The Tribunal's Order in respect of sanction is subject to appeal to the High Court (Administrative Court) by the Applicant (the Solicitors Regulation Authority). The Order remains in force pending the High Court's decision on the appeal.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11562-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BUDDIKA SAJEEVANI KADURUGAMUWA Respondent

Before:

Mr J. A. Astle (in the chair)
Mr G. Sydenham
Mrs V. Murray-Chandra

Date of Hearing: 1 February 2017

Appearances

Inderjit Johal, counsel of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

Gerard Hillman, counsel of Carmelite Chambers, 9 Carmelite Street, London, EC4Y 0DR (instructed by Chris Raja of Chris Raja Solicitors, Devonshire House, 582 Honeypot Lane, Stanmore, HA7 1JS), for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 28 September 2016. The allegations were that the Respondent by virtue of her conviction had:-

1.1(a) failed to uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Principles 2011 ("the Principles").

1.1(b) failed to act with integrity contrary to Principle 2 of the Principles.

1.1(c) behaved in a way that was likely to diminish the trust the public placed in her or the provision of legal service contrary to Principle 6 of the Principles.

Documents

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

Applicant

- Application dated 5 October 2016 and Rule 5(2) Statement dated 28 September 2016 with exhibit ZC1 dated 5 October 2016.
- Certificate of Conviction dated 9 March 2016.
- Sentencing Remarks of HHJ Pitts dated 4 March 2016.
- Reply to Answer dated 17 November 2016.
- Further Reply to Answer dated 1 December 2016.
- Costs Schedules dated 5 October 2016 and 16 January 2017.

Respondent

- Answer to the Applicant's Rule 5 Statement dated 15 November 2016.
- Further Reply on Behalf of the Respondent dated 22 November 2016.
- Letters from Rajni Peerez, Senior Partner, Christopher Matthew Solicitors dated 14 March 2016 and 22 November 2016.
- Witness Statement of the Respondent dated 11 January 2017 with nine supporting documents.
- Letter of Support from Mr Manohari Hewawasam dated 21 November 2016.
- Letter of Support from Mr Dilshan Wasage dated 20 November 2016.
- Statement of Means and supporting documentation.
- Letters from the SRA to the Respondent in respect of her Practising Certificate dated 13 January 2017.
- The Judgment in the Tribunal Case of Tariq Ali (Case Number 11169-2013).

Factual Background

3. The Respondent was born in 1969 and was admitted as a solicitor in July 2007. At the date of the hearing the Respondent held a practising certificate subject to conditions.

4. On 5 February 2016 the Respondent was convicted on indictment of "concealment/disguise/convert/transfer/removed criminal property x1" which is shorthand for an offence under the Proceeds of Crime Act 2002. The Respondent was sentenced to six months imprisonment suspended for 12 months and was required to carry out 125 hours unpaid work before 3 March 2017.

5. As part of its investigation into the matter, the Applicant wrote to the Respondent on 11 May 2016 and the Respondent replied on 18 May 2016. On 2 August 2016 an Authorised Officer of the SRA decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

6. The Respondent gave oral evidence in addition to her written evidence. The Tribunal found the Respondent to be a truthful witness who presented as naïve.

7. The written and oral evidence that was before the Tribunal is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. 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

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

<u>Dishonesty</u>

9. There was no specific allegation of dishonesty made by the Applicant against the Respondent. There had been significant pleadings in the case in respect of the issue of dishonesty and whether or not it had been alleged. At the hearing, Mr Johal confirmed that the Applicant did not allege dishonesty. The Respondent had been convicted of an offence under s327 of the Proceeds of Crime Act 2002. For the Respondent to have been found guilty of that offence the jury would have had to be satisfied that the Respondent knew or suspected that the money she transferred was criminal property.

10. In her witness statement dated 11 January 2016 the Respondent stated that she "was neither aware nor suspected this money to be part of the criminal proceedings" when she transferred it. However, the Respondent did not seek to go behind her conviction.

11. The Certificate of Conviction lacked detail and the Judge's Sentencing Remarks did not clarify the basis on which she had been convicted. He had stated that the jury "had no doubt that you at least knew or suspected this money, £111,400 was criminal proceeds" but this did not resolve the issue of actual knowledge as opposed to suspicion.

12. The hearing proceeded on the basis that the Respondent suspected that the money was criminal property as there was no evidence that she knew that it was. For the avoidance of doubt, the hearing did not proceed on the basis that the Respondent had been convicted of a criminal offence which of necessity involved or in fact did involve dishonesty.

