SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12207-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

JOHN DAVIS Respondent

Before:

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

Date of Hearing:
5 – 6 October 2021

Appearances

Michael Collis, counsel, of Capsticks LLP, 1 St Georges Road, Wimbledon, London, SW19 4DR, for the Applicant.

Stephen Harvey QC of 3 Paper Buildings, Temple, London, EC4Y 7EU, for the Respondent.

JUDGMENT

Allegations

The allegations against the Respondent, Mr John Davis, made by the SRA, are that, while in sole practice as a solicitor at Davis-Law Associates ("the Firm"), where at material times he was Compliance Officer for Legal Practice ("COLP"), Compliance Officer for Finance and Administration ("COFA"), Money Laundering Reporting Officer ("MLRO") and Money Laundering Compliance Officer ("MLCO"):

Improper provision of banking facilities through client account

1. On multiple occasions between October 2012 and March 2018, he caused or allowed monies to be paid into or out of the Firm's client accounts, other than in respect of an underlying legal transaction or a service forming part of the normal regulated activities of solicitors. In doing so, he improperly provided banking facilities through client account, in breach of all or any of:

    1.1. Rule 14.5 of the SRA Accounts Rules 2011 ("the Accounts Rules");
    1.2. Rule 8.5(e) of the SRA Authorisation Rules 2011 ("the Authorisation Rules");
    1.3. Principles 2, 6, 7 and 8 of the SRA Principles 2011 ("the Principles").

Conflict(s) of interest

2. From around December 2017, he acted for Client A and/or for Clients B, in relation to the tracing and recovering of monies invested at the direction of Mr Rodney Whiston-Dew, in circumstances where there was:

    2.1. one or more own interest conflicts (or a significant risk of such conflict);

    and/or,

    2.2. one or more client conflicts (or significant risk of such conflict).
    In doing so, he breached (or failed to achieve) all or any of:

    2.3. Outcomes 3.4 and 3.5 under the SRA Code of Conduct ("the Code");

    2.4. Principles 2, 3, 4, 6, 7 and 8;

    2.5. Rule 8.5(c) of the Authorisation Rules.

AML failures

3. From around October 2012 he:

    3.1. failed adequately or at all to establish the sources of funds received into the client account in relation to a number of entities, including all or any of those named in Schedule 1;

    and/or

3.2. failed adequately or at all to establish the source of around £10,000.00 which he received in cash from Client C;
and/or

3.3. received and transferred funds from a number of third parties without undertaking any or adequate steps to verify the identity of the payers or properly scrutinise such transactions;

and/or

3.4. failed adequately or at all to heed a number of "red flag" indicators including while acting for all or any of the entities named in Schedule 1.

He therefore breached (or failed to achieve) all or any of:

3.5. (where such conduct occurred on or before 25 June 2017) regulations 7 and 8 of the Money Laundering Regulations 2007 ("the 2007 Regulations");

3.6. (where such conduct occurred on or after 26 June 2017) regulations 27 and 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the 2017 Regulations").

3.7. Principles 2, 6, 7 and 8.

3.8. Outcomes 7.2, 7.3, 7.5 under the Code.

3.9. Rule 8.5(c) of the Authorisation Rules.

Failure to verify truth of facts asserted/assurances given in professional correspondence

4. On one or more occasions, including on or about 5 May 2015, he caused or allowed a letter to be sent in the Firm's name to a third party, purporting to confirm certain facts and matters or to give various assurances;

4.1. without having verified those facts, matters or assurances adequately or at all;

and/or

4.2. where the truth or otherwise of the facts and matters stated or assurances provided was not known to him personally.

In doing so he breached Principles 2 and/or 6 of the Principles.

5. Recklessness is expressly alleged in relation to each of the allegations 1.1 to 1.4 above but proof of recklessness is not required in order to establish those allegations or any of their particulars.

Documents

6. The Tribunal considered all of the documents in the case which included:

- Applicant's Schedule of Costs at Issue dated 26 May 2021.
- Rule 12 Statement dated 27 May 2021 and Exhibit RTM1.
- Respondent's Answer to the Rule 12 Statement dated 28 July 2021 and supporting bundle.
- Respondent's witness statement and schedule of admissions dated 17 August 2021.
- Medical report dated 2 September 2021.
- Respondent's Personal Financial Statement dated 7 September 2021.
- Character references:
    - LJD dated 6 September 2021.
    - CF dated 7 September 2021.
    - JU dated 8 September 2021.
- Applicant's Schedule of Costs at Hearing dated 28 September 2021.

Applications Made During the Hearing

The Respondent's Application

7. During the course of the Respondent's evidence, Mr Harvey QC applied for part of the hearing to be convened in private. The application for privacy related to evidence in respect of the Respondent's health which, Mr Harvey QC submitted, should not be heard within the public domain.

The Applicant's Position

8. Mr Collis did not oppose the application.

The Tribunal's Decision

9. The Tribunal considered the unopposed application in accordance with Rule 35 of the Solicitors (Disciplinary Proceedings) Rules 2019 namely:

> "**Public or private hearings**
>
> 35.—(1) Subject to paragraphs (2), (4), (5) and (6), every hearing of the Tribunal must take place in public.
>
> (2) Any person who claims to be affected by an application may apply to the Tribunal for the hearing of the application to be conducted in private on the grounds of—
>
> (a) exceptional hardship; or
> (b) exceptional prejudice to a party, a witness or any person affected by the hearing."

10. The Tribunal determined that the medical evidence filed was extremely sensitive and, if ventilated in public session, could cause exceptional hardship and/or prejudice to the Respondent and his family.

11. The Tribunal therefore granted the application and directed that the section of the Respondent's evidence and any questions/answers arising thereafter be heard in private session.

Factual Background

12. The Respondent was admitted to the Roll in 1978. He was a fellow of the Institute of Directors, a member of the Chartered Institute of Arbitrators and an advocate with Higher Rights of Audience in respect of civil and criminal litigation.

