

The Applicant appealed the Tribunal's decision dated 11 October 2022 to the High Court (Administrative Court). On 27 February 2023 Recorder Timothy Corner KC (sitting as a judge of the High Court) approved a consent order to set aside the Tribunal's decision to acquit the Respondent of Allegation 1 with a finding that Allegation 1 and its particulars are found proved. The Respondent was ordered to pay a fine of £800. There was no order as to costs.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12334-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

MAYA NISA-ZAMAN

Respondent

Before:

Mr J P Davies (in the Chair)

Mr A Ghosh

Mr P Hurley

Date of Hearing:

15-16 September 2022

Appearances

Cameron Scott, counsel, in the employ of Capsticks LLP of 1 St George Road, London, SW19 4DR, for the Applicant.

Rory Dunlop, K.C., counsel of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD instructed by HMA Law Solicitors of 5 Tenby Street, Birmingham, B1 3EL, for the Respondent.

JUDGMENT

Allegations

1. The allegations against Ms Nisa-Zaman (“the Respondent”) were that:
 - 1.1 While in practice as a solicitor, and as manager at MZ Law solicitors Ltd (“the Firm”), she failed to ensure that the Firm had in place a compliant, firm-wide anti-money laundering risk assessment between 26th June 2017 and, at the earliest, 15th April 2020 as required by Regulations 18(1) and 18(4) of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“MLRs 2017”)
 - 1.2 In doing so, to the extent the conduct took place up to 25th November 2019, she breached any or all of Principles 6, 7 and 8 of the SRA Principles 2011 and failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011.
 - 1.3 In doing so, to the extent the conduct took place from 25th November 2019, she breached Principle 2 of the SRA Principles 2019 and Rules 2.1(a) and 3.1 of the SRA Code of Conduct for Firms.
 - 2.1 On 16th December 2019, she made a false declaration to the SRA in that the Firm had in place a compliant, firm-wide anti-money laundering risk assessment in place.
 - 2.2 In doing so she breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019 and Rules 1.4 and 7.4 of the SRA Code of Conduct for Solicitors, RELs and RFL’s.
 - 3.1 On 6th November 2020 she attempted to mislead the SRA by producing a firm-wide risk assessment document falsely dated 1st January 2020.
 - 3.2 In doing so she breached any or all of Principles 2, 4 and 5 of the SRA Principles and Rules 1.4 and 7.4 of the SRA Code of Conduct for Solicitors, REL’s and RFL’s

Executive Summary

4. Ms Nisa-Zaman denied each allegation stating that there had been a compliant firm-wide anti-money laundering risk assessment in place at the material time and that she had not mislead the SRA.
5. The Tribunal dismissed all the allegations on the basis that the Applicant had not proved its case to the requisite standard, namely on the balance of probabilities, as it was more likely than not that Ms Nisa-Zaman had had in place a compliant, firm-wide anti-money laundering risk assessment during the material time. There was no order for costs.

The facts can be found [here](#).

The Applicant’s case can be found [here](#)

The Respondent’s case can be found [here](#)

Mr Dunlop’s closing submissions can be found [here](#)

The Tribunal’s Findings can be found [here](#).

Documents

6. The Tribunal considered all the documents in the case which were contained in an agreed electronic bundle.

Preliminary Issue

7. Mr Dunlop applied to introduce into evidence a supplemental statement, dated 8 September 2022 to Ms Nisa-Zaman's first witness statement dated 8 August 2022.
8. Whilst preparing for the hearing, Ms Nisa-Zaman discovered two documents when searching through documents stored on 'the Cloud.'
9. The first was titled 'Mortgage Fraud Prevention' which she had reviewed and amended on 8 May 2017. This was drafted as part of the Conveyancing Quality Scheme ("CQS") application process. The second was a template titled 'Money Laundering-Source of Funds Questionnaire.'
10. Mr Dunlop said that this recently found material was relevant to the matters to be considered by the Tribunal as it opened a window on Ms Nisa-Zaman's state of knowledge at the time and demonstrated that, she had considered the risks posed to her firm of money laundering.
11. This was therefore important and relevant evidence to take into consideration given that dishonesty was alleged by the Applicant.
12. Whilst it was her primary case that a firm-wide risk assessment policy had been in place at the material time, the newly unearthed documents opened a secondary case, namely, that if she was wrong about this genuinely held view, she may have muddled it in her recollection with the 'Mortgage Fraud Prevention' document, now before the Tribunal.
13. Whilst this material had been discovered late in the day the meta-data for the documents showed the dates they were amended. The Questionnaire was amended more than five years ago, and, whilst it could not be said with certainty that it had been created specifically for the MLRs 2017, it demonstrated that prior to June 2017, Ms Nisa-Zaman had been working on anti-money laundering policies ("AML") for her firm with her husband Mr Gulab Zaman as the Practice Manager. (*Note: in the hearing Mr Zaman was referred to by his wife and the parties as "Gulab" and the judgment will retain this nomenclature; no disrespect is intended.*)
14. The new material had been sent to the Applicant on 8 September 2022 and Mr Dunlop said that the Applicant had had time to investigate provenance. However, the meta-data was itself conclusive on this point and no further expert investigation would necessarily have been required.
15. Mr Dunlop commended the evidence to the Tribunal and said that the Applicant would not suffer any prejudice if this material was admitted into evidence.

16. Mr Scott objected to the statement and the attached exhibits being allowed into evidence. He argued that it was far too late in the day for it to be admitted and it was of questionable relevance.
17. Mr Scott said that, notwithstanding the points made by Mr Dunlop, the Applicant would indeed be prejudiced by its admission as the Applicant had had little time to investigate provenance.
18. Such investigation would have required expert assessment of the supplied meta-data to verify with objective certainty that the documents were created or amended as contended by Ms Nisa-Zaman. Neither he nor Mr Dunlop were experts in the field of meta-data and he would therefore be at a disadvantage in not being able to challenge the material.

