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BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

PETER KENNETH FELTON GERBER

Respondent

STATEMENT PURSUANT TO RULE 12 (2) OF THE SOLICITORS (DISCIPLINARY PROCEEDINGS) RULES 2019

I, Lyndsey Jayne Farrell, am a Solicitor employed by Capsticks Solicitors LLP, 1 St George's Road, London, SW19 4DR. I make this Statement on behalf of the Applicant, the Solicitors Regulation Authority Limited ("the SRA").

The allegations

1. The allegations made by the SRA against the Respondent, Peter Felton Gerber (SRA ID: 149188), are that, whilst in practice as a solicitor at Feltons Law ("the Firm") (SRA No. 552095) he:

   1.1. On or after 17 September 2021, provided information to prospective insurers in a professional indemnity insurance proposal form ("PIIPF") which indicated that all current and former fee-earners/partners/consultants over the past 6 years have received formal anti-money laundering training and that this had been properly documented in accordance with the requirements of the SRA. This information was false and the Respondent knew or ought to have known it was false.

   In doing so, he breached or failed to achieve:

   i. Principle 2 of the SRA Principles 2019 ("the 2019 Principles"); and/or
   ii. Principle 4 of the 2019 Principles; and/or
   iii. Principle 5 of the 2019 Principles; and/or

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iv. Rule 1.4 of the SRA Code of Conduct for Solicitors RELs and RFLs ("the Code").

The facts and matters relied upon are set out at paragraphs 9 to 14 below.

1.2 Between 26 June 2017 and 11 November 2022, he materially contributed to the Firm's anti-money laundering failures by failing adequately or at all to ensure the Firm had in place:

1.2.1 A firm wide risk assessment as required by Regulation 18 of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the 2017 MLR's");
1.2.2 Policies, controls and procedures as required by Regulation 19 of the 2017 MLR's;
1.2.3 Training as required by Regulation 24 of the 2017 MLR's;
1.2.4 Customer due diligence measures ("CDD") as required by Regulation 28 of the 2017 MLR's.

In doing so, he breached or failed to achieve:

In so far as the conduct took place prior to 25 November 2019:

i. Outcome 7.5 of the SRA Code of Conduct 2011; and /or
ii. Principle 6 of the 2011 Principles.

In so far as the conduct took place after 25 November 2019:

i. Principle 2 of the 2019 Principles; and/or
ii. Paragraph 7.1 of the SRA Code of Conduct for Solicitors RELs and RFLs; and/or
iii. Paragraph 2.1(a) and 2.1(b) of the SRA Code of Conduct for Firms.

The facts and matters relied upon are set out at paragraphs 29 to 46 below.

1.3 On 9 January 2020, he provided information to the SRA which indicated the Firm had in place a firm wide risk assessment. This information was false and the Respondent knew or ought to have known it was false.

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In doing so, he breached or failed to achieve –

i. Principle 2 of the 2019 Principles; and/or
ii. Principle 4 of the 2019 Principles; and/or
iii. Principle 5 of the 2019 Principles; and/or
iv. Rule 7.4(a) of the SRA Code of Conduct for Solicitors RELs and RFLs.

The facts and matter relied upon are set out at paragraphs 51 to 55 below.

1.4 Between 1 April 2020 and 30 April 2020, he caused or allowed payments to be made from the Firm's client account in circumstances other than in respect of instructions relating to an underlying transaction being undertaken by the Firm and the funds arising therefrom or in respect of the delivery by the Firm of a service forming part of its normal regulated activities.

In doing so, he breached or failed to achieve –

i. Rule 3.3 of the SRA Accounts Rules 2019 ("the SAR 2019"); and/or
ii. Principle 2 of the 2019 Principles; and/or
iii. Principle 5 of the 2019 Principles.

The facts and matter relied upon are set out at paragraphs 63 to 69 below.

1.5 Between 1 November 2017 and 30 April 2022, failed to return funds promptly to the client or a third party entitled to the funds in respect of the following client matters:

1.5.1 Company D; and/or
1.5.2 Company D vs Mr Y.

In doing so, he breached or failed to achieve:

In so far as the conduct took place prior to 25 November 2019:

iii. Rule 14.3 of the SRA Accounts Rules 2011 ("the SAR 2011"); and /or
iv. Principle 6 of the 2011 Principles.

In so far as the conduct took place after 25 November 2019:

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v. Rule 2.5 of the SAR 2019; and/or

vi. Principle 2 of the 2019 Principles.

The facts and matter relied upon are set out at paragraphs 78 to 81 below.

Recklessness

2. In addition, allegations 1.1 and 1.3 are advanced in the alternative to dishonesty on the basis that the Respondent's conduct was reckless. Recklessness is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegation. For further particulars of recklessness, please see paragraphs 25 to 28 and 60 to 62 below.

Appendices and Documents

3. The following appendices are attached to and relied upon in this Statement:

Appendix 1: Relevant Rules and Regulations

Appendix 2: Anonymisation and Matter Schedule

4. I attach to this statement a bundle of documents, marked Exhibit LJF1, to which I refer in this statement. Unless otherwise stated, the page references ("**Exhibit LJF1**, **p.X**") in this statement relate to documents contained in that bundle.

