SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12545-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

And

ASIYA NASIM KALEEM Respondent

Before:

Mrs C Evans (in the Chair)
Mr U Sheikh
Mrs L R Fox

Date of Hearing: 09-11 July 2024

Appearances

Louise Culleton, barrister employed by Capsticks Solicitors LLP of 1 St George's Road, London, SW19 4DR, for the Applicant.

Jeremy Barnett of St Pauls Chambers for the Respondent.

JUDGMENT

The Allegation

1. The allegations against the Respondent, Asiya Nasim Kaleem, made by the SRA are that, while in practice as a Solicitor at Alison Law Solicitors LLP ("the Firm") she:

1.1. On or around 27 January 2021, signed and submitted a declaration that the Firm was holding £1 million in its client account, when she knew or ought to have known that such a declaration was untrue and she thereby breached any or all of the following:

(a) Paragraph 1.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs;

(b) Principle 2 of the SRA Principles 2019;

(c) Principle 4 of the SRA Principles 2019;

(d) Principle 5 of the SRA Principles 2019.

1.2. In the alternative to the allegation that the Respondent breached Principle 4 of the SRA Principles, it is alleged that the Respondent's conduct was reckless. Recklessness is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegation. For further particulars of recklessness, please see paragraphs 101 to 102 below.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included (but were not limited to):

- Rule 12 Statement and Exhibit LC1
- Response to Rule 12 Statement and Further Written Representations

Factual Background

3. The Respondent is a solicitor having been admitted to the Roll on 1 April 2016. She is currently employed as a solicitor at Keoghs Nicolls Lindsell & Harris LLP.

4. At the time of the alleged conduct the Respondent was a solicitor and head of Civil Litigation at Alison Law Solicitors LLP ("the Firm"), where she had been employed since 2016. She was appointed as the Firm's COLP on 6 March 2020 and held this role until 8 September 2022.

5. The Respondent holds a current practising certificate free from conditions.

Findings of Fact and Law

6. The conduct in this matter came to the attention of the SRA when a report from Price Waterhouse Cooper ("PWC") was received on 12 April 2021. The report indicated that PWC acted as operating agent to the British Business Bank ("BBB") to provide

convertible loans through the UK Government's Future Fund scheme ("FF"). PWC conducted an agreed level of due diligence on applications on BBB's behalf.

7. The report explains that for an applicant to qualify for FF funding it had to demonstrate that a third party investor would match the funding that had been applied for from the FF ("the investor investment"). As part of the safeguards for demonstrating that the third party investor funding was genuine, the investor was required to transfer the funding to a solicitor's client account before the FF loan would be transferred. As part of that process, the solicitor was required to sign a declaration acknowledging that they were holding the funds under irrevocable instruction from the investor.

8. PWC indicated that it had become aware of an application where the Respondent had signed the declaration confirming that the Firm had the investor investment in the Firm's client account, when in fact the Firm did not hold such funds from the investor. The FF loan had been released to the applicant borrower, but as the investor funding was not in fact in the Firm's client account, FF was considering calling in the loan.

9. As a result a forensic investigation was commenced on 6 April 2022, with a forensic investigation report ("FIR") being issued on 30 June 2022.

10. In summary, the FIR sets out that the Firm was instructed on 18 January 2021 by Client A (owner of Company A) in relation to an FF loan of £1 million. As part of the FF application process, the Respondent signed a declaration in a letter to the FF dated 27 January 2021, confirming that the Firm was holding £1 million from an investor ("the investor") in their client account. However, the Firm had not in fact received the investor funds into their client account at that time. The completed Convertible Loan Agreement ("CLA") was finalised between Company A, the FF and the investor on 1 February 2021 and as a result the FF released £1 million to the Firm on 2 February 2021. The Respondent then transferred the funds from the FF to Company A between 10 – 19 February 2021.

11. As a result of the FF realising that the investor funds had not in fact been transferred into the Firm's client account at the time of the declaration having been signed and the CLA finalised, the FF threatened to cancel the agreement. A termination letter was sent to Client A/Company A. FF agreed not to take further steps if proof was provided that the investor funds were paid to the Firm's client account or the loan was repaid. Client A subsequently came to an agreement with the FF for an extension of time for the investor to provide the funds and these were subsequently received by the Firm on 26 and 29 March 2021, the funds from the investor then being released to Client A between 30 March and 7 April 2021. At this time, the funds were not held by Client A or by the Firm.

Allegation 1.1 – Signing of false declaration

12. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Future Fund

13. The FF was a government scheme which provided loans to UK based companies ranging from £125,000 to £5 million, subject to at least equal match funding from private investors. The contractual arrangement was entered into by way of a CLA. As part of the FF application process the solicitor who received the funds on behalf of the private investor and the FF (to transfer on to the recipient of the loan), was required to sign a declaration that they were holding the funds from the private investor, prior to the completion and submission of the CLA and the release of funds from the FF.