The Tribunal's Ruling

19. The material would be admitted into evidence.
20. It was evident that the material had been served late and that as a matter of general fairness such late material ought not to be admitted absent any persuasive reason to the contrary.
21. In this case, the Tribunal considered the persuasive reason was one related to relevance. On its face, the material was relevant to matters within Ms Nisa-Zaman's contemplation at the operative time. Whilst no expert had considered provenance, the meta-data spoke for itself as to its authenticity and an adjournment for expert evidence to be called was not necessary.
22. The trial process itself would protect the Applicant from unfair prejudice and the veracity and evidential strength of the material would be seen in the context of all the evidence and it would also be subject to cross-examination. The Tribunal would then determine the weight to place upon it when the considering the allegations.

Findings of Fact and Law

23. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Ms Nisa-Zaman'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.

Witnesses

24. 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 and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

25. The following gave evidence:
- Ishrat Mehboob as to character
 - Jenny Loynton as to character
 - Maya Nisa-Zaman as to fact
 - Gulab Zaman (“Gulab”) as to fact
26. Mr Mehboob gave evidence in person and Ms Loynton gave her evidence remotely.

Factual Background

27. Ms Nisa-Zaman was admitted to the Roll of Solicitors on 1 July 2011. She holds a current Practising Certificate free from conditions and she was at all relevant times, the sole owner, manager, Compliance Officer for Legal Practice (“COLP”) and Compliance Officer for Finance and Administration of the Firm (“COFA”). She was also the Firm’s Money Laundering Reporting Officer and Money Laundering Compliance Officer (“MLRO and MLCO”).
28. The Money Laundering Regulations came into force on 26 June 2017 (“MLRs 2017”). Regulation 18 of the MLRs 2017 required solicitors’ firms, including the Firm, to take appropriate steps to identify and assess the risks of money laundering.
29. Regulation 18(1) stated: *A relevant person must take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject.* The Firm was a “relevant person” for these purposes.
30. Regulation 18(4) stated: *A relevant person must keep an up-to-date record in writing of all the steps it has taken under paragraph 1, unless its supervisory authority notifies it in writing that such a record is not required*
31. In March 2018, the Legal Sector Affinity Group published Anti-Money Laundering Guidance for the Legal Sector. This guidance is written on behalf of all legal sector supervisory and representative bodies. Firms are not required to follow the guidance. However, supervisory bodies, including the SRA, will consider whether a legal professional has complied with the guidance when undertaking its role as a regulator of professional conduct and as a supervisory authority for the purposes of the MLRs 2017.
32. Paragraph 2.2 of that guidance confirmed: *Under Regulation 18(1) an independent legal professional’s practice is required to carry out and maintain a documented practice-wide risk assessment to identify and assess the risk of money laundering and terrorist financing to which the business is subject.*
33. In the spring of 2019, the SRA conducted a thematic review of the firms to which the MLRs 2017 applied and those firms’ firm-wide risk assessments. Some firms were found to be non-compliant. As a result, on 7th May 2019, the SRA published a Warning Notice in relation to Regulation 18 reminding firms of the requirements of Regulation 18 and stating:

“Regulation 18 of the [MLRs 2017] requires firms to take steps to identify the risks of money laundering and terrorist financing that are relevant to it.... Your firm-wide risk assessment must be in writing, kept up to date and provided to us upon request...”

34. The Warning Notice also stated: *We are seeing too many firms that do not have a risk assessment in place, and those firms could be failing to prevent money laundering. An anti-money laundering firm-wide risk assessment is an important and obligatory part of the regulations. Failure to have one is both against the law and places your firm at greater risk of being used to launder money... Failure to have a money laundering risk assessment in place for your firm is a significant breach of the money laundering regulations. We will take robust enforcement action where firms do not have one in place, where it is not sufficient to meet their responsibilities or where breaches are not rectified immediately.*
35. On 29 October 2019, the SRA updated its website with guidance and information on firm wide risk assessments including a downloadable template that firms could use if they wished. In total, the SRA has published four versions of this template. The first version of the template was published on 29 October 2019 along with a Risk Assessment Guidance Checklist, AML Warning Notice on Risk Assessments and a Firm Risk Assessment exercise.
36. The second version was published on or around 12 November 2019. The principal change from the first version was the inclusion of a box for version control. The third version was published on or around 20 January 2020. The changes from the second version included moving the areas for *“transactions that don’t fit with your firm or your clients’ normal pattern”* and *“links to politically exposed persons”* to different positions within the template.
37. The fourth version was published on or around 15 April 2020. The amendments from the third version included the addition of text stating *“conveyancing/Real Estate”*. In addition, the areas for *“Politically Exposed Persons”*, *“Client Accounts”* and *“New Products”* moved to different positions in the template. The second, third and fourth versions of the template were not available for firms to download before 12 November 2019, 20 January 2020 and 15 April 2020 respectively.
38. The SRA decided to contact all solicitors’ firms which were in-scope of the MLRs 2017 and require them to confirm, by completing an online declaration, whether they had a compliant firm-wide risk assessment in compliance with Regulation 18. The first such communication was sent on 12 December 2019 and further communications were sent in January and February 2020.

The Applicant’s Case

39. Allegation 1

- 39.1 Ms Nisa-Zaman completed and submitted a declaration on 16 December 2019 on behalf of the Firm. In response to the question *“Does your firm have in place a fully compliant firm-wide risk assessment, as required by Regulation 18...”* the Respondent answered

“Yes”. Further, she ticked a box on the declaration to confirm that the information she had given was correct to the best of her knowledge and belief.