5. The bundle is divided into the following sections:

5.1. Section A: Documents relied on by the SRA **[pages 1 to 337 of LJF1]**

5.2. Section B: Notice and correspondence with the Respondent and/or his representatives **[pages 338 to 395 of LJF1]**

5.3. Section C: SRA Guidance documents and The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 **[pages 395 to 418 of LJF1]**

Professional Details

The Respondent

6. The Respondent was admitted as a solicitor on 15 February 1991. He holds a current Practising Certificate, free from conditions. At material times he was a manager at the Firm, the Recognised Sole Practice of the Respondent, and held the following positions:

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

The facts and matters relied upon in support of the allegations

Background

7. In August 2021, the SRA's AML Proactive Team spoke with the Respondent to discuss arrangements for an AML supervision inspection **[LJF1 pp 27 and 28]**. The call raised concerns about the Firm's compliance with the MLRs 2017, as well as the SAR 2019.

8. The SRA commissioned its own forensic investigation. This commenced on 25 May 2022 and ultimately resulted in a detailed report dated 11 November 2022 ("**the FI Report**") **[LJF1, pp 1 to 24 and appendices pp 25 to 337]**.

Allegation 1.1: Providing information to prospective insurers in a PIIPF which he knew/ought to have known was false

9. A copy of the Firm's PIIPF for the year 2021/2022 appears at **LJF1 pp276-286**. Page 11 of the form indicated that the form was completed electronically by the Respondent and submitted to the insurer on 17 September 2021 [**LJF1, p286**].

10. At section two of the PIIPF under the heading "*Renewal Statements*" were a series of statements which prompted a yes or no answer [**LJF1, pp277-278**]. The statement at 2.10 outlined **[LJF1 page 278]**:

> *"We confirm that all current and former fee-earners/partners/consultants over the past 6 years have received formal anti-money laundering (AML) training and that this has been properly documented in accordance with the requirements of the SRA."*

11. In response to this statement the Respondent ticked the box which said "Yes" **[LJF1, p278]**

12. On page ten of the PIIPF under the heading "Declaration" the Respondent answered yes to the following statements [**LJF1, p285**]:

12.1. *I/We declare that the answers to the questions in this Proposal Form are true and accurate having consulted with all Partners/Principals/Directors of the practice. I/we confirm that a reasonable search has been undertaken of information available to me/us in accordance with the terms of the Insurance Act 2015 and that a written record has been retained evidencing all such searches. I/we have not omitted, suppressed, or misstated any material facts which may be relevant facts that may be relevant to insurers' consideration of this proposal form.*

12.2. *I/We undertake to inform the Insurer of any change to any material fact that occurs prior to the point at which the insurance contract has been agreed.*

12.3. *I/We understand that the information I/We provide will be used in deciding the price charged by the Insurer for the risk and whether the Insurer will accept the application and the terms of any policy provided.*

12.4. *I/We are duly authorised to sign this Proposal Form by all principles/members/directors of the firm*.

13. It is noted that on the Firm's PIIPF for the previous year, signed by the Respondent on 29 July 2020 [**LJF1, p273**], the Respondent failed to answer the same question (question 10) [**LJF1, p270**].

14. When asked by the Forensic Investigation Officer in a recorded interview that took place on 12 October 2022, whether he had done any specific training with regards to anti-money laundering, the Respondent replied, "*No, no*" [**LJF1, p52; paragraph 25**]. When reminded about the requirement to document such training the Respondent replied "*No, there, there is none. I, I am aware, and I've just bought the, the compliance book which I think I sent you, came out last time and I've been looking at I think somebody, think it's the Law Society are doing on, online money laundering courses*" [**LJF1, p53; paragraph 8**].

Breaches of the Code of Conduct and Principles

Principle 4 (honesty)

15. Principle 4 of the SRA Principles 2019 requires solicitors to act with honesty. The test for dishonesty stated by the *Supreme Court in Ivey v Genting Casinos* [2017] UKSC 67, which

applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

> "*When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.*"

16. As a sole practitioner of the firm since its inception in 2015, and its COLP and COFA at all times, the Respondent would have been aware of the duty to present accurate information to prospective insurers. It is only following the disclosure of such information that risk can properly be considered and premiums be calculated by the insurance company. He should also have been aware that under the SRA Indemnity Insurance Rules, an insurer is unable to avoid or repudiate the contract on grounds including, without limitation, any breach of the duty to make a fair presentation of the risk, or any misrepresentation, in each case whether fraudulent or not[1].

17. The Respondent, when answering the relevant question on or before 17 September 2021, knew he had not undertaken formal AML training and that this had therefore not been properly documented. The Respondent knew that the insurers could not have discovered the existence of the lack of AML training and documentation of such at the Firm without requesting disclosure from the Respondent. Given their then current state of knowledge, the insurers had no reason to make such a request and relied upon the statement being accurate and true.

18. Given his state of knowledge and belief, as set out in the preceding paragraphs, the Respondent was dishonest according to the test laid down in *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67.*

19. Ordinary decent people would regard the Respondent's conduct in knowingly giving untruthful answers to questions on an insurance proposal form to be dishonest. Principle 4 was therefore breached.

