SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12581-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

LAW AND LAWYERS LIMITED First Respondent

FRANCIS MATHEW Second Respondent

Before:

Ms A Banks (Chair)
Ms C Rigby
Mr P Hurley

Date of Hearing: 9 October 2024

Appearances

Matthew Edwards, Counsel, employed by Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR instructed by the Solicitors Regulation Authority Ltd of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

Rory Dunlop KC, Counsel of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD for the First and Second Respondent.

JUDGMENT

Allegations

First Respondent

1. The allegations made by the SRA against the First Respondent, Law and Lawyers Limited (the Firm") (SRA ID: 613159), are that:

1.1 On 31 December 2021, it had a client account shortfall of £40,636.08 following payments across 423 client matters.

In doing so it breached either or both of:-

1.1.1 Rule 5.1 SRA Accounts Rules 2019; and

1.1.2 Rule 5.3 SRA Accounts Rules 2019

1.2 Between 28 February 2021 and 14 May 2022, it failed to conduct client account reconciliations at least every five weeks. In doing so it breached any or all of:

1.2.1 Paragraph 2.1 SRA Code of Conduct for Firms;

1.2.2 Paragraph 2.2 SRA Code of Conduct for Firms; and

1.2.3 Rule 8.3 SRA Accounts Rules 2019

1.3 On 31 December 2021, it retained client balances on 1786 client matter ledgers to a total value of £287,821.46.

In doing so it breached either or both:

1.3.1 Principle 2 SRA Principles 2019; and

1.3.2 Rule 2.5 SRA Accounts Rules 2019

1.4 Between 15 March 2021 and 22 February 2022, in respect of one or all of the matters identified in Appendix 2 to this statement, it failed to conduct adequate source of funds checks to enable it to assess the risk of money laundering posed, pursuant to Regulation 28(11)(a) of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("MLRs 2017").

In doing so it breached any or all of:

1.4.1 Principle 2 SRA Principles 2019;

1.4.2 Paragraph 2.1(a) of the SRA Code of Conduct for Firms; and

1.4.3 Paragraph and 3.1 of the SRA Code of Conduct for Firms.

1.5 Between 26 June 2017 and 17 February 2022, it failed to ensure that the Firm complied with its obligations under MLRs 2017, namely by failing to ensure it had a firm wide risk assessment as required by Regulation 18 of MLRs 2017

In doing so, and to the extent the conduct took place before 25 November 2019, it breached any or all of:

1.5.1 Principle 6 SRA Principles 2011;

1.5.2 Principle 7 SRA Principles 2011;

1.5.3 Principle 8 SRA Principles 2011; and

1.5.4 Failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011.

To the extent the conduct took place on or after 25 November 2019, it breached any or all of:

1.5.5 Principle 2 SRA Principles 2019;

1.5.6 Paragraph 2.1(a) of the SRA Code of Conduct for Firms; and

1.5.7 Paragraph 3.1 of the SRA Code of Conduct for Firms

Second Respondent

2. The allegations made by the SRA against the Second Respondent, Francis Mathew (SRA ID: 402183), are that, whilst a manager at Law and Lawyers Limited ("the Firm"):

2.1 Between 1 September 2020 and 1 March 2022, when the compliance officer for finance and administration ("COFA") of the Firm, and the Firm were:

2.1.1 Dealing with client money in a manner that breached Rules 5.1 and 5.3 SRA Accounts Rules 2019;

2.1.2 Failing to undertake accurate reconciliations of the client account as required by Rules 8.1 and 8.3 SRA Accounts Rules 2019; and

2.1.3 Dealing with client money in a manner that breached Rule 2.5 SRA Accounts Rules 2019.

He failed to remedy those breaches or report them to the SRA. In doing so he breached any or all of:

2.1.4 Principle 2 SRA Principles 2019;

2.1.5 Paragraph 9.2 of the SRA Code of Conduct for Firms; and

2.1.6 Rule 6.1 SRA Accounts Rules 2019

2.2 Between 26 June 2017 and 17 February 2022, when Money Laundering Compliance Officer ("MLCO") for the Firm, he failed to ensure that the Firm complied with its obligations under MLRs 2017, namely by failing to ensure the Firm had a firm wide risk assessment as required by Regulation 18 of MLRs 2017.

In doing so, and to the extent the conduct took place before 25 November 2019, he breached any or all of:

2.2.1 Principle 6 SRA Principles 2011;

2.2.2 Principle 7 SRA Principles 2011; and

2.2.3 Failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011.

To the extent the conduct took place on or after 25 November 2019, he breached either or both of:

2.2.4 Principle 2 SRA Principles 2019; and/or

2.2.5 Paragraph 7.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs

2.3 On 24 February 2020, he provided the SRA with inaccurate information, namely by declaring to the SRA that the firm-wide risk assessment was compliant with the requirements of Regulation 18 of the MLRs 2017, the Firm had no firm-wide risk assessment in place.

In doing so he breached either or both of:

2.3.1 Principle 2 SRA Principles 2019; and/or

2.3.2 Paragraph 7.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs.

Recklessness

3. In addition, allegation 2.3 is advanced on the basis that the Second Respondent's conduct was reckless. Recklessness is alleged as an aggravating feature of the Respondent's misconduct.

Executive Summary

4. Law & Lawyers Limited, the First Respondent, is a recognised body authorised for all legal services practising in areas including Landlord and Tenant (Commercial and Domestic); Immigration; Family/Matrimonial; Immigration; Property – Commercial; and Property – Residential. Frances Mathew, the Secondment Respondent, was a Director at the Firm at the time of the matters giving rise to the allegations. He also held several senior regulatory compliance positions at the Firm.

5. An SRA investigation commenced at the Firm in 2022 and identified issues that included a failure to undertake accurate reconciliations of the client account, a client account shortfall of £40,636.08 that arose from 423 client matters, additionally the firm held £287,821.46 of residual balances across 1,786 matters.

6. The Second Respondent had failed to ensure that the Firm complied with its obligations under MLRs 2017, namely by failing to ensure the Firm had a firm wide risk assessment as required by Regulation 18 of MLRs 2017. It was also alleged that Second Respondent acted recklessly when declaring to the SRA that a compliant firm-wide risk assessment was in place.

7. The First and Second Respondents admitted the allegations which included breaches of the SRA Accounts Rules 2019, SRA Principles 2011/2019 and SRA Code of Conduct 2011 and an agreed factual background was presented jointly by both Respondents and the SRA.

8. The Tribunal found all allegations proved and imposed a fine of £25,000.00 on each of the First and Second Respondents. In respect of the costs of the proceedings the Tribunal ordered that costs totalling £38,000 plus VAT were to be paid by the Respondents on a joint and several basis.

Sanction

9. The Tribunal Ordered that the First and Second Respondent each pay a fine of £25,000.

10. The Tribunal's sanction and its reasoning on sanction can be found [here]

Documents

11. The Tribunal reviewed all the documents submitted by the parties, which included:

Applicant

- Application and Rule 12 Statement with exhibit "MJE1" dated 22 March 2024
- Statement of Agreed Facts dated 4 October 2024
- Schedule of Costs dated 2 October 2024

First Respondent

- Answer to the Rule 12 Statement dated 17 May 2024
- Witness Statement of Raju Radhakrishnan on behalf of the First Respondent with exhibit RR1 dated 2 October 2024

Second Respondent

- Answer to the Rule 12 Statement dated 17 May 2024

- Second Respondent's witness statement with exhibit FM2 dated 2 October 2024
- Second Respondent's Statement of Means dated 2 October 2024

Professional Details

First Respondent

12. The Firm is a recognised body authorised for all legal services. The Firm practises in the following areas: Landlord and Tenant (Commercial and Domestic); Immigration; Family/Matrimonial; Immigration; Property – Commercial; and Property – Residential. The firm has no previous regulatory or disciplinary findings.

Second Respondent

13. The Second Respondent was admitted as a solicitor on 1 July 2004 and holds a current Practising Certificate. The Second Respondent has no previous regulatory or disciplinary findings. At material times he was a Director at the Firm and the person with significant control of the company (Law and Lawyers Limited – company number 08598464). At all material times, the Second Respondent held the following roles at the Firm:

- Compliance Officer for Legal Practice ("COLP");
- Compliance Officer for Finance and Administration ("COFA");
- Money Laundering Reporting Officer ("MLRO"); and
- Money Laundering Compliance Officer ("MLCO").

Agreed Factual Background

14. The parties had agreed the following factual background which the Tribunal accepted:

Background

14.1 On 3 February 2022, the SRA wrote to the Second Respondent notifying him/the Firm of an SRA investigation into the Firm following concern about the firm's anti-money laundering procedures ("AML") and business management.

14.2 Following notice being given to the Second Respondent, the SRA forensic investigation commenced on 10 February 2022 and ultimately resulted in a detailed report dated 8 July 2022 ("the FI Report"), together with supporting appendices. During the investigation, the SRA's Forensic Investigation Officer, Myles Robinson ("the FIO"), reviewed accounting records and client ledgers as well as the Firm's AML policies, controls and procedures and AML documents on client files. An interview was also conducted with the Second Respondent on 30 May 2022.

Allegation 1.1 - Client account shortfall - £40,636.08

14.3 The date at which the FIO compared client liabilities and client cash held was 31 December 2021. This is referred to as the extraction date.

14.4 A list of liabilities to clients as at the extraction date was produced which totalled £5,839,628.41. A comparison of the total liabilities to clients with cash held on client bank accounts at that date, after allowance for uncleared items, showed the following:

Liabilities to Clients per matter list.	£5,839,628.41	
ADD: Client debit balances per matter list.	£43,395.50	
LESS: Client debit balances on matters where the firm has explained that money is held on her matters for the same clients.	(£2,759.42)	
ADD: Office credit balances where money was taken in excess of the amount the client was billed.	£271.00	
Total liabilities to Clients		£5,880,535.49
Client Account balance	£5,841,292.06	
LESS: Unpresented items	(£1,663.65)	
Client Cash Available		£5,839,628.41
Minimum Cash Shortage (total liabilities – client account balance)		£40,907.08

14.5 It was not possible for the FIO to ascertain from the books of account whether the figure of £40,907.08 was the full extent of the Cash Shortage. The minimum cash shortage was caused by (a) payments from the client account in excess of funds held for the relevant clients; and (b) transfers from the client account to the business account in excess of the amount the clients were billed. These matters were identified as there were debit client balances and office credit balances respectively at 31 December 2021.