- 39.2 On 2 March 2020, the SRA wrote to Ms Nisa-Zaman in relation to an investigation into a separate matter. Amongst other things, Ms Nisa-Zaman was asked to provide the Firm’s firm-wide written Risk Assessment as required by Regulation 18 of the MLRs 2017. Ms Nisa-Zaman replied on 4 March 2020 attaching an uncompleted risk assessment template. This template was the third version of the template which was published on or around 20 January 2020. Further, the properties of that document suggested that the document had been downloaded from the Applicant’s website on 3 March 2020.
- 39.3 On 5 November 2020, the SRA wrote to Ms Nisa-Zaman. The letter stated that the Respondent had confirmed on 16 December 2019 that she had a fully compliant risk assessment. It went on to state that on 4 March 2020 she had provided a copy of her Regulation 18 firm-wide risk assessment. What had been provided was a copy of the Applicant’s template which had been edited by the Respondent on 3 March 2020. This indicated that the Respondent may not have had in place a firm-wide risk assessment at the time of the declaration on 16 December 2019.
- 39.4 Further, it was suggested by Mr Scott that she may still not have been fully compliant with Regulation 18. The letter requested a response to the following:
- *Did you have in place between 16 December 2019 and 3 March 2020 a documented firm wide risk assessment? If so, please provide a copy in its original format;*
 - *If you did not have in place a firm-wide risk assessment between 16 December 2019 and 3 March 2020, but you declared to us that you did, please provide an explanation as to why you did so;*
 - *Please provide copies of your revised risk assessment, or an explanation as to why you have revised such since the 3 March 2020. Again, please provide this in its original format.*
- 39.5 Ms Nisa-Zaman replied on 6 November 2020 stating she would not have provided a false declaration and that “another solicitor had suggested we use the SRA template in mid-December 2019 so in the New Year we started to use the SRA template, see attached”.
- 39.6 She believed her scanner had been down so she could not send the Firm’s risk assessment template in March 2020 and had downloaded a further template. Attached to the letter of 6 December was a scanned PDF copy of one of the Applicant’s risk assessment templates which had been filled in by hand and was dated “1.1.20”. The template was a copy of the fourth version of the SRA’s template which, was not published until 15 April 2020.
- 39.7 Mr Scott said that the SRA did not know when the risk assessment template sent with the letter was carried out and completed by Ms Nisa-Zaman. It was in existence on 19 August 2020 when it was provided to Parbjit Sidhu, an SRA Forensic Investigation Officer, during a visit to Ms Nisa- Zaman’s office. However, it clearly could not have

been prepared and completed prior to 15 April 2020 as the template was not available to solicitors until that date.

- 39.8 Principle 6 of the SRA Principles 2011 requires solicitors to behave in a way that maintains the trust the public places in them and in the provision of legal services. There is significant public interest in the prevention of money laundering and terrorist financing. The public trusts solicitors to play an active role in that by complying with anti-money laundering laws and regulations including the MLRs 2017. Public trust is diminished by a solicitor who fails so to comply.
- 39.9 Principle 7 of the SRA Principles 2011 requires solicitors to comply with their legal and regulatory obligations.
- 39.10 Principle 8 of the SRA Principles 2011 requires solicitors to run their business or carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles. Failing to comply with anti-money laundering laws and regulations exposes a solicitor's firm to the risk of involvement in money laundering and terrorist financing.
- 39.11 Outcome 7.5 of the SRA Code of Conduct 2011 requires solicitors to comply with legislation applicable to their business, including anti-money laundering and data protection legislation.
- 39.12 Mr Scott said that by failing to ensure that her firm had in place a compliant, firm-wide anti-money laundering risk assessment between 26 June 2017 and at the earliest, 15 April 2020, Ms Nisa-Zaman failed to comply with Regulations 18(1) and 18(4) of the MLRs 2017 and thus breached any or all of Principles 6, 7 and 8 and failed to comply with Outcome 7.5.
- 39.13 Principle 2 of the SRA Principles 2019 came into force on 25 November 2019. It requires solicitors to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. The SRA Code of Conduct for Firms also came into force on 25 November 2019.
- 39.14 Rule 2.1(a) of the Code requires firms to have effective governance structures, arrangements, systems and controls in place that ensure they comply with all the SRA's regulatory arrangements as well as with other regulatory and legislative requirements which apply.
- 39.15 Rule 3.1 of the SRA code of Conduct for Firms requires firms to keep up to date with and follow the law and regulation governing the way they work. Rule 8.1 of the SRA Code for Firms makes managers responsible for compliance by their firm with the Code. The Respondent was at all material times a manager of the Firm.
- 39.16 By failing to ensure that the Firm had in place a compliant, firm-wide anti-money laundering risk assessment from 25th November 2019 to, at the earliest, 15th April 2020, Mr Scott said that Ms Nisa-Zaman breached Principle 2 of the SRA Principles 2019 and Rules 2.1(a) and 3.1 of the SRA Code of Conduct for Firms.

40. Allegation 2

- 40.1 Mr Scott said that the SRA's position was that the declaration made by the Respondent on 16 December 2019 was false because the Ms Nisa-Zaman's firm at that time did not have in place a compliant, firm-wide anti-money laundering risk assessment. Ms Nisa-Zaman, as sole owner, manager, COLP, COFA and MLRO of the firm knew this and therefore knew the declaration was false.
- 40.2 In making a false declaration, she failed to act in a way which upholds the trust and confidence placed by the public in solicitors and so breached two of the SRA Principles 2019. Public trust in solicitors is diminished by a solicitor who makes a false declaration.
- 40.3 With respect to this allegation, Mr Scott said that in addition to breaching Principle 2 of the SRA Principles 2019 Ms Nisa-Zaman had also breached Principle 4 of the said Principles, which requires solicitors to behave with honesty and that she was dishonest in accordance with the test laid down in Ivey v Genting Casinos (UK) Ltd [2017] UKSC and that ordinary decent people would not make a declaration knowing that it was false.
- 40.4 Ms Nisa-Zaman had also breached Principle 5 of the Principles, which requires a solicitor to behave with integrity. In Wingate v SRA [2018] EWCA Civ 366 it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor acting with integrity would not have made such a declaration.
- 40.5 Further, Rule 1.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs requires solicitors not to mislead or attempt to mislead their clients, the court or others and Rule 7.4 (a) of the Code requires solicitors to provide full and accurate explanations, information, and documents in response to any request or requirement from the SRA.
- 40.6 In making the declaration, Mr Scott said that Ms Nisa-Zaman attempted to mislead the SRA and thus breached Rule 1.4 of the Code of Conduct. In making the declaration, the Respondent failed to provide accurate information to the SRA and thus breached Rule 7.4(a) of the Code of Conduct.

