The Tribunal's decision dated 16 January 2020 was subject to appeal to the High Court (Administrative Court) by the Respondent. By an order dated 15 June 2023 the appeal was withdrawn and dismissed by consent.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11808-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ELLEN YEE-MAN WINDSOR Respondent

Before:

Mr A. Ghosh (in the chair)
Mr J. A. Astle
Mrs C. Valentine

Date of Hearing: 15 and 16 January 2020

Appearances

Rory Mulchrone, counsel, of Capsticks Solicitors LLP, of 1 St. George`s Road, London, SW19 4DR, for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations made by the Applicant against the Respondent were that, while practising as a sole practitioner at Ellen Windsor Solicitors ("the Firm"):

1.1 She received monies from or on behalf of Client CG on various specified dates between 15 March 2012 and 12 March 2013 in various sums totalling £30,000 ("the Client Monies"), but failed to transfer them to and/or hold them in a client account; and therefore breached all or any of:

1.1.1 Rules 1.2(a), 1.2(b), 13.1 and 14.1 of the SRA Accounts Rules 2011 ("the Accounts Rules");

1.1.2 Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the Principles").

1.2 Between around 15 March 2012 and December 2016 (alternatively, 22 January 2014) she:

1.2.1 misappropriated all or any of the Client Monies; and/or

1.2.2 failed to use the Client Monies for Client CG's matter only; and/or

1.2.3 failed to ensure that the Client Monies were immediately available to Client CG;

and therefore breached all or any of:

1.2.4 Rules 1.2(c), 7.2 and Rule 13.8 of the Accounts Rules;

1.2.5 Principles 2, 4, 6 and 10 of the Principles.

1.3 On all or any of various specified dates she made false or misleading statements to Solicitors F concerning the amount of monies held by the Firm on behalf of Client CG; and therefore breached all or any of Principles 2 and/or 6 of the Principles.

1.4 From around 22 January 2014 she failed promptly to return the full Client Monies to Client CG, including upon request; and therefore breached all or any of:

1.4.1 Rules 7.2 and/or 14.3 of the Accounts Rules;

1.4.2 Principles 2, 4 and 6 of the Principles.

1.5 On all or any of various specified dates she made false or misleading statements to Client CG concerning the whereabouts of the Client Monies and/or when she might return them; and therefore breached all or any of Principles 2, 4 and/or 6 of the Principles.

1.6 On all or any of various specified dates she attempted to discourage Client CG from reporting or pursuing concerns about her conduct to the Applicant and/or the Legal Ombudsman; and therefore breached all or any of:

1.6.1 Outcome 10.7 of the Code;

1.6.2 Principles 2 and/or 6 of the Principles.

2. Dishonesty was alleged in relation to allegations 1.2, 1.3, 1.4 and/or 1.5 but proof of dishonesty was submitted not to be essential in order to establish those allegations.

Documents

3. The Tribunal considered all of the documents in the case which included:

Applicant

- Electronic trial bundle containing the application, Rule 5 Statement and exhibits
- Correspondence bundle from September 2018 to January 2020
- Witness statement of Taranjeet Babra dated 25 May 2018
- Costs schedule dated 8 January 2020
- Copies of authorities relied upon
- Electronic preliminary applications bundle

Respondent

- Emailed submissions sent on 14 January 2020 with exhibits
- Emailed application for an adjournment dated 14 January 2020 with exhibits
- Emailed submissions on costs dated 9 January 2020

Preliminary Matters

4. In advance of the hearing, on 2 January 2020, the Respondent had applied for an adjournment of the substantive hearing and a variation of directions previously made by the Tribunal. This was on the basis that she stated she was unfit to attend. She also sought permission to file expert medical evidence from a Dr Chahl by 8 January 2020. Her application was supported by a G.P. letter dated 27 December 2019 and the Respondent stated that she suffered from "*breathing difficulties, which is a life-threatening condition caused by anxieties.*"

5. Having considered the application on the papers, the Tribunal refused the application for an adjournment on 13 January 2020. The Tribunal's written reasons stated:

> "*The Respondent has already had an inordinate amount of time in which to obtain and file a consultant's report and, especially in view of the seriousness of the allegations, it would not be in the public interest to delay the hearing further.*
>
> *However, in view of the fact that the Respondent has attended an appointment with Dr. P. Chahl, a consultant psychiatrist, on 6/1/20, we will consider a fresh application for an adjournment as a preliminary matter immediately prior to the hearing on 15/1/20 at 10 am provided that a short report from Dr. Chahl containing a diagnosis and prognosis in summary form is adduced in support. There should be no assumption that such an application will necessarily be granted.*"

Application for adjournment

6. By email dated 14 January 2020 the Respondent renewed her application for an adjournment of the substantive hearing. The Respondent stated:

> "*I wish to file a witness statement to explain the events and my position at an adjourned hearing. I had not been able to produce my evidence due to medical conditions of which the SRA and Tribunal were made aware with supporting medical evidence since 2016, and most recently, a letter from my GP dated 27 December 2019. I intend to instruct a legal representative to assist me with a full response to the Rule 5 statement and to file medical evidence in relation to the period of 2012-2014 to refute the allegation of dishonesty, as my 'state of mind' is highly relevant in my defence to the allegation.*
>
> *As my Application of 2 January 2020 is refused, I am advised to reserve my rights entirely in relation to an appeal against the outcome of the hearing of 15-16 January 2020.*"

By a further email of 14 January 2020 the Respondent stated that she sought further time in order to submit expert medical evidence and that she objected to the hearing going ahead in her absence.

7. Mr Mulchrone, for the Applicant, opposed the application for an adjournment. He referred the Tribunal to the comments of Mrs Justice Lang in paragraph [56] of Lindsay v SRA [2018] EWHC 1275 (Admin):

> "*In my view, the Tribunal was entitled to require independent medical advice on the Appellant's condition, from approved practitioners, based upon appropriately drafted letters of instruction and full disclosure of the evidence.*"

Mr Mulchrone contrasted this confirmation that the Tribunal was entitled to require independent medical advice with the short letter from the Respondent's G.P. stating that she was unfit. The G.P.'s letter stated that it had been written at the Respondent's request. It consisted of three short bullet points, the first two of which dealt with the current sick note and a forthcoming appointment. The third stated that the Respondent continued to feel anxious and to have breathing difficulties from "*what we understand are symptoms caused by ongoing work-related disciplinary actions against her. As such, she is unable to engage or take part in legal proceedings and she has consulted a Psychiatrist medical expert as evidence to verify her mental capacity and health conditions which will show that she is unfit to testify as a witness or give any evidence.*"

8. Mr Mulchrone submitted that this document fell well short of the quality of evidence required for a further adjournment of the proceedings. The proceedings had been issued in March 2018. He submitted that an adjournment at this late stage required clear and cogent evidence as per the comments of Mrs Justice Lang in Lindsay.

9. The Tribunal noted that since the application was issued in March 2018, the Respondent had sought additional time in order to comply with directions and in order to obtain relevant supporting expert medical evidence on several occasions. In April 2018 she sought an adjournment of the substantive hearing then listed for December 2018. She

was granted additional time until August 2018 to file her Answer and the medical evidence to which she had referred. In August 2018 the Respondent sought, and was granted, additional time in which to file her Answer. In October 2018 the Tribunal granted additional time, to November 2018, to file the supporting medical evidence and the substantive hearing listed for December 2018 was vacated. At a Case Management hearing ("CMH") in February 2019 the Tribunal's memorandum stated:

> "*11. The Tribunal considered the fact that the Respondent had submitted GP sick certificates stating that she was "unfit for work" for a considerable period of time but that this did not assist the Tribunal as to her ability to participate in these proceedings. Efforts had been made by the Tribunal on a number of occasions, by way of variation of directions, to focus the Respondent's medical evidence on matters germane to these proceedings to no avail.*
>
> *12. The Tribunal concluded that matters had progressed beyond that which the GP (Dr Ashia Ahmad) could assist with. The only evidence from Dr Ahmad was a letter dated 15 August 2018 which simply set out that which the Respondent had relayed to her rather than a diagnosis, prognosis or assessment of her ability to participate in these proceedings. The letter also stated that the GP had been issuing sick notes since 2013. In all of the circumstances the Tribunal was of the view that expert medical evidence should be obtained in order to progress this matter*."

At the February 2019 CMH the Tribunal directed that the Respondent should file and serve an expert report by 26 April 2019 addressing the following matters with supporting reasons:

> "*(a) The medical history of the Respondent at the time of the allegations and the current condition of the Respondent;*
> *(b) The impact, if any, of her health on the matters giving rise to the allegations in these proceedings;*
> *(c) The Respondent's ability to participate effectively in these proceedings and whether any reasonable adjustments may need to be made to allow her to participate in the proceedings.*"

10. In April 2019 the Respondent requested, and was granted, additional time to file medical evidence. A revised deadline of 7 August 2019 was set by the Tribunal. On 4 September 2019 the Tribunal listed the case for a substantive hearing on 15 and 16 January 2020.

11. The Tribunal had regard to its Policy/Practice Note on Adjournments (dated 4 October 2002). The policy, to which the Respondent's attention had been drawn several times, was clear that where an application for an adjournment was sought on the basis of the Respondent's ill-health a reasoned opinion from an appropriate medical adviser was required. The policy stated that a G.P.'s certificate was unlikely to be sufficient. The Tribunal considered that the comments from Mrs Justice Lang in Lindsay were consistent with and supported this standard Tribunal practice. The Tribunal reminded itself that this Policy/Practice Note was always subject to consideration of the circumstances of the specific case and the overriding objective, set out in Practice Direction Number 6, to ensure that cases are dealt with justly.

12. As set out above, the Respondent had stated in correspondence that she had attended a consultation with a suitably qualified medical practitioner, Dr Chahl, on 6 January 2020. In her application of 2 January 2020 she had sought permission to file expert medical evidence from Dr Chahl by 8 January 2020. The Tribunal had not been supplied with any documentation confirming that the consultation had gone ahead. The Tribunal considered that any suitably qualified medical expert would have been willing to provide as a minimum a very brief letter setting out concerns about the Respondent's fitness to attend a hearing for her to supply to the Tribunal pending a more detailed report, if such concerns existed. The Respondent had had ample opportunity to obtain appropriate supporting evidence for her application and had failed to do so. The Tribunal saw no reason to conclude than an adjournment would lead to an effective hearing being possible in the foreseeable future. The Tribunal did not consider that the short letter from the Respondent's G.P. dated 27 December 2019 stating that the Respondent was unfit amounted to an adequate "reasoned opinion of an appropriate medical adviser" and accordingly, in particular given the length of time since the proceedings were issued and the opportunities the Respondent had had to provide appropriate supporting evidence, the application for an adjournment was rejected.