[1] Rule 4.1, SRA Indemnity Insurance Rules - SRA | Indemnity Insurance Rules | Solicitors Regulation Authority

Principle 5 (integrity)

20. Principle 5 of the SRA Principles 2019 requires solicitors to act with integrity. In *Wingate v SRA [2018] EWCA Civ 366,* the Court of Appeal stated that integrity connotes adherence to the ethical standards of one's profession. In giving the leading judgement, Lord Justice Jackson said:

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

21. A solicitor acting with integrity would not provide information to a prospective insurer or insurance broker on a PIIPF which he knew to be false. Principle 5 was therefore breached.

Principle 2 (public trust)

22. Principle 2 of the SRA Principles 2019 requires solicitors to behave in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.

23. The public would expect any statement made by a solicitor in connection with the business affairs of their practice to be strictly true and accurate, and particularly so when they were dealing with a third party such as an insurer in relation to whom they stood in a relationship of upmost good faith. The trust the public would place in the Respondent and in solicitors generally was therefore seriously diminished by his provision of untruthful information to a prospective insurer or insurance broker on a PIIPF in the knowledge that it was false. Principle 2 was therefore breached.

SRA Code of Conduct for Solicitors, RELs and RFLs

24. By submitting a PIIPF to an insurer that contained answers to questions that the Respondent knew to be false and declaring in the same form that its contents were accurate meant that the Respondent mislead or attempted to mislead the insurer. He therefore breached paragraph 1.4 of the Code.

Recklessness

25. In the alternative to the allegation of dishonesty, the actions of the Respondent were reckless when providing an inaccurate declaration to his insurer on the PIIPF.

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

27. The Respondent acted recklessly by providing information to a prospective insurer that he had undertaken AML training and that this had been properly documented, when it had not. Given the Respondent had not undertaken such training, he 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 insurer by making it.

28. No reasonable solicitor in the Respondent's position and of his experience would have taken that risk. He was making a formal statement to a prospective insurer concerning matters falling within its regulatory remit. In those circumstances, a reasonable solicitor would have been scrupulous in ensuring the declaration contained only accurate assertions before signing it and attesting to the truth of the facts therein. A reasonable solicitor would at the very least have checked with the insurer or the Applicant what the correct answer to this question was in the particular circumstances of being an experienced solicitor running a sole practice, before signing and submitting the declaration. To take the risk of providing incorrect information in this manner was reckless.

Allegation 1.2: Respondent materially contributing to the Firm's failure to discharge its AML obligations

29. The Firm was the 'Relevant Person' with ultimate responsibility for ensuring compliance with the prevailing AML regime.[2]

30. Regulation 18(1) of the MLRs required the Respondent to take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject.

31. Regulation 19(1) of the MLRs 2017 required the Respondent to establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money

laundering and terrorist financing identified in any risk assessment undertaken by the relevant person under regulation 18(1).

32. Regulation 24(1)(a) of the MLRs 2017 required the Respondent to:

Take appropriate measures to ensure that its relevant employees are- (a) (i) made aware of the law relating to money laundering and terrorist financing… (ii) regularly given training in how to recognise and deal with transactions and other activities or situations which may be related to money laundering or terrorist financing…

33. Regulation 28(12) states that the ways in which a relevant person complies with the requirement to undertake customer due diligence measures, and the extent of the measures taken, must reflect:

33.1. The risk assessment carried out by the relevant person under regulation 18(1)
33.2. Its assessment of the level of risk arising in any particular case

34. The MLRs 2017 came into force on 26 June 2017. Under Regulation 18, the Respondent was required, amongst other things:

34.1. To carry out a risk assessment to identify and assess the risks of money laundering and terrorist financing to which its business was subject;
34.2. To keep an up-to –date record in writing of that risk assessment;
34.3. To provide the risk assessment to the SRA on request.

35. The SRA published a warning notice on 7 May 2019 (updated on 25 November 2019) **[LJF1 pp 396- 398]**. This confirmed that firms were required to:

Take steps to identify the risks of money laundering and terrorist financing that are relevant to it. Your firm-wide risk assessment must be in writing, kept up to date and provided to us upon request. It also must accurately set out what risks your firm is exposed to and you must also record the steps you have taken to prepare the risk assessment.

36. On 29 October 2019, the SRA published guidance on competing FWRAs **[LJF1 pp.122 to 127]**. The guidance provided tips for completing the assessment and outlined, amongst other things:

> "Firms that are within scope of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the Money Laundering Regulations") must have a written firm-wide risk assessment in place. This has been a legal requirement since 26 June 2017.
>
> …..
>
> The money laundering regulations are clear: you must carry out a risk assessment which must be relevant to the size and nature of your business. In this sense, you are the expert. We were encouraged that small practices and sole practitioners tended to produce very good and detailed risk assessments, often from scratch using their own expert knowledge of their clients and work."