13. At all material times (and since 1985) the Respondent was in sole practice at the Firm based in Buckinghamshire. As sole Principal of the Firm, the Respondent was responsible for its compliance with the Accounts Rules and to remedy any breaches of the same promptly upon discovery. The Respondent also held the following positions within the Firm:

- COFA which required him to "take all reasonable steps to ensure" that the Firm and its managers complied with "any obligations imposed upon them" pursuant to the Accounts Rules.

- COLP which required him to take "all reasonable steps to ensure compliance with" the terms of the Firm's authorisation and statutory obligations.

- MLRO.

- MLCO.

14. The Firm had one other qualified staff member and four unadmitted staff which included a conveyancing litigation executive or paralegal who was subject to an Order pursuant to s43 of the Solicitors Act 1973. In accordance with the Order, permission was sought by the Respondent to employ that member of staff. The Applicant granted conditional permission in that the Respondent was required to supervise the member of staff.

15. The Firm's income was derived predominantly from commercial litigation as well as matrimonial and residential conveyancing. The Respondent authorised all transactions from the Client Account and signed off all cheques in the name of the Firm.

16. On 21 December 2018 the Applicant received a report regarding the Respondent and his Firm from Euan Palmer, who was employed by Rosling King LLP at that time, on behalf of Client A. Mr Palmer relayed that:

- Rosling King LLP had held a "watching brief" for Client A since 5 June 2018 in respect of the efforts by the Respondent to trace and recover investments on her behalf.

- Client A believed that she had been defrauded out of a substantial amount of money by Rodney Whiston-Dew.

- In late 2011 Client A had transferred in excess of £2,000,000.00 to Charles Whiting Solicitors for investment as directed by Mr Whiston-Dew. She received irregular returns on her investment of between £8,000.00 – £12,000.00 per month. The first return came from Charles Whiting Solicitors, then from Powells Law but from October 2012 until May 2018 the payments emanated from the Firm.

- In November 2017 Mr Whiston-Dew was convicted of and sentenced for fraud. The Respondent immediately contacted Client A and introduced himself to her on the basis that (a) he did not act for Mr Whiston-Dew, (b) he did act on behalf of Mr Whiston-Dew's various companies and trusts, (c) he was willing to assist Client A (free of charge) to establish where her money had been invested and (d) he would endeavour to recover the same. The Respondent made similar representations to others whom had invested with Mr Whiston-Dew.

- On 20 July 2018 the Firm made a payment of £10,000.00 to Client A. The Respondent stated that the provenance of those funds was a cash payment from Client C in that amount. Client A and Client C were unrelated.

- In respect of other payments received from the Firm, Client A did not know the provenance of the same. She assumed that they were "income" from her investments particularly given the inconsistency and irregularity of the payments. She confirmed that she had not been involved in any ongoing transactions under which payments were due and had not sought legal services from the Respondent.

- On 23 November 2018 the Respondent met with Rosling King who asked him for a list of the entities whom had paid money into the Firm on behalf of Client A and payments made out in that regard. The Respondent stated that the information could be made available but subsequently suggested a further meeting due to "competing complications with regard to other clients". The further meeting did not take place. The information sought was not provided and the Firm terminated its retainer with Client A.

- Rosling King further raised with the Applicant the potential conflict of interest on the part of the Respondent.

- Rosling King finally reported concerns at the fact that the Respondent had visited Mr Whiston-Dew in prison a number of times. The purpose of those visits and the capacity in which the Respondent attended was not known to them.

17. The Applicant commenced a forensic investigation into the Firm in March 2019. The Respondent was interviewed by the Forensic Investigation Officer ("the FIO") on 25 June 2019. A number of written interrogatories followed thereafter and culminated in a Forensic Investigation Report ("FIR") dated 22 August 2019 which broadly concluded that:

- The Respondent acted for various trusts and companies on the instruction of Mr Whiston-Dew who was a non-practising solicitor at all material times, who was convicted of tax fraud (unconnected with the Firm) and sentenced to 10 years imprisonment in November 2017.

- 17 client matters were identified where the Firm appeared to have acted as a banking facility for clients introduced by Mr Whiston-Dew.

- On 15 of the matters identified, there was no evidence of an underlying legal transaction being undertaken by the Firm.

- The client ledgers showed receipts into the Client Account from several different entities based in different jurisdictions. There was no explanation on the client file to demonstrate the source of those funds.

- Four client matter files were reviewed and the FIO discovered that transactions in and out of the Client Account were instructed by Mr Whiston-Dew.

- On two matters Mr Whiston-Dew drafted correspondence which the Firm sent out on headed paper.

- The Respondent asserted that, as Mr Whiston-Dew did not have a Client Account, he believed that use of his Firm's Client Account was better for the clients.

- Following Mr Whiston-Dew's imprisonment, the Respondent acted for some of his former clients with the intention of locating and returning their "lost" investments.

- There was a potential conflict of interest in that the Respondent became sole director of Mr Whiston Dew's former company GBT Global Limited (which managed investments) as well as acting for the investor clients.

18. On 21 June 2021, the Applicant imposed conditions on the Respondent's Practising Certificate 2020/21 which were due to come into force on 24 October 2021. Those conditions were that:

> "…
>
> 1. With effect from four months of notification of the decision Mr Davis may not act as a COLP or COFA for any authorised body.
>
> 2. Aside from Davis-Law Associates (SRA number 522432), Mr Davis may not act as a manager or owner for any authorised body.
>
> 3. Mr Davis shall not provide legal services as a freelance solicitor offering reserved or unreserved services under regulations 10.2(a) or (b) of the SRA Authorisation of Individuals Regulations.
>
> …"

Witnesses

19. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes

of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

20. No witnesses were called by the Applicant.

21. The Respondent gave evidence in mitigation.

Findings of Fact and Law

22. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

23. **Allegation 1.1: Improper provision of banking facilities through client account**

