SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11440/2015 and 11859/2018)

BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
MICHAEL JOHN DAVIES	First Respondent
CLARE LOUISE TAMAN	Second Respondent
CHARLES VALENTINE FRASER-MACNAMARA	Third Respondent
KATHERINE MAY FRASER-MACNAMARA	Fourth Respondent

Before:

Mr B. Forde (in the chair)
Ms A. Horne
Mr M R.Hallam

Date of Hearing: 20 and 30 April 2021

Appearances

There were no appearances as the matter was considered on the papers.

MEMORANDUM OF APPLICATION FOR NON-PARTY DISCLOSURE

Background (substantive proceedings)

1. There were two Tribunal hearings, in October and November 2016 (Case No. 11440/2015) and March 2019 (Case No. 11859/2018). Judgments were published following the hearings in accordance with the Tribunal's usual practice and procedure.

The Non-Party Disclosure Application

2. On 15 March 2021 an Application for Non-Party Disclosure of Tribunal Documents ("the Disclosure Application") was made by Transparency Task Force Ltd ("TTF"). TTF sought copies of:

In relation to Case No. 11440/2015:

- The Rule 5 statement with exhibit IGM/1 dated 26 October 2015.
- Witness Statement of DC dated 26 February 2016
- Witness Statement of JR dated 25 February 2016
- Witness Statement of DH dated 4 March 2016.
- Respondents' responses to Rule 5 statement.
- Respondents' witness statements (all).
- A copy of Adam Howell's Forensic Investigation report into Sanders solicitor firm as mentioned in points 12. & 13. of the judgement.
- A copy of all client complaints raised against the firm, as presented to the Tribunal and referred to during the judgements.
- Authorities main document bundle.

In relation to Case No. 11859/2018

- The Rule 5 statement dated 16 August 2018 and exhibit NXB 1.
- A copy of any FIO reports which were included in the trial bundle but do not appear in the documents referred to in 1 above.
- Email chain between the Applicant and DS Ward dated 22 March 2019.
- Authorities main document bundle.

3. The reasons for the request were stated to be as follows:

> *"This application is made in support of & in association with numerous victims of the Ecohouse fraud, who have suffered financial loss and distress on account of the actions of the solicitor respondents mentioned in the judgements. Transparency Task Force is in contact with several victims of the fraud; some are assisting us with fraud prevention initiatives.*
>
> *These matters involve misconduct on the part of solicitors, whom the public are supposed to be able to trust to the ends of the earth (Bolton v Law Society [1993] EWCA Civ 32). There is therefore a strong public interest in establishing how this*

situation arose, why it was not stopped at an earlier stage, and to see the evidence which caused the SDT to make the findings it made.

That public interest is amplified by the fact that:

(1) The fraud was not intervened upon by the SRA to limit harm to clients; this impacted 850 clients over a protracted period of 2.5 years.
(2) The relevant insurers refused to indemnify client losses,
(3) The SRA has refused to make any awards from the Compensation Fund,
(4) This was a Ponzi scheme involving seemingly patent criminality through fraud & money- laundering. The founder of the scheme, [AAE], was arrested last year by Interpol and awaits trial. The victims are still awaiting any form of justice.
(5) Evidence of the severity of this case further includes, but is not restricted to, the written admission from one of the involved solicitors Charles Fraser-Macnamara - to the Insolvency Service in 2017. In that Admission, Macnamara stated that he had "caused or allowed Developments to make misrepresentations to potential investors" - including that investors' funds were "secure" and that Ecohouse Developments "owned the land" in Brazil, it did not.
(6) OPEN JUSTICE - The Supreme Court ruled two years ago in <u>Cape Intermediate Holdings Ltd v Dring</u> that: - "case after case has recognised that the guiding principle is the need for justice to be done in the open and that courts at all levels have an inherent jurisdiction to allow access in accordance with that principle." *That disclosure should, the court ruled, include written material disclosed to court, even if it has not been seen or read by the judge. Disclosure of written material is to* "enable the public to understand and scrutinise the justice system of which the courts are the administrators". "Often, documents are not read out. It is difficult, if not impossible, in many cases, especially complicated civil cases, to know what is going on unless you have access to the written material", *and further:* "It is not impossible, though it must be rare, that the judge has forgotten or ignored some important piece of information which was before him. If access is limited to what the judge has actually read, then the less conscientious the judge, the less transparent is his or her decision."

Disclosure is therefore necessary:

- *To maintain the public's trust in the probity of the court.*
- *To maintain the public's confidence in the administration of justice.*
- *To maintain the public's confidence that justice is being administered impartially.*

The need to satisfy these public interest criteria in this case is, we believe, unprecedented. Recent disclosure refusals - in this case - may indicate that a recent SDT Consultation on disclosure of court documents has been cursory, with no

apparent improvements in transparency to non parties as a result of the new policy. The order of the Supreme Court is to:

> "Provide default disclosure of court documents to the public, except in situations where it would cause serious harm."

Those that the SDT & SRA are protecting - as a consequence of denying disclosure - are predominantly solicitors brought before the court on matters of alleged (and proven in the Ecohouse case) dishonesty, lack of probity, and a failure to adhere to SRA principles. A list of applications for disclosure that have been refused in recent years by the SDT follows for your perusal, as detailed in APPENDIX A (pages 3 & 4) of this document.

To conclude: with the high number of clients impacted by this fraud case (850), there is a strong public interest argument supporting the granting of disclosure.

This is of particular interest since none of the respondents were struck off as a result of the initial tribunal (although Charles Fraser Macnamara was ultimately struck off in 2019, for his dishonesty).

Transparency Task Force are committed to identifying and researching why fraud appears to be being enabled - or at the very least, not adequately prevented - by solicitors in an alarming number of fraud cases. Disclosure will assist us greatly in understanding how more robust preventative measures could help to reduce the incidence of fraud."

The Applicable Policy

4. The Tribunal considered the Disclosure Application under its Policy on the Supply of Documents to a Non-Party from Tribunal Records, dated June 2020 ("the Policy").

The Position of the Parties

5. In accordance with the Policy, the parties to the proceedings were invited to make submissions on the Disclosure Application.

The Applicant (the SRA)

6. The Applicant's position was set out as follows:

> *"In summary we oppose disclosure of the majority of the documents sought on the basis that:*
>
> - *The firm acted for EDL limited and 849 investor clients. The material sought includes information and documents which are confidential to those clients and possibly subject to privilege. The documents include personal data of those*

clients and information which relates to third parties, which if disclosed could be prejudicial to them.

- *TTF seek a wide range of documents which are voluminous and could only be rendered capable of disclosure through extensive sifting, redaction and anonymisation, which the Tribunal has no power to direct the SRA to undertake and it would be inappropriate and impracticable for it to undertake itself.*

- *There are other good reasons for not disclosing the material which include: the SDT Judgments are extensive and detailed, and it is difficult to see why disclosure of the requested material will assist in advancing the principle of open justice in the light of the extensive information already set out in the Judgments.*

- *TTF have not explained what they intend to use the documents for or given any detail of the investor clients they are supporting in the application.*

The documents sought from the 2016 proceedings:

The Rule 5 statement and exhibit together consist of some 800 pages and include documents and information or reference to them which are confidential and potentially privileged. The documents include agreements that investors and EDL signed and which contain person [sic] information of investor clients including their names and addresses. The documents are capable of identifying investor clients. In the proceedings anonymisation of clients' names was preserved to ensure client confidentiality.

Where the SRA obtains privileged material, and places such material before the SDT, privilege is qualified only for the purposes of the SRA and SDT performing their statutory functions. The SDT remains under a duty to preserve client LPP and confidentiality in such material placed before it by the SRA. See Simms v Law Society [2005] EWHC 408 (Admin) and R (Morgan Grenfell Ltd) v Special Commissioner of income Tax [2003] 1 AC 563. The SDT can take steps to preserve LLP and confidentiality by redaction and anonymisation of documents and information, and the SDT's policy anticipates such steps being taken in some cases, but the SRA anticipates that this task would be impractical and onerous because of the volume, diverse and mixed nature of documents that would require sifting, anonymising, and redacting.

We object to disclosure of the Rule 5 and exhibit.