37. On 10 May 2022, the Applicant sent a notice of investigation letter together with appendices to the Respondent [**LJF1, pp129-131**]. Appendix 2 to that letter requested the following documents be provided by 18 May 2022 [**LJF1, p134**]:

    37.1. *Your firm's AML firm wide risk assessment required under Regulation 18 MLR 2017.*
    37.2. *Your firm's AML policies and procedures under Regulations 19 to 21 MLR 2017.*
    37.3. *Your firm's template client/matter AML risk assessment under Regulation 28 MLR 2017.*
    37.4. *Your firm's record keeping policy under Regulation 40 MLR 2017.*
    37.5. *Audits on your firm's policies and procedures carried out under Regulation 21 MLR 2017, to include any recommendations or follow-up action arising from them (if applicable).*
    37.6. *AML related training records.*
    37.7. *A list of open and closed client matters handled by the firm in 2021 and 2022.*
    37.8. *The attached completed AML questionnaire.*

38. On 10 May 2022, the Respondent emailed the FIO returning the AML questionnaire [**LJF1, pp140 to 147**] which he stated he had "*filled in to the best of my ability*" [**LJF1, p140**].

39. The Respondent did not provide a response to the following questions that formed part of the questionnaire [**LJF1, p144**]:

    39.1. When was your regulation 18 MLR 2017 firm wide risk assessment first drafted?
    39.2. When was your regulation 18 MLR 2017 firm wide risk assessment last updated?
    39.3. When was your firm's regulation 19 MLR 2017 AML policy first drafted?

39.4. When was your firm's regulation 19 MLR 2017 AML policy last updated?

40. In response to question 11 asking whether the Firm's AML policies, controls and procedures had been audited in accordance with regulation 21 MLR 2017, the Respondent replied "*No*" [**LJF1, p144**].

41. Part B of the questionnaire requested that the following documents be provided [**LJF1, pp144-145**]:

41.1. The firm's AML risk assessment required under Regulation 18 MLR 2017.
41.2. The firm's AML policies and procedures under Regulations 19 to 21 MLR 2017.
41.3. The firm's template client/matter AML risk assessment.
41.4. The firm's record-keeping policy under Regulation 40.
41.5. The firm's data protection statements provided to clients under Regulation 41.
41.6. AML related training records.

42. The FI report states that the Respondent did not provide any material/information in response to this request [**LJF1, pp 8 and 9; paragraphs 38 and 39**].

43. On 25 May 2022, the Respondent confirmed during the course of completing the AML Survey that [**LJF1, pp148-177**]:

43.1. there were no documented anti-money launderings policies, controls and procedures [**LJF1, p153**];
43.2. in response to the question 'What form did the training take?' the Respondent stated 'haven't had training' [**LJF1 p160**]
43.3. in response to the question 'do you keep records of the training content' the Respondent stated 'no' [**LJF1 p160**]
43.4. client and individual matter risk assessments were not being carried out for work that fell within the scope of the MLR [**LJF1, p169**]

44. On 13 July 2022, the Respondent emailed the FIO. In that email he advised that he had completed the AML Firm Risk Assessment Checklist and the online questionnaire on 28 June 2022. In that email he also stated [**LJF1, pp178-180**]:

"- the information published by the SRA and indeed the Law Society was not particularly helpful for a sole practitioner. I have no difficulty or objection whatsoever in complying with the regulations, as I repeatedly advised you I am not going to prison

for anybody. What is not helpful is that having gone through reams of documentation I unfortunately misunderstood that you required a detailed risk assessment to be undertaken on each and every matter."

45. In the completed AML Firm Risk Assessment Checklist [**LJF1, pp181 to 188**] the Respondent in response to a question about whether AML training was recorded he ticked the boxes labelled "no" and "sometimes" [**LJF1, p188**].

46. As of 11 November 2022, that being the date the FI Report was completed, no firm-wide risk assessment that fulfils the requirements of Regulation 18 or documented AML policies, controls and procedures, as required under Regulations 19 to 21, were provided to the FIO [**LJF1, p10; paragraph 44**].

Breach of the Code of Conduct and Principles

47. It is the SRA's case that the foregoing facts and matters constituted material breaches of the Firm's obligations under all or any of regulations 18, 19, 24 and 28 of the 2017 MLR's, notably the failure to:

    47.1.1. Take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject.

    47.1.2. Establish and maintain written policies, controls and procedures (PCPs) for identifying, managing and mitigating the risks identified in the Practice Wide risk assessment.

    47.1.3. Take appropriate measures to ensure its relevant employees are given regular training in how to recognise and deal with transactions and other activities or situations which may be related to money laundering, terrorist financing or proliferation financing.

    47.1.4. Apply customer due diligence measures which reflect the risk assessment carried out by them and its assessment of the level of risk in each case.

48. The Respondent, as the sole practitioner of the Firm and therefore the Firm's COLP with responsibility for taking reasonable steps to ensure compliance by the Firm its managers, employees or interest holders with the SRA's regulatory arrangements[3], was the individual responsible for ensuring the Firm's compliance with the MLRs 2017. These failures

[3] Rule 8.5(c)(i) of the SRA Authorisation Rules 2011

therefore occurred on the Respondent's 'watch' and he therefore materially contributed to the same.

Professional Misconduct

49. It is acknowledged that not every breach of a statutory regulation by a solicitor or law firm will amount to misconduct. It is however the Applicant's case that the AML failures at issue here were so serious and sustained that they constituted breaches, by the Respondent, of 6 and 2 of the 2011 and 2019 Principles:

    49.1. Members of the public rightly expect regulated persons (especially experienced solicitors and partners) to heed and scrupulously comply with all applicable anti-money laundering legislation. The Respondent's failure to heed and comply with such laws in the circumstances, or to take even basic steps that would be expected, is clearly likely to undermine public trust in the profession, particularly where it continued over a lengthy period of time, as here.

