SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11745-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

MAUREEN CHINEDU AGADA — First Respondent

ADEMOLA WESTON — Second Respondent

Before:

Mr J. P. Davies (in the chair)
Mr H. Sharkett
Mrs S. Gordon

Dates of Hearing: 12-13 June 2018

Appearances

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

The First Respondent did not attend and was not represented.

Nigel West, solicitor of Radcliffes LeBrasseur, 85 Fleet Street, London, EC4Y 1AE for the Second Respondent.

JUDGMENT

Allegations

1. The Allegations against the First Respondent made by the SRA were that whilst a partner at Maus Solicitors ("the Firm"):

1.1 Between 11 June 2013 and 16 December 2013, she made improper payments from the client account to third parties and made improper transfers from the client account to office account totalling £226,500.00 and thereby breached all, or any, of the following:

1.1.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("the Principles");

1.1.2 Failed to maintain the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles;

1.1.3 Failed to protect client money in breach of Principle 10 of the Principles;

1.1.4 Rule 20.1 of the Solicitors Accounts Rules 2011 (SAR) – client money may only be withdrawn from a client account when it is, inter alia, properly required for payment to or on behalf of a client, properly required for a payment of a disbursement on behalf of the client and withdrawn on the client's instructions, provided the instructions are at the client's convenience and are given in writing, or are given by other means and confirmed by you to the client.

1.2 By failing to properly record transactions on the office side of the client account ledgers and failing to have adequate narrative entries in the books of account she thereby breached all, or any, of the following:

1.2.1 Failed to maintain the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles;

1.2.2 Rule 29.4 of the SAR - All dealings with office money relating to any client matter, or to any trust matter, must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account.

1.3 In acting for her client, Ms S, she failed to have sufficient regard for her duties under the Money Laundering Regulations 2007 ("MLR 07") and/or the Law Society's warning card on money laundering in breach of all, or any, of the following:

1.3.1 Failed to act with integrity in breach of Principle 2 of the Principles;

1.3.2 Failed to maintain the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles;

1.3.3 Failed to comply with her legal and regulatory obligations and deal with her regulators and ombudsmen in a timely and co-operative manner in breach of Principle 7 of the Principles;

1.3.4 Failed to run her business or carry out her role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 of the Principles;

1.3.5 Failed to comply with legislation applicable to her business, including anti-money laundering and data protection legislation in breach of outcome 7.5 of the SRA Code of Conduct 2011.

1.4 She failed to ensure that the firm had any or any effective anti-money laundering policy in breach of any, or all, of the following:

1.4.1 Failed to comply with her legal and regulatory obligations and deal with her regulators and ombudsmen in a timely and co-operative manner in breach of Principle 7 of the Principles;

1.4.2 Failed to run her business or carry out her role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 of the Principles.

2. The Allegations against the Second Respondent made by the SRA were that whilst a partner of Maus Solicitors:

2.1 Between 11 June 2013 and 16 December 2013, he failed to prevent improper payments being made to third parties and failed to prevent improper transfers from the client account to the office account totalling £226,500.00 and thereby breached all, or any, of the following:

2.1.1 Failed to maintain the trust the public places in him and in the provision of legal services in breach of Principle 6 of the Principles;

2.1.2 Failed to protect client money in breach of Principle 10 of the Principles

2.1.3 Rule 20.1 of the SAR – client money may only be withdrawn from a client account when it is, inter alia, properly required for payment to or on behalf of a client, properly required for a payment of a disbursement on behalf of the client and withdrawn on the client's instructions, provided the instructions are at the client's convenience and are given in writing, or are given by other means and confirmed by you to the client.

2.2 By failing to properly record transactions on the office side of the client account ledgers and failing to have adequate narrative entries in the books of account he thereby breached all, or any, of the following:

2.2.1 Failed to maintain the trust the public places in him and in the provision of legal services in breach of Principle 6 of the Principles;

2.2.2 Rule 29.4 of the SAR - All dealings with office money relating to any client matter, or to any trust matter, must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account.

2.3 He failed to ensure that the Firm had any or any effective anti-money laundering policy in breach of any, or all, of the following:

2.3.1 Failed to comply with his legal and regulatory obligations and deal with his regulators and ombudsmen in a timely and co-operative manner in breach of Principle 7 of the Principles;

2.3.2 Failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 of the Principles.

3. Dishonesty was alleged against the First Respondent with respect to Allegation 1.1 but dishonesty was not an essential ingredient to prove that Allegation.

Preliminary Matters

4. Application to proceed in absence

4.1 The First Respondent did not attend the hearing and Mr Gibson applied to proceed in her absence. He referred to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules ("SDPR") 2007. He confirmed the notice of the hearing had been served on the Respondent in the standard directions and she had referred to it in correspondence, including a letter that she had sent to the Tribunal dated 25 May 2018. In that letter she had requested that the hearing take place in her absence. Although the letter made a reference to health, neither Mr Gibson nor Mr West were aware of any specific health issues. Mr Gibson invited the Tribunal to proceed in the First Respondent's absence on the basis that she had voluntarily absented herself. In response to a query from the Tribunal Mr Gibson confirmed that Civil Evidence Act notices had been served on 13 April 2018 and no response had been received from the First Respondent.

4.2 Mr West confirmed that he supported the application to proceed in the First Respondent's absence. The Second Respondent did not have adequate finances to support further representation and there was no indication that the First Respondent would attend on any adjourned hearing date. This was based on her indication that she did not intend to appear.

The Tribunal's Decision

4.3 The Tribunal had anticipated that such an application would be made and had in mind the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in

particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;

(ii) …;

(iii) the likely length of such an adjournment;

(iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;

(v) …;

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;

(vii) …;

(viii) …;

(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(x) the effect of delay on the memories of witnesses;

(xi) …;"

4.4 In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "…It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

4.5 Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account".

4.6 The First Respondent had written to the Tribunal on 25 May 2018 stating:

> "I am also writing to request if my hearing can be decided in writing without me attending Court to reduce the costs as I cannot afford instructing a solicitor

> to represent me and the costs is increasingly [sic] daily in this matter. I do not have any income and depend wholly on my family for my daily support. Another reason is due to health."

4.7 The Tribunal Office had responded to this letter on 1 June 2018 by way of email. The First Respondent had been informed that it was a matter for her whether she attended. She was told that the hearing was her chance to present her case and her opportunity to cross-examine witnesses as well as give evidence herself. She was reminded that it was open to the Tribunal to make such findings, sanctions, costs and other orders as it considered appropriate in her absence. She was also referred to Practice Direction 5, which dealt with the possibility of adverse inferences if she failed to give evidence and to the SDT Guidance Note on Sanctions and other powers of the Tribunal. The First Respondent had acknowledged receipt of this email.