13. **Allegation 1.1 (a) – the Respondent failed to uphold the rule of law and the proper administration of justice contrary to Principle 1 of the Principles.**

The Applicant's Case

13.1 The particulars of the offence that the Respondent had been convicted of related to events on or around 5 September 2013 when she transferred £111,400 from her own account in Singapore to her husband's account in Sri Lanka.

13.2 The certificate of conviction dated 9 March 2016 set out that the Respondent was tried and convicted of an offence under the Proceeds of Crime Act 2002. She had received a suspended prison sentence and had been required to complete unpaid work. The Judge in his sentencing remarks had stated: "Of course, you are a woman of good character, of excellent character. You have suffered very considerably during the course of this case but nevertheless, it is a serious offence, committed by you, and although you are of excellent character in every way, that helps to mitigate the penalty but cannot extinguish it…" and that "It seems to me that this case is sufficiently serious as to justify a custodial sentence". The Judge imposed a custodial sentence, which was suspended as the Judge considered the Respondent to, in a way, also be a victim of Mr LN.

13.3 The professional obligation of a solicitor was to uphold the rule of law and the proper administration of justice. The Applicant's case was that this required solicitors to, amongst other things, abstain from criminal behaviour at all times.

The Respondent's Case

13.4 The Respondent admitted the allegation.

13.5 The Respondent had first met Mr LN in 2003/2004 and then again in 2006. Her previous firm had acted for him in an abortive property transaction. From 2008 until January 2012 there was no formal or social contact between the Respondent and Mr LN apart from the occasional courtesy exchange of emails.

13.6 Mr LN had contacted the Respondent in January 2012 and told her that €100 million of investment money that he had received from a company had been frozen by the Metropolitan Police. The Respondent had understood that the €100 million was in a solicitor's client account. Mr LN asked the Respondent to hold monies for him and to pay his personal expenses from these monies. The Respondent considered that the monies she received were entirely unrelated to the €100 million and were Mr LN's personal funds.

13.7 The Respondent had received the monies in US dollars and had paid them into her account in Singapore as this was the only US dollar account she had. When the bank notified the Respondent that they were going to close the account she transferred the monies to her husband's account in Colombo as she did not want her bank in the UK, to which she owed money, to take any part of the monies.

13.8 The Respondent had been tried alongside Mr LN and had been convicted of one of two counts with which she had been charged. Her conviction was for an offence under s327 of the Proceeds of Crime Act 2002.

The Tribunal's Findings

13.9 Under Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 the findings of fact upon which the conviction was based are admissible as conclusive proof of those facts save in exceptional circumstances. Neither the Applicant nor the Respondent sought to go behind the conviction and the Respondent admitted the allegation.

13.10 The Respondent had been convicted of a criminal offence. That offence required the Respondent to know or suspect that the £111,400.00 was criminal proceedings. This was a serious criminal offence and the Respondent had received a suspended prison sentence.

13.11 On the basis of her conviction it was clear that the Respondent had not upheld the rule of law and the proper administration of justice. Allegation 1.1(a) was proved beyond reasonable doubt.

14. **Allegation 1.1 (b) – the Respondent failed to act with integrity contrary to Principle 2 of the Principles.**

The Applicant's Case

14.1 The allegation was also based on the Respondent's conviction as set out above. The Applicant submitted that a solicitor who engaged in such behaviour may be properly said to lack moral soundness, rectitude and steady adherence to an ethical code so as to lack integrity. Mr Johal submitted that the Tribunal knew integrity when they saw it. Lack of integrity did not involve a dual objective and subjective test. It was an objective test. It may have been that the Respondent's actions had been reckless but if they were she still lacked integrity.

The Respondent's Case

14.2 The Respondent gave evidence and was cross-examined. She had admitted the allegation. The Respondent told the Tribunal that by the time that she made the transfer from her account in Singapore to her husband's account in Colombo she had had no contact with Mr LN for about eighteen months.

14.3 She had received a sum of money from Mr LN to use for his personal expenses and made a number of payments on his behalf. She had not considered the money as linked to the €100 million subject to the police investigation and had no questions

about the investment and regarded the money received as his personal funds. However, she accepted that she did have questions about Mr LN. He had told her when he came to see her in January 2012 that he had been questioned about whose money the €100 million was and that the money had been frozen. However he produced documents that suggested that there was nothing wrong and that his solicitors and the company involved were trying to get the funds released.

14.4 The Respondent had been arrested on 30 March 2012. At that time she did not know very much but knew that the police were interested in Mr LN and the €100 million. After her arrest she was interviewed in June and September 2012. Both interviews were brief. One related to a Mr MB whom the Respondent knew to be Mr LN's head of concierge. The other related to Mr DP, a business associate of Mr LN's, from whose business the Respondent had received funds on behalf of Mr LN.