50. Further or alternatively:

    50.1. Outcome 7.5 of the SRA Code of Conduct 2011 required the Respondent to "*comply with legislation applicable to your business, including anti-money laundering…legislation*". The Respondent breached this paragraph for the reasons set out above.

    50.2. Rule 7.1 of the Code of Conduct for Solicitors, RELs and RFLs required the Respondent to "*keep up to date with and follow the law and regulation governing the way you work*". The Respondent breached this paragraph for the reasons set out above.

    50.3. Paragraph 2.1 of the SRA Code of Conduct for Firms requires solicitors to "have effective governance structures, arrangements, systems and controls in place that ensure that you comply with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements" and '*your managers and interest holders and those you employ or contract with do not cause or substantially contribute to a breach of the SRA's regulatory arrangements by you or your managers or employees'* The Respondent breached this paragraph for the reasons already set out above.

Allegation 1.3: Providing inaccurate information to the SRA

51. Paragraphs 25 to 36 are repeated for the purpose of this allegation.

52. On 12 December 2019, the Applicant contacted COLP at firms to communicate "*we require all firms who fall within the scope of the regulations to declare that they have a compliant firm-wide risk assessment in place*". Submission of the assessment itself was not required, only confirmation that the firm had one and that it complied with the regulations [**LJF1, pp190-191**].

53. On 8 January 2020, a reminder email was sent to the COLP at firms that a declaration regarding the firm-wide risk assessment was required by 31 January 2020 [**LJF1, pp-192-194**].

54. On 9 January 2020, the Respondent completed the declaration to confirm the Firm had in place a fully compliant firm-wide risk assessment, as required by Regulation 18.

55. The question stated, '*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'* to which the Respondent answered '*Yes*'. The declaration contained the following paragraphs [**LJF1, pp195 to 198**]:

> *"I am the individual named in this declaration and understand that it is my responsibility to make sure all the information I have given you is correct and complete*
>
> *I understand that if I have knowingly or recklessly given you information that is false or misleading (or if I failed to tell you about any significant information) you could take disciplinary action, or share information with a third-party that leads to disciplinary action*
> *I confirm that the information I have given is correct, to the best of my knowledge and belief and that I will notify you if anything changes in respect of the information provided in the future."*

Breaches of the Code of Conduct and Principles

Principle 4 (honesty)

56. The Respondent was dishonest in accordance with the test laid down in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67 as stated at paragraph 15. It is the Applicant's position that the declaration made by the Respondent on 9 January 2020 was false because the Respondent's firm at that time did not have in place a compliant, firm-wide anti-money laundering risk assessment. The Respondent, as sole owner, manager, COLP, COFA and MLRO of the firm knew this and therefore knew the declaration was false. He therefore breached Principle 4 of the 2019 Principles.

Principle 5 (integrity)

57. In *Wingate v SRA [2018] EWCA Civ 366* it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor acting with integrity would not have made such a declaration. The Respondent therefore breached Principle 5 of the 2019 Principles.

Principle 2 (public trust)

58. In making a false declaration, the Respondent failed to act in a way which upholds the trust and confidence placed by the public in solicitor. Public trust in solicitors is diminished by a solicitor who makes a false declaration. The Respondent therefore breached Principle 2 of the 2019 Principles.

SRA Code of Conduct for Solicitors, RELs and RFLs

59. In making the declaration, the Respondent failed to provide accurate information to the SRA and thus breached Rile 7.4(a) of the Code.

Recklessness

60. In the alternative to the allegation of dishonesty, the actions of the Respondent were reckless when providing an inaccurate declaration to the Applicant in regards to a firm-wide risk assessment.

61. The 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 any or any adequate enquiries as to what was required for a sole practitioner. Given the Firm did not have such a risk assessment, the 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 Applicant by making it.

62. No reasonable solicitor in the 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 the declaration contained only accurate assertions before signing it and attesting to the truth of the facts therein. A reasonable solicitor would have checked the requirements for a firm wide risk assessment for sole practitioners and that it was in line with the requirements of Regulation 18 of the MLRs 2017, before signing and submitting the declaration. To take the risk of providing incorrect information in these circumstances was reckless.

Allegations 1.4: Provision of banking facility

63. On 1 and 2 April 2020, the Firm received payments into its client account (Account No. [redacted]) from Company A of £1,000,000.00 and £1,200,000.00 respectively [**LJF1, p202 and p13].** Company A was a client of the firm (**LJF1, p13; paragraph 65)**

64. Over the course of 2 and 3 April 2020 twenty-two separate transfers of £100,000.00 were made from the Firm's client account to an account in the name of Company B [**LJF1, 202 to 204**]. The Respondent is a signatory to the account of Company B, who was a client of the Firm. The account forms part of the accounting records of the Firm [**LJF1, p5 and p13; paragraph 68**].

65. On 20 April 2020, the Firm received twenty-two separate transfers of £100,000.00 from Company B into its client account [**LJF1, p201**]. On the same day a payment was made from the Firm's client account in the sum of £2,200,000.00 to Company C, a client of the firm [**LJF1, p201 and p14; paragraph 72**].