Application to proceed in the Respondent's absence

13. Mr Mulchrone invited the Tribunal to proceed with the hearing in the Respondent's absence. He submitted that the Respondent's recent correspondence, referring to the hearing listed to begin on 15 January 2020, confirmed that notice of the hearing had been served and she was aware of it. Mr Mulchrone referred the Tribunal to the case of R v Jones [2002] UKHL 5 and submitted that whilst the Tribunal must exercise the utmost caution when proceeding in the absence of a Respondent, there was no bar on it doing so when circumstances warranted it and where the Respondent had in effect voluntarily absented themselves.

14. The Respondent had expressly objected to the hearing taking place in her absence in her second email to the Tribunal of 14 January 2020. This was on the basis of her current ill-health, her stated intention to present expert evidence as to her health (including mental health) at the times of the events giving rise to the allegations (2012 to 2014) and also her stated intention to provide relevant witness evidence. She also stated that she intended to instruct a legal representative to advise her. In correspondence with the Applicant on 21 September 2018, the Respondent made reference to a right to a fair trial and stated that she "should not be pressurised by time limits". In her application to the Tribunal dated 2 January 2020 she had submitted that there was a "real risk of a miscarriage of justice for the Tribunal to rely on evidence of these [Applicant] witnesses without the Respondent's evidence in response…"

15. The Tribunal was satisfied that the Respondent had had notice of the hearing and that accordingly it had the discretion under Rule 16(2) of the Solicitors (Disciplinary Procedure) Rules 2007 ("SDPR") to proceed in her absence if that was fair in all the circumstances. The Tribunal considered the factors set out in Jones in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent. The Tribunal gave due weight to the judicial comment in Jones that it is only in rare and exceptional cases that the discretion to proceed in a Respondent's absence should be exercised.

The Tribunal also had regard to the observations of Leveson P. in Adeogba, with whom Gross LJ and Burnton J had agreed, that, whilst the principles outlined in Jones were the starting point, it was important that the analogy between a criminal prosecution and regulatory proceedings should not be taken too far. In Adeogba it had been pointed out that in a criminal prosecution steps could be taken to enforce attendance by a defendant; he or she could be arrested and brought to court. No such remedy was available to a regulator. In determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal:-

(i) the tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;

(ii) the fair, economical, expeditious and efficient disposal of allegations was of very real importance;

(iii) it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and

(iv) there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they signed up when being admitted to the profession.

16. The medical evidence supplied was inadequate to demonstrate that the Respondent was unable to participate in the proceedings. The Respondent had had ample opportunity to procure appropriate evidence. Based on the Respondent's pattern of indicating that medical evidence would be supplied, and then failing to supply it, coupled with the very clear terms on which different Divisions of the Tribunal had set out what supporting medical evidence was required, the Tribunal had no confidence that granting an adjournment would secure either appropriate medical evidence or the Respondent's attendance at a hearing in the foreseeable future. In addition, whilst a relatively minor factor, the Tribunal was cognisant of the fact that the Applicant's witnesses, including Ms CG a former client of the Respondent's, were in attendance to provide evidence on matters which took place several years ago and that an adjournment would have an impact on them.

17. Whilst the Respondent had not provided an Answer to the allegations, the Tribunal had extensive documentation including responses from the Respondent sent to the Applicant and the recent emails from Respondent dated 14 January 2020 in which she made submissions on the case against her on which to base its decision. The Tribunal was accordingly satisfied that it was able to fairly assess the Respondent's version of the key events. The Tribunal determined that it should exercise its power under rule 16(2) of SDPR to hear and determine the application in the Respondent's absence. The Tribunal concluded that the Respondent had voluntarily absented herself from the hearing and had failed over an extended period of time to take the clear steps which were required to either participate or provide adequate evidence that she was unable to do so. The Tribunal had no confidence the position would change if the matter was adjourned. The allegations were of serious misconduct and the Tribunal was satisfied

that in all the circumstances it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

Factual Background

18. The Respondent was admitted to the Roll on 16 May 1988 and at the date the Rule 5 Statement was issued was a non-practising solicitor. At the relevant times she was the sole practitioner and Principal of the Firm which ceased trading on 20 May 2016.

19. The matters giving rise to the allegations came to the attention of the Applicant around 8 January 2016 following a complaint made by Ms CG about the Respondent. Ms CG was a distant relative of the Respondent for whom she had acted in divorce proceedings. A forensic investigation of the Firm was commissioned and was completed on 11 November 2016.

Witnesses

20. The evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case including the evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read or consider that evidence.

21. The following witnesses relied upon on by the Applicant attended the hearing, confirmed the truth of their written evidence and made themselves available for questioning:

- Mr Taranjeet Babra, the Applicant's Forensic Investigation Officer ("FIO")

- Ms CG, former client of the Respondent

Findings of Fact and Law

22. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

23. **Allegation 1.1: The Respondent received monies from or on behalf of Client CG on various specified dates between 15 March 2012 and 12 March 2013 in various sums totalling £30,000 ("the Client Monies"), but failed to transfer them to and/or hold them in a client account; and therefore breached all or any of:**

1.1.1. Rules 1.2(a), 1.2(b), 13.1 and 14.1 of the Accounts Rules;

1.1.2. Principles 2, 4, 6 and 10 of the Principles.

The Applicant's Case

23.1 Client CG's complaint to the Applicant alleged that:

- the Respondent, a distant relative, had acted for her in divorce proceedings against her former husband ("MG");
- during the course of these proceedings, she had lodged £30,000 (i.e. the Client Monies) with the Respondent/the Firm, with a view to these funds being transferred to MG's solicitors ("Solicitors F") upon settlement;
- in the event, the settlement was instead funded using the sale proceeds of her property, the balance of which was remitted to her, promptly, by her conveyancing solicitors ("Solicitors B");
- thereafter, the Respondent had failed to return the full Client Monies to her despite multiple requests;
- the Respondent had repaid £5,000 in April 2015 and repaid a further £3,000 in December 2015 but £22,000 of the Client Monies remained outstanding as at the date of the complaint.

23.2 The Applicant's case was that following Ms CG's complaint to the Applicant in January 2016, the Respondent repaid £2,000 in February 2016, thereby reducing the outstanding capital balance of the Client Monies to £20,000. In December 2016, following the involvement of the Legal Ombudsman, the Respondent repaid the outstanding Client Monies of £20,000 plus interest.

23.3 In the report dated 11 November 2016, the FIO set out his findings which were that that:

- the Respondent did not operate a client bank account (which she acknowledged) but received all funds into the Firm's office bank accounts;
- the Client Monies were paid into office account by Client CG and her mother, with a view to their use as settlement monies in the divorce proceedings;
- the settlement monies were ultimately paid by another firm of solicitors (i.e. Solicitors B), using the proceeds of the sale of the former matrimonial home;
- notwithstanding this, as at the date of the FI Report, the Respondent had failed to repay Client CG £20,000 of the Client Monies, i.e. the Respondent had only repaid £10,000 out of £30,000, in spite of regular requests from Client CG for the return of the full Client Monies since around April 2014;
- further, the Respondent had utilised the Client Monies without Client CG's knowledge or permission to fund her practice/the Firm, including the payment of drawings to herself;

- as a result of the Respondent: (i) not operating a client bank account; and (ii) holding client money in office account; it was not possible to calculate the liabilities owed by the Respondent to clients, or to express an opinion whether the Respondent held sufficient funds to meet the liabilities to clients; however, at the date of the inspection, the Respondent did not hold sufficient funds to repay Client CG the balance of the Client Monies owed;

- the Respondent had made misleading statements to:

    - Client CG in respect of the repayment of the monies, the bank account the money had been deposited in, and how long it would take to withdraw the funds;

    - Solicitors F in respect of how much money the Respondent held in the office bank account;

- the Respondent had in correspondence attempted to discourage Client CG from escalating her concerns to the Legal Ombudsman and the SRA.

23.4 Ms CG's evidence was that she provided the Client Monies to the Respondent with a view to concluding a settlement between herself and MG in the divorce proceedings. She categorically denied the Respondent's suggestion that the Client Monies were intended or provided as a loan to the Respondent or the Firm and stated that she herself had to borrow money from her mother and her company in order to fund the settlement.

23.5 The Respondent stated in her response to the FIO dated 25 July 2016 that "*The funds were effectively advanced as a loan to the firm and were used for business purposes, with repayment agreed to be made at 12 months' advance notice. In return, a concession in legal fees was offered to [Ms CG] which she accepted.*" The Respondent also averred that she offered an interest rate to Ms CG (in return for the alleged loan facility) which was in line with the rate for HSBC's fixed term deposit for 1-5 years. The Applicant did not accept this position and contended that the funds paid by Ms CG were plainly client monies at all material times, and had been advanced with a view to facilitating settlement of her divorce proceedings against MG. As such it was submitted they should have been held to order in a client account. There was submitted to be no or no good evidence that Ms CG intended a loan and every indication that she did not. There was said, in particular, to be no loan agreement document and no indication that the Respondent urged Ms CG to take independent legal advice in respect of making any loan to the Firm.

23.6 The Applicant's case was that the available evidence clearly indicated that the Respondent failed to transfer the Client Monies to and/or hold them in a client account, as required by Rules 13.1 and 14.1 of the Accounts Rules. The Respondent sought to rely on exemptions under Rules 15 and/or 17 of the Accounts Rules but the Applicant did not accept that any of the specified exceptions were applicable in her case, and it was submitted that while it was for the Applicant to prove its case beyond reasonable doubt, there was also an evidential burden upon the Respondent to establish that any exemptions relied upon were properly engaged.

23.7 It was submitted that the conduct alleged also disclosed a clear breach by the Respondent of Rules 1.2(a) and/or 1.2(b) of the Accounts Rules. By failing to operate a client account and accepting the Client Monies into the Firm's office account(s), the Respondent failed to keep those funds separate from monies belonging to her and/or the Firm as required under those rules. Again, there was submitted to be an evidential burden upon the Respondent to establish that any exceptions to those rules were properly engaged.

23.8 It was submitted that the conduct alleged amounted to a failure by the Respondent to:

- act with integrity, contrary to Principle 2 of the Principles. By failing to transfer the Client Monies to and hold them in a client account, it was submitted that the Respondent had failed, objectively, to act with moral soundness, rectitude and steady adherence to an ethical code. It was submitted to be elementary that a solicitor who received client money must operate and hold it in a client account. To do otherwise meant that the client's funds were improperly mixed with the solicitor's own and therefore at risk in the event of insolvency/liquidation. Keeping client money in office account was described as being tantamount to "dipping into" client funds. A solicitor who "dips into client account" was submitted to lack integrity regardless of the risk of non-repayment because the client account is "sacred";

- act in Ms CG's bests interests, contrary to Principle 4 of the Principles. Acting in Ms CG's best interests would require the Respondent to safeguard money entrusted to her by holding it in a client account, separate from the Firm's own money;

- behave in a way that maintained the trust the public placed in her and in the provision of legal services, contrary to Principle 6 of the Principles. Members of the public expect that solicitors entrusted with the safekeeping of client money will keep it separate from their own money in general and in a client account in particular. It was submitted that they do not expect that solicitors will keep them in office account, mixed with their own funds, still less that they will use that client money for "business purposes", or any purpose unrelated to the client matter;

- protect client money and assets, contrary to Principle 10 of the Principles. Protecting client money and assets properly required a solicitor to comply with the Accounts Rules in general and, in particular, to operate a client account for the receipt and safekeeping of any client funds entrusted to them.

