SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12371-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

UYIOSASERE ONA OBASEKI Respondent

Before:

Mr A Ghosh (in the chair)
Mr U Sheikh
Mr C Childs

Date of Hearing: 12 December -16 December 2022, 09 January 2023

Appearances

Cameron Scott, Counsel, employed by Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR instructed by the Solicitors Regulation Authority Ltd ("the SRA") of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent Ms Uyiosasere Ona Obaseki was in person and represented herself.

JUDGMENT OF SUBSTANTIVE HEARING HELD REMOTELY

Allegations

1. The allegations against Uyiosasere Ona Obaseki ("the Respondent") were that while in practice as a solicitor, manager and owner at Grazing Hill Ltd ("the Firm"):

1.1. Between 27 March 2017 and 6 November 2017 the Respondent failed promptly to return funds totalling £249,654.79 to a client when there was no proper reason to retain those funds.

In doing so, the Respondent breached either or both of Principles 2 and 6 of the SRA Principles 2011 and rule 14.3 of the SRA Accounts Rules 2011
Not Proved.

1.2. Between 16 June 2017 and 6 November 2017, the Respondent provided banking facilities through a client account by receiving funds totalling £47,000 which were not in respect of instructions relating to an underlying transaction or to a service forming part of the Firm's normal regulated activities.

In doing so the Respondent breached either or both of Principles 2 and 6 of the SRA Principles 2011 and rule 14.5 of the SRA Accounts Rules 2011 ("SRA 2011").
Not Proved.

1.3. Between 28 July 2017 and 6 November 2017, the Respondent made improper transfers of funds totalling £230,000 from:

1.3.1. the Firm's client account into her personal account;
1.3.2. her personal account into a purported investment scheme;

In doing so the Respondent breached any or all of Principles 2, 4, 6 and 10 of the SRA Principles 2011 and rules 14.1 and 20.1 of the SRA 2011.
Proved and admitted.

1.4. On or around 18 April 2019, the Respondent drafted and entered into a "Financial Loan Agreement" with Mr Sadek Tchoketch-Kebir ("STK") in circumstances where there was an own interest conflict or a significant risk of an own interest conflict.

In doing so the Respondent breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011 and failed to achieve Outcome 3.4 of the SRA Code of Conduct 2011.
Proved.

1.5. From 27 March 2017, the Respondent failed to repay client monies owed to STK in a timely manner.

In doing so she:
In relation to conduct prior to 25 November 2019, breached Principle 4 of the SRA Principles 2011 and breached rule 7.1 of the SAR 2011. In relation to conduct which occurred on and after 25 November 2019, breached Principle 7 of the SRA Principles 2019 and breached rule 6.1 of the SRA Accounts Rules 2019.
Proved and admitted.

1.6. Between 28 January 2020 and 1 April 2020 the Respondent provided misleading and/or inaccurate information to the Firm's professional indemnity insurers, Travelers Insurance Company ("Travelers"), prior to inception of the policy for the year beginning 1 April 2020 in that she failed to disclose the circumstances of the loss of Mr STK's funds and Mr STK's demands for repayment.

In doing so the Respondent breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019.
Proved.

1.7. On 27 June 2018, the Respondent gave a statement to the Police which was false and/or misleading in that it stated that the funds lost in an investment fraud were her funds and failed to inform the police that the funds belonged to Mr STK and had been transferred by her from the Firm's client account.

In doing so the Respondent breached either or both of Principles 2 and 6 of the SRA Principles 2011.
Not proved.

1.8. The Respondent failed to make an accurate and or timely report to her client STK of the loss of £230,000 of his funds.

In doing so, the Respondent breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011 and failed to achieve Outcome 1.16 of the SRA Code of Conduct 2011.
Proved and admitted.

2. Each of Allegations 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7 and 1.8 were made on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient of proving the allegations.

Proved in respect of allegations 1.6 and 1.8 only.

Executive Summary

3. There were eight allegations and dishonesty was alleged in respect of each one. Three allegations, 1.1, 1.2 and 1.7 were not found proved. The remaining five allegations were found proved. Dishonesty was found proved in respect of two allegations 1.6 and 1.8.

Sanction

4. Ms Obaseki was struck off and ordered to pay costs of £52,686.

Documents

5. The Tribunal reviewed all the documents in an electronic bundle agreed between the parties.

Preliminary Matters

6. *Anonymity*

6.1 Mr Scott for the Applicant, the SRA, informed the Tribunal that he would not seek any anonymity for the SRA's witnesses having spoken to them on the subject.

7. *Application to adduce expert evidence*

(At various points during submissions the Tribunal retired to allow the parties to consider the authorities and their submissions.)

Submissions for the SRA

7.1 Mr Scott made an application under Rule 30 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR") for leave to call an expert Dr Frederika Holmes and to adduce in evidence an expert's report from Dr Holmes at this substantive hearing. An application had been made at Case Management Hearing ("CMH") on 28 November 2022 when the Tribunal also chaired by Mr Ghosh considered that the Panel hearing the substantive case was best placed to assess whether they would be assisted by the report of Dr Holmes, and whether she was an expert for the purposes of Rule 30. The evidence related to Dr Holmes' examination of a recording made on 6 June 2019 on his mobile phone by one of the witnesses Mr Moadh Tchoketch-Kebir of a conversation alleged to have taken place between Ms Obaseki, the witness and his father Mr Sadek Tchoketch-Kebir a client of Ms Obaseki.

7.2 Mr Scott submitted that Dr Holmes was an expert forensic speech and voice analyst. The report had been served on Ms Obaseki in February 2022 and again with the Rule 12 Statement in September 2022. Ms Obaseki had neither challenged the report in her Answer nor indicated whether she wished to cross-examine Dr Holmes.

7.3 Mr Scott explained that the SRA had interviewed Mr Moadh Tchoketch in the course of its investigation. He provided a copy of the covert recording to the SRA who had it transcribed. In the course of its investigation, the SRA provided the transcript to Ms Obaseki and asked her to respond. She said she was unable to confirm if the voice on the recording was hers. She suggested that the recording might be incomplete and had been tampered with. The SRA then obtained a report from Dr Holmes who compared the recording to another recording of Ms Obaseki's voice which was made at an interview between Mrs Bartlett the Forensic Investigation Officer ("FIO") and Ms Obaseki. At the last CMH the Tribunal quite properly raised the question of Dr Holmes' qualifications and whether in fact she was an expert. Dr Holmes subsequently provided a more complete CV which was before the Tribunal which Mr Scott submitted established her credentials as an expert in phonetic physiology and the acoustic qualities of the human voice. Dr Holmes said that the recording had not been falsified; she was not an expert in the technicalities of recordings and the SRA did not seek to rely on her report as expert evidence in that respect but as to the identity of the (female) human voice being that of Ms Obaseki. The Tribunal would hear the recording in its entirety and could decide if it had been doctored.

7.4 The Tribunal noted that Dr Holmes referred to the case of R v Flynn & another EWCA [2008] and that the admission of voice recognition evidence was controversial.

7.5 Mr Scott submitted that in her report Dr Holmes also referred to a Northern Ireland case R v O'Doherty (19.4.92: NICB 3173). The Tribunal also asked Mr Scott to make submissions regarding Article 8 of the ECHR, having regard to the published Guidance on that article. Paragraph 219 of the Guidance stated:

> "Collection, through a GPS device attached to a person's car, and storage of data concerning that person's whereabouts and movements in the public sphere was also found to constitute an interference with private life (Uzun v. Germany, 55 51-53). Where domestic law does not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the domestic authorities to collect reference was made to a finding that collection, through a GPS device attached to a person's car, and storage of data concerning a person's whereabouts and movements in the public sphere constituted an interference with private life (Uzun v. Germany) [Application No. 35623/05]. Where domestic law did not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the domestic authorities to collect and store in a surveillance database information on persons' private lives - in particular, where it did not set out in a form accessible to the public any indication of the minimum safeguards against abuse - this amounted to an interference with private life as protected by Article 8…"

7.6 In summary, Mr Scott's submissions were that the position in the UK was somewhat different from that in the continental jurisdiction; there was a prohibition on criminal authorities from tapping and intercepting mobile phone communications and using the information in criminal proceedings. Mr Scott submitted that this was a different situation where one party to a meeting had recorded the meeting and he submitted that Article 8 did not prevent that recording being admitted into evidence. Mr Scott submitted that the ECHR affected the acts of public authorities; it was unlawful for public authorities to act incompatibly with the rights under the ECHR. The recording in this case had not been made by a public authority but by a private individual. Section 6 of the Guidance to which the Tribunal had referred the parties, commencing at paragraph 217, referred to file or data gathering by security services or other organs of the state. Paragraph 219 discussed the recording of conversations by remote radio transmitting devices by the police which was a violation of Article 8. Mr Scott submitted that there was significant concern about a history of covert surveillance in the former Eastern bloc countries which had carried through to the UK legislation in respect of recording by police or other state authorities. This recording had been made by the son of a client. He was involved in his father's business and meeting with his father's lawyer to discuss a case; this was the context in which the recording had been made. Covert recordings made by private citizens had been admitted by courts in the UK and by the Tribunal.

7.7 Mr Scott also relied in support of his submissions on the case of Mustard v Flowers [2019] EWHC 2623 (QB) a civil case concerned with covert recordings by a claimant in a personal injury action of examination of the claimant by defence medical experts.

It was admitted in evidence. Paragraph 21 of the judgment discussed the GDPR and rejected the propositions that the recordings were in breach of it because:

> "…the GPDR provides that the Regulation does not apply to the processing of personal data "by a natural person in the course of a purely personal ... activity". Recording a consultation with or examination by a doctor would seem to me to fall into this category. I do not think that the claimant supplying the recordings to her advisers took it out of the category. Further, the relevant data relate to the patient (the claimant) not the doctor…"

Mr Scott submitted that in this case the recording was made not by a client but by the son of a client.

7.8 Mr Scott also referred to the case of Singh v Singh and Others [2016] EWHC 1432 (Ch). This was a High Court case involving a dispute between shareholders. The claimant relied on covert recordings with one of the defendants about the entitlement to shares in a company. Paragraph 11 of the judgment referred to the "direct evidence" of the recordings. It was clear that they had been admitted in evidence and there was no discussion of Article 8 or the GDPR. The Court did not see a problem in admitting the recordings. It commented:

> "It is true to say that these must be approached with some caution, as there is always a risk that where one party knows a conversation is being recorded but the other does not the content may be manipulated with a view to drawing the party who is unaware into some statement that can be taken out of context…"

7.9 The Council for the Regulation of Health Care Professionals v GMC and Saluja [2006] EWHC 2784 (Admin), concerned an article by an undercover journalist posing as a patient and a doctor who was subsequently struck off for providing dishonest sickness certificates in return for payment. Issues were raised concerning entrapment, breach of Article 8 and section 78 of PACE. In terms of entrapment Mr Scott submitted that the case expanded on a point made earlier in respective domestic and European law:

> "Third, as both domestic and European authority make plain, the position as far as misconduct of non-state agents is concerned, is wholly different. By definition no question arises in such a case of the state seeking to rely upon evidence which by its own misuse of power it has effectively created. The rationale of the doctrine of abuse of process is therefore absent…"

Mr Scott submitted that Article 8 was designed to prevent the state abusing power by way of covert recordings which was not the case here. The person making the recording was not pretending to be someone else but was the son of a client. Mr Scott also referred to the judgment where it stated:

> "Eighth, if the defendant's Article 8 rights have been infringed that is merely a matter to be taken into account when deciding whether there has been an abuse of process or, (and it amounts to the same thing), his Article 6 rights have been infringed: see for example R v P [2002] 1AC 146 and Jones v University of Warwick [2003] 1 WLR 954."

There was no question here of abuse of process or risk to a fair trial.

7.10 Mr Scott also referred to the case of Naqvi v SRA [2020] EWHC 1394 (Admin). This was another case referring to a sting by an undercover journalist regarding sham marriages. A covert recording had been passed to the SRA and the solicitor involved had been struck off. He objected to the admission off the recordings on grounds of entrapment and abuse of process. In the High Court judgment it was stated:

> "106. Contrary to the submissions made on behalf of Mr Naqvi, the SDT did not err in law in concluding that the principles enunciated in R v Loosley [2001] UKHL 53; [2001] 1 WLR 2060 did not apply in the present case. The two appeals heard together both concerned alleged entrapment by the police and the principles enunciated were thus concerned with alleged misconduct by state agents such as the police."

The Court referred to the case of Saluja saying:

> "109. This is clear authority, with which I agree, that the principles enunciated in Loosley do not apply to non-state agents and that, in the case of non-state agents, the Court will only stay proceedings as an abuse of process where the alleged entrapment entails gross misconduct or commercial lawlessness on the part of the non-state agent in question…"

And

> 118. In his written and oral submissions, Mr Naqvi sought repeatedly to assert that the transcripts of the two interviews were edited but, as the SDT rightly concluded at [17.62] and [27.14], this was no more than assertion and speculation on his part and unsupported by any evidence."

In Naqvi, the covert recordings were admitted. In that case the client was not called to give evidence and an undercover reporter was involved while in this case the client and his son had attended the meeting and were available to give evidence to the Tribunal and to be cross examined.

7.11 Mr Scott submitted that in the circumstances of this case there was no reason why the covert recording should not be admitted. It was alleged that Ms Obaseki made a number of statements particularly regarding a document known as the Financial Loan Agreement ("FLA") which was the subject of allegation 1.4. Her response to the recording and the transcript which were sent to her was before the Tribunal as part of response to a production notice issued by the SRA. She had been asked to state if one of the voices on the recording was hers. She replied:

> "I have listened to the tape and cannot confirm whether any of the voices sound like mine for the following reasons:
>
> 1. In the absence of a comparative voice it would be difficult for me to say with absolute certainty what (sic) whether the voice on tape is mine, whether it bares (sic) a close resemblance to mine or whether is a doctored voice

2. Even if it were to be determined that the voice on tape is mine, due to the circumstances of the recording I cannot say that the tape was not been tampered with.

3. The recordings appear to have been done on separate occasions and clearly the tape has been "cut and pasted" to make one event. As a result the sense and the meaning of the discussion in the transcript does not sound like me nor the conversation that we have had.

In view of the above, I believe it would be unjust for me to comment on such content of the transcript."

7.12 Mr Scott submitted that the SRA's position was that Dr Holmes' report would assist the Tribunal in reaching a conclusion whether or not on the balance of probabilities the voice on the recording was that of Ms Obaseki. In her report at paragraph 4.5.3 Dr Holmes stated:

"Integrity of questioned recording

As outlined above, the technical quality of the questioned recording was variable, with the initial and final sections of the recording containing sounds consistent with the proximal male speaker carrying the phone used for the recording in a pocket or bag to and from the recording location.

Although it is theoretically possible to edit a digital audio file in a way that leaves no detectable trace, this would require a significant level of expertise in audio editing, as well as access to specialist equipment.

The recording examined by me showed no signs of editing or manipulation, and both the acoustic characteristics and the conversational integrity of the audio were consistent with the file having been recorded in a single 'take' in the same location, other than the sections at the beginning and end of the file where the male speakers appear to be moving respectively towards and away from the meeting venue. There was no evidence to suggest that the recording had been stopped and re-started in the course of the conversation, nor of it having been falsified in any way."

7.13 Mr Scott submitted that Dr Holmes had drawn the Tribunal's attention to the limitations of forensic speech analysis which could not provide the same degree of certainty as fingerprints or DNA. The Tribunal had to decide on the balance of probabilities whether it was Ms Obaseki's voice and accept the recording of what went on at the meeting. There would also be evidence of two witnesses and of the circumstances around the meeting. Dr Holmes' evidence was not determinative and it was not the only evidence. It would assist the Tribunal to resolve the question of what was said and who said it.

7.14 Mr Scott submitted that the two cases referred to in the report, Flynn and O'Doherty were criminal cases - one in Northern Ireland and one in England which revolved around the admission of voice recording evidence. They did not relate to expert recognition but recognition by police officers. Flynn was the later in time of the two cases. At paragraph 62 of the judgment it was stated:

> "As appears from the above we have been dealing in these appeals with issues arising out of voice recognition evidence. Nothing in this judgment should be taken as casting doubt on the admissibility of evidence given by properly qualified experts in this field. On the material before us we think it neither possible nor desirable to go as far as the Northern Ireland Court of Criminal Appeal in O'Doherty which ruled that auditory analysis evidence given by experts in this field was inadmissible unless supported by expert evidence of acoustic analysis. So far as lay listener evidence is concerned, in our opinion, the key to admissibility is the degree of familiarity of the witness with the suspect's voice..."

Mr Scott submitted that in both cases the evidence was that of police officers that they recognised voices on the recordings and in both cases the evidence was not admitted. In this case the Tribunal was concerned with expert evidence and the end of paragraph 62 above related to lay evidence. The case of O'Doherty suggested that if the evidence relied only on auditory analysis, it might not be allowed:

> "It was unlikely that on the basis of auditory analysis alone, experts could come safely to a conclusion that "it is highly likely that these two samples are from the same person"

This highlighted the risk of relying purely on listening analysis.

7.15 Mr Scott referred to Dr Holmes' Report where she stated that the analysis:

> "The methods used take account of the most recent Appeal Court Rulings relating to forensic speech analysis in Northern Ireland and England: R v O'Doherty (19.4.92: NICB 3173) and EWCA R v Flynn & another [2008]."

Mr Scott submitted that even if the case of O'Doherty stood as it was, the English Court of Appeal had said that it was acceptable to admit the recordings. Dr Holmes had gone beyond phonetic analysis and conducted further analysis of reference recordings to the extent that there was need for clarification. The Tribunal could have regard to the recording to establish if the voice were that of Ms Obaseki.

7.16 The Tribunal commented that Mr Scott had made the point that the covert recording was not made by an agent of a public authority but its use would be in open court and so a public authority would be making use of it. Mr Scott responded that he had referred to four authorities regarding hearings in open court including one involving the SRA and another the GMC and two more in civil court proceedings.

Submissions by Ms Obaseki

7.17 Ms Obaseki referred to the context in which the recording had been made. Mr Scott was correct that it had been made by the client's son. He had taken the funds initially and been made subject to a Tomlin Order for the funds to be returned. It was helpful that Mr Scott was not pursuing evidence of the veracity of the recording which had been referred to in her response quoted above and remained, her main concern. Ms Obaseki accepted that Dr Holmes had a good deal of experience regarding voice comparisons but she was not an expert in Article 8. Ms Obaseki submitted that the recording should

be kept separately and not shared unless there was a specific reason for doing so like health. It was not the SRA who had made the recording but they made use of it and made use of it in the Tribunal so the rules of the Guidance on Article 8 should still be adhered to. A balance still had to be struck regarding its use involving the impact on the existence of the individual and their life.

7.18 Ms Obaseki referred to Section C of the Guidance:

> "Indeed it is settled case-law that, whilst Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8…"

Once the SRA received the recording it should have made it very clear what the rules were for the SRA and its usage of the recording. It was unclear to Ms Obaseki how the recording was shared and stored before it was given to Dr Holmes and if that was in compliance with Article 8. These were her only observations apart from the cases mentioned. In Mustard v Flowers the defendants were on notice that recordings could be made. GDPR was an issue here but Ms Obaseki stated that she did not know enough about it. As to the case of Naqvi, Ms Obaseki said she did not believe that there were any strong objections that the recordings themselves were inaccurate. In these matters each case had to be taken on its own facts regarding the proper safeguarding and storage and appropriate use by the body using it.

