SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12091-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PETER JAN BUJAKOWSKI First Respondent
CRAIG NICHOLAS HOLLINGDRAKE Second Respondent
IAN JOHN NORMAN GEE Third Respondent
ELAINE SAUNDERS Fourth Respondent

Before:

Mr P Booth (in the chair)
Mrs J Martineau
Mrs L Barnett

Date of Hearing: 28 September 2020

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT ON AN AGREED OUTCOME

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1. Judgment not to be disclosed to the substantive panel

2. Judgment not to be published until findings have been made regarding the First and Third Respondents.

Allegations

1. **Second Respondent**

"The allegations admitted by the Second Respondent are that, while a Director in JWK Legal Group Limited ("the Firm") and while holding the position of the Firm's Compliance Officer for Finance and Administration ("COFA"), he:

i) Between 18 December 2012 and 30 November 2016, failed to take any or adequate measures to prevent the Firm from:

a. providing a banking facility to the Client A group or any individual or entity related to it, and in doing so breaching its obligations under Rule 14.5 of the SRA Accounts Rules 2011; and

b. giving effect to inter-ledger transfers of sums held on the Firm's Client Account in breach of one or both of Rule 27.1 and 14.5 of the Solicitors Accounts Rules 2011; and

c. making payments from the Firm's Client Account other than in the circumstances allowed under Rule 20.1 of the SRA Accounts Rules 2011 and by reason of such failures breached Principles 7 and 8 of the SRA Principles 2011 and Rule 8.5(e) of the SRA Authorisation Rules 2011."

2. **Fourth Respondent**

"The allegations admitted by the Fourth Respondent, who is not a solicitor, are that while employed to handle real estate transactions the Firm she was guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for her to be involved in a legal practice, in that:

i. Between May 2011 and November 2017, she failed to consider whether the contents of such marketing materials seen by her overstated the likely returns to potential buyers (some of whom were or might be unrepresented), and in doing so breached Principle 6 of the SRA Principles 2011;

ii. Between May 2011 and November 2017, she failed to consider whether the "buy back" arrangement in the contractual documents provided meaningful security for buyers (some of whom were or might be unrepresented) and in so doing breached Principle 6 of the SRA Principles 2011;

iii. Between May 2011 and November 2017, she caused or allowed transfers from the Firm's Client Account of monies consisting of sums received from buyers (i.e. by way of the purchase price for the assets the buyers were acquiring) other than in respect of instructions relating to an underlying transaction in that the recipient of such transfers was not the seller of the asset or otherwise connected with the underlying transaction and in doing so breached one or both of Rule 14.5 and Rule 20.1 of the SRA Accounts Rules 2011."

Documents

3. The Tribunal had before it the following documents:-

- The Form of Applications dated 29 April 2020
- Rule 12 Statement dated 29 April 2020
- Statement of Agreed Facts and Proposed Outcomes for Second and Fourth Respondents dated 25 September 2020

Factual Background

4. **Second Respondent**

4.1 The Second Respondent was admitted to the Roll of Solicitors on 2 October 1989. He currently holds a Practising Certificate free from conditions. He was a director of the Firm at the material time and, between 18 December 2012 and 30 November 2018 was the Firm's COFA.

4.2 The Second Respondent has not been the subject of previous adverse disciplinary findings.

5. **Fourth Respondent**

5.1 Ms Saunders is not a solicitor. At the material time, she was a graduate member of the Chartered Institute of Legal Executives. She started employment with the Firm, as a secretary in 1989 and moved to a fee earning role in 1997. She worked for Mr Bujakowski (the First Respondent in the proceedings to which this document relates) from 1997 and from 2003, headed up a team of employees handling the day to day aspects of sales (or lease and leasebacks) to investors in Client A schemes. Ms Saunders was not a director of the Firm and did not attend board meetings. Her work was carried out subject to the supervision of or in accordance with instructions given by Mr Bujakowski or other directors or solicitors, and in accordance with the Firm's procedures for transferring money.

5.2 Mr Bujakowski was admitted to the Roll of Solicitors on 1 May 1976. Mr Bujakowski was, at the material time, a director of the Firm working primarily in real estate.