14.6 On 18 February 2022, the Firm transferred £43,395.50 from the business account to the client account to replace the minimum cash shortage. After identifying bookkeeping

errors of £2,759.42 from the 31 December 2021 reconciliation, this reduced the total client account debit balance to £40,636.08. The shortfall of £40,636.08 was explained by the Second Respondent in an email to the SRA on 21 March 2022 as follows:

- £13,469.57 – Items omitted from completion statements or the amounts to be paid changed after the completion statements were sent, including ULS (search provider), notice and Land Registry fees;
- £11,203.86 – Duplicate stamp duty payment of £10,400.00 and fees relating to late payment of Stamp Duty on multiple matters;
- £5,134.66 – The clients did not provide the necessary funds;
- £3,506.80 – Excess costs being taken by the Firm in error;
- £3,498.96 – More money being transferred to the client than should have been in error;
- £2,449.06 – Ongoing matters at 31 December 2021 where the Firm anticipates the debit balance will be replaced by money received from the clients; and
- £1,373.17 – Discounts authorised by Directors.

14.7 The FIO detailed the failings in respect of seven exemplified matters which appear in the FI Report. By the 7 March 2022 reconciliation, there were no client debit balances in the matter list and the reconciliation balanced.

Allegations 1.2 – Failing to undertake client account reconciliations in accordance with the Accounts Rules

14.8 During the investigation the Firm produced a number of client account reconciliations as outlined in the FI Report.

14.9 It was noted that the following reconciliations took longer than the stipulated 5 weeks (35 days) to be completed:

Date being reconciled	**Date reconciliation completed**	**Days Taken**
28 February 2021	7 April 2021	38
30 April 2021	6 June 2021	37
31 May 2021	5 August 2021	66
30 June 2021	23 August 2021	54

Date being reconciled	Date reconciliation completed	Days Taken
31 July 2021	6 September 2021	37
30 September 2021	18 November 2021	49
31 October 2021	6 February 2022	98
23 November 2021	8 February 2022	77
30 November 2021	9 February 2022	71
30 November 2021	13 February 2022	75
13 December 2021	10 February 2022	59
31 December 2021	11 February 2022	42
31 December 2021	14 February 2022	45

14.10 In respect of the reconciliations provided for dates prior to the 7 March 2022, the FIO noted:

> *"The above reconciliations were not compliant with the SRA Accounts Rules as they were not an accurate comparison of the cash available with the firm's liabilities to clients. They did not take into account matters where payments had been made in excess of funds held (client debit balances) or matters where money had been transferred from the firm's client account to the firm's business account in excess of the amount billed (office credit balances). These would have increased the liabilities to clients and identified a cash shortage."*

14.11 It was noted that the reconciliations provided demonstrated that the books of account balanced, this is despite the client matter lists showing both client debit balances and office credit balances.

14.12 It was also noted that the reconciliations provided by the Firm were unsigned until 30 September 2021. The Second Respondent explained in an email to the SRA on 9 June 2022 that the Firm had misplaced the signed versions.

Allegation 1.3 - Retaining residual client balances - £287,821.46

14.13 On 7 March 2022 and 25 April 2022, the Firm provided spreadsheets setting out how they intended to rectify £287,821.46 of residual balances across 1786 matters which held balances at 31 December 2021, and for which there had been no movement on the account since 31 December 2020:

	Explanation	7 March 2022	25 April 2022
a.	Money the Firm will return to clients	£88,326.30	£59,408.04
b.	Money to be paid to charity	£54,984.06	£53,431.72
c.	Legal fees owed to the Firm	£44,107.50	£44,413.41
d.	Money returned to clients since the investigation began	£43,732.07	£80,251.20
e.	Ongoing transactions	£28,899.64	£29,449.64
f.	Search and post-completion fees paid but the money needs to be transferred from client to business	£9,522.96	£9,490.57
g.	Retention monies which the Firm is entitles to hold (completed and ongoing transactions)	£8,949.91	£5,540.98
h.	Four matters where the firm has been unable to locate the clients and intended to apply to the SRA for permission to pay to charity (the last movement on all four matters was 1 October 2017)	£6,880.00	
i.	To be transferred to an ongoing matter connected with the same client	£4,419.02	£5,835.90
	Total	**£287,821.46**	**£287,821.46**

14.14 In respect of the residual balances involving money that was to be paid to either the client or charity[1] (a, b, d), those balances had been held since the following dates:

[1] Based on information provided 25 April 2022

Last client ledger movement	Number of matters	Residual balances
2017	23	£10,233.88
2018	88	£15,619.45
2019	534	£53,654.07
2020	808	£113,583.56
Totals	**1453**	**193,090,96**

Allegation 1.4 – Failing to conduct adequate source of funds checks

14.15 The FIO reviewed AML documents provided by the Firm on a total of fifteen conveyancing matters. Of those fifteen matters, AML issues were identified on twelve.

14.16 Source of funds checks were also found to be inadequate in certain exemplified matters which are outlined at paragraphs 172-258 of the FI Report. Two of the five exemplified matters have been repeated below for ease of reference.

Client A – C11716

14.17 On 15 March 2021, the client completed an Initial Instructions/Money Laundering form. The section regarding source of funds was left blank.

14.18 On 2 September 2021, the Firm received £94,000.27 from the client.

14.19 On 3 September 2021, the Firm conducted electronic AML checks.

14.20 On 6 September 2021:

- The AML and risk assessment section was completed on the Firm's case management system. All boxes were left blank.

- The source of funds section was completed on the Firm's case management system. The section regarding source of funds was ticked but left blank.

14.21 The Firm held bank statements from the client's Santander bank account (*****563). From the statements, the following deposits into the account could be seen:

Date	Deposit Amount	Transaction Description
08/02/2021	£19,500.00	LIN BAOGUAN 2/NO98 BEIAOBEI
13/03/2021	£27,985.00	LIN NA/NO98BEIWOBEIS
22/03/2021	£8,000.00	CHEQUE PAID IN AT NEWBURY
07/04/2021	£19,989.00	ZHANG AIE 2/NO.98 BEIAO B
27/04/2021	£9,000.00	CHEQUE PAID IN AT NEWBURY

14.22 No regular income was identifiable from the bank statements and there was no evidence that information or documents were sought in connection with these receipts.

14.23 On 6 September 2021, the purchase was completed for £90,240.07.

14.24 On 16 September 2021, a Matter Risk Assessment form was completed. The box relating to the question regarding Source of Wealth was ticked but no details were recorded. The box relating to the question regarding Source of Funds and verification documents was ticked but no details were recorded. The matter was assessed to be medium risk with the rationale that it was a cash purchase noted on the form.

14.25 The fee earner on the matter emailed the FIO on 10 March 2022, to explain that the client in this matter *"received the deposit monies from her parents and the monies were transferred to her account from China and the same was reflected in her bank statement."*

14.26 On 18 May 2022, the fee earner on the matter emailed the FIO to confirm the money came from the client's mother and that no gift letter was requested as there was no mortgage involved.

Client B1 and Client B2 – C12754

14.27 On 16 June 2021:

- Clients B1 and B2 signed a Stamp Duty Land Tax First Buyer Declaration which was blank; and

- Clients B1 and B2 signed an Initial Instructions/Money Laundering form which was blank save for a question relating to whether a mortgage was required.

14.28 On 5 August 2021, the Firm received a mortgage offer and instruction from Kent Reliance. The offer stated that the mortgage was buy to let and interest only with a term of 25 years. There was no reference to the borrowers receiving money from third parties to help pay the balance of the purchase price.

14.29 On 13 August 2021, the clients signed a Confirmation Form relating to the mortgage application which stated that the balance of the purchase price was to come from savings.

14.30 On 30 September 2021, the Firm received £91,983.50 from Client B2 and £65,000.00 from Client B1 for a total of £156,983.50. The Firm also received mortgage monies of £374,970.00.

14.31 On 7 October 2021 the Firm conducted electronic AML checks.

14.32 On 8 October 2021:

- The AML and risk assessment section was completed on the Firm's case management system. All of the boxes were left blank; and

- The Source of Funds section was completed on the Firm's case management system. The section regarding Source of Funds was ticked but left blank.

14.33 Also on 8 October 2021, a Matter Risk Assessment form was completed. The answer given in response to the question regarding Source of Wealth was "Yes". The answer given in response to the question regarding Source of Funds and verification documents was "Yes". The matter was assessed to be medium risk. The purchase completed on this date for £500,000.00.

14.34 There is an undated pre-completion title review check list which is ticked to say that proof of funds has been obtained.

14.35 The Firm obtained bank statements from Client B2 Barclays bank account (*****379) from 15 May to 16 June 2021 then again from 17 July to 4 October 2021 (the Firm have not provided bank statements for the intervening period), which showed the following receipts:

Date	Deposit Amount	Transaction Description
08/06/2021	£16,000.00	Chen C reference Mum
08/06/2021	£39,000.00	Chen W reference Mum
16/06/2021	£10,000.00	Cheng Chen reference For Mum
16/08/2021	£12,988.00	Zhan Xiang
07/09/2021	£14,976.00	Zhan Xiang
30/09/2021	£5,000.00	INST.ISA1
30/09/2021	69,000.00	204349 33181650

14.36 The Firm did not provide any bank statements for account 204349 33181650. No evidence was provided to the FIO to suggest information or documents were sought in connection with the above receipts.

14.37 The Firm obtained bank statements for Client B1 Barclays bank account (*****210) from 8 May 2021 to 8 June 2021 then again from 9 July to 6 October 2021 (the Firm have not provided bank statements for the intervening period).

14.38 The balance on 29 September 2021 was £2,718.70. On 30 September 2021, there were receipts of £63,719.00 from "EVRYDY SAV", £2,000.00 from "204497 50247731" and

- £1,281.00 from "INST.ISA1" and a transfer of £65,000.00 to the Firm. No evidence was provided to the FIO that the Firm requested/obtained bank statements for the Everyday Saver account.

Allegation 1.5 – Failing to ensure compliance with obligations under MLRs 2017

14.39 On 26 June 2017, the MLRs 2017 came into force which imposed additional obligations on firms working in areas of higher money laundering risk. The Firm was the 'Relevant Person' with ultimate responsibility for ensuring compliance with the AML regime[2].

14.40 As such, the Firm was required to take appropriate steps to identify and assess the risks money laundering and terrorist financing to which its business is subject (MLRs 2017 – Regulation 18).

14.41 An up-to-date record of the firm wide risk assessment[3] and policy in respect of money laundering and terrorist financing[4] must be maintained in writing.

Regulation 18 – firm wide risk assessment

14.42 The SRA published guidance on creating a firm wide risk assessment on 29 October 2019 and this was updated on 21 September 2023. This guidance was updated on 29 October 2019, to include guidance and information on how to create a firm wide risk assessment and a template which could be downloaded.

14.43 On 7 May 2019, the SRA published a warning notice which set out the firm wide risk assessment needed to be in writing, kept up to date and provided to the SRA upon request.