41. Allegation 3

- 41.1 On 6 November 2020 the Respondent sent the SRA a firm-wide risk assessment document which was falsely dated 1st January 2020.
- 41.2 Mr Scott said that the SRA's position was that Ms Nisa-Zaman had known that this date was false and that her firm did not have a firm-wide risk assessment in place on that date. In sending this document, she failed to act in a way which upholds the trust and confidence placed by the public in solicitors and so breached 2 of the SRA Principles 2019 as public trust in solicitors is diminished by solicitors who knowingly provide documents with false dates.
- 41.3 Ms Nisa-Zaman, it was said, was also dishonest in accordance with the test laid down in Ivey v Genting Casinos (UK) Ltd. Ordinary decent people would not have sent a document which they knew had been falsely dated. She therefore breached Principle 4 of the SRA Principles 2019.

- 41.4 Ms Nisa-Zaman also breached principle 5. In accordance with Wingate v SRA a solicitor acting with integrity would not have sent the document when she knew it contained a false date. In sending the document, Ms Nisa-Zaman attempted to mislead the SRA by representing that her firm had a firm-wide risk assessment in place as of 1 January 2020 and thus breached Rule 1.4 of the Code of Conduct. In making the declaration, she failed to provide accurate information to the SRA and thus breached Rule 7.4(a) of the Code of Conduct.

The Respondent's Case

42. Allegation 1

- 42.1 Ms Nisa-Zaman denied that she failed to ensure that the Firm had in place a complaint, firm-wide, anti-money laundering risk assessment between 26 June 2017 and 15 April 2020 and she contended that there was an assessment in place.
- 42.2 She said that the Firm is a small firm dealing primarily in residential and domestic conveyancing. Her husband, Gulab was the Practice Manager, and there were two administration members of staff and an external bookkeeper who did the monthly reconciliations and the office and client account trial balances for the Firm, as well as an external independent accountant that dealt with the accounts and the annual AR1 forms for the SRA. She was not good with technology, and she let Gulab handle that side of the business including creating and printing out templates as required.
- 42.3 Money laundering issues were central to her core work, primarily residential conveyancing and they were something in her mind on every conveyancing transaction which she dealt with. She stated that she took her professional duties to the SRA and her duties to the lender extremely seriously.
- 42.4 She and the Firm had always had a firm grip on money laundering ("ML") issues. They did not act for international clients or large organisations and the Firm was a High Street practice dealing with conveyancing mainly for local clients and members of the community who were often first-time buyers or upgrading or applying for to re-mortgage and any funds obtained had to be from UK accounts.
- 42.5 The Firm did not act for property investors or High Net Worth Clients; it did not deal with complex matters, purely residential and commercial property work in the Birmingham area. Many clients would purchase a property within 3-5 miles of the Firm's office, and it had a very good reputation within the local community and local estate agents. Ms Nisa-Zaman said she would complete 20-30 files a month and she dealt with hundreds of thousands of pounds which required her complete attention with every pound entering into the client account being verified by the Firm's ML procedure.
- 42.6 In 2016 when the Firm opened, Ms Nisa-Zaman started to use the LEAP case management software. The main reason she chose this software was the importance it placed on ML. The file was not opened until the client's information was logged into LEAP to create a matter number, these details being driving licence numbers, passport numbers, National Insurance Numbers and dates of birth for each client and utility bills within 3 months. Next the Firm would assess the risk by carrying out on each client an

AML check using Infotrack who are a Third-Party provider that meet established SRA standards.

- 42.7 Ms Nisa-Zaman said that she had turned down plenty of work from potential clients who could not provide the required information.
- 42.8 In addition to ML checks on clients the Firm also paid for ‘Lawyer Checkers’ as the Firm needed to verify other solicitors bank details before any funds were remitted to them. Bank details are verified by Lawyer Checker and a call to the offices to verify the details over the phone, lenders are also given a call before the Firm redeems clients’ mortgages.
- 42.9 The Firm also had a File Information Form (“the Form”) which was used on the opening of all files since the start of the Firm in 2016. The Form would contain the necessary details to remind Ms Nisa-Zaman that she and the Firm were complying with ML regulations as it included details of (1) funding (2) ID verification, (3) risk profile and (4) conflict of interest.
- 42.10 Ms Nisa-Zaman accepted that the Form was not created specifically for the purpose of the ML Regulations which came into force in June 2017 as it predated these regulations by about a year. However, the Form was a ‘risk assessment’ and was always in place at the Firm. It ensured that she and the Firm complied with their duties in complying with anti-money laws and regulations. It was used for each file as a constant reminder to check the details. It was her understanding that Money Laundering Regulations had come into force in December 2007 and ML issues had been a constant feature throughout her career.
- 42.11 Ms Nisa-Zaman confirmed that the Firm had in place a compliant, firm-wide anti-money laundering risk assessment from 26 June 2017 as required by the MLRs 2017. Prior to the regulations coming into force, she and Gulab had drafted a policy for the firm that consisted of steps to identify and assess the risks of ML posed to the Firm. These consisted of identifying the client, the geographical location, the services being offered. It was central to her role as a conveyancing solicitor, that the Firm was CQS accredited and on lender panels. Without necessary checks and policies in place to deal with ML meant that the Firm would not be on these panels further the insurance proposal forms asked about the Firm’s ML polices.
- 42.12 Ms Nisa-Zaman confirmed that she would always have had a ML policy in place for the Firm and she would have used a standard Word document with a checklist, and that she would have completed the same in manuscript. This document would have been printed off and kept in a lever arch folder with other regulatory documents such as training courses and details of the PI insurance etc., in the office. Gulab as the Practice Manager would have had access to this lever arch folder to deal with the CQS application.
- 42.13 Ms Nisa-Zaman referred the Tribunal to the document, latterly admitted into evidence, and titled ‘Mortgage Fraud Prevention’ dated 8 May 2017. There was no hard copy of the document as this was kept in a lever arch folder that also contained the Firm’s first Risk Assessment Policy which was lost following a fire at the Firm’s previous address. Ms Nisa-Zaman believed that unlike the ‘Mortgage Fraud Prevention’ document the

risk assessments had not been saved to the Cloud but remained as Word documents saved on either Gulab's desktop or her personal computer. Gulab gave evidence that both these computers had to be replaced as they were damaged by the smoke from the fire with the data upon them being lost.