DC, JR and DH are investor clients of the firm who gave witness statements to the SRA for use in the proceedings. It appears from the SDT Judgment that they did not give evidence at the hearing. The witness statements identify the investor clients and contain information about their finances and details of their investments. The witness statements are lengthy documents and their exhibits are hundreds of pages

long. The exhibits contain documents which can be regarded as confidential to the investor clients and contain their personal details such as their addresses and other contact details. The witnesses have not given their consent to disclosure of their statements to third parties and to do so without their permission would not be in the public interest. We object to disclosure of all the witness statements.

We are neutral in respect of the Request for disclosure of the Respondent's Answer to the Rule 5 statement and their witness statements. However, we would point out that included in the first witness statement of Michael Davies, are the full names of the investor clients (DC, JR, and DH) and comments on their witness statements. Further, in the exhibit to his statement there is correspondence with clients. That information would require redaction or anonymisation before disclosure.

Two Forensic Investigation Reports were prepared: an interim report dated 7 October 2014 and a final report dated 21 November 2014. The interim report contains details of investor clients' complaints and in the appendix includes email exchanges between the firm and investor clients as well as client ledgers for some of the clients. The final report refers to a complaint made by an investor client. The appendices to the reports are lengthy and include schedules of the names of investor clients and details of their investment and also details of the names of investor clients in a separate investment scheme together with other personal details. We object to disclosure of both reports.

There is reference in the judgment to complaints being made to the firm at the end of 2013 and in 2014 by investor clients. Some of the complaints are referred to in the forensic investigation reports. The details of the complaints made appear in the interim investigation report, which we object to disclosing.

We are neutral in respect of the disclosure of the authorities bundle, although the authorities are of course already in the public domain and disclosure of the index alone is likely to be sufficient to meet any public interest. The Judgment recites any authorities considered by the SDT in reaching its decisions.

The documents sought from the 2019 proceedings:

The exhibit to the Rule 5 statement is a lengthy document. It consists of over 1600 pages and contains documents and information which is confidential to clients and/or third parties. The Rule 5 statement and the SDT judgment refers to Person A whose full name and personal details appear in documents in the exhibit.

The Rule 5 statement also identifies payees of dubious payments who are referred to by initial only in the SDT Judgment. The identity of the payee also appears in the affidavit referred to below. Disclosure of the identity of the third parties not named in the Judgment is potentially highly prejudicial and a breach of confidentiality.

The exhibit to the Rule 5 statement also contains an affidavit from a chief examiner in the investigation's [sic] directorate of the Insolvency Service. The affidavit was prepared in director disqualification proceedings against Person A and others. It is 218 pages long and contains over 500 pages of exhibits which contain various documents obtained during the Insolvency Service investigation. The affidavit includes reference to the investor clients of the firm, including DH and JR and their documents and contains confidential information.

The affidavit was obtained from the Insolvency Service solely for the purpose of the SRA investigation and enforcement action.

The SRA has a memorandum of understanding (MOU) with the Insolvency Service which requires the SRA as a recipient of information to amongst other things keep the information secure and use the information only for the "proper purposes", such as regulatory proceedings, disciplinary or other legal proceedings.

Whilst provision of information to the SDT for the purposes of the SRA's statutory enforcement powers is consistent with "proper purposes", disclosure to third parties appears to fall outside the scope of such proper purposes. We object to disclosure of the Rule 5 statement and exhibit.

As far as we are aware there were no Forensic Investigation Reports in the trial bundle.

We object to disclosure of the email exchange with DS Ward dated 22 March 2019. The email exchange with DS Ward on 22 March 2019 is confidential. DS Ward gave permission to share his email with the SDT and his email is quoted in paragraph 3.2 of the judgment. DS Ward has not given permission to disclosure of his email to any other third parties. The disclosure of the email exchange would not advance the principle of open justice.

We are neutral in respect of the disclosure of the authorities bundle and repeat the points made above.

Other considerations

The Judgments in the proceedings provide a full recital of the SRA's case and the evidence relied upon to prove the allegations. Disclosure of the Rule 5 statements in themselves would be unlikely to advance the principle of open justice.

In light of the limited time in which to provide our views on disclosure, the SRA have not approached the Insolvency Service or the investor clients DC, JR, and DH to obtain their comments on the application for disclosure. If the Tribunal are minded to disclose the documents obtained from them, we would be content to contact them for their views on the application before a final decision is made.

As TTF have not provided the names of the investor clients that they have made the application in support of, we have been unable to determine whether any of the documents they seek relate to them. TTF have not provided any authority from the investor clients that they are content for disclosure of documents which may relate to them to TTF.

If the SDT considers that disclosure of any of the documents should be made on a redacted basis, the SRA will be content to review any redactions proposed by the SDT prior to disclosure.

Conclusion

The SRA invite the SDT to refuse disclosure of the documents which it has objected to. The voluminous documents contain confidential and or privileged information relating to clients or third parties which would require a disproportionate amount of editing or redaction before they could be lawfully disclosed. That task would be resource intensive and impractical for the SDT to undertake.

Further, disclosure of the documents would not advance the open justice principle in light of the detailed nature of the SDT Judgments which are publicly available. The Judgments summaries [sic] all the relevant evidence relied upon by the parties in the proceedings and they contain the basis of the Tribunal's findings against the solicitors. The Judgments contain sufficient detail of the Ecohouse investment scheme and the solicitor's roles in the scheme to enable the public to understand the role of the Respondents to the proceedings in the operation of that scheme and the reasons for the enforcement action taken."

The First and Second Respondents

7. The First and Second Respondents' position was set out as follows:

"The Respondents object to the release of the case papers arising out of the proceedings in case number 11440-2015 and urges the Tribunal to reject the application from Transparency Task Force Limited ("TTFL") on the following grounds;

It is submitted that under the Solicitors Disciplinary Tribunal: Policy on the Supply of Documents to a Non-Party from Tribunal Records 10th July 2017 the Application engages the following factors;

i. The reason for the request;
ii. The potential value of the material in advancing the purposes of open justice;
iii. Any risk of harm which access to the documents may cause to the legitimate interest of others;
iv. Whether the information is confidential.

The Reason for the Request

[...]
The Applicant is a Private Limited Company by shares with a share capital of GBP 100 which has Objects, inter alia,
a. The Mission is to promote the ongoing reform of the financial sector, so it serves society better;
b. The vision is to build a highly respected, international and influential institution that helps to ensure consumers are treated fairly by the financial sector. The primary beneficiaries of the organisations' work will be consumers; but the sector itself will also benefit through market conduct and increased trust in the services it provides;
c. The objective is to carry out a broad range of activities that help drive positive, progressive and purposeful financial reform, such as:

i. Building a collaborative, campaigning community; the larger it is the more influence it can have in driving change that is needed
ii. Raising awareness of the issues, so that society better understands the problems that exist in the financial sector and how they can be dealt with
iii. Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

Therefore, it is not entirely clear as to whether the Applicant has any locus standi to make the application either on behalf of the Investors in the EcoHouse scheme or itself. The objectives of the Applicant appear to be a campaigning organisation for better regulation of the financial sector rather than an investigatory function in respect of solicitors or the recovery of the losses of those investors.

If the Applicant's reason were to be the campaigning for better regulation of the financial sector then it is difficult to see how documents relating to the breach of Solicitors Regulation Authority's Principles and as dealt with by the Tribunal in the hearing against the respondents Michael Davies and Clare Taman and, more specifically, acting in a situation where there was a conflict, acting in an area outside expertise and experience and permitting transferor withdrawals from the Firm's client account where there was no underlying legal transaction. Such documentation would have no bearing on the regulation of the financial sector.

If the Applicant's reason were to be an attempt to investigate the possibilities of recovery of the Investors losses then the application appears to be analogous to an application for pre -action discovery, which will be addressed below. However, if the Applicant's reason is such then the same contains a fundamental error as to the position.

The Applicant makes reference to the Ecohouse fraud. However as referred to above neither the Respondents Michael Davies nor Clare Taman faced any allegation of dishonesty or involvement in any fraud, and indeed both the Tribunal

and High Court were at pains to make it clear that the collapse of the Ecohouse scheme could not be laid at the Firm's door. No proceedings have ever been brought against the Respondents or the Firm for breach of contract/ breach of duty. Further the last transaction conducted by the Firm was in 2014 and therefore all claims are now statute barred.