14.44 In an initial interview with the FIO on 10 February 2022, the Second Respondent confirmed the Firm did not have a firm wide risk assessment in place.

14.45 On 17 February 2022, the Second Respondent emailed to the FIO a completed firm wide risk assessment of the same date. The document outlined that it was prepared on 16 February 2022, by the Firm's AML Compliance Officer and approved by the Second Respondent on 17 February 2022. The next review date was given as 19 August 2022. No previous versions of this document were available.

[2] MLRs 2017, Regulations 8 and 12
[3] MLRs 2017 Regulation 18(4)
[4] MLRs 2017 Regulation 19(1)(c)

14.46 The document itself highlighted particular areas of risk for the Firm, including the nature of the work largely involving conveyancing, acting for clients who nobody at the Firm has met in person and the risk of mortgage fraud.

14.47 In an interview with the FIO on 30 May 2022, the Second Respondent confirmed the Firm did not have a firm wide risk assessment in place, that he had confused this document with the client risk assessment and that he had only realised a firm wide risk assessment was required after the SRA investigation had begun.

Allegation 2.1 – Failing to remedy/report breaches of the SRA Accounts Rules

14.48 Paragraphs 14.3 – 14.14 are admitted by the Second Respondent for the purpose of this allegation.

14.49 In the Second Respondent's interview with the FIO on 30 May 2022, he accepted he was aware of the following matters at the Firm prior to the SRA investigation:

- That on occasions payments would be authorised from the client account for payment of notices etc when there was no money in the individual client account;
- That authorising payments in circumstances where there was no money in the client account was like taking money from one client to pay another;
- There was a delay in the client account reconciliations being conducted between May 2021 and October 2021 because of "*extra workload*" associated with the "*stamp duty deadline*"; and
- Whilst not being aware of the scale of the issue, the Firm were holding residual client balances in matters for which there had been no recent movement.

14.50 Despite knowledge of the above issues and the fact that they constituted breaches of the SRA Accounts Rules, the Second Respondent failed to remedy these breaches or report them to the SRA.

Allegations 2.2 – Failing to ensure compliance with obligations under MLRs 2017

14.51 Paragraphs 14.15 – 14.47 are admitted by the Second Respondent for the purpose of this allegation.

14.52 The Second Respondent was the Firm's MLCO, and therefore bears ultimate responsibility for any breaches of the regulations contained within the MLRs 2017 and is expected to have a detailed knowledge of the Firm's AML regime as set out in the SRA Guidance.

Allegation 2.3 – Providing inaccurate information to the SRA

14.53 The SRA sent letters to the Firm on 12 December 2019, 8 January 2020, 27 January 2020, 31 January 2020 and 20 February 2020 requesting that the Firm complete a declaration regarding whether they had a firm wide risk assessment in place in accordance with Regulation 18 MLRs 2017.

14.54 On 24 February 2020, the Second Respondent submitted a declaration to the SRA that the Firm had a firm wide risk assessment in place.

14.55 In answer to the question "*Does your firm have in place a fully compliant firm-wide risk assessment, as required by Regulation 18, taking account of information published by us and including references to: Your customers, The countries or geographic areas in which you operate, Your products and services, Your transactions and Your delivery channels.*" The Respondent answered "*Yes*".

14.56 The Respondent confirmed that the information contained within his declaration was correct to the best of his knowledge and belief and that he would notify the SRA of any changes in respect of the information provided in the future.

14.57 In an initial interview with the FIO on 10 February 2022, the Second Respondent confirmed the Firm did not have a firm wide risk assessment in place.

14.58 In an interview with the FIO on 30 May 2022, the Second Respondent confirmed the Firm did not have a firm wide risk assessment in place and that he had confused this document with the client risk assessment and that he had only realised a firm wide risk assessment was required after the SRA investigation had begun.

14.59 The Firm's first firm wide risk assessment was first completed on 17 February 2022.

Accounts Rules, Code of Conduct and Principle Breaches

First Respondent

15. The First Respondent admits breaches of the Accounts Rules, Code of Conduct and Principles in the following terms:

Allegation 1.1 – Client account shortfall £40,636.08

15.1 The First Respondent paid out of its client account £40,636.08 more than it was holding for their respective clients across 423 matters. The client money it therefore used to make these payments totalling £40,636.08 was being held for other clients and intended to be used for their matters. The transfers out of the client account therefore constituted a breach of Rule 5.1 of the SRA Accounts Rules 2019 by the First Respondent.

15.2 Given that these transfers totalling £40,636.08 were also made in excess of the money the First Respondent held on behalf of each of the respective clients, on each of the 423 matters, the First Respondent breached Rule 5.3 of the SRA Accounts Rules 2019.

Allegation 1.2 – Failure to undertake client account reconciliations

15.3 On at least nine occasions the First Respondent was found to have failed to conduct account reconciliations within the stipulated 35-day period. Further the reconciliations were not compliant with the SRA Accounts Rules as they were not an accurate comparison of the cash available with the Firm's liabilities to clients. Had they been so, they would have identified the client debit balances forming the subject matter of allegations 1.1 and 2.1.1. The First Respondent therefore breached Rules 8.1 and 8.3 of

the SRA Accounts Rules 2019.

15.4 The requirement to have effective governance structures, arrangements, systems, and controls in place is set out at Paragraph 2.1 of the SRA Code of Conduct for Firms. The requirement to keep and maintain records to demonstrate compliance with the Firm's obligations under the SRA's regulatory arrangements is set out at Paragraph 2.2 of the SRA Code of Conduct for Firms.

15.5 In failing to complete client account reconciliations in the correct way, and at least every five weeks, the First Respondent failed to provide proper governance and/or adhere to sound risk management principles. It therefore breached Paragraphs 2.1 and 2.2 of the SRA Code of Conduct for Firms.

Allegation 1.3 – Retaining residual client balances

15.6 On 31 December 2021, the First Respondent held residual client balances on 1786 matter ledgers totalling £287,821.46. There had been no movement on these accounts for one year and efforts to identify and return this money only accelerated after the SRA investigation began. There was no proper reason for the First Respondent to be in possession of this money and it should have been returned promptly to clients. The First Respondent therefore breached Rule 2.5 of the SRA Accounts Rules 2019.

15.7 The public would expect a solicitor/solicitor's firm to take proper care of money entrusted to them. By holding money in its client account for one year when it should have been returned to the relevant clients, and by failing to tell those clients that it was holding money on their behalf, the First Respondent breached Principle 2 of the SRA Principles 2019.

Allegation 1.4 – Failing to conduct adequate source of funds checks

15.8 The SRA Warning Notice on Money Laundering and Terrorist Financing dated 25 November 2019, highlights warning signs which solicitors should be aware of, and which may require the solicitor to take action to avoid committing a criminal offence or breaching professional obligations. This highlighted if red flag indicators are present in your dealings with a client, you should ask further questions of your client.

15.9 On the matters of Client A and Client B1 and Client B2, funds were received from China. Receiving funds from a foreign country was a risk indicator highlighted in the SRA Warning Notice referred to above. Although on the matter of Client A, the fee earner explained the client confirmed the money received from China belonged to her parents, he did not take any further action to substantiate this and was simply content to accept the client's explanation. This does not constitute adequate consideration of the source of funds.

15.10 The Firm has said that it did undertake some investigations into the source of funds. However, this was limited to obtaining bank statements but not scrutinising the information contained within them.

15.11 Regulation 28(11)(a) of the MLRs 2017 states, "The relevant person must conduct ongoing monitoring of a business relationship, including— (a)scrutiny of transactions

undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the relevant person's knowledge of the customer, the customer's business and risk profile".

15.12 On the matters of Client A and Client B1 and B2 and another matter involving Client C the transaction was funded by third parties. On the matters of Client D and Clients E1 and E2 it is unclear from where and how the clients obtained/accumulated the funds to complete their property transactions. There is no evidence of any checks undertaken on these funds. The Firm had an obligation pursuant to Regulation 28(11)(a) of the MLRs 2017 to scrutinise the transactions and, where necessary make adequate enquiries into the source of funds. The Firm did not make any enquiries as to why money (sometimes from overseas jurisdictions) was being received from third parties and/or how those funds had been accumulated.

15.13 The Firm failed to be alert to warning signs and assess the money laundering risks and ask the relevant questions. It therefore failed to have sufficient regard for SRA warning notices, which specifically spell out red flags to be aware of; the transactions had red flag indicators but insufficient extra scrutiny or enquiry was made.

15.14 The First Respondent failed to keep up to date with money laundering regulations. As a result, it did not have effective systems or controls in place to ensure that staff complied with anti-money laundering legislation to adequately risk assess matters and apply the appropriate levels of customer due diligence in breach of Paragraphs 2.1(a) and 3.1 of the SRA Code of Conduct for Firms.

15.15 The public would be alarmed by the extent of the First Respondent's failure to uphold anti-money laundering provisions because it is expected that solicitors and law firms comply with such legislation. A competent firm would have ensured anti-money laundering checks were carried out at the beginning and throughout each transaction and that it had systems for oversight of its staff on whom it properly relies. By failing to do so, the Firm has therefore acted in breach of Principle 2 of the SRA Principles 2019.

Allegation 1.5 – Failing to ensure compliance with obligations under MLRs 2017

15.16 As a consequence of the First Respondent failing to have a firm wide risk assessment, it was in breach of Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019, which require firms/solicitors to behave in a way that maintains the trust the public places in them and the provision of legal services/to act in a way so as to uphold public trust and confidence in the profession and in legal services provided by authorised persons.

15.17 Members of the public would expect the First Respondent to comply with its regulatory obligations, particularly those relating to money laundering. The First Respondent failed to have a compliant firm wide risk assessment in place, and this left it vulnerable to the risk of being used for money laundering or terrorist financing. This risk is heightened given that the Firm undertakes work areas covered by the MLRs (over 70% coming from residential conveyancing alone). The public would expect firms to take every precaution to ensure they are not vulnerable to these risks. The public would expect a firm of solicitors to comply with its legal and regulatory obligations to protect against these risks as a bare minimum.

15.18 The First Respondent's failure to ensure a compliant risk assessment was in place was a failure to behave in a way that (a) maintained the trust the public places in it; and (b) upholds public trust and confidence in the legal profession. It is therefore in breach of Principle 6 of the SRA Principles 2011 for the period up to 25 November 2019 and Principle 2 of the SRA Principles 2019 for the period thereafter.

15.19 In failing to comply with the MLRs 2017 by not having a firm wide risk assessment (Regulation 18), the First Respondent failed to comply with its legal and regulatory obligations. In doing so it breached Principle 7 of the SRA Principles 2011.

15.20 In failing to comply with the MLRs 2017 by not having a firm wide risk assessment (Regulation 18), the First Respondent failed to run its business effectively and in accordance with proper governance and sound financial and risk management principles. In doing so it breached Principle 8 of the SRA Principles 2011.