14. Information regarding the FF Scheme is still available online. The Scheme has now closed, but the Future Fund Frequently Asked Questions (FAQs) for Solicitors can be accessed. The following information is provided:

> *Settlement: if you act for the Investee Company it is a requirement of the scheme that you facilitate completion and you must therefore be a UK regulated solicitor permitted to receive and hold client money – this will involve receiving and holding the completion monies to order from the Lead Investor and any Other Investor (or their solicitor(s)), to be released to the Investee Company on execution of the Convertible Loan Agreement and upon confirmation from the Future Fund via the Future Fund portal. You will also receive the completion monies from the Future Fund post-completion, which you will send as soon as possible to the investee company. Please see the FAQs on Settlement and Regulatory Guidance for further information on settlement/completion and handling client money.*
>
> *Please note: As the nominated Investee Company solicitor [you] will be required to provide the Future Fund portal with a standard form confirmation letter addressed to UK FF Nominees Limited on receipt of the full amount of the Investor completion monies from the Lead Investor and any Other Investor(s) (as applicable), you must ensure that your client's completion monies are transferred to the nominated Investee Company solicitor in accordance with the requirements of this letter.*

15. A copy of the solicitor's confirmation letter is provided which is the same copy as that referred to above. Under the section 'Your involvement is summarised below' the information states:

> *before completion, you will need to receive into your client account, and hold to order pending completion, the full amount of the completion monies on behalf of the Lead Investor and any Other Investor(s) (as applicable); as the nominated Investee Company solicitor, you will be required to provide the Future Fund portal with a standard form confirmation letter addressed to UK FF Nominee Limited on receipt of the monies described in point (1) above. You must ensure that these monies are transferred to you in accordance with the requirements of this letter; it will be your responsibility to liaise with the Lead Investor and any Other Investor(s) (or their solicitor(s)) to ensure that you receive the monies described in point (1) above and to agree with them the terms under which you hold those monies; along with the confirmation letter for signing and dating by you, the Future Fund portal will also issue the Convertible Loan Agreement for*

signing (but not dating) by the Lead Investor and any Other Investor(s) and the Investee Company. The Future Fund portal will also request an executed director's certificate from the Investee Company; if the Future Fund portal has not received your signed and dated confirmation letter, as well as the signed and dated director's certificate and signed (but not dated) Convertible Loan Agreement within seven days, the Future Fund portal will ask you to re-confirm that you continue to hold the full amount of the Lead Investor and any Other Investor(s) completion monies to their order in your client account; the Future Fund portal will then issue a fully executed and dated Convertible Loan Agreement. This constitutes completion and will be the trigger for the Future Fund portal to instruct UK FF Nominee Limited's bank to transfer its completion monies to your client account; and after completion, you should release the Lead Investor and any Other Investor(s) completion monies to the Investee Company's bank account in accordance with your instructions and you should send the completion monies from UK FF Nominees Limited to the Investee Company's bank account as soon as possible once received in your client account. Your regulatory and legal obligations in relation to Know Your Client, AML, source of funds, and conflicts checks must be observed. If you have any concerns or questions, please contact your regulator. If you require information on the Fund's legal structure, ownership and control for the purposes of meeting your regulatory and legal obligations then please email futurefundsupport@british-business-bank.co.uk and a KYC Corporate Information pack will be shared with you. A copy of the standard form of solicitor confirmation letter mentioned above at point (2) can be found on the solicitors page of the Future Fund website.

Instruction of the Firm and the Declaration made to the Future Fund in respect of funds from the private investor triggering the release of funds from the Future Fund

16. Client A, (the owner of Company A) instructed the Firm on 18 January 2021. He informed the Firm that he had applied for a loan of £1 million from the FF. He instructed the Firm to complete the declaration and to receive the funds as required by the FF agreement. The investor wrote to the Respondent by letter dated 20 January 2021 (following instruction but prior to the declaration being made) referring to a call and confirming that *"I have previously invested £1,000,000.00 in April 2017. there is a question of whether I need to invest a further £1,000,000.00. If it is required then I will forward to your company account*".

17. Mr Habibur Rahman of the Firm passed the instruction on to the Respondent. SRA records indicate that Mr Rahman is not a solicitor. He is Owner and Member of the Firm and has been AMLCO, AMLRO, and Insurance Distribution Officer since 15 December 2022.

18. The Respondent reviewed the loan agreement (as recorded in the FIR) and the Respondent's representations on 22 January 2021. Paragraph 1 of the convertible loan agreement outlines the following:

    Each Lender set out below shall pay the respective Loan set out against its name in the table below to the Company's Solicitors' Bank Account and the Company hereby accepts such Loans and shall owe and promise to pay to each such Lender or its successors or assignees the principal amount of each such Loan, together

with any Redemption Premium and/or any accrued but unpaid Interest as the case may be, in accordance with the terms of this Agreement:

Lender	*Address and email address*	*Total Amount of Loan (£)*
The Future Fund	*10th Floor, 5 Churchill Place, London, E14 5HU futurefundsupport@british-business-bank.co.uk*	*£1,000,000.00*
[the investor]	*Apartment 1, XX, SW1X XXX, U.K [investor name]@[company A].co.uk*	*£1,000,000.00*

19. The SRA contends that it was therefore clear from the loan agreement that the requirement was for £1,000,000.00 of private investment from a private/third party investor to be paid in to the Firm's bank account.

20. As part of an FF scheme agreement the applicant's solicitor was required to sign a declaration, confirming the authenticity of an applicant's instructions and private funding including specifically that the private investment funds were held in the Firm's client account.