The proceedings in the Tribunal are governed by the principles set out in the Civil Evidence Acts 1968 and 1995, Rule 13(1)-(3) Solicitors (Disciplinary Proceedings) Rules 2007. If the Application is brought on the basis to seek evidence which might be used in future civil proceedings, notwithstanding now statute barred, the application would be directly analogous to an application for Pre-Action Disclosure pursuant to CPR r 31.16(3) and therefore it is submitted that these rules are therefore engaged in respect of such an application. The requirement of r 31.16(3)(a) is that the Respondents must be likely to be a party to subsequent proceedings. For the reasons set out in relevant paragraphs above this cannot be the case. Further, the requirement of r 31.16(3)(c) is that the Applicant must establish the merits of any underlying cause of action. The Applicant therefore must be able to show an arguable possible claim against the Respondents Black v Sumitomo Corporation [2001] EWCA CIV 1819. The Respondents submit that given the position outlined above, the Applicant cannot make out such a case and therefore fails the relevant test.

Furthermore r 31.16(3)(d) makes it a requirement that the documents sought are ones which would be required to be disclosed under the Standard Disclosure requirements set out in CPR r 31.6. As set out […] below clearly these are documents which would not be disclosable. Therefore as the Applicant cannot show that the whole of the material sought falls into that class of discloseble, then any such application would fail, Hutchinson 3G UK Ltd v O2 (UK) Ltd [2008] EWCA 55 (Comm).

Further the application is an attempt to circumvent an application for Pre-Action Disclosure, in which, for the reasons set out above, the applicant would have little or no chance of success, and therefore should fail. Finally given the imprecise reasons for the request the same amounts to little more than a "fishing expedition" which should not be permitted, Harrods Ltd v Times Newspapers Ltd [2006] EWCA Civ 294. The Applicant's application should therefore be dismissed and the materials not disclosed to the Applicant.

Risk of Harm to Others

The statements of the Respondents Michael Davies and Clare Taman contain information provided to them by both clients of their then Firm and Third Parties. That information was provided in circumstances where it was either expressly or by implication understood by those Parties that such information would be treated private, save for its necessary disclosure to the Tribunal. Those providing such information had a reasonable expectation that the same would be treated as private

and in accordance with the provisions of Article 8 EHCR. Despite the Applicant's argument as to open justice the Applicant has not advanced any argument as to why the public interest would outweigh the Third parties' right to privacy and therefore in those circumstances that information should remain private and should not be disclosed (Duchess of Sussex v Associate Newspapers Ltd 2021 EWCH 273 (Ch)).

Further it is submitted that as the Applicant has been somewhat cavalier in the allegations as to fraud and has failed to correctly identify that the Respondents Michael Davies and Clare Taman never faced such an allegation in the Tribunal, nor were found to have been dishonest, that the Applicant would not be a safe repository of such information. If the Applicant is not aware of the potential liability for actions for defamation by lack of understanding of such matters the Applicant has not shown that it is likely to be circumspect in any information that it might receive. Therefore there is a clear risk of prejudice to such Third Parties and the Respondents themselves.

Whether Information Confidential

The materials that are being sought by the Applicant contain information acquired by the Respondents Michael Davies and Clare Taman as Solicitors and are confidential falling into the Respondents' obligations as Solicitors under the Solicitor-Client relationship. The materials sought by the Applicant contain personal information as to the identity of the disappointed Investors together with financial information, therefore in those circumstances, the information is privileged from disclosure and should not be released to the Applicant.

Open Justice

The hearing of the Respondents Michael Davies and Clare Taman, between 31st October and 4th November 2016 was held in public at the Solicitors Disciplinary Tribunal, 1 Farringdon Street, London EC4M 7LG and the judgment published on 19th December 2016 in accordance with Rule12(3)-(6) The Solicitors (Disciplinary Proceedings) Rules 2007. It is submitted that in light of the Applicant's objectives the information made available from these proceedings is more than sufficient for the Applicant's purposes and that therefore the principle of open justice has been meet. [sic]

Therefore, based upon the submissions detailed in these Grounds of Resistance, the Respondents submit that there are no grounds upon which the Tribunal should disclose the materials sought by the Applicant and that there would be substantial risks in so doing."

The Third Respondent

8. The Third Respondent's position was set out as follows:

"Previous applications for disclosure in this matter have been placed before the Tribunal and the Tribunal has resolved not to permit the disclosure.

In those cases there were specific litigants making applications for proceedings, whereas this application appears to be a general application and more of a "policy fishing exercise".

I object to the disclosure of any documents relating to myself, either in the first set of proceedings, judgement case number 11440.2050, or second judgement case number 11859.2018. My reasons are as follows:

(1) The disclosures made in the statements made in relation to those proceedings mentioned above, both contain highly personal, both medical and financial, information which should not be in the public domain.
(2) The matters referred to and complained of are, by the very definition, statute barred, having occurred more than 4 years from the date of the application. Accordingly no court would normally permit proceedings to be issued in relation thereto.
(3) Any application or documentation placed into the public domain could prejudice the on-going criminal proceedings, which appear to have been undertaken against [name removed by the Tribunal].
(4) There are extant proceedings and interviews with the Metropolitan Police against [detail removed by the Tribunal]. Accordingly, for that reason, any disclosure would be premature and would prejudice any on-going investigations in that regard. Particularly in relation to myself, but also in relation to any of the other respondents.

I object in the strongest possible terms to disclosure of any of the documentation request on what appears to be a "political" basis, and not a specific litigant basis. In any event, the Tribunal has already determined that specific litigants should not have disclosure of this documentation."

The Fourth Respondent

9. The Fourth Respondent's position was set out as follows:

"I confirm that I object to the disclosure of the tribunal documentation and my reasons are set out as below:

1. The disclosure, I understand, is not required in relation to any further disciplinary or regulatory proceeding. The applicant will have had access to the detailed SDT judgment together with any other judgements in relation to the matter.

2. I was only a very junior employee at the time of the events and was inexperienced. I believe this was reflected in the Tribunals decisions not to

impose any sanctions against me personally. I no longer practice in law, I would therefore ask that the documentation not be disclosed so I am not subjected to further publicity or public scrutiny

.

3. I understand that the applicant is not an individual with an interest in the outcome of the SDT hearing and was not involved with the company EcoHouse and therefore does not have a direct interest in the proceedings.

4. In relation to the above I would ask that the Tribunal take into consideration my right to privacy and family life under Article 8 of the Human Rights act and that to disclose documentation to the applicant could affect this.

5. If the Tribunal does deem the disclosure prudent, notwithstanding the above, I would ask that any personal details pertaining to myself, my address or financial means be redacted before disclosure."

The Tribunal's Decision

10. The Tribunal had close regard to the Policy and carefully considered the detailed application from TTF and the responses of the parties to the proceedings.

11. The relevant Tribunal hearings were held in 2016 and 2019. In accordance with the Policy, the Panel of the Tribunal considering the Disclosure Application included Members who had sat on these previous substantive hearings. The hearings were held in public. Members of the TTF, and indeed any member of the public, was entitled to attend and observe the hearings. The common law principle of open justice is an important one which applies to Tribunal hearings, and which is prominently reflected in the Policy. Whilst the passage of time will ultimately heighten objections to disclosure based upon privacy concerns, the Tribunal did not consider that, in itself, the time which had elapsed since these hearings took place had a significant bearing in this case on whether disclosure was consistent with and required by the open justice principle.

12. As summarised in the Policy, the Tribunal's starting point was the default position that "*the public should be allowed access, not only to the parties' written submissions and arguments, but also to the documents which have been placed before the court and referred to during the hearing*". The Tribunal also considered, by reference to Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38 and Dring v Cape Intermediate Holdings Ltd [2020] EWHC 1873 (QB), that there was no automatic right to such documents and that disclosure must advance the open justice principle.

13. The extent to which the open justice principle was advanced was weighed against the objections to disclosure raised by the parties. The Policy recognises that the interests of the parties and any third parties referred to or otherwise involved in the disciplinary process should be part of the balancing exercise carried out by the Tribunal.