Determination of the Tribunal upon the application to admit expert evidence

7.19 The Tribunal had regard to the submissions for the SRA and by Ms Obaseki and to the authorities. The Tribunal noted in respect of Dr Holmes' status that she was an expert in phonetics and speech analysis but not in the technicalities of voice recording. Ms Obaseki's main challenge was to the veracity of the recording but she also did not admit the voice was hers.

7.20 The Tribunal also considered the potential relevance of Article 8 which stated:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Tribunal particularly noted the reference to public safety and the protection of the rights and freedoms of others. As a disciplinary Tribunal, it had the obligation to protect the public so if Article 8 was engaged it considered that this exception applied in any event. The Tribunal also noted the case law and that the recording had not been made by an agent of the state or of a public authority. This also weakened any argument that Article 8 precluded the admission of the recording. The Tribunal determined that the

recording would be admitted and the Tribunal would determine the weight to be attached to it having heard the evidence and the recording itself.

8. *The use of an interpreter for a witness*

8.1 At an earlier CMH the SRA had submitted to the Tribunal that its witness Mr Sadek Tchoketch-Kebir would require the assistance of a French interpreter. Ms Jocelyn Ngassa attended the Tribunal hearing and was duly sworn as an interpreter. The Tribunal raised the issue of whether it was appropriate for Mr. Sadek Tchoketch-Kebir to give his evidence via an interpreter. As a general rule, evidence should be given directly and in English or Welsh, unless the witness was unable to give their evidence in either of those languages. It decided that it would be appropriate to determine the witness' degree of proficiency in the English language. Mr Tchoketch-Kebir informed the Tribunal that he had some understanding of English which he described as basic but that sometimes he could not find the correct word.

8.2 Mr Scott relied on Rule 31 of the SDPR:

> "31.—(1) If any witness, applicant or respondent requires the assistance of an interpreter to participate in a hearing the Tribunal must be notified of this fact by the party requiring the interpreter when sending the list of witnesses.
>
> (2) Where a witness statement has been translated from a language other than English it must be accompanied by a Statement confirming—
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> (a) the language in which the original witness statement was made; and
>
> (b) that the translator has translated the witness statement into English to the best of the translator's skill and understanding."

Mr Scott submitted that the witness required the assistance of an interpreter as his first language was French.

8.3 The Tribunal was concerned that evidence given in examination and cross examination second hand may not be as reliable as evidence given directly. Ms Obaseki submitted that the witness had attended her offices without the need for an interpreter and she felt the Tribunal could consider the implications of why he said he needed an interpreter on this occasion. Mr Scott submitted that he had not come across this issue before in any Tribunal or court and felt that to refuse the interpreter would establish a significant precedent. The Tribunal retired briefly to consider the position.

8.4 The Tribunal decided to explore the question of Mr Tchoketch-Kebir's proficiency in English further with him. Mr Tchoketch-Kebir explained, in English, that he had lived in Algeria where he was born, in France and in Quebec and had come to the UK in 1997. His nationalities included British and in order to obtain British nationality he had passed a citizenship test which included a test as to command of the English language which, he maintained, required a basic ability in English but not at university or doctorate level. He confirmed that he had used his basic level of English in communicating with Ms Obaseki when he went to see her.

8.5 Mr Scott submitted that he had found an authority in the case of R v Sharma [2006] 2 Cr.App.R.(S) 63.CA. which set out that it was a matter in criminal cases for the discretion of the judge to decide whether an interpreter should be allowed and it remained Mr Scott's view that it was entirely appropriate and necessary for the witness to give evidence in French through an interpreter.

Determination of the Tribunal upon the application to use an interpreter

8.6 The Tribunal had had the opportunity to speak with the witness and now knew that he had passed an English language proficiency test in order to obtain British nationality. He had answered the Tribunal's questions without the need for an interpreter In the recording of his conversation with the Respondent he had spoken in English. The Tribunal therefore determined that Mr. Tchoketch-Kebir should give his evidence directly in English. In the event, the witness was able to give all his evidence proficiently in the English language without the need for assistance, although the interpreter was, nevertheless, on hand throughout.

9. *Dishonesty allegation – procedural aspects*

9.1 During its deliberations, the Tribunal was concerned as to whether the allegation of dishonesty had been sufficiently put to Ms Obaseki during the hearing, bearing in mind that she was unrepresented and having regard to the case of Williams v SRA [2017] EWHC 1478 (Admin). In that judgment it was said:

> "72. As for the need for cross-examination, the need to put allegations fairly and squarely in cross-examination is based on what is said to be the rule in Browne v Dunne (supra) (and Allied Pastoral Holdings v Federal Commissioner of Taxation [1983] 44 ALR 607), considered and applied in Markem Corp v Zipher Ltd [2005] EWCA Civ 267; [2005] RPC 31. Allegations need to be put to ensure "fair play and fair dealing with witnesses" (at [59]). A witness must be cross-examined on those parts of his evidence said to be untrue.
>
> 73. The rule is not an absolute or inflexible one: it is always a question of fact and degree in the circumstances of the case so as to achieve fairness between the parties.
>
> 74. What matters is the giving of notice to a witness of the allegation in question, and the opportunity for the witness to respond."

Mr Scott also referred to Williams v GDC [2022] EWHC 1380 (Admin) where it was stated:

> "131. This is a rule of fairness relating to the conduct of cases at hearings. The context is provided in the text. I glean from this case the following matters relevant to the issue in this case, which is proof of dishonesty:
>
> a. If the proposer has, in advance of the hearing, given notice of the allegation of dishonesty and the main evidential foundations for it, the rule may be of less or no application, so long as the opposer has been given a reasonable

> opportunity to respond to the allegations and gather evidence in response to rebut the allegations.
>
> b. If the proposer has not given notice of the nature of the allegation of dishonesty in advance and the opposer has not been given the opportunity to answer in advance then the proposer must put the allegation in cross examination so that the opposer may answer it.
>
> c. These rules are ones of practice and are necessary both to give the opposer the opportunity to deal with the main evidence, or the inferences to be drawn from it, and to allow the opposer the opportunity to call evidence either to corroborate the defence to the allegation, to give an explanation or to contradict the inferences sought to be drawn.
>
> …
>
> e. These rules are however subject to a great deal of flexibility depending on the circumstances of the case. So there is no need for cross examination on every evidential matter in support of an allegation of dishonesty which has already been made clear in pleadings, in opening and/or in evidence, that is a matter for the advocate's discretion and the judge."

9.2 Mr Scott submitted that the judgment went on to discuss what was described as the "old rule" about putting an allegation to a respondent. In this case the Rule 12 Statement set out very clearly the allegation of dishonesty both as a separate allegation and in the particulars in addition. Ms Obaseki had been taken particularly to the allegation of dishonesty and given time to read and consider the judgment in the case of Ivey v Genting Casinos [2017] UKSC so it was not a question that she had been given insufficient notice. It was true that she had not been asked in respect of every allegation as to whether she had been dishonest but all the material points of the allegations were put to her. Mr Scott submitted that he had also challenged her explanations for her actions in respect of each allegation and suggested that on a number of allegations she was not telling the truth and made matters up. If a transcript had been available, he would have taken her through it. The dishonesty point had clearly concerned the Tribunal and these were serious allegations and he therefore suggested it an appropriate course of action which had been suggested in the case of Williams v SRA that Ms Obaseki could be recalled and these specific allegations of dishonesty be put to her so that she had a chance to respond to them.

9.3 Ms Obaseki submitted that she wished to leave this issue to the Tribunal to decide. Mr Scott submitted that in Williams v SRA it had been suggested that this could have occurred after deliberations; the case suggested that the parties could be recalled at any stage so that option was still open.

9.4 The Tribunal commented that the most crucial part of the Ivey test was the first limb; it must be established that the respondent appreciated the facts as put by the SRA. One way of proving that would be to put matters to her because Mr Scott had questioned Ms Obaseki regarding her subjective view of the facts:

- In respect of allegation 1.1 and 1.2, Ms Obaseki had been questioned about her belief that there were underlying legal transactions and that she had consent to keep the funds in her client account. It had also been put to her that she had persuaded the client to retain funds in the client account because of the issue of benefit fraud and that she was trying to keep funds for her own purposes.

- In respect of allegation 1.3 she had stated that the client had consented to the transfer of funds into the investment and she had been challenged at length in cross examination about that belief. It had been put to her that she had transferred money out of client account into her personal account.

- In respect of allegation 1.4 there had been discussion about what the FLA had been intended to achieve and it was suggested to Ms Obaseki that she had misrepresented to the client that it was something to do with the insurance and that the reasons for it were quite different and that it was intended retrospectively to justify her actions.

- In respect of allegation 1.5 it was put to Ms Obaseki that she was only repaying sums as and when she was receiving notices from the SRA and in those circumstances there were actions available to repay more quickly.

- In respect of allegations 1.6 and 1.7 it had been suggested that Ms Obaseki had deliberately made misstatements to her insurers and to the police.

- In respect of allegation 1.8 in cross examination Mr Scott had gone through various alleged misrepresentations that Ms Obaseki had allegedly made to her client.

9.5 The Tribunal noted that there had been no direct questions to Ms Obaseki as to what she subjectively believed or did not believe and whether that belief was reasonable or not in the context of whether her belief was genuinely held, having regard to the words of the first limb of the Ivey test – "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". The Tribunal also noted that the SRA had pleaded dishonesty in general terms in allegation 2 and expressly included breach of Principle 4 of the 2019 Principles where appropriate and Mr Scott confirmed that this was because before 2019 there was no principle regarding dishonesty in the SRA Principles. The Tribunal also noted that in her defence Ms Obaseki had set out what her belief was, for example regarding allegation 1.1 her position was that there were underlying transactions. In respect of allegation 1.2, the Tribunal understood her to say that she genuinely believed that she was instructed to retain the money to invest at a higher rate of interest and Mr Scott stated that he had put it to her that that was not true, that she did not have consent from the client. He had put it to her that she had not informed the client about the investment and on that basis the Tribunal could make a finding that she did not have consent.

Determination of the Tribunal upon the procedural aspects of the dishonesty allegation

9.6 The Tribunal noted that Mr Scott did not think he needed to have another opportunity to put the allegations of dishonesty to Ms Obaseki although he had offered to do so as

a way of resolving the question if the Tribunal disagreed with him on that. The allegation of dishonesty had been set out in the Rule 12 Statement and Ms Obaseki had been given every opportunity to study the test in the case of Ivey. She had been cross examined upon her state of knowledge in respect of every allegation and she had been content to leave to the Tribunal the question of whether dishonesty had been adequately put to her. The Tribunal did not consider that she could be in any doubt as to the case against her and did not think that to have her recalled and for the allegation formally to be put to her in respect of all eight other allegations would make the position any clearer. It was for the Tribunal to consider the case against Ms Obaseki based upon the documentary and oral evidence before it and to make appropriate findings and this it would do.

Factual Background

10. Ms Obaseki was admitted to the Roll of Solicitors on 1 June 2004. At all relevant times she was the sole manager and owner of the Firm and held the roles of Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration (COFA"). She was the sole signatory on the Firm's office and client bank accounts.

11. The Firm was a recognised body which traded from 6 June 2013 until 31 May 2021. It was not registered with the Financial Conduct Authority ("FCA") and was not authorised to advise on investments. The Firm's authorisation as a recognised body was revoked by the SRA on 28 January 2021. The Firm ceased trading on 31 May 2021.

12. Following the FIO's interim report, the SRA served a notice recommending intervention into the Firm. Following receipt of representations from Ms Obaseki, the SRA's Adjudication Panel decided to stand over the intervention. On 12 February 2021, an SRA Adjudicator imposed conditions on Ms Obaseki's Practising Certificate. Those conditions were upheld by an Adjudication Panel on 8 June 2021. At the time of the hearing, she was not employed as a solicitor and did not hold a current Practising Certificate.

13. The facts on which the allegations were based were primarily contained in the Forensic Investigation ("FI") Reports dated 5 October 2020 and 26 July 2021 of the FIO Mrs Sarah Bartlett employed by the SRA.

14. In summary, in 2017 Ms Obaseki acted for client Mr Sadek Tchoketch-Kebir ("the client"), who was registered as blind and whose preferred language was French, in a dispute with his son, Mr Moadh Tchoketch-Kebir ("the client's son"), over funds which had been paid into the latter's UK bank account following the sale by the client of a property in Algeria. Ms Obaseki issued proceedings on the client's behalf to recover these funds. These proceedings were settled by way of a Tomlin Order on 15 March 2017 as a result of which £214,712.79 was paid into the Firm's client account between 27 March 2017 and 9 May 2017. These funds were initially retained by the Firm in the client account, until at least 28 July 2017 (a period of some four months).

15. Between 16 and 22 June 2017, the Firm received further payments totalling £47,000 from the client into the Firm's client account.

16. The matter came to the attention of the SRA because the client made an application to the Compensation Fund on 5 March 2020.

17. The First FI Report detailed that between 28 July and 1 November 2017, Ms Obaseki transferred a total of £230,000 from the Firm's client account into her own personal account.

18. In a letter to the SRA dated 24 July 2020, Ms Obaseki stated that she had invested the client's money into an investment scheme with ISG Exchange, which turned out to be fraudulent.

19. During an interview with Mrs Bartlett on 25 August 2020, Ms Obaseki agreed that the loss of the client's money had caused a shortfall on the Firm's client account.

20. Ms Obaseki reported the matter to the police in June 2018. She provided a statement to the police dated 27 June 2018. This statement, amongst other things, stated that she had invested £230,000 in the ISG Exchange investment scheme. It stated that these were her funds.

21. At some point in April 2019, Ms Obaseki informed the client that his funds had been lost.

22. Also at some point in April 2019- the date was disputed - Ms Obaseki had the client sign a FLA relating to repayment of the lost funds by Ms Obaseki in instalments into the client's account from 1 June 2019.

23. On 28 January 2020, Ms Obaseki had completed a signed form entitled "Professional Indemnity Insurance Proposal Form for Solicitors". Ms Obaseki answered "No" to the question at 7b of the Proposal Form as to whether the Partners were aware of any circumstances which may give rise to a claim against them. She answered "Yes" to the question at 7c that all claims and circumstances which might give rise to a claim had been reported to insurers.

24. On 8 March 2020, the client wrote to Ms Obaseki demanding repayment of all his funds. At the date of the substantive hearing some monies were still outstanding.

Witnesses

25. The written and oral 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 and made notes of the oral 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, hear or consider that evidence. The following witnesses gave oral evidence:

- Mrs Sarah Bartlett FIO
- Mr Sadek Tchoketch-Kebir
- Mr Moadh Tchoketch-Kebir

Findings of Fact and Law

26. The Applicant was required to prove the allegations to the standard applicable in civil proceedings (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 the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 respectively of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

N.B. The allegation of dishonesty is dealt with separately below from other aspects of the allegations.

27. **Allegation 1.1 Between 27 March 2017 and 6 November 2017 the Respondent failed promptly to return funds totalling £249,654.79 to a client when there was no proper reason to retain those funds.**

In doing so, the Respondent breached either or both of Principles 2 and 6 of the SRA Principles 2011 and rule 14.3 of the SRA Accounts Rules 2011

Allegation 1.2. Between 16 June 2017 and 6 November 2017, the Respondent provided banking facilities through a client account by receiving funds totalling £47,000 which were not in respect of instructions relating to an underlying transaction or to a service forming part of the Firm's normal regulated activities. In doing so the Respondent breached either or both of Principles 2 and 6 of the SRA Principles 2011 and rule 14.5 of the SRA Accounts Rules 2011 ("SRA 2011").

<u>The Applicant's Submissions</u>

27.1 For the SRA, Mr Scott referred the Tribunal to the interim FI Report Executive Summary including that as at 31 July 2020 there was a minimum shortfall on the Firm's client account totalling £202,740.00. The shortfall was caused by Ms Obaseki improperly transferring funds totalling £230,000.00 belonging to her client, to her personal bank account. Ms Obaseki subsequently made partial repayment to the client. In a letter to the SRA dated 24 July 2020, Ms Obaseki stated that the client had wanted to invest his money. Ms Obaseki stated that she found an investment company referred to as ISG Exchange (also referred to as ISG Xchange). She invested his money into that investment. Ms Obaseki stated that the investment turned out to be a scam and that she reported the matter to the police. During an interview with the FIO on 25 August 2020, Ms Obaseki stated that she had not invested any other client money into the investment scheme.

27.2 During an interview with Mrs Bartlett on 25 August 2020, Ms Obaseki stated that the client had wanted to invest his money from the beginning. In a letter to the SRA dated 8 March 2020, he denied consenting to any particular investment. Ms Obaseki did not have formal written instructions from the client to make an investment at the time that it was made. It was alleged that the client signed an FLA. This document purportedly contained his retrospective consent to Ms Obaseki investing his money. The client was visually impaired. During an interview with Mrs Bartlett on 18 September 2020, he stated that when the FLA was signed, he attended the Firm on his own and was not able to read what he had signed. He stated that Ms Obaseki told him that the document he

had signed was for insurance purposes. Ms Obaseki did not advise the client to seek independent legal advice prior to him signing the FLA.

27.3 During the interview on 25 August 2020, Mrs Bartlett asked Ms Obaseki what due diligence had been undertaken prior to investing in the fraudulent investment scheme. In a letter to Mrs Bartlett dated 11 September 2020, Ms Obaseki stated that she found the name of the investment scheme on the website of the FCA. As at the date of the interim FI Report no documentary evidence of the due diligence had been provided but Mr Scott explained that this did not form part of the allegations. During the interview on 25 August 2020, Ms Obaseki said that she was not qualified to make an investment on anybody's behalf. It was the transfer of funds which drove the misconduct allegations.

27.4 Mr Scott also referred to the final FI Report which set out that at its date a minimum of £68,000 remained outstanding. Since then there had been some discussion with Ms Obaseki and further investigation by the FIO and the SRA was very close to agreeing the figure outstanding at £66,192. There might be a slight difference of £50. A substantial amount had been repaid but it was the SRA's case that it should have been repaid earlier.

27.5 The Tribunal asked for clarification of the figures as several were referred to in the papers. Mr Scott submitted that the total amount paid in to the Firm was £245,373.43. Of the total, £230,000 was later transferred to Ms Obaseki's personal bank account. The way the outstanding figure was calculated was to take the total amount paid into client account and subtract fees and disbursements properly charged for the work Ms Obaseki did and further to subtract repayments subsequently made to the client and one ended up with just over £66,000.

27.6 Mr Scott submitted Ms Obaseki failed to tell the client about the loss of his money until on or around 18 April 2019. Mr Scott also submitted that on or around that date, the client signed an FLA. In a witness statement dated 10 February 2021, he stated that he did not know that he had signed an FLA and that he had not given consent to his money being invested.

From the FIO interview (SB is Mrs Bartlett the FIO and UO is Ms Obaseki):

"UO We got the Freezing Order for Moadh's accounts, and the money had to be transferred, he wanted it into our client account, via the client account.

SB Did, did, did he give, did he give you a reason as to why he wanted it in your, in your client account?

UO Not that I can remember at the time, no.

SB No.

UO I'd have to look at the file

SB Ok.

UO I'm not entirely sure what he - what, what it was at the time.

SB Did you ever feel you were ever in a position to say 'No, sorry, can't have it in my client account. You need to have it directed to your [client] bank account and if you want to instruct me in X, Y, Z, then you can give me whatever when you instruct me', did that ... ?

UO No. It is probably something I will do now [UO laughs]."

27.7 Mr Scott submitted that the SRA accepted that the client was looking for property mid to late 2017 but the instructions did not come until later than was suggested by Ms Obaseki and there were never firm instructions regarding a particular property and so no underlying transaction at the relevant time. It was covered in the interview:

"SB Right, ok, ok, fine. So, turning to the Conveyancing transaction, Mr Sadek instructed you in respect of a purchase of 29 Clarkson Road. Do you know what the reason was why that purchase didn't complete?