The Applicant's Case

23.1 Mr Collis set out the regulatory and legal framework upon which Allegation 1.1 was predicated namely:

Rule 14.5 of the Accounts Rules

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

Guidance Note

> "…Rule 14.5 reflects decisions of the Solicitor Disciplinary Tribunal that it is not a proper part of a solicitors everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. It should be noted that any exemption under the Financial Services and Markets Act 2000 is likely to be lost if a deposit is taken in circumstances which do not form part of your practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers…"

Patel v Solicitors Regulation Authority [2012] EWHC 3373 (Admin)

> §"18…the first sentence of the rule [14.5] contains the prohibition on the use of the client account to provide banking facilities… "instructions" … implies professional instructions, in other words instructions relating to the accepted professional services of solicitors…"

Fuglers v Solicitors Regulation Authority [2014] EWHC 179 (Admin)

> "§39 … first strand is that it is objectionable in itself for a solicitor to be carrying out or facilitating banking activities because he is to that extent not acting as a solicitor… If a solicitor could operate a banking facility for clients which was divorced from any legal work being undertaken for them, he would in effect be trading on the trust and reputation which he acquired through his status as a solicitor in circumstances where such trust would not be justified by the regulatory regime…
>
> §40 … second strand is that by allowing a client account to be used as a banking facility, unrelated to any underlying transaction which the solicitor is carrying out, carries with it the obvious risk that the account may be used unscrupulously by the client for money laundering…
>
> §41 … third strand arises in the particular context of insolvency or risk of insolvency and is objectionable for several reasons … it allows the client to achieve that which the client will normally be unable to achieve from any bank … there is the risk of disaffection and opprobrium which is involved in favouring one creditor over another … risk of … [requiring] creditors to reimburse payments from the client account in subsequent liquidation …"

SRA Warning Notice dated 18 December 2014:
"Improper use of client account as a banking facility"

23.2 Mr Collis submitted that, in interview with the FIO, the Respondent accepted that he was aware of the warning notice which provided that:

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

23.3 Against that backdrop, Mr Collis set out the assertions made by the Respondent to the FIO during the course of his interview and in subsequent correspondence/communications between them. The Respondent stated that he first met Mr Whiston-Dew around 30 years previously when Mr Whiston-Dew was practising as a solicitor. Their relationship was purely professional.

23.4 The Respondent was aware when Mr Whiston-Dew retired from practice and set up Mayfair Chambers Limited from which he provided consultancy services in offshore companies, trusts and tax affairs. He asked the Respondent whether he could introduce his clients to the Firm so that they could make use of the Client Account as Mayfair Chambers did not have a Client Account. The Respondent stated that he:

> "…saw no reason not to do so and I fact thought it was safer to have a proper and well-maintained client account to safeguard the interests of those clients…"

23.5 When asked by the FIO if Mr Whiston-Dew provided him with any details as to what would be involved between his clients and the Firm, the Respondent stated:

> "…I think it was just a general discussion. My view at the time, I assumed it would be fairly limited and we would just open a ledger. Do whatever work was required and monitor the monies in and out of the client account um because we have a very good bookkeeping system, even though it's external. But I don't think he ever explained to me the nature and extent, or volume of um matters. I simply trusted him…"

23.6 Subsequently, the Respondent acknowledged to the FIO that Mr Whiston-Dew had previously told him that he faced allegations levelled against him by Her Majesty's Revenue and Customs ("HMRC") in relation to ecology projects and the rainforest but that "there was nothing to worry about". The Respondent stated that he was not concerned at the time of that revelation as he believed Mr Whiston-Dew was innocent until proven guilty.

23.7 Mr Whiston-Dew instructed the Respondent (who accepted that his knowledge in relation to trusts and offshore companies was "virtually nil") to act for him on investment and trust matters. Between 2012 and 2017 the Respondent opened client ledgers in the names of trusts, companies and individuals associated with Mr Whiston-Dew.

23.8 Mr Whiston-Dew acted for the clients and the ledgers opened by the Respondent were characterised by monies from third parties and payments out to other third parties under the description "loans" or "repayment of loans". The ledgers showed that frequent payments were made directly to Mr Whiston-Dews investor clients from monies received into the Firm's account by third parties. The FIO noted that (a) there were 15 client matters in respect of which there was no evidence of an underlying legal transaction, (b) there were two matters where the Firm had acted on an underlying legal transactions but the payments/receipts on the ledger appeared not to be associated with the underlying legal transaction, (c) there was no explanation on file (and the Respondent was unable to provide an explanation in interview) regarding the source of some funds paid into the Client Account and (d) in relation to 17 client matters the sums involved were substantial (£13,134,857.28, $18,989,111.91 and €1,274,889.76).

23.9 During the course of the Applicant's investigation, the Respondent accepted that he had breached Rule 14.5 and stated:

> "… Well I think my view is that the evidence is there, sadly. I should have been more vigilant, I wasn't and I see no advantage in trying to vacillate. You know

> I've spent forty years in the profession thinking I was doing a good job. Um and then this comes towards the end of my career and I'm very disappointed in myself. But I don't think I can pick holes in that allegation…"

23.10 Mr Collis therefore submitted that the Respondent breached Rule 14.5 of the Accounts Rules and further breached Rule 8.5(e) of the Authorisation Rules which required him to ensure that the Firm complied with the Accounts Rules as well as a duty to notify the Applicant of any failures to do so.

23.11 Mr Collis contended that the Respondent's repeated misuse of the client account (a) lacked integrity, contrary to Principle 2, (b) undermined public trust in him and in the provision of legal services, contrary to Principle 6, (c) ran counter to his duty to comply with his legal and regulatory obligations, contrary to Principle 7 and (d) demonstrated a wholesale failure to exercise proper governance and sound financial risk management principles within the Firm, contrary to Principle 8.

The Respondent's Position

23.12 The Respondent made plain in his witness statement dated 17 August 2021 and the Schedule of Admissions appended thereto that he admitted the factual matrix of Allegation 1.2 as well as the consequential regulatory failures.

