SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12206-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

SILAS OGBONNA First Respondent

TOPSTONE SOLICITORS LIMITED Second Respondent

Before:

Mr A Ghosh (in the chair)
Miss H Dobson
Dr A Richards

Date of Hearing: 18 August 2021

Appearances

David Collins, barrister, of Capsticks LLP, 1 St George's Road, London, SW19 4DR, for the Applicant.

Robert Forman, solicitor, of Murdochs Solicitors, 45 High Street, Wanstead, London, E11 2AA, for the First and Second Respondents.

JUDGMENT ON AN AGREED OUTCOME

Allegations

The allegations admitted by the First Respondent were that he:

1. Between August 2018 and January 2019, failed to cause the Second Respondent to conduct adequate due diligence on:

1.1 the clients involved in one or more of Transaction 1 and Transaction 2 as described in Appendix 2 of the Rule 12 Statement;

1.2 the sources of funds received into the Firm's Client Account in respect of Transaction 2;

pursuant to Regulations 27 and/or 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("MLRs 2017"), and by reason of such failure:

1.3 breached one or more of Principles 6, 7 and 8 of the SRA Principles 2011

1.4 failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011;

2. Between August 2018 and January 2019, failed to cause the Second Respondent to undertake enhanced due diligence measures or enhanced ongoing monitoring in respect of one or more of the Transaction 1 and Transaction 2 as described in Appendix 2 of this Statement pursuant to one or more of Regulations 33(1) and 35 of the MLRs and by reason of such failure:

2.1 breached one or more of Principles 6, 7 and 8 of the SRA Principles 2011;

2.2 failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011;

3. Between August 2018 and September 2018, in failing to identify Client A, identified in Appendix 2 of this Statement, as a Politically Exposed Person for the purposes of the MLRs 2018, failed to have in place appropriate risk management systems and procedures to determine whether the client was a Politically Exposed Person and by reason of such failure:

3.1 breached one or more of Principles 6, 7 and 8 of the SRA Principles 2011;

3.2 failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011.

4. On or about 5 September 2018, after Transaction 1 as described in Appendix 2 of this Statement was aborted, caused or allowed a payment in the sum of about £37,865.00 to be made from the Firm's Client Account other than in relation to an underlying transaction and in doing so provided a banking facility in breach of:

4.1 Rule 14.5 of the Solicitors Accounts Rules 2011 ("SARs 2011");

4.2 One or more of Principles 6, 7 and 8 of the SRA Principles 2011.

5. By reason of the matters set out at 1.1 to 1.4 above or any of them, failed to comply with his obligations as:

5.1 the Firm's Compliance Officer for Legal Practice ("COLP") in that he failed to ensure compliance with the Firm's regulatory obligations and failed to report material issues to the SRA contrary to Rule 8.5 of the SRA Authorisation Rules 2011; and/or

5.2 the Firm's Compliance Officer for Finance and Administration ("COFA") in that he failed to ensure that the Firm and its managers and employees complied with the SRAs 2011 contrary to Rule 8.5 of the SRA Authorisation Rules 2011.

The allegations admitted by the Second Respondent were that:

6. Between August 2018 and January 2018, it failed to have in place an adequate documented assessment of the risks of money laundering to which its business was subject, as was required pursuant to Regulation 18 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("MLRs 2017") and by reason of such failure:

6.1 breached one or more of Principles 6, 7 and 8 of the SRA Principles 2011;

6.2 failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011.

7. Between August 2018 and January 2019, it failed to have in place adequate policies, controls or procedures to mitigate and effectively manage the risks of money laundering as was required pursuant to Regulation 19 of the MLRs 2018 and by reason of such failure:

7.1 breached one or more of Principles 6, 7 and 8 of the SRA Principles 2011;

7.2 failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011.

8. Between August 2018 and January 2019, it failed to cause to be undertaken source of funds checks in relation to sums received into the Firm's Client Account in respect of one or more of Transaction 1 and Transaction 2 as described in Appendix 2 of this Statement pursuant to Regulations 27 and/or 28(11) of the MLRs 2017 and by reason of such failure:

8.1 breached one or more of Principles 7 and 8 of the SRA Principles 2011;

8.2 failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011.