UO Yes, that was all on the file basically. He first wanted - was it 29 Clarkson he first wanted?

SB Yes.

UO He wanted 29 Clarkson at first. He went with his son to have a look at the property. My feeling is that Moadh really is the person who didn't want the property ...

SB Right.

UO Or had his reasons why he didn't want the property.

SB Mmmh.

UO Then they saw 29 Harry Barber.

SE That's right.

UO I believe, and decided that they were going ahead with 29 Harry Barber.

SB Right.

UO And that was £180,000.00, or the calculation was that it would be £180,000.00 to purchase ...

SB Yes.

UO and including Stamp Duty from my calculations, if I remember rightly.

UO Ok. So, and they - what Sadek was saying was that he wanted to invest the rest and if I could find something…."

And

"UO They knew how much they had. They saw a property for as I said, £100 and - I don't know how much Clarkson was erm ...

SB I think it was £190,000.00, from memory.

UO Right. So, they changed their mind from that, to Harry Barber, and then Harry Barber fell through, and as I said from the beginning, what they said was that they wanted to invest the rest. I don't know what they wanted to invest it in, or they didn't finally agree with anything until a little bit later on, around June/July. But yes, I, I am not really sure about that question properly.

SB So, so say at best, I mean, you had about £202,000.00 in from the Litigation, and then ...

UO Another £47,000.00 so short, shy of £250,000.00.

SB Yes, so as I say, there was more money there, even if it was Harry Barber Close.

UO Mmm ...

SB Sorry, 29 Clarkson. Even if they were going to buy that one, it was more money than they needed to, to actually pay for that property, including your legal fees, and Stamp Duty, wasn't it?

UO Yes, I suppose they didn't know that at the time, and I didn't know that at the time. I only knew when they made a choice as to whether they were buying property A or B, and I didn't know if they were going to go on to buy property C. So ...

SB Right, I see. So ...

UO so I didn't know what they were, what their final decisions were going to be.

SB No, but obviously, if they were only going to have a property worth I don't know, £190,000.00 plus Stamp Duty, they didn't need to give - send through another £47,000.00 odd, did they?

UO They didn't need to keep it in the account, no, unless their decision was as it was, to invest it, but that's, you know I'd, I'd no idea what they wanted to do. But yes, I suppose hindsight, I could have said to them at the time, 'well, you're only going for this so, take this back.' I could have you know, with hindsight ...

SB I mean they, they weren't, they actually - you weren't aware of them looking for any other property apart from those two, were you?

UO I didn't know what they were looking for ...

SB Right.

UO Yes. I didn't know at all. They told me about the first one, then the second one.

SB Ok. Would you agree then that there was no underlying legal transaction to support those additional payments?

UO You mean to have the, the balance in the client account?

SB Yeah.

UO At the time, I had no idea what they were planning to do until they told me ...

SB Right

UO or, what they wanted to do, until they told me.

SB Yes.

UO So ... and when would I have known that? You mean when the sale for Harry Barber fell through that I knew exactly, or when they said to go ahead ...

SB Yeah, well ...

UO you know. I mean it was quite erm ...

SB So, why wasn't the money returned once Harry Barber fell through?

UO Because that's not what they wanted.

SB But you'd got no real reason to keep that money, had you? There was no - if, if, if there was no instruction for Harry Barber anymore, then there was no legal transaction for that money to be sitting in your client account for.

UO There was no legal transaction on that day, but they then wanted it invested.

SB Right.

UO So, it wasn't anything on that particular day ...

SB But was it ...

UO I didn't know when it was not going to go through.

SB But investment isn't a legal transaction, is it?

UO No, it isn't."

Regulatory breaches in respect of allegation 1.1

27.8 In the Rule 12 Statement it was set out that Ms Obaseki had no legitimate reason to retain £202,654.79 (being the balance of £214,712.79 received under the Tomlin Order after payment of the Firm's fees) or the further £47,000 received from the client into the Firm's client account. Rule 14.3 of the SRA Accounts Rules 2011 provides that client money must be returned to the client promptly as soon as there is no longer any proper reason to retain those funds. By retaining the funds, Rule 14.3 was breached. The funds paid under the Tomlin Order should have been transferred to the client's personal account following receipt by the Firm. The further £47,000 payment from him should not have been accepted in the first place. Once accepted, however, it should have been returned to him as Ms Obaseki had no reason to keep it in the Firm's client account. The breaches of Principle 2 and Principle 6 of the SRA Principles 2011 arising from this allegation are addressed below in respect of allegation 1.2 on the basis that the conduct giving rise to allegations 1.1 and 1.2 were part of a continuing course of conduct.

Regulatory breaches in respect of allegation 1.2

27.9 It was submitted that there was no legitimate reason for Ms Obaseki to accept payments totalling £47,000 into the Firm's client account. They did not relate to instructions relating to an underlying transaction or to a service forming part of the Firm's normal regulated activities. Rule 14.5 of the SRA Accounts Rules 2011 provides that a solicitor must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction or to a service forming part of their normal regulated activities. The receipt of a further £47,000 in the Firm's client account where there was no underlying transaction and where it did not relate to a regulated service provided by the Firm breached this rule.

27.10 It was submitted that Ms Obaseki claimed that she retained the funds in the Firm's client account because of concerns that it might affect the client's entitlement to state benefits and therefore to assist him in concealing the funds from the UK government. Her conduct in allegations 1.1 and 1.2 therefore breached Principles 2 and 6 of the SRA Principles 2011. In Wingate v SRA [2018] EWCA Civ 366, the Court of Appeal stated that integrity connotes adherence to the ethical standards of one's profession. In giving the leading judgment, Lord Justice Jackson said:

> "Integrity is a broader concept than honesty. In professional codes of conduct the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members"

A solicitor acting with integrity would act within the law and would not knowingly be a party to an attempt to defraud the benefits system. A solicitor acting with integrity would decline to retain or accept payment of funds in their client account in these

circumstances. Further, the public expected solicitors to act within the law and not to assist in cheating the benefits system. It was submitted that this conduct was also dishonest. Ordinary decent people would regard it as dishonest for a solicitor to retain funds in a client account in breach of the SRA Accounts Rules in order to assist a client to conceal it from the state authorities.

The Respondent's Submissions

27.11 Ms Obaseki gave sworn evidence in response to this and all the allegations. She explained that she had not accepted allegation 1.1 on the basis that there were further grounds to retain the funds and there were the almost immediate instructions to purchase properties. She did not accept the date range in the allegation. She believed that the client confirmed he wanted to invest in the purchase of properties, either his own council owned property or the purchase of an alternative investment property, two of which he was looking at in Norwich.

27.12 Ms Obaseki asked the Tribunal to note the client care letter in respect of the conveyancing work dated 3 July 2017; she had started work at that time. The £47,000 was received and he confirmed in his statement that it was in anticipation of purchasing a property.

27.13 Ms Obaseki submitted that allegations 1.1 and 1.2 were in some ways cleared up save for the point that from early November 2017 it was clear that any further actions by her were outside her role as a solicitor and really should have been referred back to the client. When asked to clarify her position regarding the allegations, Ms Obaseki referred to her Extended Answer where she had provided some background in respect of her initial instructions from the client. He often attended her office by himself and his instructions regarding the statement in support of the application for the Tomlin Order were given in English. She mentioned in the Answer that he had sold a property in Algeria and wanted to bring funds to the UK but this could not be done directly because of the banking system in Algeria. Transfers had to be made to specific organisations to which he and his son would go to collect the funds. He believed his son had collected over £340,000 at that point. An amount of £214,000 was placed in the son's account and a further £47,000 was accumulated by the client. It was agreed that the son would keep funds in excess of £214,000 which would be transferred to the Firm's client account.

27.14 Ms Obaseki referred to the original instructions received as set out in the client's statement in support of his application to the court for a freezing order (against his son) where he set out his initial plan to use the money from the property in Algeria and give so much to his son and daughter and that his son was to hold these sums. Ms Obaseki also referred to a handwritten note which said that money could be held in trust for the daughter. That was the client's initial thought but it was difficult to get full instructions about what he wanted to do and about the position with his son. This could be seen from an e-mail from counsel relating to the preparation of the client's affidavit which included:

> "One thing that I notice is still missing is a description of just what the discussions were between father and son as to the arrangement as to how the funds were to be dealt with."

Ms Obaseki stated that the possibility of the client purchasing his council owned property was discussed but when she made initial enquiries it became apparent it would be beyond his reach.

27.15 Ms Obaseki submitted that the client and his son took their time in looking for property. They looked first at the council owned property and then decided to look for properties around the son's university, Norwich. It was not accepted that during the period cited in the allegation that these funds should have been returned to the client because he was expecting to purchase a property. She did not believe that she had breached the Principles and rules referred to in the allegations. In cross examination Ms Obaseki stated that as at 22 June 2017, her instructions were that they were looking for a property and there was an expectation of an underlying legal transaction. She did not believe that there was anything in the rules to say that a firm could not collect funds for a transaction. She was not as familiar with the accounts rules as she should be but she had gone on a course to update herself after this.

27.16 It was put to Ms Obaseki that she was asked in interview (SB is Mrs Bartlett the FIO and UO is Ms Obaseki):

> "SB Did, did, did he give, did he give you a reason as to why he wanted it in your, in your client account?
>
> UO Not that I can remember at the time, no."

Ms Obaseki responded that she thought at the time that what she did was legitimate. The client did not tell her that he wanted to keep the money in her client account because he could have problem with benefits.

27.17 Mr Obaseki also stated that while the conveyancing file was opened on 3 July 2017 and the client care letter sent, the client's initial instructions had been in respect of the Tomlin Order and throughout that process what he wanted to do and what he was going to do was to purchase a property and create a trust. She was referred to a handwritten attendance note dated 28 June 2017 recording instructions for the purchase of a house at Clarkson Road for £190,000 which she confirmed. There was another note dated 11 July 2017 which referred to a property at Harry Barber Close. It was put to her that she had no clear instructions regarding which property was to be bought. Ms Obaseki stated that there had been toing and froing with the client and she asked him to come in and sign something confirming his instructions regarding Clarkson Road. They were asked not to send letters to him but to telephone him and he would come in. (He did not want letters because he had to get someone to read them to him.) If a client had no idea what they wanted to do with the money the Firm would normally tell them to take their funds back but this was not the case here. She did not accept that she was permitting the client account to be used as a bank while the client and his son decided what to do and she also rejected the suggestion that more money than necessary was paid in because she had persuaded him that it would affect his benefits.

27.18 While the client care letter did not refer to a particular property or an amount to be paid on account, Ms Obaseki pointed out that there was a letter from the seller and a Memorandum of Sale dated 23 June 2017 in respect of Harry Barber Close. She also pointed out that the client had signed the client care letter and an attendance note confirmed that the Firm had had discussions with him about it.

27.19 Ms Obaseki was then asked about whether the amount she held was in excess of what was needed for a property purchase. She had said in interview that she had just under £250,000 with the money from the Tomlin Order and the additional £47,000. Ms Obaseki stated that with hindsight she did not dispute that she had more money than she needed to complete a property purchase but at the time she knew the client and his son had one property and were discussing a possible flat and wanted to be cash buyers.

27.20 In cross examination, Ms Obaseki stated that she knew the client had some issues with his eyesight as he asked for letters in larger than normal font and he used some kind of magnifying glass for smaller font. She felt that he was more than capable in English; he gave cogent clear details about the transfer of money from Algeria and the amounts were all given in English. If there had been any indication that he struggled she would have obtained an interpreter and the barrister who represented him in obtaining the Tomlin Order would have insisted on that in respect of the client's statement and for him to give evidence regarding the Tomlin Order.

27.21 Mr Obaseki stated that she did not know that the client was in receipt of benefits but she assumed he was entitled to Disability Living Allowance as was shown when he brought in evidence of identity etc. It was put to her that in her interview with the FIO she had said that the Firm would have asked for details of his financial background although he did not really tell her what it was. She knew Disability Living Allowance was not means tested.

27.22 The Tribunal asked for clarification of what Ms Obaseki had said to the FIO in interview about why she had not reported the loss of the money to the SRA:

> "if you're someone of my community background, you don't tend to get a very fair - well, I didn't feel that I would get a very fair response."

Ms Obaseki stated that she was scared. Her experience or knowledge of other people's experience meant that her colour background and being Afro Caribbean meant that they tended to do worse with the SRA. They tended to receive harsher sanctions. They tended to come from smaller High Street firms. Other firms that were bigger tended to accept options such as installing supervision. Mr Scott said on behalf of the SRA that a number of very wide and very serious allegations had been made about a statutory authority which were not supported by any evidence and the SRA was not in a position to make a response. The Tribunal enquired as to how any of what Ms Obaseki had said was relevant to her case. She replied that the FIO asked why she had not gone to the SRA immediately and she had explained that this was her view and her experience. She had put in a new office manager, COLP etc and she felt that in other firms that would have been accepted. This was just a general observation rather than relevant to her defence to the allegations in the Rule 12 Statement.

Determination of the Tribunal in respect of allegation 1.1

27.23 The Tribunal had regard to the evidence and the submissions for the SRA and by Ms Obaseki. The Tribunal had heard oral evidence from Ms Obaseki, Mr Sadek Tchoketch-Kebir, Mr Moadh Tchoketch-Kebir and Mrs Bartlett. Allegation 1.1 was precisely pleaded in terms both of the timescale and the amount alleged to have been held during that period. The allegation stated "Between 27 March 2017 and 6 November 2017 the Respondent failed promptly to return funds totalling £249,654.79". Exhibit SB6 of Mrs Bartlett's witness statement of 7 November 2022 set out the movement of funds in the client account over the period pleaded. This showed that on 27 March 2017, the amount in the Firm's account totalled £181,288.24. A sum of £249,654.79 was shown as being in the client account but only between 22 June 2017 and 29 June 2017. The allegation that a sum of £249,654.79 was not returned to the client between 27 March 2017 and 6 November 2017 was not, therefore, proved.

27.24 It was also alleged that there had been no proper reason for Ms Obaseki to hold the funds during the period alleged but Ms Obaseki had given a reason - the underlying prospect of conveyancing transactions. The Tribunal determined that the evidence showed that the client and his son had been considering properties for possible purchase starting with the local authority owned property in which the client lived and then moving on to looking at properties in the area where the son had attended university and might possibly resume his studies and possibly elsewhere according to the evidence of the client, his son and Ms Obaseki. Her letter to the SRA of 24 July 2020 stated that on 29 June 2017, the client Mr Sadek Tchoketch-Kebir attended the Firm saying that he wanted to go ahead with the purchase of the Clarkson Road property. Ms Obaseki stated that on 3 July 2017 she formally opened a second matter (in addition to the file for the litigation) for the purchase of that property. Initially this went ahead and then the client and his son changed their minds and wanted to purchase in Harry Barber Close. In evidence the client confirmed that it was not until the end of September 2017 that he decided not to go ahead and maintained that this was because Ms Obaseki had said that a crisis was coming because of Brexit and that he should not buy anything. In the Harry Barber Close matter there was an email from the vendor's solicitor dated 3 November 2017 showing that they, at least, were under the impression that negotiations about price were ongoing. However payments to ISG had commenced before then. The Tribunal considered that when that second transaction was abandoned, it may be arguable that funds should have been returned to the client, but that had not been pleaded in allegation 1.1. The pleadings were very precise in terms of the amount and the dates between which it was alleged the funds had been held. It was not alleged the funds were held with no proper reason for all *or part* of the period cited. The Tribunal determined that at least for part of the period at the end of June and again in July 2017 and arguably until the end of September 2017, or even November 2017, Ms Obaseki was instructed in conveyancing matter(s). Based on these findings of fact allegation 1.1 was found not proved to the required standard on the evidence. The Tribunal did not, therefore, have to go on and consider the allegations of breach of Principles and of the SARs or of dishonesty.

Determination of the Tribunal in respect of allegation 1.2

27.25 The Tribunal had regard to the evidence and to the submissions for the SRA and by Ms Obaseki. The client account showed the receipt of additional funds totalling £47,000 over and above that received under the Tomlin Order which formed the basis for allegation 1.2. The Tribunal had found in respect of allegation 1.1 that Ms Obaseki had received definite instructions in respect of two different conveyancing transactions. In his witness statement the client said:

> "I started to pay money into the firm's special bank account in my name in June 2017. In total I paid an additional £47,000.00 into that bank account in June 2017. I put more money into the firm's special bank account because I wanted to buy properties in Norwich for my son. I went to see a number of properties. The properties I was looking at were between £200,000.00 to £240,000.00. I was not sure what properties I wanted to buy. I did not buy a property at that time."

In interview with Mrs Bartlett, Ms Obaseki said, when asked about when she should have returned the money and as to the amount she held being in excess of what was needed for the proposed transactions:

> "I only knew when they made a choice as to whether they were buying property A or B, and I didn't know if they were going to go on to buy property C."

The Tribunal found that the evidence showed that the client and his son had not made up their minds definitively about the amount they wished to spend. Based on these facts the Tribunal did not consider that it had been proved to the requisite standard that the additional funds were not in respect of instructions relating to an underlying transaction or to a service forming part of the Firm's normal regulated activities. Accordingly the Tribunal found allegation 1.2 not proved on the evidence to the required standard. The Tribunal did not therefore have to go on and consider the allegations of breach of Principles and of the SARs or of dishonesty.

28. **Allegation 1.3. Between 28 July 2017 and 6 November 2017, the Respondent made improper transfers of funds totalling £230,000 from:**

1.3.1. the Firm's client account into her personal account;
1.3.2. her personal account into a purported investment scheme;

In doing so the Respondent breached any or all of Principles 2, 4, 6 and 10 of the SRA Principles 2011 and rules 14.1 and 20.1 of the SRA 2011.

The Applicant's Submissions

28.1 For the SRA, Mr Scott submitted that between 28 July and 1 November 2017, Ms Obaseki transferred a total of £230,000 from the Firm's client account into her own personal account. These transfers were debited to Mr Sadek Tchoketch-Kebir's client ledger and therefore notionally were funds owing to him. Ms Obaseki's personal bank statements showed the receipt and the subsequent payment out of these funds. She paid

the funds into an investment scheme, ISG Exchange, which, it transpired, was fraudulent. It was alleged that she became aware, at the latest by February 2018, that the scheme was fraudulent. It was not suggested that she was part of the fraud or knew about it but she did not have the client's consent either to transfer funds from client account or to invest them into ISG Exchange or any other investment scheme. She claimed that the client authorised her to invest the funds but admitted that she did not have his written authority. The SRA did not accept that she had any authority. Ms Obaseki had also claimed that she had transferred the client's money from the Firm's client account to her bank account because there were restrictions on transferring money from the Firm's client account. Despite being asked to provide evidence of these restrictions she has failed to do so. Even if there were such restrictions, this would not permit her to transfer money from the Firm's client account to her personal account.

28.2 Mr Scott also referred to Ms Obaseki's representation against the proposed intervention into the Firm which included:

> "Transfer of Mr Tchoketch-Kebir's money to Ms Obaseki's personal bank account AND Investment of Mr Tchoketch-Kebir's money:

Pages B8 & B9 [of a notice from the SRA about the intervention]

> 2. I accept that it was wrong for me to transfer the client's money into a personal account and that I did not have his written authority to invest his money.
>
> a) While I may have believed that the client was unequivocal in his instructions about wanting to invest his money, I ought to have secured his written and explicit instructions and referred him to a suitably qualified investment adviser.
>
> b) Regardless of the same the request to assist him with obtaining higher returns stepped me outside of my role as a solicitor and brought me in to breach with my regulations. I invested through my account on the basis of being convinced by the scammers that the account would be held as a client account.
>
> c) I did not have the necessary expertise or authority to make any investments on behalf of anyone nor was I regulated to carry out such regulated activities. Indeed, had I had the necessary expertise and been properly regulated, I would have been aware of the FCA warnings on Binary Trade options and its meaning. Equally of such expertise I may have been acutely aware of the investment scams being carried out by IGS Xchange."