The Tribunal's Findings

23.13 The Tribunal noted that the Respondent had received (a) given a full account to the FIO during the course of the investigation, (b) drafted his Answer to the Rule 12 Statement which was detailed and thorough, (c) drafted his witness statement with a schedule of admissions that were unequivocal and (d) received legal advice and was represented at the substantive hearing. Having regard to all of those factors the Tribunal was satisfied that the Respondent's admissions to Allegation 1.1 in its entirety was properly made.

23.14 The Tribunal therefore determined, on the evidence before it and the admissions of the Respondent, that Allegation 1.1, 1.1.1, 1.1.2 and 1.1.3 was proved on a balance of probabilities.

24. **Allegation 1.2: Conflict(s) of interest**

The Applicant's Case

24.1 Mr Collis set out the regulatory and legal framework upon which Allegation 1.2 was predicated namely:

Outcome 3.4 of the Code of Conduct ("O3.4")

> "You do not act if there is an own interest conflict, or significant risk of an own interest conflict."

24.2 Mr Collis contended that O3.4 made plain the paramount duty on solicitors to observe fiduciary obligations in his personal dealings with clients and former clients. That duty arises from the circumstances surrounding the confidential relationship between the

solicitor and the client. It may extend beyond the duration of the retainer. Consequently a solicitor must not place themself in a position where his duty to act in the interests of his client may conflict with his personal interest in acting for his own benefit.

Outcome 3.5 of the Code of Conduct ("O3.5")

> "You do not act if there is a client conflict, or significant risk of a client conflict unless the circumstances set out in Outcomes 3.6 or 3.7 apply…"

24.3 Mr Collins submitted that O3.5 reflected the well-established principles that solicitors owe fiduciary duties to act with "single minded loyalty" to their clients namely in good faith and absent inter client conflict. Acting for two clients with potentially conflicting interests, without the informed consent of both, was contrary to O3.5. If informed consent is obtained the solicitor must not further the interests of one client over another and must not allow the performance of his obligations to one client to be influenced by his relationship with another. Mr Collis reminded the Tribunal that if a solicitor cannot fulfil his obligations to one client without failing in their obligations to another, they should cease to act for one of the clients so as not to fall foul of O3.5.

24.4 Following Mr Whiston-Dew's imprisonment in November 2017 the Respondent was instructed by Clients A and B to recover their invested funds. The retainer with Client B was documented in a client care letter issued on or around 18 December 2017. There was no formal client care letter in respect of Client A initially, but it was plain from communications that the Respondent was similarly instructed. In particular, in an email dated 8 December 2017 the Respondent emailed Client A in the following terms:

> "…I was pleased to meet you yesterday, although I regret the circumstances … I am trying to unravel matters relating to [Mr Whiston-Dew's] clients including obviously yourself … I believe we are making progress in that direction and I have arranged to meet [Mr C] … I shall obviously do all that I can to resolve these matters but, if you have any concerns, please do not hesitate to contact me …"

24.5 Mr Collis submitted it was therefore evidence on that the Respondent was instructed on behalf of Client A and Client B at the end of 2017 and that they held a solicitor/client confidential relationship.

24.6 The Respondent had previously issued a client care letter to Mr Whiston-Dew in respect of GBT Global Limited dated 29 November 2012 from which point he was instructed on GBT matters.

24.7 On 12 April 2018 the Respondent took over the roles of director and sole shareholder in GBT Global Limited from Mr Whiston-Dew. In interview with the FIO, the Respondent stated:

> "… I asked [Mr Whiston-Dew] to allow me to step into the shoes of GBT Global, I was advised to be careful because of course I could, *(sic)* I was warned id be liable for tax with an offshore company. But I very quickly realised in view of my litigation experience, that something was wrong and the only way I could protect funnily enough [Client A] and others, was by stepping into GBT

> Global's shoes because I remain in that position, controlling the charges against this highly lucrative development land in Essex. So he, he – I mean he was in shock (a) at being convicted and (b) at being given ten years imprisonment. Um so I think he was quite happy to relinquish it. I wasn't doing it as a favour to him, quite the reverse, I was doing it as a favour to people like [Client A]…"

24.8 On 11 June 2018, in response to a request on behalf of Client A for a client care letter, the Respondent asserted:

> "…With regard to a Client Care letter. I have been considering the position over the weekend. As I am now protector for GBT Global which in turn protects [Client A] and others, I am not sure whether it is either appropriate or necessary for me to have [Client A] sign a client care letter. Obviously I am protecting her and former clients of [Mr Whiston-Dew] in so far as I can. I would not want some technical problem to arise in relation to a possible conflict of interests which might deprive me of the opportunity to continue to protect [Client A]…"

24.9 Mr Collis submitted that the Respondent was therefore alive to the issue of conflict and plainly realised that acting for Client A could give rise to one. Notwithstanding those facts, the Respondent did ultimately issue Client A with a client care letter dated 12 June 2018.

24.10 A further issue was raised on behalf of Client A in respect of bankruptcy proceedings against Mr Whiston-Dew. The Respondent replied on 30 July 2018 in the following terms:

> "… My Practice *(sic)* does not undertake insolvency work ... Even if we did undertake insolvency work, there could be a potential conflict of interest, as although I do not act for [Mr Whiston-Dew], I do act and have been retained by his family and therefore any investigation by an insolvency practitioner may impact upon them…"

24.11 The Respondent explained his position to the FIO during interview as follows:

> "… I do not think there was a conflict although I flagged it up as one is supposed to, a potential conflict. But having analysed it since, as GBT Global I was acting in [Client A's] interests. As I haven't acted and never have for [Mr Whiston-Dew]. So [Client A's] interest and GBT Global were, were *(sic)* as one…"

24.12 Mr Collis submitted that the Respondent's position (regarding having never acted for Mr Whiston-Dew) was inconsistent with a number of his email communications, namely:

- 19 January 2018; "although I was acting for [Mr Whiston-Dew] as your trustee".
- 24 January 2018; "as I am his family solicitor, communications between us and on his behalf are privileged".

- 7 February 2018; "I am trying to sort things out for [Mr Whiston-Dew] and his former clients so that hopefully he has got something left, either if he succeeds in his appeal or otherwise. However, I am under extreme pressure from [Client A]".