<u>The Respondent's Case</u>

23.9 The allegation was denied. As indicated above, the Respondent set out her response in an email to the Tribunal dated 14 January 2020. The Respondent was the sole Principal of the Firm. She stated that her firm was at all times funded by her personal resources. She contended that the Applicant had failed to consider evidence of her own personal financial resources at the time of the alleged events. She stated that at all times (as demonstrated by personal bank records and statements she had provided) the funds she held personally exceeded the funds paid to her by Ms CG during 2012/13. She stated that her resources were therefore sufficient to meet the repayment to her in full plus higher interest at 4% per annum which the Respondent maintained had been agreed

with Ms CG. The Respondent stated that she believed at the time that was acting in her client's best interests and submitted that whilst "*it may be regarded as an error of judgement, any breach of the account rules would have been technical*".

23.10 She submitted that the allegations, including allegation 1.1, were misconceived as they were based on what she described as Mr Babra's defective forensic reports. She stated that she had provided relevant personal banking information to Mr Babra during his investigation. Her case was that no money had been taken from a client account or had been misappropriated as was often the case with accounts rules breaches. In an application of 2 January 2020 the Respondent had stated that Mr Babra's Forensic Investigation Report "remained incorrect" and that his credibility remained in question.

23.11 The Respondent submitted that "*It is within the Solicitors Accounts rules for funds to be paid into an office account with the client's consent. The client [Ms CG] has in fact benefited from the funds being repaid at a higher interest based on my comparison with High Street banks' fixed term deposit interest rate at the time for deposits over £10,000 for 12 months or over…*" The Respondent's case was that she had a "free reign to deal with her matters as her instructions showed" She stated that Ms CG "had paid her funds into my firm's office account in which she also paid her costs".

23.12 In correspondence that she sent to the Applicant in September 2018, the Respondent contended that the evidence of Ms CG was unreliable due to the passage of time and what the Respondent described as "duplicity". The Respondent stated in correspondence with the Applicant that Ms CG had failed to produce evidence to support the contents of her witness statement. The Respondent stated that Ms CG had omitted from her evidence the fact that she had received a financial gain though the payment of interest by the Respondent. She also stated that she considered Ms CG's complaint was motivated by financial considerations, that she had been compensated for the alleged distress she had suffered and that Ms CG was exaggerating the extent of the harm she had suffered. In correspondence that she sent to the Applicant in March 2019, the Respondent contended that Ms CG was not a credible witness for various reasons. The Respondent described comments from Ms CG in her witness statement that Ms CG did not know what legal fees she had paid to the Respondent as a "fabrication" on the basis that statements made available to the Applicant would contain this information. She also stated:

> "*It is not credible, and in fact, inconceivable for her to claim to have worked at such a high level as an accountant but not to have known the market interest rates, extent of legal fees and economic conditions at the time the alleged events took place. She has also failed to disclose how she has benefited from the saving of legal costs, additional interests, and the lending rate at record low in 2016/2017…*"

23.13 The Respondent denied that the Applicant had discharged the burden and standard of proof upon it. She relied upon the consent of Ms CG for the way in which the Client Monies were handled, such that she fell within exemptions within the Accounts Rules. She denied the alleged breaches of the Principles on the basis that she believed she was acting in Ms CG's best interests, Ms CG in fact earned a favourable rate of interest on the money held by the Respondent and any technical account rule breach was inadvertent and minor. Given the concerns that she had raised about Ms CG's evidence,

and the report of Mr Babra, the Respondent stated in her adjournment application of 2 January 2020 that there was a real risk of a miscarriage of justice if their evidence was relied upon in her absence.

The Tribunal's Decision

23.14 The Respondent had accepted that she did not operate a client account at the Firm. Her response to the allegation was based on client consent to the way in which Ms CG's funds were treated and a contention that this treatment resulted in an objectively favourable outcome for Ms CG.

23.15 The Tribunal did not accept that the money paid by Ms CG to the Firm was a loan. Ms CG's written evidence was coherent and appeared credible. Ms CG's evidence was that the money was provided to fund a legal settlement and not as a loan. In the unusual circumstance of a client lending money to a legal firm, the Tribunal would expect to see evidence of some agreement as to the terms of that loan and of independent legal advice having been taken. There was no such evidence. There was evidence to the contrary: the payments made to the Firm corresponded with the negotiations conducted by the Respondent about the divorce settlement. Ms CG's evidence was that the Client Monies were funded in part by her mother and also from her company. The Tribunal was satisfied beyond reasonable doubt that the Client Monies paid by Ms CG to the Firm were provided to fund the divorce settlement in respect of which the Respondent was acting rather than as some form of loan. It followed that the Tribunal was satisfied beyond reasonable doubt that the funds were accordingly client and not office money.

23.16 The mandatory Rules 1.2 (a) and (b) of the Accounts Rules stated that solicitors must:

> "*keep other people's money separate from money belonging to you or your firm";* and *"keep other people's money safely in a bank or building society account identifiable as a client account (except when the rules specifically provide otherwise)*".

The Respondent sought to rely on an exemption to these rules based on an agreement she stated she had reached with Ms CG. The Tribunal had rejected this contention and found there was no such agreement. The Respondent had not provided any grounds or evidence for her contention that an exemption to the Accounts Rules applied. The terms of the mandatory rules set out above were clear. The Client Monies belonged to Ms CG; the Respondent accepted that she did not operate a client account at the Firm. The Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Rules 1.2 (a) and (b) of the Accounts Rules.

23.17 Rules 13.1 and 14.1 of the Accounts Rules stated:

> "*If you hold or receive client money, you must keep one or more client accounts (unless all the client money is always dealt with outside any client account in accordance with rule 8, rule 9, rule 15 or rule 16)*"; and
>
> "*Client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary (see rules 8, 9, 15, 16, 17 and 19).*"

The Tribunal did not consider any of the exemptions in the rules applied in the Respondent's case, and she had produced nothing beyond an assertion that there was a loan agreement and/or that she had an agreed wide discretion over how she dealt with the Client Monies. The Tribunal had rejected this contention. Accordingly, the Tribunal found proved beyond reasonable doubt that Rules 13.1 and 14.1 had been breached; none of the exemptions applied and the Respondent had failed to keep one or more client account and to pay client money into it without delay and hold it there.

23.18 The Tribunal accepted the submission made on behalf of the Applicant that client money is sacrosanct. Its careful stewardship is a fundamental ethical principle of the profession. The Tribunal had regard to the leading case on conduct lacking integrity, Wingate v SRA [2018] EWCA Civ 366. In that case Lord Justice Rupert Jackson gave various examples of conduct lacking integrity. The Tribunal considered that the example provided in paragraph [101 (iii)] was relevant to the Respondent's situation:

> "*Subordinating the interests of the clients to the solicitors' own financial interests*"

The Respondent had accepted that she did not operate a client account. The Tribunal had found that the Client Monies were client money belonging to Ms CG. The Tribunal accepted the evidence, not challenged by the Respondent, that the balance of the Firm's office accounts was below the amount which had been provided by Ms CG in 2012. Accordingly, the Tribunal accepted the submission that the Respondent had, in effect, dipped into client funds for the Firm's or her own purposes. Such action subordinated the client's interest to the solicitor's and exposed the monies to risk whilst frustrating the protection provided by the requirements of the Accounts Rules. The Tribunal considered the fact that the Respondent may have had equivalent funds elsewhere to be irrelevant to the allegation (whilst potentially being relevant to mitigation). The Tribunal considered that the conduct found proved amounted to a very clear breach of Principle 2. A solicitor may not unilaterally choose not to operate a client account. The Tribunal found beyond reasonable doubt that to do so, and to effectively borrow from client funds, was conduct clearly lacking integrity.

23.19 For the reasons set out directly above, the Tribunal also found beyond reasonable doubt that such conduct also breached Principles 4, 6 and 10. Failing to take basic and fundamental steps designed to protect client funds, whilst effectively borrowing from the client was manifestly not in that client's best interests, would undermine the trust placed by the public in the Respondent and the provision of legal services and also amounted to a failure to protect client money.

24. **Allegation 1.2: Between around 15 March 2012 and December 2016 (alternatively, 22 January 2014) the Respondent:**

1.2.1 misappropriated all or any of the Client Monies; and/or

1.2.2 failed to use the Client Monies for Client CG's matter only; and/or

1.2.3 failed to ensure that the Client Monies were immediately available to Client CG;

and therefore breached all or any of:

1.2.4 Rules 1.2(c), 7.2 and Rule 13.8 of the Accounts Rules;

1.2.5 Principles 2, 4, 6 and 10 of the Principles.

The Applicant's Case

24.1 The Applicant relied on the background set out in outline in allegation 1.1 above. It further relied, firstly, on the Respondent having confirmed that the Client Monies were "*used for business purposes*". This was said to be in circumstances where the Client Monies had been advanced, not as a loan to be used for business purposes (or any other purpose), but as client money with a view to facilitating settlement with MG.

24.2 Secondly, the FIO had allegedly identified that when the Client Monies were paid into the Firm's (office) account, the Respondent used them to fund her business expenses and to pay her own drawings. She was submitted, in other words, to have misappropriated them. Five examples were provided in support of the allegation:

- Prior to the first instalment of the Client Monies being paid to one of the Firm's two office accounts on or about 15 March 2012, in the sum of £5,000, the combined balance of the Firm's office accounts was £1,036.51. Between 16 March and 20 March 2012, the Respondent transferred monies totalling £2,308.00 from one office account to the other and then to her own personal bank account.

- On or about 12 March 2012, the Respondent made payment to counsel in the sum of £1,020. In her response to the FIOs dated 9 May 2016, she confirmed that this payment related to a matter other than Ms CG's. The cheque was encashed on or about 20 March 2012 by when the only funds in the debited account were those belonging to Ms CG.

- Prior to the penultimate instalment of the Client Monies being paid to one of the Firm's office accounts on or about 11 March 2013 (by Ms CG's mother), in the sum of £10,000, the combined balance in the Firm's office bank accounts was £503.74. Between 11 March 2013 and 28 March 2013, the Respondent transferred funds totalling around £5,526 from one office account to the other and then to her own personal bank account.