And

> "e) The FIO asked specifically about a transfer of £50,000 in the office on the 18th August 2020. I was initially unhappy to go through my personal account again and attempted to make the transfer directly into the investment account but it would not go. All of the transfers to my account were wrong and without proper written authority to go via my account and wrong to complete without proper formal written authority."

28.3 Mr Scott went on to highlight other points in the interview with Mrs Bartlett:

> "SB So, why did, why did you agree to look for investment for him rather than saying "No, I'm not going to do it?"
>
> UO … Retrospectively, looking at it, that's what I should have done, and you know, definitely, I will never ever think with my heart again. I thought I was helping him really, but that obviously, isn't the case. Well, if it was true, it would have been the case. But yeah, it was just madness, I don't know.
>
> SB Had, had you done any investing for anybody before?
>
> UO No, only myself, but not for anyone.
>
> SB But you weren't - would you agree that you weren't qualified to do investment for anybody?
>
> UO I don't believe that I am, no.
>
> SB So really, you should have sent him elsewhere, shouldn't you?
>
> UO Absolutely, absolutely, agree with you."

28.4 Mr Scott submitted that during the interview with Mrs Bartlett, Ms Obaseki was asked if the client consented to the investment:

> "SB So at the time you actually did the investment, you actually hadn't got any signed any, any consent, had you, in order to make, in you know, at the time you actually transferred the money in 2017, he hadn't actually consented to that investment, had he?
>
> UO Oh yes he had, he had throughout, been asking for that. And I think he even came in to sign something, or signed a piece - signed that that was what he wanted.
>
> SB He'd actually explicitly ...
>
> UO Well, a formal, a formal - I didn't think I needed something formal, because he was quite clearly saying that's what he wanted. So ...
>
> SB He'd actually instructed you in 2017?
>
> UO Yes, that was my understanding at the time."

28.5 Mr Scott submitted that that was not the SRA's position about what had happened; Ms Obaseki had no consent whatsoever to invest in ISG Exchange or anywhere else:

> "SB But did you get any formal written instructions in writing, consenting to that investment?

UO In 2017?

SB Yes.

UO No."

Regulatory breaches in respect of allegation 1.3

28.6 In the Rule 12 Statement, it was alleged that between 28 July and 6 November 2017, Ms Obaseki transferred £230,000 from the Firm's client account to her personal bank account. She then transferred this into an investment scheme. Rule 14.1 of the SRA Accounts Rules 2011 provides that client money must be held in a client account except when the rules provide to the contrary. Rule 15.1 allows for client money to be held outside a client account in certain circumstances. This allows funds to be paid into an account at a bank, building society or other financial institution opened in the name of the client but only if the client instructs this for their own convenience and only if the instructions are given in writing. Nowhere in the SRA Accounts Rules did it permit client funds to be held in a solicitor's personal bank account. Rule 20.1 of the SRA Accounts Rules 2011 states that client money may only be withdrawn from a client account in the circumstances set out in sub-paragraphs (a) to (k) of that rule. None of these circumstances applied to any of the transfers from the client account referred to above. The client did not consent to or provide written authority for these transfers to be made by Ms Obaseki or for the funds to be invested elsewhere. This rule was therefore breached.

28.7 It was also alleged that solicitors are held to a high standard when it comes to the handling and protection of client money. The judgment of Jackson LJ in Wingate, referenced above, provided illustrations of conduct which constitutes acting without integrity. These examples included making improper payments out of a client account. In this case Ms Obaseki not only did that but also paid the money into her personal account and then invested it. All of which was done without authority. A solicitor acting with integrity would not have transferred funds out of a client account into their personal account. Nor would they have invested the funds without obtaining the client's authority in writing and placing the funds with a bank, building society or other financial institution in an account in the client's name. Ms Obaseki therefore acted without integrity and breached Principle 2. Similarly, she breached Principle 6. The public places its trust in solicitors to handle and safeguard clients' assets and funds. That trust is seriously damaged by a solicitor who makes improper and unauthorised transfers of client funds into her own private account, then invests it and subsequently loses it. The client's money was not protected as it was removed from the safety of the Firm's client account. It was not in his best interests for it to be transferred into the personal account of Ms Obaseki nor to be invested in what turned out to be a fraudulent investment scheme.

28.8 It was submitted that all of this was done by Ms Obaseki without the client's informed consent. Even if he had expressed an interest in investing, she should have advised him to seek professional advice as she was neither qualified nor authorised to provide investment advice, and discuss the specific nature of the investment with him. She should also have obtained his written authority and ensured that any investment was with a bank, building society or financial institution in an account in his name.

Ms Obaseki failed to act in the client's best interests and failed to protect his client money. Principles 4 and 10 were therefore breached.

28.9 It was also submitted that Ms Obaseki's conduct was dishonest. Mr Scott submitted that ordinary, decent people would regard it as dishonest for a solicitor to transfer a client's funds into her own personal account and then invest it without informing the client and without seeking his express authority to do so. Her explanation that there were limits on the amount of funds that could be transferred from the client account was neither reasonable nor credible. A solicitor who takes or uses a client's money without their knowledge acts dishonestly even if the solicitor does not intend permanently to deprive the client of their money (Bultitude v Law Society [2004] EWCA Civ 1853).

28.10 A letter to the SRA from Ms Obaseki dated 7 July 2020 responding to its enquiries, included that the client made various calls to the office stating he wanted the money to be invested. On 21 June 2017, the client called. He did not like the fact that the client account with Barclays paid little interest and asked Ms Obaseki to look for a better account or if she knew any investments. She found an account that purported to provide a much better interest rate on short term to long term investments and informed the client. He said he trusted her decision to do what she thought was best. She invested the sums with an investment company called ISG Exchange. However, the investment turned out to be a scam.

The Respondent's Submissions

28.11 In evidence Ms Obaseki stated that both the client and his son who had come with him on one occasion were not happy with the rate of interest being paid because there were other accounts available. She did not know what that rate on the client account was. The rate of interest at Barclays was not something of which she would have been aware.

28.12 Ms Obaseki rejected Mr Scott's suggestion that the reference in the handwritten attendance note dated 28 June 2017 to a conversation including "the client want a/c with better interest said will look & he to look" did not take place. She replied similarly in respect of the attendance note dated 11 July 2017 referring to having found an investment account and that it would be tested before placing funds, which part of the note was written in a different ink. Ms Obaseki pointed out that the client's signature on the note was in the same ink as that part of the note.

28.13 Ms Obaseki agreed that there was a reference on an attendance note dated 15 July 2017 to investing in ISG. She thought that she had been considering making the investment even before that as there were ongoing discussions about what the client and his son were doing with the funds. It was put to her that there was a draft transfer form for the Harry Barber property attached to an e-mail to her Firm from another firm of solicitors dated 30 October 2017 in anticipation of exchange of contracts and completion with a price consideration of £177,000 and that by that stage she had already transferred £130,000 from client account to her own personal account. It was further pointed out that on 1 November 2017 she transferred another £50,000 from client account to her own account and immediately sent it onto ISG Exchange. Ms Obaseki did not dispute the documentation.

28.14 Ms Obaseki was asked how she proposed to complete the transaction if she had invested most of the client's funds into ISG Exchange and she responded that there were still enough funds for the client to be a cash buyer. It was put to her that this was not the case as the consideration for the purchase was £177,000 to which had to be added fees stamp duty land tax etc. She had received a total of £240,000 approximately from the client but by 1 November 2017 she had transferred £130,000 to ISG Exchange, with a further £50,000 on 6 November and a further £50,000 on 7 December and did not have enough funds in the client account to complete the purchase. Ms Obaseki responded that it was very clear from mid-November, if not before, that the client was not going ahead with the transaction and her recollection was that when the transfer was sent on 31 October 2017 the transaction was no longer going ahead. She did not send the money back to him at that point because he wanted her to do something else with it.

28.15 Ms Obaseki rejected the suggestion that the client had never given her authority to make any investment on his behalf. She also rejected that the SRA did not accept that the conversations referred to in the attendance notes which mentioned investing had taken place and even if they did take place on the lines indicated, what was being discussed was obtaining a better interest rate. Ms Obaseki agreed that the attendance note dated 28 June 2017 referred to obtaining an account with a better interest rate. She rejected the suggestion that there was no indication in the notes, including in the note dated 11 July 2017 referring to testing an investment account first before placing funds, that the clients had given even verbal authority to invest anything with ISG Exchange. This was not her belief at all.

28.16 It was put to Ms Obaseki that even if there were conversations about interest rates, that was quite different from withdrawing £130,000 from client account and investing it in a Binary Options investment scheme. She responded that the things they talked about had progressed from a trust fund for the client's daughter and then dividing the money as to £175,000 for the client and £85,000 each for his children and then to purchasing the council owned property and then to a property in Luton and then Norwich where the son's university was, to encourage him to go back to university and then to just finding an interest rate better than Barclays. Ms Obaseki stated that she did not know that ISG Exchange was a Binary Option scheme; she thought that it was a bank account with a better interest rate but that was irrelevant because it was a scam. She was informed that the monies would be held by ISG in a client account and she had thought that this mitigated the risk.

28.17 Ms Obaseki agreed that while she had sent a letter on 24 May 2017, confirming to the client that his money under the Tomlin Order had been placed in a Barclays specified client account, there was no similar letter confirming the money had been put into ISG Exchange. She believed there were attendance notes confirming when the property purchase was not going ahead. She referred to a note dated 3 November 2017 which mentioned a telephone conversation with the client's son. It included:

> "Did he get email? Not going ahead with reduced amount offered
> Want to see if can find other investment that can bring better return like a/c is
> Advised will speak with his father about the a/c"

The note then went on to say:

"Telephone with Sadek
Said if account OK to invest last with the a/c"

Ms Obaseki stated that this was not an isolated discussion. She was asked if she was saying that the attendance note related to investing in ISG Exchange and she said she was not using those words. It was put to her that she did not tell the client she was investing with ISG Exchange or about the returns and she said she did not know because she did not know the returns on her own Barclays account. It was put to her that the money was invested in her name and not the client's and she responded that the Barclays account was not in his name but she agreed that she had invested the money in a specified client account in his name with Barclays. As to that not being done with ISG Exchange, Ms Obaseki replied that what she "was told was a load of rubbish". The money was not invested in the client's name because that was not how the specified account worked. She rejected the suggestion that the transfer into her personal account before the money was invested with ISG Exchange must be because it was to be invested in her own name and for her benefit.

28.18 Ms Obaseki was also questioned about what she had told the SRA about restrictions on transferring funds from her Barclays client account. She said there had been about 12 calls that day from the scammers and everyone knew that that was what they did. She initially tried transferring the money into the account ISG Exchange had given her using her client account. She could transfer money between client accounts even into her own account but not from the client account to ISG. She was under pressure to make the transfer at that point; she was told not to lose out, that everything had been set up for her. It was pointed out to Ms Obaseki that she had told the SRA in interview:

> "I think I've got restrictions on my account so that you can't transfer a certain amount without going into the bank and making that transfer, and I didn't want to go into the bank."

It was put to her that she had been asked to provide documentary support for the statement but had not done so in respect of the restrictions. Ms Obaseki said she had written to her bank about three times asking about restrictions but had received no response.

28.19 Ms Obaseki submitted that it was correct that the transfers from client account to her personal bank account and onto the investment scheme were improper. She accepted that this was a breach. Even though she said that she had verbal instructions it was the wrong thing to do and she had always accepted that. Ms Obaseki stated enquiries were made about opening a further specified client account and the transfers were made. Clearly after looking retrospectively at the rules she should not have done it as she did and should not have done it at all and so allegation 1.3 was admitted.

<u>Determination of the Tribunal in respect of allegation 1.3</u>

28.20 The Tribunal had regard to the evidence and to the submissions for the SRA and by Ms Obaseki. Ms Obaseki had accepted the factual elements of allegation 1.3 and the Tribunal found that admission to have been properly made as it was clearly established on the evidence. She said in her extended Answer:

> "This allegation is correct.
>
> The factors surrounding this allegation relate to the clients (sic) request to find a client account/investment with higher interest and the grooming of the scammers. It is accepted that regardless of such I ought to have known the rules and the failure of which led to the loss."

The Tribunal noted that there was a conflict of evidence about whether the client had consented to the investment; he and his son were adamant that he was not interested in investing other than in property and Ms Obaseki maintained that she had oral consent supported by references in attendance notes. The Tribunal made no determination as to consent; the fact was that the transfers were improper.

28.21 The Tribunal went on to consider the breaches of Principles and of the accounts rules. As set out in the Rule 12 Statement, Principle 2 of the SRA Principles 2011 requires solicitors to act with integrity. The Tribunal found that in taking client money and transferring it into a personal bank account and then into an investment scheme where Ms Obaseki knew that she was not authorised or qualified to advise a client upon investing with a third party and that she had no expertise in investments, she put client money at risk first by mixing it with her own personal money and then by entrusting it to a third party (by whom it was ultimately misappropriated). This applied regardless of whether what Ms Obaseki said about restrictions on making transfers direct from client account to ISG Exchange was correct or not. The Tribunal determined that by her actions, Ms Obaseki failed to act with integrity. Similarly putting client money at risk in this way constituted failing to act in the best interests of the client and accordingly she breached Principle 4 by her actions. Ms Obaseki also failed to behave in a way that maintained the trust the public placed in her and in the provision of legal services thus breaching Principle 6. Principle 10 requires solicitors to protect client money and assets and this Ms Obaseki clearly failed to do. As to the accounts rules, rule 14.1 requires that **c**lient money must be paid into a client account without delay except where the rules provide otherwise. Rule 20.1 set out the circumstances in which client money might be withdrawn from a client account and the circumstances of these withdrawals did not come within this case. Breach of both rules was found proved. The Tribunal found allegation 1.3 proved to the required standard on the evidence; indeed it was admitted.

29. **Allegation 1.4 On or around 18 April 2019 the Respondent drafted and entered into a "Financial Loan Agreement" with STK in circumstances where there was an own interest conflict or a significant risk of an own interest conflict.**

In doing so the Respondent breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011 and failed to achieve Outcome 3.4 of the SRA Code of Conduct 2011

<u>The Applicant's Submissions</u>

29.1 For the SRA, Mr Scott submitted that on 17 April 2019, Ms Obaseki called the client and asked him to come into the office to sign some documents. He attended on 18 April 2019, at which time she asked him to sign a document entitled "Financial Loan Agreement". This purported to give the client's retrospective consent for Ms Obaseki

to hold his funds personally and to invest them. As part of the loan agreement, she was to pay at least £3,000 per month into his account from 1 June 2019. The document was signed by the client. Ms Obaseki had accepted that she did not advise the client to seek independent legal advice. Mr Scott submitted that this document was effectively back dated since it purported to be binding from 1 June 2017. The document, which was exhibited to the client's witness statement dated 24 October 2022 as Exhibit MK3, stated:

> "The parties of this agreement intend for the same to be binding and remain in force from 1st June 2017 until the completion of the terms.
>
> The parties
>
> Ms Uyiosasere Obaseki personally
>
> And
>
> Mr Sadek Tchoketch-Kebir
>
> This agreement is confirmation of the intentions and expectations of each party.
>
> Mr Sadek Tchoketch-Kebir has no current need of the full funds specifically £248,000.00.
>
> Mr Sadek Tchoketch-Kebir is currently not working and with this consideration paragraphs A and B are entered in to.
>
> A. Mr Sadek Tchoketch-Kebir consents to Ms Uyiosasere Obaseki holding the funds personally until one of the specific event (B1 or B2) occurs for Mr Sadek Tchoketch-Kebir's further benefit.
>
> B. The funds can be held in any format Ms Obaseki believes to be appropriate which includes but is not exclusive to investing it, banking it and making use of the same on condition that,: (sic)
>
> 1. From the 1st June 2019 payments of at least £3,000.00 per month is paid into an account of Mr Sadek Tchoketch-Kebir's choosing. If none is elected by Mr Sadek Tchoketch-Kebir an account held with Grazing Hill will hold the monthly payments.
>
> 2. Upon Notice of at least 8 weeks by Mr Sadek Tchoketch-Kebir a larger sum will be returned of a maximum of £10,000 or further sum by agreement …"

29.2 It was submitted that the reason the FLA gave rise to misconduct was, as Ms Obaseki had admitted, that Ms Obaseki did not advise the client to obtain independent legal advice before he signed it. The problems did not end there, as the client could not read documents except in large print and he also used a magnifying glass. He confirmed that he had gone to Ms Obaseki's office alone on about 18 April 2019 when he was asked to sign a document. He could not read what he was being asked to sign as he did not have his magnifier with him. She did not read the document to him. She told him the

document was required to enable her to obtain cheaper insurance and he was not given a copy of it. He did not know he had signed a FLA. Ms Obaseki told the client on 18 April 2019 that she would pay him some of his funds in two weeks' time. There was a further meeting on 23 April 2019 when she indicated that she had problems withdrawing the funds. It was not until 29 April 2019 that she informed the client that his funds had been lost (i.e. some 14 months after she became aware of the loss of his money).

29.3 In her letter to the SRA of 24 July 2020 Ms Obaseki said:

> "I appreciate the seriousness of my mistakes in this case and along with the gravity of taking on the responsibility to pay the sum lost, I understand the SRA may view my actions fell short ... I wish to give my personal reassurance that there has been no iota of dishonesty to retain the funds myself in this matter, except that there has been an error of judgement on my part for which I am deeply saddened."

It was submitted that Ms Obaseki had repaid some of the money beginning on 2 May 2019. Mr Scott referred to a document attached to the FI Report which Ms Obaseki had provided to the client on 18 June 2021 which set out the repayments made and the dates and was accepted as broadly accurate. It included disbursements deducted between 30 March 2017 and 26 February 2018.

29.4 Mr Scott submitted that the matter came to the attention of the SRA on 9 March 2020 when the client and his son made an application to the SRA Compensation Fund. The letter included:

> "I am disabled and was on benefits at the time (I am a pensioner now) and I expressed concern to Ms Obaseki about whether this money returning to me would hurt my benefits. She said that it would not, as long as I kept it in a solicitors client account under her supervision, so I chose this option. I also requested that she draft a letter denoting that these funds were for my children, but this was never delivered.
>
> Shortly after, I reconcile (sic) with my son and we are on good terms again. I decide to start looking for properties to buy with my son. My son was studying in Norwich, so we look for properties there. Also, looking for properties outside of London allows the properties to be within our price range.
>
> I visit multiple properties and correspond with Ms Obaseki in this property-buying process. In late 2017, I delay my property-buying goals temporarily after Ms Obaseki convinces me that it is wiser to wait for Brexit and the subsequent market crash…"

29.5 The claim on the Compensation Fund referred to a previously mentioned visit to Algeria in February 2019 after which the client asked Ms Obaseki if he could withdraw cash:

> "In February of 2019, I visit family in Algeria and during that trip I find a well-priced property. Upon returning to the UK, I request £70,000 in cash from Ms Obaseki so that I can buy that property in Algeria. Obaseki instructs me to return

a week later where she will accompany me to Barclays bank and make the withdrawal in person and hand me the cash. Once I return to her, she gives me £3k cash in an envelope and complains to me that the bank is taking longer than expected. Upon hearing this, I tell her that if she isn't able to withdraw the cash then she should just transfer the money to my son, who could then withdraw the money. She asks for a little more time.