- 9 February 2018; "I am trying to do my best for [Mr Whiston-Dew] in his difficult circumstances.

- 7 March 2018; "I am trying to assist both [Mr Whiston-Dew] and his former clients".

- 9 April 2018; "I have known [Mr Whiston-Dew] for over 30 years, at one time he suggested forming a practice together. I declined only because I value my independence. However, as he left the profession some years ago he asked me to act for his various companies and Trust which I was content to do so *(sic)*. As with any other client simply followed my instructions and had no reason to believe that there was anything inappropriate (if that proves to be the case). I assume he believed, as I am, a man of integrity, and trusted me to act on his behalf".

- 7 June 2018; "[Mr Whiston-Dew] is rather sensitive to the fact that it appears that emails and letters are being opened by the prison authorities, despite the fact that under Rule 39 correspondence should remain confidential between a solicitor and client".

24.13 The Respondent was challenged by the FIO in interview regarding the potential conflict with Mr Whiston-Dew's family to which he replied:

> "…And having thought about it I don't think it would have been a problem because I never acted for the family in relation to anything that could conflict with [Client A's] interests…"

24.14 Mr Collis submitted that the evidence referred to above demonstrably showed that the Respondent acted for Client A and/or Client B in the face of one or more own interest conflicts or at least significant risk of such conflict.

24.15 Prior to acting for Client's A and B, the Respondent had (on the instruction of Mr Whiston-Dew) facilitated a number of transactions on their behalf through the Client Account. Mr Collis contended therefore that the Respondent and the Firm were potentially implicated in the disappearance of those client's investment funds. Mr Collis stated that the Respondent should not have acted for Clients A and B in those circumstances and that he should have told them to take independent legal advice regarding the recovery of their invested funds. The Respondent further erred in taking over from Mr Whiston-Dew as director and sole shareholder of GBT Global Limited which gave him a propriety interest in an entity which was implicated in the disappearance of investment funds and which purportedly had made a number of loans to Client A. That conflict was abundantly clear to the Respondent as evidenced in his reluctance to issue a client care letter to Client A. Mr Collis submitted that the Respondent's conduct, individually and cumulatively, amounted to a failure on his part to achieve O3.4.

24.16 Mr Collis contended that the Respondent also acted for Clients A and B in the face of one or more client conflicts or a significant risk of client conflict. The Respondent was not able to act with "single minded loyalty" to either client whilst simultaneously (on his own account) "trying to do his best" for Mr Whiston-Dew and/or his family and in circumstances where Clients A and B were competing creditors of Mr Whiston-Dew or his associated entities. The Respondent was not able to act with "single minded loyalty" to Client A whilst holding the positions that he did at GBT Global Limited, an entity implicated in the disappearance of Client A's invested funds and which was the trustee of Client A's offshore trust, whilst trying to recover Client A's missing funds. Mr Collis submitted that the Respondent's conduct, individually and cumulatively, amounted to a failure on his part to achieve O3.5.

24.17 Mr Collis contended that the Respondent, in acting in the face of conflict/significant risk of conflict (a) amounted to a lack of integrity, contrary to Principle 2, (b) compromised his independence in so acting, contrary to Principle 3, (c) was not in the clients best interests, contrary to Principle 4, (d) undermined public trust in him and in the provision of legal services, contrary to Principle 6 and (e) represented a failure to exercise proper governance and sound financial risk management principles within the Firm, contrary to Principle 8.

The Respondent's Position

24.18 The Respondent made plain in his witness statement dated 17 August 2021 and the Schedule of Admissions appended thereto that he admitted the factual matrix of Allegation 1.2 as well as the consequential regulatory failures.

The Tribunal's Findings

24.19 The Tribunal noted that the Respondent had received (a) given a full account to the FIO during the course of the investigation, (b) drafted his Answer to the Rule 12 Statement which was detailed and thorough, (c) drafted his witness statement with a schedule of admissions that were unequivocal and (d) received legal advice and was represented at the substantive hearing. Having regard to all of those factors the Tribunal was satisfied that the Respondent's admissions to Allegation 1.2 in its entirety was properly made.

24.20 The Tribunal therefore determined, on the evidence before it and the admissions of the Respondent, that Allegation 1.2, 1.2.1, 1.2.3, 1.2.4 and 1.2.5 proved on a balance of probabilities.

25. **Allegation 1.3: Anti Money Laundering failures**

The Applicant's Case

25.1 Mr Collis set out the regulatory and legal framework upon which Allegation 1.2 was predicated namely:

The 2007 Regulations

25.2 Mr Collis summarised the relevant parts of the Regulations, which were in force until 25 June 2017, as having required the Respondent to:

- Apply customer (client/beneficiary) due diligence measures namely identification and verification of the client's identity from documentary evidence, data or a reliable independent source.

- Obtaining information on the purpose and intended nature of the business relationship.

- Scrutiny of transactions undertaken throughout the course of the relationship.

- Retaining up to date source material (documentary evidence, data, reliable independent source) on the client file.

The 2017 Regulations

25.3 Mr Collis summarised the relevant parts of the Regulations, which came into force on 26 June 2017, as having required the Respondent to:

- Apply customer (client/beneficiary) due diligence.
- Conduct ongoing monitoring of his business relationships.

SRA Warning Notice: 8 December 2014

25.4 Mr Collis referred the Tribunal to the notice entitled "Money Laundering and Terrorist Financing" which the Respondent confirmed an awareness of when interviewed by the FIO. The notice set out a number of "warning signs" or "red flag indicators" for solicitors to be alert to and further stated:

> "… Being aware if these indicators or warning signs of money laundering and terrorist financing should assist you in applying a risk-based approach to meeting your obligations under the MLR 2007 and other money laundering legislation. If red flag indicators are present in your dealings with a client, you should ask further questions and consider making a suspicious activity report to your firm's Money Laundering Reporting Officer (MLRO) or the National Crime Agency, as appropriate…
>
> We expect all firms and individuals regulated by us to comply with money laundering legislation including taking appropriate steps to conduct customer due diligence (CDD) when required to do so by the Money Laundering Regulations 2007. We expect firms and individuals to be aware of, and act properly upon, warning signs that a transaction may be suspicious…"

25.5 The Respondent was asked by the FIO, during the course of the investigation interview, whether he considered the money laundering regulations when originally instructed by Mr Whiston-Dew. The Respondent stated "To be perfectly honest, I suspect not".