14. The Tribunal did not consider that the Respondents could have any reasonable expectation that the evidence they gave in a public hearing, whether orally or in their written witness

statements, would not be shared with the public. Having carefully reviewed the written statements made by the Respondents, the Tribunal did not consider that there was much sensitive personal information included in them, and considered that where this was present, redactions could be made to protect such information where appropriate.

15. In contrast, the three statements requested which were from non-party individuals were full of personal information. This included extensive sensitive personal and financial information. Moreover, the Tribunal considered that, unlike the statements made by the Respondents, the authors of these statements would legitimately not expect their contents to be made public.

16. The parties had all noted that the Tribunal judgments were detailed, and submitted that accordingly the requirements of open justice, that the decision be comprehensible and the evidential and legal basis for it clear, were already met. That the relevant judgments were detailed, running to 55 and 97 pages, appeared to the Tribunal to be a relevant factor which carried some significant force. However, the Tribunal also considered that access to some or all of the documents to which the Panels making the original decisions had had access must inevitably aid the understanding of the decisions which had been reached.

17. The Tribunal did not consider that the objections based on the standing of TTF to make an application, the extent to which they may or may not represent particular investors, or be seeking to obtain documents which should more properly by the subject of a Pre-Action Disclosure application under the Civil Procedure Rules, should play a central part in their deliberations. The Policy created a mechanism and guiding principles for members of the public at large to request copy documents. A collateral purpose or interest in the material was peripheral to the central question of whether the Disclosure Application could reasonably be said to advance the open justice principle. A collateral purpose did little if anything to advance this, but neither did it operate as a bar.

18. Having carefully reviewed the Disclosure Application and the responses from the parties, the Tribunal considered each of the 13 documents or categories of documents requested by TTF in light of the above principles and the Policy. The Tribunal's decision is summarised below.

The 2016 hearing (Case No. 11440/2015)

The Rule 5 statement with exhibit IGM/1 dated 26 October 2015

19. The Rule 5 Statement was the document setting out the Applicant's Case against the Respondents. Most of the names in the Statement were anonymised, or personal information was protected through the use of initials. Details about EcoHouse itself was already in the public domain, as was the name of a previous sole director and shareholder (AAE). The Tribunal accepted that a full summary of the Applicant's case had been included in the Tribunal's judgment. It was, however, inevitably selective and less detailed than the source document. The Tribunal accepted and agreed that it was obliged to protect legally privileged information deployed in proceedings by the Applicant (or by the

Respondents). The Applicant had taken steps to protect personal information and legally privileged information through the use of initials and anonymisation, and this had been mirrored in the Tribunal's judgment. The Tribunal considered that it was appropriate for the initials of investors to be redacted, and for any other identifying material to be redacted in order to further protect third party personal data, and also legal privilege. The initials of AAE, should remain unredacted so that the document was comprehensible. The Tribunal did not agree with the submission that disclosure of the Rule 5 Statement was liable to prejudice any Police investigation. To a large extent, the information relating to allegations capable of constituting criminal offences had already been rehearsed in public. The Tribunal considered that the Rule 5 Statement should be disclosed, subject to redactions to protect the identities of investors and other third parties.

20. The exhibit to the Rule 5 Statement contained over 700 pages. It contained a very extensive amount of personal information and copy documents which were unambiguously client documents attracting legal professional privilege. The amount of material which the Tribunal considered should properly be protected went far beyond that present in the Rule 5 Statement. The task of reviewing and redacting the exhibit was not one that the Tribunal was equipped to undertake. The Tribunal also had concerns that such an exercise would leave much of the material essentially meaningless in any event. The Tribunal determined that this aspect of the request would involve disproportionate effort for the marginal benefit which would be obtained in terms of additional public understanding of the material which had been before the Tribunal. The Tribunal directed that the exhibit to the Rule 5 Statement should not be disclosed.

The witness statements of DC, JR and DH

21. DC, JR and DH were investor clients of Ecohouse who all gave witness statements, but not oral evidence, at the hearing. There was no indication in the material before the Tribunal that any of these three individuals consented to the disclosure of the information they had provided in their statements. The statements contained extensive personal information including as to their finances. The exhibits to their statements were lengthy. The Tribunal considered that such sensitive third-party personal data should be protected, and did not consider that it would be proportionate for redaction of personal information to be ordered. Accordingly, the Tribunal directed that the three witness statements of the investor clients, and their exhibits, should not be disclosed.

Respondents' responses to Rule 5 statement.

22. All Respondents objected to the disclosure of their Answers to the Rule 5 Statement. The Applicant was neutral. The Answer was the formal document which set out the Respondents' cases in response to the allegations made against them in the Rule 5 Statement. Having reviewed the Answer documents carefully, the Tribunal did not consider that they contained much sensitive personal information (such as medical or financial information). The allegations themselves were inevitably sensitive to the Respondents, but scrutiny of their responses to the allegations was inevitable in a public hearing. The Answers did contain some client information attracting legal professional privilege and/or

which was confidential, which information the Tribunal accepted should be protected. The Tribunal considered that this could be protected by identifying initials or other details being redacted. Where such redaction was not possible, or would render the document essentially meaningless, the Tribunal did not consider that TTF should be provided with the document. As with the Rule 5 Statement, whilst the Tribunal accepted that a detailed summary of the Respondents' arguments was included within the Tribunal's judgment, the Tribunal considered that a member of the public would inevitably have a fuller understanding of the Tribunal's decision and the reasons for it if access to the Answers were granted. The open justice principle was thereby furthered.

23. The Fourth Respondent had raised Article 8 right to privacy arguments. The Tribunal recognised this was a potentially relevant factor but did not consider that the Fourth Respondent's Answer contained any material which tipped the balance against disclosure. The Tribunal considered that the right to private and family life under Article 8, a qualified right, was overwhelmed by the open justice principle considerations. The Tribunal considered that it was important for public confidence in the Tribunal's decision making that access to such documents be granted where practicable. The Tribunal directed that, subject to third party names and identifying information being redacted, the Respondents' Answers should be disclosed.

Respondents' witness statements (all).

24. The Tribunal reviewed two statements from the First Respondent (dated 26 May 2016 and 6 October 2016), one from the Second Respondent (dated 27 May 2016), two from the Third Respondent (dated 24 May 2016 and an unsigned statement seemingly dated 25 October 2016) and one from the Fourth Respondent (dated 25 May 2016).

25. On balance the Tribunal considered that the First Respondent's first witness statement (dated 26 May 2016) should not be disclosed. The witness statement contained significantly more personal and sensitive material than his formal Answer. In addition, the lengthy statement contained long sections recounting legally privileged information. This privilege belonged to the relevant clients. In addition, there was a significant amount of confidential material relating to clients and other third parties. It appeared to the Tribunal that the majority of the statement would need to be redacted, and that this task was disproportionate in view of the resources available to the Tribunal, the material already publicly available, and the additional material that the Tribunal had directed should be disclosed. Disclosure of this statement might afford a minimal additional public understanding of the arbitration process, which prompted admissions to be made by the Respondents, but this did not outweigh the factors against disclosure identified above. The Tribunal directed that the First Respondents' first witness statement should not be disclosed.

26. However, the First Respondent's second witness statement (dated 6 October 2016) contained much less client information and detail. Unless there were specific reasons why disclosure was inappropriate, such as those spelled out in relation to the first witness statement, the Tribunal did not consider that there could be a general expectation of privacy

for matters set out by a Respondent in a witness statement deployed in a public hearing. One client name appeared in the statement, and the Tribunal considered this should be redacted. Subject to this redaction, the Tribunal directed that the First Respondent's second witness statement (dated 6 October 2016) should be disclosed.

27. The Second Respondent's witness statement contained very much less privileged and confidential information that the First Respondent's first statement. The balancing exercise therefore favoured disclosure. The Tribunal considered the sensitive personal information included in the Second respondent's statement, and which should legitimately be protected, could be redacted without rendering the statement meaningless. The Tribunal directed that redactions should be made to paragraph 26 of the statement dated 27 May 2016, but that it should otherwise be disclosed.