21. A letter to the FF dated 27 January 2021 contains the signed declaration of the Respondent confirming that an investment sum of £1 million from the private investor, was held in the Firm's client account. The declaration stated:

> *"3. We confirm that the following sums are deposited in our Client Account for or on behalf of each of the Other Lenders:*
> ***Name of Other Lender Loan amount***
> *[name of investor] £1,000,000.00"*

22. The Declaration further states:

> *"We confirm that we have received a written instruction from each of the Other Lenders to the effect that the amount set out opposite their name above is (i) from the date of this confirmation until the time of occurrence of the Completion Trigger, to be held in our Client Account for and on behalf of each such respective Other Lender; (ii) from the time of occurrence of the Completion Trigger, to be held to the order of the Company and (iii) as soon as reasonably practicable after the time of the occurrence of the Completion Trigger and in any event within one Business Day of the Completion Trigger, to be transferred to the Company Bank Account".*

23. However, there was no such sum from the investor held in the Firm's client account at that time.

24. The declaration signed by the Respondent was therefore incorrect and misrepresented the position to the FF.

25. A client care letter was sent to Client A dated 1 February 2021.

26. On the same date, a CLA was executed between Client A, the FF and the investor. The Respondent received an email from the FF at 12:10 stating -'We're pleased to confirm that the convertible loan agreement between [the investor] and others, UK FF Nominees Limited and [Company A] has completed. We confirm that in line with the terms of the CLA, the Future Fund has arranged for GBP 1,000,000.00 to be sent to the solicitor client account detailed in the CLA'.

27. On 2 February 2021 at 15:38 the FF subsequently confirmed to the Respondent by email that the £1 million FF loan funds had been sent to the Firm's client account. Two sums were received on 2 February 2021 (£100,000 and £900,000) although for the second transaction the 'entry date' on the client's ledger is recorded as 10 February 2021.

Correspondence between the Respondent and the Future Fund

28. On 4 February 2021 at 09:44 the Respondent received an email from the FF which stated:

> *"Further to our previous email, please confirm that you have received the amount of £1,000,000.00 from the Future Fund and sent this along with the, [sic] Investor funds to [Company A]!*

29. A follow up email was sent to the Respondent from the FF on 8 February 2021 which stated:

> *"Further to our previous emails, please confirm that you have received the amount of £1,000,000.00 from the Future Fund and sent this along with the, [sic] Investor funds to [Company A] as soon as possible"*

30. The Respondent replied on 10 February 2021 to confirm that the funds received from FF had been received. She stated: 'We confirm receipt of the £1,000,000.00 from the Future Fund for our client [Company A]'. However, of note, she did not address the question as to the third party investor funds.

31. On the same date, the Respondent transferred £200,000 of the FF funds to Company A.

32. On 11 February 2021, the Respondent transferred a further £200,000 of the FF funds to Company A, and that was followed on 12 February 2021 with a further £200,000. Further sums being transferred between 16-19 February 2021 as follows:

    32.1. 16 February 2021 - £200,000
    32.2. 17 February 2021 - £100,000
    32.3. 17 February 2021 - £50,000
    32.4. 18 February 2021 - £25,000
    32.5. 19 February 2021 - £25,000

33. By 19 February 2021, the Respondent had thus transferred all of the funds from the FF to Company A, whilst not being in receipt of the third party investor funds.

34. There then appears to be a gap in correspondence from 19 February to 11 March 2021.

Subsequent communications and arrangements between Client A, the Respondent and the Future Fund

35. On 11 March 2021 at 18:01 the FF sent a follow up email to the Respondent which stated:

> *"Further to our previous emails, and your response on 10 February that you have received the amount of £1,000,000 from the Future Fund. Please can you also confirm, in line with the Solicitor Confirmation document, signed, that you also received £1,000,000 from the Lead Investor and have also sent the Investor funds to [Company A]."*

36. On 12 March 2021, there was a telephone call between the Respondent and Client A. An attendance note records:

> *"Client has spoken to them [future fund] and they have confirmed that they are ok with the delay of the Investor funds. They said that technically the funds should have been received before all parties signed the CLA however the client referred them back to the notice that was given by the investor via email to the bank regarding the funds and the bank agreed that its partly their fault for not responding to that email and overlooking it."*

37. The attendance note also records that the Respondent said that she could write to the FF to say that an agreement had been reached between the parties and that the investment funds would be received at the end of April. However, Client A said that he had already spoken with an individual (David) from the 'portfolio admin team' and advised them that the funds from the investor would be with the Firm/Company A no later than the end of April and that he had explained that the delay was due to the completion of a sale on a previous investment asset.

38. The Respondent did not respond to the FF's email of 11 March 2021 and the FF wrote again on 16 March 2021 to chase for a response. Again the Respondent did not reply.

39. On 19 March 2021, the FF served a termination letter on Client A, the investor and the Respondent. Client A responded on 19 March 2021 and stated, 'This is a mistake – we have already agreed and explained our position – [the investor's] property is now sold and the funds are clearing with the solicitors next week'.

40. On 19 March 2021, the Respondent was copied into an email exchange between Client A, the investor and the FF. The email stated that no further steps would be taken by FF if, by 31 March 2021 (i) evidence was provided that the loan from the investor had been remitted to the Respondent or (ii) the Future Fund loan was repaid.

41. An attendance note dated 19 March 2021 in respect of a telephone call from Client A to the Respondent sets out that Client A advised he had received a termination letter from FF and he would contact the FF and come back to the Respondent with an update.