Around a week later, she calls me crying her insurance company increasing her fees and call me into a meeting next week. During the meeting, Ms Obaseki makes me sign a letter that she claimed was important for insurance purposes. I am blind and desperate to get my money as soon as possible, so I signed the letter without the presence of my son (who usually checks these things for me). Ms Obaseki recommends that my son is young and not to be trusted with a lump sum of money, and to instead deposit £lk monthly into his account. This is not an acceptable solution, I needed money urgently to buy property and so again I insist on the £70,000.

Later, I communicate the details of the meeting with my son and this makes him alarmed. He was very unhappy to hear that I had signed something important without knowing what it was. My son demands that we go see Ms Obaseki together. Around a week later, we see Ms Obaseki and she tells me that the money had been invested (neither me nor my son consented to this act) and that she needed 60 days notice to retrieve it. My son also asks to see the letter that she made me sign, and Ms Obaseki presents him with an unsigned document…

I tell Ms Obaseki that 60 days is too long to wait, so Obaseki promises that she will borrow £70k and give it to me as soon as possible…

She warns us that if we take action against her I will get in serious trouble and lose my pension due the failure of myself to notify the pension system that I had money under my name despite the fact that she had told me from the beginning that I didn't need to notify anyone of this money. She also says that because of this technicality, the insurance couldn't be claimed and the only way for me to get my money back was for her to pay it back, gradually. Ultimately, we come to the agreement that she will pay it back in instalments of £5,000 direct transfers to my sons (sic) Santander account …"

29.6 Mr Scott submitted that on 24 April 2019, Ms Obaseki called the client and arranged a meeting which he attended with his son. She "gradually" told them what had happened. She told them she had contacted the police. She had contacted her insurance brokers who told her that this was unlikely to be covered by insurance. She told the client that she wanted to start paying for the loss as soon as possible. Ms Obaseki then drew up an agreement that was signed. A copy was given to the client.

29.7 On 25 August 2020, Ms Obaseki was asked during interview with Mrs Bartlett:

"SB Ok, ok. So, what, what did you know about Mr Sadek's financial circumstances at the time he instructed? Was he a wealth (sic) man? Was he on benefits? What, what sort of financial background did he have, do you know?

UO He didn't really tell me what financial background he had. But we would have asked for details. I don't believe I have it here today. We will have taken details of what his situation and circumstances were at the time.

SB Mmm.

UO If I remember rightly, I know that he's in receipt of Disability Living Allowance."

29.8 Ms Obaseki was asked if the client had any impairments and she repeated that he was in receipt of Disability Living Allowance. She explained:

"UO: I do know that. And when he came to the office, he clearly has a - he's, he's got narrow vision very –

SB Right.

UO That's, that's how he explained. He can see but he has narrow vision. So, he needed a little bit of guidance.

SB Oh, so he needed some reasonable adjustment to help his vision?

UO Move the chairs out the way yes, and things like that yes.

SB But he could he, he could read with whatever he brought with him, did he?

UO He, he brought with him a glass, he brought with him a glass, and we made the letters I think, sent to him a little bit larger ...

SB Right, ok.

UO as a result.

SB But it wasn't like he needed somebody to actually read it out for him, to be able to ...

UO Not, not to my recollection.

SB No

UO But he said that he would prefer doing things on the phone, but obviously as you know, there's certain things that we need.

SE Mmm.

UO I mean this is just, this is going back some time, but if I remember rightly he, he had a glass with him. He came to the office by himself, he didn't, no-one accompanied him.

SB Right.

UO He doesn't live very close by to the office so, I would imagine he got a bus ..."

29.9 Mr Scott submitted that then Ms Obaseki was asked in interview about the FLA:

"SB Did you, did you, did you, do you think that actually there is a - did you ask him to, before he entered into the Financial Loan Agreement, did you tell him to go and get independent legal advice on the Agreement?

UO They - I said - no, I just said there's different things that you can do. No, yeah, the discussion was that yes, you can, you can go and, you know, think about it, and talk to whoever but I didn't say - use the words 'independent legal advice', I didn't use those words.

SB Do you agree that there was a conflict of interest between you and Mr Sadek, because of the nature of the loan? Obviously, this ultimately is a benefit to you, isn't it? Do you, do you agree that there's a conflict of interest there, and actually he should have had independent legal advice before he signed this?

UO I think really, what we were looking at was whether - to make myself liable, I think I used those words, to make myself liable for this sum…"

Mr Scott submitted that Ms Obaseki did not accept there was a conflict while it was the SRA's position that there was a quite clear conflict.

29.10 Mr Scott submitted that the client was interviewed on 16 September 2020 and provided a witness statement dated 10 February 2021. It was in French and had been translated. The client's son also provided a witness statement dated 7 December 2020 which referred to a meeting he attended with his father and Ms Obaseki on 23 April 2019 when she told them that she had invested the client's money and needed 60 days to retrieve it. They went to see her again on 29 April 2019 and she admitted that the money had been stolen. She said that she had invested £60,000 of another client's money and money of her own. She then started making cash payments. She asked the client to sign an FLA and he had refused as the payment amount of £3,000 per month which was referred to in the agreement was too small. On 6 June 2019, the client and his son visited Ms Obaseki again and the son made a covert recording which was before the Tribunal. At that meeting, Ms Obaseki said that the FLA was for insurance purposes. If anything happened to her, the document would give the client the ability to go to the insurance company. Ms Obaseki also indicated that she did not want to tell the insurance company why she held the client's money because he was in receipt of benefits and she did not want to say that as she was helping him defraud the benefits system. She did not want to give the insurance company an excuse not to pay.

29.11 Mr Scott also referred to Ms Obaseki's representations against the recommended intervention where she stated that she intended to replace the whole sum from billings which would not be possible if she was unable to work. She accepted she had displayed "an astonishing lack of judgement". Mr Scott submitted that in this document

Ms Obaseki alleged that the client did not want his funds in his accounts but the SRA did not accept that. She said:

> "The 'financial loan agreement' giving the client's retrospective permission in respect of my use of the funds was well intentioned as I wished to formally assume responsibility for the loss of the money and start making regular repayments from 1 June 2019. This is as confirmed in my 24 July 2020 letter to the SRA in which I stated that "[I] "wanted to start paying for the loss as I felt responsible. I would take on the obligation to pay what was lost ..."

She also said:

> "I accept that my conduct was of a very high standard. This became apparent to me as events started to unravel. In a bid to correct errors I became desperate and ended up making more errors. I am truly sorry I lost my sense of focus and direction for a short period of time which has ended up in the present situation I find myself. I am genuinely sorry."

Mr Scott submitted that the word "not" was missing from the first sentence of the quotation above.

29.12 Mr Scott submitted that Ms Obaseki was asked in interview:

> "SB …So, the next, the next thing I want to ask about is again, thinking about when Mr Tchoketch-Kebir became aware of, of the - what had happened to their money. I think you said that was 25 April 2019, when he signed up to the Financial Loan Agreement, is that right?
>
> UO I actually thought it was before then. I thought it was, I thought it was something like the 19 April. I'd need to check my file to find about those dates. I don't think it was 25th I think it was before then, because I contacted him, I thought I'd contacted him earlier in April ..."

<u>Breaches of regulatory provisions in respect of allegation 1.4</u>

29.13 It was submitted that Ms Obaseki had the client sign an FLA which purported to give his retrospective consent for her to hold his funds personally and to invest them. A solicitor acting with integrity would not have asked a client to sign such a document as it was clearly not in his best interests and was designed retrospectively to legitimise her misconduct. Such a solicitor would also not have told the client that the document was to enable her to obtain cheaper insurance.

29.14 Further, a solicitor acting with integrity would not have asked the client to sign the document without informing the client of the circumstances including that she had transferred his funds into her personal account and subsequently lost them in an investment scam; ensuring that the client properly understood the document (for example by providing a translation; ensuring that he was able to read it, given that he was visually impaired (for example by printing it in large font and making a magnifier available, or allowing him to take it away and read it in his own time before signing it); and advising the client to seek independent legal advice.

29.15 It was also submitted that Ms Obaseki acted in a way which could damage the trust placed in her and the solicitors' profession and therefore breached Principle 6. Public trust was diminished by solicitors who have clients sign documents which are not in the client's best interests and which seek to legitimise the solicitors' misconduct. It was also diminished by solicitors who give a false explanation as to the purpose of the document, fail to ensure that the client is able to read and understand the document and fail to advise the client to seek independent legal advice where this is necessary, as it was here. A solicitor acting in their client's best interests would not have asked a client to sign the FLA as it was not in his best interests and sought to legitimise the solicitor's misconduct. Even if it was appropriate for the solicitor to have asked the client to sign such a document, a solicitor acting in the client's best interests would have explained that she had transferred his funds from the Firm's client account into her personal account and subsequently lost the funds in an investment scam; advised him that he might have a claim against her and/or the Firm and to seek separate legal advice. They would have ensured that he was able to read and understand the document; clearly explained the document to the client to make clear the nature of the document they were being asked to sign. If the client could not understand due to language difficulties, they would have the document translated. When a client was unable to read the document due to impaired vision, the solicitor would take reasonable steps to ensure the client was able to understand the document. These might include printing the document in large font, reading it to the client and allowing him to take it home to read.

29.16 It was submitted that the FLA was in the interests of Ms Obaseki. It purported to give retrospective authority to her to transfer the client's funds into her own account and then use them to invest thereby making her transfers and use of the funds legitimate. It was not in his interests. She did not make him aware of this before she asked him to sign it. Her actions were therefore in breach of Principle 4 of the SRA Principles 2011.

29.17 Outcome 3.4. of the SRA Code of Conduct 2011 states: you do not act if there is an own interest conflict or a significant risk of an own interest conflict. Indicative behaviour 3.8 states that borrowing from a client may tend to show that the Outcome has not been achieved unless the client has obtained separate legal advice. Ms Obaseki was in a clear position of own interest conflict with the client. She had taken his funds without his authority and lost them in an investment scam. She owed him a significant amount of money. She arranged for him to sign a document which purported to state that he had authorised the transfer and investment of his funds. She failed to achieve Outcome 3.4.

29.18 It was also submitted that Ms Obaseki's actions were also dishonest. She pressured an elderly client who was registered blind and whose first language was not English to sign the FLA. She told him that the document was related to her insurance. This was untrue. She knew that his funds had been lost but she failed to inform him of this. She knew that he had a potential claim against her and/or the Firm and failed to inform him of this. She knew that the document was not in his best interests but failed to advise him to seek independent legal advice. The purpose of this document was to make it appear that the client had consented to her taking his funds and investing them when she knew he had not so consented. It purported to give retrospective consent to Ms Obaseki's misconduct. She knew that the client was elderly, that his first language was not English and that he was visually impaired. Despite this she took no steps to ensure

that he was able to read and understand the document. Ordinary decent people would consider this to be dishonest.

The Respondent's Submissions

29.19 Ms Obaseki stated it was not accepted that the FLA was signed on 18 April 2019 as the client asserted, but it was discussed and drafted for him and he had signed it. Ms Obaseki accepted that the FLA had been drafted by her, but not that it was in breach of the Principles or that she had acted out of self-interest. She stated that it was her aim to make the client as whole as possible. She felt "absolutely horrible" that so much money had been lost and so her aim was for him to have something confirming the situation which was that he should be repaid. She said in her Extended Answer:

> "The Agreement was put in writing to ensure that STK was made whole and the burden of the loss due to the scam was suffered by myself as the police had failed to find the funds. It is accepted that the financial loss is significant to anyone person including myself, but it is my mistake and felt that it was my burden to rectify."

29.20 In cross examination, Ms Obaseki did not dispute that the client did not ask for money in 2018 but in 2019 he did ask, as he had set out in his witness statement:

> "22.I went to see Ms Obaseki to ask for some cash to buy a property on 10 April 2019. Moadh did not come with me to that meeting. I asked Ms Obaseki for £25,000.00 as soon as possible because otherwise I would lose the opportunity to buy this house.[in Algeria] When I asked Ms Obaseki for the money she told me that she would need to ask the bank and that the money was in the bank. Ms Obaseki asked me to give her two weeks because it was a big amount of money and she would give me the money, no problem. Ms Obaseki stated that she was very busy and that she was dealing with a big case.
>
> 23. I saw Ms Obaseki again on 15 April 2019. I told Ms Obaseki that I had made a mistake and that I needed £70,000.00 and not £25,000.00. This was because I had made a mistake about the currency conversion rates.
>
> 24. On 17 April 2019, Ms Obaseki telephoned me crying and said she needed to see me and that is was an emergency. Ms Obaseki said that the insurance company was going to double or triple her insurance fees. Ms Obaseki asked me to make an appointment to see her that week, as soon as possible, to sign some documents.
>
> 25. On about 18 April 2019, I went to see Ms Obaseki on my own. Moadh did not go with me. Ms Obaseki told me I had to sign a piece of paper otherwise she would get into trouble. Ms Obaseki gave me two pieces of paper to sign. I did not have my reading magnifier with me. I was not able to read what I was being asked to sign. She did not read out what she was writing, she just explained that it was for her to get cheaper insurance. I did not take a copy of what I had signed home with me."

29.21 Ms Obaseki disputed the client's assertion that she had telephoned him in tears about her insurance premium. On the first occasion she called him and told him about the Firm's insurers and that she wanted to go to another insurance company and that she had prepared a statement for them which she asked him to sign. She felt that he had confused the documents but this did happen in 2019What she had were bits of information that she was putting to a broker connected to her former insurance company. She wanted him to look at the scenario. She was not asking about it as a claim but whether it would be accepted by an insurance company. She was told that it was outside her role and so an insurance company would not pay out on it.

29.22 Ms Obaseki asserted that the client signed a document at the second meeting not the first and that he was alone at the first meeting only, not the second meeting. He did not have his magnifier but the size of font on these documents was the same as on letters sent to him previously. Ms Obaseki agreed she did not read it to him but he was with his son. As to whether she gave him a copy, he and his son had the blank copy which they provided to the FIO. She had not said that he could seek legal advice but she had said he could go to the SRA, the police or whatever he wanted to do. She never said it was anything to do with the insurer; it was about trying to make him whole; huge amounts of money had been lost in the scam and this document was something for him to show payments he had received from her. He had received £3,000 on 2 May 2019 and his son was saying that it should be more and wanting penalties. Evidence had been given that he wanted £10,000 a month.

29.23 Ms Obaseki maintained that it was at the second meeting that she and the client signed a document not on 18 April 2019. She had picked up the signed document although she could not now find it. She rejected the suggestion that the document had been signed before she told the client what had happened to the money. She said the whole point of the document was that they knew what had happened with ISG Exchange and she was trying to show them she was committed to the client being made whole. She believed they relied on this agreement. Ms Obaseki denied that the purpose of the agreement was to make it look as if the client had consented to her holding onto his funds. At no time between November 2017 until she telephoned him in April 2019 did he demand or want his funds; there was an understanding between them.

Determination of the Tribunal in relation to Allegation 1.4

29.24 The Tribunal had regard to the evidence and to the submissions for the SRA and by Ms Obaseki. In respect of allegation 1.4, Ms Obaseki stated in her extended Answer:

"This allegation is not accepted as put.

> Any agreement made was in an attempt to ensure that Mr Sadek was placed back in to his position that he was in prior to the loss."

The circumstances and timing around the signing of this document were disputed but Ms Obaseki did not dispute that she had had the client sign an FLA or dispute its terms. Ms Obaseki maintained that the FLA was in the client's best interests. The client maintained that he did not know what he had signed by reason of his visual impairment. Whatever the circumstances, the Tribunal determined as a fact that Ms Obaseki had a clear conflict of interest with her client, having invested a substantial amount of money

belonging to him in an investment scheme which had proved to be fraudulent. Ms Obaseki admitted in oral evidence that she had not advised the client that he could seek independent legal advice before signing, that rather she said he could go to the SRA, the police or do whatever he wanted. In the circumstances the Tribunal found that Ms Obaseki had, as she admitted, had the client sign an FLA without advising him he could seek independent legal advice. The Tribunal considered that in having the client sign such a document, whenever that occurred, Ms Obaseki had failed to act with integrity, placing her own interests above his and that she had thereby breached Principle 2. In failing to deal appropriately with the conflict she had failed to act in the client's best interests and breached Principle 4. She had also failed to maintain the trust the public placed in her and in the provision of legal services thus breaching Principle 6. Outcome 3.4 required Ms Obaseki not to act if there was an own interest conflict or a significant risk of an own interest conflict and she had failed to achieve that outcome. The Tribunal found allegation 1.4 proved on the evidence to the required standard.

30. **Allegation 1.5. From 27 March 2017, the Respondent failed to repay client monies owed to STK in a timely manner.**

In doing so she: In relation to conduct prior to 25 November 2019, breached Principle 4 of the SRA Principles 2011 and breached Rule 7.1 of the SAR 2011. In relation to conduct which occurred on and after 25 November 2019, breached Principle 7 of the SRA Principles 2019 and breached Rule 6.1 of the SRA Accounts Rules 2019.

<u>The Applicant's Submissions</u>

30.1 For the SRA, Mr Scott relied on the facts set out in the Rule 12 Statement about the timing of the repayments made to the client commencing in May 2019, the client's witness statement dated 10 February 2021, the witness statement of the client's son dated 7 December 2020 in which he stated that on 23 April 2019, he and his father had visited Ms Obaseki together. She told them she had invested the client's money and needed 60 days to retrieve it. On 29 April 2019, he and the client went to see Ms Obaseki again. She told them that the client's money was invested in 2018 in a mass investment scam and had been stolen. She said that she had also invested £60,000 from another client and some of her own money. On 2 May 2019, Ms Obaseki gave the client £3,000 in cash. The client had refused to sign a repayment agreement which referred to payments of £3,000 per month as this was too low. On 6 June 2019, father and son met with Ms Obaseki. Mr Moadh Tchoketch-Kebir produced a recording of this meeting. At this meeting, the son asked why his father had not been given bank statements. They did not know how much was in the Firm's account. Ms Obaseki said she would check through the bank statement. Ms Obaseki said the document signed by the client (the FLA) was for insurance purposes. If anything happened to her, the document would give the client the ability to go to the insurance company. Ms Obaseki did not want to tell the insurance company why she held the client's money because the reason was that he was in receipt of benefits and she did not want to say that as she was helping him defraud the benefits system. She did not want to give the insurance company an excuse not to pay. She stated it was better if she carried on paying as much as she could. Mr Scott also relied on the FI Reports relating to the repayments.

Regulatory breaches in respect of allegation 1.5

30.2 It was submitted that between 28 July 2017 and 1 November 2017, Ms Obaseki made unauthorised transfers of funds totalling £230,000 from the Firm's client account into her own account causing a shortfall in the client account in respect of Mr Sadek Tchoketch-Kebir's funds. These transfers were made when the SRA Accounts Rules 2011 were in force. However, her conduct in relation to the failure to repay these funds spanned both the periods prior to 25 November 2019 (covered by the SRA Handbook 2011) and from 25 November 2019 (covered by the 2019 Standards and Regulations including the SRA Accounts Rules 2019). Both sets of the SRA Accounts Rules required Ms Obaseki to remedy breaches promptly upon discovery. This included the repayment or replacement of any money improperly withdrawn from a client account (Rule 7.1 of the SRA Accounts Rules 2011 and Rule 6.1 of the SRA Accounts Rules 2019). She was aware of the shortfalls in the client accounts at the time they arose because she made the transfers. However, as set out above, she did not begin making repayments until 2 May 2019.