- 42.14 Gulab confirmed that he assisted his wife with the running of the practice and to ease her burden whilst she dealt with the fee earning side of the practice. He dealt with PI insurance, renewal of Practising Certificates, membership of professional bodies and liaising and making enquiries with the software providers.
- 42.15 He also confirmed that he applied for the CQS and that he would have discussed with Ms Nisa-Zaman the ML policies once they received the e-mail from the SRA in December 2019. He had also made enquires with other solicitors he knew in the area about their policies and the standard response was that the firms used the SRA template. He then printed off the copy of the SRA template that was in existence as at December 2019. He completed the same in manuscript after discussing with Ms Nisa-Zaman as to what needed to be included. He did this in the office, and he recalled shouting over to his wife if he needed more information to complete the form which he dated January 2020 as this was the date at which they would start the new ML policy incorporating the SRA template.
- 42.16 He said that he kept a copy of the form in the office. The template was not an A4 size document but A3 and both he and Ms Nisa-Zaman recalled, unusually, having to use A3 size paper to print it out.
- 42.17 Gulab recalled on 2 March 2020 Ms Nis-Zaman receiving the e-mail from Mr Shotton at the SRA. The scanner was not working properly, and his wife asked him to download the form on 3 March 2020. He believed that it was identical to the template they had been using since January although it was blank. Ms Nisa-Zaman then sent the blank copy to Mr Shotton.
- 42.18 Gulab said that in the later investigation by the SRA in August 2020 they could not find a copy of the risk assessment, and he was asked by Ms Nisa-Zaman to download the latest version from the SRA website, which he then saved as January 2020 as this was the date that the Firm's new policy came into place. He completed the form to replicate the earlier, missing form and it was this, later form, which was given to Parbjit Sidhu during her visit.
- 42.19 In cross-examination Mr Scott asserted that as practice manager Gulab should have been aware of the importance of the risk assessment document, and if it had existed, in any format, he should and would have stored it safely for future reference.
- 42.20 It was put to Gulab, and denied by him, that he had never produced the risk assessment in December 2019 or at all. Mr Scott submitted that Gulab's evidence had demonstrated a very shaky grasp of the fundamentals with respect to the risk assessment document as Gulab had appeared to have had no clear idea about the type of information which the risk assessment had required. Mr Scott asserted that Gulab had tailored his evidence to support his wife's account and that his evidence was untrue. Gulab denied this assertion.

- 42.21 Ms Nisa-Zaman said that she practised the fundamentals of the ML policy on a day to day basis and there had been no need to check the hard copy of the policy and she believed the only time she would have needed to amend the ML policy was if the SRA gave any guidance since 2017 on improving the policy, but there was none so the Policy and the Firm's practices remained in force.
- 42.22 Ms Nisa-Zaman confirmed that she did receive an e-mail confirmation from the SRA on Thursday 12 December 2019 asking her to confirm whether the Firm had a compliant firm-wide risk assessment by completing an online declaration.
- 42.23 The deadline for completion was 31 January 2020 so there was adequate time to respond. Despite this, she completed the form promptly on Monday 16 December 2019.
- 42.24 Ms Nisa-Zaman maintained that the quick response demonstrated that she had had nothing to hide, and she had had no reason to think the policy they had in place was not adequate. She did not think there was any guidance issued by the SRA on draft templates at the time the ML 2017 regulations came into force and there would have been no plausible reason for her to mislead the SRA by completing the form and saying that she had the form when that was not the case. She was being conscientious in dealing with the enquiry made by the SRA in good time. There was a genuine belief on her part that the Firm still had a copy of the policy on site, in the folder of documents that pertained to the running of the Firm.
43. Allegation 2
- 43.1 Ms Nisa-Zaman denied that on 16 December 2019, she made a false declaration to the SRA that the firm had in place a compliant, firm-wide anti-money laundering risk assessment. She said that she was not dishonest pursuant to the test of dishonesty as set out in Ivy v Genting Casinos and denied she had been dishonest in any way.
- 43.2 Ms Nisa-Zaman denied that she failed to act with integrity pursuant to the test of integrity as set out in Wingate and Evans.
- 43.3 The reason why she denied acting with dishonesty or lack of integrity was that she had had no intention to mislead or deceive in making such a declaration to the SRA on 16 December 2019. In cross-examination it was put to her, and denied by her, that there had never been a firm-wide risk assessment and that to the best of her knowledge there had been one, which had been kept by Gulab in a lever arch folder.
- 43.4 Mr Shotton, FIO, had asked for a detailed response by 24 March 2020 to his e-mail dated 2 March. Ms Nisa-Zaman had been shocked to receive this e-mail as she thought it related to something which may have gone wrong on the "J file" (a conveyancing file). Again, Ms Nisa-Zaman said she was perhaps too hasty and she had wanted to respond to the SRA as quickly as possible to demonstrate she was cooperating with her regulator and she therefore replied on 4 March by e-mail. She recalled that the office scanner was not working at the time, so she was unable to scan the hard copy of the ML policy in the office. Gulab then downloaded the form on or around 3 March 2020 from the SRA's website without any further information or extra data added to it.