25.6 Mr Collis referred the Tribunal to the exemplified matters identified by the FIO and the associated failures on the part of the Respondent.

Entity 1

25.7 There was no evidence on file to demonstrate that the Firm knew the source of relevant funds. In interview, the Respondent stated to the FIO that:

> "… I knew from discussions with [Mr Whiston-Dew] that there was un a development taking place in Uruguay … um and monies needed to be transferred to fund it and it was going to be very successful. And that really was the total extent of my knowledge…"

25.8 The Respondent acknowledged that (a) he had not researched the development, (b) he relied on the documents he had been provided with, (c) he did not know who other relevant entities were, what their business was, why they had made such large loans to Entity 1 or how those loans were secured and (d) he did not know why a US law firm had been paid $20,000.00 in relation to Entity 1.

25.9 Mr Collis therefore submitted that there was nothing on file to establish source of funds adequately or at all. Nor was there any evidence of ongoing monitoring of the Firm's business relationship with Entity 1.

Entity 2

25.10 There was no evidence on file to demonstrate that the Firm knew the source of the relevant funds that went through the client ledger.

25.11 On 2 March 2017 the Firm £65,000.00 was deposited into the Client Account. There was no explanation concerning the identity of the payer, just the description "Jisbert".

25.12 On 22 December 2017 £37,869.39 was deposited into the Client Account from solicitors of Client B. The deposit was described as a "gift" from Mr B to Mrs B. Upon receipt of those funds, they were transferred out of the Client Account to Mrs B in March 2018.

25.13 Mr Collis therefore submitted that there was nothing on file to establish source of funds adequately or at all. Nor was there any evidence of ongoing monitoring of the Firm's business relationship with Entity 2.

Entity 3

25.14 There was no evidence on file to demonstrate that the Firm knew the source of the relevant funds that went through the client ledger.

25.15 None of the funds on the ledger came from the client. All deposits, from April 2015 – February 2018, emanated from a variety of sources none of which appeared to have any connection with an underlying legal transaction.

25.16 Mr Collis therefore submitted that there was nothing on file to establish source of funds adequately or at all. Nor was there any evidence of ongoing monitoring of the Firm's business relationship with Entity 3.

Entity 4

25.17 There was no evidence on file to demonstrate that the Firm knew the source of the relevant funds that went through the client ledger.

25.18 The ledger showed 10 deposits into the Client Account from companies and individuals totalling £655,808.19. In respect of some of those payments, the payer was cited as "unknown".

25.19 One deposit was made by Mr C. Mr C had been loaned monies using Client A funds. Mr C repaid that loan in £10,000.00 cash given to the Respondent in person. The Respondent sought to explain that transaction to the FIO by stating that Mr C could not electronically transfer the monies from Saudi Arabia hence the cash payment.

25.20 The Respondent admitted, when questions about other sources of deposits made into the Client Account, that he "did not know" and "[wouldn't] have necessarily been aware" of their identities and/or businesses.

25.21 Mr Collis therefore submitted that there was nothing on file to establish source of funds adequately or at all. Nor was there any evidence of ongoing monitoring of the Firm's business relationship with Entity 4.

25.22 Mr Collis submitted that, by virtue of the exemplified matters, there were a number of "red flag" indicators which the Respondent should have considered namely (a) clients appeared to be using intermediaries or appearing not to be directing the transaction, (b) unusual sources of funds, (c) large cash payments, (d) unexplained payments from a third party, (e) loans from non-institutional lenders, (f) use of corporate assets to fund private expenditure of individuals, (g) use of multiple or foreign accounts, (h) instructions to retain documents or hold money in the Client Account, (i) instructions outside of the Firm's usual area of expertise/business, (j) unexplained connections with and movement of monies between other jurisdictions and (k) connections with jurisdictions which are subject to sanctions or suspect because of drug production, terrorism or corruption or where there is a lack of money laundering regulation. Mr Collis reminded the Tribunal that the FIO found no evidence on any of the client files to suggest that further questions were asked by the Respondent in light of the "red flags" nor was any report made by him to the National Crime Agency.

25.23 Mr Collis contended that the Respondent, by virtue of his conduct, failed to achieve O7.2 which required him to have effective systems and controls in place to ensure compliance with the regulatory standards expected of him. Mr Collis further contented that the Respondent, by virtue of his conduct, failed to achieve O7.3 which required him to identify, monitor and manage risks when ensuring compliance with the regulatory standards expected of him.

25.24 Mr Collis submitted that the Respondent fundamentally failed to properly discharge his duties as the Firm's COLP which amounted to a breach of Rule 8.5(c) of the Authorisation Rules.

25.25 Mr Collis contended that the Respondent, in his failures to comply with anti-money laundering regulations and the regulatory standards expected of him a) lacked integrity, contrary to Principle 2, (b) undermined public trust in him and in the provision of legal services, contrary to Principle 6, (c) did not comply with his legal and regulatory obligations, contrary to Principle 7 and (d) failed to exercise proper governance and sound financial risk management principles within the Firm, contrary to Principle 8.

The Respondent's Position

25.26 The Respondent made plain in his witness statement dated 17 August 2021 and the Schedule of Admissions appended thereto that he admitted the factual matrix of Allegation 1.3 as well as the consequential regulatory failures.

The Tribunal's Findings

25.27 The Tribunal noted that the Respondent had received (a) given a full account to the FIO during the course of the investigation, (b) drafted his Answer to the Rule 12 Statement which was detailed and thorough, (c) drafted his witness statement with a schedule of admissions that were unequivocal and (d) received legal advice and was represented at the substantive hearing. Having regard to all of those factors the Tribunal was satisfied that the Respondent's admissions to Allegation 1.3 in its entirety was properly made.