28. The Third Respondent's first statement was dated 24 May 2016. The statement made reference to and summarised legally privileged material. However, the Tribunal considered that with minimal redactions of third-party identifying information, it would be possible to protect such privilege effectively. The Tribunal considered that the identities of individuals who were peripheral to the allegations should also be protected by way of redaction. The statement did not appear to the Tribunal to contain sensitive personal data relating to the Third Respondent such that additional redactions were required. Having reviewed the statement the Tribunal did not accept that there was information included which could plausibly be said to risk prejudicing any police investigation. On the basis that proportionate redactions could be made to remove legally privileged or confidential information, and that, as stated above, the Tribunal did not consider that there could or should be a general expectation of privacy in matters set out by a Respondent in a witness statement deployed in a public hearing, the Tribunal directed that, subject to the specified redactions, the Third Respondent's first witness statement dated 24 May 2016 should be disclosed.

29. The copy of the Third Respondent's second statement available to the Tribunal was unsigned but labelled 25 October 2016. That statement was provided primarily in order to respond to the First Respondent's second witness statement. Both statements dealt with similar issues. The Tribunal did not accept that it included material which could plausibly be said to risk prejudicing any police investigation, or that it contained sensitive personal financial or medical information. As with the First Respondent's second witness statement to which this statement responded, the Tribunal considered that the redactions required to remove privileged, confidential or irrelevant third-party information were relatively minor and proportionate. Accordingly, for the reasons set out above in relation to other statements, the Tribunal directed that subject to these redactions the Third Respondent's second statement (unsigned but labelled 25 October 2016) should also be disclosed.

30. The Tribunal considered that redactions could be made to the Fourth Respondent's Statement to protect third parties identified in it, and also to remove a limited amount of financial information relating to the Fourth Respondent which had been included. The Tribunal did not consider that the objections to disclosure raised by the Fourth Respondent outweighed the public interest in open justice being furthered. Potential embarrassment

was not sufficient to outweigh this interest, and specifically the Tribunal did not consider that any expectation of privacy in relation to a public professional disciplinary hearing held in 2016 outweighed this interest. The Tribunal directed that, subject to redactions to protect financial information relating to the Fourth Respondent, to remove client names, and to remove paragraph 47 in its entirety, the Fourth Respondent's witness statement should be disclosed.

31. The exhibit to the Fourth Respondent's witness statement contained extensive confidential and privileged client information. For the reasons rehearsed above in relation to such material, the Tribunal considered that it had an obligation to protect such information from public disclosure, and that an exercise of review and redaction of the exhibit was disproportionate to the benefit which may be obtained. The Tribunal directed that the exhibit should not be disclosed.

A copy of Adam Howell's Forensic Investigation report into Sanders solicitor firm as mentioned in points 12. & 13. of the judgement.

32. The Tribunal noted that the body of both investigation reports (the interim and final reports dated 7 October 2014 and 21 November 2014 respectively) contained very extensive confidential information relating to clients and investors. There was no indication before the Tribunal that any of these individuals consented to the disclosure of documents containing their personal details to the public. The Tribunal also noted that material collated and referred to in those investigation reports had been obtained by the Applicant (the SRA) for the purpose of regulatory proceedings, and that cooperation with their investigations may be undermined if there was an expectation that material provided to them may be made public without further notice to those providing it. Much of the information contained in the reports was sensitive and confidential, and in some instances attracted legal privilege. As above, the Tribunal considered that it had an obligation to protect such information from public disclosure, and that an exercise of review and redaction of the reports and appendices was disproportionate to the marginal benefit which may be obtained. The body and conclusions of the final report was reflected in the Rule 5 Statement. The Tribunal directed that the Forensic Investigation reports and exhibits should not be disclosed.

A copy of all client complaints raised against the firm, as presented to the Tribunal and referred to during the judgements.

33. The client complaints considered by the Tribunal were contained within the appendices to the Rule 5 Statement and the Forensic Investigation reports. Those complaints inevitably identified the clients involved, and the Tribunal considered that the matters raised were confidential to those clients. In addition, the Tribunal considered that a review and redaction exercise of the complaints would be disproportionate given the limited administrative resources available to the Tribunal, and the material already or shortly to be made available. The Tribunal directed that the client complaints should not be disclosed.

Authorities main document bundle.

34. The Tribunal was content for any authorities bundle to be disclosed, but none was located during the search for material falling with the scope of the Disclosure Application. The Tribunal was therefore unable to disclose it.

The 2019 hearing (Case No. 11859/2018)

The Rule 5 statement dated 16 August 2018 and exhibit NXB 1.

35. The Tribunal applied the same reasoning to this second Rule 5 Statement as that set out above. The Applicant objected to disclosure of material relating to the Insolvency Service in particular, which was contained within the exhibit to the Statement. Within the Rule 5 Statement itself, the references to the Insolvency Service were limited. The Tribunal understood the Applicant's wish to ensure that material obtained from the Insolvency Service was used in a manner consistent with the memorandum of understanding referred to in their response to the Disclosure Application. However, the Tribunal did not consider that the references to the Insolvency Service within the Rule 5 Statement should be redacted. The Statement had been deployed in open court in a public hearing, and provided detail of the explanation which had been offered by the Third Respondent for his conduct. The Tribunal considered that initials used within the Rule 5 Statement should be redacted to protect third parties. In addition, other than those companies connected with the Third Respondent (EDL, Black Country, EDC or EDG), third party company names should similarly be redacted. The Panel which heard the case in 2019 would have been influenced by the explanation that the Third Respondent had given. The Tribunal considered that it would be unreasonably limiting public access, understanding and the open justice principle if the Statement which set out these explanations more fully was not disclosed in response to the Disclosure Application. The Tribunal directed that, subject to the redactions summarised above, the Rule 5 Statement be disclosed.

36. As with the exhibit to the Rule 5 Statement in the earlier proceedings, the Tribunal did not consider it was proportionate for the Tribunal to carry out the necessary redaction of the thousand plus pages to protect third party, confidential and privileged information. Without such redaction, it was not appropriate for such material to be disclosed in view of the harm which may thereby be caused. The Tribunal directed that the exhibit to the Rule 5 Statement should not be disclosed.

A copy of any FIO reports which were included in the trial bundle but do not appear in the documents referred to in 1 above.

37. There were no additional Forensic Investigation Reports used in the 2019 hearing beyond those identified and discussed above.

Email chain between the Applicant and DS Ward dated 22 March 2019.

38. As indicated by the Applicant in its response, the email from DS Ward was mentioned in paragraph 3.2 of the Tribunal's Judgment, and an extract from the email was reproduced. The email was discussed within the context of an (unsuccessful) application for an adjournment, rather than relating to the substance of the allegations. The Tribunal did not therefore consider that disclosing any further material would advance the principle of open justice as it would not assist an understanding of the Tribunal's decision on the allegations against the Respondent. The Tribunal directed that the email chain should not be disclosed.

Authorities main document bundle.

39. As above, whilst the Tribunal was in principle content for any authorities bundle to be disclosed, none was located by the search for material falling with the scope of the Disclosure Application. The Tribunal was therefore unable to disclose it.

The Tribunal Directed:

40. In summary, and subject to the redactions summarised above, the Tribunal directed that the following documents be disclosed:

From the 2016 hearing (Case No. 11440/2015):

- The Rule 5 Statement (without the exhibit)
- All four Respondents' formal responses (Answers) to the Rule 5 statement (without exhibits)
- The First Respondent's second witness statement 6 October 2016
- The Second Respondent's witness statement dated 27 May 2016
- The Third Respondent's witness statements dated 24 May 2016 and an unsigned version dated 25 October 2016
- The Fourth Respondent's witness statement dated 25 May 2016

From the 2019 hearing (Case No. 11859/2018)

- The Rule 5 Statement dated 16 August 2018 (without the exhibit).

41. The Policy provides that where the Tribunal had directed that redactions be made to documents which are to be disclosed:

> *"the parties will be given an opportunity to review and comment in writing upon the proposed redactions before the documents are disclosed."*

The Tribunal accordingly directed that copies of the redacted documents should be provided to the parties and they should be given 7 days from the date of circulation of this memorandum in which to comment in writing upon the proposed redactions. The Panel

stressed that this was not an opportunity to renew representations against disclosure – but to comment on the proposed redactions.