Application for the matter to be resolved by way of Agreed Outcome

6. The parties invited the Tribunal to deal with the Allegations against the second and fourth Respondents in accordance with the Statements of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcomes proposed were consistent with the Tribunal's Guidance Note on Sanctions.

7. The allegations and admissions with respect to the second and fourth Respondents related to work undertaken in relation to the "Client A" Scheme between 2011 and 2016.

8. Client A was an entity which, through group companies, purchased real estate which could be redeveloped into storage units or car parking and then sold on the individual units or spaces to various buyers.

9. Long leasehold interests in individual parking spaces and storage pods were sold by Client A entities to private individuals or the providers of Self Invested Personal Pensions. Those purchasers then sub-leased the units/plots to Client A entities (which were then free to sub-sub-lease it to an end user if it so wished). At the end of the sub-lease period the buyer was able to enter into a management facility with a separate limited company.

10. The Firm maintained control ledgers for each of the sites in respect of which it was instructed by the entity which owned the site and was selling the storage pod or parking space. When the Firm received money in respect of the purchase of a storage pod or parking space the funds would be lodged against the client side of a sub-ledger relating to the sale of a sub-plot. Typically, the funds would then be transferred to the 'control ledger' relating to that particular scheme.

11. Client A produced marketing materials for the parking spaces and storage pods. The contracts between Client A and various buyers contained a "buy back" clause. The effect of the buy-back clause (in the form drafted after the initial version) was:

    - The buyer only had a window of one month, 5 years after purchase, to give formal notice of a wish to exercise the buy-back option, in prescribed form with a witnessed signature;

    - Even if such notice was given, Client A did not have to buy the storage pod or parking place back, because the buy-back depended on Client A's decision about whether it could reasonably afford to do so and Client A was not required to act reasonably in so determining;

    - In any event, Client A did not have to pay for the buy-back for a further 5 years.

12. It was common ground that the amount of the money received and distributed by the Firm in the period 2011 to 2016 was in the region of £101,509,669.20.

Findings of Fact and Law

13. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Second and Fourth Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

14. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the second and fourth Respondents' admissions were properly made.

15. The Tribunal considered the Guidance Note on Sanction (November 2019). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

16. **Second Respondent**

16.1 The Tribunal considered that given his length of qualification and experience, the second Respondent ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession. However, the Tribunal observed that the second Respondent was not the main protagonist and the allegations against him were limited in scope and nature.

16.2 The Tribunal noted that the second Respondent had had an exemplary career without any prior regulatory or disciplinary findings against him. The breaches in this case were inadvertent and did not cause loss to clients or the purchasers of the store pods/parking spaces.

16.3 However, the Tribunal considered that as COFA of the Firm the second Respondent should have been more vigilant and his culpability arose from his role as the Firm's COFA. The Tribunal agreed that the second Respondent's conduct was rightly assessed as being 'moderately serious' and that the proposed fine was at the top of the Level 2 Indicative Band.

17. **Fourth Respondent**

17.1 The Tribunal noted that whilst she was not a qualified solicitor nor a legal executive (i.e. a Fellow of CILEx) she was not without experience and again she should have exercised more vigilance and thought and if she had done so this may have prevented some of the harm.

17.2 However, she did not have responsibility as a director or solicitor at the Firm. Ms Saunders was being supervised by Mr Bujakowski. Mr Bujakowski was a shareholder and director in the Firm and an experienced solicitor.

17.3 The Tribunal accepted the proposal that in light of the admissions she had made and taking due account of the mitigation put forward by the fourth Respondent, the proposed outcome represented a proportionate resolution of the matter which was in the public interest.

Costs

18. The parties agreed that the second and fourth Respondent should each pay costs in the sum of £9,093.75 plus VAT. The Tribunal determined that the agreed amounts were reasonable and appropriate. Accordingly, the Tribunal ordered that the second and fourth Respondent pay costs in the agreed sums.