14.5 The Respondent had been told by the bank that there was a global decision to close her accounts. She did not want to transfer the monies to her own account with a different bank as she owed money on that bank's credit card and did not want Mr LN's funds to be taken and set against that debt. The Respondent transferred what was left of the monies, in the sum of £111,4000.00 to her husband's account in Colombo as she thought that it would be safe in that account. She did not use the monies for her own benefit. After her conviction the money had been transferred to the police.

14.6 The Respondent had not told the police that she had the money in her account. She was interviewed about the transfer in September 2014 when the police were or became aware of the transfer. The Respondent did not know how the police became aware of the transfer but they had her bank statements.

14.7 The Respondent and Mr LN had all been charged on the same date at the beginning of 2015. When the Respondent received disclosure from the prosecution she realised that Mr LN was not all he claimed to be.

14.8 The Respondent accepted candidly that if she could turn the clock back she would not have done what she did. Mr Hillman acknowledged that there was some conflict between the Respondent's evidence and her admission. He invited the Tribunal to consider whether the Respondent's action was due to her naivety and the fact she did not see what she should have seen rather than a lack of integrity.

The Tribunal's Findings

14.9 The Respondent admitted the allegation. She had given evidence that between the time of her arrest and the transfer she had been interviewed by the police three times, albeit according to the Respondent, the interviews were brief and the questions were only obliquely related to Mr LN. Further the Respondent had told the Tribunal that she had questions in her mind about Mr LN but no questions about the money. From the outset of her involvement with the money the Respondent knew that Mr LN had been questioned about a €100 million investment. After her arrest she had not told the police that she was holding monies for Mr LN.

14.10 The Judge in his sentencing remarks had highlighted that the issue with the charge on which she had been convicted, as opposed to the one on which she was acquitted, was that the transfer was made after the Respondent had been interviewed several times and Mr LN had been arrested twice. The Judge considered that the transfer "could have been interpreted and probably was by the jury that by transferring it back, when it could have stayed untouched, to Colombo and put it into an account in your husband's name, was an act designed to hide it".

14.11 It was a matter for the judgment of the Tribunal on the facts of any given case whether those facts demonstrated integrity or revealed a lack of integrity. This was an objective test. The Tribunal considered that at the relevant time the Respondent had demonstrated a significant measure of naivety. Others had also been deceived by Mr LN. The Tribunal considered that the Respondent had turned a blind eye. In turning the blind eye and making the transfer that resulted in her conviction the Respondent had lacked integrity. Allegation 1.1 (b) was proved beyond reasonable doubt.

15. **Allegation 1.1 (c) – the Respondent behaved in a way that was likely to diminish the trust the public placed in her or the provision of legal service contrary to Principle 6 of the Principles.**

The Applicant's Case

15.1 Allegation 1.1(c) was based on the same factual matrix as allegations 1.1(a) and (b). The Applicant submitted that the trust that the public placed in solicitors and in the provision of legal services depended upon the reputation of the solicitors' profession as one in which every member may be trusted to the ends of the earth. The conviction of a solicitor for a criminal offence undermined that reputation.

The Respondent's Case

15.2 The Respondent admitted the allegation. In her view she was assisting Mr LN as a friend and not acting for him as a solicitor.

The Tribunal's Findings

15.3 The Respondent had admitted the allegation. For the same reasons as set out in respect of allegations 1.1(a) and 1.1 (b) the Tribunal found allegation 1.1 (c) proved beyond reasonable doubt. The Respondent, in being convicted of an offence under the Proceeds of Crime Act 2002, had not behaved in a way that maintained the trust that the public placed in her and in the provision of legal services. It was irrelevant that the Respondent did not consider that she was acting as Mr LN's solicitor. The Respondent was a solicitor and had to adhere to the high standards expected of her in all her conduct.

Previous Disciplinary Matters

16. None.

Mitigation

17. The Respondent had been convicted on a single count. She had no previous findings against her professional record and no other conviction. The Respondent had worked hard to qualify as a lawyer in Sri Lanka and then as a solicitor in England.

18. The Respondent considered that Mr LN was her friend and not her client. As far as the Respondent was concerned she did what she had done in response to a personal request and it had no bearing on her role as a solicitor.

19. Mr LN had produced documentation to the Respondent which supported his version of events. The Respondent now knew that documents had been falsified. The Respondent had been found not guilty of the first count against her which related to the €100 million.

20. The Respondent had not touched the money for her own use whilst it was in her own account. After it had been transferred to her husband's account the money was left undisturbed and apart from de minimise bank charges the full amount had been transferred to the police after the criminal trial. The Respondent had not made any personal financial gain and had lost her good name and reputation.