42. On 19 March 2021, Client A forwarded a chain email between himself, the investor and the FF Customer Support Team of the previous day to the Respondent. Included in the chain was an email from Client A to David at the FF Customer Support Team and the investor, where Client A indicated that he needed to speak to David urgently about the termination notice. The email referred to a telephone conversation between Client A and David on 12 March 2021 where Client A informed David of the delay of his investor's payment and it was agreed that it would be received no later than the end of April. The email also stated that the investor wrote to the fund on 1 February 2021 to advise of a "short term delay in fulfilling her commitment as the funds were coming from the sale of a property". It appears that this email from the investor to the FF was not forwarded on to the Respondent until 19 March 2021. The email stated:

> *"The funds (£1,000,000) that I am placing towards this future fund investment are to be released from a previous property development project. Currently, you have given me until the 31st March to complete my payment obligation. I have been advised that due to the current stamp duty holiday all conveyancing solicitors are inundated with other applications and that there may be a delay in completing my transactions to release the funds. With that in mind, would it be possible to get an extension of 30 days? My sale may complete on time, but my solicitors cannot give me 100% confirmation. My request is to have until the 30 April to raise my portion of the transaction. I have discussed this with Adam, and we are fully aware that we cannot complete the transaction until I have fulfilled my commitment".*

43. Client A indicated in the email to the FF dated 19 March 2021 that as no response had been received to that email from the investor, they therefore presumed that there was no issue and his investor had now confirmed that her part of the investment would be in the Firm's client account before 31 March 2021. Client A also stated that he could not speak for the solicitors or any mistakes that may have been made from their side.

44. Following this, the Respondent sent an email to Enquiries at the FF on 26 March 2021 stating:

> *"We have been advised that we will be receiving the funds from [investor name] in two payments; the first payment of £750,000 is being transferred today and £250,000 on Monday. Once I am in receipt of the funds I shall contact you with confirmation of the same. I have spoken with [Company A] who have forwarded me the below email to confirm that your colleague David has agreed to this".*

45. On 26 March 2021, the Firm received £750,000 from Smithfield Partners Ltd (on the investor's behalf) and a further £250,000 was received from the investor on 29 March 2021.

46. On 29 March 2021, the Respondent sent an email to the FF confirming that the Firm was in receipt of £1 million from the investor and provided the evidence to confirm this.

47. On 30 March 2021, FF confirmed that funds could be released to the client and the Firm made payments totalling £1 million to Company A from 30 March 2021 to 7 April 2021.

Investigation meetings with Mr Rahman and the Respondent and the Respondent's response to the investigation and to the SRA

48. The FIO met with Mr Rahman, a member of the Firm, on 13 May 2022. Mr Rahman stated that the Firm acted on the client's instructions and that the Firm was instructed on 18 January 2021. They had not previously acted in an FF application. Mr Rahman stated that Client A had informed him that he had been dealing with FF since 2017 as he had received a £1 million investment from the investor in 2017. He stated that the Firm were instructed to confirm that Company A had received £1 million from the investor and that Client A had provided bank statements to show that he had received that sum from his investor in 2017. Mr Rahman stated that he was not aware of a requirement by the FF specifying the dates the investment funds should have been received.

49. Mr Rahman stated that the Firm were only instructed to execute the contract as the client had received £1 million from his investor into his company account and therefore the Firm did not have those funds in their client account. His understanding was that the £1 million from the investor was already in Company A's account and the Firm would then receive the £1 million from the FF into their client account in order to match that investment. He did not believe that he should have the investor funds transferred back from the client's company account to the Firm's client account, only to transfer them back to the client's company account when they then received the FF investment funds.

50. He stated that the agreement was interpreted as £1 million in the client's company account and that the funds from the FF would go into the Firm's client account, but in hindsight they should have told the FF the situation that the client already had the money in his account.

51. Mr Rahman stated that there was a misunderstanding on the Firm's part as they did not believe that an additional £1 million was required as Company A had received the investor funds in 2017 and that before the agreement was signed no one had mentioned that an additional £1 million was required. It was only after the contract had been executed that the Firm were informed that an additional £1 million was required. He said that on 1 February 2021 the FF said that the 2017 investment could not be used but that no reason was given. The FF then gave an extension to receive the additional £1 million by the end of March 2021.

52. Mr Rahman further stated that the Firm were confused as their client had received the investment funds in 2017 'therefore why would he transfer the funds into the firm's client account in January 2021, which is nearly four years after receiving the funds'. The Firm thought this had been checked by the FF. Mr Rahman said that in hindsight they should have told the FF the situation about the client having the investment funds in his company account. However the Firm believed that if the FF had an issue they would not have transferred the £1 million investment into the Firm's client account. If there was a problem the FF would have recalled the investment funds and they would not have agreed to the extension of 31 March 2021 for the Firm to receive the investment funds.

53. During a further meeting with the FIO on 30 May 2022 Mr Rahman informed her that the application form was signed by the Respondent as their client, Company A, had received the investment funds in the company account from the investor. They did not transfer the funds to their client account due to money laundering concerns. It was only after the application had been submitted that the FF informed the Firm that an additional £1 million investor funds were required. He said there was confusion on the part of the Firm when signing the application form.