Statement of Full Orders

19. **Second Respondent**

The Tribunal Ordered that the Respondent, CRAIG NICHOLAS HOLLINGDRAKE, solicitor, do pay a fine of £7,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,093.75 plus VAT**.**

20. **Fourth Respondent**

The Tribunal Ordered that as from 28 September 2020 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his /her practice as a solicitor ELAINE SAUNDERS;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Elaine Saunders
(iii) no recognised body shall employ or remunerate the said Elaine Saunders;
(iv) no manager or employee of a recognised body shall employ or remunerate the said Elaine Saunders in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said Elaine Saunders to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said Elaine Saunders to have an interest in the body;

And the Tribunal further Ordered that the said Elaine Saunders do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,093.75 plus VAT.

Dated this 1st day of October 2020
On behalf of the Tribunal

P Booth
Chair

Case Number: 12091-2020

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

SOLICITORS REGULATION AUTHORITY

Applicant

v

PETER JAN BUJAKOWSKI

First Respondent

and

CRAIG NICHOLAS HOLLINGDRAKE

Second Respondent

and

IAN JOHN NORMAN GEE

Third Respondent

and

ELAINE SAUNDERS

Fourth Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME RELATING TO THE SECOND RESPONDENT

Introduction

1. By a statement made on behalf of the Solicitors Regulation Authority (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 29 April 2020 ("the Rule 12 Statement"), the SRA brings proceedings before the Tribunal making allegations of misconduct against the Second Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.

2. In this Statement of Agreed Facts, Admissions and Outcome ("**the Agreed Outcome**"), references to

"**the SRA**" are to the Applicant

"**Mr Bujakowski**" are to the First Respondent;

"**Mr Hollingdrake**" are to the Second Respondent

"**Mr Gee**" are to the Third Respondent; and

"**the Firm**" are to JWK Legal Group Limited (this abbreviation is adopted notwithstanding that it relates to an incorporated company rather than a partnership).

Admissions

3. The allegations admitted by the Second Respondent are that, while a Director in the Firm and while holding the position of the Firm's Compliance Officer for Finance and Administration, he:

   3.1. Between 18 December 2012 and 30 November 2016, failed to take any or adequate measures to prevent the Firm from:

      3.1.1. providing a banking facility to the Client A group or any individual or entity related to it, and in doing so breaching its obligations under Rule 14.5 of the SRA Accounts Rules 2011; and

      3.1.2. giving effect to inter-ledger transfers of sums held on the Firm's Client Account in breach of one or both of Rule 27.1 and 14.5 of the Solicitors Accounts Rules 2011; and

      3.1.3. making payments from the Firm's Client Account other than in the circumstances allowed under Rule 20.1 of the SRA Accounts Rules 2011

   and by reason of such failures breached Principles 7 and 8 of the SRA Principles 2011 and Rule 8.5(e) of the SRA Authorisation Rules 2011.

Agreed Facts

4. The Second Respondent was admitted to the Roll of Solicitors on 2 October 1989. He currently holds a Practising Certificate free from conditions. He was a director of the Firm at the material time and, between 18 December 2012 and 30 November 2018 was the Firm's Compliance Officer for Finance and Administration ("**COFA**").

5. The Second Respondent has not been the subject of previous adverse disciplinary findings.

6. The Firm was acquired by Simpson Millar LLP in November 2018.

7. The SRA's investigation into the Firm was commenced in May 2017. A forensic investigation report dated 12 March 2018 was prepared ("the FIR").

8. On 20 September 2018, the SRA issued an explanation of conduct letter to the Second Respondent. He responded on 30 November 2018.

9. The allegations and admissions relate to work undertaken in relation to the "Client A" Scheme as described in the Rule 15 Statement.

10. Client A was an entity which, through group companies, purchased real estate which could be redeveloped into storage units or car parking and then sold on the individual units or spaces to various buyers. TW was a director, and ultimate beneficial owner, of Client A and Client A group companies.

11. The allegations arise out of work undertaken by the Firm for Client A related entities between 2011 and 2016.

12. Long leasehold interests in individual parking spaces and storage pods were sold by Client A entities to private individuals or the providers of Self Invested Personal Pensions. Those purchasers then sub-leased the units/plots to Client A entities (which were then free to sub-sub-lease it to an end user if it so wished). At the end of the sub-lease period the buyer was able to enter into a management facility with a separate limited company.