66. The client ledger for Company C (Matter: [redacted]/600) recorded deposits of £1,000,000.00 and £1,200,000.00 from '[Company B]' and '[Company A]' respectively on 2 April 2020 [**LJF1, p236 and p.237**].

67. The client ledger for Company C records the transfer of £2,200,000.00 being made from the client account to Company C and the funds had been transferred back from Company B's bank account. The ledger records the deposit to client account transfer having taken place on 21 April 2020 [**LJF1, p237 and p15; paragraph 79**].

68. At interview with the FIO, the following exchange with the Respondent took place **[LJF1 pages 74 to 77]:**

FIO: *what I'm looking for here is, what were the instructions you had at the time you made these transfers?*

Respondent: *So, the money came in was, we need to get the money you know NatWest are threatening to close the accounts, we need to move the money*

Respondent: '*So, right, so, the money came in because NatWest were getting very, very concerned about being associated with a sex offender'*

FIO*:* *'But you accept in relation to this there was, there was no underlying legal transaction service that you were providing'*

Respondent*:* *'well yes but no'*

Respondent: *'there was an underlying legal transaction in that I was enabling my client to deal with its money in a sensible way and the transaction was to get the money out of [Company C] in a safe repository'*

FIO: *'so I just want to ask a question. Is there any reason why the money couldn't have been transferred from [Company A] straight to [Company B]?'*

Respondent: *Yes, because at the same time NatWest were concerned about [Company B] because they didn't necessarily want to be associated with [Company B] where [Mr Y] was a director. Now, for example, NatWest were looking at the, at the overall association they had with [Company B] and, and one of the issues that arose is look, you know, we've always banked with Natwest from day one. You know we've spent an absolute fortune with NatWest and they're cutting up rough. So, Natwest were looking at anything associated with [Mr Y]'*

69. As set out by the FIO within the FI report, there was no client file created for this matter. No emails or telephone attendance notes were produced to the FIO by the Respondent to (a) set out the reasons for these transfers; or (b) evidence the fact that there was an underlying legal transaction linked to the transactions [**LJF1, page 15; paragraph 80]**

Breaches of the Code of Conduct and Principles

SAR 2019

70. Rule 3.3 of the SAR 2019 states:

> *"You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities."*

71. On 18 December 2014[4], the SRA issued its 'Improper use of a client account as a banking facility' warning notice which stated (amongst other things):

> *"The fact that you have a retainer with a client is insufficient to allow you to process funds freely through client account. You need to think carefully about whether there is any justification for money to pass through your client account when it could be simply paid directly between the clients. Historically, some solicitors have held funds for clients to enable them to pay the client's routine outgoings. This has been mainly for the clients' convenience such as where they are long term private clients or based abroad. In view of technological change, such as the ease of internet and telephone banking, we consider that allowing client account to be used in this way is no longer justifiable and a breach of rule 3.3. Clients can now operate their bank accounts from their own homes or indeed from anywhere in the world. Allowing clients simply to hold money in a client account gives rise to significant risks and may evade sophisticated controls and risk analyses that banks apply to money held for their customers."*

72. In *Fuglers v SRA* [2014] EWHC 179 (Admin), Mr Justice Popplewell considered the policy reasons that a solicitor could not use their client account as a banking facility:

> *"… it is objectionable in itself for a solicitor to be carrying out or facilitating banking activities because he is to that extent not acting as a solicitor. If a solicitor is providing banking activities which are not linked to an underlying transaction, he is engaged in carrying out or facilitating day to day commercial trading in the same way as a banker. This is objectionable because solicitors are qualified and regulated in relation to their activities as solicitors, and are held out by the profession as being regulated in relation*

[4] Updated 25 November 2019.

to such activities. They are not qualified to act as bankers and are not regulated as bankers. If a solicitor could operate a banking facility for clients which was divorced from any legal work being undertaken for them, he would in effect be trading on the trust and reputation which he acquired through his status as a solicitor in circumstances where such trust would not be justified by the regulatory regimen: see Patel v SRA per Cranston J at [34]. Such behaviour has the potential to cause significant damage to the standing of the profession. This is all the more so if the solicitor is not merely allowing the client to use the client account to pay trade debts, but is himself involved in directing the payment of creditors and making the decisions as to who should be paid, as Mr Berens was in this case. Moreover such conduct involves determining or implementing commercial decisions as to which creditors should be paid when, and whether some creditors should be paid in priority to each other, as a matter of timing or at all. Even in the absence of any risk of insolvency, that is not an activity for which a solicitor is qualified or regulated, and the more favourable treatment of one creditor ahead of another may attract criticism and opprobrium which is capable of damaging the solicitor's standing and that of the profession." [**Paragraph 39**]

73. Despite the Respondent appearing to accept that the reason these funds were transferred into the client account was because his client was at risk of losing these funds, there is no need for there to be warning signs for Rule 3.3 to apply. As explained in *Fuglers,* Rule 3.3 exists precisely because such risks always exist, it is not a solicitor's role to eliminate these risks entirely, and because it is objectionable in itself for solicitors to use their status and client account in such a manner, to simply assist an individual in ensuring money is kept away from the sophisticated controls and risk analyses that banks apply to money held for their customers. In order to maintain public confidence in the profession solicitors need to comply with such rules and be insulated from such risks as much as possible.