15.21 As a consequence of the First Respondent failing to have a firm wide risk assessment as required by the MLRs 2017, it:

- Failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011, namely complying with legislation applicable to its business, including anti-money laundering and data protection legislation, for the period 26 June 2017 to 25 November 2019;

- Breached paragraph 2.1(a) of the SRA Code of Conduct for Firms, namely, to have effective governance structures, arrangements, systems and controls in place that ensure compliance with the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements for the period 25 November 2019 to 17 February 2022; and

- Breached paragraph 3.1 of the SRA Code of Conduct for Firms, namely, to keep up to date with and follow the law and regulation governing the way it works, for the period 25 November 2019 to 17 February 2022.

Second Respondent

16. The Second Respondent admits breaches of the Accounts Rules, Code of Conduct and Principles in the following terms:

Allegation 2.1 – Failing to remedy/report breaches of the SRA Accounts Rules

16.1 The Second Respondent was aware of practices at the Firm whereby payments would be authorised in excess of funds held for the client. The problem was widespread at the Firm and occurred over 423 matters. The Second Respondent was aware that this was akin to taking money from one client to pay another and yet despite this, he allowed this process to continue. The public would expect the COFA of the Firm to exercise proper stewardship of the client account in adherence with the SRA Accounts Rules. In failing to keep client money safe, the Second Respondent failed to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons, and therefore breached Principle 2 of the SRA Principles 2019.

16.2 The Second Respondent was the COFA of the Firm. It was his responsibility to ensure that the Firm and its managers and employees comply with any obligations imposed upon them under the SRA Accounts Rules.

16.3 In allowing the Firm to operate in breach of the SRA Accounts Rules as detailed at paragraph**s** 14.3 – 14.14, rather than correcting such breaches promptly, the Second Respondent breached Rule 6.1 of the SRA Accounts Rules 2019.

16.4 In failing to promptly report the same breaches to the SRA, the Second Respondent has also breached paragraph 9.2 of the SRA Code of Conduct for Firms.

Allegations 2.2 – Failing to ensure compliance with obligations under MLRs 2017

16.5 As a consequence of the Second Respondent, as the Firm's MLCO and under an obligation to ensure the Firm was compliant with the MLRs 2017, failing to ensure the Firm had a firm wide risk assessment, he was in breach of Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019. These principles require solicitors to behave in a way that maintains the trust the public places in them and the provision of legal services/to act in a way so as to uphold public trust and confidence in the profession and in legal services provided by authorised persons.

16.6 Members of the public would expect a firm to comply with its regulatory obligations, particularly those relating to money laundering. As a result of the Second Respondent's failings, the Firm failed to have a compliant risk assessment in place, which left it vulnerable to the risk of being used for money laundering or terrorist financing. This risk is heightened given that the Firm undertakes work areas covered by the MLRs (over 70% coming from residential conveyancing alone). The public would expect firms to take every precaution to ensure they are not vulnerable to these risks. The public would expect a firm of solicitors to comply with its legal and regulatory obligations to protect against these risks as a bare minimum.

16.7 The Second Respondent's failure to ensure the Firm had a compliant firm wide risk assessment in place was a failure to behave in a way that (a) maintained the trust the public places in him; and (b) upholds public trust and confidence in the legal profession. He is therefore in breach of Principle 6 of the SRA Principles 2011 for the period up to 25 November 2019 and Principle 2 of the SRA Principles 2019 for the period thereafter.

16.8 In failing to comply with the MLRs 2017 by not having a firm wide risk assessment (Regulation 18) at the Firm, the Second Respondent has failed to comply with his legal and regulatory obligations. In doing so he has breached Principle 7 of the SRA Principles 2011.

16.9 As a consequence of the Second Respondent failing to ensure a firm wide risk assessment was in place at the Firm, he:

- Failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011, namely complying with legislation applicable to the Firm's business, including anti- money laundering and data protection legislation, for the period 26 June 2017 to 25 November 2019;

- Breached paragraph 7.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs, namely, to keep up to date with and follow the law and regulation governing the way you work, for the period 25 November 2019 to 17 February 2022.

Allegations 2.3 – Providing inaccurate information to the SRA

16.10 The Second Respondent made a declaration to the SRA on 24 February 2020 that the Firm had a fully compliant firm wide risk assessment in place as required by Regulation 18 of the MLRs 2017. However, this was not drafted until 17 February 2022.

16.11 The Second Respondent should have checked before completing the declaration on 24 February 2020, that the Firm had a firm wide risk assessment in place, however he failed to do so which resulted in him submitting a declaration to confirm one was in place when it was not. Members of the public would expect a solicitor to be scrupulous with their responses for information and documentation from his regulator and to take particular care not to mislead. They would expect him to ensure that he had carefully checked the accuracy of his responses and ensure they were not misleading. By failing to do so and by providing the SRA with inaccurate information which could not be relied upon, the Second Respondent undermined the trust the public places in him and in the provision of legal services in breach of Principle 2 of the SRA Principles 2019.

16.12 In failing to provide an accurate explanation/information to the SRA's request the Second Respondent breached paragraph 7.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs.

Allegation 3 - Recklessness

16.13 The actions of the Second Respondent were reckless when providing an inaccurate declaration to the SRA in respect of Allegation 2.3 above.

16.14 The SRA sent letters to the Firm on 12 December 2019, 8 January 2020, 27 January 2020, 31 January 2020 and 20 February 2020 requesting that the Firm complete a declaration regarding whether they had a firm wide risk assessment in place in accordance with Regulation 18 MLRs 2017.

16.15 On 24 February 2020, the Second Respondent submitted a declaration to the SRA that the Firm had a firm wide risk assessment in place.

16.16 In answer to the question "*Does your firm have in place a fully compliant firm-wide risk assessment, as required by Regulation 18, taking account of information published by us and including references to: Your customers, The countries or geographic areas in which you operate, Your products and services, Your transactions and Your delivery channels.*" The Respondent answered "*Yes*".

16.17 The Respondent confirmed that the information contained within his declaration was correct to the best of his knowledge and belief and that he would notify the SRA of any changes in respect of the information provided in the future.

16.18 In an initial interview with the FIO on 10 February 2022, the Second Respondent confirmed the Firm did not have a firm wide risk assessment in place.

16.19 In an interview with the FIO on 30 May 2022, the Second Respondent stated that the Firm did not have a firm wide risk assessment in place and that he had confused this document with the client risk assessment. The Second Respondent stated that he had only realised a firm wide risk assessment was required after the SRA investigation had begun.

16.20 The Firm's first firm wide risk assessment was first completed on 17 February 2022.

16.21 The Second Respondent acted recklessly by making a declaration that the Firm had a firm wide risk assessment that met the requirements of Regulation 18 of the MLRs 2017 without making sure that he understood exactly what a firm wide risk assessment was and without making any or any adequate enquiries as to whether one existed. Given the Second Respondent had not fully understood what he was declaring, the Second Respondent could have had no certainty that the declaration he was making was true. Consequently, he was aware of the risk that he might mislead the SRA by making it.

16.22 No reasonable solicitor in the Second Respondent's position and of his experience would have taken that risk. He was making a formal statement to his regulator concerning matters falling within its regulatory remit. In those circumstances, a reasonable solicitor would have been scrupulous in ensuring that he understood each of the questions in the declaration and only gave accurate answers to those questions before signing it and attesting to the truth of the facts therein. A reasonable solicitor would have made sure they understood what a firm wide risk assessment was and checked the Firm had a firm wide risk assessment that it was in line with the requirements of Regulation 18 of the MLRs 2017, before signing and submitting the declaration.

Witnesses

17. No oral evidence was received, and the Tribunal considered all of the evidence and the submissions made on behalf of the parties. The evidence 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. 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.

Findings of Fact and Law

18. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

19. The position of the parties was set out in the Statement of Agreed Facts and they invited the Tribunal to make factual findings on that basis. Additionally, the First and Second Respondents had made full admissions to the Applicant's case and the alleged breaches of the Principles and the Code for Solicitors.

The First Respondent

20. **Allegation 1.1 - On 31 December 2021, it had a client account shortfall of £40,636.08 following payments across 423 client matters**

20.1 The Applicant's case regarding the material facts underlying Allegation 1.1 is detailed at Paragraphs 14.3 – 14.7. The First Respondent had adopted and admitted the material facts within the Statement of Agreed Facts.

20.2 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the First Respondent's admission in respect of Allegation 1.1 was properly made. The Tribunal accepted the information presented by the parties within the Statement of Agreed Facts and noted that the supporting evidence within exhibit MJE1, including the FI Report, sustained Allegation 1.1.

20.3 Rules 5.1 of the SRA Accounts Rules 2019 required that the First Respondent only withdraw client money from a client account for the purpose for which it is being held, following receipt of instructions from the client or the third party for whom the money is held or on the SRA's prior written authorisation or in prescribed circumstances.

20.4 Rules 5.3 of the SRA Accounts Rules 2019 required that the First Respondent only withdraw client money from a client account if sufficient funds are held on behalf of that specific client or third party to make the payment.

20.5 The Tribunal found that the First Respondent had paid £40,636.08 out of its client account in circumstances when this was more than it was holding for its respective clients across 423 matters. The client money it therefore used to make these payments totalling £40,636.08 was being held for other clients and intended to be used for their matters. The transfers out of the client account therefore constituted a breach of Rule 5.1 of the SRA Accounts Rules 2019 by the First Respondent.

20.6 Furthermore, as these transfers totalling £40,636.08 were also made in excess of the money the First Respondent held on behalf of each of the respective clients on each of those 423 matters, the First Respondent breached Rule 5.3 of the SRA Accounts Rules 2019.

20.7 The Tribunal found **Allegation 1.1 proved** in full, on the balance of probabilities.

21. **Allegation 1.2 - Between 28 February 2021 and 14 May 2022, it failed to conduct client account reconciliations at least every five weeks.**

21.1 The Applicant's case regarding Allegation 1.2 is detailed at Paragraphs 14.8 – 14.12. The First Respondent adopted and admitted these facts within the Statement of Agreed Facts.

21.2 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the First Respondent's admission in respect of Allegation 1.2 was properly made. The Tribunal accepted the information presented by the parties within the Statement of Agreed Facts and noted that the supporting evidence within exhibit MJE1 (including the FI Report) sustained Allegation 1.2.

21.3 Paragraph 2.1 of the SRA Code of Conduct for Firms required the First Respondent to have effective governance structures, arrangements, systems and controls in place that ensured: -

- Compliance with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements that applied to the firm.

- That the firm's managers and employees complied with the SRA's regulatory arrangements which applied to them.