9. Between August 2018 and January 2019 failed to have in place any or adequate systems or controls to prevent the Firm's Client Account being used to provide a banking facility and in doing so breached one or more of Principles 7 and 8 of the SRA Principles 2011.

Documents

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

- Rule 12 Statement dated 26 May 2021 and Exhibit DWRP1.
- First and Second Respondent's Answer to the Rule 12 Statement dated 2 July 2021.
- Statement of Agreed Facts and Proposed Outcome; updated on 18 August 2021.
- Applicant's Schedule of Costs dated 26 May 2021.
- First Respondent's Personal Financial Statement dated 20 July 2021.
- Second Respondent's accounts dated 30 April 2020.

Background

11. The First Respondent was admitted to the Roll in October 2009 and held a Practising Certificate free from conditions. He was, and remained, a director of the Second Respondent.

12. The Firm was a recognised body and a limited company. At the material time, there were two directors and the First Respondent owned 100% of the Firm.

13. In January 2019 the Applicant commenced an investigation, during the course of which production notices were served on the Firm. The broad allegations against both Respondents arose from their failures to comply with anti-money laundering obligations in the course of handling property transactions.

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

14. 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.

Findings of Fact and Law

15. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

16. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made. The Tribunal therefore found all of the allegations against the First and Second Respondent proved on a balance of probabilities.

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

<u>The First Respondent</u>

18. The Tribunal considered that the First Respondent was highly culpable for both his and the Firm's misconduct. The First Respondent was motivated by profit in relation to the property transactions. His misconduct was planned and repeated. He had direct control

over the manner in which the transactions proceeded. He was, at the material time, a solicitor of 10 years post qualification experience who held the significant roles of COLP, COFA and MLRO within the Firm. He failed to meet the requirements of each role and significantly so.

19. The failures of the First Respondent caused significant harm to the reputation of the profession. The lack of due diligence undertaken had the potential to open the gateway to financing terrorist activities contrary to the purpose of the MLRs and the responsibilities vested in him as COLP and COFA. The direct harm to the profession was clearly foreseeable.

20. The Tribunal found that the First Respondent's misconduct was deliberate, calculated and repeated over a six-month period. The First Respondent knew or ought to have known that his failures were in breach of his obligations to protect the public and maintain the reputation of the profession.

21. The Tribunal determined that it was to the First Respondent's credit that he had a previous unblemished regulatory record, that he made open and frank admissions throughout the Applicant's investigation and the Tribunal proceedings and that he co-operated with the Applicant throughout.

22. Weighing all of the attendant circumstances in the balance the Tribunal classified the First Respondent's failures as "very serious misconduct" that warranted a Level 4 fine in the sum of £25,000.00 as the appropriate and proportionate sanction.

23. The Tribunal paid due regard to the Personal Financial Statement filed and served. The Tribunal noted the limited means of the First Respondent and therefore reduced the level of the fine by 50% to reflect the same.

24. The proposed costs of £10,000.00 was considered to be reasonable and proportionate. The Tribunal determined that the First Respondent should bear the majority of those costs to reflect the higher culpability that he bore.

<u>The Second Respondent</u>

25. Having found that the First Respondent was essentially the "controlling mind" of the Second Respondent, the Tribunal determined that the Second Respondent was culpable but to a lesser extent than the First Respondent.

26. With that in mind the Tribunal was satisfied that a Level 3 fine in the sum of £15,000.00 was the appropriate and proportionate sanction. The Tribunal considered the Firm's accounts filed on behalf of the Second Respondent but did not consider it appropriate to reduce the level of the fine in that regard.

Costs

27. Costs were agreed in the sum of £10,000.00 in respect of both Respondents with the First Respondent's liability set at £6,250.00 and the Second Respondent's liability set at £3,250.00.

Statement of Full Order

28. First Respondent

1. The Tribunal Ordered that the Respondent, SILAS OGBONNA, solicitor, do pay a fine of £12,500.00, 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 £6,250.00.