- 43.5 Ms Nisa-Zaman had thought the AML policy that Gulab had put in place was that set out in the SRA template. Ms Nisa-Zaman denied that the issue with the scanner was something she had made up after the event to cover up the fact that there had never been a firm-wide risk assessment.
- 43.6 She denied the assertion put to her in cross-examination that the events which had taken place had been as a result of her panicking in never having produced a firm-wide risk assessment and that such a document only came into existence in August 2020 when she and Gulab had downloaded the updated template and backdated it to 1 January 2020.
- 43.7 Ms Nisa-Zaman stated that the Firm used the SRA risk assessment template. This was correct as it was using the SRA template from January 2020 following Gulab's conversation with other solicitors in December 2019.

44. Allegation 3

- 44.1 Ms Nisa-Zaman denied that on 6 November 2020, she attempted to mislead the SRA by producing a firm-wide risk assessment document falsely dated 1 January 2020 and denied the allegation that she had been dishonest and/or she had lacked integrity.
- 44.2 She said that there was no intention to mislead or deceive on her part in making such a declaration to the SRA on 6 November 2020, accordingly, her state of mind as at that time was such that she was not dishonest or lacking integrity. She genuinely believed that the document was what she said it was.
- 44.3 Ms Nisa-Zaman confirmed that she had received a detailed e-mail from Nicola O'Brien an AML Investigation Officer at the SRA on 5 November 2020 asking for a response as to whether the Firm had a documented firm wide risk assessment and asking for a response by 25 November 2020. In that e-mail there was no mention of the ML policy given to Parbjit Sidhu during her visit to the Firm in August that year.
- 44.4 Even though she was extremely busy at the office she responded to the SRA promptly on the following day explaining that she did not have the scanner when she had sent the same to Mr Shotton. She then sent a copy of the policy which was given to Ms Sidhu during her visit in August.
- 44.5 Ms Nisa-Zaman was also about to go on holiday with her family, their first holiday for 16 years as a family and the first break she had since setting up the Firm in September 2016. She was therefore under considerable pressure to deal with the ongoing conveyancing files before the Firm was closed after the Christmas break.
- 44.6 She said there would have been no reason for her to mislead the SRA by completing the form and saying that she had the form when that was not the case. There was no intention to mislead and no dishonesty.
- 44.7 Ms Nisa-Zaman said that she had been devastated by the SRA's dishonesty allegations. The worry had caused her difficulty sleeping and she was prescribed sleeping tablets by her GP and the investigation played continually on her mind causing her

considerable stress. She had also to contend with trauma caused by masked raiders entering her home.

44.8 It was never her intention to deceive anyone. She had had an unblemished disciplinary record and she had not had any claims made on any of her conveyancing files. She had tried her best to run a decent honest law firm within her community.

45. Closing Submissions

45.1 In closing Mr Dunlop made the following submissions:

The law

45.1.1 The burden of proving the allegations rested upon the SRA alone and if the Tribunal could not decide which version of events was more likely, then it should find the allegations not proven.

45.1.2 Although the standard of proof is the balance of probabilities, some allegations were more likely than others. It is, in general, unlikely that a person of good character, still less a solicitor with an unblemished record, would attempt to mislead their regulator or tell deliberate falsehoods. There needs to be cogent evidence to establish such an unlikely allegation, not just as it is inherently unlikely but also because a person's career is at stake (Re Doherty [2008] UKHL 33, [2008] 1 WLR 1499 at [27]-[28]).

45.1.3 Testimonial evidence of good character is relevant to credibility (i.e., whether Ms Nisa-Zaman's evidence should be believed) and propensity (i.e., whether she was likely to have done this: Sawati v GMC [2022] EWHC 283 (Admin) at [53]-[56]).

45.1.4 It was necessary to weigh, in the balance, what motivation Ms Nisa-Zaman would have had to be dishonest, in the manner alleged and that it would be wrong in principle to infer dishonesty from odd or inadequately explained conduct if there is no credible motivation for the alleged dishonesty (Fish v GMC [2012] EWHC 1269 (Admin) at [67], [68], [75] & [79]).

The evidence

45.1.5 Ms Nisa-Zaman was of good character, attested to by Mr Mehboob and Ms Loynton who gave evidence before the Tribunal. Both spoke of the trust they placed in her, built over a long course of working with them on the other side of transactions. Further, Ms Nisa-Zaman's clients trusted her with the legal work about their homes and with the large sums of money necessary to buy property. Mr Mehboob has recommended his family to them. There was no evidence that she had ever let any of them down and no evidence she had ever been the subject of a complaint from a client. Her referees also included a Chief Prosecutor and many others who provided written testimonials to the Tribunal on her behalf.

- 45.1.6 Ms Nisa-Zaman had an unblemished regulatory history. She was thoroughly investigated in August 2020, because of the intervention into solicitors on the other side of one of her transactions, and no concerns were identified. There is no evidence that any money was ever laundered in any of the sales she oversaw.
- 45.1.7 Ms Nisa-Zaman had everything to lose and nothing to gain from being dishonest with her regulator and the Tribunal had to determine whether factual matrix underpinning the allegations brought by the Applicant were because of (a) mistakes, misunderstandings, and lost documents, or (b) deliberate and sustained deception.
- 45.1.8 In this case what had happened were mistakes from a hard-pressed, stressed, and anxious professional with integrity who, at worst, delegated a little too much to her husband and replied to SRA emails a little too fast and with not enough care. The SRA's account of sustained and prolonged deception, for no obvious motive, was implausible and certainly less likely than the defence case.