25.28 The Tribunal therefore determined, on the evidence before it and the admissions of the Respondent, that Allegation 1.3, 1.3.1, 1.3.2, 1.3.3, 1.3.4, 1.3.5, 1.3.6, 1.3.7, 1.3.8 and 1.3.9 proved on a balance of probabilities.

26. **Allegation 1.4: Failure to verify truth of facts asserted/assurances given in professional correspondence**

The Applicant's Case

26.1 During the course of the investigation the FIO discovered a number of instances in which the Respondent approved correspondence drafted by or at the behest of Mr Whiston-Dew. That correspondence purported to confirm the truth of various facts and matters and/or gave assurances.

26.2 An example of such correspondence was a letter dated 5 May 2015 which was drafted by Mr Whiston-Dew and sent to the Firm with the instruction:

> "…Please print the attached letter on letterhead and have it signed by [the Respondent]. Please send it to me for forwarding to the Bank…"

26.3 The content of the letter was:

> "…We confirm that in our role acting as lawyers to [Entity 1] we have received instructions from our client Company to transfer funds to … pursuant to the terms of legal agreements in connection with the sale and purchase of the shares of …which we are informed owns a hotel in Uruguay. The instructions we have received with regard to the transfer of funds appear to be entirely in accordance

> with documents forming part of the Transaction and do not contravene any international money laundering legislation so far as we are aware…"

26.4 The FIO asked the Respondent, in the investigation interview, whether the content of the letter represented the Firm's view or whether it was a document that passed through the Firm then sent to the Bank. The Respondent replied "the latter".

26.5 The FIO raised a concern with the Respondent that Mr Whiston-Dew was using the Firm to give assurances to the Bank in circumstances where the Respondent did not appear to be familiar enough to give such assurances. The Respondent replied:

> "… That's probably so… I mean [Mr Whiston-Dew] would have given me an explanation … which I would have passed onto the bank … which they accepted…"

26.6 Mr Collis submitted that, by approving the sending or correspondence in his Firm's name which confirmed the truth of the facts and matters that were not within his knowledge and which he had taken no or inadequate steps to verify, the Respondent acted without integrity contrary to Principle 2.

26.7 Mr Collis further submitted that in so doing the Respondent undermined public trust in him and in the provision of legal services, contrary to Principle 6.

The Respondent's Position

26.8 The Respondent made plain in his witness statement dated 17 August 2021 and the Schedule of Admissions appended thereto that he admitted the factual matrix of Allegation 1.4 as well as the consequential regulatory failures.

The Tribunal's Findings

26.9 The Tribunal noted that the Respondent had received (a) given a full account to the FIO during the course of the investigation, (b) drafted his Answer to the Rule 12 Statement which was detailed and thorough, (c) drafted his witness statement with a schedule of admissions that were unequivocal and (d) received legal advice and was represented at the substantive hearing. Having regard to all of those factors the Tribunal was satisfied that the Respondent's admissions to Allegation 1.4 in its entirety was properly made.

26.10 The Tribunal therefore determined, on the evidence before it and the admissions of the Respondent, that Allegation 1.4, 1.4.1 and 1.4.2 proved on a balance of probabilities.

27. **Allegation 2: Recklessness in respect of Allegations 1.1, 1.2, 1.3 and 1.4**

The Applicant's Case

27.1 Mr Collis reminded the Tribunal of the test for recklessness promulgated in Brett v SRA [2014] 1974 in which Wilkie J held:

> §"78 I remind myself that the word "recklessly", in criminal statutes, is now settled as being satisfied with respect to;

(i) a circumstance when he is aware of a risk that exists or will exist and

(ii) a result when he is aware that a risk will occur and it is, in circumstances known to him, unreasonable for him to take the risk…"

27.2 Mr Collis submitted that the Respondent's conduct met the test for recklessness in respect as set out above in respect of Allegations 1.1, 1.2, 1.3 and 1.4 with regards to:

- Whether the transactions addressed in Allegation 1.1 were proper for him to be involved in and/or compliant with Rule 14.5.
- Whether funds received into the Client Account were illicit or of illicit origin.
- Whether there was an own interest conflict in respect of work performed on behalf of Clients A and B.
- Whether there was a client conflict in respect of work performed on behalf of Clients A and B.
- Whether the £10,000.00 received in cash from Mr C was illicit or of illicit origin.
- Whether funds received into the Client Account from unidentified or inadequately identified third parties were illicit or of illicit origin.
- Whether there was any or adequate ongoing monitoring of his business relationships including adequate scrutiny of transactions undertaken.
- Whether transactions featured "red flag" indicators and, if so, whether suspicious activity reports were indicated.
- Whether the contents of the letter to the Bank were true and accurate.

The Respondent's Position

27.3 The Respondent made plain in his witness statement dated 17 August 2021 and the Schedule of Admissions appended thereto that he admitted Allegation 2.

The Tribunal's Findings

27.4 The Tribunal noted that the Respondent had received (a) given a full account to the FIO during the course of the investigation, (b) drafted his Answer to the Rule 12 Statement which was detailed and thorough, (c) drafted his witness statement with a schedule of admissions that were unequivocal and (d) received legal advice and was represented at the substantive hearing. Having regard to all of those factors the Tribunal was satisfied that the Respondent's admissions to Allegation 2 was properly made.

27.5 The Tribunal therefore determined, on the evidence before it and the admissions of the Respondent, that Allegation 2 proved on a balance of probabilities.

Previous Disciplinary Matters

28. None.

Mitigation

29. Mr Harvey QC submitted that it was perfectly clear from the investigation interview, given the extent and details of the questions that the Respondent answered as best he could, that he was making admissions to the allegations he faced from the outset. Any ambiguity in that regard was clarified, in Mr Harvey QC's submission, by the Respondent's response to the "Notice of Referral to the Tribunal" dated 4 September 2020. Moreover, the Respondent drafted his own Answer to the Rule 12 Statement which ran to 15 pages, was supported by a bundle of documents and which made plain that he fully admitted the allegations he faced. Any perceived equivocation on the part of the Applicant with regards to the Respondent's position was vitiated by the Respondent's witness statement and schedule of admissions dated 17 August 2021.

