# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12143-2020

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY Applicant

and

MATTHEW GUY HIMSWORTH Respondent

---

Before:

Mr A Ghosh (in the chair)
Mr B Forde
Mrs N Chavda

Date of Hearing: 4 December 2020

---

**Appearances**

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

---

# JUDGMENT ON AN AGREED OUTCOME

---

**Allegations**

1. The allegation against the Respondent made by the Solicitors Regulation Authority ("SRA") was that, whilst in practice as a solicitor and Director of Himsworth Scott Limited, formerly Himsworths Legal Limited, ("the Firm"):

1.1. between 2017 and 2019, caused or allowed payments in the total sum of about £4,635,398.36 to be made into and out of the Firm's client account by way of the provision of "escrow" services, other than in respect of an underlying transaction, and in doing so provided banking facilities through the Firm's client account in breach of one or more of Rule 14.5 of the SRA Accounts Rules 2011 and Principles 6 and 8 of the SRA Code of Conduct 2011.

**Documents**

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

- Rule 12 Statement and Exhibit HWP1 dated 18 November 2020
- Statement of Agreed Facts and Proposed Outcome dated 2 December 2020
- Applicant's Statement of Costs dated 18 November 2020

**Background**

3. The Respondent was a solicitor having been admitted to the Roll in September 2004. He held a current practising certificate.

4. This matter first came to the SRA's attention on receipt of a report dated 17 July 2019 from an individual, raising concerns about a brochure for an investment scheme which appeared to indicate that the Firm would hold investors 'funds by way of an "escrow" service.

5. A forensic investigation into the Firm was commenced. As part of the forensic investigation, the Respondent was interviewed on 26 February 2020. The investigation culminated in a report dated 26 March 2019 (noting that this was incorrectly dated and should have been dated 26 March 2020).

**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 Respondent in accordance with the Statement of Agreed Facts and Proposed Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

**Findings of Fact and Law**

7. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for his private and family life under

Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

8. The Tribunal reviewed all the material before it and, taking account of the Respondent's admissions, was satisfied that on the balance of probabilities the Applicant had substantiated its allegations. .

9. 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. The Tribunal determined that the Respondent was solely culpable for his misconduct. In allowing the Firm's client account to be used repeatedly as a banking facility for substantial sums, the Respondent had breached his position of trust as a solicitor and had acted in reckless disregard of the risk of money laundering. He had caused significant harm to the reputation of the profession.

10. The Respondent's conduct was aggravated by its repeated nature and by the Respondent's failure to verify the identity of paying third parties. The Respondent was an experienced solicitor who ought to have known that he was in material breach of his obligation to protect the public and the reputation of the profession. In mitigation, it was noted that the profit costs charged by the Respondent were minimal, he had not attempted to hide the transactions, and he had co-operated with the Applicant.

11. The Tribunal found that the seriousness of the Respondent's conduct was such that sanctions of No Order or a Reprimand were neither adequate nor proportionate. The Tribunal was of the view that a financial penalty was the appropriate sanction. The Tribunal assessed the Respondent's conduct as sufficiently serious as to fall within Level 4 of the Tribunal's Indicative Fine Bands. The Tribunal found that the proposed fine of £15,001.00 was appropriate and proportionate. Accordingly, the Tribunal granted the application for the matter to be dealt with by way of an Agreed Outcome.

**Costs**

12. The parties agreed costs in the sum of £15,000. The Tribunal found that the agreed costs were appropriate and proportionate. Accordingly, the Tribunal ordered that the Respondent paid costs in the agreed sum.

13. **Statement of Full Order**

1. The Tribunal Ordered that the Respondent, MATTHEW GUY HIMSWORTH, solicitor, do pay a fine of £15,001.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00.

2. The Tribunal further Ordered that for the period of 3 years the Respondent:

2.1 May not practise as a sole practitioner or sole owner or manager of a recognised or authorised body;

2.2 May not be a signatory on any client account;

2.3 May not be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration;

2.4 Must notify any employer or future employer (if that employer is an authorised or recognised body as defined in the Glossary to the SRA Standards and Regulations 2019) of the conditions on his Practising Certificate.

Dated this 2nd day of January 2021
On behalf of the Tribunal

A Ghosh
Chair

**[Case No. 12143-2020]**

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

**SOLICITORS REGULATION AUTHORITY**

Applicant

and

**MATTHEW GUY HIMSWORTH**

Respondent

---

**STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME**

---

## Introduction

1. By a statement made by Hannah Pilkington on behalf of the Solicitors Regulation Authority (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 18 November 2020, the SRA brings proceedings before the Tribunal making allegations of misconduct against the Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.

## Admissions

The Respondent admits that: whilst in practice as a solicitor and Director of Himsworth Scott Limited, formerly Himsworths Legal Limited, ("the Firm") he:

1.1 Between 2017 and 2019, caused or allowed payments in the total sum of about £4,635,398.36 to be made into and out of the Firm's client account by way of the provision of "escrow" services, other than in respect of an underlying transaction, and in doing so provided banking facilities through the Firm's client account in breach of one or more of Rule 14.5 of the SRA Accounts Rules 2011 and Principles 6 and 8 of the SRA Code of Conduct 2011:

2. The SRA is satisfied that the admissions and outcome satisfy the public interest having regard to the gravity of the matters alleged.

**Agreed Facts**

3. The Respondent (SRA ID: 336924) is a solicitor having been admitted to the Roll on 15 September 2004.

4. The Respondent holds a current practising certificate.

5. This matter first came to the SRA's attention on receipt of a report dated 17 July 2019 from an individual, raising concerns about a brochure for an investment scheme which appeared to indicate that the Firm would hold investors' funds by way of an "escrow" service.

6. A forensic investigation into the Firm was commenced on. As part of the forensic investigation, the Respondent was interviewed on 26 February 2020. The investigation culminated in a report dated 26 March 2019 noting that this was incorrectly dated and should have been dated 26 March 2020).

**Background**

7. The full facts of the matter are set out in the Rule 12 Statement and the Respondent agrees and accepts the content of the Rule 12 Statement. In summary, between 2017 and 2019, the Respondent agreed to act on behalf of Companies A, B and C in respect of investment schemes operated by such companies. In each case, the Respondent was introduced to the client company by an individual who was a director of Company A, a shareholder in Company B and otherwise connected with Company C.

<u>Summary of Concerns</u>

8. Following the SRA's engagement with the Respondent concerning Client C, the Respondent indicated to the Applicant that similar concerns may also arise with other clients. The SRA's investigation identified similar concerns relating to the provision of escrow services in relation to two other investment schemes, operated by Company A and Company B, between 2017 and 2019.

9. Companies A, B and C had been introduced to the Respondent through a single contact, Client D [FIR paragraph 4 HWP1/5]. Client D instructed the Respondent on behalf of Company A and introduced the Respondent to Company B and Company C [FIR para 4 HWP1/5].

10. The value of the funds in respect of which escrow services were provided were as follows:

| **Company Name** | **Period of Escrow Services** | **Funds** |
|---|---|---|
| Company A | 2017 | £200,000 |
| Company B | 2018/2019 | £3,893,000 |
| Company C | 2019 | £542,398.36 |

11. Such funds were received solely by way of provision of an "escrow" service and in the absence of underlying legal instructions or transactions carried out by the Respondent, and therefore amount to the provision of banking facilities through the Firm's client account in breach of Rule 14 (5) of the Solicitors Accounts Rules.

*Provision of services to Company A*

12. The Firm, through the Respondent, was retained by Company A on 5 May 2017 to provide intellectual property and trademark advice.

13. On or about 5 May 2017 the Firm provided a client care letter to Company A [FIR App E1, HWP1/146-162] reciting the services to be provided. Those services were stated to be:

    13.1. Subscription Agreement
    13.2. Trade mark advice
    13.3. Privacy policy for website and app
    13.4. User terms and conditions
    13.5. Privacy policy for third party contractors
    13.6. User terms and conditions for third party contractors

14. The client care letter indicated that a fee of £4,400 plus VAT would be charged for the provision of such services. The client care letter made no reference to the Firm receiving or holding funds from third parties as part of the services to be provided.

15. During the course of the retainer, the Firm provided the following services to Company A:
    15.1. A draft privacy and cookie policy for editors;
    15.2. A draft privacy and cookie policy for users;
    15.3. A non-exclusive photo editing services agreement;
    15.4. User terms and conditions;
    15.5. An agreement to subscribe for shares in Company A

16. Early on in the retainer with Company A, Client D advised the Respondent that as Company A was a start-up Company, investment would be required, and indicated that the investor would like to invest through Company A's lawyers [FIR/B6, interview line 30, HWP1/83].

17. Further, the client file for Company A contained an email from the Respondent to staff members dated 9 May 2017 [FIR App E3, HWP1/164], in which the Respondent stated:

*"… - he's [Client D] had further talks with the investor and they are close to agreeing a deal where the investor becomes Chairman and pays £200k up front and a further £300k down the line - he [Client D] talked about putting the funds in escrow (i.e. holding on our client account for a while) - that's fine but it'll rightly annoy [Practice Manager] (and me a bit) because we have to get some kind of accountant's report if we hold too much on account (but the [Company A] fees will outweigh those accountant's costs and I think we should offer that facility to clients). He's going to get KYC documents from the investor (so we can cover money laundering obligations) and he says he's a lawyer (which is interesting)…"* (APP E3)

18. The Respondent obtained external advice through the Firm's financial compliance service [Advisory Service X]. Advice was provided by email to the Firm's Practice Manager dated 9 May 2017 [FIR App E4, HWP1/165]. That advice was:

*"Under Rule 14.5You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities.*

*You need to make sure you have a clear engagement letter from your client which will detail holding this money "in escrow" as a part of a main transaction (company formation, shareholder agreements etc). You cannot simply provide a bank account to hold the money. You should also make sure you are fully compliant with any AML regulations so you should speak to [Advisory Service Y] on that particular point."*

19. The Respondent was therefore aware of an intention to (and had agreed to) hold investors' funds on behalf of Company A:

    19.1. in an email to colleagues on 3 July 2017 [FIR App E5/HWP1/167] the Respondent stated that *"They will be using our client account (as previously discussed) for the investors to send funds too. I believe we'll be sending the funds straight on."*

19.2. In an email to Client D of 11 July 2017 [FIR App E6/HWP1/168], the Respondent said:

*"KYC documents*

*We are happy to receive funds on your behalf and pass them on. As you mentioned, you will be obtaining KYC information from the investors (if this can be passed on to us I'd be grateful).*

*…*

*Passing the funds on*

*My understanding is that we will be instructed to pass the funds on to (Company A) immediately. We'll need to make sure that we have the correct bank details for this."*

20. The Firm received funds from individuals wishing to invest in Company A. Between 29 July 2017 and 12 December 2017, funds totalling £200,000 were received from sixteen individual investors into the Firm's client account.

21. The Respondent caused the funds to be transferred (less a £1,200 fee) from the Firm's client account to the bank account of Company A by 17 transactions. [Paragraph 1 FIR, HWP1/5, FIR App E HWP1/146-13 and ledger FIR App E7 at HWP1/169-171].

22. The receipt and payment out of funds as described at paragraphs 17 to 19 above were not a necessary corollary to the provision of the services described at paragraphs 13 to 16 above; the services provided were not an "underlying transaction" relating to the holding of such funds, and the provision of escrow services were not part of the Respondent's or the Firm's normal regulated activities.

23. As is set out above at paragraph 22, a fee of £1,200 was charged by the Respondent for the provision of "escrow" services. The Respondent agreed with Company A that such charges would be imposed; in an email of 11 September 2017 [FIR/App E9, HWP1/173], the Respondent agreed to charge 0.5% of investment monies received by way of a fee, subject to a minimum charge of £500 plus VAT. Invoices dated 11 September 2017 and 13 December 2017 were raised for the provision of escrow and administrative services (separately to the charge for legal services, which were invoiced on 5 June 2017, 2 November 2017, and 17 November 2017). Copies of the invoices appear at FIR App E10, HWP1/174-178.

<u>Provision of services to Company</u> B

24. On 12 January 2018, the Firm (through the Respondent) was retained by Company B to provide the Company with advice on the Company's Memorandum and Articles. The retainer followed an introduction of Company B to the Respondent by Client D, who was also a shareholder in Company B. The Firm's letter dated 12 January 2018

confirming those instructions and signed by the Respondent is found at [FIR/App F2, HWP1/219-236].

25. At the outset of the retainer, by email dated 10 January 2018, the Respondent was provided, by Company B, with an "Information Memorandum" relating to Company B's investment scheme [FIR App F1, HWP1/194-218]. This included the following information:

    25.1. That the investment scheme related to *"the operation of crypto-mining facilities which produce a variety of cryptocurrencies";*

    25.2. That the scheme required a minimum investment of £10,000;

    25.3. That in order to participate in the scheme, an application form, anti money laundering documentation and payment was required to be sent to the Firm (the bank account details of which were provided).

26. The email dated 10 January 2018 sent to the Respondent drew the Respondent's attention to the information included in the Information Memorandum which related to the Firm and to the Respondent. The email asked for confirmation that the information was correct [FIR App F1, HWP1/194]. The Information Memorandum included the Firm's contact details and client account bank details and information that the Firm would hold investment funds pending anti-money laundering and know your client checks.

27. On 12 January 2018, after receipt of the "Information Memorandum" referred to above, the Respondent sent, or caused to be sent, a client care letter to Company B [FIR App F2, HWP1/219-236] which recorded that:

    *"… To confirm: [Company B] is a new company. We are instructed in the first instance to advise on the company's Memorandum and Articles. We will also be available to provide advice and/or draft legal documents where needed. As part of our continuing service to the company we will receive investment funds on your behalf and hold them in escrow until satisfactory "know your client" documents are received from the investor.…*
    *We will charge a fee equivalent to 0.5% of the investments received (with a minimum fee of £500.00 + VAT and a maximum total fee of £2,500.00 + VAT)."*

28. During the course of the retainer the Firm provided Company B with advice relating to a "Security Trustee Agreement", registration of a charge, defamation advice and advice on a non-disclosure agreement.

29. The Firm received funds from individuals wishing to invest in the scheme operated by Company B. Between 29 January 2018 and 7 January 2019, funds totalling £3,893,000 were received into the Firm's client account from 177 individual investors. The Respondent transferred the funds (less a £3,273.30 fee) from the Firm's client account to the bank account of Company B by 114 transactions. [Paragraph 2 FIR HWP1/5 section F FIR, HWP114-293].

30. A fee of £2,586 was charged by the Respondent for the provision of legal services [invoices dated 13 September 2018, 4 October 2018, 26 October 2018, 3 May 2018, 29 May 2018 [FIR App F4, HWP1/279-286]. Separately, fees and disbursements of £3,227.75 were charged for the provision of "escrow" services and CHAPS transfer costs, by invoices dated 25 January 2018, 11 July 2018, 4 April 2019, copies of which appear at pages FIR App F4 279-286. The Respondent agreed with Company B that such charges would be imposed; in of the client care letter dated 12 January 2018 [FIR App F2, HWP1/219-236] the Respondent agreed to charge 0.5% of investment monies received by way of a fee, subject to a minimum charge of £500 plus VAT and a maximum total fee of £2,500 plus VAT.

31. The receipt and payment out of funds as described at paragraph 27 above were not a necessary corollary to the provision of the services described at paragraphs 25 to 26 above; the services provided were not an "underlying transaction" relating to the holding of such funds, and the provision of escrow services were not part of the Respondent's or the Firm's normal regulated activities.

Provision of services to Company C

32. In May 2019, the Firm (through the Respondent) was retained by Company C to provide the Company with advice on its contracts and agreements. The retainer followed an introduction of Company C to the Respondent by Client D.

33. At the outset of the retainer, the Respondent was told by Company C that it operated an investment scheme for individuals to invest in a commodity. The Respondent was told in an email from Company C dated 10 May 2019 [FIR App G1, HWP1/297]:

*"The reason we would like to use your services again is to provide transparency and credibility for larger purchases."*

34. The Respondent was aware of a risk that holding sums in escrow could breach his obligation not to provide a banking facility. In an email to Company C of 13 May 2019 [FIR App G1, HWP1/296] the Respondent said (underlining added)

*"I understand from AJ that you will need help on contracts and agreements and we will need to be instructed to do legal work for compliance purposes – we can't offer an escrow facility without some further involvement in working for you."*

35. The Respondent sent, or caused to be sent, a client care letter dated 28 May 2019 [FIR App G2, HWP1/298-302] which provided that:

*"… To confirm: [Company C] is a new company. We are instructed in the first instance to advise on the company's contracts and agreements. We will also be available to provide further advice and/or draft other legal documents where needed. As part of our continuing service to the company we will obtain satisfactory "know your client" documents from the investor and hold funds on escrow and pass those funds onto you once all checks have finalised and the investment is confirmed. If satisfactory checks cannot be completed then the funds will be returned to the original source only." …*
*"Estimates*
*… (ii) we will charge a fee equivalent to 0.5% of the investment amount to cover our fees for dealing with the administrative and KYC matters relating to all investments."*

36. During the course of the retainer the Firm provided drafting services to Company C in relation to several documents relating to Company C's investment scheme. Those documents included a document making specific reference to *"an escrow facility designated as such which is to be established and maintained in the client account of your firm namely Himsworth Scott Limited".*

37. Notwithstanding the Respondent's earlier statement that *"we can't offer an escrow facility without some further involvement in working for you*", the Firm received funds from individuals wishing to invest in a commodity through Company C's scheme. Between 19 June 2019 and 23 September 2019, funds totalling £542,398.36 were received into the Firm's client account from 20 individual investors. The Respondent transferred the funds (with no fee being deducted) from the Firm's client account to the bank account of Company C by 22 transactions. [Paragraph 3 FIR HWP1/5, section G FIR, HWP1/294-360].

38. The receipt and payment out of funds as described at paragraph 34 above were not a necessary corollary to the provision of the services described at paragraphs 30 to 33 above; the services provided were not an "underlying transaction" relating to the holding of such funds, and the provision of escrow services were not part of the Respondent's or the Firm's normal regulated activities.

The SRA's Warning Notices

39. On 18 December 2014, the SRA issued a Warning Notice entitled "Improper use of a client account as a banking facility" [FIR App H1, HWP1/361-366]. The Warning Notice included the following:

*"There must be a reasonable connection between the underlying legal transaction and the payments. Whether there is a reasonable connection is likely to depend on the facts of each case but where the legal services are purely advisory, it will clearly be more difficult to show a reasonable connection. The fact that you have a retainer with a client does not give you licence to process funds freely through client account on the client's behalf. Throughout a retainer, you should question why you are being asked to receive funds and for what purpose. You should only hold funds where necessary for the purpose of carrying out your client's instructions in connection with an underlying legal transaction or a service forming part of your normal regulated activities. You should always ask why the client cannot make the payment him or herself. The client's convenience is not the paramount concern and, if the client does not have a bank account in the UK, this considerably increases the risks. You should be prepared to justify any decision to hold or move client money to us where necessary."*

*…*

*You should be aware that criminals often target solicitors' client accounts to lend credibility to fraudulent schemes or to launder the proceeds of their criminal activity. You must not allow money to move through client account unless it is in connection with a genuine transaction about which you are providing legal services. You should ensure that you undertake proper due diligence before accepting any funds into client account and you should not act if you do not fully understand the transaction on which you are advising."*

40. On 21 September 2016, the SRA issued a Warning Notice entitled "Investment schemes and client account" [FIR App H2, HWP1/367-362]. The Warning Notice included the following:

40.1. under the heading "Our Concerns": "*4. To evade rules preventing the improper movement of money, they [investment scheme providers] also manufacture a process which they claim means that the firm is acting in a genuine underlying transaction. The reality is that they are simply allowing their client account to be used to commit what is very likely to be a fraud - and to launder the proceeds."*

40.2. Under the heading "The schemes" *" 16. The involvement of a law firm or solicitor does not provide security or assurance. It may actually suggest a need for particular caution. This is because:*

*a. The law firm will usually be acting for the promoters of the scheme (and not for the investors) and will not be looking after the investors' interests, although they may not realise that – investors must get advice from their own trusted professionals*

*b. The law firm may itself know very little about the scheme, particularly if involves overseas investments*

*c. An honest or safe investment scheme does not need to involve a solicitor to give it credibility*

*d. There is no good reason why money being paid to an investment scheme should pass through the client account of a law firm acting for the investment company – it could and should be paid direct to the investment company*

*e. investment company and the law firm manufacture a process, sometimes involving "certification" or "verification" that something has happened to give the impression that they are doing some legal work when they are not..."*

Aggravating feature

41. Related concerns were raised during the course of the Forensic Investigation in relation to failures to verify the identities of paying third parties, and paragraphs 28, 29, 51 (o), 70 (g) and 86 of the FIR are relied upon [HWP/11, HWP/19, HWP/30].

42. In the provision of the Escrow service to Companies A, B and C, the Respondent received numerous payments from a large number of individual investors. Save for the receipt of payments into the Firm's client account, the Respondent did not have direct contact with the paying parties apart from on occasion. Identification documents were instead provided to the Firm by or on behalf of Companies A, B and C.

43. The identity documents were not certified by any third party. It was not therefore possible to confirm that the identity documents provided genuinely related to the person they purported to represent. The firm carried out no enquires into the investors' source of wealth, or the source of the funds used by the individuals for the investment. On the occasion they were not able to obtain the identity documents, the bank returned the funds to the sender's account at the Firm's request. In relation to the investment money, they were not instructed to do anything further on behalf of their client or the investor.

44. The Warning Notice on using the client account as a banking facility identifies the need for proper due diligence given the risk of criminal behaviour or money-laundering. The

failures in identification demonstrates the risks associated in the Respondent's non-compliance with Rule 14(5) as alleged and are an aggravating feature.

**Allegation 1.1: Caused and / or permitted the Firm's client account to be used as a banking facility**

Rule 14.5 of the SRA Accounts Rules 2011

45. 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."*

46. 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

47. 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:

    47.1. 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;
    47.2. 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
    47.3. 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.

48. The Warning Notice was issued prior to the matters identified above and stated:

***"There must be a reasonable connection between the underlying legal transaction and the payments***

*Whether there is a reasonable connection is likely to depend on the facts of each case but where the legal services are purely advisory, it will clearly be more difficult to show a reasonable connection. The fact that you have a retainer with a client does not give you licence to process funds freely through client account on the client's behalf. Throughout a retainer, you should question why you are being asked to receive funds and for what purpose. You should only hold funds where necessary for the purpose of carrying out your client's instructions in connection with an underlying legal transaction or a service forming part of your normal regulated activities. You should always ask why the client cannot make the payment him or herself. The client's convenience is not the paramount concern and, if the client does not have a bank account in the UK, this considerably increases the risks. You should be prepared to justify any decision to hold or move client money to us where necessary."*

49. Paragraph 11.2.3 of the Law Society's Anti-Money Laundering Practice Note states that solicitors should "*think carefully*" before disclosing their client account details, as this *"allows money to be deposited into your accounts without your knowledge"*. Client account details should only be used for "*previously agreed purposes*".

Breach of Rule 14.5

50. The Respondent's retainers with Companies A, B and C were limited to the provision of commercial advice and drafting of contractual documents. They did not include communication with, or the handling of matters relating to the investments of, individual investors.

51. However, the Respondent allowed his client bank account to be used by investors and lenders to deposit monies into before they were transferred out to third parties. The work undertaken by the Respondent for Companies A, B and C did not amount to an underlying legal transaction or legal work which related to, or which would justify, the receipt and payment of funds which passed through the firm's client account. There was no need for the monies to be passed through the Respondent's client account.

52. 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".*

53. The Applicant further has regard to paragraph 60 of the Tribunal's decision in *Solicitors Regulation Authority v Michael Wilson-Smith*[1]:

*"Whilst it is probably widely and well known the Tribunal feels it important to reiterate conclusions which it has made on earlier occasions, namely that a solicitor should not permit his client account to be used where there is no underlying transaction save in circumstances where he is absolutely satisfied that he is holding money on behalf of a client for a proper purpose and is disbursing it for a proper purpose. A solicitor should have no role to play in the collection and disbursement of monies in a situation where he is not receiving fees for the benefit of his advice. It is not for a client to explain the nature of a transaction to a solicitor but rather the solicitor's role is to explain the nature of a transaction to the client. It can be described as nothing other than crass stupidity to accept a role as, for example, an "escrow agent" when the solicitor cannot know what that means as, indeed, that expression has no meaning in English law. It is, in any event, serious professional misconduct for a solicitor to accept instructions to undertake work in connection with which he has no knowledge, expertise or experience and where the only reason for his involvement is to add a "cloak of respectability" and thereby induce the victims of fraud to take part."*

54. The Respondent now accepts that he caused and/or permitted the Firm's client account to be used as a banking facility.

**Mitigation**

55. The following mitigation, which is not agreed by the SRA, is put forward by the Respondent. The Respondent:

55.1. set up the Firm in 2012 when he was only 8 years qualified; it was the first solicitors' practice that he had run and he took steps to have support in place in respect of the financial management of the Firm by retaining external experts in compliance and accounting;

[1] 8772-2003

55.2. fully and openly engaged and cooperated with the internal investigation carried out by the Firm and by the SRA Forensic Investigation Officer;

55.3. quickly and voluntarily took steps to relinquish his compliance officer roles and MLRO role as soon as he was aware of the issues raised and agreed to step back from the Firm to enable it to reparate; and

55.4. admitted the SRA allegation at the first available opportunity.

**Penalty proposed**

56. The Respondent agrees:

56.1. To pay a fine in the sum of £15,001; and

56.2. That for a period of three years:

56.2.1. he may not be a sole practitioner or sole owner or manager of a recognised or authorised body;

56.2.2. he may not be a signatory on any client account;

56.2.3. he may not be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

56.2.4. To notify any employer or future employer (if that employer is an authorised or recognised body as defined in the Glossary to the SRA Standards and Regulations 2019) of the conditions on his Practising Certificate.

56.3. To pay costs to the SRA agreed in the sum of £15,000 inclusive of VAT which takes into account the Respondent's means.

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

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

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

58.1. The admitted allegations in the Rule 12 statement relate to the conduct of transactions involving significant sums of money. The Respondent was the only solicitor acting in those transactions, and was therefore in a position of trust and authority.

58.2. The Respondent was a solicitor of 13 years' qualification and it was incumbent upon him to be alert to unusual features of transactions on which

he acted and which bore the hallmarks of fraud. It was incumbent upon him to understand his regulatory obligations to comply with them.

59. The level of harm caused was also significant:

59.1. 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:

59.1.1. 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;

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

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

60.1. The misconduct took place repeatedly;

60.2. 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.

60.3. The Applicant also notes that related concerns were raised during the course of the Forensic Investigation in relation to failures to verify the identities of paying third parties as set out in the Rule 12 statement. In the provision of the Escrow service to Companies A, B and C, the Respondent received numerous payments from a large number of individual investors. Save for the receipt of payments into the Firm's client account, the Respondent did not have direct contact with the paying parties apart from on occasion. Identification documents were instead provided to the Firm by or on behalf of Companies A, B and C. The identity documents were not certified by any third party. It was not therefore possible to confirm that the identity documents provided genuinely related to the person they purported to represent. The firm carried out no enquires into the investors' source of wealth, or the source of the funds used by the individuals for the investment.

60.4. The Warning Notice on using the client account as a banking facility identifies the need for proper due diligence given the risk of criminal behaviour or money-laundering. The failures in identification demonstrates the risks associated in the Respondent's non-compliance with Rule 14(5) as alleged and are an aggravating feature.

61. As to the principal factors which mitigate the seriousness of the Respondent's misconduct, the SRA accepts that the Respondent received minimal profit costs in respect of the transactions, and further that the did take steps to seek and obtain compliance advice notwithstanding that this was not properly appreciated or actioned. Further, the Respondent did not take steps to hide the transactions and engaged fully with the Applicant's investigations.

62. 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.

.....

Mark Rogers, Partner, Capsticks Solicitors LLP
On behalf of the Solicitors Regulation Authority

Date: 2 December 2020

Matthew Guy Himsworth

Date: 1st DECEMBER 2020.