- That the Firm's managers and interest holders and those that the Firm employed or contracted with do not cause or substantially contribute to a breach of the SRA's regulatory arrangements by the Firm or its managers or employees.

- That the Firm's compliance officers were able to discharge their duties under paragraphs 9.1 and 9.2[5].

21.4 Paragraph of the 2.2 SRA Code of Conduct for Firms required the First Respondent to keep and maintain records to demonstrate compliance with its obligations under the SRA's regulatory arrangements.

21.5 Rule 8.3 of the SRA Accounts Rules 2019 required the First Respondent to complete at least every five weeks, for all client accounts held or operated by the Firm, a reconciliation of the bank or building society statement balance with the cash book balance and the client ledger total, a record of which must be signed off by the COFA or a manager of the Firm. The Firm was required to promptly investigate and resolve any differences shown by the reconciliation.

21.6 The Tribunal found that on at least nine occasions the First Respondent failed to conduct account reconciliations within the stipulated 35-day period. Further the reconciliations were not compliant with the SRA Accounts Rules 2019 as they were not an accurate comparison of the cash available with the Firm's liabilities to clients. If the Firm had conducted compliant reconciliations, it would have identified the issues that formed the basis of Allegation 1.1 above in relation to the Client account shortfall. The First Respondent therefore breached 8.3 of the SRA Accounts Rules 2019[6].

21.7 By its failure to complete client account reconciliations in the correct way, and at least every five weeks, the First Respondent also failed to provide proper governance and/or adhere to sound risk management principles. The Tribunal found that this was a breach of Paragraphs 2.1 and 2.2 of the SRA Code of Conduct for Firms.

21.8 The Tribunal found **Allegation 1.2 proved** in full, on the balance of probabilities.

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[5] Which can be viewed here.

[6] The Statement of Agreed Facts contained an admission by the First Respondent to a breach of Rule 8.1 of the SRA Accounts Rules 2019 within Allegation 1.2 (see Paragraph 15.3 above). Neither the Applicant's Rule 12 statement nor the Statement of Agreed Facts contained an allegation of a breach of Rule 8.1 of the SRA Accounts Rules 2019 against the First Respondent. For the avoidance of doubt the Tribunal made no findings in relation to Rule 8.1 of the SRA Accounts Rules 2019 in respect of the First Respondent.

22. **Allegation 1.3 - On 31 December 2021, it retained client balances on 1786 client matter ledgers to a total value of £287,821.46.**

22.1 The Applicant's case regarding Allegation 1.3 is detailed at Paragraph 14.13 – 14.14 above. The First Respondent adopted and admitted these facts within the Statement of Agreed Facts.

22.2 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the First Respondent's admission in respect of Allegation 1.3 was properly made. The Tribunal accepted the information presented by the parties within the Statement of Agreed Facts and noted that the supporting evidence within exhibit MJE1 (including the FI Report) sustained Allegation 1.3.

22.3 Principle 2 of the SRA Principles 2019 required the First Respondent to act in a way that upheld public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.

22.4 Rule 2.5 SRA Accounts Rules 2019 required the First Respondent to ensure that client money was returned promptly to the client, or the third party for whom the money is held, as soon as there is no longer any proper reason to hold those funds.

22.5 The Applicant had demonstrated, and the First Respondent accepted, that on 31 December 2021 the First Respondent held residual client balances on 1786 matter ledgers totalling £287,821.46. There had been no movement on these accounts for one year and efforts to identify and return this money only accelerated after the SRA investigation began. There was no proper reason for the First Respondent to be in possession of this money and it should have been returned promptly to clients. The Tribunal found that the First Respondent therefore breached Rule 2.5 of the SRA Accounts Rules 2019.

22.6 The public would expect a solicitor/solicitor's firm to take proper care of money entrusted to them. By holding money in its client account for one year when it should have been returned to the relevant clients, and by failing to tell those clients that it was holding money on their behalf, the Tribunal found that the First Respondent had breached Principle 2 of the SRA Principles 2019.

22.7 The Tribunal found **Allegation 1.3 proved** in full, on the balance of probabilities.

23. **Allegation 1.4 - Between 15 March 2021 and 22 February 2022, in respect of one or all of the matters identified in Appendix 2 to this statement, it failed to conduct adequate source of funds checks to enable it to assess the risk of money laundering posed, pursuant to Regulation 28(11)(a) of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("MLRs 2017").**

23.1 The Applicant's case regarding Allegation 1.4 is detailed at Paragraphs 14.15 – 14.38 above. The First Respondent adopted and admitted these facts within the Statement of Agreed Facts.

23.2 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the First Respondent's admission in respect of Allegation 1.2 was properly made. The Tribunal accepted the information presented by the parties within the Statement of Agreed Facts and noted that the supporting evidence within exhibit MJE1 (including the FI Report) sustained Allegation 1.2.

23.3 Paragraph 3.1 of the SRA Code of Conduct for Firms required the First Respondent to keep up to date with and follow the law and regulation governing the way the Firm worked.

23.4 In the Statement of Agreed Facts the parties had referenced the matters of Client A and Client B1 and Client B2, in which funds were received from China. Receiving funds from a foreign country was a risk indicator highlighted in the SRA Warning Notice[7]. The Tribunal found that the First Respondent had failed to take sufficient steps to substantiate client explanations regarding source of funds and also failed to properly scrutinise the information contained within client's supporting documentation. These steps were required pursuant to Regulation 28(11)(a) of the MLRs 2017.

23.5 In relation to the matters of Client A, Client B1, B2 and Client C the transactions were funded by third parties. On the matters of Client D and Clients E1 and E2 it was unclear from where and how the clients obtained/accumulated the funds to complete their property transactions. There was no evidence of any checks undertaken on these funds. The Firm had an obligation pursuant to Regulation 28(11)(a) of the MLRs 2017 to scrutinise the transactions and, where necessary make adequate enquiries into the source of funds.

23.6 The Tribunal found that the Firm did not make any enquiries as to why money (sometimes from overseas jurisdictions) was being received from third parties and/or how those funds had been accumulated. The Firm failed to be alert to warning signs and assess the money laundering risks. It therefore failed to have sufficient regard for SRA Warning Notice that specified concerns to be aware of; the transactions had red flag indicators but insufficient scrutiny or enquiry was made to identify and address them.

23.7 The Tribunal found that by its failure to keep up to date with money laundering regulations the First Respondent did not have effective systems or controls in place to ensure that staff complied with anti-money laundering legislation to adequately risk assess matters and apply the appropriate levels of customer due diligence. This was in breach of Paragraphs 2.1(a) and 3.1 of the SRA Code of Conduct for Firms.

23.8 The public would be alarmed by the extent of the First Respondent's failure to uphold anti-money laundering provisions because it is expected that solicitors and law firms comply with such legislation. The First Respondent should have ensured that anti-money laundering checks were carried out at the beginning and throughout each transaction and that it had systems for oversight of its staff on whom it properly relies. By failing to do so the Tribunal found that the First Respondent acted in breach of Principle 2 of the SRA Principles 2019.

23.9 The Tribunal found **Allegation 1.4 proved** in full, on the balance of probabilities.

[7] The SRA Warning Notice on Money Laundering and Terrorist Financing dated 25 November 2019

24. **Allegation 1.5 - Between 26 June 2017 and 17 February 2022, it failed to ensure that the Firm complied with its obligations under MLRs 2017, namely by failing to ensure it had a firm wide risk assessment as required by Regulation 18 of MLRs 2017**

24.1 The Applicant's case regarding Allegation 1.5 is detailed at Paragraph 14.39 – 14.47 above. The First Respondent adopted and admitted these facts within the Statement of Agreed Facts.

24.2 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the First Respondent's admission in respect of Allegation 1.5 was properly made. The Tribunal accepted the information presented by the parties within the Statement of Agreed Facts and noted that the supporting evidence within exhibit MJE1 (including the FI Report) sustained Allegation 1.5.

24.3 The obligation on the First Respondent to ensure it had a firm wide risk assessment as required by Regulation 18 of MLRs 2017 was clear and the Firm accepted from the earliest stage of the FIO's inspection on 10 February 2022 that the Firm did not have a firm wide risk assessment in place. Its absence left the Firm vulnerable to the risk of being used for money laundering or terrorist financing. This risk was heightened given that the Firm undertook a significant amount of work in areas covered by the MLRs including residential conveyancing.

24.4 The Tribunal found that as a consequence of the First Respondent failing to have a firm wide risk assessment, it was in breach of Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019[8], which require firms/solicitors to behave in a way that maintains the trust the public places in them and the provision of legal services/to act in a way so as to uphold public trust and confidence in the profession and in legal services provided by authorised persons.

24.5 The Tribunal found that by its failure to comply with the MLRs 2017 by not having a firm wide risk assessment, the First Respondent failed to comply with its legal and regulatory obligations and failed to run its business effectively and in accordance with proper governance and sound financial and risk management principles. In doing so the First Respondent breached Principles 7 and 8 of the SRA Principles 2011 and failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011 which required the First Respondent to comply with legislation (including anti-money laundering) applicable to its business.

24.6 The Tribunal found that by not having a firm wide risk assessment the First Respondent breached Paragraph 2.1(a) of the SRA Code of Conduct for Firms which required the First Respondent to have effective governance structures, arrangements, systems and controls in place that ensure compliance with the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements for the period 25 November 2019 to 17 February 2022.

24.7 The Tribunal found that by not having a firm wide risk assessment the First Respondent breached Paragraph 3.1 of the SRA Code of Conduct for Firms which required the First

[8] The breach of Principle 6 of the SRA Principles 2011 relates to the period up to 25 November 2019 and Principle 2 of the SRA Principles 2019 for the period thereafter.

Respondent to keep up to date with and follow the law and regulation governing the way it works for the period 25 November 2019 to 17 February 2022.

24.8 The Tribunal found **Allegation 1.5 proved** in full, on the balance of probabilities.

The Second Respondent

25. **Allegation 2.1 - Between 1 September 2020 and 1 March 2022, when the compliance officer for finance and administration ("COFA") of the Firm, and the Firm were:**

2.1.1 Dealing with client money in a manner that breached Rules 5.1 and 5.3 SRA Accounts Rules 2019;

2.1.2 Failing to undertake accurate reconciliations of the client account as required by Rules 8.1 and 8.3 SRA Accounts Rules 2019; and

2.1.3 Dealing with client money in a manner that breached Rule 2.5 SRA Accounts Rules 2019

25.1 The Applicant's case regarding Allegation 2.2 is detailed at Paragraphs 14.48 – 14.50 above. The Second Respondent adopted and admitted these facts within the Statement of Agreed Facts.