2. The Respondent shall be subject to conditions imposed by the Tribunal as follows:

2.1 The Respondent may not:

2.1.1 hold the position of Compliance Officer for Legal Practice, Compliance Officer for Finance and Administration, Money Laundering Reporting Officer or Money Laundering Compliance Officer in an entity regulated by the SRA for a period of 3 years, to take effect 30 days from the date of the Tribunal's order.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

29. Second Respondent

1. The Tribunal Ordered that the Respondent, TOPSTONE SOLICITORS LIMITED of 792- 794 London Road, Thornton Heath, CR7 6YQ, Recognised Body, do pay a fine of £15,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that they do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,750.00.

Dated this 9th day of September 2021
On behalf of the Tribunal

A Ghosh
Chair

Case Number: 12206-2021

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

SILAS OGBONNA

First Respondent

and

TOPSTONE SOLICITORS LIMITED

Second Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

Introduction

1. By a statement made on behalf of the Solicitors Regulation Authority (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 26 May 2021 ("the Rule 12 Statement"), the SRA brings proceedings before the Tribunal making allegations of misconduct against the First Respondent and the Second Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.

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

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

"**the Firm**" are to the Second Respondent.

Admissions

3. The allegations admitted by the First Respondent are that he:

3.1. Between August 2018 and January 2019, failed to cause the Second Respondent to conduct adequate due diligence on

3.1.1. the clients involved in one or more of Transaction 1 and Transaction 2 as described in Appendix 2 of the Rule 12 Statement

3.1.2. the sources of funds received into the Firm's Client Account in respect of Transaction 2

pursuant to Regulations 27 and/or 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("MLRs 2017"), and by reason of such failure

3.1.3. breached one or more of Principles 6, 7 and 8 of the SRA Principles 2011

3.1.4. failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011;

3.2. Between August 2018 and January 2019, failed to cause the Second Respondent to undertake enhanced due diligence measures or enhanced ongoing monitoring in respect of one or more of the Transaction 1 and Transaction 2 as described in Appendix 2 of this Statement pursuant to one or more of Regulations 33(1) and 35 of the MLRs 2017 and by reason of such failure

3.2.1. breached one or more of Principles 6, 7 and 8 of the SRA Principles 2011

3.2.2. failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011

3.3. Between August 2018 and September 2018, in failing to identify Client A, identified in Appendix 2 of this Statement, as a Politically Exposed Person for the purposes of the MLRs 2017, failed to have in place appropriate risk-management systems and procedures to determine whether the client was a politically exposed person and by reason of such failure

3.3.1. breached one or more of Principles 6, 7 and 8 of the SRA Principles 2011

3.3.2. failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011

3.4. On or about 5 September 2018, after Transaction 1 as described in Appendix 2 of this Statement was aborted, caused or allowed a payment in the sum of about £37,865 to be made from the Firm's Client Account other than in relation to an underlying transaction and in doing so provided a banking facility in breach of

3.4.1. Rule 14.5 of the Solicitors Accounts Rules 2011 (SARs 2011);

3.4.2. one or more of Principles 6, 7 and 8 of the SRA Principles 2011

3.5. By reason of the matters set out at 1.1 to 1.4 above or any of them, failed to comply with his obligations as

3.5.1. the Firm's Compliance Officer for Legal Practice (COLP) in that he failed to ensure compliance with the Firm's regulatory obligations and failed to report material issues to the SRA contrary to Rule 8.5 of the SRA Authorisation Rules 2011; and/or

3.5.2. the Firm's Compliance Officer for Finance and Administration (COFA) in that he failed to ensure that the Firm and its managers and employees complied with the SARs 2011 contrary to Rule 8.5 of the SRA Authorisation Rules 2011.