4.8 The Tribunal was satisfied that the First Respondent had chosen not to attend the hearing and indeed had invited the Tribunal to proceed in her absence. She had provided no details about the health issues to which she referred. In the circumstances it would not be the interests of justice to adjourn the matter and the application to proceed in the absence of the First Respondent was granted. Mr Gibson confirmed that he was aware that he would have to prove the Allegations beyond reasonable doubt notwithstanding the First Respondent's absence.

5. Application to sit in Private

5.1 Mr West and Mr Gibson applied for the Tribunal to sit in private for the part of the hearing that involved consideration as to whether or not the Allegations were proved.

5.2 Mr Gibson told the Tribunal that the reason for the application was because of the nature of the facts that gave rise to the Allegations. Mr Gibson and Mr West did not want a situation arising whereby 'tipping-off' occurred inadvertently.

5.3 Mr West explained that because of the nature of the First Respondent's explanations for her conduct he was concerned that in the course of his submissions he may get to a point where the Tribunal was concerned that the information he was referring to was getting close to 'tipping-off'. Mr West felt that it was appropriate to draw the Tribunal's attention to it at this stage rather than leave it until later in the hearing. He was possibly being "ultra-cautious".

The Tribunal's Decision

5.4 This was an application made by both parties for the proceedings to continue in private and that such steps would then follow in relation to the written judgment. The Tribunal referred to Rule 12(4) SDPR 2007 which stated:

> "Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of a) exceptional hardship b) exceptional prejudice to a party, a witness or any person affected by the application".

5.5 The Tribunal also had regard to the principle of open justice as set out in SRA v Spector [2016] EWHC 37 (Admin).

5.6 It was unclear whether any parts of that Rule 12(4) were engaged by the circumstances of this case. The Tribunal noted that the Rule 5 statement was dated 8 November 2017 following an intervention in June 2017 and matters had therefore been known about for some time. The Tribunal noted that there was no evidence of notification to other enforcement agencies in that time. The Tribunal was not satisfied that the application was made out. For the avoidance of any doubt it directed that the parties ensure the references to individuals or entities be by their initials and if at any point that precaution did not satisfy the need to protect anyone that could be protected by Rule 12(4) the Tribunal would reconsider the position. It was important that hearings such as this took place in public unless there were exceptional reasons to the contrary. There were no such reasons in this case and the application to sit in private was therefore refused.

Factual Background

6. The First Respondent was admitted to the Roll on 2 October 2006. The Second Respondent was admitted to the Roll on 5 January 2004. At the material time they both practised in partnership at Maus Solicitors, Global House, 228 Brownhill Road, London SE6 1AT. The First Respondent had been the Money Laundering Reporting Officer ("MLRO").

7. Following authorisation of the inspection of the books of account and other documents of the Firm, a Forensic Investigation of the firm commenced on 24 April 2017 and resulted in a Forensic Investigation Report ("FIR") dated 15 May 2017.

8. Allegations 1.1 and 2.1

8.1 The Firm acted for Ms S in the purchase of a property but the transaction did not complete. The client file contained a copy of a client care letter, dated 18 September 2012, in which the Firm confirmed Ms S's instructions. The letter showed that the First Respondent was the fee earner dealing with the matter. The purchase price for the property was shown as £400,000.

8.2 The file contained an attendance note, dated 17 September 2012 which referred to an attendance at the office by Mr A and Mr V on behalf of Ms S. In her interview with the SRA on 24 April 2017 the First Respondent explained that Mr A was an associate of Mr S, Ms S's father, and that he was helping him with his political campaign in Nigeria.

8.3 The file contained a letter, dated 10 October 2012, which stated that

> "This is to confirm that i, [Mr A], of the above address is financing the purchase of [address] for £400,000.00 for my daughter [Ms S].
>
> "The source of the proceeds from lease of my property…"

8.4 The client side of the client ledger account for this matter showed receipts of funds as follows:

Date	Narrative	Credit	Balance
17.9.12	Deposit	£1180.00	£1180.00
19.9.12	Deposit	£500.00	£1680.00
5.11.12	Deposit	£400,000.00	£401,680.00
9.11.12	Stamp Duty	£13,500.00	£415,680.00

8.5 During her interview the First Respondent had stated that the sum of £1,180.00 was received from Mr A and the sum of £500 from Ms S.

8.6 The client ledger account showed the following payments between 11 June 2013 and 29 August 2013. The narrative for each of these payments was "Transfer";

Date	Payee	Amount
11.6.13	JC Ltd	£2,500.00
11.7.13	JC Ltd	£52,000.00
17.7.13	KO	£8,000.00
25.7.13	JU	£2,000.00
2.8.13	PO	£10,000.00
5.8.13	PO	£2,000.00
13.8.13	JC Ltd	£10,000.00
14.8.13	JU	£6,000.00
19.8.13	SP	£40,000.00
29.8.13	JC Ltd	£10,000.00
Total		**£146,500.00**

8.7 The file did not contain any evidence to show that the client had requested or authorised these payments. In her interview the First Respondent confirmed that she did not obtain the authority of Ms S to make these withdrawals. The Forensic Investigation Officer ("FIO") asked her "Who gave you instructions to make these payments to these people?" The First Respondent replied "Nobody gave me instructions because when they were coming to my office to threaten me which if I weren't go so I was either going to be killed or lose out so I told him I would not give them back the money, that I was sending back to for them to share to charity. And as if I'd die I know at least I've done something good for people back home".

8.8 She explained that JC Ltd and SP were money transfer businesses that enabled payments to be made from the UK to Nigeria. The First Respondent said that KO, PO and JU were all linked to JC Ltd and that they sometimes asked her for their personal accounts to be used for money transfers. The FIO had asked her "Do you accept that by making these payments without the authority of your client you've made improper withdrawals from client bank account?" The First Respondent had replied "Yes". The First Respondent had also accepted, in the interview, that she had made withdrawals in excess of £146,000 improperly from the client bank account.

8.9 The client ledger account for Ms S showed two payments on 30 August 2013 totalling £80,000.00. The narrative for each payment was "Transfer". The money was paid to the Firm's business account. The client matter did not contain any evidence to show that the client had requested or authorised either of these payments. The client ledger account had further showed that the firm's fees of £1,200.00 were transferred from client to office bank account on 28 November 2012 but the client matter file did not contain any other bill or written notification of costs that might account for this payment.

8.10 During her interview on 24 April 2017 the FIO asked the First Respondent "why did you transfer the money from client account to, to this account" and the First Respondent replied "I just transferred it I didn't think of it as anything I just transferred it to that account".