74. In the instant case, the Respondent over the course of nineteen days received and paid out from the Firm's bank account funds totalling £4,400,000.00. There were no instructions relating to an underlying transaction being undertaken by the Firm in respect of these transactions and they did not form part of the delivery by the Respondent of regulated services. As a result, the Respondent breached Rule 3.3 of the SAR 2019.

<u>Principle 5 of the 2019 Principles – (integrity)</u>

75. Principle 5 of the 2019 Principles requires that solicitors "*act with integrity*": as per *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366 this "*connotes*

adherence to the ethical standards of one's own profession. That involves more than mere honesty… a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

76. The Respondent failed to act with integrity by accepting money into the client account and authorising transactions made from it totalling £4,400,000.00. This allowed the Firm's client account to be used as a banking facility, in breach of the SRA Accounts Rules, and creating a clear risk of the Firm facilitating money laundering and/or the circumvention of other rules on insolvency. The Respondent, as demonstrated by his interview with the FIO, was aware that the client was at risk of losing the said funds. The Respondent was a sole practitioner and therefore aware that the funds were not respect of instructions relating to an underlying transaction being undertaken by the Firm. Nevertheless, in the face of instructions from his client, the Respondent continued to receive money into the client account and authorise payments from it without raising any queries with the client, in breach of Rule 3.3 of SAR 2019. This willingness to consciously act in this manner shows a lack of integrity in breach of Principle 5 of the 2019 Principles.

Principle 2 of the 2019 Principles – (maintaining trust)

77. Funds tainted by insolvency, fraud, or other wrongdoing that pass through client account risk damaging public confidence in the profession. A solicitor cannot and is not expected to eliminate all risks of fraud or insolvency. Rule 3.3 therefore seeks to establish a clear demarcation to ensure that, even in cases where there are no obvious warning signs, the reputation of the profession is properly protected. By allowing the client to use the Firm's client account as a banking facility, the Respondent risked harming the reputation of the profession. The Respondent therefore breached Principle 2 of the 2019 Principles.

Allegations 1.5: Failing to return client funds promptly

78. A client matter listing produced for 30 April 2022, contained balances which, when the matter opening date and the date last billed were compared, showed that there were client funds held after the point when they should have been returned to the client [**LJF1, p22; paragraph 114]**

Exemplified Matter 1 – [Company D]

79. The first entry on the general ledger for the Company D (matter: [redacted]/001) was dated 15 August 2011 [**LJF1, p297**]. At the extraction date of 30 April 2022, there was a client balance of £27,020.12 [**LJF1, p307**]. There had been no movement on the client ledger since 27 April 2020 [**LJF1, p347**].

Exemplified Matter 2 –Company D vs [Mr Z]

80. The first entry on the general ledger for the Company D was dated 21 May 2015 [**LJF1, p310**]. At the extraction date of 30 April 2022, there was a client balance of £6,692.52 [**LJF1, p311**]. There had been no movement on the client ledger since 20 November 2017 [**LJF1, p311**].

81. At interview with the FIO, the following exchanges took place in relation to the residual balance held in relation to Company D **[LJF1, pages 80 to 88]**:

FIO	*'opened and at my extraction date of 30 April, there was a ledger balance of £27,020.12. And there had been no actual movement on the, on that client ledger since well, April 2020 and the majority of that, virtually all of it actually, £20,171.00 arose from an inter-ledger transfer back in October 2019, from a separate matter connected to Company D, with this being a general ledger'*
Respondent:	*'which matter?*
FIO:	*'A [Mr X']*
Respondent:	*'Was he twenty grand?'*
….	
Respondent:	*'It's sloth on my part. Am I running off with [Company E's] money? No.*
FIO:	*'No, no, I accept the money, the money is still there.*'
….	

FIO: *'It's just we are, we are two and half years down the line, and this is…'*

Respondent: *'No, I'm, bang to rights.'*

FIO: '*Mmm.'*

Respondent: '*You know, you know I – what can I say? You know guilty as charged. Right, when we started dealing with [Company E] they wanted everything done now. But the labyrinthine system of getting money out of a Local Authority so, for example they would want me to issue proceedings on Mr Smith,* ***now****. But and I'd say, 'Well that's all very well and good but I want the issue fee'*

FIO: *'Mmm.'*

Respondent: '*So, and I wasn't running this, my colleague Ms Simmonds was running it, and I trusted her. I may have views about her ability to run client account. She's you know, painfully honest but the entries were… So, the deal was that [Company E] paid us a sum of money, I think it was £10,000.00 I really you know as, as a float'*

…….

FIO: *'Ok. Right, yeah because I noticed on this one yeah, as of, of the ledger its £6,692.00.*

Respondent: *'The, the answer, the answer is the same'*

FIO: *'Yeah'*

Respondent: *'you know hands up.*

Breaches of the Code of Conduct and Principles

Regulatory requirement – Rule 14.3 of the SRA Accounts Rules 2011 and Rule 2.5 of the SRA Accounts Rules 2019

82. Rule 14.3 of the SAR 2011 states:

> "*Client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds. Payments received after you have already accounted to the client, for example by way of a refund, must be paid to the client promptly."*

83. Rule 2.5 of the SAR 2019 states:

> "*You ensure that client money is 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."*

84. On 30 April 2022, the Respondent held residual client balances on 2 matter ledgers totalling £33,712.64. There had been no movement on these accounts for over 2 years and there appear to have been no efforts to return this money to the client. There was no proper reason for the Respondent to be in possession of this money and it should have been returned promptly to clients.