4. The allegations admitted by the Second Respondent are that

4.1. Between August 2018 and January 2019, it failed to have in place an adequate documented assessment of the risks of money laundering to which its business was subject, as was required pursuant to Regulation 18 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017) and by reason of such failure

4.1.1. breached one or more of Principles 6, 7 and 8 of the SRA Principles 2011;

4.1.2. failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011;

4.2. Between August 2018 and January 2019, it failed to have in place adequate policies, controls or procedures to mitigate and effectively manage the risks of money laundering, as was required pursuant to Regulation 19 of the MLRs 2017 and by reason of such failure

4.2.1. breached one or more of Principles 6, 7 and 8 of the SRA Principles 2011;

4.2.2. failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011

4.3. Between August 2018 and January 2019, it failed to cause to be undertaken source of funds checks in relation to sums received into the Firm's Client Account in respect of one or more of Transaction 1 and Transaction 2 as described in Appendix 2 of this Statement pursuant to Regulations 27 and/or 28(11) of the MLRs 2017 and by reason of such failure

4.3.1. breached one or more of Principles 7 and 8 of the SRA Principles 2011

4.3.2. failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011

4.4. Between August 2018 and January 2019 failed to have in place any or adequate systems or controls to prevent the Firm's Client Account being used to provide a banking facility and in doing so breached one or more of Principles 7 and 8 of the SRA Principles 2011.

Agreed Facts

5. The First Respondent was admitted to the Roll on 15 October 2009 and holds a Practising Certificate free from conditions. At all material times he was, and at the time of this Statement remains, a Director of the Firm.

6. The Firm is a recognised body and a limited company. At the material time, there were two directors, of which one was the First Respondent. At the material time the First Respondent owned 100% of the Firm.

7. Neither Respondent has not been the subject of previous adverse disciplinary findings.

8. The SRA's investigation into the Respondents was commenced in January 2019.

9. On 4 June 2020, the SRA wrote to the Respondents seeking an explanation for a number of alleged breaches of the SRA Code of Conduct and the Respondents responded on 3 July 2020.

<u>Due diligence failures</u>

10. The First Respondent accepts that he was instructed in respect of two real estate transactions or proposed transactions, particularised and referred to as Transaction 1 and Transaction 2 in the Rule 12 Statement. In respect of each transaction the First Respondent proposed a fee for the Firm's services of £2,340 plus VAT. The First Respondent accepts that, pursuant to Regulations 27 and/or 28 of the MLRs 2017, due diligence was required to verify the identities of clients and parties making payments into the firm's client account, and the sources of funds received into the Firm's Client Account, but that he did not cause sufficient steps to be taken in compliance with those

requirements, in circumstances giving rise to a risk of money laundering and where indicators of a heightened risk of money laundering were present.

11. The First Respondent accepts that in the course of undertaking a digital Customer Due Diligence/AML search, he used a "manual override" facility (permitted by the software) to add commentary, which resulted in a previously "non-compliant" check showing as "compliant" in circumstances where he ought to have appreciated that the commentary added did not warrant a compliant result.

Enhanced client due diligence failures

12. The First Respondent accepts that in respect of each of Transaction 1 and Transaction 2 indicators were present giving rise to an obligation pursuant to one or more of Regulations 33(1) and 35 of the MLRs 2017 to undertake enhanced due diligence, and accepts that he did not cause adequate steps to be taken in compliance with those obligations.

PEP failures

13. The First Respondent accepts that Client A, as identified in the Rule 12 Statement, was a Politically Exposed Person for the purposes of the MLRs, and that he failed to identify Client A as such, or in consequence cause measures to be taken in compliance with the MLRs, as he was required to do.

Banking facility

14. The First Respondent accepts that in receiving a payment of £37,865 into the Firm's Client Account, purportedly in relation to Transaction 1, after being instructed that Transaction 1 had been aborted, and in allowing the same sum to be paid out to a third party, he provided a banking facility for Client A in breach of the prohibition on doing so under Rule 14.5 of the SRA Accounts Rules 2011.

Failures as COLP and COFA

15. The First Respondent accepts that by reason of the matters set out in the Rule 12 Statement and at paragraphs 3 and 10 to 13 above, he failed to comply with his obligations as the Firm's COLP and COFA.

Risk assessment and money laundering controls

16. The Firm accepts that it was required to, but between August 2018 and January 2019 and did not, have in place an adequate risk assessment or adequate policies, controls or procedures to mitigate and effectively manage the risks of money laundering to which its business was subject.