13. The Firm maintained control ledgers for each of the sites in respect of which it was instructed by the entity which owned the site and was selling the storage pod or parking space.

14. When the Firm received money in respect of the purchase of a storage pod or parking space the funds would be lodged against the client side of a sub-ledger relating to the sale of a sub-plot. Typically, the funds would then be transferred to the 'control ledger' relating to that particular scheme.

15. The funds should then have been transferred to the entity which had instructed the Firm in relation to the sale of the storage pod or parking space. However, funds would sometimes be transferred by the Firm: (i) out to third parties or (ii) to other client ledgers and then out to third parties. It is accepted that these transactions did not, in themselves, involve an underlying legal transaction and were contrary to the SRA Accounts Rules 2011 ("the SAR").

16. The SRA accepts that no transfers were made out to unknown third parties. To the best of Second Respondent's knowledge, on each occasion that a payment was made by the Firm out to a third party, the recipient was:

    16.1. TW;

    16.2. a company or companies forming part of the Client A group of companies; or

16.3. a bank account in the name of a currency exchange business which the Firm understood had been set up to include a designated account in the name of Client A in order to generate monies in foreign currencies and pay out monies to overseas agents and buyers in their local currencies.

17. The SRA accepts that, where an inter ledger transfer took place, the ledger to which the transfer was made was to the ledger of a Client A group company.

18. The transfers referred to above took place between 2011 and 2016. It is common ground that the actual amount of the money received and distributed by the Firm in this way cannot be definitely stated but is likely to be substantial. The SRA's estimate is £101,509,669.20.

Rule 14.5 of the SRA Accounts Rules 2011

19. In October 2011, the SRA Accounts Rules came into force. The relevant rule is Rule 14.5, which states: *"You must not provide banking facilities through a client account. Payment 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."*

20. Guidance Note (v) reads: *"Rule 14.5 reflects decisions of the Solicitors Disciplinary Tribunal that it is not a proper part of a solicitors everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account. Further, solicitors are likely to lose the exemption under the Financial Services and Markets Act 2000 if deposit is taken in circumstances which do not form part of a solicitors practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers."*

SRA Warning Notice

21. On 18 December 2014, the SRA issued a warning notice entitled *"Improper use of client account as a banking facility"*. The Warning Notice provided a summary of the relevant issues and recent High Court judgments. In particular, there are three reasons why client accounts must not be used as banking facilities for clients:

21.1. 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;

21.2. allowing a client account to be used as a banking facility, unrelated to any underlying transaction which the solicitor is carrying out, carries with it the obvious risk that the account may be used unscrupulously by the client for money laundering; and

21.3. insolvency or risk of insolvency: use of the client account allows the client to achieve that which the client will normally be unable to achieve from any bank.

Breach of Rule 14.5

22. The Second Respondent accepts that the Firm's client bank account was used to make payments, and transfers were made between ledgers, other than in relation to an underlying legal transaction. He further accepts that as the Firm's COFA he had a responsibility to take steps to prevent such issues arising.

23. There are strong, and well known, reasons why solicitors are not permitted to provide banking facilities through their client accounts. The Applicant has regard to paragraph 39 of *Fuglers and others v Solicitors Regulation Authority* [2014] EWHC 179 (Admin):

> *"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 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".*

MITIGATION

24. The following points are advanced by way of mitigation on behalf of the Second Respondent. Their inclusion in the Agreed Outcome does not amount to adoption of such points by the SRA but the SRA accepts that account can properly be taken of the following points in assessing whether the proposed outcomes represent a proportionate resolution of the matter.

25. The Second Respondent has had an exemplary career without any prior regulatory or disciplinary findings against him.

26. The breaches were inadvertent and did not cause loss to either JWK's clients or the purchasers of the store pods/parking spaces. When the Firm were alerted to the potential breaches they undertook firm-wide training in relation to the SAR.