21. HHJ Pitts, in his sentencing remarks, had acknowledged that Mr LN was a sophisticated fraudster who had taken in a number of people including a firm of eminent solicitors who had represented him for a few weeks. The Judge had said, in the context of the Respondent having been taken in by Mr LN, that "It's very unfortunate for you because there is nothing I learnt of you or saw in you that would indicate that you would ever had (sic) committed a criminal offence, if it hadn't been for the connection, not of your own willing, but because of his determination to find you again, when he came back, no doubt to use you in the way that we heard that he did."

22. The Respondent had a number of financial commitments, including for her extended family, and was of limited means. She now had a greater insight as to the behaviour and conduct of individuals and considered that risk of further misconduct would never arise.

23. The Respondent had been granted a Practising Certificate subject to conditions by the SRA and the Authorised Officer who granted the certificate in May 2016 had noted that the offence was unrelated to her work as a solicitor, she did not profit from the offence and she had assisted in relation to the return of the money. The Respondent had been granted a further Practising Certificate for the practising year 2016/17 on 13 January 2017 which was again subject to conditions.

24. Relying on Ali which he acknowledged was persuasive but not binding on this Division of the Tribunal, Mr Hillman drew the Tribunal's attention to the fact that that Division, when determining sanction, had considered it especially pertinent that that Respondent had been issued with a Practising Certificate three times after the date of charge and subsequent conviction. The SRA in deciding to grant a practising certificate undertook a full risk assessment. There was no evidence that the Respondent presented a risk to the public. Mr Johal, in response, highlighted that the

granting of a Practising Certificate was a regulatory function and the Tribunal proceedings were disciplinary.

25. Mr Hillman submitted that the Ali case was a useful comparator in considering sanction. In that case the respondent had been subject to a Suspended Suspension Order and a Restriction Order. The conditions on the Respondent's practising certificate ensured public protection. There had been no repetition of the misconduct.

26. The Respondent had produced two letters from her senior partner, who attended the Tribunal to support her, as well as two further character references. In evidence she told the Tribunal that she would not do what she had done again.

Sanction

27. The Tribunal referred to its Guidance Note on Sanctions (5th Edition) when considering sanction.

28. The Respondent's motivation for the misconduct appeared to be her misguided loyalty to Mr LN whom she viewed as her friend. She had not made any personal gain. The transfer appeared to have been triggered by the bank telling the Respondent that it was going to close her account and in that sense it was not a planned act. The Respondent should not have committed a criminal offence and given that she had done so and she was a solicitor, her actions were in breach of a position of trust. However, she did not act in the course of her employment and the money was not client money.

29. The Respondent was not inexperienced albeit she was not the most experienced solicitor and she appeared somewhat naïve. However she had direct control of or responsibility for the circumstances giving rise to the misconduct. She decided to make the transfer and subsequently made it. The Respondent had not deliberately misled the regulator but she had not informed the police that she was holding the money. Limited harm had been caused by the Respondent's actions. The money had been recovered with minimal deductions. However the money was criminal property so it was not possible to say that there was no harm.

30. In assessing seriousness the Tribunal took into account the fact that the Respondent had been convicted of a criminal offence. The Tribunal had found that she had breached Principles 1, 2, and 6. The Respondent's conduct would have had a detrimental impact on those directly and indirectly affected by the misconduct and would have harmed the way in which the public viewed solicitors. This in turn would have damaged the reputation of the profession. To some extent the harm to the reputation of the profession would be cumulative in that the public would be aware of another solicitor convicted of a criminal offence and this would invariably damage the profession's reputation. The jury had found the Respondent guilty of one of the offences with which she had been charged. Whilst the Respondent may not have intended any harm, it was reasonably foreseeable that harm would be caused by her misconduct both to the rightful owners of the money and the reputation of the profession.

31. The Respondent had been convicted and received a suspended prison sentence. The jury's verdict carried the necessary implication only that her actions had been to a very limited extent calculated i.e. to the extent that she deliberately transferred the money having a suspicion that it might be criminal property and she had retained the money over a period of time without making use of it. She had turned a blind eye. The Tribunal considered the Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the profession. These were all aggravating factors.

32. By way of mitigating factors, the Respondent had been deceived by Mr LN and the monies transferred had been returned. The transfer that led to the conviction was a single episode albeit the Respondent had retained the monies for some time. The Tribunal considered that the Respondent had some insight and she had co-operated with the Regulator and engaged in the proceedings.