- On or about 1 April 2013 the Respondent transferred £5,000 from one office account to the other and the following day a cheque was encashed from the receiving account in the same amount. Based on the relevant bank statements to which the Tribunal was referred, it was alleged that but for the transfer of the Client Monies there would have been insufficient funds to make this transfer from one office account to the other and the cheque would have bounced. It was submitted that the unrelated cheque was therefore paid using funds deposited on behalf of Ms CG.

- A chequebook stub indicated that the cheque encashed on 1 April 2013 was drawn on 25 March 2013 and sent to a former client of the Respondent. An email from the former client to the Respondent confirmed that she had paid him £5,000 on

25 March 2013 in respect of monies owed by the Firm to him. It was said to follow that the Respondent therefore used some of the Client Monies to repay funds owed by her/the Firm to this former client.

24.3 Thirdly, although Ms CG's matter settled on or about 22 January 2014 using the sale proceeds of Ms CG's home, the Respondent did not return the Client Monies promptly to her at this point. Indeed, she was unable to because in contrast to the £30,000 deposited by Ms CG on or before 12 March 2013, the Firm only held a total of £2,550.82 in the office bank account at the date of settlement. It was submitted that it followed that the Respondent had dissipated the Client Monies and/or failed to ensure that they were immediately available.

24.4 Fourthly, the Respondent did not return the full funds until around December 2016. In an email to Ms CG dated 17 August 2015 the Respondent stated that she had "*now resorted to personal resources which I hope will help rectify the situation at the earliest opportunity*". In an email to Ms CG dated 27 August 2015 the Respondent stated "*I am awaiting release of personal funds to enable repayment to you asap*". It was submitted to follow that the Client Monies were unavailable, having been misappropriated and/or used for matters other than Ms CG's.

24.5 Based on the above it was submitted that the Respondent had:

- failed to keep the Client Monies separate from those belonging to her/the Firm; and/or
- failed to keep the Client Monies safely in an account identifiable as a client account; and/or
- failed to use the Client Monies for Client CG's matter only;
- failed to ensure that the Client Monies were immediately available to Client CG;
- failed to replace missing client money.

It was submitted that the Respondent had therefore breached all or any of Rules 1.2(c), 7.2 and 13.8 of the Accounts Rules. As with the alleged Accounts Rules breaches in allegation 1.1, the Applicant did not accept that any exceptions to/exemptions from the Accounts Rules were applicable in this case and submitted that there was an evidential burden upon the Respondent to establish that such exceptions/exemptions were properly engaged.

<u>Dishonesty alleged in relation to allegation 1.2</u>

24.6 The Applicant relied upon the test for dishonesty stated by the Supreme Court in <u>Ivey v Genting Casinos</u> [2017] UKSC 67, which applies to all forms of legal proceedings, and which the Applicant summarised as the person having acted dishonestly by the ordinary standards of reasonable and honest people.

24.7 By allegedly misappropriating the Client Monies, and/or failing to use them for Ms CG's matter only, and/or failing to ensure that they were immediately available, it was submitted that the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people. It was submitted that, in addition, the circumstances of the case showed that she must have realised that by those standards she was acting dishonestly (but proof of such realisation was submitted not to be necessary to prove dishonesty). It was submitted that the Respondent acted dishonestly according to the ordinary standards of reasonable and honest people because she knew that the Client Monies did not belong to her or the Firm but she nevertheless deliberately dealt with them as her own, in that she used them to fund her practice and/or to settle liabilities with other clients/third parties. This in circumstances where the Respondent (a highly experienced solicitor) knew that the Client Monies had been transferred to her for the sole purpose of facilitating settlement with MG and should therefore have been safeguarded and held to order, in readiness for payment in full at any time.

The Respondent's Case

24.8 The allegation was denied. The Respondent relied on some of the same matters raised in her response to allegation 1.1. Firstly, she maintained that at all times she held the money provided by Ms CG, albeit not in a client account. She provided personal bank records and statements to support this contention. Again, her case was that the Firm was at all times funded by her personal resources. Whilst the Client Monies were not held in a client account, which the Respondent had acknowledged she did not operate, she stated that they were not dissipated or misappropriated and were held at all times in a manner agreed with, and benefitting, her client. The benefit to her client was demonstrated by the payment of interest at 4% which was a very competitive rate and something which the Respondent stated had been agreed with Ms CG. The Respondent further stated that Ms CG had never asked for the relevant bank deposit account details.

24.9 The Respondent again made submissions about what she regarded as Ms CG's lack of credibility and selective witness statement and alleged defects in the FIO's report. She submitted that the Applicant had failed to produce evidence to support its case to the requisite standard which was beyond reasonable doubt.

Response to allegation of Dishonesty in relation to allegation 1.2

24.10 In her email to the Tribunal of 14 January 2020 the Respondent referred the Tribunal to a character reference provided by Mr DR which she submitted supported her contention that she was an honest and industrious person with no propensity towards dishonest conduct.

24.11 Without producing any supporting evidence the Respondent also made reference in the same email to unspecified medical conditions present in 2012 to 2014 which she indicated were relevant to her state of mind at the relevant time. Given this state of mind, her submission was that she should not be regarded (to the requisite standard of proof) as dishonest.

24.12 The Respondent submitted, in an email to the Tribunal and the Applicant of 20 November 2019, that Ms CG's evidence about not knowing what costs were paid, when this was said to be clear from the Respondent's disclosed bank statements, was

not credible. The Respondent further submitted that the fact that the dishonesty allegation rested on such, in her view, unreliable witness evidence, undermined it to the extent that it could not support the serious allegation of dishonesty given the burden and standard of proof which the Applicant was obliged to overcome.

The Tribunal's Decision

24.13 The Respondent had accepted that she had not ensured that the Client Monies were held in an appropriate client account. The Tribunal accepted the evidence of the Firm bank statements to which it was referred that at various times when the Client Monies had been paid by Ms CG, the amount actually held by the Firm (disregarding the fact that an appropriate client did not exist) was significantly less than the amount that Ms CG had paid. The Respondent did not dispute that these funds had not been applied to Ms CG's matter.

24.14 A significant proportion of the Client Monies had accordingly been used for purposes which were not Ms CG's. The Respondent had confirmed to the Applicant that the monies were used for "business purposes". The Tribunal had rejected her contention that the Client Monies were a loan or were otherwise provided on the basis that the Respondent was free to deal with the money outside the scope of the Accounts Rules. The Tribunal had found that the monies paid by Ms CG were client money. That the full sum was not held by the Firm at various times was compelling evidence that the Client Monies were not immediately available and had been used for purposes other than Ms CG's. The Tribunal accepted the submission that this amounted, in effect, to "dipping into" client funds or misappropriation of those funds.

24.15 The Firm's resources were at various times less than that which had been paid by Ms CG, which remained client money. The Respondent was obliged by Rules 1.2(c), 7.2 and 13.8 of the Accounts Rules respectively to:

- use the Client Monies for Client CG's matter only;
- replace missing client money; and
- ensure that the Client Monies were immediately available to Client CG.

Given that the Firm held less money in total than had been paid to it by Ms CG, and given that the Tribunal had found the Client Monies to be client money for the purposes of the Accounts Rules, it followed, and the Tribunal found proved beyond reasonable doubt, that the Respondent had breached each of these Accounts Rules.

24.16 The Tribunal accepted that the Respondent had in effect used the Client Monies for her own purposes. Ms CG had asked for the money to be returned, and the Respondent acknowledged there was some delay in this being effected. Having regard to the test for conduct lacking integrity set out in Wingate, the Tribunal again concluded that this was a clear case of the client's financial interests being subordinated to the Respondent's own interests. As set out in the Tribunal's decision in relation to allegation 1.1, the Tribunal accepted that client funds are sacrosanct and that a failure to safeguard such funds was a serious departure from the minimum ethical standards of the profession. The Tribunal had found that the Respondent had used Ms CG's funds for her own

purposes and failed to ensure the funds were immediately available. This was conduct lacking integrity which did not display moral soundness or a steady adherence to an ethical code on what was a basic and fundamental obligation for all solicitors. The Tribunal found beyond reasonable doubt that the breach of Principle 2 had been proved.

The Tribunal's Decision on Dishonesty alleged in relation to Allegation 1.2

24.17 Whilst the Tribunal considered that the summary of the Ivey test included within paragraph [112] of the Rule 5 Statement was not an accurate reflection of the relevant test, the subsequent paragraphs did set out the essential elements of the correct test such that the Respondent was fully aware of the allegation she had to meet and the legal test to be applied. The test for dishonesty was set out at paragraph [74] of the Ivey judgment and accordingly when considering the issue of dishonesty the Tribunal adopted the following approach:

- firstly the Tribunal established the actual state of the 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 her conduct was honest or dishonest by the objective standards of ordinary decent people.

24.18 For the reasons summarised above, the Tribunal had found that the Respondent had used the Client Monies for her own purposes, failed to use the monies for Ms CG's matter only and failed to ensure that the monies were immediately available. The Tribunal considered that the requirement to operate a client account and, even more fundamentally, not to use client money for the solicitor's or the firm's own purposes, was so basic and fundamental that it was inconceivable that an experienced solicitor could be unaware of these requirements. The Respondent had over 20 years' PQE at the relevant time. The Tribunal had found that there was no loan or similar agreement between the Respondent and Ms CG. The Tribunal further found beyond reasonable doubt that the Respondent did not genuinely consider that to be the case. Had she had any genuine belief in such an arrangement the Tribunal considered that the Respondent would inevitably have made reference to it in correspondence with her client which she did not. Similarly, the absence of any evidence supporting the Respondent's contention that there was any such agreement, such as terms of the loan or evidence of independent advice having been taken, undermined the plausibility of the Respondent's account. The Tribunal had regard to its Practice Direction No. 5 under which appropriate inferences may be drawn from a Respondent's decision not to give evidence. The Tribunal considered that the Respondent's refusal to engage in a meaningful way with the proceedings over an extended period of time, and to provide anything beyond an email setting out her submissions undermined her credibility further. The Tribunal was satisfied beyond reasonable doubt that the Respondent had no genuine belief that she had any loan agreement with Ms CG. The Tribunal further found proved beyond reasonable doubt that the Respondent had no genuine belief that she was entitled to deal with Ms CG's funds as her own but nevertheless did so.

24.19 Moving on the second element of the two-stage Ivey test, the Tribunal had no doubt that ordinary, decent people would consider that using client monies for the Firm's and her own purposes when not so entitled, and failing to protect the funds in accordance with the Accounts Rules, was dishonest conduct. The Tribunal found dishonesty proved beyond reasonable doubt.