27. So far as the allegations of breach of rule 14.5 of the SAR are concerned, in *Fuglers v SRA* [2014] EWHC 179 Admin the High Court identified three reasons why client accounts must not be used for banking facilities. Namely that: (a) it is objectionable in itself, (b) it can facilitate money laundering and (c) it can be used by a client as a means

of avoiding their obligations under insolvency legislation. Reason (a) applies in this case, but reasons (b) and (c) do not.

28. The Second Respondent was not a fee earner on any of the transactions which have given rise to the admitted allegations. His culpability arises, therefore, from his role as the Firm's COFA.

29. The fact of these proceedings has been financially disastrous for Mr Hollingdrake. He received nothing for his share in the Firm which was his retirement fund. He is no longer employed as a solicitor and has been unable to obtain employment as a solicitor. He is now in the process of selling the family home where he has lived for over 20 years.

AGREED OUTCOME

30. In agreeing these sanctions, account has been taken of the Solicitors Disciplinary Tribunal Guidance Note on Sanctions 6th Edition December 2018 ("the Guidance Note").

31. The Second Respondent has admitted the allegations as set out above and, given the seriousness of the admitted conduct, a reprimand is not a sufficient sanction.

32. The SRA accepts that, in the circumstances of this case, neither the protection of the public nor the protection of the reputation of the profession require the Second Respondent to be suspended from practice or struck off the Roll of Solicitors

33. A fine is therefore a sufficient sanction to mark the seriousness of the misconduct and to protect the public and reputation of the profession.

34. The level of fine has been determined after consideration of, in particular, paragraph 27 of the Guidance Note.

35. In light of all the circumstances of this case, including the mitigating factors, the Second Respondent's conduct falls within Indicative Fine Band 2 as the misconduct can be rightly categorised as "*Conduct assessed as moderately serious*". The range for a Band 2 fine is £2,001 to £7,500.

36. Consequently, it is agreed that the Second Respondent should be fined £7,500.

Explanation as to why such an order would be in accordance with the Tribunal's sanction guidance

37. The sanction outlined above is considered to be in accordance with the Tribunal's sanctioning guidance.

38. The level of culpability in respect of the allegations above is moderately high due to:

38.1. The admitted allegations in the Rule 12 statement relate to the conduct of transactions involving significant sums of money. The Respondent was the Firm's COFA, and was therefore in a position of trust and authority.

38.2. The Respondent was a solicitor of many years' qualification and in a position of responsibility as the Firm's COFA, and it was incumbent upon him to be alert to unusual features of transactions involving the Firm's client account. It was incumbent upon him to understand his regulatory obligations.

39. The level of harm caused was also significant:

39.1. Significant sums passed through the Firm's client account in circumstances where that was not permitted. In *Fuglers & Others v SRA* [2014] EWHC 197 (Admin) QB the Court identified that:

39.1.1. Operating a banking facility 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;

39.1.2. it carries an obvious risk of money laundering – a risk which had been specifically highlighted by the Solicitors Disciplinary Tribunal in decided cases;

40. The principal factors that aggravate the seriousness of the Respondent's misconduct:

40.1. The misconduct took place repeatedly;

40.2. Given his length of qualification and experience, the Respondent ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

41. As to the principal factors which mitigate the seriousness of the Respondent's misconduct, the SRA accepts that the Respondent was not the fee earner involved in the transactions giving rise to the breaches.

42. The Parties consider that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter which is in the public interest.

43. The Second Respondent agrees to meet the SRA's costs in the sum of £ 9,093.75 plus VAT.

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Partner, Capsticks Solicitors LLP
On behalf of the SRA

Date:

Craig Nicholas Hollingdrake

Date: 25th September 2020

Case Number: 12091-2020

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

SOLICITORS REGULATION AUTHORITY

Applicant

v

PETER JAN BUJAKOWSKI

First Respondent

and

CRAIG NICHOLAS HOLLINGDRAKE

Second Respondent

and

IAN JOHN NORMAN GEE

Third Respondent

and

ELAINE SAUNDERS

Fourth Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME RELATING TO THE FOURTH RESPONDENT

Introduction

1. By a statement made on behalf of the Solicitors Regulation Authority (the "SRA") pursuant to Rule 15 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 29 April 2020 (“the Rule 15 Statement”), the SRA brings proceedings before the Tribunal seeking an order against the Fourth Respondent pursuant to s43 of the Solicitors Act 1974. Definitions and abbreviations used herein are those set out in the Rule 15 Statement.