The Respondent's Position

Letter from Legal Compliance Consultants

54. The Respondent provided a response to the SRA via the Firm's Compliance Consultants on 24 September 2021. The response states that the Respondent had been acting on behalf of Client A, that he had 'already received £1 million investment direct from his investor in 2017' and that she believed that this investment 'was sufficient for him to meet the requirements to secure funding from Future Funds as the eligibility criteria for investment by the FF was that the company must have raised at least £250,000 in equity from third-party investors in previous funding rounds in the last five years (from 1 April 2015 to 19 April 2020 inclusive)'. It is stated that at no point prior to receiving the funds from the FF had the Respondent received any confirmation that this was not sufficient and that additional recent investment funds were required to meet the requirements.

55. The response then details the correspondence that there had been between the Respondent and the FF, and that there had also been communications direct between Client A and the FF.

56. Communications between Client A and FF are attached, which appear to have been forwarded on to "Habib Rahman Esq of Alison Law" on 23 September 2021. These refer to bank statements having been provided to FF on 11 December 2020 which are provided again on 18 December 2020 and responds to a query of the FF indicating, *"In regards to your question, the investment definitely 1m… I previously attached the books from stage 1 of the investment, I have not attached ALL the books from the 3 stages of investment",* the question having been "*We've noticed that the Previous Raise Template states that a finance of £1,000,000 was raised however both the (RoM) Register of members & (RoA) Register of allotments show £100,000 being raised. Can you please clarify which information provided is correct"*. The previous correspondence between Client A and the FF refers to "£250k check confirmation".

57. On 12 March 2021, an email from Client A to FF states "Hi Guys Your message is somewhat confusing. I have received 1m from [investor name] in 2017. Is this what you are referring too? [sic] [investor name] is now arranging another payment of 1m to be paid before the 1st of May. Are you saying that this second payment is not required? Please clarify urgently". The email from FF which prompted this query from Client A referred to "Headroom" investment, which in the CLA was zero. The email then stated, "Since the initial investment recorded in the CLA from [investor name] is also £1m, could you please confirm you have already received the £1m from [investor name] as per the CLA of 01 February 2021 and the recent query is for a further £1m investment?". This appears to refer to the initial investment from the investor as being the £1m referred

to in the CLA of 1 February 2021, and not to an initial amount from the investor in 2017.

58. These communications therefore appear to indicate that Client A thought that a payment from the investor was anticipated and required in 2021 for the FF agreement at that time, despite referring to the 2017 amount previously received, given the query – "*Are you saying that this second payment is not required?.*"

59. The letter from the Compliance Consultants states - 'On 19 March 2021 Future Funds sent a further email informing him that the 2017 investment was not sufficient to meet the funding requirements and in order to rectify the situation, he was required to either return the £1 million funds or provide evidence that the funds from his investor has been paid to the firm by 31 March 2021'.

60. The letter also indicates that '[t]he Respondent obtained confirmation of the initial £1million investment received in 2017 in the form of bank statements from both the investor and the client. See attached bank statements'.

10 June 2022 meeting with the Respondent

61. The FIO held a meeting with the Respondent on 10 June 2022. She confirmed that she had been employed at the Firm for 6 years and had been the COLP for 3 years.

62. The Respondent said that she had been asked to deal with the FF matter for Client A and that she was informed by Mr Rahman that Client A had applied for an FF investment funding loan of £1 million, on the basis that he had received £1 million from the investor in 2017 and he only required a solicitor for the contract stage. She stated that when she took on the case, Client A confirmed these same instructions. It is noted that, as set out above, the Respondent had in fact been sent a letter dated 21 January 2021 from the investor confirming that there was a question at that time as to whether the investor needed to invest a further £1,000,000.00

63. The SRA contends that this is inconsistent with the email of 1 February 2021 from the investor to the FF (Client A copied) where she states, when asking for an extension for her investment until 31 March 2021 – "I have discussed this with Adam, and we are fully aware that we cannot complete the transaction until I have fulfilled my commitment".

64. The Respondent confirmed that Client A, who was a previous client of the Firm, made an application to the FF in December 2020 and January 2021 following which he instructed a solicitor to deal with the contracts. She stated that Client A informed her that everything had been approved by the FF and that he required a solicitor for the contract stage.

65. The Respondent stated that the FF contacted her to confirm that she was a solicitor on the telephone. The FF sent through the contract by email for review. The Respondent explained that she discussed the contract with Mr Rahman and found a couple of errors as the file reference had been used instead of the client account number and she asked the FF to correct these errors.

66. The Respondent confirmed that once she signed the agreement she notified the client and funds were released by the FF in two payments.

67. The Respondent stated that FF contacted Client A within a day by telephone regarding the release of funds from the solicitor and that Client A informed them that he had received them from the investor direct in 2017.

68. The Respondent stated that Client A had provided his bank statements from 2017 to prove that he had received a £1 million investment from the investor. The Respondent believed that the Firm only had to receive the £1 million from the FF into the client account. Mr Rahman had said to her that the investment funds Company A received in 2017 should not be transferred to the client account as they would not be the same funds from 2017 in the business account, which may cause money laundering issues.

69. The Respondent said the Firm did not realise at any point that the Firm was required to have the £1 million investment in their client account as Client A had done the application based on the investment funds received in 2017.

70. The Respondent said that this matter stemmed from a misunderstanding of the £1 million investment funds from the investor and that Client A had taken the lead in this matter as he had been dealing with David directly at the FF.

71. The Respondent said that she signed the contract as she understood the Firm would receive £1 million from the FF as the client had received the investment from the investor in 2017. She stated - 'Our mistake was that we misinterpreted that on the basis of instructions we had from our client when we opened the file. It was taken to believe they were funds [the investor] had transferred in 2017'.