30.3 It was further submitted that in respect of her failure to repay prior to 25 November 2019, Ms Obaseki breached Rule 7.1 of the SRA Accounts Rules 2011. In doing so she also breached Principle 4 of the SRA Principles 2011 which requires solicitors to act in the best interests of each client. It was not in the client's best interests for her to fail promptly to repay the shortfall in his client money. In respect of her failure to repay on and after that date, she breached rule 6.1 of the SRA Accounts Rules 2019. She also breached Principle 7 of the SRA Principles 2019.

The Respondent's Submissions

30.4 Ms Obaseki stated that she believed this allegation was accepted and on reviewing her position also stated that she accepted the allegation. She pointed out that no formal demand had been made for the funds until 2020 and she accepted that the funds had not been returned in a timely manner definitely from 2020 and she therefore accepted breach of the Principles and rules alleged. She said in her Extended Answer:

> "STK was asked to come in and sign to confirm that he wanted to change the property as he had changed his mind numerously…"

She accepted that as soon as the properties fell through, the funds should have been returned instead of being placed in a high yielding account. She also said in her Extended Answer:

> "This led to enquiries that brought contact with IX (sic) exchange and the grooming for the scam. It is accepted that had the regulations been known and complied with the scammers would not have been successful."

Ms Obaseki stated that she had looked into high yielding accounts and made enquiries which prompted a number of calls and emails from various companies including ISG which led to the breaches.

30.5 In cross examination, Ms Obaseki agreed that she had sent the client the schedule of repayments under cover of a letter dated 18 June 2021. It was put to her that she made a few payments and there was then a gap between 9 September 2019 and 19 July 2020. On 7 July 2020, the SRA had written to her informing her that it was investigating her based on information received from the client. It was put to her that she then made payments on 9 July 2020 in the amount of £10,000, on 31 July 2020 of £12,500, on 28 August 2020 of £10,500, on 30 September 2020 of £5,240 and on 23 October 2020 of £5,000.

30.6 Mr Scott submitted that on the 17 August 2020, Ms Obaseki had received a production notice from the SRA and then there was the payment of £10,500. On 17 November 2020, there was a further production notice recommending intervention into the Firm immediately after which there was a significant payment of £47,000 on 22 November 2020 and on 18 December 2020 a payment of £31,000. It was suggested that Ms Obaseki only made larger payments when she was receiving notifications from the SRA and thought that she ought to make them.

30.7 Ms Obaseki rejected this suggestion; she stated that she had a number of meetings with the client and it was agreed that she would pay £5,000 a month. In the period from July 2019 onwards she had increasing difficulty personally and in respect to the revenue she could get from the Firm. The result was that she could not keep up the payments from 8 September 2019 onward. Significant revenue came from one case in July 2020 and from then on she was identifying particular cases where there would be sufficient revenue to satisfy the liability. She and the client agreed on £5,000 a month but where she could pay more she did so. In November 2020, she settled a case in respect of which she should have received £10,000 to £15,000 more than she did, but she settled for less so she could give the client his substantial lump sum. The payments were nothing to do with the SRA's actions; they started well before the SRA's involvement. She asked from what and where was she expected to pay more money to the client earlier?

30.8 Ms Obaseki submitted that she had referred to obtaining a loan at one of the meetings with the client and had looked into it but the bookkeeper had left and she needed to get help to put the information together so she could make an application for a loan. She was able to do this for December 2020. A case came through and so she could add a small amount to the payments to the client.

30.9 As to the fact that she owned two properties one of which was apparently her home and worth £1.5 million, Ms Obaseki said that it could be worth that amount but she did not know. There had been a change in the law regarding mortgages so that they were based on income. If it had been possible she would have sorted out the liability a lot earlier. As to whether she could have sold one of her two properties, she stated that her mother had died the previous year and when would she be expected to make the sale?

30.10 The Tribunal asked Ms Obaseki for clarification as to how much money was still outstanding to the client and she responded £56,130. As to whether she had any plans to repay the money, Ms Obaseki stated the matter had been going on for some time. Repayment had paused when she had to close down the Firm as a regulated company. Her intention had been and was to pay the outstanding money but she needed to know if she could continue to work as a solicitor. Work to close down the Firm was substantial and also restrictions had been placed on her practice by the SRA. She would need to

ask the SRA about it. She had not renewed her practising certificate. She had sent a couple of reminders to the SRA but had no responses. She had to concentrate on closing down the Firm and getting funds in. She referred to the distress of going through the disciplinary procedure.

30.11 The Tribunal asked why, as Ms Obaseki had substantial real estate, she had not raised funds in respect of it and she replied that she could have; she needed to make an application for a further loan. As to the possibility of selling one of the properties and obtaining housing from the local authority, Ms Obaseki responded that she would not be able to get that. It was put to her that she had an obligation to a higher authority and she responded but not at cost to oneself. If she sold a property she, her father and her foster children would be homeless. She could not obtain another property which would house everyone and there were difficulties with a mortgage or further loan because she was divorced but she would look at those options again.

Determination of the Tribunal in respect of allegation 1.5

30.12 The Tribunal had regard to the evidence and to the submissions for the SRA and by Ms Obaseki. The Tribunal noted that Ms Obaseki accepted the facts upon which this allegation was based. The Tribunal considered that admission to be properly made; it was clear from the evidence that even after she had informed the client that his money had been lost some time previously, she only made instalment payments and monies were still outstanding. The Tribunal had before it a schedule of repayments which Ms Obaseki had sent to the client on 18 June 2021 which recorded payments commencing on 2 May 2019 totalling £177,373.40 of the £230,000 which had been lost. There had been some further payments thereafter. Ms Obaseki herself estimated the outstanding amount as being in excess of £56,000. The Tribunal understood from her oral evidence that Ms Obaseki had chosen to repay by instalments rather than by realising a second property asset for family related reasons. It was not disputed that the client had been kept out of a substantial amount of his money for a considerable amount of time and that monies were still owing to him.

30.13 The Tribunal found that Ms Obaseki's conduct constituted a breach of Principle 4 of the 2011 Principles failure to act in the client's best interests, and Rule 7.1 of the SRA 2011:

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

Having regard to the time period over which the money was outstanding, the Tribunal also found proved breaches of the equivalent Principle 7 of the 2019 Principles and Rule 6.1 of the SRA Accounts Rules 2019:

> "You correct any breaches of these rules promptly upon discovery. Any money improperly withheld or withdrawn from a client account must be immediately paid into the account or replaced as appropriate."

The Tribunal found allegation 1.5 proved on the evidence to the required standard, indeed it was admitted.

31. **Allegation 1.6 Between 28 January 2020 and 1 April 2020 the Respondent provided misleading and/or inaccurate information to the Firm's professional indemnity insurers, Travelers Insurance Company, prior to inception of the policy for the year beginning 1 April 2020 in that she failed to disclose the circumstances of the loss of Mr STK's funds and Mr STK's demands for repayment.**

In doing so the Respondent breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019.

The Applicant's Submissions

31.1 For the SRA, Mr Scott submitted Ms Obaseki notified the Firm's professional indemnity insurers on 13 August 2020 of a complaint against the Firm by the client and that she had been advised by the SRA to make an immediate claim against the policy. The claim was ultimately rejected. In their letter of 22 January 2021 declining the claim, Travelers stated that they had seen a copy of a letter from the client dated 8 March 2020 demanding return of all his funds:

> "We have seen a copy of a letter addressed to you dated 08 March 2020 from Sadek Tchoketch-Kebir, whom we assume is the same person. The letter makes disturbing reading and ends with a demand for you to return all his funds, which is said to exceed £200,000, within 14 days.
>
> We were not informed by you of this demand before the policy was renewed on 01 April 2020. This is a serious breach of your duty to give a fair presentation of your risk prior to the renewal and you made no mention of it when you sent the letter of 13 August 2020.
>
> In addition, the information that you supplied to Travelers at inception and before renewal was materially inaccurate in that you made no mention of being unable to meet Sadek's demands for his money made at various times from at the latest, February 2019."

31.2 Mr Scott submitted that Ms Obaseki had completed the proposal form on 28 January 2020. The final page of the form was headed Duty of Disclosure and included a declaration:

> "I declare that to the best of my knowledge or belief the particulars and statements given in this application and any other documentation and information provided in connection with this application are true and complete.
>
> I declare that I have carried out a reasonable search of all information held by the firm and informed the Insurer of all facts which are likely to influence the insurance in the acceptance or assessment of this insurance..."

31.3 Ms Obaseki answered 'No' to the question at 7b of the Proposal Form as to whether the Partners were aware of any circumstances which might give rise to a claim against them. She answered 'Yes' to the question at 7c that all claims and circumstances which might give rise to a claim had been reported to insurers. This was not true and she knew it was not true. She was aware when she signed the Proposal Form of the loss of client

funds, and the client's demands for repayment. She was therefore aware of circumstances which might give rise to a claim against the Firm and failed to disclose this. She was aware as set out in her report to the police of the loss of the funds in the investment scam by, at latest, February 2018. The client had asked for repayment of his funds in April 2019 as set out in his statement. Ms Obaseki had arranged for him to sign the FLA on 18 April 2019 which she explained to him was for insurance. She had informed him on 29 April 2019 that his funds had been lost. Further, she had received the letter dated 8 March 2020 from the client demanding repayment of his funds. The letter from the client concluded:

> "I believe your actions have fallen far below those expected from an individual in your profession. I therefore ask you to return all my funds within 14 days. If I do not receive my funds or an adequate response from you, I will approach both the police and your regulator."

This was after she signed the Proposal Form. However, it was before the renewal of the Firm's policy and should, therefore, have been disclosed to the Firm's insurers.

31.4 Mr Scott submitted that as stated above, Ms Obaseki had herself admitted:

> "There were a number of issues around, not that I lied, but I sort of didn't tell the broker all of the details and I wasn't going to".

Mr Scott submitted that Ms Obaseki had admitted in part in the statement quoted above that she did not make full disclosure. Mr Scott further submitted Ms Obaseki was interviewed by the FIO and a colleague on 2 March 2021 and the transcript included:

> "And who raised the insurance, was that yourself Ms Obaseki or was that the clients?
>
> UO They raised it. Is it something that we could go the insurance, your insurance company with? And I had contacted my broker to see whether it was something that could go through the insurance. There was a number of issues around that so, not that I lied, but I sort of didn't tell the broker all of the details, and I wasn't going to – I kind of felt that there were a number of questions that Sadek would have to answer, I would have to answer, and would it be beneficial for us? Would we get a pay out for him? Would he be compensated basically or not? And those were the discussions we had over three or four meetings, emails, phone calls whatever, as to whether it was something. But from the conversation I had with the broker is that it was outside my duties as a solicitor so, it wouldn't be covered."

<u>Regulatory breaches in respect of allegation 1.6</u>

31.5 It was submitted that Ms Obaseki failed to disclose circumstances which might have given rise to a claim against her and/or the Firm namely the loss of the client's funds and his demands for repayment prior to the renewal of the Firm's Professional Indemnity Insurance policy. When she signed the Proposal Form for the renewal of the Firm's professional indemnity insurance on 28 January 2020 and the declarations set

out above, Ms Obaseki knew that she had made unauthorised transfers of the client's funds out of the Firm's client account, that these sums had been lost in a scam investment and that the client had demanded repayment since February 2019. She knew that these circumstances could give rise to a claim against her or the Firm. She therefore knew that the information given on the proposal form was incomplete and that the declarations were false. She also knew prior to the inception of the Firm's professional indemnity policy on 1 April 2020 that the client had again, by a letter dated 8 March 2020, demanded payment but she had failed to disclose that fact to Travelers.

31.6 It was also submitted that Ms Obaseki acted dishonestly in accordance with the test in Ivey. She therefore breached Principle 4 of the SRA Principles (2019). A solicitor acting with integrity would have disclosed these matters particularly as failing to make disclosures may put at risk the Firm's insurance coverage. In signing the Proposal Form and the declarations she failed to act with integrity and breached Principle 5 of the SRA Principles (2019). Ms Obaseki also breached Principle 2 of the SRA Principles (2019). The public's trust in solicitors was diminished by a solicitor who fails to disclose material matters to her Firm's insurers.

The Respondent's Submissions

31.7 Ms Obaseki submitted that the Tribunal had heard from the FIO that she advised Ms Obaseki that a claim should be made against her professional indemnity insurance. Ms Obaseki did not think that was appropriate or correct as her discussions with a broker were to the effect that her actions were outside a solicitor's practice and a claim would fail. However the FIO said the insurance company needed to be notified and so a letter was sent to them in 2020. This allegation was not accepted as put however she accepted that her actions as set out in the allegation were correct. She clarified that the allegation was not accepted. She also stated in evidence that at the time she completed the insurance proposal form she had not received a demand for repayment from the client. The client and his son had the benefit of an agreement with her and she had no intention of making a claim upon the insurance company. She did not believe that it would come under insurance at all. She had previously made enquiries of a broker she knew and was told that it could not come under the work done by a solicitor. Ms Obaseki emphasised that she had made a notification to the insurer but not made a claim. She had provided full details of why she had not contacted them previously.

31.8 In cross examination, Ms Obaseki agreed that the client had written to her on 8 March 2020 demanding his money back and that on 13 August 2020 she had written to the Firm's insurers; she had written to them a couple of times. As to the fact that the insurers had written to her on 17 August 2020 asking for further information, Ms Obaseki stated that her communication had been to notify them of a complaint. She provided further information in response to the letter. It was suggested that she had not responded but Mr Scott was not sure that was relevant to allegation 1.6. He submitted that the point was that the insurers rejected the claim and part of the reason for that was that she had not been accurate and not given full information when she took out the insurance.

31.9 Ms Obaseki stated that the insurance proposal form asked her to show cases that were relevant. She knew that she could not make a claim and so she excluded this matter as she did not think it was relevant. It was pointed out to her that there were what were

described as 'Important Notes' on the Proposal Form and that she was aware of the need to make full disclosure of material facts. Ms Obaseki responded, "of relevant cases". She was also reminded of what she had said in respect to question 7b 'No' when she knew that the client did have a claim against her. She responded that at that stage he was not making a claim. In respect of the fact that at the 6 June 2019 meeting the client had said he wanted his money back and they were talking about loans, she responded that he was not making a claim and she thought that they had made an agreement.

31.10 It was put to Ms Obaseki that she did not inform her insurers because she knew that she might not obtain more insurance. Ms Obaseki replied that she did not think that the case would be a claim at all. She agreed that at the 6 June 2019 meeting a claim against the insurers had been part of the discussion but the client and his son had not wanted to make a claim; it was agreed that she would be responsible for the repayment. She was directed to the client's 8 March 2020 letter when he asked for his money back. She denied that she knew she should tell the insurers before the policy started.

31.11 It was put to Ms Obaseki that she accepted in interview on 2 March 2021 that she had not been totally truthful. She responded that retrospectively she supposed every single complaint should be disclosed but in the midst of it she did not think so; she had an agreement of some sort. She accepted that it definitely became clear on 8 March 2020 that the client wanted his money there and then and that he did not want to comply and continue with the agreement. She repeated that what had happened was outside her role as a solicitor.

31.12 The Tribunal asked why Ms Obaseki had made enquiries of a broker regarding the circumstances and about what would be covered by the policy and why she had not made enquiries with her existing insurer. Ms Obaseki responded that she trusted this person to give her an explanation of whether the claim would be successful. Travelers were her new insurer and she did not have a relationship with any person there. She could see that things were absolutely awful and needed to know if she would be successful with a claim. She had not given details of the client's name etc just that the funds were his. If she had received a positive response from the broker she would have gone to the insurers but it was clear that the situation would not be covered. Ms Obaseki said that she knew it sounded stupid but her concern was how to make the client whole. She had known the broker for nine or ten years and trusted him. He had previously worked with the Firm in connexion with Aon insurance. If one were seeking advice one would not necessarily go to one person. One might get information before putting in a claim; she would always do this.

<u>Determination of the Tribunal in respect of allegation 1.6</u>

31.13 The Tribunal had regard to the evidence and to the submissions for the SRA and by Ms Obaseki. In her extended answer Ms Obaseki said:

> "The Insurance company was informed of all matters that it was believed related to the work of a solicitor. It is accepted that the actions taken were outside the scope of a solicitor."

31.14 In evidence, Ms Obaseki stated that the FIO, Ms Bartlett, had advised her that a claim should be made against her insurance. Ms Obaseki did not think that was appropriate as her discussions with a broker whom she had previously known were to the effect that what she had done fell outside a solicitor's practice and such a claim would fail and that to make such a claim would be inappropriate. However Ms Bartlett had told her that the insurers needed to be notified and so in 2020 she had sent a letter to the insurance company. She also stated in evidence that at the time she completed the insurance proposal form she had not received a demand for repayment from the client. The client and his son had the benefit of an agreement with her and she had no intention of making a claim upon the insurance company. Ms Obaseki emphasised that she had made a notification to the insurer but not made a claim. The Tribunal determined that the facts were not in dispute as to what Ms Obaseki had told the insurers when she signed the proposal form and also as to what she knew the situation to be regarding the loss to and claim by the client whether or not he had made a formal demand for repayment.

31.15 The Tribunal noted that the front sheet of proposal form clearly stated:

> "... As your policy approaches renewal date it is important that the details we hold about you are kept up to date and all material facts about the risk are declared ... The Insurance Act 2015 requires you to make a fair presentation of the risk. An insured, and their agents, are under a duty to disclose all material facts and circumstances to an insurer ..."

The final page of the Proposal Form was headed "Duty of Disclosure". This reiterated the duty to make a fair presentation of the risk. The Tribunal also noted the answers that Ms Obaseki had given to Questions 7b and 7c. The Tribunal had noted the contents of Traveler's letter of 22 January 2021. The Tribunal determined that even if Ms Obaseki's actions regarding the investment and the loss to the client fell outside the professional indemnity insurance policy these were material facts which Ms Obaseki should have declared to the insurer when she completed the proposal form which she signed on 28 January 2020. At that point she was aware the funds had been lost. On 8 March 2020, the client wrote to Ms Obaseki demanding repayment of his money within 14 days. The policy was renewed on 1 April 2020 and she notified the insurers of the situation on 13 August 2020. The Tribunal found the facts underlying the allegation to have been proved to the required standard that Ms Obaseki provided misleading and/or inaccurate information to the Firm's professional indemnity insurers as alleged. The Tribunal was also satisfied that Ms Obaseki's actions constituted a breach of Principle 2 of the 2019 Principles regarding public trust and confidence and Principle 5 the requirement to act with integrity. The Tribunal therefore found allegation 1.6 proved on the evidence to the required standard.

32. **Allegation 1.7. On 27 June 2018, the Respondent gave a statement to the Police which was false and/or misleading in that it stated that the funds lost in an investment fraud were her funds and failed to inform the police that the funds belonged to Mr STK and had been transferred by her from the Firm's client account.**

In doing so the Respondent breached either or both of Principles 2 and 6 of the SRA Principles 2011.

The Applicant's Submissions

32.1 For the SRA, Mr Scott submitted that Ms Obaseki provided a statement to the Police dated 27 June 2018. It was signed by her and bore a statement of truth. The statement contained the following declaration of truth at the beginning:

> "This statement (consisting of 5 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true."