85. Whilst the relevant rules do not define what is meant by 'promptly' in *Regency Rolls Ltd. v. Murat Carnall* [2000] EWCA (Civ), Simon Brown LJ said:

> *'I would accordingly construe 'promptly' here to require, not that an applicant has been guilty of no needless delay whatever, but rather that he has acted with all reasonable celerity in the circumstances*'

86. On his own account the Respondent failed to act promptly. The Respondent therefore breached Rule 14.3 of the SAR 2011 and Rule 2.5 of the SAR 2019.

Principle 6 and Principle 2 - public trust

87. 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 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019 and

Respondent's Response

88. The Respondent provided a response to the Notice through his representatives on 15 March 2024; the Tribunal is invited to read these representations in full which appear at **LJF1, pp369 to 391**. In summary the Respondent provided the following representations in respect of each allegation:

Allegation 1.1

88.1. *"Mr Felton Gerber kept abreast of publicised material (e.g. in the Law society Gazette and related case law resulting) regarding money laundering and is well aware of his duties and obligations in this respect. It has perhaps not been appreciated fully that notwithstanding that there are no other employees or personnel involved in the practice, Mr Felton Gerber's own knowledge of these matters required to be documented even though this would effectively only have been an aide memoire to himself rather than a means by which all members of staff would need to share that knowledge."*

Allegation 1.2

88.2. *"Mr Felton Gerber accepts that there were some failings regarding the documentation of his AML controls but in essence there was no danger of any money laundering activity taking place within his firm and as the sole employee there was of course no danger of any other member of staff failing to follow the requirements of such controls."*

Allegation 1.3

88.3. *"This allegation is denied and although it may have been misinterpreted or misunderstood by Mr Felton Gerber, we would invite you to find that this is a technical breach which has caused no loss and the FWRA is now in place and apparently accepted"*

Allegation 1.4

88.4. *"The funds were placed into my account to preserve the company and that appeared to me to be the underlying transaction. I did not disburse money other than from an account marked plc and back to an account marked plc. I was not paid for this but had viewed this to be essential to assist the long term survival of a client. I understand now that this should not have been carried out if the assistance to Newlyn does not constitute an underlying transaction but would respectfully suggest that it did not disburse funds to any third party and is in the nature of a technical breach for which I apologise".*

Allegation 1.5

88.5. "*This allegation is accepted although there are substantial mitigating circumstances which it is hoped would be viewed as a technical breach only.*"

The SRA's investigation

89. The SRA has taken the following steps to investigate the allegations which it makes against the Respondent:

89.1. The SRA undertook investigations including a Forensic Investigation, obtaining documentation from the Firm and interviewing the Respondent.

89.2. A Notice dated 17 January 2024, was sent to the Respondent **[LJF1, pp338 to 368]**.

89.3. On 15 March 2024, the Respondent's representative responded to the Notice **[LJF1 pp369-391]**.

89.4. On 17 March 2024, an Authorised Decision Maker of the SRA decided to refer the conduct of the Respondent to the Tribunal **[LJF1, pp392 to 372]**.

I believe the facts and matters stated in this statement are true.

Signed: 

Lyndsey Farrell

Date: 21 June 2024

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

PETER KENNETH FELTON GERBER

Respondent

APPENDIX 1 TO STATEMENT PURSUANT TO RULE 12 (2) SOLICITORS (DISCIPLINARY PROCEEDINGS RULES) 2019

Relevant Rules and Regulations

SRA Accounts Rules 2019

Rule 2.5 You ensure that client money is 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.

Rule 3.3 You must not use a client account to provide banking facilities to clients or third parties. Payments into, and transfers or withdrawals from a client account must be in respect of the delivery by you of regulated services.

SRA Principles 2019

You act:

Principle 2: In a way that upholds public trust and confidence in the *solicitors*' profession and in legal services provided by *authorised persons*.

Principle 3: With independence.

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Principle 4: With honesty.

Principle 5: With integrity.

Principle 7: In the best interests of each client.

SRA Code of Conduct for Solicitors, RELs and RFLs

Rule 1.4 You do not mislead or attempt to mislead your clients, the court or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others (including your client).

Rule 7.1 You keep up to date with and follow the law and regulation governing the way you work.

Rule 7.4 You respond promptly to the SRA and:

(a) Provide full and accurate explanations, information and documents in response to any request or requirement..

SRA Code of Conduct for Firms

Rule 2.1 You have effective governance structures, arrangements, systems and controls in place that ensure:

(a) You comply with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements, which apply to you;
(b) your managers and employees comply with the SRA's regulatory arrangements which apply to them

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BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

PETER KENNETH FELTON GERBER

Respondent

APPENDIX 2 TO STATEMENT PURSUANT TO RULE 12 (2) SOLICITORS (DISCIPLINARY PROCEEDINGS RULES) 2019

Anonymisation Schedule

Client/Matter	Anonymisation
[redacted]	Company A
	Company B
	Company C
	Company D
	Mr X
	Mr Y
	Mr Z