8.11 The Firm's business account bank statements showed transactions between 17 August 2013 and 16 December 2013. These statements showed that of the £80,000.00 received, six payments totalling £58,000.00 were made to JC Ltd and 11 transfers totalling £21,800 were made to the Firm's office bank account.

8.12 In her interview on 24 April 2017 the FIO asked "Can you explain why you transferred this money to office account?" The First Respondent replied "I transferred it to pay expenses".

9. Allegations 1.2 and 2.2

9.1 The FIO reviewed three client ledger accounts; Ms M, Ms O and Mr U as well as Ms S.

9.2 The client ledger account for Ms M showed a transfer from client to office bank account dated 8 February 2017 in the sum of £500.00. The client ledger did not record a corresponding credit entry on the office side of the account. The client ledger did not record a debit entry in respect of a bill or disbursement that may have warranted the transfer from client to office bank account.

9.3 The client ledger account for Ms O showed a transfer from client to office bank account, dated 22 December 2015, in the sum of £5,600.00. The client ledger did not record a corresponding credit entry on the office side of the account. The client ledger did not record a debit entry in respect of a bill or disbursement that may have warranted the transfer from client to office bank account.

9.4 The client ledger account for Mr U showed two transfers from client to office bank account, dated 21 December 2016 and 28 February 2017, in the sums of £3,500.00 and £1,741.00 respectively. In each case the client ledger did not record a corresponding credit entry on the office side of the account. The client ledger account did not record a debit entry in respect of a bill or disbursement that may have warranted the transfer from client account to office bank account.

9.5 The client side of the ledger account for Ms S showed the receipt of funds as set out in the table above. In her interview on 24 April 2017 the First Respondent confirmed that the sums of £500.00 and £13,500.00 were received from Mr A and the sum of £400,000.00 was received from a business referred to in this judgment as W.

9.6 The FIO asked the First Respondent about the narrative entries:

> "FIO: Do you think that the narrative entries for the entries we've talked about contain adequate information? So just to be clear we're looking at the first five entries. So the narrative says "deposit, deposit, deposit and stamp duty"
>
> First Respondent: Ok. Yes.
>
> FIO: So you think that's adequate information?
>
> First Respondent: Yes
>
> FIO: In hindsight do you think that the proper thing to have done would have been to record the name from whom those funds were received, so in each case it's Mr [A]?
>
> First Respondent: Yes"

9.7 During the opening meeting with the First Respondent she said that the books of account were maintained by the Firm's accountants.

10. Allegation 1.3

10.1 The Applicant's case was that there was there was no evidence in the client matter file to show that the First Respondent had considered whether Ms S or her father was a politically exposed person, in breach of Regulation 14(4) of the MLR 07. The Applicant's case was that because the Firm was unable to verify the identity of Ms S it had therefore not complied with Regulation 7 of the MLR 07. It also alleged a breach of Regulation 11 of the MLR 07 on the basis that the First Respondent had not ceased the transaction and business relationship where due diligence measures had not been carried out.

10.2 In her interview the following exchange took place concerning the receipt of the £400,000 referred to above.

10.3 During interview with the First Respondent on 24 April 2017, the FIO asked the First Respondent about the receipt of £400,000.00 as follows:

> "CW: Can you explain why the funds came from [W] rather than Mr [S]?
>
> MA: When Mr [A] attended our office we did give him list of things that we needed to verify and asked him where the fund was coming from. He said it was coming from Mr [S] account that he's got an account in the UK. So I was surprised to see that the money wasn't from his account.
>
> CW: So when you saw that money coming in you were surprised that it's coming from [W] rather than Mr [S] personal account in the UK ok. Did you then follow up with [Ms S] or her father to check that the money had come from one of them?

MA: We did I con, sorry, I contacted Mr [A], I wasn't here actually when the money came in. I was in Nigeria.

CW: Yeah

MA: I was not here. So when I got back, that was when I contacted him because I don't have direct contact with Mr [S] or the daughter.

CW: The fact that you didn't have direct contact with the person whose supposed to be your client.

MA: Because they send it postal address, no I was using to write to her.

CW: Did that give you any cause for concern that you're having to go through an intermediary?

MA: It did.

CW: So did at any stage you think, hold on I am not going to act on this matter?

MA: I, when I realised what was happening and they were already coming to my office regularly anyway. So I contacted them I said ok can I see [Mr S] when they came in and the daughter as well and I gave them a list of things I needed because I was getting very scared.

CW: Yeah. Why were you scared?

MA: If you know what political people do to people in Nigeria you'd be scared so whichever way I go I'm going to lose.

CW: You're scared of physical violence?

MA: Even killing."

10.4 The payments made to the third parties are set out in the table above. During her interview on 24 April 2017, the First Respondent explained that the funds were sent to Nigeria, via the businesses and individuals referred to above. The FIO asked "who decides who gets the benefit of the money in Nigeria? The First Respondent replied "I had a, a gentleman who, who was helping me out, but unfortunately he was killed in 2014 he died."

11. Allegations 1.4 and 2.3

11.1 The Applicant's case was that the Firm did not have a policy to comply with anti-money laundering requirements. This Allegation was denied by both Respondents.

Witnesses

12. Cary Whitmarsh (FIO)

12.1 Mr Whitmarsh confirmed that the contents of his FIR were true to the best of his knowledge and belief. In cross-examination he agreed that it was not correct to state that a solicitor had to meet the client face-to-face in order to establish their identity. The solicitor could rely on third parties but somebody had to do it. He confirmed that the Law Society practice note set out the correct position. It was put to Mr Whitmarsh that the Second Respondent had corrected the First Respondent during the meeting by explaining that the Firm did not have a written money-laundering policy but had adopted the Law Society standard. Mr Whitmarsh stated that the Second Respondent had qualified the First Respondent's answer by stating that the Firm followed the Law Society standard. It was put to him that the Second Respondent had gone further and confirmed that it was adopted. Mr Whitmarsh was unable to recall whether he had gone further. Mr Whitmarsh was asked whether he disagreed with anything in paragraph 17 of the Second Respondent's witness statement. He confirmed that he did not.

12.2 Paragraph 17 stated as follows:

> "When Mrs Agada and myself met the FI Officer, Mr Whitmarsh, on 11 April 2007 at the start of his investigation, he asked us a series of questions including a question as to whether we had an anti money laundering policy. Mrs Agada confirmed we operated a money laundering policy and I told Mr Whitmarsh that we had not written our own policy but instead we relied on the Law Society's standard policy as the firm's policy. Those comments have been misquoted in paragraph 48 of the FI Report, which incorrectly says that I said we did not have a written policy. That is not what I said. I said we had not written our own policy as we had adopted the Law Society's policy."