42. After the submission of the Disclosure Application, and before final consideration of it by the Tribunal, TTF contacted the Tribunal's administrative office and requested copies of the responses provided by the parties to the Disclosure Application. The Policy does not provide for such an additional step. The process for arranging public access to documents from Tribunal proceedings is intended to be straightforward and proportionate, and not something which resembles the litigation involving the parties themselves. It was open to the TTF, or any other member of the public, to attend the hearing or to request a copy of the recording of the entire hearing. Were the Tribunal to invite comments from TTF on the parties' responses to the Disclosure Application, it would then be necessary to seek the parties' further representations on TTF's representations, which would mean that a satellite process out of all proportion to the intended simple mechanism to provide public access to documents where warranted, would come into being. However, the Tribunal considered that the submissions from the TTF, that they would not be able to assess the Tribunal's response to their Disclosure Application without understanding the points made against it by the parties had obvious force. The responses are set out almost verbatim above. To ensure transparency in the Tribunal's decision making the Tribunal directed that the responses to the Disclosure Application which had been provided by the parties should also be appended to this memorandum.

43. The Disclosure Application included an appendix called "Analysis of Non-Party Request for Copy Documents Decided between 2017 and January 2021". The Tribunal focused on the Disclosure Application, the Policy, applicable case-law and the specific arguments relating to those documents falling within the scope of the request. Wider considerations relating to historical fact-specific decisions would not and did not assist with this process and do not require further comment in this memorandum.

44. The Tribunal made no order as to costs.

Dated this 22nd day of June 2021
On behalf of the Tribunal

B. Forde
Chair

SRA RESPONSE TO THIRD PARTY DISCLOSURE APPLICATION

1 The SDT have received a third party disclosure application from the Transparency Taskforce (TTF) dated 15 March 2021 and have requested the SRA's views on the application.

2 This document sets out the SRA's views on the application having considered the SDT's policy on the supply of documents from tribunal records to a non-party.

3 We understand that the SDT have also sought the views of other parties who may be affected by the application.

TTF application

4 TTF are a social enterprise whose stated purpose is to raise awareness of a lack of transparency in financial services and drive positive change in the financial services sector.

5 TTF claim to have made the application in support of and in association with numerous victims of the Ecohouse Fraud.

6 TTF seek disclosure of documents relating to two sets of SDT proceedings which were concluded in 2016 (the 2016 proceedings) and in 2019 (the 2019 proceedings) and relate to solicitors that acted as escrow agents for Ecohouse Development Limited (EDL) and the investors in the EDL investment schemes.

7 The 2016 proceedings involved Claire Louise Taman, Michael John Davies, Charles Valentine Fraser-Macnamara and Katherine May Fraser-Macnamara. On 4 November 2016, the SDT suspended Ms Taman, Mr Davies, and Mr Macnamara from practise for 1 year and made no order against Katherine May Fraser-Macnamara. On 21 June 2017, the Administrative Court increased the suspensions of Ms Taman and Mr Davies to 3 years.

8 The 2019 proceedings involved on Charles Valentine Fraser-Macnamara and he was struck off by the SDT on 27 March 2019.

9 TTF seek the following documents from the 2016 proceedings:

- The Rule 5 statement with exhibit IGM/1 dated 26 October 2015;
- Witness statements of DC, JR, and DH;
- Respondent's response to the Rule 5 statement;
- All of the Respondent's witness statements;
- A copy of Adam Howell's Forensic Investigation reports into Sanders Solicitor firm ('the firm');
- A copy of all the client complaints raised against the firm as presented to the Tribunal and referred to during the judgments; and
- Authorities main document bundle;

10 The following documents are sought from the 2019 proceedings:

- The Rule 5 statement dated 16 August and exhibit NXB1.
- A copy of any of the FIO reports which were included in the trial bundle;
- Email chain between the Applicant and DS Ward dated 22 March 2019 and
- Authorities main bundle.

11 TTF's reasons for seeking disclosure are public interest reasons in establishing how the Fraud arose, why it was not stopped at an earlier stage and to see the evidence which caused the SDT to make its findings.

12 Disclosure is said to be necessary to maintain public trust in the probity of the court and public confidence in the administration of justice and justice being administered impartially.

SRA'S views

13 In summary we oppose disclosure of the majority of the documents sought on the basis that:

- The firm acted for EDL limited and 849 investor clients. The material sought includes information and documents which are confidential to those clients and possibly subject to privilege. The documents include personal data of those clients and information which relates to third parties, which if disclosed could be prejudicial to them;
- TTF seek a wide range of documents which are voluminous and could only be rendered capable of disclosure through extensive sifting, redaction and anonymisation, which the Tribunal has no power to direct the SRA to undertake and it would be inappropriate and impracticable for it to undertake itself.
- There are other good reasons for not disclosing the material which include: the SDT Judgments are extensive and detailed, and it is difficult to see why disclosure of the requested material will assist in advancing the principle of open justice in the light of the extensive information already set out in the Judgments;
- TTF have not explained what they intend to use the documents for or given any detail of the investor clients they are supporting in the application.

The documents sought from the 2016 proceedings

14 The Rule 5 statement and exhibit together consist of some 800 pages and include documents and information or reference to them which are confidential and potentially privileged[1]. The documents include agreements that investors and EDL signed and which contain person information of investor clients including their names and addresses. The documents are capable of identifying investor clients. In the proceedings anonymisation of clients' names was preserved to ensure client confidentiality.

15 Where the SRA obtains privileged material, and places such material before the SDT, privilege is qualified only for the purposes of the SRA and SDT performing their statutory functions. The SDT remains under a duty to preserve client LPP and confidentiality in such material placed before it by the SRA. See **Simms V Law Society [2005] EWHC 408 (Admin) and R (Morgan Grenfell Ltd) V Special Commissioner of income Tax [2003] 1 AC 563**. The SDT can take steps to preserve LLP and confidentiality by redaction and anonymisation of documents and information, and the SDT's policy anticipates such steps being taken in some cases,

[1] We are not aware of whether the Respondent's to the SDT proceedings claim that any of the material relied upon by the SRA in the proceedings is privileged.

but the SRA anticipates that this task would be impractical and onerous because of the volume, diverse and mixed nature of documents that would require sifting, anonymising, and redacting.

16 We object to disclosure of the Rule 5 and exhibit.

17 DC, JR and DH are investor clients of the firm who gave witness statements to the SRA for use in the proceedings. It appears from the SDT Judgment that they did not give evidence at the hearing. The witness statements identify the investor clients and contain information about their finances and details of their investments. The witness statements are lengthy documents and their exhibits are hundreds of pages long. The exhibits contain documents which can be regarded as confidential to the investor clients and contain their personal details such as their addresses and other contact details. The witnesses have not given their consent to disclosure of their statements to third parties and to do so without their permission would not be in the public interest. We object to disclosure of all the witness statements.

18 We are neutral in respect of the Request for disclosure of the Respondent's Answer to the Rule 5 statement and their witness statements. However, we would point out that included in the first witness statement of Michael Davies, are the full names of the investor clients (DC, JR, and DH) and comments on their witness statements. Further, in the exhibit to his statement there is correspondence with clients. That information would require redaction or anonymisation before disclosure.

19 Two Forensic Investigation Reports were prepared: an interim report dated 7 October 2014 and a final report dated 21 November 2014. The interim report contains details of investor clients' complaints and in the appendix includes email exchanges between the firm and investor clients as well as client ledgers for some of the clients. The final report refers to a complaint made by an investor client. The appendices to the reports are lengthy and include schedules of the names of investor clients and details of their investment and also details of the names of investor clients in a separate investment scheme together with other personal details. We object to disclosure of both reports.

20 There is reference in the judgment to complaints being made to the firm at the end of 2013 and in 2014 by investor clients. Some of the complaints are referred to in the forensic investigation reports. The details of the complaints made appear in the interim investigation report, which we object to disclosing.

21 We are neutral in respect of the disclosure of the authorities bundle, although the authorities are of course already in the public domain and disclosure of the index alone is likely to be sufficient to meet any public interest. The Judgment recites any authorities considered by the SDT in reaching its decisions.