25.2 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Second Respondent's admission in respect of Allegation 2.1 was properly made. The Tribunal accepted the information presented by the parties within the Statement of Agreed Facts and noted that the supporting evidence within exhibit MJE1 (including the FI Report) sustained Allegation 2.1

25.3 The Tribunal had been referred to the matters detailed at Paragraphs 14.3 – 14.47 above which were stated by the parties to apply to both the First and Second Respondent.

25.4 The Tribunal noted that during an interview with the FIO on 30 May 2022 the Second Respondent admitted that on occasions payments would be authorised from the Firm's client account for payment of notices etc when there was no money in the individual client account. The Tribunal found that in dealing with client money in this manner the Second Respondent breached Rules 5.1 and 5.3 SRA Accounts Rules 2019**.**

25.5 The Second Respondent accepted that there were delays in the client account reconciliations and the Tribunal had made findings that on at least nine occasions the First Respondent failed to conduct account reconciliations within the stipulated 35-day period which applied equally to the Second Respondent. Additionally, the reconciliations were not compliant with the SRA Accounts Rules 2019 as they were not an accurate comparison of the cash available with the Firm's liabilities to clients. The Tribunal therefore found that the Second Respondent had breached Rules 8.1 and 8.3 SRA Accounts Rules 2019.

25.6 The Tribunal's findings in relation to the residual client balances on the 1786 matter ledgers reviewed during the investigation applied equally to the Second Respondent.

There was no proper reason for the Second Respondent to be in possession of this money and it should have been returned promptly to clients. The Tribunal therefore found that the Second Respondent breached Rule 2.5 of the SRA Accounts Rules 2019.

25.7 The Tribunal noted that the Second Respondent was the COFA of the Firm. It was his responsibility to ensure that the Firm and its managers and employees comply with any obligations imposed upon them under the SRA Accounts Rules 2019. The Second Respondent was aware of practices at the Firm whereby payments would be authorised in excess of funds held for the client. The problem was widespread at the Firm and occurred over 423 matters. The Second Respondent was aware that this was akin to taking money from one client to pay another and yet despite this, he allowed this process to continue.

25.8 The public would expect the COFA of the Firm to exercise proper stewardship of the client account in adherence with the SRA Accounts Rules 2019. The Second Respondent failed to do so and the Tribunal found that by failing to keep client money safe he failed to act in a way that upheld public trust and confidence in the solicitors' profession and in legal services provided by authorised persons the Second Respondent breached Principle 2 of the SRA Principles 2019.

25.9 The Tribunal found that by allowing the Firm to operate in breach of the SRA Accounts Rules 2019 as detailed at Paragraphs 14.3 – 14.47 above, rather than correcting such breaches promptly, the Second Respondent breached Rule 6.1 of the SRA Accounts Rules 2019 which required that he "…*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*."

25.10 As the Second Respondent was the Firm's COFA he was obligated, pursuant to Paragraph 9.2 of the SRA Code of Conduct for Firms to take all reasonable steps to ensure that the Firm and its managers and employees comply with any obligations imposed upon them under the SRA Accounts Rules 2019. Secondly to ensure that a prompt report is made to the SRA of any facts or matters that he reasonably believed were capable of amounting to a serious breach of the SRA Accounts Rules 2019 and finally to ensure that the SRA is informed promptly of any facts or matters that he reasonably believed should be brought to its attention in order that it may investigate whether a serious breach of its regulatory arrangements has occurred or otherwise exercise its regulatory powers. The Tribunal found that, by failing to do so in relation to the matters at Paragraphs 14.3 – 14.47 above, the Second Respondent breached Paragraph 9.2 of the SRA Code of Conduct for Firms.

25.11 The Tribunal found **Allegation 2.1 proved** in full, on the balance of probabilities.

26. **Allegation 2.2 - Between 26 June 2017 and 17 February 2022, when Money Laundering Compliance Officer ("MLCO") for the Firm, he failed to ensure that the Firm complied with its obligations under MLRs 2017, namely by failing to ensure the Firm had a firm wide risk assessment as required by Regulation 18 of MLRs 2017.**

26.1 The Applicant's case regarding Allegation 2.2 is detailed at Paragraph 14.51 – 14.52. The Second Respondent adopted and admitted these facts within the Statement of Agreed Facts.

26.2 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Second Respondent's admission in respect of Allegation 2.2 was properly made. The Tribunal accepted the information presented by the parties within the Statement of Agreed Facts and noted that the supporting evidence within exhibit MJE1 (including the FI Report) sustained Allegation 2.2

26.3 The Second Respondent was the Firm's MLCO and under an obligation to ensure the Firm was compliant with the MLRs 2017. The Tribunal found that the Second Respondent failed to ensure that the Firm had a firm wide risk assessment and thereby breached Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019[9]. These principles required the Second Respondent to behave in a way that maintained the trust the public placed in him and the provision of legal services and to act in a way so as to uphold public trust and confidence in the profession and in legal services provided by authorised persons.

26.4 The obligation on the Second Respondent to ensure it had a firm wide risk assessment as required by Regulation 18 of MLRs 2017 was clear and the Second Respondent accepted from the earliest stage of the Applicant's investigation that there was no firm wide risk assessment in place. The absence of the firm wide risk assessment left the Firm vulnerable to the risk of being used for money laundering or terrorist financing. This risk was heightened given that the Firm undertook a significant amount of work in areas covered by the MLRs including residential conveyancing.

26.5 The Second Respondent failed to ensure that a firm wide risk assessment was in place at the Firm and the Tribunal found (to the extent the conduct took place before 25 November 2019) that he breached Principle 7 of the SRA Principles 2011 in that he failed to comply with his legal and regulatory obligations and failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011, namely complying with legislation applicable to the Firm's business.

26.6 In the period after 25 November 2019, the Tribunal found that the Second Respondent breached Paragraph 7.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs, in that he failed to keep up to date with and follow the law and regulation governing the way he worked.

26.7 The Tribunal found **Allegation 2.2 proved** in full, on the balance of probabilities.

27. **Allegation 2.3 - On 24 February 2020, he provided the SRA with inaccurate information, namely by declaring to the SRA that the firm-wide risk assessment was compliant with the requirements of Regulation 18 of the MLRs 2017, the Firm had no firm-wide risk assessment in place.**

[9] The breach of Principle 6 of the SRA Principles 2011 relates to the period up to 25 November 2019 and Principle 2 of the SRA Principles 2019 for the period thereafter

27.1 The Applicant's case regarding Allegation 2.3 is detailed at Paragraphs 14.53 – 14.59 above. The Second Respondent adopted and admitted these facts within the Statement of Agreed Facts.

27.2 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Second Respondent's admission in respect of Allegation 2.3 was properly made. The Tribunal accepted the information presented by the parties within the Statement of Agreed Facts and noted that the supporting evidence within exhibit MJE1 (including the FI Report) sustained Allegation 2.3

27.3 The Second Respondent made a declaration to the Applicant on 24 February 2020 that the Firm had a fully compliant firm wide risk assessment in place as required by Regulation 18 of the MLRs 2017. However, the firm wide risk assessment was not drafted until 17 February 2022. The Tribunal noted that i**t** was important that the Firm had a wide risk assessment in place pursuant to the MLRs 2017 and when faced with enquiries from his regulator regarding this the Second Respondent should have checked and ensured that the information he was providing to his regulator was accurate.

27.4 The Tribunal found that by failing to provide an accurate response to the Applicant's query the Second Respondent breached paragraph 7.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs which required him to provide full and accurate explanations, information and documents in response to any request or requirement by his regulator.

27.5 Members of the public would expect a solicitor to be careful with their responses to their regulator ensuring the accuracy of any information requested. The Tribunal found that the Second Respondent had failed to do this by providing the SRA with inaccurate information which could not be relied upon and he had therefore undermined the trust the public places in him and in the provision of legal services in breach of Principle 2 of the SRA Principles 2019.

27.6 The Tribunal found **Allegation 2.3 proved** in full, on the balance of probabilities.

28. **Recklessness (in relation to Allegation 2.3)**

28.1 The Applicant's case was that the Second Respondent's conduct as detailed at Allegation 2.3 was reckless. This was stated as an aggravating feature of his misconduct.

28.2 The Applicant's case regarding recklessness is detailed at Paragraph 16.13 – 16.22 above. The Second Respondent adopted and admitted these facts within the Statement of Agreed Facts.

28.3 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Second Respondent's admission in respect of Allegation 3 was properly made. The Tribunal accepted the information presented by the parties within the Statement of Agreed Facts and noted that the supporting evidence within exhibit MJE1 (including the FI Report) sustained the allegation of recklessness.

28.4 The Tribunal applied the test for recklessness which was set out in the case of Brett v

SRA [2014] EWHC 1974. At paragraph 78, 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*".

28.5 The Tribunal noted the chronology and context of this allegation as the Applicant had contacted the Second Respondent on at least five occasions between December 2019 and February 2020 requesting that the Firm complete a declaration regarding whether they had a firm wide risk assessment in place in accordance with Regulation 18 MLRs 2017.

28.6 The Second Respondent submitted a declaration to the SRA that the Firm had a firm wide risk assessment in place on 24 February 2020. The Tribunal noted that the Second Respondent answered "*Yes*" in response to the question: -

> "*Does your firm have in place a fully compliant firm-wide risk assessment, as required by Regulation 18, taking account of information published by us and including references to: Your customers, The countries or geographic areas in which you operate, Your products and services, Your transactions and Your delivery channels."*

28.7 The Second Respondent also confirmed that the information contained within his declaration was correct to the best of his knowledge and belief and that he would notify the Applicant of any changes in respect of the information provided in the future.

28.8 The Second Respondent subsequently explained to the FIO during the Applicant's investigation that he had mistaken the firm wide risk assessment with the Firm's client risk assessment and that he had only realised a firm wide risk assessment was required after the SRA investigation had begun.

28.9 The Tribunal found that the Second Respondent acted recklessly in that he made a declaration that the Firm had a firm wide risk assessment which met the requirements of Regulation 18 of the MLRs 2017 without making sure that he understood exactly what a firm wide risk assessment was and without making any or any adequate enquiries as to whether one existed.

28.10 In those circumstances the Second Respondent was aware of the risk that he may provide inaccurate information to the Applicant and it was therefore unreasonable for him to provide that response to his regulator.

28.11 The Tribunal found the allegation of recklessness **proved** in full on the balance of probabilities, in that the Second Respondent had acted recklessly in relation to the conduct detailed within Allegation 2.3.

Previous Disciplinary Matters

29. None.

Mitigation

30. Mr. Dunlop KC accepted on behalf of the First and Second Respondents that it was necessary and appropriate that they receive sanctions for the allegations they have admitted. The Respondents also accepted that reprimands would be insufficient. The appropriate sanction was therefore, in Mr Dunlop KC's submission, a fine against each Respondent. This would reflect the seriousness of the admitted allegations. In relation to seriousness Mr Dunlop KC addressed the Tribunal on the following issues by which level of seriousness would be determined: - culpability, harm, aggravating and mitigating factors.