13. Second Respondent

13.1 The Second Respondent confirmed that his witness statement was true to the best of his knowledge and belief.

13.2 He confirmed that the First Respondent was the Money-Laundering Reporting Officer (MLRO).

13.3 The regulations changed in 2017 and in anticipation of that change the Second Respondent told the Tribunal that he had obtained a sample of policy from another solicitor who was a friend of his to consider from a risk point of view whether to consider a further change in policy.

13.4 In cross examination the Second Respondent was asked why he had not tailored the Law Society policy to suit his practice. The Second Respondent stated that he believed that it suited the purpose for which the Firm was applying it. It met the Firm's requirements and he did not believe that he needed a unique one.

13.5 In response to questions from the Tribunal the Second Respondent confirmed that he was the only signatory on the Firm's bank account but that either partner could authorise a bank transfer online. The First Respondent could not do a telephone transfer nor could she sign cheques. The Second Respondent explained that he had sometimes signed blank cheques which were kept in the safe in case the First Respondent, who did conveyancing work, needed to redeem mortgage for example when the Second Respondent was not in the office. The Second Respondent told the Tribunal that since the intervention into the Firm he had been doing mainly manual work and had not been working as a solicitor.

Findings of Fact and Law

14. The Applicant was required to prove the Allegations beyond reasonable doubt. The Tribunal had due regard to the 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. The Tribunal considered all the documents placed before it and had regard to the submissions made by the parties, which are summarised below.

15. **Allegation 1 - The Allegations against the First Respondent made by the SRA were that whilst a partner at Maus Solicitors ("the Firm"):**

1.1 Between 11 June 2013 and 16 December 2013, she made improper payments from the client account to third parties and made improper transfers from the client account to office account totalling £226,500.00 and thereby breached all, or any, of the following:

1.1.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("the Principles");

1.1.2 Failed to maintain the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles;

1.1.3 Failed to protect client money in breach of Principle 10 of the Principles;

1.1.4 Rule 20.1 of the Solicitors Accounts Rules 2011 (SAR) – client money may only be withdrawn from a client account when it is, inter alia, properly required for payment to or on behalf of a client, properly required for a payment of a disbursement on behalf of the client and withdrawn on the client's instructions, provided the instructions are at the client's convenience and are given in writing, or are given by other means and confirmed by you to the client.

Applicant's Submissions

15.1 Mr Gibson submitted that the payments to third parties and the transfers to office account were improper as the payments and transfers were made without the client's instructions or authority and were therefore made in breach of Rule 20.1 of the SAR. The payments from client account were for the benefit of others and the transfers from client account to office account were for the benefit of the Respondents and others.

15.2 A solicitor acting with integrity would not have made improper payments to third parties or made improper transfers from client account to office account for her own benefit knowing that the payments were made without the client's instructions or authority. By making the improper payments to third parties and improper transfers to office account, and thus not protecting client monies, the First Respondent had failed to maintain the trust the public placed in her and in the provision of legal services.

15.3 Mr Gibson further submitted that the First Respondent's actions had been dishonest by the ordinary standards of reasonable and honest people. She was aware that the £400,000.00 had been paid to her firm for the specific purpose of purchasing a property. The First Respondent knew that her client had not authorised payments to the third parties and improper transfers from the client account to the office account but despite this she went ahead and made 28 improper payments to third parties and improper transfers from client account to office account totalling £226,500.00. Mr Gibson submitted that this was a deliberate course of conduct.

15.4 The First Respondent admitted in interview with the FIO that the payments to third parties were improper. She benefitted from the transfers of money she made from the client account to the office account, which she had admitted in interview kept the office account within its overdraft limit and subsequently transfers were made to herself and to the Second Respondent.

15.5 Mr Gibson submitted that the correct test for dishonesty was that set out in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67. Lord Hughes held at paragraph 74 of the Judgment that:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

First Respondent's Position

15.6 The First Respondent had filed a witness statement and a response to the Allegations. The Tribunal read these documents carefully when deliberating.

15.7 The First Respondent's witness statement dated 23 May 2018 stated that she referred to her response dated 6 December 2017. The witness statement did not address Allegation 1.1 specifically but in it the First Respondent stated that she had always complied with the professional rules and due to threats on her life in this particular case, she was "scared on what to do". She stated that she should be held responsible for the outcome of this matter and that the Second Respondent had been unaware of what was going on.

15.8 In her response dated 6 December 2017, while not specifically referencing Allegation 1.1, she set out the circumstances of her dealings with Mr A and Mr G in relation to Ms S's case.

15.9 The First Respondent stated that the Firm had been instructed in September 2012 to act for Ms S. She had been approached by Mr A who was an executive assistant to Mr S who was a political figure in Nigeria. The First Respondent stated that she sent the client care letter to Ms S detailing the procedure to follow including confirmation of her identity and the source of funds for the purchase as it was a cash purchase. She stated that she received payment for the searches and part payment of the Firm's fees. She further requested for Ms S's attendance at the office to conclude the money laundering checks, but she never attended. Mr A and Mr G, also a public official in Nigeria and cousin of Mr S, did attend the office when it was made clear to them that they were not the client and that the First Respondent still needed to see Ms S, as stated in the client care letter. While the process continued this had to happen before exchange or completion. This did not happen and nor did she see Mr S or his identity. The First Respondent did not ask for the requisite deposits on exchange or completion money as they were not at the position where they could exchange contracts. At the time of the instructions the First Respondent had been told that the money was from the sale of shares in a company owned by Mr S and she duly gave a list of documents that would be required of this. She was also informed that Mr S would be paying for the property as he had money in a UK bank account. In fact she found out subsequently that the payment had come from W, a money transfer company and not from Mr S as they had originally stated. On one occasion Mr G and Mr A attended the offices with some men, one of whom was introduced as Mr S. When he was asked for identity they quickly left the office.

The Tribunal's Decision

15.10 The Tribunal treated the First Respondent's response and witness statement to be a denial of this Allegation.

15.11 The ledgers made payments clear and had not been challenged, indeed it was the First Respondent's own document. She had admitted making payments to third parties without authority and without written instruction from her client. She had explained that she had been subjected to duress by way of threats made on her life. In considering this the Tribunal noted that there was no evidence of such threats provided by the First Respondent. It was not clear whether her position was that the threats were made orally, in writing, in person or by telephone. The First Respondent had provided no detail as to the immediacy of the threat or what steps she took, or considered taking, to protect herself, for example contacting the police. The Tribunal noted that the improper payments had taken place on 28 occasions over a period of months. The First Respondent had not explained in what way the duress had continued for the entirety of that duration.