Admissions

2. The allegations admitted by Ms Saunders, who is not a solicitor, are that while employed to handle real estate transactions in JWK Legal Group Limited (“the Firm”) she has been

guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for her to be involved in a legal practice, in that:

2.1. Between May 2011 and November 2017, she failed to consider whether the contents of such marketing materials seen by her overstated the likely returns to potential buyers (some of whom were or might be unrepresented), and in doing so breached Principle 6 of the SRA Principles 2011;

2.2. Between May 2011 and November 2017, she failed to consider whether the "buy back" arrangement in the contractual documents provided meaningful security for buyers (some of whom were or might be unrepresented) and in so doing breached Principle 6 of the SRA Principles 2011;

2.3. Between May 2011 and November 2017, she caused or allowed transfers from the Firm's Client Account of monies consisting of sums received from buyers (i.e. by way of the purchase price for the assets the buyers were acquiring) other than in respect of instructions relating to an underlying transaction in that the recipient of such transfers was not the seller of the asset or otherwise connected with the underlying transaction and in doing so breached one or both of Rule 14.5 and Rule 20.1 of the SRA Accounts Rules 2011.

3. Having considered the admissions made by the Fourth Respondent, and given her agreement to the imposition by the Tribunal of an order pursuant to s43 of the Solicitors Act 1974 in the terms applied for, the SRA considers that it is no longer proportionate or in the public interest to pursue those matters set out in the Rule 15 Statement as particulars in support of the order sought, where those matters are not admitted.

Agreed Facts

4. Ms Saunders is not a solicitor. At the material time, she was a graduate member of the Chartered Institute of Legal Executives. She started employment with the Firm, as a secretary in 1989 and moved to a fee earning role in 1997. She worked for Mr Bujakowski (the First Respondent in the proceedings to which this document relates) from 1997 and from 2003, headed up a team of employees handling the day to day aspects of sales (or lease and leasebacks) to investors in Client A schemes. Ms Saunders was not a director of the Firm and did not attend board meetings. Her work was carried out subject to the supervision of or in accordance with instructions given by Mr Bujakowski or other directors or solicitors, and in accordance with the Firm's procedures for transferring money.

5. Mr Bujakowski was admitted to the Roll of Solicitors on 1 May 1976. Mr Bujakowski was, at the material time, a director of the Firm working primarily in real estate. Mr Hollingdrake was admitted to the Roll of Solicitors on 2 October 1989. Mr Hollingdrake was a director of the Firm at the material time and, between 18 December 2012 and 30 November 2018 was the Firm's Compliance Officer for Finance and Administration ("**COFA**").

6. The Fourth Respondent has not been the subject of previous adverse disciplinary findings.

7. The Firm was acquired by Simpson Millar LLP in November 2018.

8. The SRA's investigation into the Firm was commenced in May 2017. A forensic investigation report dated 12 March 2018 was prepared ("the FIR").

9. On 12 April 2019, the SRA issued an explanation of conduct letter to the Fourth Respondent. She responded on 29 May 2019.

10. The allegations and admission relate to work undertaken in relation to the "Client A" Scheme as described in the Rule 15 Statement.

11. Client A was an entity which, through group companies, purchased real estate which could be redeveloped into storage units or car parking and then sold on the individual units or spaces to various buyers. TW was a director, and ultimate beneficial owner, of Client A and Client A group companies.

12. The allegations arise out of work undertaken by the Firm for Client A related entities between 2011 and 2016.

13. Long leasehold interests in individual parking spaces and storage pods were sold by Client A entities to private individuals or the providers of Self Invested Personal Pensions. Those purchasers then sub-leased the units/plots to Client A entities (which were then free to sub-sub-lease it to an end user if it so wished). At the end of the sub-lease period the buyer was able to enter into a management facility with a separate limited company.