72. The Respondent stated that Client A had told FF that 'the whole basis of the application was on the 2017 funds' but the FF informed Client A that they required a further £1 million investor funds. Client A said that if that was the requirement he would get another £1 million investment. The Respondent stated that they did not have the application submitted by Client A to the FF and that she had not seen the original application. She stated that Client A had called her to inform her of the situation with the FF and that he would contact the investor for another £1 million. He was in contact with David at the FF and had been given an extension until the end of March 2021.

73. The FF gave Client A an extension until 31 March 2021 to obtain the additional funds. The Respondent was not involved in agreeing this extension but during her telephone call with Client A on 12 March 2021, the Respondent offered to contact the FF to confirm once the investment funds were in the Firm's bank account.

74. The Respondent stated that the first thing she advised Client A of was to hold the £1million received from the FF in his bank account and not to spend it because the money may need to be returned if the additional investment funds did not arrive by 31 March 2021. Client A acknowledged this and confirmed the funds would not be spent.

75. The Respondent acknowledged that she realised there was a breach of contract when she received the email from the FF on 4 February 2021. The Respondent did not respond to the FF's emails as she left it with the client to deal with the FF directly.

76. The Respondent stated that "it was not meant to be a dishonest transaction and it was genuinely honestly done" as the client had received funds from the investor in 2017, that the application submitted by Client A was based on the investment funds received in 2017 and that it was a "stupid error" which was rectified with the client.

77. The Respondent stated that "we" haven't gained anything from this and that there was no benefit to her or the Firm in lying to the FF.

78. The Respondent said she read and interpreted the contract as the client's (Client A's) account and not the Firm's client account. The Tribunal accepted her later evidence that she was in fact referring to the declaration and not the CLA and that she had read and interpreted the declaration itself without having had sight the terms of the CLA as being truthful.

Written representations of 8 August 2023

79. The Respondent submitted written representations to the SRA dated 8 August 2023.

80. She denied that she misled, or attempted to mislead, her client, the court or others, or that she gave false or misleading information in breach of the Principles alleged.

81. She stated that her understanding of the instructions was to come on record as acting for Client A of Company A, who was known to her as she had previously acted on his behalf in respect of an intellectual property dispute. She stated that her instructions (as confirmed to her by Mr Rahman and the client on their initial call) were that the Firm were being instructed to come on record to represent Company A in a loan that Company A had applied for from FF. The SRA notes that the initial instruction sheet records instructions were given on 18 January 2021 that the client had "applied for loan of £1mn..need approval of solicitor for agreement for funds to be transferred by lender to solicitor on behalf of client…". No telephone attendance note of this call is found on the client file and nor has one been made available to the SRA.

82. She described reviewing the loan agreement on 22 January 2021 and discussing it with Mr Rahman. She stated that during the discussion they highlighted that the account details were incorrect within a prominent table set out within the agreement, which needed to be corrected as the amount to be received was substantial (£1 million).

83. She stated that her only concern at the time was to ensure that the client account details were correct in order to receive the loan and that she had not understood or appreciated at the time that FF expected the Firm to also receive matching funds from the Investor into the same client account. She therefore denies the assertion set out in the Notice that her amendment to the client account details demonstrated that she had carefully reviewed the declaration that was later signed by her.

84. She further stated that at the time of correcting the client account details, she also highlighted the instructions from the client that the Investor had already paid £1 million to Company A in 2017 and that they understood the loan was made on that basis.

85. She accepted that in hindsight, due to the wording of the agreement, she should have sought further information from FF to clarify whether the investment funds from the Investor in 2017 were indeed the funds they were referring to within the agreement. The Respondent was not aware at the time that the investor was trying to get funds together to transfer a further £1 million investment into the client account. She stated that had she known this she would not have signed the agreement until they were in receipt of those further funds and that furthermore the due diligence that she carried out in respect of the funds from 2017 would have been pointless. The information in respect of 'additional new funds which were delayed due to sale of properties' did not come to light until March 2021. However, the SRA notes that the Respondent was sent a letter by the investor dated 21 January 2021 which confirms that there was at that point (i.e. prior to making the declaration) a question as to the need for a further £1million payment.

86. On 26 January 2021, Client A copied her into an email to FF notifying them that "his previous solicitors had received documentation from FF and to send any further communication to her. Consequently she was sent a copy of the Solicitor's Confirmation letter to sign. On 27 January 2021 she signed and sent the declaration to FF on the understanding that Company A had already received the £1 million investment in their own bank account and hence she interpreted the client account to mean the client's own account.

87. She stated that to sign the declaration was a genuine mistake as she did not appreciate that the 2017 monies needed to be in the Firm's client account and she genuinely believed that she was carrying out her instructions as required by both Company A and FF. There was no gain to be sought either for herself or for her client, or for Company A and there was no loss to FFA as the issue was swiftly resolved.

88. She then set out what occurred over the next few days, namely that the loan was approved, and due diligence carried out on Company A and Client A. The funds were then released.

89. The Respondent explained that her response of 10 February 2021 (to emails from FF on 4 February and 8 February 2021 seeking confirmation that the funds had been received and sent to the client, along with the investor funds), was not unreasonable or untimely as she did not work on Fridays (the 5th February being a Friday). For this reason, she responded on Wednesday 10th February, having received both emails on her return to work after the weekend on 8th February. She had in the meantime sought confirmation that payment had been released to Client A and queried the question in respect of the investor funds, with Mr Rahman remarking to her "why do you need to get £1 million from [Company A] when the client has already had the money from [the investor]?".