Culpability

31. Mr. Dunlop KC stated that the culpability of the Respondents was not particularly high. The misconduct was not planned or deliberate as each instance of misconduct arose through oversight and was inadvertent.

32. The conduct underlying Allegations 1.1-1.3 and 2.1 arose during a period when the Firm had a spike in work (transactions tripled due to the Stamp Duty Land Tax holiday) but a reduction in available staff (who had to work at home due to COVID). The pressures from this led to delays in reconciliation of the client account and, hence, in bookkeeping errors not being identified or corrected promptly.

33. Allegations 1.4-1.5 and 2.2-2.3 arose from the Second Respondent taking on too many responsibilities at a fast-growing firm, without fully understanding the requirements of the Money Laundering Regulations 2017

34. The Second Respondent did not deliberately mislead the SRA. He gave an inaccurate answer to a question from the SRA because he was confused. In particular, he overlooked the distinction between a firm wide anti-money laundering assessment ("FWRA") and the client and matter risk assessment forms which the Firm asked fee earners to complete in individual cases. Mr. Dunlop KC stated that there appeared to have been confusion in some sectors of the profession about what exactly it meant to have a FWRA. Mr. Dunlop KC stated that the Second Respondent was by no means the only person to have ticked 'yes' in answer to a question from the SRA in a mistaken belief that his firm had a compliant FWRA when it did not, several comparable such cases were cited in support of this submission.

Harm

35. Mr. Dunlop KC submitted that harm (and potential for harm) arising from the misconduct was not particularly high. Firstly, no actual harm was caused to any of the Respondents' clients and secondly there was no real risk of harm to any of the Respondents' clients. Client monies are of course sacrosanct, however not every error in the operation of a firm's client account creates a risk of a client losing money.

36. In relation to Allegations 1.1-1.2 and 2.1, it was conceded that errors were made so that, at times, sums of money were paid from the client account which were greater than the sums held for that client, and also that client account reconciliations were not done as

frequently as they should have been, with the result that errors were not identified or corrected as promptly as they should have been.

37. However, in Mr. Dunlop KC's submission the risk to clients arising out of this was purely theoretical, not real. There was no question of any client ever being left out of pocket as a result. The 'client account shortfall' which temporarily arose (i.e. £40,636.08 across 423 client matters) could only have resulted in a loss to a client if (a) all or almost all of the Firm's clients had sought to withdraw their money from the client account at the same time, before the errors were noticed and corrected, so that the client account drained down to below £40,636.08; and (b) the Firm did not have the funds in the office account to make good any shortfall. Neither of these things was remotely likely. The Firm had a very large number of clients and over £5.8 million in cash in the client account. It was extremely unlikely that so many clients would withdraw their funds from the client account that the balance went from over £5.8 million to under £40,636.08. Further and in any event, even in the extremely unlikely event of that happening, the Firm had the funds, many times over, to make good any shortfall: as of 31 December 2021, for example, there was a surplus in the office account of £573,167.24. That was enough to cover the shortfall 15 times over.

38. As to Allegation 1.3, the Firm always intended to repay the retained residual client balances to clients where the money was due to the clients, and they could be traced. The figure of £287,821.46 in the allegation could be misunderstood. The vast majority of the retained residual client balances related to fees and disbursements which the Firm was entitled to claim but had not yet done so. £88,326.30 was due to be returned to clients. More than half of this figure related to small sums owed to clients who had left no forwarding contact details and could not be traced. Such residual balances often occur in conveyancing firms and the SRA permits the money to be donated to charity where the client cannot be traced. That is what the Firm eventually did.

39. This allegation arose because that process (of trying to trace clients and donating money to charity where they cannot be traced) was not prioritised in a period where the Firm had a spike of work and staff could not come into work. There was no real risk to client money by this delay – if anything, in Mr Dunlop KC's submission, clients had more time to reclaim the small sums due to them than would have been the case if the Firm had promptly donated the money to charity. Following the wake-up call of the SRA investigation the Firm took action and cleared the balances, Mr Dunlop KC referred to an independent accountant report which detailed successful remediation of this issue by the Firm.

40. Thirdly Mr Dunlop KC submitted that there was no real risk of money laundering. The Firm was not involved in forms of conveyancing which presented particularly high risks of money laundering. In essence, the admitted breaches of the MLRs 2017 consisted of failures to conduct and record source of funds checks in relatively low value conveyancing transactions. In many cases the relevant fee-earner had obtained an oral explanation for the sources of funds but failed to record that answer or verify it against documents.

41. Fourthly, in respect of Mr. Dunlop KC's submission that harm (and potential for harm) arising from the misconduct was not particularly high, he advanced that there was no serious damage to the reputation of the profession. The breaches did not go to integrity,

instead they consisted of errors. Some of those errors were relatively common in the profession, and Mr Dunlop set out that the wider profession has taken time to develop its understanding of the requirements of the MLRs 2017. Mr. Dunlop KC maintained that no member of the public (client or otherwise) was adversely affected by the errors which were ultimately corrected. The Legal Ombudsman ("Legal Ombudsman") has never upheld a complaint against either the First or Second Respondent.

Aggravating/Mitigating features of the Respondents misconduct

42. Mr Dunlop KC submitted that none of the aggravating factors detailed the SDT Guidance Note on Sanction (10th Edition) ("the Guidance Note") were present in this case. By contrast there were, he submitted, powerful mitigating factors – the Respondents had no disciplinary history and no record of Legal Ombudsman findings against them, they made open and frank admissions, cooperated with the SRA throughout, shown genuine insight and taken active steps to remediate.

43. The First and Second Respondent invested significant time and money to ensure that they put right what went wrong and to make sure it never happens again. Those steps included: -

- Prompt action was taken to rectify the problems highlighted when the SRA forensic investigation commenced on 10 February 2022
- A FRWA was put in place by 17 February 2022
- On 18 February 2022 £43,395.50 was transferred from the business account to the client account to replace the client account cash shortage
- By 7 March 2022
    i. there were no client debit balances;
    ii. the reconciliation balanced.
    iii. A new head of compliance was appointed with responsibility to update the AMB policy and verify proof and source of funds on each transaction.
    iv. The Firm created an updated source of funds form which requested specific information about the source of funds.
- New procedures were adopted whereby the fee earner who requests payments must first check the client ledger to ensure there is enough money before making a payment.
- Following the SRA investigation new individuals have been appointed as COFA, MLRO, MLCO and COLP.
- The Firm's external accountants and auditors were replaced changed.
- An additional bookkeeper was hired.

- Reconciliations are now undertaken daily (even though they only need to be done every 5 weeks).

- An independent review of the accounting practices was conducted by an expert auditor, who confirmed that there is now full compliance with the SRA Account Rules.

- The Firm's AML policies and procedures were amended and updated

- All relevant fee-earners and staff attended have received AML training

- The client and matter risk assessment form was further improved, with further specific questions about the source of funds

Personal Mitigation

44. Mr Dunlop KC submitted that the personal mitigation in this case was unusually powerful. Mr Mathew, the sole owner of the Firm, had expressed remorse for the mistakes made. Mr Dunlop KC submitted that Mr Mathew is a remarkable person dedicated to serving his community. He is the president of a nonprofit organisation dedicated to the needs of his community. He has instigated the donation of over £400,000 to charitable causes and works with Catholic organisations to identify individuals and communities with the most need. He even donated his own kidney, in 2015, in an act of altruism which is consistent with his guiding values and principles.

45. Testimonials provided in support of Mr Mathew detailed what Mr Dunlop KC described as exceptional commitment to the welfare of his community, organising food drives and actively participating in projects to assist those in need. The Chair of the Malayalee Association of the UK stated that Mr Mathew "…*embodies the values of empathy, integrity and kindness*". Other testimonials described Mr Mathew as "*sincere, genuine, kind, generous and charitable*' and '*straightforward, hardworking and… generally a well-liked and respected person*'.

Appropriate Sanction

46. Mr Dunlop KC submitted that a fine would a proportionate sanction and that it was not necessary to impose any more serious sanction, such as a restriction order. A restriction order would not serve to protect the public. Mr Mathew has already stepped down from, and identified replacements for, the roles he used to have in managing compliance and risk at the Firm – i.e. COLP, COFA, MLRO and MLCO. A restriction order was unnecessary as Mr Mathew had no intention of resuming those roles.

47. An unintended consequence of any restriction order would be to further damage the Firm and its ability to serve the public as Mr Dunlop KC submitted that it would disqualify the Firm by default, from various lender panels. That, in turn, would prevent many clients from being able to instruct the Firm. As the Firm was experienced in acting for communities for whom English may not necessarily their first language the Firm could provide an important service to that community as clients are able to obtain efficient and competent services, in their first language, for a reasonable price.

48. In relation to the level of fine to be imposed it was submitted that the level of seriousness Mr Dunlop KC referred to the Tribunal's Guidance Note on Sanction (10th Ed) submitting that this was somewhere near the border of Levels 3 and 4 – either 'more serious or 'very serious'. As a result, Mr Dunlop KC submitted that fines in the region of £15,000 would be appropriate for each Respondent as that would be in line with the sanctions imposed in other, similar cases. In support of this Mr Dunlop KC referred to previous decisions of the Tribunal[10].

49. Mr Dunlop KC reiterated that all the breaches arose through inadvertence and neither Mr Mathew nor the Firm obtained any profit or advantage from them. A fine of around £15,000 each would be proportionate to the size of the Firm and the resources available to the Respondents and would commensurately reflect the errors, admissions, apologies and corrections made by the Respondents. Mr Dunlop KC also referenced the costs incurred by the Respondents which included their own legal fees for representation and the costs of being taken off lender panels that impacted on them severely.

50. Mr Dunlop KC submitted that no one represented the nobility of the profession more than the Second Respondent. In this case he had taken on too much and too many regulatory responsibilities however when he had come to realise and understood what had gone wrong, he had worked tirelessly to put it right at great personal cost. The Second Respondent was said to have served his local community ensuring excess profits are given to charity and had donated a kidney demonstrating his selflessness. Mr Dunlop KC invited the Tribunal to impose a fine that would not frustrate the Second Respondent's work going forward.

Sanction

51. The Tribunal had regard for its Guidance Note on Sanction (10th Ed) and the proper approach to sanctions as set out in *Fuglers and others v SRA* [2014] EWHC 179 ("Fuglers"). The Tribunal considered the seriousness of the misconduct, assessing the First and Second Respondent's culpability and the extent of any harm together with any aggravating or mitigating factors.