14. The Firm (and Mr Bujakowski and Ms Saunders as fee earners at the Firm) acted in about 15,000 transactions across over 23 sites each of which related to either the sale of parking spaces or storage pods. Some of the buyers were unrepresented.

15. Client A produced marketing materials for the parking spaces and storage pods. Ms Saunders cannot now recall which particular marketing materials she saw. On occasions she read through brochures prepared by Client A, with Mr Bujakowski.

16. The contracts between Client A and various buyers contained a "buy back" clause. The effect of the buy-back clause (in the form drafted after the initial version) was:

    16.1. The buyer only had a window of one month, 5 years after purchase, to give formal notice of a wish to exercise the buy-back option, in prescribed form with a witnessed signature;

    16.2. Even if such notice was given, Client A did not have to buy the storage pod or parking place back, because the buy-back depended on Client A's decision about whether it could reasonably afford to do so and Client A was not required to act reasonably in so determining;

    16.3. In any event, Client A did not have to pay for the buy-back for a further 5 years.

17. The SRA accepts that:

    17.1. Ms Saunders did not draft the contract documents herself;

    17.2. Ms Saunders failed to consider whether or not the above buy-back terms offered buyers any meaningful security;

    17.3. Ms Saunders was not aware of a discrepancy between any marketing materials and the buy-back clause.

Recipients of Payments out of Client Account

18. The Firm maintained control ledgers for each of the sites in respect of which it was instructed by the entity which owned the site and was selling the storage pod or parking spac.

19. When the Firm received money in respect of the purchase of a storage pod or parking space the funds would be lodged against the client side of a sub-ledger relating to the sale of a sub-plot. Typically, the funds would then be transferred to the 'control ledger' relating to that particular scheme.

20. The funds should then have been transferred to the entity which had instructed the Firm in relation to the sale of the storage pod or parking space. However, funds would sometimes be transferred by the Firm: (i) out to third parties or (ii) to other client ledgers and then out to third parties. The Fourth Respondent accepts that these transactions did not, in themselves, involve an underlying legal transaction and were contrary to the SRA Accounts Rules 2011 ("the SAR").

21. The SRA accepts that no transfers were made out to unknown third parties. To the best of Ms Saunders' knowledge, on each occasion that a payment was made by the Firm out to a third party, the recipient was:

    21.1. TW;

    21.2. a company or companies forming part of the Client A group of companies; or

    21.3. a currency exchange business which the Fourth Respondent understood to be used by TW and Client A to generate monies in foreign currencies and pay out monies to overseas agents and buyers in their local currencies.

22. The SRA accepts that, where an inter ledger transfer took place, the ledger to which the transfer was made was to the ledger of a Client A group company.

23. The transfers referred to above took place between 2011 and 2016. It is common ground that the actual amount of the money received and distributed by the Firm in this way cannot be definitely stated but is likely to be substantial. The SRA's estimate is £101,509,669.20

MITIGATION

24. The following mitigation is put forward by the Fourth Respondent. Its inclusion in the Agreed Outcome does not amount to adoption of such points by the SRA but the SRA accepts that account can properly be taken of the following points in assessing whether the proposed outcome represents a proportionate resolution of the matter.

25. Ms Saunders was not (and is not) a qualified solicitor nor a legal executive (ie a Fellow of CILEx). She did not have responsibility as a director or solicitor at the Firm.

26. Ms Saunders was, at all material times, supervised by Mr Bujakowski. Mr Bujakowski was a shareholder and director in the Firm. Mr Bujakowski was also someone who Ms Saunders was entitled to consider, and did consider, was a highly experienced and expert solicitor. Further, insofar as Ms Saunders was supervised by a director other than Mr Bujakowski (such as in relation to Scottish matters) she was entitled to consider and did consider that they were experienced and expert solicitors.