The documents sought from the 2019 proceedings

22 The exhibit to the Rule 5 statement is a lengthy document. It consists of over 1600 pages and contains documents and information which is confidential to clients and/or third parties. The Rule 5 statement and the SDT judgment refers to Person A whose full name and personal details appear in documents in the exhibit.

23 The Rule 5 statement also identifies payees of dubious payments who are referred to by initial only in the SDT Judgment. The identity of the payee also appears in the

affidavit referred to below. Disclosure of the identity of the third parties not named in the Judgment is potentially highly prejudicial and a breach of confidentiality.

24 The exhibit to the Rule 5 statement also contains an affidavit from a chief examiner in the investigation's directorate of the Insolvency Service. The affidavit was prepared in director disqualification proceedings against Person A and others. It is 218 pages long and contains over 500 pages of exhibits which contain various documents obtained during the Insolvency Service investigation. The affidavit includes reference to the investor clients of the firm, including DH and JR and their documents and contains confidential information.

25 The affidavit was obtained from the Insolvency Service solely for the purpose of the SRA investigation and enforcement action.

26 The SRA has a memorandum of understanding (MOU) with the Insolvency Service which requires the SRA as a recipient of information to amongst other things keep the information secure and use the information only for the "proper purposes", such as regulatory proceedings, disciplinary or other legal proceedings[2].

27 Whilst provision of information to the SDT for the purposes of the SRA's statutory enforcement powers is consistent with "proper purposes", disclosure to third parties appears to fall outside the scope of such proper purposes. We object to disclosure of the Rule 5 statement and exhibit.

28 As far as we are aware there were no Forensic Investigation Reports in the trial bundle.

29 We object to disclosure of the email exchange with DS Ward dated 22 March 2019. The email exchange with DS Ward on 22 March 2019 is confidential. DS Ward gave permission to share his email with the SDT and his email is quoted in paragraph 3.2 of the judgment. DS Ward has not given permission to disclosure of his email to any other third parties. The disclosure of the email exchange would not advance the principle of open justice.

30 We are neutral in respect of the disclosure of the authorities bundle and repeat the points made at para 21 above.

Other considerations

31 The Judgments in the proceedings[3] provide a full recital of the SRA's case and the evidence relied upon to prove the allegations. Disclosure of the Rule 5 statements in themselves would be unlikely to advance the principle of open justice.

32 In light of the limited time in which to provide our views on disclosure, the SRA have not approached the Insolvency Service or the investor clients DC, JR, and DH to obtain their comments on the application for disclosure. If the Tribunal are minded to disclose the documents obtained from them, we would be content to contact them for their views on the application before a final decision is made.

33 As TTF have not provided the names of the investor clients that they have made the application in support of, we have been unable to determine whether any of the documents they seek relate to them. TTF have not provided any authority from the

[2] See section 15 of the MOU sets out what can also be considered as proper purposes.
[3] The Rule 5 statement in the 2016 proceedings is 37 pages long and the Rule 5 statement in the 2019 proceedings is 28 pages long.

investor clients that they are content for disclosure of documents which may relate to them to TTF.

34 If the SDT considers that disclosure of any of the documents should be made on a redacted basis, the SRA will be content to review any redactions proposed by the SDT prior to disclosure[4].

Conclusion

35 The SRA invite the SDT to refuse disclosure of the documents which it has objected to. The voluminous documents contain confidential and or privileged information relating to clients or third parties which would require a disproportionate amount of editing or redaction before they could be lawfully disclosed. That task would be resource intensive and impractical for the SDT to undertake.

36 Further, disclosure of the documents would not advance the open justice principle in light of the detailed nature of the SDT Judgments which are publicly available. The Judgments summaries all the relevant evidence relied upon by the parties in the proceedings and they contain the basis of the Tribunal's findings against the solicitors. The Judgments contain sufficient detail of the Ecohouse investment scheme and the solicitor's roles in the scheme to enable the public to understand the role of the Respondents to the proceedings in the operation of that scheme and the reasons for the enforcement action taken.

29 March 2021

Inderjit Johal

Senior legal Adviser

SRA

[4] The SDT's policy on disclosure provides that "*where the panel directs that the Tribunal itself should redact, edit or anonymise documents the parties will be given an opportunity to review and comment in writing upon the proposed redactions before the documents are disclosed*".

Case Number 11440 -2015

Application for Non-Party Disclosure of Tribunal Documents

Transparency Task Force Ltd **Applicant**

V

Michael John Davies

Clare Louise Taman **Respondents**

&

Others

Grounds of Resistance of Application

1. The Respondents object to the release of the case papers arising out of the proceedings in case number 11440 – 2015 and urges the Tribunal to reject the application from Transparency Task Force Limited ("TTFL") on the following grounds;

2. It is submitted that under the Solicitors Disciplinary Tribunal: Policy on the Supply of Documents to a Non-Party from Tribunal Records 10th July 2017 the Application engages the following factors;

   i. The reason for the request;
   ii. The potential value of the material in advancing the purposes of open justice;
   iii. Any risk of harm which access to the documents may cause to the legitimate interest of others;
   iv. Whether the information is confidential.

The Reason for the Request

3. The reason given for the request as set out in the application and amplified further:

   i. This application is made in support of and in association with the numerous victims of the EcoHouse fraud who have suffered financial loss and distress on account of the actions of the solicitor respondents mentioned in the judgments. TTF are in contact with several victims of the fraud on a regular basis and some are assisting us with fraud prevention initiatives and;
   ii. The Transparency Task Force are committed to identifying and researching why fraud appears to be being enabled-or at the very least, not adequately prevented- by solicitors in an alarming number of fraud cases. Disclosure will assist us greatly in understanding how more robust preventative measure could help reduce the incidence of fraud.

   The Applicant is a Private Limited Company by shares with a share capital of GBP 100 which has Objects, inter alia,

   a. The Mission is to promote the ongoing reform of the financial sector, so it serves society better;
   b. The vision is to build a highly respected, international and influential institution that helps to ensure consumers are treated fairly by the financial sector. The primary beneficiaries of the organisations' work will be consumers; but the sector itself will also benefit through market conduct and increased trust in the services it provides;
   c. The objective is to carry out a broad range of activities that help drive positive, progressive and purposeful financial reform, such as:

      i. Building a collaborative, campaigning community; the larger it is the more influence it can have in driving change that is needed
      ii. Raising awareness of the issues, so that society better understands the problems that exist in the financial sector and how they can be dealt with
      iii. Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

   Therefore, it is not entirely clear as to whether the Applicant has any locus standi to make the application either on behalf of the Investors in the EcoHouse scheme or itself. The objectives of the Applicant appear to be a campaigning organisation for better regulation of the financial sector rather than an

investigatory function in respect of solicitors or the recovery of the losses of those investors.

4. If the Applicant's reason were to be the campaigning for better regulation of the financial sector then it is difficult to see how documents relating to the breach of Solicitors Regulation Authority's Principles and as dealt with by the Tribunal in the hearing against the respondents Michael Davies and Clare Taman and, more specifically, acting in a situation where there was a conflict, acting in an area outside expertise and experience and permitting transferor withdrawals from the Firm's client account where there was no underlying legal transaction. Such documentation would have no bearing on the regulation of the financial sector.

5. If the Applicant's reason were to be an attempt to investigate the possibilities of recovery of the Investors losses then the application appears to be analogous to an application for pre –action discovery, which will be addressed below. However, if the Applicant's reason is such then the same contains a fundamental error as to the position.

6. The Applicant makes reference to the Ecohouse fraud. However as referred to above neither the Respondents Michael Davies nor Clare Taman faced any allegation of dishonesty or involvement in any fraud, and indeed both the Tribunal and High Court were at pains to make it clear that the collapse of the Ecohouse scheme could not be laid at the Firm's door. No proceedings have ever been brought against the Respondents or the Firm for breach of contract/ breach of duty. Further the last transaction conducted by the Firm was in 2014 and therefore all claims are now statute barred.