15.12 The Tribunal further noted that the First Respondent's defence of duress appeared inconsistent with her case that the money had gone to good causes. The Tribunal found it implausible that a solicitor could be threatened into making charitable donations.

15.13 The Tribunal therefore rejected the First Respondent's defence of duress.

15.14 The fact that the money may have gone to good causes did not make it a proper transfer. Indeed there was no evidence that the money had gone to such causes. The First Respondent had admitted in her interview with the SRA in April 2017 that the transfers were improper and the Tribunal was satisfied beyond reasonable doubt that she was correct in that admission.

15.15 The Tribunal found the factual basis of Allegation 1.1 and the breach of Rule 20.1 of SAR 2011 proved beyond reasonable doubt.

15.16 The Tribunal considered whether the First Respondent had lacked integrity. The Tribunal applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

15.17 The Tribunal noted that this was not a one off and the payments had continued repeatedly over a period of time. Some of them were for her own benefit and/or that of her Firm. The Tribunal was satisfied beyond reasonable doubt that the First Respondent had lacked integrity as she had failed to adhere to the ethical standards of the profession. The Tribunal found the alleged breach of Principle 2 proved beyond reasonable doubt.

15.18 The Tribunal found that the First Respondent had failed to behave in a way which maintained the trust the public placed in the profession by reason of her improper transfers of client funds. The Tribunal found the alleged breach of Principle 6 proved beyond reasonable doubt.

15.19 It followed as a matter of logic from the Tribunal's findings of fact that the First Respondent had failed to protect client money and assets as she had disposed of them improperly away from client account. The Tribunal found the alleged breach of Principle 10 proved beyond reasonable doubt.

Dishonesty

15.20 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the First Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

15.21 The Tribunal considered the First Respondent's knowledge or belief as to the facts. The money had come into client account and had then been sent to various destinations without any instruction. Some of those payments were to the office account and some of the office account was used to run the Firm. There was no evidence of invoices and bills. The First Respondent had knowledge of these transfers, which occurred on 28 occasions. The First Respondent knew that she had no authority or instruction from the client, as she had told Mr Whitmarsh. The Tribunal was therefore satisfied beyond reasonable doubt that she knew that she was making payments that were improper.

15.22 The Tribunal had already considered the question of duress and rejected it the reasons set out above.

15.23 The Tribunal was satisfied beyond reasonable doubt that knowingly making improper transfers of client funds on 28 occasions would be considered dishonest by the standards of ordinary decent people. The Tribunal found beyond reasonable doubt that the First Respondent had acted dishonestly when making the improper payments from client account.

15.24 The Tribunal found Allegation 1.1 proved in full beyond reasonable doubt including the element of dishonesty.

16. **Allegation 1.2 - By failing to properly record transactions on the office side of the client account ledgers and failing to have adequate narrative entries in the books of account she thereby breached all, or any, of the following:**

1.2.1 Failed to maintain the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles;

1.2.2 Rule 29.4 of the SAR - All dealings with office money relating to any client matter, or to any trust matter, must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account.

Applicant's Submissions

16.1 Mr Gibson submitted that by failing to properly record transactions on the office side of client account and by failing to provide adequate narrative entries in the books of account the First Respondent had breached Rule 29.4 of the SAR. The same submission was made in respect of Allegation 2.2, which was the corresponding Allegation against the Second Respondent.

16.2 The SAR existed to ensure transparency of dealings with client and office money. By failing to ensure their books of account were properly written up in accordance with those rules, which members of the public would expect a solicitor to ensure, both Respondents had failed to maintain the trust the public places in them and in the provision of legal services.

First Respondent's position

16.3 The First Respondent had not addressed this Allegation specifically beyond the account contained in her witness statement and her response as set out in relation to

Allegation 1.1. The Tribunal treated the First Respondent's position as being a denial of the Allegation.

The Tribunal's Decision

16.4 The Tribunal considered the ledgers to which it had been referred in relation to this Allegation. Rule 29.4 was clear. A solicitor had to provide sufficient information on both sides of the ledgers to show why money was moving from one side to the other. The reason for this was so that anybody looking at it could see the reason why the money was moving. In the exemplified cases there were debits from client account but no corresponding credits on the office side of the client ledgers and the narrative entries were not adequate. The Tribunal was satisfied beyond reasonable doubt that this was a breach of Rule 29.4.

16.5 The Tribunal found that the public would expect information to be kept properly so that client monies were safe, tracked and secure. This had clearly not happened here and the Tribunal was satisfied beyond reasonable doubt that the First Respondent had failed to behave in a way that maintained the trust the public placed in the provision of legal services. The Tribunal found the alleged breach of principle 6 proved beyond reasonable doubt.

16.6 The Tribunal found Allegation 1.2 proved in full beyond reasonable doubt.

17. **Allegation 1.3 - In acting for her client, Ms S, she failed to have sufficient regard for her duties under the Money Laundering Regulations 2007 ("MLR 07") and/or the Law Society's warning card on money laundering in breach of all, or any, of the following:**

1.3.1 Failed to act with integrity in breach of Principle 2 of the Principles;

1.3.2 Failed to maintain the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles;

1.3.3 Failed to comply with her legal and regulatory obligations and deal with her regulators and ombudsmen in a timely and co-operative manner in breach of Principle 7 of the Principles;

1.3.4 Failed to run her business or carry out her role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 of the Principles;

1.3.5 Failed to comply with legislation applicable to her business, including anti-money laundering and data protection legislation in breach of outcome 7.5 of the SRA Code of Conduct 2011.

Applicant's Submissions

17.1 Mr Gibson submitted that the First Respondent had failed to have sufficient regard to the MLR 07 in a number of respects. A solicitor acting with integrity would have undertaken customer due diligence measures and would have ceased the transaction

mentioned above in order to comply with the MLR 07. She had failed to undertake any customer due diligence measures and failed to cease the transaction. Mr Gibson's case was that the First Respondent had failed to demonstrate moral soundness and rectitude and to show a steady adherence to an ethical code and had therefore lacked integrity.

17.2 By failing to comply with the Money Laundering Regulations 2007, which members of the public would expect a solicitor to comply with, the First Respondent has failed to maintain the trust the public places in her and in the provision of legal services.

First Respondent's position

17.3 In her response the First Respondent specifically denied this Allegation and denied failing to have sufficient regard her duties under the MLR 07 and or the Law Society's warning card on money laundering. She stated that she had complied with the legislation applicable to her role in the business effectively, including anti-money laundering and data protection legislation and in accordance with proper governance and sound financial and risk management principles.