90. Her response did not seek to avoid FF's direct questions about the third-party investor funds, but rather that it was her reasonable belief that FF was mistaken as Client A had already received £1 million from the investor in 2017. She further states that it was

only on 12 March 2021 when she spoke with Client A that he notified her for the first time that the investor was expected to make a further payment of £1 million and that that was delayed but that FF were aware of the situation. She told Client A that that did not accord with the instructions that he had provided at the outset of the matter and requested that he obtain copies of correspondence between the investor and FF relating to this. She says that it was because she was waiting for this evidence from the client and a full explanation around the circumstances of the investment funds and the agreement between the investor, Client A, Company A and FF that she did not respond further to FF until 19 March 2021, because she wanted to be able to provide a substantive response.

91. She set out what occurred on 19 March 2021 when a termination notice was received from FF and how Client A responded to that, with the situation ultimately being resolved as long as £1 million was received from the investor no later than 31 March 2021, this ultimately being received by the Firm on 29 March 2021 which then was released to Client A.

92. The Respondent reiterates that as far as she was concerned this was a misunderstanding between the parties regarding the initial 2017 investment, which was swiftly rectified and resolved without any impact on the client, investor, FF or public funds. As such she did not report the incident to the SRA in her role as COLP as she did not believe it was a serious breach, it was rectified and resolved and she had not realised that she had made a grave mistake when signing the declaration.

Principle 2 (maintaining trust) and Paragraph 1.4 of the SRA Code of Conduct

93. The Tribunal found that the Respondent knew or ought to have known that the words in the declaration were not accurate. On the fact of the declaration itself, it was abundantly clear that she was being required to declare that there was £1 million in the Firm’s client account. The fact that she had not seen the terms of the CLA, (which evidence was accepted as being truthful by the Tribunal), could not have any impact on the literal meaning of the declaration.

94. Accordingly, the Respondent’s conduct amounted to a breach of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by a solicitor signing such a declaration containing inaccurate statements. The declaration containing inaccurate facts were inevitably misleading. The conduct therefore amounted to a breach of Principle 2.

95. The Tribunal further found, given that it was clear that the Firm’s client account did not have £1 million from the third party investor to the agreement in it, that as a matter of fact the declaration was misleading, and accordingly the Respondent’s conduct was also in breach of Paragraph 1.4 of the SRA Code of Conduct.

Principle 4 (dishonesty) and Principle 5 (integrity)

96. The Applicant relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings,

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."*

97. The Applicant contended that at the time that the Respondent signed the declaration confirming that £1 million was deposited in "our Client Account" from the investor, she knew that the Firm's Client Account had not received such funds and that such funds were not deposited in the Client Account. The rest of the FF declaration statement repeatedly refers to "our Client Account", referring to the Firm's client account and not the client's account. The Respondent must have been aware of this, particularly as she herself said that she had reviewed the declaration carefully given the large sums involved and she had asked for the account details to be corrected by the FF when they were incorrect in the initial draft declaration received from FF. The amendments that the Respondent asked for demonstrate that she had carefully reviewed the declaration, which is short and prescriptive in nature with defined terms used throughout.

98. In relation to Principle 5, the Applicant relied on Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, where it was said that integrity connotes adherence to the ethical standards of one's own profession and where reference was also made to a solicitor conducting negotiations will take particular care not to mislead as such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse. The Applicant submitted that in signing the declaration, the Respondent was not being scrupulous about accuracy and taking care not to mislead, and was not acting in accordance with the higher standards which society expects from professional persons and which the professions expect of their own members.

99. The Tribunal carefully considered the evidence and found that although the Respondent had not initially identified that the account referred to was the client account, she had in her evidence stated that at a later stage (but before signing the declaration) she did appreciate that it was referring to the client account of the firm.

100. However, having not seen the terms of the CLA, she discussed the matter with her supervisor, Mr Rahman, and received his assurance that she could sign the declaration. When he maintained that the relevant £1 million had in fact already been invested by the private investor in 2017, she signed the declaration. The Tribunal accepted that the explanation provided by her employer was accepted by her and on that basis could not be satisfied that her conduct was dishonest. The general public would not regard such conduct as involving dishonesty on her part.

101. Nevertheless, in reaching this conclusion, the Tribunal was also mindful of the test for integrity set out in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "*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 ... [Professionals] are required to live up to their own professional standards. […] Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse. The duty to act with integrity applies not only to what professional persons say, but also to what they do. […]*
>
> *Obviously, neither courts nor professional tribunals must set unrealistically high standards ... The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public.*"

102. The Tribunal concluded that the Respondent's acceptance of her supervisor's explanation demonstrated a lack of integrity. This was accepted by the Respondent.

103. In particular, as a solicitor, she was required to subject her supervisor's explanation to scrutiny and could not simply accept it at face value. This was especially important in this case due to the FF's requirement for a solicitor's undertaking to release 1M of public money and complete the transaction. The role of the solicitor here was, in part, to provide a personal guarantee that the contractual obligations had been met. This involved effective scrutiny by the solicitor in question. The Respondent entirely failed to provide this scrutiny. It should have been apparent to her that she could not accept her supervisor's explanation at face value: he was not a solicitor, while she was a solicitor and head of Civil Litigation. The Respondent's pusillanimity here amounted to a serious lack of integrity.