7. The proceedings in the Tribunal are governed by the principles set out in the Civil Evidence Acts 1968 and 1995, Rule 13(1)-(3) Solicitors (Disciplinary Proceedings) Rules 2007. If the Application is brought on the basis to seek evidence which might be used in future civil proceedings, notwithstanding now statute barred, the application would be directly analogous to an application for Pre-Action Disclosure pursuant to CPR r 31.16(3) and therefore it is submitted that these rules are therefore engaged in respect of such an application. The requirement of r 31.16(3)(a) is that the Respondents must be likely to be a party to subsequent proceedings. For the reasons set out in relevant paragraphs above this cannot be the case. Further, the requirement of r 31.16(3)(c) is that the Applicant must establish the merits of any underlying cause of action. The Applicant therefore must be able to show an arguable possible claim against the Respondents *Black v Sumitomo Corporation [2001] EWCA CiV 1819.* The Respondents submit that given the position outlined above, the Applicant cannot make out such a case and therefore fails the relevant test.

8. Furthermore r 31.16(3)(d) makes it a requirement that the documents sought are ones which would be required to be disclosed under the Standard Disclosure requirements set out in CPR r 31.6. As set out in paragraph (11) below clearly these are documents which would not be disclosable. Therefore as the Applicant cannot show that the whole of the material sought falls into that class of disclosable, then any such application would fail, *Hutchinson 3G UK Ltd v O2 (UK) Ltd [2008] EWCA 55 (Comm).*

9. Further the application is an attempt to circumvent an application for Pre-Action Disclosure, in which, for the reasons set out above, the applicant would have little or no chance of success, and therefore should fail. Finally given the imprecise reasons for the request the same amounts to little more than a "fishing expedition" which should not be permitted, *Harrods Ltd v Times Newspapers Ltd [2006] EWCA Civ 294.* The Applicant's application should therefore be dismissed and the materials not disclosed to the Applicant.

Risk of Harm to Others

10. The statements of the Respondents Michael Davies and Clare Taman contain information provided to them by both clients of their then Firm and Third Parties. That information was provided in circumstances where it was either expressly or by implication understood by those Parties that such information would be treated private, save for its necessary disclosure to the Tribunal. Those providing such information had a reasonable expectation that the same would be treated as private and in accordance with the provisions of Article 8 EHCR. Despite the Applicant's argument as to open justice the Applicant has not advanced any argument as to why the public interest would outweigh the Third parties' right to privacy and therefore in those circumstances that information should remain private and should not be disclosed (*Duchess of Sussex v Associate Newspapers Ltd 2021 EWCH 273 (Ch)*).

11. Further it is submitted that as the Applicant has been somewhat cavalier in the allegations as to fraud and has failed to correctly identify that the Respondents Michael Davies and Clare Taman never faced such an allegation in the Tribunal, nor were found to have been dishonest, that the Applicant would not be a safe repository of such information. If the Applicant is not aware of the potential liability for actions for defamation by lack of understanding of such matters the Applicant has not shown that it is likely to be circumspect in any information that it might receive. Therefore there is a clear risk of prejudice to such Third Parties and the Respondents themselves.

Whether Information Confidential

12. The materials that are being sought by the Applicant contain information acquired by the Respondents Michael Davies and Clare Taman as Solicitors and are confidential falling into the Respondents' obligations as Solicitors under the Solicitor –Client relationship. The materials sought by the Applicant contain personal information as to the identity of the disappointed Investors together with financial information, therefore in those circumstances, the information is privileged from disclosure and should not be released to the Applicant.

Open Justice

13. The hearing of the Respondents Michael Davies and Clare Taman, between 31st October and 4th November 2016 was held in public at the Solicitors Disciplinary Tribunal, 1 Farringdon Street, London EC4M 7LG and the judgment published on 19th December 2016 in accordance with Rule12(3)-(6) The Solicitors (Disciplinary Proceedings) Rules 2007. It is submitted that in light of the Applicant's objectives the information made available from these proceedings is more than sufficient for the Applicant's purposes and that therefore the principle of open justice has been meet.

14. Therefore, based upon the submissions detailed in these Grounds of Resistance, the Respondents submit that there are no grounds upon which the Tribunal should disclose the materials sought by the Applicant and that there would be substantial risks in so doing.

Dated 28th March 2021

.....Michael Davies.....
Signed electronically
For Respondents Michael J. Davies
& Clare L. Taman

From: Mr Charles Fraser Macnamara
Sent: Thu, 25 Mar 2021 13:38:51 +0000
To: Matthew Waterworth
Subject: Application for Non-Party Disclosure

Ref: NOM54
Dear Sirs
Thank you for your e-mail of the 16 March 2021.
Previous applications for disclosure in this matter have been placed before the Tribunal and the Tribunal has resolved not to permit the disclosure.
In those cases there were specific litigants making applications for proceedings, whereas this application appears to be a general application and more of a "policy fishing exercise".
I object to the disclosure of any documents relating to myself, either in the first set of proceedings, judgement case number 11440.2050, or second judgement case number 11859.2018.
My reasons are as follows:-
(1) The disclosures made in the statements made in relation to those proceedings mentioned above, both contain highly personal, both medical and financial, information which should not be in the public domain.
(2) The matters referred to and complained of are, by the very definition, statute barred, having occurred more than 4 years from the date of the application. Accordingly no court would normally permit proceedings to be issued in relation thereto.
(3) Any application or documentation placed into the public domain could prejudice the on-going criminal proceedings, which appear to have been undertaken against Mr A[redacted] A[redacted].
(4) There are extant proceedings and interviews with the Metropolitan Police against [redacted] ccordingly, for that reason, any disclosure would be premature and would prejudice any on-going investigations in that regard. Particularly in relation to myself, but also in relation to any of the other respondents.
I object in the strongest possible terms to disclosure of any of the documentation request on what appears to be a "political" basis, and not a specific litigant basis.
In any event, the Tribunal has already determined that specific litigants should not have disclosure of this documentation.
Please specifically acknowledge safe receipt and let me know of the views of the Tribunal, and the determination of the Tribunal, in due course.
Yours faithfully

Charles V Fraser-Macnamara
Black Country Group
Helen House, Great Cornbow, Halesowen B63 3AB

From: katie Macnamara
Sent: Mon, 29 Mar 2021 07:43:48 +0000
To: Matthew Waterworth
Subject: Re: Application for Non-Party Disclosure

Dear Sirs,
I write to formally respond to your email of the 16th March with attachments. I apologise for the delay in responding but I had not seen the same within my emails.
I confirm that I object to the disclosure of the tribunal documentation and my reasons are set out as below :-

1. The disclosure, I understand, is not required in relation to any further disciplinary or regulatory proceeding. The applicant will have had access to the detailed SDT judgment together with any other judgements in relation to the matter.
2. I was only a very junior employee at the time of the events and was inexperienced. I believe this was reflected in the Tribunals decisions not to impose any sanctions against me personally. I no longer practice in law, I would therefore ask that the documentation not be disclosed so I am not subjected to further publicity or public scrutiny.
3. I understand that the applicant is not an individual with an interest in the outcome of the SDT hearing and was not involved with the company EcoHouse and therefore does not have a direct interest in the proceedings.
4. In relation to the above I would ask that the Tribunal take into consideration my right to privacy and family life under Article 8 of the Human Rights act and that to disclose documentation to the applicant could affect this.
5. If the Tribunal does deem the disclosure prudent, notwithstanding the above, I would ask that any personal details pertaining to myself, my address or financial means be redacted before disclosure.

I appreciate your consideration in relation to the above and await hearing from the Tribunal further in this matter.
Yours sincerely
Katherine [redacted] (nee Fraser Macnamara
From: Matthew Waterworth
Sent: 16 March 2021 15:59
To: SDT Enquiries
Subject: FW: Application for Non-Party Disclosure
Dear Sirs
Please see the Non-Party Application for disclosure attached.
A copy of this email has been sent to each Respondent in the relevant SDT proceedings (and to the SRA).
The Tribunal wishes to obtain your views (and those of the SRA) by 4 pm on Tuesday 30 March 2021 before the matter is considered by a division of the Tribunal.
I look forward to hearing from you.
Kind regards
Case Management Team
Solicitors Disciplinary Tribunal
Telephone: 020 7778 0769
Email: enquiries@solicitorsdt.com