In that statement Ms Obaseki stated that she had invested £230,000 in ISG Exchange between July and November 2017. She outlined the circumstances leading up to the investment. She stated that at the end of November 2017 she had asked for a refund of the funds. She had tried to withdraw her money in February 2018 at which time she believed that it was a scam. She stated that she believed she was a victim of fraud. At no point in her statement did Ms Obaseki confirm that the funds she invested had come from the Firm's client account, or that they had originated from the client. She did not inform the Police that she had transferred the funds from the client account to her personal account before investing in ISG Exchange. Instead she referred to the investments she had made, to her funds and to her money. She said she was a victim of fraud and had suffered the loss. This was false and misleading. The funds did not belong to her.

Regulatory breaches in respect of allegation 1.7

32.2 It was submitted that a solicitor acting with integrity would have informed the police that the funds which had been defrauded belonged to a client and that they had been transferred from the Firm's client account. By failing to tell the police this in her witness statement she breached Principle 2 of the SRA Principles 2011. The public would expect a solicitor to provide accurate information to the police when reporting the loss of client funds. Her failure to tell the police that the funds lost belonged to the client and had been transferred from the Firm's client account would diminish the public's trust in her and in the profession. Principle 6 was therefore breached.

32.3 It was also submitted that Ms Obaseki signed a witness statement containing a statement of truth. In that statement she stated that the funds invested and lost in ISG Exchange were her funds. This was untrue and she knew it was untrue. The statement was therefore dishonest in accordance with the test set out in Ivey.

The Respondent's Submissions

32.4 Ms Obaseki initially stated that the allegation was not accepted but she needed to read the statement and come back to the allegation. Having reviewed her position Ms Obaseki denied this allegation. In oral evidence, Ms Obaseki maintained this stance; that she had been asked by the police for a brief statement for the purposes of the CPS. The police wanted to know that there had been transfers and the relationship with the scammers. She had tried to make the statement as full as possible but the police contacted her and asked her to provide it on that day. She was also asked not to provide so much detail as they were only interested in detail about the transfers.

32.5 In cross examination, Ms Obaseki agreed that in her statement to the police she had not mentioned that the money came from her client account. She denied that she deliberately not did not tell the police that the money belonged to one of her clients. The police had called her on the date she signed the statement asking for it. She explained that she still needed to gather dates together but they said they did not want all the dates but specific confirmation that transfers had been made to ISG. The police said that if they wanted a full statement, they would come back to her. There were a number of people in her position. That was the reason she had typed up the statement quickly. She stated that she asked if they wanted to see where the transfers of the funds came from. She had drafted the statement and the police sent it back to her for signature. In cross examination MS Obaseki said that she had desperately wanted to put in a full statement of what had happened. She denied that she did not want the police to know that it was client money as that would lead to difficult questions. She had already informed the FCA it was client money and made complaints to it but it was unresponsive.

32.6 Ms Obaseki was directed to a client complaint form she had submitted to ISG dated 5 March 2018 as part of what Mr Scott described as quite a lot of correspondence with them. She responded that in an email of 5 February 2018 she had said to ISG:

> "As stated your plans are great but they are dependant (sic) on me obtaining the signatures of my client to add funds. Until we have this I do not see the point in talking about your long term plans as of yet."

Ms Obaseki stated that there were further emails which said that this was client money.

Determination of the Tribunal in respect of allegation 1.7

32.7 The Tribunal had regard to the evidence and to the submissions for the SRA and by Ms Obaseki. In her Extended Answer, Ms Obaseki stated:

> "There was and remains no intention to mislead in any way the police. The scam was to provide a specific client account which would be my responsibility."

In oral evidence Ms Obaseki maintained her stance that she had been asked by the police for a brief statement for the purposes of the CPS although she would have preferred to have given more detail. The Tribunal found as fact that Ms Obaseki had given a statement in which she did not mention that the money lost had been client money. This might have been inaccurate but at that point it was not material whose money it was. It was also a fact that, as she said, it was she who had put the money into the scam account having transferred it from her personal account and she did not need at that point to highlight that it was client money. The Tribunal felt that the police did not need to know at that point what arrangements she had been making for money which she held on trust for the beneficial owner her client. It would have been different if the police had asked about the background to the arrangements. The Tribunal considered that to allege that the statement was false and/or misleading was too strong. The Tribunal considered that the background to the arrangement was irrelevant at that particular time. Accordingly the Tribunal found that allegation 1.7 was not proved on the evidence to the required standard. It did not therefore need to go ahead and consider breaches of Principle or the allegation of dishonesty.

33. **Allegation 1.8. The Respondent failed to make an accurate and or timely report to her client STK of the loss of £230,000 of his funds.**

In doing so, the Respondent breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011 and failed to achieve Outcome 1.16 of the SRA Code of Conduct 2011.

The Applicant's Submissions

33.1 For the SRA, Mr Scott relied on the Rule 12 Statement, the FI Reports, the fact that Ms Obaseki did not immediately inform the client his funds had been lost, the facts around the signing of the FLA and what Ms Obaseki told the client when he sought the return of his money, the client's witness statement and what Ms Obaseki had said in her two interviews with the SRA. Ms Obaseki was asked in interview why she did not tell the client about the loss of the money until April 2019. She said:

> "UO I have spoken to you about this before, Ms Bartlett. I was obviously petrified, it's a lot of money. Also, there was some hope and belief that the police would be able to recover it. That was, that hope was dashed after some time."

And

> "UO I've just explained to you Ms Bartlett. It was the hope and belief at some point very soon the, the funds would be returned. We were given witness statements apparently, very brief witness statements. They wanted to make applications for I think Freezing Orders, and things like that, and at that they'd asked me not to make any applications for any Freezing Orders or anything like that. So, you know speaking to somebody and telling them of a loss, such huge financial loss, when the funds have not been recovered is terrible. If there was any hope that you could - I could tell them about it that the funds had been recovered, or half had been recovered or a third had been - or anything like that, that would have been so much more better (sic) for anyone to deal with, isn't it?"

Regulatory breaches in respect of allegation 1.8

33.2 It was submitted that by, at the latest, February 2018, Ms Obaseki was aware of the loss of the client's funds and therefore of a potential claim against her or the Firm by him. However, she failed to inform him of the loss of his funds until on or around 18 April 2019. Outcome 1.16 of the SRA Code of Conduct 2011 requires solicitors to inform clients if they discover any act or omission which could give rise to a claim by them against them. A solicitor acting with integrity would have informed her client promptly after becoming aware of the loss or potential loss of his funds. Ms Obaseki failed to act with integrity and thus breached Principle 2 of the SRA Principles 2011.

33.3 The public trust in solicitors is diminished by a solicitor who loses client funds and fails to tell the client about this for over a year. Principle 6 of the SRA Principles 2011 was therefore breached. The failure promptly to inform the client about the loss of his funds potentially prejudiced action he might have wished to take to try and protect or recover

those funds, including seeking independent legal advice and taking legal action against those responsible, including Ms Obaseki and ISG Exchange. She therefore failed to protect client money and Principle 10 of the SRA Principles 2011 was breached.

33.4 It was also alleged that this failure was dishonest. Ms Obaseki deliberately did not tell the client of the loss of his funds until 29 April 2019. She knew that the funds had been lost. However on 18 April 2019, she told him that she could pay £270,000. On 23 April she told him that she had problems withdrawing cash and needed 60 days to take money out of the investment. Ordinary, decent people would regard this as dishonest.

The Respondent's Submissions

33.5 Ms Obaseki stated that she accepted allegation 1.8; informing the client did take some time to happen. On review she confirmed her acceptance. She stated that as soon as she knew in March 2018 that the money had been lost she should have informed the client. She admitted that she put her head in the sand and hoped beyond hope that the police would find the funds and then she would explain to him what had happened.

33.6 In respect to when she realised the ISG Exchange was a scam, Ms Obaseki agreed that at the latest by 27 June 2018 when she gave her statement to the police, she must have known that it was a scam. She said at that time there were realisations that there was definitely something wrong. She was referred to the ISG Exchange client complaint form dated 5 March 2018 in which she complained she was not able to withdraw funds. It was suggested that she had realised by that stage that it was a scam as she was getting "the run around" when she asked to transfer the funds. In her statement to the police she said:

> "I became aware that I must be a victim of investment fraud when the answers they were giving me simply did not add up at the end of December 2017."

It was put to her that at some date between end of December 2017 and June 2018, she realised that she had been the victim of a fraud. Ms Obaseki agreed those dates. It was suggested to Ms Obaseki that by about February 2018 she realised she had been defrauded. Ms Obaseki agreed and said she had also gone to the FCA and noted that their website had changed. She had not told the client that there had been a fraud and £230,000 of his money had been lost. She said at that point she should have told him but it was hope and despair. She just hoped that the police would find the money and sort it out.

33.7 In cross examination, Ms Obaseki stated she had told the client about the loss of funds at the meeting before 29 April but he said it was on 29 April. She agreed that the FLA did not mention the loss of funds. It was put to her that the document said that the funds could be held in any format which she believed to be appropriate which included banking, investing and making use of it, provided payments were made back to the client but this was not right because by the time the document was signed the funds had been lost. Ms Obaseki asserted that at that time the client said he did not necessarily want back all the funds at once.

33.8 As to the fact that when the client and his son asked for money, Ms Obaseki said she needed 60 days, she said that they wanted everything in cash and that she needed a bit of time. She told them when they started asking for details of how to settle the matter; she gave them options of going to the police or the SRA. As to the fact they asserted that she told them she had lost £60,000 from another client, Ms Obaseki stated that this was part of the confusion; they had asked her about the scam. When she told them what others had lost it was a discussion about what she knew. It was not true that she said that she had lost her own money as well. It was also completely untrue that she had warned the client that if he sued her he would get into trouble for tax reasons. If this were true it would have been so from the onset of the case. She could not think how either the client or his son came to that conclusion.

33.9 As to the document which the client had refused to sign in which payments of £3,000 were referred to, Ms Obaseki stated that he had asked for that amount at one of the first meetings and that she had asked him to sign a document agreeing to repayments of £3,000 a month. She wanted it in writing that he had received the money but he changed his mind and wanted £5,000 a month. She was trying to stick to £5,000 a month and sometimes she paid double that as she tried to catch up with payments she had missed.

33.10 Ms Obaseki agreed that in an e-mail from the client's son dated 22 May 2019 he had asked for a statement from Barclays Bank and in spite of further emails asking for that statement she had not provided it. Ms Obaseki stated that he knew the money had gone out and he wanted the account details to see the amounts paid in as he believed his father had paid in more money than she had outlined. She did not provide him with a copy of the client account; she did not give out client account statements and thought there was a rule which prevented it.

33.11 Ms Obaseki was also referred to references in the transcript of the 6 June 2019 meeting to the client coming to see her and her having him sign two documents (MK refers to Mr Moadh Tchoketch-Kebir):

> "MK You said it was for the insurance company.
> UO Yeah, for the insurance company."

Ms Obaseki went on to say that she was not sure if the client was going to apply to the insurance company. Ms Obaseki stated that she was not sure on what basis he could apply; they had a number of meetings and discussed if he could apply and she explained what she had found out. He could not apply directly but he could ask her to. They had discussions as to whether a claim would be successful or whether a loan should be taken out. This was what the discussions on 29 April were about. She denied that she was contemplating a claim at that stage because she did not think that it was going to be successful and she did not think that the client could make a successful claim. After the enquiries that she had made they decided not to make a claim but going to the police and the SRA were options for them.

33.12 Ms Obaseki agreed that at the 6 June 2019 meeting she told the client and his son that she was not going to inform the insurers that the client was in receipt of disability benefits and a reference had been made to defrauding benefits. Ms Obaseki stated that at a previous meeting the client's son had asked if she could make a claim and he asked for the meeting on 6 June to clarify a few points. She was confirming that she could not

make a claim and could not say that he was on benefit and that she had held onto those funds helping him to defraud the benefits system. She rejected the suggestion that she was trying to scare the client and his son into not making a fuss; they wanted clarification of some things. She was a bit irritated and busy. She denied that she said that she might be helping them defraud the system rather that it could be said but it was not true and the client said it was not true.

33.13 Ms Obaseki referred to the part of the transcript of the 6 June 2019 meeting where she said:

> "UO And you have a document saying that this company owes you money, do you understand? So that protects you a little bit. Then, I don't want to push it with the insurance company.
>
> MK Yeah
>
> UO Because I don't want them to tell you, I just, I don't want to tell any more lies…"

She stated but she had not lied to them or anyone else up to that point. It was put to her that the following exchange took place at the 6 June meeting:

> "UO Let me try and rectify it. If you don't - you can rectify it yourself because really, my life is in your hands. You can decide that you're going to make whatever complaint and whatever. But then it's out of my control.
>
> MK Yeah, yeah.
>
> UO But while it's in my control, let me try and see if I can rectify it."

Ms Obaseki denied that she was trying to discourage the client and his son because she knew they were considering making a complaint. Mr Scott suggested she was saying that they could make a complaint if they wanted to but then she would not be able to repay them. Ms Obaseki stated that she thought that at the first meeting with the client's son she gave him the option that he could go direct to the SRA or the police and offered to give him information to do that. The 6 June 2019 meeting was reaffirming that there was nothing to stop them doing that if they wanted to but while they were not doing that she would try to rectify the situation. She was not trying to discourage them in anyway whatsoever; she gave them as much information as they needed to go and make a claim. Ms Obaseki emphasised that the recording of the meeting was not complete; in evidence the son had said that he had cut off parts of the recording and she believed that he had. There had been a discussion about when they had instructed her; a brief sentence or two about it and that was not in the recording at all which she felt was odd.

<u>Determination of the Tribunal in respect of allegation 1.8</u>

33.14 The Tribunal had regard to the evidence and to the submissions for the SRA and by Ms Obaseki. The Tribunal had agreed to admit into evidence an audio recording of a meeting between the client, his son and Ms Obaseki on 6 June 2019. Initially Ms Obaseki was not prepared to concede that the female voice on the recording was

hers. Evidence had been heard from an expert who had concluded that hers was the female voice on the recording. In giving evidence Ms Obaseki agreed that the voice was hers however she continued to assert that the recording was not complete. In the event the Tribunal determined that nothing particularly turned on the contents of the audio recording; it formed part of the background to the allegations.

33.15 Ms Obaseki admitted allegation 1.8. The facts were not disputed. In evidence, Ms Obaseki stated that as soon as she knew that the client's money had gone missing, she should have told him. He was not expecting to receive his funds until later and she admitted that she put her head in the sand and hoped beyond hope that the police would locate the missing funds and then she would have explained to him what had happened. The Tribunal considered that the admission was properly made. The Tribunal went on to find, as alleged in the Rule 12 Statement, that by, at the latest, February 2018, Ms Obaseki was aware of the loss of the client's funds and therefore of a potential claim against her or the Firm by the client. However, she failed to inform him of the loss of his funds until on or around 18 April 2019. Outcome 1.16 of the SRA Code of Conduct 2011 requires solicitors to inform clients if they discover any act or omission which could give rise to a claim by them against them. A solicitor acting with integrity would have informed her client promptly after becoming aware of the loss or potential loss of his funds. The Tribunal found that Ms Obaseki failed to act with integrity and thus breached Principle 2 of the SRA Principles 2011. The public's trust in solicitors was diminished by a solicitor who lost client funds and failed to tell the client about this for over a year. Principle 6 was therefore breached. The failure promptly to inform the client about the loss of his funds potentially prejudiced any action he might have wished to take to try and protect or recover those funds, such as seeking independent legal advice and taking legal action against those responsible, including Ms Obaseki and ISG Exchange. Ms Obaseki therefore failed to protect client money and Principle 10 of the SRA Principles 2011 was breached. The Tribunal found allegation 1.8 proved on the evidence to the required standard; indeed it was admitted.

34. **Allegation 2. Each of Allegations 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7 and 1.8 were made on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient of proving the allegations.**

The Applicant's Submissions

34.1 Mr Scott relied on the Rule 12 Statement which alleged that Ms Obaseki acted dishonestly. The SRA relied upon the test for dishonesty stated by the Supreme Court in Ivey, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

> "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."

The Respondent's Submissions

34.2 Ms Obaseki initially stated that she left the Tribunal to make a determination about the dishonesty allegation after it had heard from her. She was neither denying nor admitting it but did not believe that she was being dishonest. The Tribunal clarified with Ms Obaseki at the conclusion of the third day of hearing after some discussion that she admitted allegations 1.3 and 1.5 and reserved her position in respect of allegation 1.7, all this save for the position concerning dishonesty which she denied. At the commencement of the fourth day of hearing, bearing in mind that Ms Obaseki was unrepresented she was again asked to clarify her admissions and denials including in respect of the breaches of Principle and rules that were applicable in the allegations. She was reminded that the most serious of the allegations was that of dishonesty and that unless exceptional circumstances were established the Tribunal would have no option but to strike her off if dishonesty were found proved. She was also asked if she was familiar with the test for dishonesty in the case of Ivey and the Tribunal's Guidance Note on Sanctions where it referred to dishonesty. It was also pointed out to her that the Ivey test was quoted in the Rule 12 Statement. Ms Obaseki was given time to read all these references. She denied all the allegations of dishonesty.

Determination of the Tribunal in respect of the allegations of dishonesty

34.3 The Tribunal found allegations 1.3, 1.4, 1.5, 1.6 and 1.8 proved and proceeded to consider the allegation of dishonesty in respect of each. The Tribunal employed the test in the case of Ivey.

Dishonesty in respect of allegation 1.3

34.4 This allegation related to the improper transfers of the client's money via Ms Obaseki's personal account to ISG Exchange. In terms of the facts, according to Ms Obaseki, the client and his son were looking for an investment which paid a higher rate of interest than the Firm's client account. According to the client and his son they were only interested in purchasing a property and the possibility of making an investment was never discussed. The Tribunal looked to the evidence to ascertain Ms Obaseki's state of knowledge when she made the investment. Ms Obaseki had produced various handwritten attendance notes including one dated 21 June 2017 recording a telephone conversation with the client which referred to the client wanting an account with better interest (than the rate in her Barclays client account). Although the SRA rejected Ms Obaseki's assertions, it had not alleged that these notes were post-dated creations. Another note dated 11 July 2017 included at point 2, "Found invest account will test first before placing some funds". There were initials described as client signature between points 1 and 2. Another note dated 15 July 2017 had a reference to "Client called" "Go l 65/64 ISG?" following on from some notes about conveyancing. There was also a note dated 3 November 2017 of a telephone conversation with the client's son which included:

"Want to see if can find other investment that can bring better return …"

In his statement the client said:

> "My son told me at this time that he wanted me to consider him buying a property in Norwich so that he could live in it whilst he is in University. I was open to this as I wanted us to have some sort of investment…"

And:

> "Between the 30th January and the 21st February I sent many texts and calls trying to encourage him [the client's son] to look at properties and investment possibilities."

34.5 In the light of the documentary evidence, the Tribunal determined that on the balance of probabilities, it was unlikely that all the notes were fabricated and that was not in any event alleged, just that doubt had been cast on the accuracy of one of them (that apparently bearing the client's signature) because of a difference in ink colour. It was not possible to make a determination on the evidence as to whether Ms Obaseki acted without consent in investing in ISG. The Tribunal also considered that in the light of the client's use of the word 'investment' it was not proved to the required standard on the evidence that Ms Obaseki had made the transfers dishonestly although they were improper and she had been found to have lacked integrity in making them.

Dishonesty in respect of allegation 1.4

34.6 This allegation related to the FLA and conflict of interest. The Tribunal considered what Ms Obaseki knew. The Tribunal had not found proved that the investment had been made without the consent of the client. If Ms Obaseki believed that she had consent to make the investment that cast doubt on a dishonest motive for procuring the execution of the FLA. Ms Obaseki had given evidence that she wanted the document signed to put on record that she was repaying the client the money she had lost. The Tribunal was faced with a situation where there was no conclusive evidence to satisfy the standard required that dishonesty had occurred. The versions of events offered by Ms Obaseki, and the client and his son contradicted each other. In the circumstances the Tribunal did not find proved to the required standard that there had been dishonesty in respect of allegation 1.4.