Recklessness

104. In the alternative to dishonesty, the Applicant relied upon the test for recklessness which was set out in the case of Brett v SRA [2014] EWHC 1974. At paragraph 78 in that case, Wilkie J said that for the purposes of the Brett appeal, he adopted the working definition of recklessness from the case of R v G [2004] 1 AC 1034. He said that "the word recklessly is satisfied: with respect to (i) a circumstance when {the solicitor} is aware of a risk that it exists or will exist and (ii) a result when {the solicitor} is aware that a risk will occur and it is, in circumstances known to them, unreasonable for them to take the risk".

105. The Tribunal carefully considered all the evidence in applying the above test for recklessness. The allegation of recklessness was based on various pleaded facts which were however premised on the Respondent's knowledge of the terms of the CLA. The Tribunal considered that although FF may have been misled by the Respondent's

signing of the document, the Respondent genuinely believed (after discussing this with Mr Rahman) that she was entitled to do so. The Respondent had initially identified a risk, and had taken the step of discussing her concern with Mr Rahman. She was reassured that she could sign the declaration for the reasons already given above. It cannot be said that she continued to perceive of any "risk". The Tribunal therefore found the allegation of recklessness not proven.

Previous Disciplinary Matters

106. There was no record of any previous disciplinary findings by the Tribunal.

Sanction

107. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – December 2022).

108. The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

109. The approach set out in <u>Fuglers and Others v Solicitors Regulation Authority</u> [2014] EWHC 179 (per Popplewell J) was followed:

> *"There are three stages to the approach… The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question."*

110. In assessing the Respondent's level of culpability, the Tribunal took into account the Respondent's motivation in placing excessive reliance on information given to her by her supervisor which was in part due to her failure to obtain a copy of the CLA before placing her signature on the declaration. It was noted that she had worked for Mr Rahman and under his supervision for several years. Her conduct could not be said to have been planned, but it could be seen as tantamount to a breach of a position of trust because the declaration was to be signed by a solicitor which implied that she would have carried out relevant checks. In relation to her level of experience, she had worked for around 5 years and was COLP and head of civil litigation of the Firm, but not a partner. She had not deliberately misled the regulator.

111. Turning to the harm caused, the Tribunal found that signing a declaration required from a solicitor that was on its face inaccurate undermined the reputation of, and trust and confidence, in the profession. The Tribunal further observed that this had a causative effect on the public purse in this case which reinforced the requirement of a rigorous assessment being conducted the solicitor signing the declaration. Although the Tribunal accepts that the harm was entirely unintentional, the Tribunal was of the view that the harm caused should have been foreseen.

112. In considering whether there were aggravating and mitigating factors, the Tribunal observed that the Respondent had failed to reply to FF's requests by email clarifying the position and/or raising the alarm in order to mitigate any risk to the FF. In the Respondent's mitigation however, this was a single episode in a previously unblemished career. The Tribunal considered the Respondent had shown some partial but not complete insight regarding the need to be precise and accurate when signing a solicitor's declaration, having sought to claim in her evidence that no harm had been done to the FF because it had decided to proceed with the arrangement. The Tribunal further considered that the Respondent had made open and frank admissions at an early stage and had cooperated with the SRA.

113. As personal or general mitigating factor, the tribunal further took into account medical evidence filed on her behalf, observing however that it did not apply at the material time.

114. The Tribunal finally concluded that the level of seriousness of the misconduct was within the 'serious' and that a reprimand would not be appropriate in the circumstances. The Tribunal ordered a fine (at Level 4) of £15,001. The Tribunal further considered that a Restriction Order would be appropriate and ordered that the Respondent may not, for two years:

    114.1. Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body; or as a freelance solicitor; or as a solicitor in an unregulated organisation;

    114.2. Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;

    114.3. Be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration;

    114.4. Hold client money;

    114.5. Be a signatory on any client account;

    114.6. There be liberty to either party to apply to the Tribunal to vary the conditions set out above.

Costs

115. Counsel for the Applicant relied on the Schedule of Costs dated 9 July 2024 covering the entire investigation and proceedings in claiming £39,523.35.

116. The Tribunal noted that the Applicant had been unsuccessful in significant parts of its case, that the Respondent had to bear her own costs in defending the proceedings, but that it was proper to bring the prosecution even though some allegations could not be proved or were disproved by the Respondent.

117. The Tribunal carefully considered the matter of costs and the Respondent's ability to pay and found that it was just and reasonable to reduce the amount of costs to be paid by the Respondent to £25,000.00.

Statement of Full Order

118. The Tribunal ORDERED that the Respondent, ASIYA NASIM KALEEM, solicitor, do pay a fine of £15,001.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,000.00.

119. The Tribunal further Ordered that the Respondent shall be subject to conditions imposed for a period of two years as follows:

119.1. The Respondent may not:

119.1.1. Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body; or as a freelance solicitor; or as a solicitor in an unregulated organisation;

119.1.2. Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;

119.1.3. Be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration;

119.1.4. Hold client money;

119.1.5. Be a signatory on any client account;

119.2. There be liberty to either party to apply to the Tribunal to vary the conditions set out above.

Dated this 1st day of October 2024
On behalf of the Tribunal

C Evans

C Evans
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
01 OCT 2024