25. **Allegation 1.3: On all or any of various specified dates the Respondent made false or misleading statements to Solicitors F concerning the amount of monies held by the Firm on behalf of Client CG; and therefore breached all or any of Principles 2 and/or 6 of the Principles.**

The Applicant's Case

25.1 The Applicant again relied on the matters alleged under the previous allegations in addition to the following matters. On or about 16 March 2012, the Respondent wrote to Solicitors F and stated that:

> "*Our client has transferred the sum of £10,000 to our account in anticipation of a settlement to be paid out upon the approval and sealing of a Consent Order and Decree Absolute.*"

The bank statements showed that (i) Ms CG had only transferred £5,000 for the purposes of settlement by this date; and (ii) the Firm only held £4,710,51.10 The above statement was therefore submitted to be false and/or misleading.

25.2 On or about 18 February 2013, the Respondent wrote to Solicitors F and proposed a:

> "*1. Cash payment to your client of £18,000 – funds are still available in our account.*"

Although Ms CG had transferred monies totalling £18,000 by this time, the bank statements showed that those funds were not available in the Firm's account, which held only £155.69 at the date of the letter. The above statement was therefore submitted to be false and/or misleading.

25.3 On or about 20 June 2013 the Respondent emailed Solicitors F and stated:

> "*We are currently holding the sum of £30,000 (from her own resources) in anticipation of payment to your client upon the approval of the Consent Order by the Court.*"

In fact, the bank statements showed that, although Ms CG and her mother had transferred monies totalling £30,000 to the Firm by this time, the Firm held only £1,704.98 by the date of the email. The above statement was therefore submitted to be false and misleading.

25.4 On or about 16 July 2013 the Respondent emailed Solicitors F and stated:

> "*…we propose to continue to hold the sum of £30,000 on deposit…*"

The bank statements showed that although Client CG and her mother had transferred monies totalling £30,000 to the Firm by this time, the Firm held only £1,364.53 at the date of the email. The above statement was therefore submitted to be false and misleading.

25.5 Mr Mulchrone submitted that whilst the Respondent had now made reference to monies held in her personal accounts, this did not alter the facts of what the FIO had found that the Firm had held.

25.6 It was submitted that by making false and/or misleading statements to Solicitors F concerning the amount of money held by the Firm on behalf of Ms CG, the Respondent had failed to act with integrity, contrary to Principle 2 of the Principles, in that, objectively, she failed to act with moral soundness, rectitude and steady adherence to an ethical code. The Tribunal was referred to comments from Bingham MR in Bolton v Law Society [1994] 1 W.L.R. 512, that the reputation of the solicitors' profession is or should be "*one in which every member, of whatever standing, may be trusted to the ends of the earth*". The conduct alleged was further submitted to amount to a failure by the Respondent to behave in a way that maintained the trust the public placed in her and in the provision of legal services, contrary to Principle 6 of the Principles. Members of the public expected that solicitors will be scrupulous to avoid making false or misleading statements and that, when such a statement was made unintentionally, it was corrected at the earliest opportunity.

Dishonesty alleged in relation to allegation 1.3

25.7 The Applicant again relied upon the test for dishonesty summarised in paragraph [24.7] above. By making allegedly false or misleading statements to Solicitors F, it was submitted that the Respondent acted dishonestly according to the ordinary standards of reasonable and honest people. It was submitted in addition that the circumstances of the case showed that she must have realised that by those standards she was acting dishonestly (but, again, proof of such realisation was submitted not to be necessary to prove dishonesty). The Respondent acted dishonestly according to the ordinary standards of reasonable and honest people because the false / misleading statements were made deliberately and in the knowledge that they were false and/or misleading. It was submitted that in other words, they were lies, and that the Respondent must have known that they were lies and therefore must have realised she was acting dishonestly by the ordinary standards of reasonable and honest people.

The Respondent's Case

25.8 The allegation was denied. Again, the Respondent relied upon her contention that the relevant funds were always available to her, albeit not in a designated client account. The Firm was funded by her personal financial resources and at all times the money she indicated to Solicitors F was held was in fact available to her. On this basis, the Respondent submitted that the allegation was misconceived. The funds were available in the sums and for the purposes indicated to Solicitors F. The Respondent also relied again on the concerns outlined in response to previous allegations about Mc CG's evidence, the report of Mr Babra, and what she regarded as a real risk of a miscarriage of justice if their evidence was relied upon in her absence.

Response to allegation of Dishonesty in relation to allegation 1.3

25.9 The allegation was denied on the basis summarised above. In addition, the Respondent's submissions in paragraphs [24.10] to [24.12] above based on the character witness and lack of propensity for any dishonest conduct, her health and state of mind, and an alleged lack of credible evidence supporting the Applicant's case, were repeated. The Respondent again submitted that the Applicant's case failed to meet the burden and applicable standard of proof.

The Tribunal's Decision

25.10 The Tribunal had been referred to four emails from the Respondent to Solicitors F (dated 16 March 2012, 18 February 2013, 20 June 2013 and 16 July 2013) in which the Respondent made clear and unambiguous statements about money held in "our account" or that "we are currently holding" or would "continue to hold". In each case the evidence collated by the FIO, to which the Tribunal was referred, was that the Firm held less in all of its accounts combined than that which had been paid by Ms CG (the Client Monies).

25.11 The Respondent did not dispute that the funds were not held by the Firm. Her position was that, pursuant to an agreement with Ms CG, the Client Monies were held by the Respondent in other, personal, accounts. The Tribunal rejected the Respondent's key contention that this was an adequate or acceptable response. The clear implication of the emails that the Respondent had sent to Solicitors F was that the Firm held the relevant Client Monies. Any solicitor would understand by the words that the Respondent used that the Client Monies were held in an appropriate client account in accordance with the Account Rules. The statements were false and misleading; the Client Monies were not so held. At the relevant time, of the four emails, the Firm held less money in total than the Client Monies about which the Respondent had made clear statements.

25.12 The Respondent had provided no information about her liabilities and so even on the Respondent's case, it was impossible on the information presented for the Tribunal to determine whether the Respondent had secure and guaranteed access to equivalent funds elsewhere. Even if the Respondent did in fact have access to equivalent funds elsewhere, the Tribunal considered that this was irrelevant and did not prevent the statements which clearly related to the Firm being false and misleading.

25.13 The Tribunal accepted Mr Mulchrone's submission that the comments of Bingham MR made in Bolton v Law Society [1994] 1 WLR 512 were relevant to the findings made. He had indicated that the reputation of the profession should be one *"in which every member, of whatever standing, may be trusted to the ends of the earth"*. In the context of this ethical obligation, and by reference to the test for conduct lacking integrity in Wingate, the Tribunal found beyond reasonable doubt that making false and misleading statements to another solicitor amounted to a clear failure to adhere to the ethical standards of the profession. The Tribunal found that the Respondent's conduct thereby lacked integrity in breach of Principle 2 of the Principles.

25.14 The Tribunal also accepted that the public would expect solicitors to be scrupulous to avoid making false or misleading statements. Accordingly, the Tribunal found beyond reasonable doubt that in breach of Principle 6 of the Principles the Respondent's conduct in repeatedly making such false and misleading statements failed to maintain the trust placed by the public in her and in the provision of legal services.

The Tribunal's Decision on Dishonesty alleged in relation to allegation 1.3

25.15 The Tribunal again applied the test in Ivey summarised in paragraph [24.17] above. For the reasons summarised above, the Tribunal had found that the Respondent had made false and misleading statements to Solicitors F. Applying the first element of the two stage Ivey test, the Tribunal found beyond reasonable doubt that the Respondent must have been, and was, aware that the statements she made about the amount of money held by the Firm were false and misleading. She had sole responsibility for financial matters at the Firm and the Tribunal found that she had no belief in the truth of the statements she made (summarised above). The Tribunal considered that as an experienced solicitor the Respondent must have been aware of the foundational importance of not making false and misleading statements to other solicitors in the course of her legal practice. Turning to the second element of the two stage Ivey test, the Tribunal found beyond reasonable doubt that ordinary decent people would regard knowingly making false and misleading statements to another solicitor to be dishonest. The allegation was accordingly found proved to the requisite standard.

26. **Allegation 1.4: From around 22 January 2014 the Respondent failed promptly to return the full Client Monies to Client CG, including upon request; and therefore breached all or any of:**

1.4.1 Rules 7.2 and/or 14.3 of the Accounts Rules;

1.4.2 Principles 2, 4 and 6 of the Principles.

The Applicant's Case

26.1 The Applicant again relied on the matters alleged under the previous allegations in addition to the following matters. Once the divorce proceedings had settled with payment of the cash figure from the sale proceeds of Ms CG's property, there was said to be no proper reason for the Respondent to retain the Client Monies (leaving aside the fact that the Applicant alleged she no longer held them). Her duty under Rule 14.3 of the Accounts Rules was therefore to return them to Ms CG "promptly".

26.2 The Applicant's case was that the Respondent did not return the Client Monies promptly, not least because she had misappropriated and/or dissipated them. Ms CG's evidence was that she made numerous requests for the return of the funds from around April 2014 but that, in spite of these, the Respondent failed to repay them in full. Instead the Respondent advanced what were described as various excuses as to why the funds were not immediately forthcoming, all or any of which were alleged to be false or misleading (see allegation 1.5 below).

26.3 Ms CG's evidence was that:

- the Respondent repaid £5,000 in April 2015 and repaid a further £3,000 in December 2015 but £22,000 of the Client Monies remained outstanding as at the date of the complaint to the Applicant (8 January 2016);

- following Ms CG's complaint to the Applicant, the Respondent repaid £2,000 in February 2016, thereby reducing the outstanding capital balance of the Client Monies to £20,000;

- this sum was still outstanding as at the date of the FI Report (11 November 2016) and was not returned until December 2016.

26.4 Rule 7.2 of the Accounts Rules makes clear that the duty to remedy breaches extends to replacing missing client money from the principal's own resources. The Respondent did not replace the full missing client money from her own resources, or at all, until December 2016 and therefore was submitted to have breached Rule 7.2.

26.5 Rule 14.3 of the Accounts Rules provides that: *"Client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds."* The Accounts Rules do not define what is meant by "promptly" but in Regency Rolls Ltd. v. Murat Carnall [2000] EWCA (Civ), Simon Brown LJ said:

> "*I would accordingly construe 'promptly' here to require, not that an applicant has been guilty of no needless delay whatever, but rather that he has acted with all reasonable celerity in the circumstances.*"

Mr Mulchrone invited the Tribunal to consider whether, in taking almost two years to return the full Client Monies to Ms CG despite numerous requests, the Respondent "*acted with all reasonable celerity in the circumstances*". The Applicant's position was that she did not.