52. <u>First Respondent</u>

52.1 In assessing culpability, the Tribunal accepted that there was no blameworthy motivation for the misconduct and it was not planned. The First Respondent was, however, by reason of being a firm, directly responsible and had full control over the circumstances giving rise to the misconduct. Its responsibility for the breaches was shared with the Second Respondent, for whom they had overarching responsibility. The First Respondent was entitled to rely on the Second Respondent to properly discharge his compliance roles, but it was also responsible for having systems in place in case this did not happen, in order to prevent breaches of important regulations.

[10] In SRA v Norman [2013] EWHC 3886
In SRA v Kirton, Newbold, Khalid, George and Organ (11684-2017)
In SRA v Nisa-Zaman (CO/4026/2022)
In SRA v Newaz and Masood (Case number 1269034-2019)
In SRA v Dentons UK and Middle East LLP (Case number 12476-2023)
In SRA v (1) Clyde and co. LLP; (2) Mills-Webb (Case number 12481-2023)

52.2 The Firm was responsible for ensuring it had put in place systems that were appropriate to the nature of its business. In allowing the client account shortfall, retaining residual balances on client matter ledgers and failing to compliantly conduct client account reconciliations the First Respondent had breached fundamental aspects of the SRA Accounts Rules 2019. The First Respondent's failure to ensure that the Firm complied with its obligations under MLRs 2017 and its failure to conduct adequate source of funds checks to enable it to assess the risk of money laundering were, likewise, instances of fundamental non-compliance with regulatory obligations that sit at the core of the professions work on behalf of clients.

52.3 The firm was experienced enough to have been able to ensure full compliance yet failed to do so. The Tribunal found that Law & Lawyers Limited's level of culpability was high.

52.4 In assessing harm, the Tribunal found that there was always harm caused to the reputation of the profession when there were persistent and long-running breaches of the SRA Accounts Rules, which were in place ultimately to protect the public. The Tribunal had not heard any evidence of loss to individual clients or claims on the Compensation Fund and so the harm in this case was reputational rather than direct.

52.5 The matter was mitigated by the fact that the First Respondent had shown genuine insight. The firm had co-operated with the SRA throughout and admissions had been made to the facts and allegations set out within the Agreed Statement of Facts. The Firm had an unblemished regulatory history and its work was valued by the local community as detailed within the character references presented.

52.6 The Tribunal considered that No Order and a Reprimand were inadequate sanctions as these options were not commensurate with the seriousness of the misconduct or the risk to the public and the reputation of the profession. The Tribunal determined that the seriousness of the misconduct was such that the appropriate sanction was a financial penalty.

52.7 In relation to the level within the indicative fine bands, the Tribunal found the misconduct to be very serious and placed it within Level 4. It had not been deliberate or caused by any blameworthy motivation. There had been no lack of integrity, recklessness, or manifest incompetence and so it did not cross into Level 5. The First Respondent had also taken responsible remedial action after the SRA investigation commenced.

52.8 The Tribunal imposed a fine of £25,000 on the First Respondent.

53. <u>Second Respondent</u>

53.1 In assessing culpability, the Tribunal found there was no specific motivation for the misconduct. It had been the result of a cavalier attitude by Second Respondent in respect of the range regulatory obligations that applied to his practice at the material time. Although there had been no specific planning or conscious attempt to circumvent proper processes or to obtain an advantage, the issues detailed within the allegations represented continuing position that the Second Respondent had been aware of to some extent. There had been a failure to comply with fundamental regulatory requirements in

circumstances where the Second Respondent was directly responsible for compliance at the Firm, this enhanced his culpability.

53.2 The Second Respondent was aware of widespread practices at the Firm whereby payments would be authorised in excess of funds held for the client, he was aware that this was akin to taking money from one client to pay another and allowed this process to continue. Separately, in respect of the residual client balances totalling £287,821.46 when there had been no movement on these accounts for a year, efforts to identify recipients and return this money only accelerated after the SRA investigation began. There was no proper reason for the Second Respondent to be in possession of this money and it should have been returned promptly to clients or alternatively billed where proper to do so. This was aggravated by his role as COFA at the Firm and the Second Respondent was expected to exercise stewardship of the client account in adherence with the SRA Accounts Rules 2019.

53.3 The Firm failed to have a compliant risk assessment in place, which left it vulnerable to the risk of being used for money laundering or terrorist financing. Although it had been submitted in the course of the Second Respondent's mitigation that money laundering was not taking place, given the extent to which the Firm was undertaking conveyancing this was an ideal work type for this risk to manifest and served to emphasise the importance of compliance with the MLRs 2017**.**

53.4 The Second Respondent's culpability was high given his status as MLCO for the Firm. The Second Respondent was expected to ensure compliance and failed to ensure that the Firm complied with its obligations under MLRs.

53.5 Effective regulation of the profession requires solicitors to be scrupulous when communicating with and providing information to their regulator. The Second Respondent had recklessly provided inaccurate information to the SRA regarding the Firm having a fully compliant firm wide risk assessment.

53.6 The Second Respondent had direct control and responsibility for the circumstances of the misconduct. He was an experienced solicitor at the time of the misconduct with over fifteen years of experience. At material times he was a Director at the Firm and the person with significant control of the company. The Second Respondent held roles at the Firm including COLP, COFA, MLRO and MLCO. The Tribunal assessed the Second Respondent's culpability as high.

53.7 In assessing harm, the Tribunal found that there was always harm caused to the reputation of the profession when there were persistent and long-running breaches of the SRA Accounts Rules, which were in place ultimately to protect the public. The Tribunal had not heard any evidence of loss to individual clients or claims on the Compensation Fund and so the harm in this case was reputational rather than direct.

53.8 The risk of harm was clear and real as opposed to theoretical. It had been submitted in mitigation that issues arising from the shortfall on client account would only manifest in a black swan type event i.e. the unlikely event that so many clients withdrew their funds from the client account in a short space of time. The Tribunal rejected this assertion. The SRA Accounts Rules 2019 do not apply with any distinction for a firm that is able to make good readily any shortfall.

53.9 There is always a risk when there is a shortfall on client account particularly when adequate and timely reconciliations are not undertaken. The spike in work referenced by the Second Respondent, arising from the Stamp Duty Land Tax (SDLT) holiday during and in the aftermath of the pandemic in 2020/2021, should have served to prompt him to undertake regular reconciliation as the risks, to which he was on notice, were increased. There were inherent risks to clients in the circumstances admitted by the Second Respondent and found proved. The public expect solicitors to maintain their accounts and ensure compliance with the SRA Accounts Rules 2019.

53.10 The Tribunal had been addressed in mitigation regarding the implications on the Firm and the Firm's clients were a Restriction Order to be imposed and the Firm were to be consequently disqualified from lender panels. It had been submitted that lender panel work was an important source of instructions for the Firm. The Tribunal's primary concern was that the Firm's clients receive a proper service with required regulatory protections in place in which they can have full confidence. The underlying errors and breaches found proved reflected Firm wide issues including a lack of effective training. The Second Respondent had indicated that he did not appreciate the severity of the underlying circumstances until the SRA investigation commenced. These were all factors that demonstrated the need for a Restriction Order to ensure public protection and confidence in the profession.

53.11 The Tribunal was mindful of the importance of the MCLO and the seriousness attached to the functions of that role being discharged effectively and competently. It was presented in mitigation that the Second Respondent's misconduct could be viewed on a spectrum with the lower end of culpability and seriousness applying to inadvertent misunderstanding through to knowingly misleading his regulator at the higher end, which was not alleged in this case. The Tribunal noted that the public would expect a solicitor to ensure their understanding of queries raised by their regulator and to carefully respond with accuracy when communicating with their regulator. In this case the Second Respondent had failed to make proper checks and was reckless in allowing the risk of his regulator being misled by his responses.

53.12 The Tribunal noted that the Second Respondent had had a hitherto unblemished career with no previous disciplinary findings recorded against him. The Second Respondent appeared to show genuine and heartfelt insight into his misconduct and had made open and frank admissions to his Regulator during the investigative process in which he had co-operated. The Second Respondent had taken responsible remedial action after the SRA investigation commenced. The Tribunal gave weight to the Second Respondent's character references which spoke to his selflessness and significant community contributions both inside and outside of his professional life.

53.13 The Tribunal considered that No Order and a Reprimand were inadequate sanctions as these options were not commensurate with the seriousness of the misconduct or the risk to the public and the reputation of the profession.

53.14 The Tribunal considered that a Fine and a Restriction Order adequately addressed the seriousness of the misconduct and the need to protect the public and the reputation of the profession. The Tribunal assessed the Second Respondents misconduct as very serious and determined that a Level 4 fine applied.

53.15 The Tribunal imposed a fine of £25,000 on the Second Respondent.

53.16 The Tribunal imposed a Restriction Order prohibiting the Second Respondent from taking up the following roles: - Head of Legal Practice/Compliance Officer for Legal Practice or Head of Finance and Administration/Compliance Officer for Finance and Administration/Money Laundering Reporting Officer or Money Laundering Compliance Officer, without permission of the Solicitors Regulation Authority. The Restriction Order was imposed indefinitely albeit with liberty to either party to apply to the Tribunal to vary it.

Costs

54. The Applicant had submitted a Statement of Costs dated 2 October 2024. The Applicant applied for costs in the sum of £38,000. This amount had been agreed with the First and Second Respondent in advance of the substantive hearing.

55. The Tribunal noted that all allegations had been found proven and the Tribunal concluded that the costs as applied for by the Applicant were, in all the circumstances and by reference to Rule 43 of the SDPR 2019, proportionate and reasonable.

56. The Tribunal ordered that the First and Second Respondents pay the costs of and incidental to this application and enquiry fixed in the sum of £38,000 plus VAT, such costs to be paid on a joint and several basis.

Statement of Full Order

First Respondent

57. The Tribunal ORDERED that the Respondent, LAW AND LAWYERS LIMITED, Recognised Body do pay a fine of £25,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that they do pay the costs of and incidental to this application and enquiry fixed in the sum of £38,000 plus VAT, such costs to be paid on a joint and several basis with the Second Respondent, Francis Mathew

Second Respondent

58. The Tribunal ORDERED that the Respondent, FRANCIS MATHEW solicitor, do pay a fine of £25,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £38,000 plus VAT, such costs to be a paid on a joint and several basis with the First Respondent, Law and Lawyers Limited.

58.1 The Respondent shall be subject to conditions imposed indefinitely by the Tribunal as follows:

The Respondent may not:

- Be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and

Administration/Money Laundering Reporting Officer and Money Laundering Compliance Officer without permission of the Solicitors Regulation Authority.

- There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 13th day of January 2025
On behalf of the Tribunal

A. Banks

A. Banks
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
13 JANUARY 2025