Dishonesty in respect of allegation 1.5

34.7 As to the failure to repay the monies lost by the client in a timely manner, Ms Obaseki acknowledged that she should have made payment much earlier and she did not deny that she knew the money was due back to the client. The Tribunal noted that there was no allegation of lack of integrity in connection with the failure. Having heard Ms Obaseki's evidence, the Tribunal concluded that she was trying to work out how to get the money together and was fearful of the consequences of the loss to the client in terms of what would happen when he found out. The Tribunal had not been presented with any evidence that Ms Obaseki was seeking to avoid repayment from a dishonest motive although she clearly wanted to make repayment on terms which suited her. In all the circumstances the Tribunal did not find dishonesty proved on the evidence to the required standard in respect to the allegation 1.5.

Dishonesty in respect of allegation 1.6

34.8 This allegation related to the information provided to the professional indemnity insurer, Travelers. Dishonesty - breach of Principle 4 of the 2019 Principles - was alleged. The Tribunal considered Ms Obaseki's state of knowledge when she completed the proposal form. In evidence she gave as her reason for failing to notify Travelers of potential claims at the time that she had signed the application form and again prior to the inception of the policy that she had been advised that the transactions had been outside the scope of the policy and she did not, therefore, consider the information to be material Ms Obaseki did not approach the insurer to clarify the situation but, instead, consulted a broker with whom she had dealt previously. The Tribunal did not consider this to be a credible explanation for her failure to provide the required information to her insurer. The Tribunal considered that the reason that she had failed to disclose the risk of claims to Travelers was in order, deliberately, to conceal that risk from the insurer. She knew that she had lost over £230,000 pounds of a client's money but she chose not to raise this with her insurer either before submitting the form or prior to the inception of the policy. Question 7b expressly asked:

> "Are you or any Partner, Director or Member, after having made full enquiries, aware of any circumstances which may give rise to a claim against you? (See Important Note C)"

The Tribunal found that Ms Obaseki was certainly aware of the circumstances which would give rise to a claim whether covered by insurance or not. The question was also directed precisely at the person filling out the form as well as any other partners. Question 7c directly asked:

> "Have all claims and circumstances which might give rise to a claim been reported to insurers?"

Ms Obaseki answered in the affirmative although she had not reported the potential claims by the client. She knew full well that the client had demanded repayment, both prior to the date on which she signed the application form and prior to the policy coming into force. In his letter of 8 March 2020 the client had said in very plain terms that he wanted all of his money to be repaid to him. It was impossible to construe such a demand as anything other than a claim. Based on the state of her knowledge and belief as to the facts ordinary decent people would consider Ms Obaseki to have been dishonest in her completion of the form and in failing to inform Travelers of the risk of a claim by the client prior to the inception of the policy. Dishonesty was therefore found proved to the required standard in respect of allegation 1.6.

Dishonesty in respect of allegation 1.8

34.9 The Tribunal considered the state of Ms Obaseki's knowledge when as she admitted she did not tell the client of the loss of his funds. When the client began asking for the return of his money, Ms Obaseki was only too aware that the money had been lost. She was clearly very fearful of what would happen when the client found that out. The money had already been lost for many months and she knew that she had an obligation to safeguard client money and that the client had a right to know what had happened. With that knowledge Ms Obaseki made a deliberate decision not to tell the truth

including by telling the client that it would take 60 days to get his money. Her evidence was that she hoped against hope that the police would recover the money but this was not a reason to conceal what had occurred from the client. Her fear led her to tell a series of lies. The Tribunal considered that of all the misconduct in the case this was the one about which the public would have been most concerned and that ordinary decent people would consider this conduct dishonest. The Tribunal therefore found dishonesty proved to the required standard in respect of allegation 1.8.

Previous Disciplinary Matters

35. Ms Obaseki had been before the Tribunal in case 9334 -2006 on 3 July 2007. Ms Obaseki had admitted an amended allegation of being responsible for the production of two misleading letters and through the correspondence perpetuating a misleading costs invoice. She was reprimanded and ordered to pay £7,000 in costs.

Mitigation

36. On 3 January 2023, Capsticks had filed with the Tribunal and copied to Ms Obaseki submissions on sanction supported by case law authorities, Weston v Law Society 1998 WL 1043481, SRA v Sharma [2010] EWHC 2022 (Admin) and SRA V James [2018] EWHC 3058 (Admin). Upon reflection Mr Scott decided not to apply for leave to address the Tribunal upon sanction but to leave it to the Tribunal to determine whether it would read the submissions. He acknowledged that the SRA had no right to make such submissions. Ms Obaseki did not object to this approach. The Tribunal determined that it would admit the submissions as they might assist Ms Obaseki who was unrepresented in respect of the key issues and the common law. The submissions were taken as read and no questions were raised upon them. The Tribunal had noted that Ms Obaseki had not provided any references. Ms Obaseki said that she understood that little or no weight would be given to them and so it had seemed pointless. She had derived this view from the information sent to her and case law.

37. Having regard to the submissions on sanction, Ms Obaseki submitted in respect of allegation 1.3 and the improper transfers that she had always accepted that her actions had been wrong and that her understanding of the rules had been negligent. She noted the Tribunal's finding in respect of allegation 1.4 and in respect of allegation 1.5 had always accepted what she had done. She asked the Tribunal to consider that the restrictions placed on her slowed down her ability to pay or repay the client's money. She knew that a document which she had produced had shown the payments she had made to the client although she felt that it had been placed in a way that suggested that she only paid when the SRA had made contact which was incorrect. The SRA made contact over a two-year period. Ms Obaseki submitted that she had produced a document to show the effort she had made and a considerable sum £177,000 had been repaid in order to reduce the amount outstanding or put the client back into the position that he should have been in. Ms Obaseki submitted that the Chair had asked her if the payments had been made "in accordance with her comfort"; this was not so. She could have reduced her second mortgage and done wonders for her with the £177,000 if she had decided not to try and rectify the situation. What she had done had not been to make gains or expected gains for herself but the SRA had chosen to put it that way.

38. In respect of allegation 1.6 where dishonesty had been found proved in respect of her proposal for professional indemnity insurance, Ms Obaseki submitted that it was her understanding that what she had done fell outside the role of a solicitor and that remained her understanding. Ms Obaseki noted the finding in respect of allegation 1.8 which she had accepted (without dishonesty).

39. In its submissions on sanction, the SRA had asserted that there were aggravating factors but Ms Obaseki felt that that should not be considered in isolation. She noted the initial decision of the SRA (Compensation Fund) which she described as the client having not approached with clean hands. Ms Obaseki submitted that this was not an attempt to shift the blame but something she believed was relevant. She did not accept that any advantage had been taken of the client in terms of his being a vulnerable person. Ms Obaseki said that she knew that the Tribunal had a clear direction in case law as to what sanction to apply in such cases. She referred to the case of SRA v James et al [2018] EWHC 3058 (Admin) at paragraph 125 where it was stated:

> "Suspension of striking off is easier to comprehend, since that is akin to a suspended sentence of imprisonment in criminal proceedings."

Ms Obaseki said she knew that the Tribunal would consider all relevant sanctions.

Sanction

40. The Tribunal had regard to its Guidance Note on Sanctions (10th edition), to Mr Scott's written submissions and to the mitigation offered by Ms Obaseki. Five allegations had been found proved against her and in respect of two of those, dishonesty had also been found proved. The Tribunal's Guidance Note set out at paragraph 51 that:

> "Some of the most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin))."

In respect of the seriousness of the misconduct, the Tribunal considered culpability. In her actions towards the client Ms Obaseki said that she was motivated by helping him to obtain a better rate of interest, an explanation which he rejected. Her motivation in not telling him that the money had been lost appeared to be her fear of what would happen when he found out. There was no real evidence as to what had motivated her in respect of her dealings with the insurance company. Her actions were planned in both instances of dishonesty and generally in respect of all the allegations which were found proved. As a sole practitioner, she had direct control of and responsibility for the circumstances giving rise to the misconduct. She was an experienced solicitor. Ms Obaseki's actions had certainly caused harm to the client whether or not he managed to obtain any compensation from the Compensation Fund as he had been kept out of a substantial amount of money for a significant period of time and was still owed a considerable amount. Whether or not there was any degree of the client consenting to the investment, he was certainly not complicit in the fact that Ms Obaseki made the investment without having any expertise to do so which she admitted. The Tribunal considered that there was significant harm to the reputation of the profession from the

misconduct in this case. The Tribunal accepted that Ms Obaseki did not intend to harm the client but it was reasonably foreseeable that harm would result from a high risk investment which she was not qualified to advise on or to make. There were aggravating factors in the case; dishonesty had been found proved in respect to two allegations. The misconduct continued over a period of time in respect of the client and was deliberate, calculated and repeated in terms of the lies which she told him about the whereabouts of his money. There had been several occasions when Ms Obaseki could have told the client what had happened but she deliberately did not do so. The client suffered from sight impairment but having seen him give evidence, noting his ability to communicate in English and that often Ms Obaseki dealt with the client and his son together, the Tribunal was not satisfied that he could be described as vulnerable. Ms Obaseki had concealed her wrongdoing from him but as that formed the substance of one of the allegations, the Tribunal would not double count by regarding it as an aggravating factor. Ms Obaseki ought reasonably to have known that all her misconduct was in material breach of her obligations to protect the public and the reputation of the legal profession. The Tribunal noted that Ms Obaseki had previously appeared before the Tribunal many years previously and been reprimanded. As to mitigating factors, whether Ms Obaseki had been deceived by the scammers was irrelevant to her dealings with the client and with the insurance company. She had made some efforts to reimburse the client and a significant amount of the money lost had been repaid but a significant amount was still outstanding. Ms Obaseki had not notified the regulator of what had occurred; the SRA found out by an indirect route from the client's application to the Compensation Fund. Any misconduct was not a single episode nor one of very brief duration in a previously unblemished career. The Tribunal carefully considered whether Ms Obaseki had shown any insight into her misconduct. The evidence of financial means showed that she had substantial property but she had firmly rejected the Tribunal's questions about why she had not realised some of that property in order to repay the client in full immediately. She seemed to think that she was owed an interest free loan from the client until it was convenient for her to make repayment. Her approach in evidence to concealing from the client that the money had been lost indicated that she still felt that as long as she could get the money back over a period of time before the client found out that was acceptable conduct. Her statements in mitigation concerning her approach to the insurance proposal form showed clearly that she still thought that as her misconduct occurred outside her role as a solicitor, she had been quite right not to disclose it to the insurer. She had not pleaded any exceptional circumstances in respect of her dishonesty and the Tribunal found none. Having regard to the number and seriousness of the allegations found proved, particularly the allegations of dishonesty, the Tribunal did not consider that any of the lesser penalties than strike off would be appropriate.

Costs

41. Mr Scott applied for costs in the amount of £68,082.85 of which £45,000 related to the SRA's investigation costs for the work of the FIO Ms Bartlett. Capsticks had worked to a fixed fee of £18,500 and so no additional amount was being claimed for the half day hearing on 9 January 2023. Mr Scott submitted that under Rule 43(4) of the SDPR, the Tribunal could take account of the conduct of the parties and submitted that broadly throughout the investigation and proceedings Ms Obaseki's response to the allegations and to the evidence had been equivocal, evasive and at times untruthful. As a result, all matters had to be investigated fully and the SRA was put to proof on almost every single

point. Mr Scott gave as examples: Ms Obaseki's response to the production notice dated 24 March 2021 regarding the recording of the 6 June 2019 meeting which led to the SRA instructing an expert witness and Ms Obaseki later accepted she attended. In respect to the transfers, Ms Obaseki's response indicated that there had been some restrictions on her transferring from the client account to the ISG investment account. She was asked to provide further information but she failed to do so. That had to be investigated. Mr Scott submitted that Ms Obaseki made a number of assertions without supporting evidence for example as to why she did not report her liability to the client to the SRA. She also gave equivocal explanations as to why she did not report matters to her insurers. In her Answer, Ms Obaseki effectively denied all the allegations with the possible exception of allegation 1.3. On the second day of the hearing the Tribunal had to press Ms Obaseki regarding what she accepted and even then she changed her position when pressed.

42. As to Ms Obaseki's ability to pay costs, Mr Scott submitted that she had uploaded a Personal Financial Statement ("PFS"). Mr Scott submitted that her approach to this was somewhat similar to her approach to the allegations. Section 10 related to supporting evidence. She was asked for documentary evidence including bank statements, valuations of property, updated mortgage statements and about her credit commitments. She provided bank statements from one account but this was not her only bank account. On her PFS, Ms Obaseki indicated that she had an account with another financial institution but no statements had been provided. Payments out could be seen. This suggested there might be other assets. Payments suggested that she might have life assurance, a pension policy or another account. There were also payments that suggested that she might own a Land Rover car, which was not disclosed in the PFS. Mr Scott submitted that the limited information suggested that Mrs Obaseki was not making full disclosure of her financial position. In terms of her income, she disclosed £5,000 pounds per month, but it was not clear where this came from. Although one could see in the bank statements payments from a London Borough by way of regular credits and it could be assumed that these related to income from Ms Obaseki's fostering activities.

43. Mr Scott referred to Ms Obaseki's home address which she had disclosed in evidence and in respect to which the SRA had obtained Land Registry entries and Zoopla documentation. The latter showed that Ms Obaseki owned the property and that it was apparently mortgaged but there were no up to date mortgage statements. It could be seen that it was bought, perhaps by her and a partner in 2006, for £650,000, but no up to date valuation had been provided. The Zoopla document was not an expert valuation but it gave an estimated value of between.£1.59m and £1.76m. Ms Obaseki admitted that there would be a significant amount of equity in the property. Ms Obaseki also had a second property in which she had indicated she had an interest. She gave a partial address in her PFS but it was not known where that property was or what it was worth. She suggested it was worth £400,000 but the SRA could not comment on that. Mr Scott submitted that Ms Obaseki had sufficient assets to pay the SRA's costs and to make repayments to the client who was owed in excess of £66,000. Ms Obaseki was asked for information to support her PFS and her claim that she could not pay costs in full, but she had not provided satisfactory evidence and once the costs were assessed, Mr Scott submitted that they should be paid in full.

44. The Tribunal raised a query about an item in the SRA's investigation costs, which was described as 'Other' at £18,000. Mr Scott informed the Tribunal that he had asked for further details of that item, but had not yet received them. It must relate to time spent by Mrs Bartlett the FIO in considering documentation and information she had obtained from Ms Obaseki and elsewhere because there was no other entry which really encompassed that. Mr Scott subsequently submitted that he had obtained information from Mrs Bartlett. The entry related to time spent reviewing material obtained from the investigation and some of it also related to internal meetings with colleagues.

45. The Tribunal referred to the costs of the interpreter and asked whether this was an estimated or actual cost. Mr Scott said he could obtain it but the Tribunal suggested that might not be necessary as the interpreter had not appeared to have been needed. Mr Scott responded that she had been stood down at short notice.

46. The Tribunal also referred to the fact that not all the allegations had been found proved and that Ms Obaseki was therefore entitled to a reduction in the costs. The Tribunal also considered that part of the reason for dismissing allegations 1.1 and 1.2 was the poor quality of the pleading. Mr Scott responded that he was not sure what the Tribunal meant by that and he did not accept that there should be a reduction in the costs ordered on that ground. He repeated that Ms Obaseki's response had been vague and equivocal. Allegations 1.1 and 1.2 had related to whether or not there was an underlying reason for her accepting payments into her client account. The facts about that were disputed. The SRA said that based on the evidence including attendance notes and the witness evidence of the client the allegations were reasonably brought and that the SRA was entitled to its costs even though the allegations were not proved. Mr Scott submitted that there might be some justification in civil proceedings for reducing costs or if it was found part way through that the allegations were not properly brought but given the SRA's role as a statutory regulator and his submission that the allegations were properly brought the SRA was entitled to recover its costs. Mr Scott relied on the cases of Baxendale Walker [2007] EWCA Civ 233 and CMA v Flynn Pharma Ltd [2022] UKSC 14, but the Tribunal pointed out that the former related to costs being sought against the regulator. Mr Scott initially identified the case of Broomhead [2014] EWHC 2772 (Admin) which was referred to at paragraph 72 of the Tribunal's Guidance Note on Sanctions but conceded that it did not support his submissions. He then informed the Tribunal that the SRA did not seek to recover costs in respect to the allegations, where it had been unsuccessful.

47. Ms Obaseki referred to what she described as an expanded PFS in the documents before the Tribunal. She said she had put in all the information that she could provide at the time. It was not so easy to get valuations of properties, especially as she had to pay for them. She had detailed who contributed to her household payments including two Life policies which belonged to someone else, and she did not think it was right to provide someone else's information. She did provide the cost of a car, in respect of which she had been supposed to make a balloon payment in December 2022 but she felt that would be irresponsible, and so she continued to pay monthly. Ms Obaseki said she could provide evidence of that, but did not know if it was relevant. One of the references to a financial institution was to a credit card, which she was paying off. She felt that these points had been raised to try and discredit her and that she believed she had put in as much information as she could.

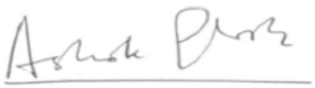
48. Ms Obaseki submitted that she had asked whether the client would be able to obtain the balance of what was owed to him from the Compensation Fund but the question had not really been answered. She accepted that costs would follow the outcome of the hearing but she asked the Tribunal to note only some of the allegations brought against her had been found proved. She would rather not have a costs order against her and have time to pay and possibly continue repaying the client. She was not currently working but undertook fostering which allowed her to pay her mortgage.

49. The Tribunal had regard to Mr Scott's submissions for the SRA and those by Ms Obaseki. Mr Scott had conceded that she should not have to pay costs in respect to the allegations which it had been unsuccessful in proving - allegations 1.1, 1.2, 1.7 and the dishonesty allegations in respect of all the allegations except 1.6 and 1.8. The Tribunal accepted that a lot of the work required was in common across all the allegations but it also took into account its view that allegations 1.1 and 1.2 had been poorly pleaded The Tribunal also considered that it was inappropriate to award any costs in respect of the instruction of the interpreter as, upon further inquiry by the Tribunal, the witness had been shown to have a workable knowledge of the English language and at no point had it been necessary for the services of the interpreter to be engaged during the hearing. The SRA should have established this before the hearing. The Tribunal considered that a reduction of 10% in the costs claimed would be reasonable and proportionate after the deduction of the interpreter's fees (£460) and a deduction in respect of the category described as 'Other' in the work of the FIO which totalled 195.50 hours and totalled £18,000. The Tribunal did not challenge that the FIO had undertaken a considerable amount of work but even upon enquiry and the opportunity to obtain further information, Capsticks had been unable to describe to the satisfaction of the Tribunal what the £18,000 of costs related to; indeed the categories which Mr Scott referred to were in some instances already separately listed under the work done by Ms Bartlett for example 'Info Review' itemised at £5,029 and 'Attend on Others' £517 and 'Meetings/Case Conference' £517. The Tribunal determined that it would be appropriate to halve the total costs claimed for that category from £18,000 to £9,000. The Tribunal assessed costs in the total sum of £52,686 and made no reduction having regard to Ms Obaseki's means.

Statement of Full Order

50. The Tribunal Ordered that the Respondent, UYIOSASERE ONA OBASEKI, 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 £52,686.00.

Dated this 27th day of February 2023
On behalf of the Tribunal



A Ghosh
Chair