Key events in the chronology

- 45.2 In 2017, before MLR came into existence, Ms Nisa-Zaman had created a written ML policy and both she and Gulab gave evidence that they had such a policy.
- 45.3 That the original policy could not be found was not determinative because papers may get lost over many years particularly where (as in this case) there has been a fire and she and her staff had had to get out of their office in a few hours.
- 45.4 It was not surprising that she did not notice, between 2017 and 2019, that the ML policy was missing as it was not a document she needed to go back to. It was a small firm doing the same kind of work. Once the risks were assessed she was able to carry on with her day-to-day work.
- 45.5 Ms Nisa-Zaman would not, in December 2019, have ticked the box 'yes' she did have a policy, if she had not believed that she had a policy. There had been nothing to gain from doing so, and no motive for lying, when the SRA had given her a month to answer a question in the present tense i.e., '*does your firm have a compliant policy?*'. She had had no motive to lie about this and it would have been irrational to have done so. The SRA gave her over a month to answer this question '*does your firm have in place a full compliant firm-wide risk assessment?*' This question was in the present tense. She was not asked whether she had such a firm wide risk assessment since 2017 and she was not asked about past compliance from the date the MLR came into effect. If, contrary to her evidence, she had not believed in December 2019 that she had such a policy, the rational thing to do would have been to draft a policy and then respond saying '*Yes, I have one*'. This was an anxious person whose family's livelihood at stake. It was far more likely was that she genuinely believed the answer was 'yes'.
- 45.6 Later in December 2019, Gulab spoke to other solicitors and was told that it was better to use the SRA template and so he downloaded it and completed it by hand.

- 45.7 On 2 March 2020 the SRA asked Ms Nisa-Zaman for the firm-wide risk assessment. However, the SRA did not ask for the version of the risk assessment in force in December 2019.
- 45.8 On 4 March 2020 Mis Nis-Zaman replied, attaching a blank form. Her evidence and that of Gulab was that the scanner was down so she had asked Gulab to download the form so it could be sent electronically. He downloaded the form from the website and neither filled it in. There was therefore no allegation that she tried to mislead the SRA in her email of 4 March.
- 45.9 A solicitor who was sending this form to mislead the SRA would have filled in this form and backdated it before 16 December 2019. The fact it was sent blank was a strong indicator that her account was true one and that she been in a panicked state as a result of a shock email out of the blue from the SRA and in rushing to comply she sent an unhelpful blank document without explaining properly what she was doing and not a deceptive person trying to mislead.
- 45.10 In August 2020 there was a visit from a FIO and the Firm provided a hand-written AML policy to the FIO. The earlier version could not be found so Gulab downloaded and completed a new one. Gulab explained that it was him, not R, who filled it in and added the date on the end, January 2020. He put that date meaning that that was when the policy was created, not that that was when he completed the form.
- 45.11 Ms Nisa-Zaman's evidence was that although she checked the form, she did not notice the January date either before she gave it to the FIO or before she sent it on to the SRA in November 2020. There was no cogent evidence produced by the Applicant to contradict her account on this issue and her explanation was more likely than the Applicant's submission that she had conspired to mislead the SRA: it was a sloppy use of a date by Gulab (not her) which she had failed to spot as she trusted him.
- 45.12 Information contained within her second witness statement and the document titled 'Mortgage Fraud Prevention' dated 8th May 2017, produced as an exhibit to her statement indicated that Ms Nisa-Zaman, had in May 2017, been thinking about the risks of money laundering to her firm. This had been a time before the Regulations had come into force.
- 45.13 The meta-data relating to this document showed that it had been written in May 2017 and within the document there was a telling reference at page 2 within the paragraph headed 'Money Laundering' as follows:
- "The risks of bribery or corruption by the practice are, of course, very low and are more than adequately covered by current office standards policy."*
- 45.14 Mr Dunlop submitted that it was more likely than not that 'current office standards policy' referred to the firm-wide risk assessment which had been lost.

46. The Allegations

- 46.1 With respect to the first allegation i.e., that she failed to ensure that the Firm had in place a compliant, firm-wide anti-money laundering risk assessment between 26 June 2017 and 15 April 2020 the Tribunal needed to ask three questions:
- (a) was there ever a risk assessment in this period,
 - (b) was it compliant and
 - (c) was it 'in place' for the whole period?
- 46.2 With respect to (a) the evidence from both Ms Nisa-Zaman and Gulab was that they did draw up a risk assessment. There was no evidence to contradict them and whilst the written document has not been produced (it was lost as a result of the fire and office move) there was evidence, attached to Ms Nisa-Zaman's second witness statement, that she was thinking, in the Spring of 2017, about the money laundering risks the firm faced when she had drawn up the document titled 'Mortgage Fraud Prevention' dated 8 May 2017. That made it likely that she did conduct such a risk assessment.
- 46.3 The very fact that she had not produced a piece of paper from 26 June 2017 actually weighed against a finding of dishonesty. A dishonest solicitor, trying to mislead the SRA and cover up earlier failures, would have created a risk assessment backdated to 26th June 2016 but she had not done that, precisely because it was dishonest.
- 46.4 With respect to (b) it was likely that it was compliant given:
- Her general compliance: there were no concerns identified after a full examination of her files
 - The wealth of references attesting to her professionalism
 - Her training achievements
 - That no fault was found with later risk assessment drafted in August 2020.
- 46.5 With respect to (c) on a fair reading of the allegation, having an assessment '*in place*' did not mean having a piece of paper in a particular physical location. It meant having identified and assessed the risks of ML the firm would be exposed to and having a plan to deal with those risks. Ms Nisa-Zaman had such a plan in operation, and she considered the risk of money laundering when she opened each new file and recorded in the 'File Information Form.'
- 46.6 The alternative construction of the allegation would be very harsh, by way of illustration Mr Dunlop asked the Tribunal to consider the example of a solicitor who had a written assessment but through no fault of his own, that assessment was destroyed or stolen, e.g., in a fire. Could such a solicitor really be in regulatory breach? In another example, Mr Dunlop asked the Tribunal to consider the solicitor who had an electronic risk assessment on his computer which then crashes. Would he be in breach?
- 46.7 As to the second allegation, that on 16 December 2019, Ms Nisa-Zaman made a false declaration to the SRA that the Firm had in place a compliant, firm-wide anti-money laundering risk assessment in place, Mr Dunlop said that if the Tribunal was minded to dismiss the first allegation then it must also dismiss the second allegation.