26.6 The conduct alleged above was submitted to amounts to a failure by the Respondent to:

- act with integrity, contrary to Principle 2 of the Principles. By failing to return the Client Monies to Ms CG promptly the Respondent had failed, objectively, to act with moral soundness, rectitude and steady adherence to an ethical code. Acting with integrity would have required the Respondent to return (and, if necessary, replace) client money entrusted to her with a view to settlement as soon as it became apparent that it was no longer required for that purpose. It would not include the Respondent failing to return those funds during a period of nearly two years, despite multiple requests from and a formal complaint by the client;

- act in Ms CG's bests interests, contrary to Principle 4 of the Principles. Acting in Client CG's best interests would require the Respondent to return her money promptly, out of her own resources if necessary. It was noted that Ms CG stated she suffered some hardship as a result of the Respondent's failing to return her funds;

- behave in a way that maintained the trust the public placed in her and in the provision of legal services, contrary to Principle 6 of the Principles. Members of the public expected that solicitors entrusted with the safekeeping of client money would return it promptly as soon as no longer required for the client matter, or when requested by the client. They would not expect that solicitors would fail to return such funds for periods approaching two years, particularly in circumstances where there was said to be no good reason to retain them and the client was actively and urgently requesting their return.

Dishonesty alleged in relation to allegation 1.4

26.7 The Applicant again relied upon the test for dishonesty summarised in paragraph [24.7] above. By allegedly failing to return the Client Monies promptly to Client CG, including upon request, it was submitted that the Respondent acted dishonestly according to the ordinary standards of reasonable and honest people. It was submitted in addition that the circumstances of the case showed that she must have realised that by those standards she was acting dishonestly (but again that proof of such realisation was not necessary to prove dishonesty). It was submitted that the Respondent acted dishonestly according to the ordinary standards of reasonable and honest people because she knew that there was no good reason for her to retain the Client Monies once the proceedings had been settled and she must have known that, under the Accounts Rules, she was duty-bound to repay them. The Respondent nevertheless failed to (replace and) repay them in full until December 2016. It was submitted that such failure was deliberate and that the Respondent must therefore have realised that her behaviour was dishonest according to the ordinary standards of reasonable and honest people.

The Respondent's Case

26.8 The allegation was denied. In her emailed submissions of 14 January 2020 sent to the Tribunal, the Respondent expanded on the points she had made in response to the above allegations. Her case was again that she had an arrangement with Ms CG that she could hold and use the Client Monies in the way she did. Accordingly, the Respondent's submission was that given this agreement with her client the funds would have "*fallen outside the scope of client's money and the Solicitors' accounts rules*". Even if the Tribunal did not accept her case that there was such an agreement, the Respondent made reference to her genuine belief that such an agreement did exist which would be relevant to an assessment of whether she had acted without integrity, had failed to act in her client's best interests or had undermined public trust in her and in the provision of legal services as alleged.

26.9 The Respondent also made reference to an arrangement she stated she had reached with Ms CG under which she would waive/reduce the legal fees payable on the divorce matter in order to help her client resolve the matter without it being pursued to a trial. The beneficial interest rate paid to Ms CG was also relied upon in support of an arrangement taking the Client Monies outside the Accounts Rules. The Respondent submitted that she believed she was acting pursuant to an agreement with her client, and in her best interests, and accordingly any technical breach was unintended and a minor error of judgment insufficient to amount to a breach of the Principles or to amount to dishonest conduct. Despite an acknowledged delay in returning the Client

Monies the Respondent submitted that Ms CG was fully compensated and that her interests had been protected at all times. She again relied on the concerns outlined above about Mc CG's evidence, the report of Mr Babra, and what she regarded as a real risk of a miscarriage of justice if their evidence was relied upon in her absence.

Response to allegation of dishonesty in relation to allegation 1.4

26.10 The allegation was denied on the basis summarised above. In addition, the Respondent's submissions in paragraphs [24.10] to [24.12] above based on the character witness and lack of propensity for any dishonest conduct, her health and state of mind, and an alleged lack of credible evidence supporting the Applicant's case were repeated.

26.11 As indicated above, the Respondent stated that she genuinely believed that there was an agreement with Ms CG that she could use the funds in the way that she did which combined with the preferential rate of interest and discounted legal fees that she had charged safeguarded Ms CG's interests. Accordingly, whilst having acknowledged some delay in returning the funds, the Respondent again submitted that taking all the relevant factors into account the Applicant's case failed to meet the burden and applicable standard of proof.

The Tribunal's Decision

26.12 For the reasons set out above, the Tribunal had rejected the Respondent's contention that the Client Monies were a loan and that she had a free rein over how to hold them. Ms CG's evidence was that she requested the return of the Client Monies from around April 2014. The Tribunal accepted the evidence of Ms CG and the findings of the FIO (which were not disputed by the Respondent) that payments of £5,000 and £3,000 were made to Ms CG in April and December 2015 and that a further £2,000 was returned in February 2016. The balance, of £20,000, was not returned to Ms CG until December 2016.

26.13 Ms CG's evidence was that she raised a formal complaint in October 2015 about the failure of the Respondent to return her money following what Ms CG had described as "polite reminders" up to that point.

26.14 The Respondent did not contend that she had, in fact, returned the Client Monies earlier than the Applicant and Ms CG had alleged. Her case was that she was not obliged to return the funds as promptly as the Applicant contended due to the arrangement she had reached with Ms CG (for which consideration in the form of reduced fees and preferential interest had been provided). The Tribunal had rejected this contention and found that the Client Monies were at all times client money. Mandatory Rule 14.3 of the Accounts Rules requires that "*client money must be returned to the client … promptly, as soon as there is no longer any proper reason to retain those funds*". Having taken around two years to return the Client Funds in full the Tribunal had no doubt that the Respondent had breached this Rule. The Tribunal further found proved that she had breached Rule 7.2 of the Accounts Rules which requires that breaches of the Accounts Rules must be remedied.

26.15 As stated above, client funds are sacrosanct and the Tribunal considered that failing to return client money on request, where no legitimate reason for retention existed, amounted to an egregious failure to adhere to the ethical standards of the profession. Again by reference to the examples set out in paragraph [101] of Wingate, the Tribunal found beyond reasonable doubt that by failing to return the full Client Monies to Ms CG on request for over two years, she had failed to act with integrity in breach of Principle 2 of the Principles.

26.16 Given the above findings, the Tribunal found beyond reasonable doubt that the Respondent had failed to act in her client's best interest in breach of Principle 4 of the Principles. Failing to return money on request and without cause was inevitably not in her client's interest. Careful stewardship of, and thorough trustworthiness with, client funds was such a fundamental obligation on all solicitors that the Tribunal had no doubt that the Respondent's conduct would fail to maintain the trust placed by the public in her and in the provision of legal services in breach of Principle 6 of the Principles.

The Tribunal's Decision on Dishonesty alleged in relation to allegation 1.4

26.17 The Tribunal again applied the test in Ivey summarised in paragraph [24.17] above. For the reasons summarised above, the Tribunal had found that the Respondent had failed to return the Client Monies to Ms CG promptly, including on request. The Tribunal had found in relation to allegation 1.2 that the Respondent had no genuine belief that she had any loan agreement with Ms CG and no genuine belief that she was entitled to deal with Ms CG's funds as her own. Applying the first element of the two-stage Ivey test, the Tribunal found proved beyond reasonable doubt that the Respondent knew that she was obliged to return the Client Monies when the purpose for which they were held no longer existed. Absent any genuine belief in any loan agreement or entitlement to deal with the funds as her own, and applying the second element of the Ivey test, the Tribunal found beyond reasonable doubt that failing to return the entirety of the funds would be regarded as dishonest by ordinary decent people. Accordingly the allegation of dishonesty was proved to the requisite standard.

27. **Allegation 1.5: On all or any of various specified dates the Respondent made false or misleading statements to Client CG concerning the whereabouts of the Client Monies and/or when she might return them; and therefore breached all or any of Principles 2, 4 and/or 6 of the Principles.**

The Applicant's Case

27.1 The Applicant again relied on the matters alleged under the previous allegations in addition to the following matters. On or about 15 April 2014 the Respondent wrote to Ms CG stating:

> "*… the funds held on account of £30,000 can in turn be fully released to you upon expiry of 60 days' notice, with accrued interest…*"

There was said by the Applicant to be no evidence that any notice period was required by the bank; rather, the evidence indicated that the Respondent did not hold £30,000 on account. On 15 April 2014, the Firm's accounts held a total of £561.94. The above statement was therefore submitted to be false and/or misleading (i.e. Ms CG would have

been misled by it into believing that (i) the Respondent held £30,000 for her on account in circumstances where she did not and (ii) the bank required 60 days' notice to release these funds when it did not).

27.2 On or about 23 September 2014 the Respondent wrote to Ms CG stating:

> "*It has come to my notice that the entire balance of £30,000 was placed on a designated high interest account while pending a settlement with our assurance to [Solicitors F] that the funds would be secured during negotiation and the court process. As such, the funds were placed on high interest at 4% per annum for 12 months from February 2014 which is for a fixed term until February 2015. Any early release of funds will attract a penalty on interest and this will defeat the purpose of the high interest account. However, if you need the funds earlier, I will see if it is possible to secure the release in several stages so that you will be paid periodically up to February 2015*."

There was said by the Applicant to be no evidence that the £30,000 was placed on a designated high interest account pending settlement; rather, the evidence was submitted to indicate that the Respondent did not hold the Client Monies. On 23 September 2014, the Firm's accounts held a total of £133.02. It follows that there was no interest penalty payable for "early release of the funds". The above statement was therefore submitted to be false and/or misleading (i.e. Ms CG would have been misled by it into believing that (i) the Respondent held £30,000 for her on account in circumstances where she did not and that (ii) "early release" of these funds would attract an interest penalty).

27.3 On or about 4 February 2015 the Respondent wrote to Client CG stating:

> "*Funds release date – I have checked with the banking administrative team/my Accounts colleagues, it is necessary to give 60 days' notice and so the funds paid in could be returned to you in two stages at the start of May 2015 - £18,000 plus interest accrued to that date at 4% per annum from March 2013 and at the start of August 2015 – £12,000 plus interest accrued to that date.*"

As stated above, there was said by the Applicant to be no evidence that any notice period was required by the bank; rather, the evidence was submitted to indicate that the Respondent did not hold the Client Monies. On 4 February 2015, the accounts held a total of £4,006.08. The above statement was therefore false and/or misleading (i.e. Ms CG would have been misled by it into believing that (i) the Respondent still held the Client Monies in circumstances where she did not and (ii) that it was necessary to give/the bank required 60 days' notice before those funds could be returned).

27.4 The conduct alleged was submitted to amount to a failure by the Respondent to:

- act with integrity, contrary to Principle 2 of the Principles. By making false and/or misleading statements to Ms CG concerning the whereabouts of the Client Monies and/or when she might return them, the Respondent was submitted to have failed, objectively, to act with moral soundness, rectitude and steady adherence to an ethical code. Acting with integrity was submitted to require the Respondent to be open and honest with Ms CG about the whereabouts of her money and when she would get it back, particularly in circumstances where Ms CG was struggling

financially as a result of not having those funds. It would not include misleading her client about these matters or causing her to believe that any delay was attributable to notice requirements imposed by the bank;

- act in Ms CG's bests interests, contrary to Principle 4 of the Principles. Acting in Ms CG's best interests was submitted to require the Respondent to 'come clean' and inform the her client that she no longer held the Client Monies and therefore could not repay them immediately. It was submitted not to include misleading Ms CG about these matters or causing her to believe that any delay was attributable to notice requirements imposed by the bank;

- behave in a way that maintained the trust the public placed in her and in the provision of legal services, contrary to Principle 6 of the Principles. It was submitted that members of the public expect that solicitors will be open and honest with their clients concerning the whereabouts of money entrusted to them. They do not expect that solicitors will make false or misleading statements in this regard, particularly where this is done deliberately. The Respondent's conduct was therefore submitted to be likely to undermine public confidence in the profession as "*one in which every member, of whatever standing, may be trusted to the ends of the earth.*"

Dishonesty alleged in relation to allegation 1.5

27.5 The Applicant again relied upon the test for dishonesty summarised in paragraph [24.7] above. The Applicant repeated the submissions made in relation to allegation 1.3 in paragraph [25.7] that by making allegedly false or misleading statements to Ms CG, the Respondent had acted dishonestly.

The Respondent's Case

27.6 The allegation was denied on essentially the same basis already outlined in relation to allegations 1.1 to 1.4. The Respondent also stated in her email of 14 January 2020 to the Tribunal that Ms CG never asked for details about the bank deposits. The Respondent stated that she did not recall (and there was no evidence to the effect) that she indicated to Ms CG that there was any deposit account and the Respondent reiterated that in accordance with the agreement reached with Ms CG she considered that she had "*a free reign [sic] to deal with her matters as her instructions showed*".

27.7 The Respondent stated that there was no evidence supporting the contention that she represented to Ms CG that the bank deposit account required a period of notice. She stated that: "*It was my firm which required prior notice at a period comparable to the fixed term deposit accounts at a High Street bank*". She relied upon the preferential rate of interest paid to Ms CG, and the discounted legal fees, which the Respondent maintained was pursuant to an arrangement which gave her discretion over how the Client Monies were used and which took these funds outside the scope of the Accounts Rules. The Respondent stated in her email of 26 March 2019 to the Tribunal and the Applicant that Ms CG had benefitted from the arrangement she reached and that Ms CG had failed to reflect this in her evidence. Any breach of those rules was submitted to be minor and technical and the Respondent submitted that the Applicant had failed to satisfy the standard of proof for the alleged breaches of the Principles.

Response to allegation of Dishonesty in relation to allegation 1.5

27.8 The allegation was denied on the basis summarised above. In addition, the Respondent's submissions in paragraphs [24.10] to [24.12] above based on the character witness and lack of propensity for any dishonest conduct, her health and state of mind, and an alleged lack of credible evidence supporting the Applicant's case were repeated.

27.9 As indicated above, the Respondent' case was that she genuinely believed that there was an agreement with Ms CG that she could use the funds in the way she did. She also stated that she had not misled Ms CG about the whereabouts of the monies or when they may be returned. Again, whilst having acknowledged some delay in returning the funds, given her genuine belief that she was acting in accordance with an agreement with her client, and given her belief that her client benefitted from the arrangement and her interest were protected, the Respondent submitted that taking all the relevant factors into account her conduct could not, to the requisite standard of proof, be regarded as dishonest. The submissions about the lack of credibility in the witness and FIO evidence relied upon were repeated.

The Tribunal's Decision

27.10 Mr Mulchrone had directed the Tribunal to bank statements showing transfers of money between the Firm's two office accounts and onwards to the Respondent's personal account. As set out above, the Tribunal had accepted and found proved that at various times the Firm held less money in total in all accounts than had been provided by Ms CG. The conclusion that the Client Monies were not held within the Firm was irresistible.

27.11 There was no evidence that the Client Monies were paid into a high interest account. The Respondent herself did not maintain this; her position was set out in her submissions emailed to the Tribunal on 14 January 2020 was: "*It was my firm which required prior notice at a period comparable to the fixed term deposit accounts at a High Street bank*". The Tribunal had found that the Client Monies were not retained within the Firm. The Tribunal was satisfied beyond reasonable doubt that the Client Monies were neither in any high interest account nor held by the Firm at all.

27.12 The statements made by the Respondent to Ms CG, to which the Tribunal was referred, included asserting that "*the funds held on account*", "*the entire balance of £30,000 was placed on a designated high interest account*" and "*it is necessary to give 60 days' notice and so the funds paid in could be returned to you in two stages…*" The Tribunal found beyond reasonable doubt that these statements were plainly false and misleading.

27.13 The Tribunal accepted the uncontroversial submission made by Mr Mulchrone that acting with integrity required the Respondent to be honest with her client about the whereabouts of that client's money and when she would get it back. Making false and misleading statements in such a context was a stark example of a failure to adhere to the ethical standards of the profession and the Tribunal found beyond reasonable doubt that the Respondent had thereby breached Principle 2 of the Principles. For the same reasons, the Tribunal found proved beyond reasonable doubt that the Respondent had not acted in Client CG's best interests in breach of Principle 4 of the Principles. The

obligation to refrain from making false and misleading statements about all matters and in particular those relating to client money was so fundamental that the Tribunal found beyond reasonable doubt that such conduct undermined the trust placed by the public in the Respondent and the provision of legal services in breach of Principle 6 of the Principles.

The Tribunal's Decision on Dishonesty alleged in relation to allegation 1.5

27.14 The Tribunal again applied the test in Ivey summarised in paragraph [24.17] above. For the reasons summarised above, the Tribunal had found that the Respondent had made plainly false and misleading statements to her client about the whereabouts of the Client Monies and/or when she might return them. The Tribunal had rejected the Respondent's account of the statements she made and found proved that she had no genuine belief in the false and misleading statements she had made. The statements themselves related to client money to which Ms CG was entitled promptly. The Tribunal found beyond reasonable doubt that ordinary decent people would regard such conduct as dishonest. Accordingly, the Tribunal found beyond reasonable doubt that the allegation of dishonesty was proved.

28. **Allegation 1.6: On all or any of various specified dates the Respondent attempted to discourage Client CG from reporting or pursuing concerns about her conduct to the Applicant and/or the Legal Ombudsman; and therefore breached all or any of:**

1.6.1 Outcome 10.7 of the Code;

1.6.2 Principles 2 and/or 6 of the Principles.

The Applicant's Case

28.1 The Applicant again relied on the matters alleged under the previous allegations in addition to the following matters. On or about 28 September 2015 the Respondent wrote to Ms CG stating:

> "*Overall, I treat the issues of complaint as resolved on the above basis. I still believe that it is not in any party's interests or of any additional benefit for the matter to escalate. There are far reaching implications in various ways. The issue of liability is settled. Any enquiries by the authority over the issues involved will take time and generate complications. It may reduce, hinder or destroy the prospects of an expeditious settlement and payments to you. It is of paramount importance to maintain the practice's fluidity and viability for ongoing business. As you may have received legal advice on this, you will be aware that the matter can be referred to my firm's Insurers who may decide to take over control of the way that I should respond to this complaint.*"

It was alleged that this statement amounted to a threat that if Ms CG escalated her concerns to the authorities it might delay or even prevent the return of her money. It was submitted to be a wholly improper statement to make in circumstances where Ms CG was seeking the return of the full Client Monies and the Respondent had failed

to repay them in full. As such the Applicant contended that it was an attempt to discourage Ms CG from escalating her concerns.

28.2 On or about 13 October 2015 the Respondent wrote to Ms CG stating:

> "*The main business reasons why I suggest that there are far reaching implications for the matter to be referred to the authority/Ombudsman are that:-*
>
> *1. It will undoubtedly have an impact on my firm and its trading status including professional indemnity insurance and ongoing business/work, etc.*
>
> *2. This will affect my ability to repay you expeditiously while a Complaint is officially pending, not to mention that my firm's Insurers may decide to contest the process on the basis that the issue outstanding is one of payment, not one in substance, due to the fact that I have accepted responsibility and apologised for the errors. If the Complaint channel is pursued, to which you are entitled, I may have no option but to contest the process and thus prolong the matter further. The need of repayment to you is already treated as a priority and a formal Complaint will not expedite a resolution but will, rather, diminish the prospects of a speedy conclusion in my view.*"

Again, the above statement was alleged to amount to a threat that if Ms CG escalated her concerns to the authorities it might delay or prevent the return of her money. It was submitted to be a wholly improper statement to make in circumstances where Ms CG was seeking the return of the full Client Monies and the Respondent had failed to repay them in full, despite multiple requests. Again it was submitted to be a clear attempt to discourage Ms CG from escalating her concerns.

28.3 On or about 5 February 2016 the Respondent wrote to Ms CG including as follows:

> "*I am in receipt of an email from the Legal Ombudsman's office dated 1 February 2016 in relation to your complaint ...*
>
> *I have therefore responded to the Ombudsman's office in the first instance indicating that the issues of the complaint have been resolved from my point of view ... Once the Ombudsman is involved, it will be necessary to halt the settlement process pending developments and this delays the payments scheduled to you.*
>
> *…*
>
> *With your complaint being registered with the Ombudsman, you have reserved your rights to pursue the complaint, it is appropriate to seek to suspend the Ombudsman's process by mutual consent to 31 March 2016, to provide my firm the opportunity to complete the settlement payments to you without interruptions. Upon full payment, your complaint to the Ombudsman should then be withdrawn.*
>
> *It is not in any party's interests to engage in protracted litigation or an enquiry by the Ombudsman. In my view, a binding settlement has been reached with you*

and on that basis, I am advised by my professional indemnity advisor that jurisdiction and the validity of the complaint to the Ombudsman will be disputed."

The Applicant alleged that this statement amounted to a threat that if Ms CG did not agree to suspend her complaint to the Ombudsman it might delay or prevent the return of her money. It was submitted to be a wholly improper statement to make in circumstances where Ms CG was seeking the return of the full Client Monies and the Respondent had failed to repay them in full, despite multiple requests.

28.4 Outcome 10.7 of the Code makes clear that solicitors must not attempt to prevent anyone from providing information to the SRA or the Legal Ombudsman. The Applicant's position was that this duty included attempts to discourage clients from making or pursuing complaints to those bodies. In making the three statements above, the Respondent was submitted to have failed to achieve this Outcome.

28.5 In allegedly attempting to discourage Ms CG from escalating or pursuing her concerns to the SRA and/or the Legal Ombudsman, the Respondent was submitted to have failed to act with integrity, contrary to Principle 2 of the Principles, in that, objectively, she failed to act with moral soundness, rectitude and steady adherence to an ethical code. It was submitted that acting with integrity would require the Respondent to respect and facilitate Ms CG's right to complain/escalate her concerns, not to obstruct or hinder it. It was submitted that it would certainly not include making threats to Client CG to the effect that if she escalated and pursued her concerns to the authorities, this might delay or prevent the return of the Client Monies.

28.6 The conduct alleged was further submitted to amount to a failure by the Respondent to behave in a way that maintained the trust the public placed in her and in the provision of legal services, contrary to Principle 6 of the Principles. It was submitted that members of the public expect that, if and when things go wrong, solicitors will respect and facilitate their clients' right to escalate any concerns to the relevant authorities, including the Applicant and the Legal Ombudsman. They do not expect that solicitors will take active steps to discourage such complaints, particularly by making threats that, if they are pursued, this may hinder or prevent the return of client money.

<u>The Respondent's Case</u>

28.7 The allegation was denied. The Respondent stated in her email of 14 January 2020 to the Tribunal that she had made similar comments to those relied upon by the Applicant to the Legal Ombudsman which would have been relayed to Ms CG. The Respondent was simply setting out her intentions. Her case was that it was in Ms CG's best interests to avoid delay in the return of her funds, and that a complaint to the Legal Ombudsman would inevitably introduce delay. This was on the basis that her insurer's consent was necessary before the Respondent could "settle". Her submissions were, in essence, that she was providing neutral and factual information to Ms CG about the effect (i.e. delay) that the formal Ombudsman process would inevitably entail. The Respondent stated that Ms CG had not expressed any concern at the time about her emails and the Respondent had accepted her liability at all times and offered to repay Ms CG.

28.8 The Respondent also again made submissions that Ms CG was an unreliable witness and her account of feeling discouraged from raising concerns lacked credibility. The Respondent stated in an application of 2 January 2020 to the Tribunal that in any event Ms CG had been fully compensated. Accordingly, the Respondent submitted that the Applicant had failed to discharge the evidential burden upon it. The Respondent also relied again on the concerns outlined in response to previous allegations about Mc CG's evidence, the report of Mr Babra, and what she regarded as a real risk of a miscarriage of justice if their evidence was relied upon in her absence.

The Tribunal's Decision

28.9 The Tribunal carefully reviewed the correspondence that the Respondent had written to her client, Ms CG, in relation to her Legal Ombudsman complaint. The Tribunal did not consider that there was any plausible purpose for the correspondence other than to discourage Ms CG from pursuing her concerns. The tone of the correspondence was discouraging. The Respondent stated on or about 5 February 2016 that "*Once the Ombudsman in involved, it will be necessary to halt the settlement process pending developments and this delays the payments scheduled to you*". In the same email she also stated "*it is appropriate to seek to suspend the Ombudsman's process by mutual consent to 31 March 2016, to provide my firm with the opportunity to complete the settlement payments to you without interruptions*". The Tribunal considered that such sentiments spoke for themselves; the Respondent sought to apply pressure to dissuade the Respondent from pursuing her complaint.

28.10 The terms of Outcome 10.7 of the Code were very clear that all solicitors must not attempt to prevent anyone providing information to the Applicant or the Legal Ombudsman. The reasons for such a mandatory requirement were obvious; public confidence in solicitors and the profession generally would be seriously undermined were such a basic outcome not achieved. The Respondent had made statements to Client CG about notice requirements applying to the Client Monies and the money being placed on account that the Tribunal had found to be false and misleading, as set out in relation to allegation 1.5 above. The Tribunal considered this context to the statements she made about the Legal Ombudsman. It was plain from the false and misleading statements that the Respondent had made about the whereabouts and return of the Client Monies that her objective was to have additional time in which to repay the money owed. In this context, and taking into account the tone and veiled threats of further delays to repayment implicit in the emails that the Respondent had sent to Ms CG about her Ombudsman complaint, the Tribunal was satisfied beyond reasonable doubt that the Respondent sought to discourage Ms CG from pursuing her complaint to the Legal Ombudsman and that this represented a failure to achieve Outcome 10.7 of the Code.

28.11 The Tribunal accepted the submission made by Mr Mulchrone on behalf of the Applicant that acting with integrity required the Respondent to respect and facilitate Ms CG's right to complain and escalate her concerns and not to obstruct or seek to hinder it. As set out above, the right to raise complaints with the Applicant or the Legal Ombudsman was a vital public protection and guarantor of the reputation of the profession. The breach of Principle 2 of the Principles was accordingly proved beyond reasonable doubt. The Tribunal further found beyond reasonable that conduct which sought to thwart or hinder a right to pursue a complaint to the Legal Ombudsman must

inevitably fail to maintain the trust placed by the public in the Respondent and in the provision of legal services in breach of Principle 6 of the Principles.

Previous Disciplinary Matters

29. There were no previous Tribunal findings.

Mitigation

30. As set out above, the Respondent had raised issues relating to her health that the time of the events giving rise to the misconduct. Without producing supporting medical evidence in the form previously specified by the Tribunal, the Respondent stated that her medical condition between 2012 and 2014 was relevant to her state of mind. She submitted, in effect and in general terms, that her conduct was due to some extent to ill-health rather than to any deliberate intention on her part. She stated that her "sense of judgment" was affected by issues she made reference to in her second email to the Tribunal of 14 January 2020.

31. The Respondent stated that she had made good the issues raised by the Applicant and that Ms CG had suffered no loss (in fact she had received a favourable rate of interest on the Client Monies). She maintained that she had charged discounted legal fees for the work in question and that there had been no complaint about the substantive legal work.

32. There had been no other disciplinary or regulatory issues throughout the Respondent's long legal career. She provided a character reference describing her as an honest and industrious person. The Respondent made reference (without supplying supporting documentation) to the effect that she would be unable to meet the costs of any fine or costs award. She stated that in the event of a strike off order she would have no employment prospects.

Sanction

33. The Tribunal referred to its Guidance Note on Sanctions (7th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

34. In assessing culpability, the Tribunal found that the motivation for the Respondent was financial including to support her firm. The Tribunal found that she had subordinated the interests of her client to her own. The misconduct was not spontaneous and required consistent and repeated acts over about two years. The Tribunal considered that the Respondent had been in a position of trust with regards to Ms CG and that the Respondent had direct control over the relevant circumstances. She was an experienced solicitor. The Tribunal assessed the Respondent's culpability as high.

35. The Tribunal considered the harm caused by the misconduct to have been entirely foreseeable. The Respondent's client did not promptly receive the client money to which she was entitled and gave sworn evidence as to the hardship this caused. Such conduct, which amounted to 'dipping into' client funds and failing to promptly replace

them including on request would inevitably cause significant harm to the reputation of the profession. The Tribunal assessed the harm caused as significant.

36. The Tribunal then considered aggravating factors. Multiple findings of acting dishonestly had been made. These included misappropriating client money, failing to return it promptly and misleading the Respondent's client and another solicitor in relation to the funds. This conduct extended over a significant period of time. The Tribunal considered that the Respondent had sought to obfuscate and conceal the true position in her dealings with the Applicant by putting forward and maintaining a position that she had had a loan agreement with Ms CG, for which there was no evidence and which the Tribunal rejected. The misconduct was aggravated by the fact that the failures were in such basic and fundamental matters (making false and misleading statements and failing to treat client money appropriately) that any solicitor should and would have been aware of the potential for harm.

37. The Tribunal also considered mitigating factors. The Respondent had an otherwise unblemished record and had produced a positive testimonial which spoke about her professionalism and integrity.

38. The overall seriousness of the misconduct was high; it could not be otherwise given the dishonesty finding. In addition, there were multiple findings that the Respondent had lacked integrity, failed to act in her client's interests and failed to uphold public trust in the provision of legal services. Even without dishonesty the Tribunal would regard the misconduct as very serious. As the Respondent had been found to have been dishonest, the Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll. The Tribunal was not expressly invited to consider any factors submitted to be exceptional was not persuaded that any were present such that the normal penalty would not be appropriate. Whilst the Respondent had made reference to ill-health at the time of the relevant events, she had produced no evidence to support this. The dishonesty included such fundamentally dishonest conduct as misappropriation, and comprised several acts over an extended period of time, such that the Tribunal did not consider there to be any plausible exceptional circumstances taking into account the nature, scope and extent of the dishonest conduct found proved.

39. Having found that the Respondent had acted dishonestly, and in view of the other serious findings made against her, the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "*to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth*".

The Tribunal determined that the findings against the Respondent, including dishonesty, required that the appropriate sanction was strike off from the Roll.

Costs

40. Mr Mulchrone applied for the Applicant's costs. The costs sought and set out in a schedule dated 8 January 2020 were £33,727.45.

41. By email dated 9 January 2020 the Respondent submitted that the costs claimed by the Applicant were "excessive, disproportionate and unnecessary". She also invited the Tribunal to order detailed assessment of the costs claimed rather than undertaking summary assessment. In an email to the Applicant dated 10 August 2018 she stated that costs of £33,000 were excessive for what amounted to one client complaint. In an application to the Tribunal date 2 January 2020 she stated that she should not have to bear the costs of the Applicant instructing external solicitors.

42. On behalf of the Applicant, Mr Mulchrone invited the Tribunal to summarily assess costs. In support of his request he referred the Tribunal to Gale v SRA [2019] EWHC 222 (Admin) paragraphs [32] to [44] in which a summary assessment of Capsticks' fixed legal costs was upheld on appeal to the Administrative Court. Mr Mulchrone submitted that this was a long running case which had been charged on a fixed fee basis, with the effect that adjournments and the additional work which had been necessary in responding to applications from the Applicant had not been reflected in any increased costs overall.

43. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence and considered it was well placed to assess the reasonableness of the costs claimed. The Applicant's investigation costs and Capsticks' fixed legal costs appeared to the Tribunal to be reasonable in light of the number and complexity of the allegations, the extent of the documentation and the procedural history of the case. The Respondent had not provided evidence to substantiate the statements she had made about her financial means. She had not provided evidenced information to inform the Tribunal's decision. In line with its Standard Directions, of which the Respondent had received a copy, the Tribunal consequently proceeded without regard to the Respondent's means. The Tribunal ordered the Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £33,727.45.

Statement of Full Order

44. The Tribunal ORDERED that the Respondent, ELLEN YEE-MAN WINDSOR, 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 £33,727.45.

Dated this 1st day of April 2020
On behalf of the Tribunal

A. Ghosh
Chair