33. The misconduct was serious because it involved the commission of a criminal offence of which the Respondent had been convicted and thereby involved admitted and proved breaches of the Principles. However, taking into account the Respondent's level of culpability, the harm caused and the aggravating and mitigating factors the level of seriousness was towards the lower end of matters of this kind coming before the Tribunal.

34. The Tribunal considered the range of sanctions available to it commencing with No Order. Whilst the Respondent had shown insight she had been convicted of a criminal offence and neither "No Order" nor Reprimand would be sufficient sanction in this case. The Tribunal, bearing in mind the background to the offence and the deception by Mr LN, determined that a Fine was the appropriate sanction in combination with a Restriction Order. The protection of the public and the reputation of the profession did not justify the Respondent being Struck Off or Suspended.

35. The Tribunal assessed the Respondent's conduct as moderately serious and that the appropriate fine was £2,000.00. The Respondent had produced evidence of her means and this showed that whilst her income was heavily committed she had significant equity. The Tribunal concluded that the level of fine did not need to be reduced in light of the Respondent's means.

36. The Tribunal was aware that the Respondent had certain conditions on her Practising Certificate which had been imposed by the SRA. The Tribunal carefully considered whether or not a Restriction Order was required to be part of the overall sanction in order to ensure the protection of the public and the reputation of the profession. The Tribunal concluded that given the seriousness of the misconduct a Restriction Order was required. The combination of such an order with the Fine imposed provided adequate protection and would ensure the protection of the public and the reputation of the profession from future harm by the Respondent.

37. The Tribunal imposed conditions that the Respondent may not (a) act as a manager or owner of any authorised body; (b) be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration; (c) act as a Money Laundering Reporting Officer for any authorised body; (d) be a sole signatory to any client or office account cheques; (e) have sole responsibility for client or office account; and

(f) have sole responsibility for authorising client or office account transfers, electronic or otherwise. The Respondent was required immediately to inform any actual or prospective employer of these conditions and the reasons for their imposition.

38. The Tribunal gave liberty to either party to apply to the Tribunal to vary or rescind the above conditions after the lapse of two years from 1 February 2017. The Tribunal was concerned that in her evidence the Respondent had presented as naïve. The Restrictions imposed should remain in place for at least two years.

39. Whilst this Division of the Tribunal could not bind any future Division of the Tribunal that dealt with an application to vary or rescind the conditions the Tribunal wished to express its concern that, whilst it did not consider the Respondent would deliberately commit misconduct, it was possible that the Respondent could in the future be manipulated by someone similar to Mr LN. Whilst the conditions could not guarantee prevention of a repetition of what happened in this instance they offered the Respondent and the public very substantial protection and indeed the best protection short of striking off, which the Tribunal had decided would be disproportionate in this case.

40. Given the seriousness of the Respondent's criminal conviction the Tribunal gave careful consideration to the possibility of imposing a Suspended Suspension in conjunction with a Restriction Order. In all of the circumstances of the case the Tribunal did not conclude that the seriousness of the misconduct justified suspension from the Roll and therefore the question of whether the combination of a Restriction Order and pending suspension would adequately protect the public and the reputation of the profession did not arise. The Tribunal wished to make clear that any criminal conviction was a very serious matter. The sanction imposed by the Tribunal would always be case specific. The fact that this Division considered that Mr LN's deception and the Respondent's naivety meant that a Fine and Restriction Order was the appropriate sanction should in no way be seen as indicative that another Respondent convicted of the same offence or a different one should expect to receive a similar sanction.

Costs

41. The Applicant had applied for its costs in the sum of £3,120.06. Mr Johal informed the Tribunal that an agreement had been reached in respect of costs and that the Respondent had agreed to pay these in the sum of £2,652.00. Mr Hillman confirmed that this was the case. Accordingly, the Tribunal ordered that the Respondent do pay the costs of and incidental to this application and enquiry agreed in the sum of £2,652.00.

Statement of Full Order

42. The Tribunal Ordered that the Respondent, BUDDIKA SAJEEVANI KADURUGAMUWA, solicitor, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry agreed in the sum of £2,652.00.

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

The Respondent may not:

Act as a manager or owner of any authorised body;

Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

Act as a Money Laundering Reporting Officer for any authorised body;

Be a sole signatory to any client or office account cheques;

Have sole responsibility for client or office account;

Have sole responsibility for authorising client or office account transfers, electronic or otherwise;

The Respondent shall immediately inform any actual or prospective employer of these conditions and the reasons for their imposition.

There be liberty to either party to apply to the Tribunal to vary or rescind the conditions set out above after the lapse of a two year period from 1 February 2017.

Dated this 16th day of February 2017
On behalf of the Tribunal

J.A. Astle
Chairman