The Tribunal's Decision

17.4 The Tribunal found that there were anti-money laundering procedures in place for reasons set out in more detail in relation to Allegation 1.4 below. The First Respondent had worked through the initial processes. When it became clear that she was not getting the identity documents that she was requesting she had not carried on with the property purchase.

17.5 The First Respondent knew that she was dealing with a potentially politically exposed person. Whether he was or was not a politically exposed person was not a matter which the Tribunal needs to make a finding as it was the First Respondent's suspicion that he was a politically exposed person that mattered. Enhanced checks were required in those circumstances. They were also required because the First Respondent had not met the client. The Tribunal noted the answers given in cross-examination of Mr Whitmarsh to the fact that it was not absolutely necessary to meet the client. However when the client and the solicitor had not met, this again triggered the need for enhanced checks.

17.6 The Tribunal noted the contents of the client care letter dated 18 September 2012 which referred to the identity check requirements and the documents that had to be provided. The First Respondent did not receive these as she had explained in her response. However she received £400,000.00 in October 2012 despite the checks not having been completed. She had also accepted the sum of £1180, referred to as 'deposit'.

17.7 The Tribunal was satisfied beyond reasonable doubt that the First Respondent had not had sufficient regard to the money laundering regulations. The Tribunal found the factual basis and Outcome 7.5 of the SRA Code of Conduct 2011 proved beyond reasonable doubt.

17.8 The Tribunal considered whether the Respondent had lacked integrity and again applied the test in Wingate, Evans and Malins. The whole point of the money laundering regulations and solicitors obligations to comply with them or that identities were checked were so solicitors could be satisfied that they were not laundering money. The

First Respondent had a particular responsibility as she was the MLRO. In those circumstances the failure to have sufficient regard to the regulations was particularly serious and the Tribunal was satisfied beyond reasonable doubt that it demonstrated a lack of integrity on the part of the First Respondent. The Tribunal found the alleged breach of principle 2 proved beyond reasonable doubt.

17.9 It followed from this that the First Respondent had failed to behave in a way which maintained the trust the public placed in her and in the provision of legal services as the public trust was founded on the principle that solicitors would comply with regulations in place in order to prevent criminal activity. The Tribunal found the alleged breach of Principle 6 proved beyond reasonable doubt.

17.10 It further followed as a matter of logic that the First Respondent had failed to comply with the legal and regulatory obligations as she had not complied with the money laundering regulations or the obligations to have sufficient regard to them. However there was no evidence called and it had not been part of the Applicant's case that she had failed to deal with the regulator in a timely and open manner. The Tribunal therefore found the alleged breach of Principle 7 proved to the extent that she had failed to comply with the legal and regulatory obligations but not proved in respect of any suggestion that she had failed to deal with the regulators and ombudsmen in an open, timely and co-operative manner.

17.11 The First Respondent's role in the business was that of a partner and the MLRO and for the reasons above the Tribunal had found that she had failed to carry out that role effectively and in accordance with proper governance and sound financial and risk management principles. It was not possible to follow financial risk management principles if a solicitor was not following the money laundering regulations. The Tribunal found the alleged breach of Principle 8 proved beyond reasonable doubt.

17.12 The Tribunal found Allegation 1.3 proved in full beyond reasonable doubt, save for the element of Principle 7 referred to above.

18. **(First Respondent)**
Allegation 1.4 -She failed to ensure that the firm had any or any effective anti-money laundering policy in breach of any, or all, of the following:

1.4.1 Failed to comply with her legal and regulatory obligations and deal with her regulators and ombudsmen in a timely and co-operative manner in breach of Principle 7 of the Principles;

1.4.2 Failed to run her business or carry out her role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 of the Principles.

(Second Respondent)
Allegation 2.3 - He failed to ensure that the Firm had any or any effective anti-money laundering policy in breach of any, or all, of the following:

2.3.1 Failed to comply with his legal and regulatory obligations and deal with his regulators and ombudsmen in a timely and co-operative manner in breach of Principle 7 of the Principles;

2.3.2 Failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 of the Principles.

18.1 The Tribunal considered these Allegations together as they were pleaded in identical terms in respect of each Respondent. The Tribunal had heard live evidence from the Second Respondent and this was relevant to the consideration of the Allegation against the First Respondent.

Applicant's Submissions

18.2 Mr Gibson drew the Tribunal's attention to Regulation 20(1) of the Money Laundering Regulations 2007 which stated:

> "A relevant person must establish and maintain appropriate risk-sensitive policies and procedures relating to:
>
> (a) Customer due diligence and ongoing monitoring;
> (b) Reporting;
> (c) Record keeping;
> (d) Internal control;
> (e) Risk assessment and management;
> (f) The monitoring and management of compliance with, and the internal communication of, such policies and procedures;
>
> In order to prevent activities relating to money laundering and terrorist financing"

18.3 If the Firm did not have any written policies and procedures in respect of anti-money laundering it was in contravention of the requirement set out above. The First and Second Respondent had therefore failed to comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in a timely and cooperative manner by not having an anti-money laundering policy. They had also failed to run their business or carry out their roles in the business effectively and in accordance with proper governance and sound financial and risk management principles by not having an anti-money laundering policy.

First Respondent's position

18.4 In her response, the First Respondent had again stated that she had not failed to ensure that the Firm had any, or any effective, anti-money laundering policy. She stated that she had complied with the legislation applicable to her role in the business effectively including anti-money laundering and data protection legislation and in accordance with proper governance and sound financial and risk management principles.

Second Respondent's submissions

18.5 Mr West told the Tribunal that under the 2007 regulations there was no requirement for the policy to be in writing. By contrast the 2017 regulations did make specific reference to written records. The 2017 regulations were not retrospective and the Tribunal was therefore required to apply the 2007 regulations, which were those in force at the material time.

18.6 Mr West submitted that the Applicant could not make out its case as pleaded as there was no requirement for a written policy in the 2007 regulations. This was not, as had been suggested, a loophole. The regulations had changed as society had changed.

18.7 Even though it was not required however, Mr West submitted that the Firm did have a written policy as they had adopted the Law Society practice note which was written. Mr West told the Tribunal that the documents showed that as a matter of fact the Firm relied on the Law Society practice note. There had initially been an office manual in 2007 which had been followed by a decision to change three years later following a review. This evidence had not been challenged. The decision to change had been made for sound reasons. The result was a 'living policy' which was being updated by the Law Society as and when required by specialists.

18.8 This was a two partner Firm and the decision to adopt the policy had ensured that there was a specialist reviewing and updating policy when necessary. Mr West referred the Tribunal to the cross-examination of Mr Whitmarsh. He had agreed that the correct position as regards seeing a client face-to-face was that set out in the Law Society practice note, which was the document that was being relied upon by both Respondents.