27. As to the marketing material:

    27.1. The Fourth Respondent only recollects reading limited material

    27.2. It was the Fourth Respondent's understanding that it was not part of her job to review the marketing material. She had no skill in analysing marketing material or projected investment returns and did not consider that there was anything implausible in the projected rate of returns;

28. The Fourth Respondent was aware that Mr Bujakowski had reviewed some marketing materials.

29. The Fourth Respondent did not herself draft the contract containing the buy-back provisions. She was aware that the buy-back provisions changed from the first version to the version described at paragraph 17 above. She believed that the changes had been made on counsel's advice, that the draft had been considered by numerous SIPP companies performing "due diligence" and that firms of solicitors acting for buyers had also approved it. Further, the Scottish version of the contract (including the buy-back) was drafted by a Scottish qualified solicitor

30. Whilst some buyers were not represented, a significant number were. Insofar as a buyer did have their own solicitor then the Fourth Respondent was entitled to, and did assume, that they were being advised on the transactions by their solicitors. If and insofar as buyers did not have a solicitor then they were advised that the Firm did not act for them, the Firm could not give them any advice, and recommended that they take their own legal advice.

31. As far as the allegations relating to the SAR are concerned:

31.1. Decisions about the Firm's policies and procedures in relation to the transfer of client monies and compliance with SAR were not made by The Fourth Respondent but by the directors of JWK. The Fourth Respondent acted pursuant to those policies and procedures, and on instructions from, amongst others, Mr Bujakowski;

31.2. The Fourth Respondent understood (albeit wrongly) that the movements of money were legitimate. This understanding was reinforced by the fact that the Firm's policies and procedures were (to the best of her knowledge) adhered to when the payments were made and all the payments were signed off by a director

31.3. The breaches were entirely inadvertent and did not cause loss to either JWK's clients or the purchasers of the store pods/parking spaces. When the Firm were alerted to the potential breaches they undertook firm-wide training in relation to the SAR;

32. So far as the allegations of breach of rule 14.5 of the SAR are concerned, in *Fuglers v SRA* [2014] EWHC 179 Admin the High Court identified three reasons why client accounts must not be used for banking facilities. Namely that: (a) it is objectionable in itself, (b) it can facilitate money laundering and (c) it can be used by a client as a means of avoiding their obligations under insolvency legislation. Reason (a) applies in this case, but reasons (b) and (c) do not.

33. The Fourth Respondent has had an exemplary career without any prior regulatory or disciplinary findings against them. The Fourth Respondent has co-operated with the SRA throughout.

Agreed Outcome

34. In agreeing these sanctions, account has been taken of

34.1. the Solicitors Disciplinary Tribunal Guidance Note on Sanctions 6th Edition December 2018 ("**the Guidance Note**"); and

34.2. the Solicitors Disciplinary Tribunal Guidance Note on Other Powers of the Tribunal, 2nd Edition, December 2018 ("**the Guidance Note on Other Powers**").

35. The Fourth Respondent has admitted the allegations as set out above which, given the seriousness of the admitted conduct, means that "no order" is not a sufficient sanction. Ms Saunders agrees to an order being made pursuant to section 43 of the Solicitors Act 1974

36. Consequently, it is agreed that in respect of The Fourth Respondent the Tribunal should make an order under Section 43 of the Solicitors Act 1974 (as amended) be made by the Tribunal directing that as from the date of the Order,

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice;
(iii) no recognised body shall employ or remunerate;
(iv) no manager or employee of a recognised body shall employ or remunerate in connection with the business of that body

Elaine Saunders, of 5 Thurnham Street, Aalborg Square, Lancaster, Lancashire, LA1 1XU, except in accordance with The Law Society's permission.

(v) no recognised body or manager or employee of such a body shall, except in accordance with Law Society permission, permit **Elaine Saunders** to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall, except in accordance with Law Society permission, permit **Elaine Saunders** to have an interest in the body.

37. The Parties consider that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter which is in the public interest.

Costs

38. Ms Saunders agrees to meet the SRA's costs in the sum of ££ 9,093.75 plus VAT.

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Partner, Capsticks Solicitors LLP
On behalf of the SRA

Date:

…….
Elaine Saunders

Date: