SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12196-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

AJIJUN MAYA ALI Respondent

Before:

Ms A Horne (in the chair)
Mr G Sydenham
Mrs L McMahon-Hathway

Date of Hearing: 17 September 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

The allegations against the Respondent were that:

Client A

1. Between February 2015 and March 2015, when acting for Client A on the assignment of a lease, the Respondent:

1.1 failed to carry out adequate due diligence in respect of any or all of:

1.1.1 the lease;

1.1.2 Person B's identity;

1.1.3 the source of funds received by the Firm.

And, in so doing, acted in breach of Principles 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and Outcomes 7.3 and 7.5 of the SRA Code of Conduct 2011;

1.2 failed to advise Client A adequately in respect of the nature of and obligations under the lease.

And in so doing, acted in breach of Principles 4, 5 and 6 of the SRA Principles 2011.

Clients 1-8

2. Between July 2015 and June 2016 when acting in litigation in relation to the recovery of funds in a failed property development, the Respondent:

2.1 accepted instructions for the Firm to act for Clients 1-8 (collectively "the Clients"), and thereafter acted for and took steps on their behalf, including withdrawing money from client account, in that litigation without the written or verified agreement or instruction of any or all of Clients 1-8 instead relying upon the instruction of Client 5 and/or KM.

And, in so doing, acted in breach of Principles 4 and 6 of the SRA Principles 2011 and Rule 20.1(f) of the SRA Accounts Rules 2011 (the "Accounts Rules");

2.2 failed to ensure that the Firm, from around 26 November 2015, promptly replaced a minimum client account shortage.

And, in so doing, acted in breach of Principles 4 and 6 of the Principles and Rule 7 of the Accounts Rules.

3. The Respondent admitted each of the allegations.

4. The Applicant stated that it was satisfied that the admissions and outcome satisfy the public interest having regard to the gravity of the matters alleged.

Documents

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

- The Form of Application dated 13 April 2021
- Rule 12 Statement dated 13 April 2021
- Statement of Agreed Facts and Proposed Outcome dated 13 July 2021

Background

6. The Respondent is a solicitor, owner, and manager of Maya & Co Solicitors Limited.

7. At the time of the alleged conduct, she was a solicitor and recognised sole practitioner of Maya & Co Solicitors ("the Firm"). At the Firm she was the COLP, COFA and MLRO.

8. The Respondent currently held a practising certificate effective from 1 November 2020 free from conditions.

9. The Firm closed on 29 October 2019 due to a change of entity. The new entity was Maya & Co Solicitors Limited whose Authorisation and Trading start date was 25 September 2019. The new entity remained at the same premises as the Firm, the change being from a Sole Law Practice to a Company Limited by Shares.

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

10. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions (8th Edition).

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Findings of Fact and Law

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

12. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.

13. The Tribunal had respectful regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth…"

14. The Respondent was, at the time of the misconduct, a solicitor of some experience having been qualified for ten years. She held the positions of COPL and COFA at the Firm.

15. The Tribunal observed that in conveyancing transactions the public rely on a solicitor to get the details right and to exercise 'eagle-eyed' vigilance over the whole transaction. Contrary to this basic expectation the Respondent's actions were 'slap-dash'. The Respondent also seemed to have lost sight of who was her client.

16. The admitted allegations at 1.1 and 1.2 above arose from the Respondent acting on behalf of Client A. Client A had little experience in legal matters and was unsophisticated in this regard. The Respondent failed to properly advise Client A as to the obligations which he was to enter into under a commercial lease.

17. The Respondent admitted that she had failed to carry out proper due diligence and adequate enquiries. She had therefore not been in a position to provide Client A with proper advice as to the proposed transaction and the potential risks associated with it. Essentially, Client A was not provided with the information necessary to understand the transaction into which he entered.

18. The Respondent had not acted in Client A's best interests, and she failed to provide him with a proper standard of service.

19. In instructing the Respondent, Client A was entitled to expect and trust that she would undertake adequate due diligence in order to represent his interests in relation to the transaction.

20. The public are entitled to expect that a solicitor would make adequate enquiries as to the source of cash funds received, particularly when this was in breach of the Firm's own AML policy, and to make adequate enquiries as to the parties to a transaction involving her client.

21. With regard to the admitted allegations at 2.1 to 2.2, these related to conduct in which the Respondent acted for Clients 1-8 (the Clients). She had withdrawn money from client account without the written or verified agreement or instruction of any or all of Clients 1-8. The Respondent also failed to promptly replace a client account shortage. There were no allegations that the Respondent had acted dishonestly or with a lack of integrity.

22. In her Answer dated 3 June 2021 the Tribunal noted that the Respondent had made open admissions to each of the allegations in the Applicant's Rule 12 statement. The Respondent had not sought to conceal or obfuscate, and her early admissions demonstrated her insight. This was to her credit. It was also noted that, luckily, there had been no lasting significant harm caused to the Clients.

23. In respect of both allegations, the Respondent did not benefit financially as a result of the conduct alleged, and she believed at all times that she was assisting the clients pursuant to their instructions. Both allegations represented only two matters in many dealt with by the Respondent over her lengthy and hitherto unblemished career .

24. The Tribunal accepted that the Respondent had not set out to misconduct herself in any way, and it accepted that the misconduct could be categorized as mistakes rather than wilful misconduct. As a result of the incorrect payments out of client account, the Respondent had made detailed and immediate changes to her policies in respect of client authorities to transfer monies. The Firm now carried out multi-factor authentication of client account details to ensure the issues set out in allegation 2.2 would not arise in the future.

25. The Tribunal noted that the Respondent's health had suffered as a result of the allegations raised and the resulting investigations which have taken several years to be concluded.

26. The level of culpability in respect of the allegations was agreed by the Tribunal to have been moderate due to:

- The Respondent having direct control and responsibility for the circumstances giving rise to the conduct.

- The Respondent's level of experience, being in the region of ten years qualified at the time of the relevant conduct.

- That the Respondent's misconduct did not involve dishonesty or an ulterior motivation on her part.

27. As to the harm caused, the admitted misconduct:

- in relation to Client A (allegations 1.1 and 1.2 above) directly affected Client A in that he entered into an assignment of a commercial lease without having received proper advice in relation to the nature and obligations of that lease.

- In doing so Client A was exposed to financial liabilities under the lease which he was unable to meet, causing his parents to incur financial costs in relation to settlement, and additional legal costs being incurred. Client A also suffered emotional stress due to the impact on him of the obligations under the lease.

- No loss was caused to Clients 1-8.

28. With regard to the aggravating factors, it was noted that:

- The allegations related to two distinct client matters, such that this was not a single incident of misconduct, and in both matters there was a common element of the Respondent not being clear as to whom she was acting for, from whom she was entitled to take instructions, and to whom she needed to provide advice.

- The misconduct continued over a period of time.

29. With regard to mitigating factors it was noted that:

- The Respondent rectified the identified shortage on client account.

- The Respondent made open admissions in relation to each allegation.

30. The Tribunal accepted that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represented a proportionate resolution of the matter which was in the public interest. The Respondent had learnt a harsh lesson.

31. The Tribunal was satisfied that a fine in the proposed sum of £10,000 was the appropriate sanction by which to maintain public confidence in the profession and to mark the level of the admitted misconduct.

Costs

32. The parties agreed that the Respondent should pay costs in the sum of £25,000. The Tribunal determined that the agreed amount was reasonable and appropriate. Accordingly, the Tribunal ordered that the Respondent pay costs in the agreed sum.

Statement of Full Order

33. The Tribunal Ordered that the Respondent AJIJUN MAYA ALI, solicitor, do pay a fine of £10,000 such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,000.

Dated this 23rd day of September 2021
On behalf of the Tribunal

A Horne
Chair

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No: 12196-2021**

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

AJIJUN MAYA ALI
(SRA ID: 512363)

Respondent

AGREED STATEMENT OF FACTS AND OUTCOME

Introduction

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 13 April 2021, 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:

Client A

1. Between February 2015 and March 2015, when acting for Client A on the assignment of a lease, the Respondent:

    1.1. failed to carry out adequate due diligence in respect of any or all of:

        1.1.1. the lease;

        1.1.2. Person B's identity;

        1.1.3. the source of funds received by the Firm.

        And, in so doing, acted in breach of Principles 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and Outcomes 7.3 and 7.5 of the SRA Code of Conduct 2011;

    1.2. failed to advise Client A adequately in respect of the nature of and obligations under the lease.

And in so doing, acted in breach of Principles 4, 5 and 6 of the SRA Principles 2011.

Clients 1-8

2. Between July 2015 and June 2016 when acting in litigation in relation to the recovery of funds in a failed property development, the Respondent:

   2.1. accepted instructions for the Firm to act for Clients 1-8 (collectively "the Clients"), and thereafter acted for and took steps on their behalf, including withdrawing money from client account, in that litigation without the written or verified agreement or instruction of any or all of Clients 1-8 instead relying upon the instruction of Client 5 and/or KM.

   And, in so doing, acted in breach of Principles 4 and 6 of the SRA Principles 2011 and Rule 20.1(f) of the SRA Accounts Rules 2011 (the "Accounts Rules");

   2.2. failed to ensure that the Firm, from around 26 November 2015, promptly replaced a minimum client account shortage.

   And, in so doing, acted in breach of Principles 4 and 6 of the Principles and Rule 7 of the Accounts Rules.

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

Agreed Facts

Professional Details

4. The Respondent is a solicitor, owner, and manager of Maya & Co Solicitors Limited (SRA ID 659733). At the time of the alleged conduct, she was a solicitor and recognised sole practitioner of Maya & Co Solicitors (SRA ID 512363) ("the Firm"). At the Firm she was the COLP, COFA and MLRO. The Respondent currently holds a practising certificate effective from 01/11/2020 and which is free from conditions.

5. The Firm closed on 29/10/2019 due to a change of entity. The new entity is Maya & Co Solicitors Limited (SRA ID 659733) whose Authorisation and Trading start date is 25 September 2019. The new entity remains at the same premises as the Firm, the change being from a Sole Law Practice to a Company Limited by Shares.

Allegation 1 – Client A

Outline summary

6. Allegation 1 and its sub-allegations arise out of work the Respondent carried out in 2015 on an assignment of a lease ("the lease") of a commercial property ("the Property"), identified in Appendix A to the Rule 12 statement. The

freehold to the Property was owned by a Local Authority ("the Council") and was subject to a 25-year lease, dated 12 June 2013, in favour of Person B. Client A's solicitor complained to the SRA on 8 May 2017.

7. The Respondent acted in the assignment of the lease from Person B to Client A. The Respondent represented Client A. Person B was unrepresented, apparently preferring to save on legal expenses. Person B introduced Client A to the Respondent.

8. Client A and Person B knew each other personally. Person B may have had two aliases, also set out in Appendix A to the Rule 12 statement.

9. Client A signed a witness statement on 15 January 2019. At the relevant time, Client A was a 20 year old apprentice at a car repair shop. Person B was a frequent customer of the car repair shop and Client A and Person B developed, what Client A believed to be, a friendship.

10. According to Client A, in February 2015, Person B advised him that he was expanding his business, but was having a few difficulties and needed someone to sign some papers to rent a commercial property (i.e. the Property) for a couple of weeks.

11. According to Client A, he attended the Respondent at the Firm on one occasion. Person B was present, the information provided to him was limited and the papers were simply presented to him for signature.

12. The assignment of the lease completed on 18 March 2015, although it was not subsequently registered at HM Land Registry.

13. Subsequently, the Council pursued Client A for outstanding business rates. Client A's position is that he did not understand that he had taken on legal responsibility for the lease and had been duped by Person B. The lease was in due course forfeited and Client A's parents reached a settlement with the Council for the outstanding business rates. Client A's position is that he was naïve and vulnerable and that the Respondent did not protect his position and/or act in his best interests.

14. The Respondent provides a different account to that of Client A. She says that he attended her on more than one occasion and was properly advised, albeit that the advice was not in writing. She says that Client A knew what he was doing. An unsigned client care letter is on the matter file. Client A denies receiving this.

Allegation 1.1.1 – failure to carry out adequate due diligence in respect of the lease

15. The Council and Person B entered into a commercial lease of shop premises on 12 June 2013, for a term of 25 years. As the lease was for a term of more than seven years, it was required to be registered[1].

16. Client A's evidence is that he understood that he was helping out Person B (who was expanding his business) by signing papers to rent a commercial property *"for a couple of weeks maximum until he got himself sorted out".* The Respondent was instructed to represent Client A in respect of the assignment of the 25 year lease to him from Person B.

17. The Respondent failed to carry out adequate due diligence in respect of the lease before completing the assignment, including by failing to adequately investigate title and investigate the liabilities and/or obligations of Client A under the lease and as a result of the assignment.

18. Due diligence is required whenever a buyer or tenant is proposing to purchase an interest in land including leasehold property and enables a buyer/tenant to check what he is purchasing and that he is paying the right price for it. Legal due diligence involves investigation of the seller's title to the property or interest to ensure that the buyer will obtain a good and marketable title, and the extent of any legal rights, restrictions, obligations, liabilities and risks associated with the property or the purchase (for example stamp duty land tax, VAT and Land Registry fees).

Investigation of title/pre-completion searches

19. Solicitors acting on behalf of an individual entering into an assignment of a commercial lease should therefore investigate title in relation to such a property transaction (in the absence of express instructions not to do so) particularly given the doctrine of caveat emptor applies. Investigation of title seeks to establish that the seller/assignor is legally able to transfer title to the property and that there are no defects in that title that would adversely affect the buyer's interests.

20. Investigating title includes an official search of the index map as it may disclose entries and interests that cause problems or may require additional investigation, including where the property under investigation is unregistered or includes unregistered land and details of registered interests. An index map search would reveal if, inter alia, there was a pending application for first registration as required by Rule 10 (1) (a) of the Land Registration Rules 2003.

21. If the land is unregistered investigations will include examination of official copies of the title register, title plan and documents referred to on the register. If the land is unregistered the seller will usually produce an epitome or

[1] Practice guide 25: leases - when to register - GOV.UK (www.gov.uk)

schedule of all title documents together with copies of all the documents. A solicitor would then prepare a report on title or certificate of title.

22. The Land Registry requires conveyancers to verify the identity of their clients and, in some cases, to verify the identity of other parties involved in the transaction. If the seller is not legally represented and the assignment will need to be registered, solicitors should consider whether sufficient steps have been taken to establish the unrepresented party's identity, and, if not, obtain appropriate evidence of identity. Reference is made to the guidance provided at: Completing the evidence of identity panels on forms AP1, FR1, DS2 - GOV.UK (www.gov.uk).

23. It is likely that that the lease in question was never registered and that the property was unregistered land. The SRA has made attempts to clarify this, but has not been able to obtain a historical search as there is a pending application for registration of freehold. An index map search of the Property dated 19 March 2021 reveals that there is a pending first registration. The Land Registry has confirmed that Title Number MM141754 which relates to the Property is pending registration, indicating that the land is, and therefore would have been likely to be at the relevant time, unregistered. The index map search confirms that no other registered estate, caution against first registration, application for first registration or application for a caution against first registration s shown on the index map in relation to the property.

24. In February 2015, Client A attended the Respondent. The Respondent considers that this meeting was on 3 February 2015. The client file holds a client care letter dated 9 February 2015. Client A disputes receiving this letter. The Respondent states that it was sent but Client A never returned a signed copy. The client care letter stated *"we are pleased to act for you in respect of your expressed interest for a LEASE of the above property"* but did not provide any details of the legal work to be carried out. However, the client care letter indicated that Client A would incur likely Land Registry Fee of '£TBC' and Land Registry Search fees of £20.00, in addition to other anticipated disbursements, and thus required payment of £250.00 on account. It was therefore anticipated by the Respondent that the retainer would include the investigation of title.

25. There is no evidence on the file of any title searches having been carried out, for instance in the way of land registry documents, or any other evidence that Person B held legal title.

26. The client file reveals a handwritten receipt indicating that £250.00 was paid in cash. The Respondent deposited into the client account on 9 February 2015. The account ledger suggests that a payment of £20.00 was made out of the office account for "Oce" (i.e. Office Copy Entries – the Land Registry search) on 20 February 2015. A corresponding payment for all disbursements was

made from the client account to the office account on the same day. This is consistent with a "Financial Statement" dated 20 February 2015. Whilst the financial documents suggest that Office Copy Entries were obtained, this was unlikely to be possible because the land was unregistered. Official Copy Entries relate to registered land.

27. Furthermore, the TR1 on the file, signed by Person B, is a transfer for the whole of registered title. If due diligence had been carried out and the title had been investigated properly, it would have been identified that the title was not registered. The fact that, on the TR1 form, the title number is absent supports this analysis. It is also noted that the TR1 refers to the transferee holding the property on trust as joint tenants. The file does not indicate who the joint tenant may be given that Client A was the sole transferee. The section in relation to transferee covenants refers to the transferee as 'her' when Client A is male. Client A appears to have provided transferee's covenants by way of the TR1, which indicates that Client A should also have executed the TR1 as a deed. This does not appear to have taken place and there is no evidence as to advice on this issue on the file.

28. There is no evidence of any pre-completion searches on the client file, or on the financial documents. This is despite the transaction completing on 18 March 2015. There is no evidence that Client A provided instructions to forego the investigation of title or that he was advised of the potential consequences of doing so.

Potential liabilities under the lease

29. Solicitors should advise on the potential obligations and liabilities on the assignee, in order to comply with a duty on a solicitor to provide advice as to the consequences of entering into such a transaction.

30. The basic principle is that in the ordinary way a solicitor is not obliged to travel outside his instructions and make investigations which are not expressly or impliedly requested by the client: *Pickersgill v Riley* [2004]. On the other hand, there is generally a duty to point out any hazards of the kind which should be obvious to the solicitor but which the client, as a layman, may not appreciate: *Boyce v Rendells* (1983) EG 268 at 272, col.2.

31. By way of example, CPSE.4 (version 3.1) (applicable to 2015) Supplemental pre-contract enquiries for commercial leasehold property on the assignment of the lease sets out standard enquiries to be made prior to exchange of contracts for the assignment of commercial lease. These include enquiries as to:

    31.1. Any outstanding obligations on the part of the landlord or the tenant under any agreement for lease under which the lease was granted;

31.2. Liabilities for service charge attributable to the property and its calculation;

31.3. Any overdue payments of rent, service charge, insurance premiums or other payments under the Lease.

32. The lease to be assigned from Person B to Client A sets out the Tenant's covenants including obligations on the Tenant (i.e. Person B but after assignment Client A) to:

32.1. Pay rent: the rent was a peppercorn rent until 11 June 2018, thereafter increasing to £10,000 p.a. until 11 June 2023, then £15,000 p.a. until 11 June 2028, then £20,000 p.a. until 11 June 2033, and then £25,000 p.a. throughout the remainder of the term;

32.2. To pay outgoings, such as rates and taxes;

32.3. To pay for electricity, gas and other services consumed;

32.4. To address repairs and services (i.e. to keep the premises in a tenantable state of repair and condition);

32.5. To keep insurance in place for certain matters, including Public Liability Insurance, and to pay the Council insurance rent (for the building insurance);

32.6. To comply with certain requirements as set out fully in the lease (e.g. to use the premises only as permitted, to not allow the premises to cause a nuisance, etc.).

33. On any reading, the lease imposed significant obligations and liabilities, including financial liabilities, on the tenant, which were enforceable by the Council. These obligations would fall to Client A after assignment of the lease. However, there is no evidence that the Respondent made any (or any adequate) enquiries to determine the potential liabilities of Client A as assignee of the lease, for example, enquiries with the Council or Person B. This was despite the fact that the Council did alert the Respondent to the fact that Person B owed outstanding business rates which had to be settled prior to assignment.

34. There is no evidence that Client A provided instructions to forego the investigation of potential liabilities under the lease or that he was advised of the potential consequences of doing so. Client A's statement confirms that *"Maya [the Respondent] did not ask me any questions about the property or the lease."*

<u>1.1.2 and 1.1.3– failure to verify the identity of Person B and source of funds</u>

35. The client file records that the Respondent obtained a copy of Client A's driving licence on 3 February 2015.

36. The Respondent states that she did not verify the identity of Person B as he was not, and never had been a client of the Firm.

37. However, the Respondent:

    37.1. was required to confirm the identity of Person B to the Land Registry. Person B should have been required to establish his identity to the Respondent including by completion of forms ID1 certificate of identity for a private individual where that person is a party to the transaction not represented by a conveyancer. This is set out in Form AP1[2] (at part 12) and the accompanying guidance[3].

    37.2. accepted cash monies in the sum of £3,644.00 on or around 4 March 2015 (presumably paid by or on behalf of Person B), paid these into the Firm's client account and transferred these to the Council in order to discharge obligations of Person B under the lease.

38. As such, it was incumbent on the Respondent to carry out due diligence as to Person B's identity as well as Client A's and failed to do so.

39. The matter ledger records that cash payments were made to the Firm on the following dates, and placed in the client account:

    39.1. 9 February 2015 - £250.00;

    39.2. 18 February 2015 - £1,355.00;

    39.3. 4 March 2015 - £3,644.20.

40. The ledger records "Paid By Cash" for each entry but does not provide any further details. File notes or receipts dated 3 February 2015 and 16 February 2015 record respectively *"[Client A] £250 on account cash Re: [the Property]"* and *"[Client A] Re: [the Property] £1,3550.00 ca…"* . There is no equivalent document for the cash payment of £3,644.20.

41. The cash payments on 9 February and 18 February 2015, of £250.00 and £1,355.00 respectively, were used in respect of the Firm's fees and disbursements. The payment of £3,644.20 was used to settle Person B's liability to the Council for outstanding insurance rent.

42. Client A confirms in his statement that he did not make any payment to the Firm on account of costs or otherwise. His position is confirmed by his solicitor in her complaint to the SRA on 8 May 2017.

43. In her witness statement dated 21 April 2010, the Respondent provided in response to SRA enquiries dated 24 March 2020. The Respondent states that her recollection is that Client A attended the office on 3 February 2015, during

[2] Form AP1 (publishing.service.gov.uk)
[3] Completing the evidence of identity panels on forms AP1, FR1, DS2 - GOV.UK (www.gov.uk)

that meeting he paid over £250.00 in cash on account of costs and a receipt was provided. She cannot recall exactly but she believes that he attended on 16 February 2015 to pay a further £1,355.00 in cash and a further receipt was provided. She believes Client A attended on other occasions to provide cash and to sign the relevant documentation. There are no other receipts on the matter file. The file receipt for payment of £1,355 is dated 16 February 2014.

44. In a response to the SRA's email dated 11 May 2018, the Respondent stated on 29 June 2018 in summary that cash was received on a few occasions, the sum of £3,644.00, (according to the Firm's records) was received at the Firm's reception '*by our client'* and that subsequently, the envelope containing the money was left on her desk which was banked the next day. The Respondent states that she did bank the monies but had satisfied herself as to Client A's identity and knew there was an ongoing transaction for which the funds would be used. It does not appear therefore that the Respondent was present at the time that the monies were left with reception.

45. However, in an email dated 9 March 2015 a Commercial Property Legal Officer at the Council referred to a telephone conversation that she had with the Respondent on the same day. It is recorded that the Respondent informed the Council's officer that *"the existing tenant [i.e. Person B] has provided cash to you or your client who has in turn forwarded it to you for the purpose of off setting outstanding rents and charges after completion."* [emphasis added]. The Respondent was therefore aware that the monies were from Person B for the purposes of settlement of Person B's obligation under the lease.

46. As set out above, the Respondent had not undertaken due diligence as to the identity of Person B, despite this individual: (i) being referred to in one name on the lease; (ii) being referred to in a second name on the Respondent's file notes and emails and (iii) being known to Client A with a third completely different name and (iv) the Firm making receiving cash payments and transferring funds from client account to the Council on his behalf. There is no evidence on the client file as to why the Respondent paid these funds to the Council rather than Person B doing so directly.

47. On 8 December 2014 the SRA issued a Warning Notice entitled "Money Laundering and terrorist financing".

48. The Money Laundering Regulations 2007 required under s20 a relevant person to establish and maintain appropriate and risk-sensitive policies and procedures including relating to customer due diligence measures and ongoing monitoring, record-keeping, internal control and the monitoring and management of compliance with, and the internal communication of, such policies and procedures, in order to prevent activities related to money laundering and terrorist financing. Risk factors or warning signs in relation to

money laundering include an unusual source of funds, such as large cash payments and unexplained payments from a third party, and where the client appears unconcerned or lacks knowledge about the transaction.

49. The Firm's AML policy in operation at the time was issued in January 2015. Page 3 of the policy states that no amount of money over £1,000.00 in cash will be accepted by the Firm.

50. There is no evidence on the client file that any due diligence were made as to the source of these funds, despite: (i) the clear warning in the Firm's own AML policy as to dangers in accepting large cash sums; (ii) the fact that the Respondent knew the tenant by at least two separate names and she had not verified his identity (iii) the fact that she had not apparently verified who had delivered the payment to her/the Firm and (iv) that payments were received apparently to meet obligations of the tenant Person B who was not her client. Client A confirms that he did not pay this money. In a response to the SRA dated 28 February 2019, the Respondent accepts that she failed to verify the source of the funds.

Allegation 1.2 – failure to advise adequately in respect of the nature of and obligations under the lease

51. A solicitor should advise a potential purchaser on all of the material issues arising from the proposed transaction.

52. As set out above there is a common law duty on a solicitor to point out any hazards of the kind which should be obvious to the solicitor but which the client, as a layman, may not appreciate: *Boyce v Rendells* (1983) EG 268 at 272, col.2.

53. In this case the Respondent was instructed to represent Client A in relation to the assignment of a commercial property lease for the remainder of a 25 year period. A solicitor carrying out a transaction for such an inexperienced client is not justified in expressing no opinion when it is plain that the client is rushing into an unwise, not to say potentially disastrous, adventure: *Neushul v Mellish Karkavy* (1967) 111 SJ 399, per Danckwerts LJ. There is no distinction between legal consequences and financial implications in this case: in this case the significance of the legal consequences lie in the financial implications (compare *County Personnel Ltd v Alan R Pulver & Co* [1987] 1 WLR 916 per Bingham LJ at 924). The obligations under the lease, including financial obligations, are precisely the type of consequences of which the Respondent ought to have advised Client A, applying these Principles. Further, it is Client A's evidence that he expected to be helping out Person B for a couple of weeks, when instead he completed the assignment of a commercial lease and all of its attendant obligations to his financial detriment.

54. Client A's position is that he received no, or no adequate, advice on the lease, including the implications for him in taking on the lease in circumstances in which he was not expecting to take on such obligations, at the least not permanently. There is no evidence on the client file of any advice, either written (e.g. a report on title) or verbal (e.g. an attendance note), having been provided. Client A explains that when presented with the papers to sign he expressed reluctance to sign as he wished to have time to read them. Client A refers to believing that he was no longer involved, the clear implication being that he had not been properly advised as to the nature of the documents which he was signing or the obligations he was accepting under assignment of the lease.

55. The Respondent's position is that she met Client A and advised him of the implications of signing documents and what his liabilities were in doing so. She says that Client A was not a vulnerable individual and understood exactly what was being conveyed to him. She accepts that she did not provide him with a written report but submits it was not necessary. She says that an oral explanation is preferred by clients so that they can ask any questions that they may have. The Respondent has not provided any evidence, such as an attendance note, to justify this position or confirm the advice given.

56. To the extent that the Respondent did provide Client A with any advice, that advice could not have been adequate because: (i) she did not carry out due diligence as to the lease including title and the obligations under the lease. As such, she was in no position to advise Client A adequately. It is inconceivable that: (i) any client would agree to the transfer of the lease without good title had they been properly advised; and (ii) that Client A would have agreed to have taken on the liabilities under the lease in light of his financial position and (iii) given that Client A had no involvement in the business of Person B and understood he was only helping out Person B for a matter of weeks.

Registration of the lease

57. The lease was for 25 years. Since 13 October 2003, subject to certain exceptions (which do not apply here), it has become compulsory to register the grant of a lease for a term of seven years or more out of unregistered or registered land. In this case investigations indicate that the lease granted to Person B was not registered.

58. The Licence to Assign, in which the Council permitted Person B to assign the lease to Client A, is dated 18 March 2015. It is signed by all three parties; the Council, Person B and Client A. Clause 3.4 of the Licence obliges the assignee, i.e. Client A, to apply for registration of the assignment and the lease at the Land Registry within one month following completion of the assignment,

and to send the Council official copies of its title within one month after the registration has been completed.

59. It is, of course, also in a buyer's interests for the lease to be registered. Until the registration requirements are met, the transfer does not operate at law and the buyer's title is merely equitable. Further if registration does not take place within a priority period commencing from the date of an official search certificate, an assignee may not be protected against entries made on the register between the date of the search and the date of completion of the assignment.

60. The client care letter indicates that Client A would incur a Land Registration Fee of "£TBC". In its letter to Client A dated 18 March 2015, the Firm confirmed that it *"shall now deal with post completion matters."*

61. Whilst the Firm proceeded to send a Notice to the Council of the assignment, there is no evidence on the client file that: (i) any application for registration was made; (ii) any payment was made to the Land Registry in respect of registration; and (iii) any Office Copy Entries were sent to the Council. This was despite the fact that there is an attendance note on the file dated 11 May 2015 where the Respondent (or the Firm) confirmed with the Land Registry that the lease was registerable. The Respondent states that the lease has not been registered.

62. In a letter to the SRA dated 28 February 2019, the Respondent states that enquiries were made by the firm of HM Land Registry to confirm the fee payable. This Respondent states that she called Client A to pay the fee but Client A did not pay. However, there is no evidence that she did so.

63. There is an attendance note dated 11 May 2015 which states *"- Confirmed with Land Reg It is registrable"* and *"Client owes us £30.00 in respect of cheque sent to CC*". The SRA infers that the latter reference is to the Council's fee of £30.00 pursuant to clause 3 of the licence.

64. There is no record of any call with Client A in which the Respondent provided him with any advice about the obligations on him to register the lease. The client care letter is silent on the quantum of the fee. There is no evidence that any letter was sent to Client A to inform him of the requirement to register the lease or the consequences of failing to do so. Client A states that no advice was provided to him about completion or registration. There is no record of instructions from Client A that he would not pay the registration fee or that he wished not to register the lease.

65. There is no evidence that any, or any adequate, advice was provided to Client A, and every indication that it was not. Indeed, if Client A did, as the Respondent says, *"know what he was doing"* then he would have paid the fee and agreed to register the lease in order to protect his position.

Allegation 2: Clients 1-8

Background (Allegations 2.1 and 2.2)

66. In summary, a group of individuals (referred to here as "the Clients" or "Clients 1-8") had all sought to recover monies that they had paid for apartments purchased off-plan in a failed development in Croydon. The Clients' litigation started before the Respondent's involvement as set out below.

67. The freehold of the site for development was owned by SJC. SJC entered into a number of contracts to sell apartments to DSL. Between November 2007 and March 2008, DSL entered into sub-contract sales of those apartments to individual Clients 1-8. The 8 Clients variously purchased 6 apartments. The relationship is therefore that SJC sold the apartments to DSL who sub-contracted to sell those apartments to the Clients.

68. The Clients each registered unilateral notices at HM Registry in order to protect their interests under the sub-contracts. However, DSL failed to protect its own position in that it failed to register its own notice/s. Therefore the Clients were only protected as regards DSL. They were potentially not protected as regards SJC because DSL had not protected them.

69. SJC went into liquidation and the freehold of the development was purchased by a new developer, RFL. RFL did not recognise the interests of Clients 1-8 as it was of the opinion that it was not bound by those interests. This formed the basis of the dispute and later litigation between the Clients and RFL. RFL were represented throughout the dispute by JK of Firm D, an SRA authorised firm of solicitors.

70. This statement does not seek to explain all of the facts and matters relating to the underlying litigation in detail. However, for completeness, a summary of the two relevant elements of the litigation is set out below.

71. The first part of the litigation concerned RFL's application to the Land Registry to cancel the Clients' unilateral notices. This resulted in a decision from the Property Chambers, Land Registration of the First-Tier Tribunal on or around 8 September 2014 and a costs order on 28 May 2015. The decision was in favour of the Clients and the unilateral notices remained registered on the title.

72. The second part of the litigation arose out of the original and substantive dispute and resulted in a settlement between the parties on or around 19 November 2015. The parties agreed that the Clients would cancel their unilateral notices in exchange for a global financial sum. At the time of this settlement, the Respondent and the Firm were acting on behalf of Clients 1-8.

73. In a decision dated 8 September 2014 (following an oral hearing on 29 July 2014), the Property Chamber proposed to direct the Chief Land Register to

cancel RFL's original applications for cancellation of the Clients' unilateral notices.

74. On 28 May 2015, the Property Chamber made a costs order in favour of Clients 1, 2, 5, 7 and 8 for a total of £34,477.20.

Representation of the Clients: HMS, HML, JRJ

75. The Clients were originally represented by KM of HMS, an SRA authorised firm of solicitors. However, HMS closed in December 2013. KM is a solicitor and was formerly a partner at HMS.

76. In January 2014, KM established another entity, HML, which provided unregulated legal work. KM continued to act for and/or assist Clients 1-8, and possibly provided "consultancy services" [FIR para 10]. However, SRA authorised firms were subsequently engaged to carry on the reserved legal activities.

77. On or around February 2014, JRJ, an authorised Firm, was engaged to carry on the reserved legal activities in the Clients' litigation against RFL. JRJ wrote to firm D, who were acting on behalf of RFL, on 14 February 2014 to explain that they had taken over the matter. Further, on 26 February 2014, Client 1 wrote to firm D, indicating that JRJ were the new solicitors acting.

78. In April 2014, JRJ wrote to Clients 1, 2 and 7 to confirm that KM had given JRJ their files. The SRA holds letters to Clients 1, 2 and 7 only but assumes that all of the Clients 1-8 were written to. JRJ enclosed their terms and conditions for the Clients to sign and return and requested photographic identity and proof of residency. The Respondent accepts that she did not send client care letters save one to Client 5, although no copy has been provided.

79. The SRA has identified that there was a lack of client authorities on the files (both when being instructed and subsequently dis-instructed). The SRA advised JRJ accordingly.

80. On 31 October 2014, KM's practising certificate was suspended (due to an unrelated matter).

Representation of the Clients: The Firm and the Respondent

81. In or around July 2015, the Firm took over conduct from JRJ and was engaged to carry on the reserved legal activities in the Clients' litigation against RFL. The Firm acted on instructions from KM and from Client 5, on behalf of all of the Clients 1-8. The Firm shared the same premises as HML. The Respondent accepted without verification that KM and Client 5 were authorised to act and provide instructions for the remainder of the Clients.

82. On 20 July 2015, the Firm wrote to the Land Registry indicating that they had been instructed by the Clients and were objecting to an application by RFL to cancel the unilateral notices.

83. On 18 August 2015, the Respondent completed a Notice of change of solicitor. On 21 and 27 August 2015, the Firm further wrote to the Land Registry to enclose a Notice of Acting and to ask the Land Registry to amend its records accordingly. This confirmed that the Respondent and the Firm acted on behalf of Clients 1-8.

84. On 26 August 2015, the Land Registry wrote to the Firm indicating that it had referred that particular dispute to the Land Registration division of the Property Chamber of the First-Tier Tribunal.

85. On 3 September 2015, the Firm wrote to the Land Registry confirming that *"[Client 5] and all parties"* [emphasis added] object to the cancellation of the unilateral notice.

86. On 16 September 2015, the Firm wrote to firm D (acting on behalf of RFL) inviting them to respond to the Letter of Claim dated 25 May 2015 (which had been sent by JRJ).

87. On 2 November 2015, the Firm wrote to firm D indicating that the Clients accepted the offer of £90,000.00 in full and final settlement.

88. On 5 November 2015, the Respondent signed the Land Registry's UN2 forms on behalf of the Clients (applications to remove a unilateral notice).

89. On 19 November 2015, firm D paid the settlement monies of £90,000.00 into the Firm's client account.

Email scam

90. On 20 November 2015, following a third party's interception of email exchanges made between three Clients and KM, each of the Clients' bank account details were altered. The account information provided to the Firm for the purposes of payments being made to the Clients was therefore incorrect. As a result, the Firm paid some of the settlement monies into accounts which were not operated by the respective clients but were instead operated by fraudsters.

Forensic Investigation

91. The Forensic Investigation commenced on 6 June 2016 and resulted in a Forensic Investigation Report dated 23 February 2017.

92. The Forensic Investigation Officer considered that:

    92.1. there were breaches of the SRA Principles 2011 and the SRA Code of Conduct 2011 with respect to the Firm's dealings with Client 5 and KM;

92.2. there were also breaches of the SRA Accounts Rules 2011 regarding the Firm's handling of the monies recovered on behalf of the Clients.

Allegation 2.1 – 2.2. Accepting instructions to act for Clients 1-8 and thereafter acing for and taking steps on their behalf without their written or verified agreement or instructions.

93. The SRA relies upon paragraphs 71 to 97 of the Rule 12 statement. Additionally, the SRA relies upon the following facts and matters.

Client care

94. The SRA Glossary defines a client as "the person for whom you act". Once a party has instructed a law firm to act for it, and the firm accepts that instruction, the party becomes a client. It is self-evident that, in order to act for a party, a law firm must obtain that person's agreement to do so.

95. Furthermore, unless there are genuinely exceptional circumstances, such agreement must be clear, and should be in writing. This is because, as set out in Chapter 1 of the SRA Code of Conduct, a firm's relationship with its *client* is a contractual one which carries with it legal, as well as conduct, obligations.

96. A client's interests are best protected by a written agreement, which can be enforced if necessary. This written agreement is often in the form of a client care letter, enclosing the Firm's terms and conditions, which is signed and returned by the client. This document sets out the contract between the solicitor and the client, defining the work to be done and how this is to be paid for, in addition it is usual that the written client care letter provides each client with information as to the qualifications of the person carrying out the work, the hourly rate or fee structure, an estimate of the overall likely cost and details of how a client can raise a complaint.

97. Outcome 4.1 of the SRA Code of Conduct provides that a solicitor must keep the affairs of clients confidential unless disclosure is required or permitted by law or the client consents. A solicitor should therefore not exchange information relating to a client matter to another client or to a person or persons purporting to act on behalf of the client unless that the client consents. Again, unless there are genuinely exceptional circumstances, good practice would also provide that any form of consent or authority is in writing.

98. It is recognised that the SRA's guidance on client care letters (as updated 25 November 2019) was published subsequent to the conduct giving rise to allegation 2. However, it is submitted that it consolidates and cites well known principles and is mentioned here for illustrative purposes. In particular that:

98.1. "*All firms have an obligation to provide information about their services at the point of engagement with a client and as a matter progresses. Information that must be provided includes the likely cost and how to*

complain if things go wrong. When they begin working with a client, firms often provide this information in a client care letter";

98.2. "*As well as these regulatory obligations, there are requirements about providing information under consumer protection law. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 require legal services providers to provide their clients with certain specified pre-contract information. For example, the main characteristics of the service and the best possible information about the overall cost of the matter and if there are likely to be any disbursements. These do not necessarily need to be met through the client care letter, but you need to be aware of them and meet them in some way*".

99. Specifically Outcome 1.9 of the SRA Code of Conduct 2011 requires that clients are informed in writing at the outset of their matter of their right to complain and how complaints can be made, and Outcome 1.10 requires that clients are informed in writing, both at the time of engagement and at the conclusion of the complaints procedure, of their right to complain to the Legal Ombudsman, the time frame for doing so and full details of how to contact the Legal Ombudsman. Indicative Behaviour 1.3 is an example of how the requirements may be evidenced and by ensuring that the client is told, in writing, the name and status of the person(s) dealing with the matter and the name and status of the person responsible for its overall supervision. These requirements underline the importance of written provision of information and the terms of the agreement with each client of the firm with a view to protecting the best interests of the client.

100. Indicative Behaviour 1.25 sets out that the following may tend to show that a solicitor has not achieved the outcomes and therefore not complied with the Principles: *"acting for a client when instructions are given by someone else, or by only one* client *when you act jointly for others unless you are satisfied that the person providing the instructions has the authority to do so on behalf of all of the clients".* Having the written agreement of each client therefore would tend to satisfy and evidence a belief that the person providing the instructions has the authority to do so on behalf of all the clients.

The Clients

101. As noted above, the litigation concerned eight individuals who had purchased six properties[4]. The Respondent signed formal Land Registry documents on behalf of all of the Clients and entered into correspondence on behalf of all parties to the applications (Clients 1-8). She did so despite having not verified with each client that they consented to the instruction of the Firm or the steps

[4] Two properties had each been purchased by two individuals.

which she went onto take. Instead the Respondent accepted seemingly on face value that Client 5 and KM were authorised to act and provide instructions on behalf of the remaining clients without further query.

102. The Respondent has now accepted that the Firm acted on behalf of all of the Clients 1-8 albeit she initially did not accept this was the case. It is therefore necessary to set out some of this correspondence as relevant to the allegation.

103. On 16 June 2016, the Respondent informed the FIO that Client 5 was the "spokesperson" for the other Clients. By email dated 5 July 2016, the FIO asked the Respondent to confirm certain matters. She responded on 11 July 2016. That response included, in summary, confirmation that:

    103.1. Instructions were only received from Client 5 who 'represented' the other Clients;

    103.2. Only one client care letter was sent, which was sent to Client 5 "*as he represented he was the sole client" and "…the sole representative for the other people involved in the case".*

    103.3. She did not believe that separate representation [of the other Clients] was necessary as Client 5 had confirmed he represented all the other clients. *"Other people involved were free to obtain their own separate legal representation if they wish to do so. We have no knowledge if they exercised this. ..This was a matter previously conducted by [JRJ] that was transferred to this firm."*

104. As set out above, the Respondent's initial position was that the Firm had one client and that this was Client 5 who acted on behalf of the other Clients. However, the FIO's review of the file evidenced that the Firm had confirmed in correspondence and documentation that it was acting on behalf of all of the Clients. By way of example, the Respondent took the following steps purportedly on behalf of all Clients 1-8:

    104.1. On 20 July 2015, wrote to the Land Registry listing all eight Clients in the title under "Our Clients" and stated *"We have been instructed by the above named……"*

    104.2. On 12 November 2015, emailed JK of firm D, acting for the opposing party RFL, and stated *"We represent <u>the parties</u> contracting to purchase apartments [numbers of six apartments listed]. That is clear for all the pleadings."* [emphasis added].

105. On 14 May 2018, the SRA put it to the Respondent that she accepted instructions to act on behalf of the eight Clients and, on 18 June 2018, the Respondent confirmed that this was the case.

The roles of Client 5 and KM

106. As set out in paragraph 108 of the Rule 12 statement and above, the Respondent informed the FIO on 16 June 2016, that Client 5 was the "*spokesperson*" for the Clients.

107. On 16 June 2016, the Respondent provided to the FIO almost identically worded emails from Clients 1, 3, 7 and 8, dated 10 June and 11 June 2016 (following commencement of the SRA investigation), which confirmed that they authorised Client 5 to deal with the restrictions registered against the properties they were acquiring and instructed the Firm to undertake any dealings as their representative.

108. Client 7 responded on behalf of herself and Client 2. It is assumed that Client 3's email was intended to be on behalf of Client 4. It is also assumed that Client 6 was content for Client 5 to represent him or her as they had purchased a property together. It is inferred, therefore, each of the Clients subsequently confirmed that they authorised Client 5 to act for them.

109. The Respondent also provided to the FIO an email from Client 5 dated 10 June 2016 which stated that he confirmed that he *"delegated authority to [the Firm] to deal with my brother-in-law [KM] on the Croydon Property's [sic]"*.

110. As referred to in paragraph 112 of the Rule 12 statement, Client 3 informed the Firm on 10 June 2016 that he had authorised Client 5 to act on his behalf. In his witness statement dated 17 January 2017, Client 3 subsequently confirmed that he does not know Client 5 and has never had any form of communication with him. Client 3 also stated that he unexpectedly received an email from KM asking him to confirm that he had authorised Client 5 to deal with the restrictions.

111. Client 3 explains that he sent the email to the Firm using the words proposed by KM. He says that he was under the impression that it was something that he had provided before but that it had been misplaced.

112. Similarly, Client 1 informed the Firm on 10 June 2016 that he authorised Client 5 to act on his behalf. However, in an interview with the FIO on 12 August 2016, Client 1 informed the FIO that he did not know Client 5. He had not ever met or spoken to him. In respect of the email he sent about Client 5, he explained that he was just pleased to have recovered some money and was "just tidying the file up".

113. On 9 September 2016, in response to a Production Notice dated 26 August 2016, the Respondent informed the SRA that, in summary Client 5 instructed her and informed her that KM would act as Client 5's agent. All files relating to the matter were collected by KM and Client 5 from [JRJ] who physically passed the files to the Firm. Further that Client 5 represented the other parties. The

other parties and instructions were received through Client 5 and KM, and that KM assisted Client 5.

114. The FIO identified that the litigation commenced at HMS and KM acted on behalf of the Clients. The client files were transferred to JRJ and these evidenced KM's involvement in the. Following the transfer of the client files to the Firm, KM again continued his involvement in the litigation for example communicating with Counsel and the other party's solicitor.

Instructions to the Firm

115. As noted in paragraph 112 of the Rule 12 statement and above, the Clients all confirmed by email on 10 and 11 June 2016, when asked to do so after the SRA investigation, that they had instructed the Firm to act on their behalf.

116. When the FIO spoke with Clients 1 and 3, both confirmed that they had no knowledge of the Firm and had not instructed them to act. Client 1 and Client 3 explain above the circumstances in which they sent the emails confirming that they had instructed the Firm to act.

117. The FIO identified that the Firm had in its possession the client files previously held by HMS and JRJ (with the exception of Clients 3 and 4). However, the FIO noted that there was no evidence retained on the relevant client file of the Clients' authorities for the transfer of their files to the Firm in 2015.

118. On 20 January 2017, the FIO asked the Respondent to explain how she had come into possession of the Clients' client files previously held by HMS and JRJ. The Respondent explained to the FIO that Client 5 had brought the *"physical file and said he wants us to act for him."* When asked whether she had obtained the consent of the other clients for the transfer of their files to the Firm, the Respondent informed the FIO that *"[Client 5] came to us and said he was the spokesperson for everyone else.".*

119. As noted above, JRJ sent the Clients letters and asked them to sign and return terms and conditions. However, unlike the position when JRJ was instructed, the SRA has been unable to identify any contemporaneous correspondence which the Firm sent to the Clients, and the Respondent has confirmed that client care letters were not sent to the Clients save for Client 5. Similarly, the SRA has been unable to identify any contemporaneous correspondence which indicates that the Firm obtained the Clients' written agreement or consent for the Firm to obtain instructions through Client 5 and/or KM.

Distribution of client funds

120. The SRA relies upon paragraphs 71 to 97 of the Rule 12 statement. Additionally, the SRA relies upon the following facts and matters.

Rule 20.1(f) of the SRA Accounts Rules 2011

121. Rule 20.1(f) of the Accounts Rules provides that: Client money may only be withdrawn from a client account when it is withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing. In this case the Respondent (in September 2015) withdrew funds from the Client account in relation to the distribution of funds recovered under costs orders, and in later relation to settlement monies. It is alleged that the Respondent did so without the written or verified agreement or instruction of any or all of Clients 1-8.

122. As noted at paragraph 79 of the Rule 12 statement, on 28 May 2015, the Property Chamber, Land Registration of the First-Tier Tribunal made a costs order in favour of Clients 1, 2, 5, 7 and 8 for a total of £34,477.20.

123. On 3 September 2015, the Firm received £34,477.20 from firm D, acting on behalf of RFL. The FIO identified that the costs were distributed according to the client ledger for Client 5 as follows:

Client 8	£20,000.00
MLS	£4,500.00
VK	£5,000.00
Costs	£1,800.00
Counsel	£1,950.00
MH	£1,150.00

124. In the Production Notice dated 26 August 2016, the SRA raised questions with the Respondent about the distribution of the above monies. The Respondent responded on 9 September 2016 in summary that:

    124.1. The monies received in the sum of £34,477.20 were fees payable for [HMS] and [JRJ] received from [firm D] under costs orders awarded by the Property Chamber. The purpose of the payments was settlement of the legal fees for litigation/ Tribunal matter.

    124.2. These payments were made as advised by Client 5 on the premise these were payable to [HMS] and [JRJ] for their costs and re-payment to the persons who assisted in initial deposit payments from the Croydon properties.

    124.3. The payment of £24,500.00 on 7 September 2015 were payable to Client 8, who contributed in the initial deposit payments, paid when contracts were exchanged when the matter was being dealt with by [HMS].

    124.4. The payment of £5,000.00 on 18 September 2015 were monies payable to [VK], who contributed in the initial deposit payments, paid

when contracts were exchanged when the matter was being dealt with by [HMS]. The Respondent confirmed that VK had no other connection to the litigation.

124.5. The payment of £1,150.00 on 17 November 2015 were payable to [MH], who contributed in the initial deposit payments, paid when contracts were exchanged when the matter was being dealt with by [HMS].

125. As can be seen from the above, the Respondent did not distribute the monies to Clients 1, 2, 5, 7 and 8 for application towards the costs incurred. Rather, on the instruction of Client 5, the Respondent distributed the monies to pay for part of the costs incurred. The Respondent thereafter distributed the remainder to Client 8 and VK in respect of deposit monies that they had apparently contributed towards. Whilst some of the Clients were connected and may have reached an agreement between them, the SRA notes in particular that no monies had been paid to Client 1 (who was unrelated to or unconnected with the other Clients).

126. As noted at paragraph 94 of the Rule 12 statement, on 19 November 2015, D paid settlement monies of £90,000.00 into the Firm's client account.

127. The FIO identified that there was nothing retained on the Firm's file detailing the settlement agreement and agreement or instructions as to the distribution of the funds. The Respondent informed the FIO that she was not involved in discussions regarding the division of the money but she authorised its distribution through her Firm's client bank account.

128. JK of firm D informed the FIO on 12 August 2016 that no formal settlement agreement was drawn up and a breakdown as to the division of the settlement monies was not provided.

129. The client ledger for Client 5 demonstrates that £90,000.00 was received from firm D into the client account on 19 November 2015. On 20 November 2015, the Firm distributed the monies as follows:

Client 8	£20,000.00
Client 3	£10,000.00
Client 1	£ 9,000.00
Client 7	£25,000.00
Client 5	£16,000.00
Client 5	£10,000.00 [2nd payment]

130. In the Production Notice dated 26 August 2016, the SRA raised questions with the Respondent about the distribution of the above monies. The Respondent responded, on 9 September 2016, that the transfers out of client account as above amounted to the return of deposits as advised by Client 5 with the

division of the £90,000 settlement having been agreed between Client 5 and 'the parties' (being the remainder of the Clients).

131. The Respondent was asked why Client 2 did not receive a portion of the £90,000.00 litigation settlement. The Respondent replied that Client 2's payments were made through Client 7, and that Client 7 conducted the matter on behalf of Client 2. The Respondent referred to Exhibit 7, which is an attachment to an email dated 9 September 2016 (post-dating the transfer) sent from Client 7 to SA of the Firm. In it, Client 7 says that she delegated all responsibility to Client 5 to deal with the matter on behalf of herself and Client 2. It is unclear how Client 2 gave Client 7 authority to delegate any of his matters to anyone else. There is no contemporaneous evidence of these instructions being provided to the Respondent prior to or at the time of the distribution above.

132. As noted in paragraph 134 of the Rule 12 statement, on 20 November 2015, the Firm transferred a total of £44,000.00 to three Clients as follows:

Client 3	£10,000.00
Client 1	£ 9,000.00
Client 7	£25,000.00

133. The Firm used bank account details for the three Clients concerned which had been provided to it by KM. It appears that KM's emails had been intercepted by fraudsters. As a result KM provided bank account details to the Firm for accounts which were controlled by the fraudsters. The Firm reported the matter to the Police and the banks concerned.

134. The Firm sought to recover the monies. The £10,000.00 intended for Client 3 and the £9,000.00 intended for Client 1 have not, however, been recovered.

135. However, on 29 January 2016, the Firm's bank made a partial recovery of £24,990.87 from the £25,000.00 payment intended for Client 7 (i.e. all but £9.13). The FIO identified that, after the recovery of £24,990.87 intended for Client 7, and on receipt of a returned cheque for £16,000.00 on 2 February 2016, the Firm did not distribute those funds to Client 7, but instead distributed the money intended for Client 7 as follows:

Client 5	£20,000.00	2 February 2016
HML	£16,000.00	6 April 2016
Client 5	£5,000.00	6 April 2016

136. The client ledger (for Client 5) suggests that the returned cheque may have been from Client 5 (i.e. the £16,000.00 which was sent to him on 20 November 2015). If this was the case, it means that:

136.1. a further £9,000.00 was transferred to Client 5;

136.2. £16,000.00 was transferred to HML (i.e. KM's non-regulated legal services business); and

136.3. nothing was transferred to Client 7.

137. In the Production Notice dated 26 August 2016, the SRA raised questions with the Respondent about the distribution of the above monies. The Respondent responded on 9 September 2016 as follows in summary that:

137.1. the payment of £20,000.00 from Client 7's recovered funds to Client 5 on 2 February 2016 was properly due to him as was payable to Client 5 from the initial division and not paid from recovered funds;

137.2. In relation to the payment of £16,000.00 to [HML] on 6 April 2016, this payment was made on the instructions of Client 5 and it was in consideration of compromising missing monies with Clients 3 and 1. The Respondent stated that [HML] agreed to indemnify the Firm;

137.3. The further payment of £5,000.00 to Client 5 on 6 April 2016 was made on the instruction of Client 5, and it was an agreement between Client 7 and Client 5.

138. When asked to provide evidence that Clients 7, 3 and 1 had been compensated for their loss of funds, the Respondent replied that the matter has been compromised with all parties involved and there is a provision if any monies are recovered they will receive the sums due. She confirmed that the police investigation was ongoing and any further recovery would be accounted to clients accordingly.

139. As noted in paragraph 136 of the Rule 12 statement, "Exhibit 7" relied upon by the Respondent is an attachment to an email dated 9 September 2016 sent from Client 7 to the Firm. In it, Client 7 says that Client 5 had full authority to deal with any proceeds of the litigation as he believed necessary. Client 7 further confirms that all instructions to the Firm are ratified by her and she raises no issue that the Firm only contacted Client 5 in connection with the litigation.

140. Again, as can be seen from the above, the Respondent distributed the settlement monies originally intended for Client 7 to Client 5 and HML (i.e. KM). The SRA understands that KM subsequently distributed monies in the region of £4,000.00 to each of Clients 1 and 3 in or around April 2016.

141. KM sent an email to the Firm dated 6 April 2016. KM asks SA of the Firm to provide a cheque for £16,000.00 to HML and provide a cheque to Client 5 for £5,000.00.

142. On 6 April 2016, Client 5 acknowledged receipt of the sums of £20,000.00 and £5,000.00 as full and final settlement for his claim. Client 5 then says: *"I*

instruct [the Firm] to pay [HML] £16,000.00 as full and final settlement for [Client 7]. [Client 2], [Client 1] and [Client 3] …..".

143. It is to be inferred from the above that the recovered sum of £25,000 (approx.) originally intended for Client 7 was then distributed by the Firm or by KM to Clients 1, 2, 3, 5 and/or 7.

144. The distribution of client funds by the Respondent on each occasion above may have been acceptable if the terms had been agreed by those Clients who had been named in the Costs Order and who were party to the settlement and had the Respondent received written or verified instructions to make such distributions on behalf of her clients. For example, the Clients, if so properly advised, could have agreed between themselves how the monies should have been distributed.

145. However, the SRA is unable to identify that the Firm obtained any independent prior written confirmation from the Clients that it could distribute the monies in the manner that it did which, on the face of it, preferred some Clients over others. Rather, the Firm was acting solely on the instructions of Client 5 and/or KM. As identified above, the individual Clients did not provide prior written confirmation to the Respondent that Client 5 and/or KM could act for them.

146. The SRA notes in particular that no monies had been paid to Client 2 and that the Respondent was not provided with any written agreement between the Clients or agreement as to this arrangement by Client 2.

147. Rather, the Respondent was acting solely on the instructions of Client 5. As identified above, the individual Clients did not provide prior written confirmation that Client 5 could act for them. The Respondent did not have confirmation from each Client as to agreement to the settlement or agreement as to how the settlement was to be apportioned. There is therefore, at the very least, a risk of harm to the any or all of the Clients in that they may not have received a fair proportion of the settlement. Further, some monies were lost due to the email scam and therefore Clients are at the least likely to have recovered less than they would have done otherwise.

Allegation 2.2 – failure to promptly replace a client account shortfall

148. The SRA relies upon paragraphs 71 to 97 of the Rule 12 statement. Additionally, the SRA relies upon the following facts and matters.

<u>Shortfall on the client account</u>

149. On 19 November 2015, firm D paid the settlement monies into the Firm's client account.

150. As set out at paragraph 137 of the Rule 12 statement, the Firm made payments on 20 November 2015 to Clients 1, 3 and 7 to the sum of £44,000.00 in respect of settlement monies.

151. The FIO reports that the Firm stated that, on 26 November 2015, both KM and Client 5 brought to its attention the fact that none of the payments had been received by Clients 1, 3 and 7.

152. As set out in paragraphs 27 to 42 of the FI Report, the fact that no payments had been received was due to the fact that, on 20 November 2015, the Firm transferred monies to fraudsters and not to accounts belonging to those clients.

153. The FIO obtained emails between KM, Client 1 and Client 3 and the Firm which demonstrated that the email exchanges between KM and Clients 1 and 3 were apparently intercepted by an unknown third party[5]. The bank account details that KM provided to the Firm were therefore incorrect. The FIO could not identify that the Firm had independently verified the bank account details with Clients 1, 3 and 7 prior to making the transfers.

154. Rule 12.1(a) of the Accounts Rules defines "client money" as meaning *"money held or received for a client or as trustee, and all other money which is not office money".*

155. Rule 1.2(b) of the Accounts Rules provides that a solicitor must *"keep other people's money safely in a bank or building society account identifiable as a client account…."*

156. In this case, the settlement monies were plainly client money and the Firm appropriately received those monies into the client account.

157. Rule 20.1(a) of the Accounts Rules provides that *"Client money may only be withdrawn from a client account when it is: (a) properly required to or on behalf of a client (or other person on whose behalf the money is being held);"*

158. In this case, client monies were improperly withdrawn because the monies were not transferred to Clients 1, 3 and 7. Rather, the monies were transferred to the accounts of fraudsters. Therefore, on or around 20 November 2015, there existed a shortfall on the client account of £44,000.00 in that this sum was still properly payable to clients. As set out above there is no evidence that the Respondent had independently verified bank account details, or indeed the ID of each Client which at least increased the risk that such a scam would be successful.

159. As noted at paragraph 140 of the Rule 12 statement, on 29 January 2016, the Firm received partial recovery of £24,990.87. From 29 January 2016, there existed a shortfall on the client account of £19,009.13 until 8 June 2016 when the shortfall was rectified (see below).

[5] Emails regarding Client 7's account details were not provided to the SRA.

Duty to replace the shortfall on the client account

160. Rule 7 of the SRA Accounts Rules 2011 concerns the duty to remedy breaches. Rule 7.1 provides that *"Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account."* Rule 7.2 provides that the duty to remedy breaches rests not only with the person causing the breach but also on all the principals of the Firm. The duty extends to replacing missing client money from the principals' own resources even if the money has been misappropriated by an employee or another principal and whether or not a claim is subsequently made on the firm's insurance or the Compensation Fund.

161. The Respondent therefore had a duty to promptly replace the shortfall on the client account once discovered.

Delay in rectification of the Client Account shortfall

162. As noted at paragraph 157 of the Rule 12 statement and above, the Firm was notified of the discovery that money had been improperly withdrawn from the client account on 26 November 2015. However, the Firm did not replace the shortfall on the client account until 8 June 2016, which was after the commencement of the Forensic Investigation on 6 June 2016.

163. By this stage, £24,990.87 had been received on 29 January 2016. On 8 June 2016 the Firm replaced the remaining shortfall of £19,009.13 by way of a transfer of £19,010.00 from office to client account. The overpayment of £0.87 was corrected on the same day.

164. In the Production Notice dated 26 August 2016, the SRA asked the Respondent to provide all correspondence and supporting documents with respect to: *"Evidence to support your decision not to correct the shortage on client bank account, in the sum of £44,000.00 at the time this arose."*

165. In the response dated 9 September 2016, the Respondent stated that: *"This is not deemed a shortage until the outcome of the police investigation. There is an allegation that the money has gone astray. Police investigation is outstanding. Certainly the clients have been kept informed about the circumstances at every stage and are happy with the way that we have dealt with this.".*

166. In the SRA's letter dated 14 May 2018], the SRA alleged that the Respondent failed to replace the client bank account shortage between 20 November 2015 and 8 June 2016. In her response dated 18 June 2018, the Respondent accepts that she failed to replace the shortage until 8 June 2016. She states that the clients were willing to accept a partial recovery of funds and that the Firm does not believe that there is any shortfall. However, the Firm has placed

money within the client account from the firm's office account whilst it establishes the correct position.

Admissions

167. With reference to the Respondent's Answer dated 3 June 2021 the Respondent has made open admissions as to each of the allegations in Applicant's Rule 12 statement. The Respondent has provided further narrative in her response to the admissions.

Mitigation

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

    168.1. In respect of the allegation 2.1, there was no lasting significant harm to the Clients. The Respondent, albeit retrospectively and following the commencement of the SRA's investigation, provided independent confirmation: (a) from the Clients that Person S was appointed to act as their representative and to undertake all dealings with the Firm; (b) from Person S that he delegated authority to Person M to deal with the Firm;

    168.2. In respect of allegation 2.2, the Respondent was initially poorly advised and believed that no client account shortage existed. She had been advised that the fact the hacked email had been sent to the unregulated entity who was acting on behalf of the client the responsibility lay with them rather than the firm to rectify. As soon as she was notified of the correct position, she promptly replaced the shortage;

    168.3. In respect of both allegations, the Respondent did not benefit financially as a result of the conduct alleged. She believed at all times that she was assisting the clients pursuant to their instructions;

    168.4. Both allegations represent only two matters in many dealt with by the Respondent over her lengthy career. There is no evidence that she repeatedly breached her regulatory responsibilities. Other than the matters contained within this Agreed Outcome, the Respondent has enjoyed an unblemished record as a solicitor with no regulatory involvement;

    168.5. The Respondent did not set out to misconduct herself in any way. The misconduct can be categorized as mistakes rather than wilful misconduct;

    168.6. The Respondent's health has suffered as a result of the allegations raised and the resulting investigations which have taken several years to be concluded;

    168.7. The Respondent has demonstrated insight by her early admissions;

168.8. The Respondent made detailed and immediate changes to her policies in respect of receipt of client authorities to transfer monies as a result of the incorrect payments out of client account. The Firm carry out multi-factor authentication of client account details to ensure the issues described in respect of allegation 2.2 do not arise in the future.

Penalty proposed

169. The Respondent agrees:

169.1. To pay a financial penalty in the sum of £10,000

169.2. To pay costs to the SRA agreed in the sum of £25,000.

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

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

171. For the purposes of these proceedings, the Respondent has admitted the allegations set out above and in the Applicant's Rule 12 statement.

172. The admitted allegation at 1.1 and 1.2 above arose from the Respondent acting on behalf of Client A, a non-sophisticated client whom the Respondent failed to properly advise as to the nature and obligations which he was to enter into under a commercial lease.

167. The admitted allegation at 2.1 to 2.2 relates to conduct in which the Respondent acted for Clients 1-8 and took steps on their behalf, including withdrawing money from client account, in that litigation without the written or verified agreement or instruction of any or all of Clients 1-8, and as to a failure to promptly replace a client account shortage.

173. The Respondent was at the time of the misconduct a solicitor of significant qualification and experience of ten years qualification. She held the positions of COPL and COFA at the Firm. It was incumbent upon her to understand his regulatory obligations to comply with them.

174. Reference is made to the points of mitigation raised by the Respondent at paragraphs 168 above.

175. The level of culpability in respect of the allegations above is moderate due to:

175.1. The Respondent having direct control and responsibility for the circumstances giving rise to the conduct;

175.2. The Respondent's level of experience, being in the region of ten years qualified at the time of the relevant conduct.

176. It is recognised that the Respondent's misconduct did not involve dishonesty or ulterior motivation on the part of the Respondent as set out in the Respondent's mitigation above.

177. As to the harm caused, the admitted misconduct in relation to Client A (allegations 1.1 and 1.2 above) directly affected Client A in that he entered into an assignment of a commercial lease without having received proper advice in relation to the nature and obligations of that lease. In doing so Client A was exposed to financial liabilities under the lease which he was unable to meet causing his parents to incur financial costs in relation to settlement and legal costs being incurred. Client A also underwent emotional stress due to the obligations under the lease. The Respondent's submission that no loss was caused to Clients 1-8 is noted as set out at paragraph 168 above.

178. As to the principal factors which aggravate the seriousness of the Respondent's misconduct, it is noted that the allegations relate to two distinct client matters such that this was not a single incident of misconduct. The misconduct continued over a period of time.

179. The Tribunal is referred to the factors raised in mitigation by the Respondent above. Factors that mitigate the seriousness of the misconduct:

179.1. The Respondent rectified the identified shortage on client account;

179.2. Open admissions have been made by the Respondent in relation to each allegation.

180. 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.

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

Date: 13 September 2021

Ajijun Maya Ali

Date: 13/09/21