18.9 Mr West submitted that it was not necessary for there to have been an additional note clarifying that the Firm was adopting the Law Society practice note. The only people in the Firm were the two Respondents and they had discussed it with each other and agreed to follow the policy. Mr West submitted that therefore the approach taken by the Firm to adopt the policy without writing a note stating they had done so was proportional and appropriate.

18.10 Mr West referred the Tribunal to the client care letter to Ms S dated 18 September 2012 which said in bold that the Firm operated an anti-money-laundering policy. The Second Respondent had stated in his evidence that he took identification evidence in every case. The First Respondent had told Mr S and Ms S to bring documents into the office to satisfy the requirements. Mr West submitted that not only was there a satisfactory policy in place but it was being followed.

The Tribunal's Decision

18.11 The Tribunal considered the wording of the 2007 regulations and noted that there was no specific requirement for the policy to be in writing. The fact that the 2017 regulations specified a need for it to be in writing reinforced the view that such a requirement had been absent from the previous regulations. However even if the Tribunal was incorrect on that interpretation of the 2007 regulations, the adoption of the Law Society practice note meant that the Firm had adopted a policy which clearly was in writing. The Second Respondent had been clear in his interview that the Firm had adopted this policy

and Mr Whitmarsh had confirmed that he did not dispute anything that was said in paragraph 17 of the Second Respondent's witness statement to that effect.

18.12 The Tribunal had the benefit of hearing the Second Respondent give oral evidence both in chief and in cross-examination. The Tribunal accepted his evidence that the Firm had adopted the Law Society practice note. The Applicant had suggested that the Law Society practice note could or should have been tailored to the needs of the Firm. The Tribunal did not accept Mr Gibson's submission that the 2007 regulations should be read in the context of it being implied that it was necessary to have a bespoke policy for the Firm. The Firm had adopted the Law Society practice note and had been acting on it, relying on it and using it. It had the advantage of being regularly updated which was one of the reasons it had been adopted in the first place. The Tribunal was not satisfied beyond reasonable doubt that the Firm did not have any or any effective anti-money laundering policy in place and therefore found Allegation 1.4 not proved against the First Respondent and Allegation 2.3 not proved against the Second Respondent.

19. **Allegation 2.1 - The Allegations against the Second Respondent made by the SRA were that whilst a partner of Maus Solicitors:**

Between 11 June 2013 and 16 December 2013, he failed to prevent improper payments being made to third parties and failed to prevent improper transfers from the client account to the office account totalling £226,500.00 and thereby breached all, or any, of the following:

2.1.1 Failed to maintain the trust the public places in him and in the provision of legal services in breach of Principle 6 of the Principles;

2.1.1 Failed to protect client money in breach of Principle 10 of the Principles

2.1.2 Rule 20.1 of the SAR – client money may only be withdrawn from a client account when it is, inter alia, properly required for payment to or on behalf of a client, properly required for a payment of a disbursement on behalf of the client and withdrawn on the client's instructions, provided the instructions are at the client's convenience and are given in writing, or are given by other means and confirmed by you to the client.

19.1 The Second Respondent had admitted this Allegation in full. The Tribunal was satisfied that this admission was properly made and consistent with the evidence. The Tribunal found Allegation 2.1 proved in full beyond reasonable doubt.

20. **Allegation 2.2 - By failing to properly record transactions on the office side of the client account ledgers and failing to have adequate narrative entries in the books of account he thereby breached all, or any, of the following:**

2.2.1 Failed to maintain the trust the public places in him and in the provision of legal services in breach of Principle 6 of the Principles;

2.2.2 Rule 29.4 of the SAR - All dealings with office money relating to any client matter, or to any trust matter, must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account.

20.1 The Second Respondent had admitted this Allegation in full. The Tribunal was satisfied that this admission was properly made and consistent with the evidence. The Tribunal found Allegation 2.2 proved in full beyond reasonable doubt.

21. **Allegation 3 - Dishonesty was alleged against the First Respondent with respect to Allegation 1.1 but dishonesty was not an essential ingredient to prove that Allegation.**

21.1 This was the Allegation of dishonesty in respect of the First Respondent. The Tribunal found this Allegation proved in full beyond reasonable doubt for the reasons set out in relation to Allegation 1.1.

Previous Disciplinary Matters

22. None in respect of either Respondent.

Mitigation

23. First Respondent

23.1 The First Respondent did not specially advance any mitigation but the Tribunal noted all matters that could be considered mitigating factors contained in her response and witness statement.

24. Second Respondent

24.1 Mr West told the Tribunal that Allegation 2.2 had related to bookkeeping errors and narrative entries. The complaint about narrative entries related to the file of Ms S. There was no allegation of inadequate narrative entries on other files. The three bookkeeping errors related to a failure to keep the office side of the client ledger up to date. It did not affect the client account and Mr West submitted that these were minor breaches. If that was all that had been alleged against the Second Respondent then he should not have been referred to the Tribunal.

24.2 Mr West told the Tribunal that the Second Respondent had been unaware of the misappropriation of funds until the SRA investigation commenced in 2017. From 2007 the First and Second Respondent had worked closely together for some 3 to 4 years. They both worked on the accounting functions and this had been important to the Second Respondent as he had wanted to supervise the First Respondent and satisfy himself about the quality of her work. After 3 to 4 years she had earned his trust and they had agreed to split responsibilities. By this point the Second Respondent was satisfied that the First Respondent was competent and so in 2010- 2011 she took over the management functions and the Second Respondent concentrated on client work, as he had a busy practice. The First Respondent had breached the trust that the Second Respondent had placed in her. She had made all of the transfers and the Second Respondent had not seen the transactions. It had been concealed from the

auditors and there were no warning signs that the Second Respondent could have picked up on. He found it hard to understand why she had done what she did. The Second Respondent had expressed contrition and regret in his witness statement and in his answer.

24.3 The Second Respondent was well educated with two degrees and two other professional qualifications. Mr West submitted that this came through in the standard of his work. There had been no complaints about that aspect of his practice and the Tribunal was referred to character references from three solicitors, who all confirmed his high degree of professionalism. The Second Respondent currently held a practising certificate with conditions. Whilst he did not have a formal offer of employment he had an informal understanding that work could be offered to him subject to the conclusion of these proceedings.

24.4 Mr West invited the Tribunal to consider dealing with this matter by way of a reprimand. The circumstances justified a sanction at the lowest level and no greater sanction was required to protect public confidence. The effect of the intervention had been significant. This had taken place before he had an opportunity to make representations and it was possible had he been able to make those representations then his own practice may not have been intervened in and his practising certificate may not have been suspended. Mr West submitted that if the Tribunal was not minded to impose a reprimand then it should impose a fine at the lowest level.

Sanction

25. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering each Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

26. First Respondent

26.1 In assessing culpability the Tribunal did not identify specific motivation for the First Respondent's misconduct. The Tribunal had rejected her defence of duress and it was therefore unclear precisely why the First Respondent had committed serious acts of misconduct particularly in relation to the misappropriation of funds. The First Respondent had been in a position of trust both in relation to her partner, the Second Respondent, and to her client to whom she had a duty to protect client money and assets. She also had specific responsibility as the MLRO.

26.2 The First Respondent was directly responsible for the transfers and therefore had full responsibility for the circumstances giving rise to the misconduct. She had sufficient experience to know that what she was doing was wrong.

26.3 The harm caused to individuals by the misconduct was not quantified and the Tribunal had heard that Ms S had not made a claim on the compensation fund. However the potential for significant loss was substantial. The harm caused to the reputation of the profession was very serious as client money was sacrosanct and the First Respondent had improperly transferred more than £250,000 from the client account.

26.4 The matters were aggravated by the First Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

26.5 The matters were further aggravated by the fact that the misconduct had continued over a period of time and had been repeated. The Tribunal recognised that all the transfers that were the subject of Allegation 1.1 had occurred on a single file. The First Respondent knew or ought reasonably to have known that the conduct was in material breach of her obligations to protect the public and the reputation of the legal profession.

26.6 The Tribunal found very little in the way of mitigating factors but recognised that she had no previous disciplinary matters against her and also noted that to the extent that she had accepted responsibility, she had not sought to blame the Second Respondent.

26.7 The misconduct was so serious that a Reprimand, Fine, Restriction Order or a Suspension would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the First Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike-Off. The protection of the public and of the reputation of the profession demanded nothing less.

26.8 The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be struck-off the Roll.

27. Second Respondent

27.1 In assessing culpability in respect of the Second Respondent the Tribunal did not find any motivation for the misconduct. They were omissions rather than commissions. The Second Respondent had some responsibility on the basis that he was a partner and this was reflected in his admissions to Allegations 2.1 and 2.2. The Second Respondent had slightly more experience than the First Respondent.

27.2 The potential harm caused to individuals had been considered by the Tribunal when assessing the level of harm caused by the First Respondent. Similarly the factors that caused harm to the profession again applied in respect of the Second Respondent although clearly his failings were of a significantly different order to those of the First Respondent.

27.3 The main aggravating factor was that matters had continued over a period of time.

27.4 The matters were mitigated by the fact that the Second Respondent had had the trust that he placed in the First Respondent breached. The Second Respondent had made open and frank admissions at an early stage and had fully cooperated with the SRA. The Tribunal was satisfied that he had displayed genuine insight and it also noted that he had a previously unblemished career.

27.5 The Tribunal found that the matters were too serious for there to be no order. The risk of serious financial loss meant that a sanction had to be imposed to protect the reputation of the profession.

27.6 The Tribunal had assessed the Second Respondent's culpability as being low and while there was the potential for loss, there had been no identifiable harm caused to any individual by the Second Respondent's misconduct. The risk of harm was not negligible. This factor however was offset by the mitigating factors identified by the Tribunal. The Tribunal also had regard to the character references that have been presented on his behalf. The Tribunal was satisfied that the level of insight displayed by the Second Respondent was such that the protection of the public and the reputation of the profession did not require a greater sanction than a reprimand.

Costs

28. Mr Gibson applied for costs in the sum of £11,257.49.

29. Mr West submitted that there should be separate costs orders and that the SRA's claim for costs should be apportioned, with the First Respondent paying at least 80% of the costs and the Second Respondent pay no more than 20%.

30. Mr West submitted that the hourly rate of £94 for Mr Whitmarsh was excessive and should only reflect the actual cost of employing him rather than a comparison with commercial rates.

31. The Tribunal was referred to the Second Respondent's statement of means and supporting exhibits. Since the intervention the Second Respondent was doing mainly manual work and was living of those earnings, topped up by charitable donations. He was currently living in a room in his local church rent-free. He had no assets, his bank accounts were empty and he had no means to satisfy a costs order at present. Mr West invited the Tribunal to reduce the overall level of costs to nil on the basis of his means and that any order for costs that it did make against the Second Respondent should not be enforced without leave of the Tribunal.

32. In response Mr Gibson submitted that the Tribunal should not make such an order and that it should rely on the discretion of the enforcement team, which adopted common sense when enforcing orders. If the Tribunal made an order that costs were not to be enforced without leave, this could in fact increase the costs faced by Second Respondent as the matter may have to be brought back to the Tribunal for enforcement in the future.

33. The Tribunal considered the cost schedule presented by the Applicant. The Tribunal did not take issue with the hourly rate of £94 for Mr Whitmarsh but it was concerned that 79 hours seemed excessive given the modest length of the report. The Tribunal summarily assessed the Applicant's costs at £10,000. The Tribunal then considered the apportionment between the two Respondents. The Allegations against the First Respondent had been considerably more serious than against the Second Respondent and the proceedings arose out of the First Respondent's grave misconduct. In the circumstances the Tribunal accepted Mr West's submission that the

appropriate apportionment was that the First Respondent pay 80% of the costs and the Second Respondent 20%.

34. The First Respondent had submitted a basic statement of means which did not contain sufficient detail or evidence such that persuaded the Tribunal that she did not have the ability to pay. The Tribunal therefore ordered that she pay costs fixed in the sum of £8,000.00.

35. The Second Respondent had submitted a detailed statement of means supported by exhibits. It was quite clear from this that the Second Respondent had no ability to pay. The Tribunal was not minded to make an order for costs that could only be enforced with leave of the future Tribunal. This would simply increase the costs as the matter may need to be brought back for enforcement to take place. The Tribunal would have ordered the Second Respondent pay costs in the sum of £2,000.00 However in light of his inability, applying the principles in Solicitors Regulation Authority v Davis and McGlinchy [2011] EWHC 232 (Admin) to pay the Tribunal reduced to this to nil. It therefore made no order for costs in respect of the Second Respondent based on his means.

Statement of Full Order

36. The Tribunal Ordered that the First Respondent, MAUREEN CHINEDU AGADA, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,000.

37. The Tribunal Ordered that the Second Respondent ADEMOLA WESTON, solicitor, be REPRIMANDED. The Tribunal makes no order for costs in respect of the Second Respondent.

Dated this 9th day of July 2018
On behalf of the Tribunal

J. P. Davies
Chairman