Source of funds checks

17. The Firm accepts that in relation to Transaction 1 and Transaction 2, source of funds checks were indicated but were not adequately carried out in respect of funds received into the firm's Client Account.

Banking facility

18. The Firm accepts that between August 2018 and January 2019, it was required to, but did not, have in place adequate systems and controls to identify and prevent the use of the Firm's bank accounts to provide a banking facility.

MITIGATION

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

20. The Respondents' misconduct, which took place over a six-month period, was not intentional.

21. In Transaction 1, the client had been recommended by a trusted agent through whom no previous issues had arisen. The First Respondent spoke with the client, took ID and was not alive to the risk that she could be a PEP. Another firm of solicitors had provided written confirmation as to the source of the funds. The transaction was aborted.

22. In Transaction 2, the Respondents took oral instructions regarding the source of the funds, but such checks were in the circumstances inadequate.

AGREED OUTCOME

23. In agreeing these sanctions, account has been taken of the Solicitors Disciplinary Tribunal Guidance Note on Sanctions 8th Edition December 2020 ("the Guidance Note").

First Respondent

24. The First Respondent has admitted the allegations as set out above.

25. Given the seriousness of the admitted conduct, a reprimand is not a sufficient sanction.

26. The SRA accepts that, in the circumstances of this case, a fine coupled with a restriction order is a sufficient sanction to mark the seriousness of the misconduct and to protect the public and reputation of the profession.

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

28. In light of all the circumstances of this case, including the mitigating factors, the First Respondent's conduct falls within Indicative Fine Band 4 as the misconduct can be rightly categorised as "*Conduct assessed as very serious".* The range for a Band 4 fine is £15,001 to £50,000.

29. It is agreed that the conduct would warrant a fine of £20,000. Taking into account the First Respondent's means, the SRA accepts that a reduction in the fine to £12,500 would be appropriate

30. Consequently, it is agreed that the First Respondent should be fined £12,500.

31. It is further agreed that the First Respondent will be subject to conditions that he shall not hold the position of Compliance Officer for Legal Practice, Compliance Officer for Finance and Administration, Money Laundering Reporting Officer or Money Laundering Compliance Officer in an entity regulated by the SRA for a period of 2 years.

Firm

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

33. The SRA accepts that, in the circumstances of this case, a fine is a sufficient sanction to mark the seriousness of the misconduct and to protect the public and reputation of the profession.

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

35. In light of all the circumstances of this case, including the mitigating factors, the Firm's conduct falls within Indicative Fine Band 4 as the misconduct can be rightly categorised as "*Conduct assessed as very serious".* The range for a Band 4 fine is £15,001 to £50,000.

36. It is agreed that the conduct would warrant a fine of £20,000. Taking into account the Second Respondent's means, including information provided concerning its turnover, the SRA accepts that a reduction in the fine to £12,500 would be appropriate.

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

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

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

38.1. The admitted allegations relating to the conduct of more than one matter and risk assessment and systems over a prolonged period;

38.2. The breaches alleged and admitted against the First Respondent related to the conduct of transactions involving significant sums of money and clear indicators of risk of money laundering including:

38.2.1. A person, who if searched for online, would have been readily identifiable as a PEP;
38.2.2. Instructions from clients based in a jurisdiction scoring low in the Transparency International corruption index (and thus suggesting higher risk), although not being a high risk jurisdiction for the purposes of the MLRs 2017;
38.2.3. Multiple, inadequately explained or documented third party sources of funds;
38.2.4. A receipt into and two payments out of Client Account after a transaction had "aborted";

38.3. Incompetent performance of obligations, through the use of a manual "override" of an online checking system.

38.4. It was incumbent upon the Firm, as a practice handling substantial sums of client money in the course of property transactions, to be alert to its obligations in respect of preventing money laundering.

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

40. The Respondents agree jointly and severally to meet the SRA's costs in the sum of £10,000 inclusive of VAT.

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

Date: 13 August 2021

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Silas Ogbonna

Date: 13/08/2021

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Silas Ogbonna
Director
On behalf of Topstone Solicitors Limited

Date: 13/08/2021