- 46.8 Mr Dunlop said that the evidence to support an allegation of dishonesty was not cogent. There was no plausible motivation for someone, whose whole livelihood is at stake, to knowingly give a false answer to this question and it would be wrong in principle to jump from *'the Respondent did something odd here and I don't really understand why they did it'* to the conclusion *'the Respondent must have been dishonest'*. The Tribunal had to ask *'why would anyone be deliberately dishonest about this?'* If the Tribunal did ask that question then the balance would swing heavily against a finding of dishonesty.
- 46.9 With respect to the third allegation, that on 6 November 2020 the Respondent attempted to mislead the SRA by producing a firm-wide risk assessment document falsely dated 1 January 2020 the evidence was that:
- It was Gulab, not Ms Nisa-Zaman, who completed the risk assessment she sent on 6 November 2020.
 - It was Gulab, not Ms Nisa-Zaman, who put the 1 January 2020 date on that document and she never noticed the 1 January 2020 date on the document.
- 46.10 There was no evidence to contradict this account and no evidence anywhere near strong enough to support the allegation of dishonesty advanced by the Applicant. There was no evidence that she even noticed the January date on this document, still less that she presented a document with a false date in order to mislead.
- 46.11 Mr Dunlop said that the SRA did not advance a positive case that it was her handwriting on the form and that it had every opportunity to collect her handwriting. It had conducted a forensic investigation over several days at her firm and looked over many files and in Mr Dunlop's estimation the absence of evidence that this was her handwriting was telling and this was part of the reason the Applicant could not discharge the burden of showing that she knew that this document had a misleading date.
- 46.12 It was apparent that Ms Nisa-Zaman sent the email of 6 November 2020 in a hurry without fully engaging with the questions being asked of her. She was under a lot of stress at the time, having been the victim of a traumatic attack by masked men attacking her home, she had been through the investigation and had not done anything wrong with the J file and she was fed up and did not give the response the time she should have done as she set out in her first witness statement, *"I replied quickly... I feel I am being victimised"*.
- 46.13 Mr Dunlop observed that if she had reflected and taken advice, she could have explained better the provenance and history of the document she was attaching. She could have checked it better. However, those errors of judgment, rushing off an email without properly checking or explaining the attachment, did not make her dishonest.
- 46.14 Finally, Mr Dunlop argued that Ms Nisa-Zaman was entitled to the benefit of the doubt that when she provided a document with something incorrect in it, that was a mistake, not with the intention of misleading. The SRA had not provided cogent evidence of any intention to mislead.

47. Applicant's reply re point of law

- 47.1 Mr Scott addressed a point of law arising from Mr Dunlop's closing submissions.
- 47.2 Mr Scott submitted that there was no 'sliding scale' of the standard of proof and that the Applicant had presented cogent evidence to the requisite standard. The concept of 'inherent unlikelihood' as stated by Mr Dunlop was a distracting gloss and one which he contended the authorities did not support.

The Tribunal's Findings

- 47.3 In accordance with Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 the Tribunal applied the civil standard of proof – the burden of proof was on the Applicant to prove its case on the balance of probabilities. Ms Nisa-Zaman, as Respondent, was not obliged to prove that she did not commit the alleged acts and great care must be taken to avoid any assumption (without sufficient evidence) of any deliberate failure or act on her part.
- 47.4 The Tribunal carefully considered the evidence it had heard and read. The Tribunal accepted the proposition that there was no 'sliding scale' with respect to the standard of proof and the balance of probabilities always meant 'more likely than not'.
- 47.5 The Tribunal had to evaluate critically the evidence presented to it by both parties and in a case where dishonesty was pleaded this included an evaluation of the likelihood that a solicitor of hitherto good character within the profession would commit the acts of dishonesty alleged and to weigh such evidence, as to propensity and credibility, in the balance against the Applicant's evidence, in order to determine whether it was more likely than not that the solicitor had committed such acts.
- 47.6 The Tribunal found Ms Nisa-Zaman to be a credible witness. She was clearly a busy solicitor who was highly regarded by her peers in the profession and by others as illustrated by the character evidence called on her behalf. She had an exemplary record and the files examined by the SRA during its investigation were found to be flawless.
- 47.7 Her account had revealed, however, an over reliance on her husband, Gulab, as practice manager. The Tribunal found Gulab's evidence to be vague and he appeared to lack specific knowledge of fundamental details which, as practice manager, he would have reasonably been expected to possess. However, the Tribunal recognised that it was not Gulab facing the allegations but his wife.
- 47.8 As dishonesty had been alleged, the Tribunal applied the test for dishonesty set out in Ivey:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest

or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest”.

- 47.9 It may be that Ms Nisa-Zaman had misremembered events and confused in her mind the ‘Mortgage Fraud Prevention’ document with the risk assessment, however, her evidence demonstrated that it had been her genuinely held view that there had been a compliant risk assessment in place at the material time and the Tribunal did not find the Applicant’s evidence sufficiently strong to render her account of events as being unlikely. The Applicant had not discharged the burden of proof with respect to dishonesty. The Tribunal therefore found that Ms Nisa-Zaman had not been dishonest by the standards of ordinary decent people.
- 47.10 The Tribunal accepted Ms Nisa-Zaman’s testimony that the Firm had had in place a compliant, firm-wide anti-money laundering risk assessment at the material time albeit this may not have been a form or format considered usual by the SRA. The surrounding evidence suggested that she had thought about the risks presented by money laundering, and she had put in place processes to counter such risks.
- 47.11 Whilst questions might be asked of Ms Nisa-Zaman’s organisation and the storage of important documents, the Tribunal found that the loss of such documents in the circumstances set out by Ms Nisa-Zaman and Gulab was credible.
- 47.12 Accordingly, the Tribunal did not find the factual basis for any of the allegations proved to the requisite, civil, standard, namely the balance of probabilities. In these circumstances the Tribunal was not required to consider the specific breaches of the Principles and it dismissed all of the allegations.

Costs

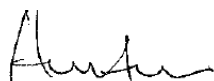
48. Neither party made an application for costs

Statement of Full Order

49. The Tribunal Ordered that the allegations against MAYA NISA-ZAMAN. solicitor, be DISMISSED. The Tribunal made no order as to costs.

Dated this 11th day of October 2022

On behalf of the Tribunal



J P Davies
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
11 OCT 2022