30. Mr Harvey QC stated there were many identified breaches of different regulatory facets all of which were predicated on the same act. He therefore reminded the Tribunal, when determining sanction, to pay regard to the "totality" principle in its overall assessment of seriousness.

31. Mr Harvey QC contended that it was patent from the investigation interview and thereafter that the Respondent cooperated fully with the Applicant, spent significant time gathering material that was requested from him, responded fully to all that was asked of him and disclosed all material that he could.

32. There was no suggestion that the Respondent benefitted, either personally or through his Firm, from Mr Whiston-Dew's fraud which aligned with the fact that the Respondent had spent more than 40 years in practice without incident, query or enquiry. The Respondent had never, prior to the instant matter, been criticised in respect of his Firm's accounts, never made a claim on his Public Indemnity Insurance and no claim had ever been made to the Solicitors Compensation Fund in respect of work that he had undertaken.

33. Mr Harvey QC submitted that the remedial steps taken by the Respondent since the investigation interview were to his credit namely (a) improved "Know Your Client" procedures within the Firm, (b) improved due diligence procedures within the Firm, (c) more rigorous anti money laundering searches, (d) advice sought and received from external providers in respect of improving internal procedures and (e) increased training to all within the Firm regarding regulatory changes and updates from the Applicant.

34. Mr Harvey QC contended that the Respondent's ability and sheer hard work had built an enviable practice in both civil and criminal litigation. That was testament to the contribution that the Respondent had and continued to make to the profession. Mr Harvey QC described the Respondent as a "big hitter" and the Firm as one which "punched above its weight".

35. With regards to the Respondent's relationship with Mr Whiston-Dew, Mr Harvey QC submitted that they first met around 30 years ago and had brief contact in the early days. Some time later, Mr Whiston-Dew approached the Respondent with a view to merging their practices. The Respondent declined on the basis that he did not want a partner per se as opposed to him not wanted to partner with Mr Whiston-Dew. In 2011- 2012 Mr Whiston-Dew advised the Respondent that he had retired as a solicitor and set up as a consultant regarding trusts/offshore tax savings. He instructed the Respondent to act for him in respect of his consultancy as he did not have a client account. He therefore used the Firm's client account in respect of his clients 'transactions relating to their trusts and offshore tax savings. He believed that providing this service was safeguarding client monies through the formal client account and the added protection that entailed. The Respondent trusted Mr WhistonDew as he never had any reason not to do so. The Respondent's trust extended to disbelief when Mr Whiston-Dew advised him, long before the criminal trial, that he was being investigated by His Majesty's Revenue and Customs.

36. The Respondent met with every client that Mr Whiston-Dew introduced him to and made copies of their proof of identity documentation. None of the clients raised any concerns with him regarding the arrangement prior to Mr Whiston-Dew's incarceration. Once concerns were raised the Respondent believed it was his duty to assist clients in tracing and retrieving their money which was what he endeavoured to do.

37. The Respondent first met with Client A on 7 December 2017 following Mr Whiston-Dew's incarceration. Client A raised concerns about her money and sought assistance from the Respondent to retrieve the same. The Respondent accepted those instructions but did not issue Client A with a client care letter as he did not intend to charge for his services. He only issued a client care letter subsequently in order to obtain access to the papers in relation to her investments. His efforts were acknowledged by Client A who, on 19 January 2018, emailed him in the following terms; "…You are being extremely helpful and I am very grateful…"

38. The Respondent's visits to Mr Whiston-Dew in prison were with the intention of obtaining information which could assist the clients who had lost money as a consequence of his fraudulent activity. Client A and Client B were aware of the visits and the purpose of them. The Respondent discovered an asset, land in Essex, held via GBT Global Ltd in respect of which Client A held a beneficial interest. That discovery led to the Respondent seeking appointment as sole director of GBT Global Ltd in order to protect Client A's interest in that land which he did.

39. Client B instructed the Respondent to act for him in relation to a £7,000,000.00 property transaction. The Respondent undertook that underlying legal work and during his investigations into Mr Whiston-Dew, he recovered £770,000.00 of Client B's money which was wrongfully deployed by Mr Whiston-Dew as a loan to a third party.

40. With regards to the family of Mr Whiston-Dew, his wife sought to instruct the Respondent in respect of divorce proceedings and his daughter asked him to advise on the criminal appeal. The Respondent refused to accept instructions in respect of either.

41. The Respondent accepted fully that he was not concerned regarding the amount of money passing through the client account as it was not unusual for his Firm. He did not interrogate the source of funds as he did not consider that he had to. He trusted Mr Whiston-Dew implicitly and was satisfied, at the material time, with the information Mr Whiston-Dew gave him in that regard.

42. Mr Harvey QC referred the Tribunal to the character references filed on the Respondent's behalf as well as he significant medical evidence filed which demonstrated the issues he faced whilst endeavouring to recover client monies unappropriated by Mr Whiston-Dew.

Respondent's Evidence

43. The Respondent stated that he "bitterly regretted the situation" that had arisen. He had tried to cooperate with the Applicant as fully as he could from the inception of the investigation and did not want to present any difficulties in the same. He provided the FIO with free access to client files and all of the Firm 'facilities were available to the FIO. He voluntarily answered questions in interview as openly and frankly as he could. He dealt with all queries raised to the best of his ability.

44. The Respondent stated that at the material time he was facing significant health and personal family issues. He coped by compartmentalising them and his work. He deployed the same approach with regards to the client account and his dealings with Mr Whiston-Dew who he trusted implicitly and had no reason to doubt. He fully appreciated with the benefit of hindsight that his approach was erroneous.

45. The Respondent emphasised the efforts he made to qualify as a solicitor and the fact that he had practised for 44 years very successfully without any concern, criticism or allegation being raised against him. His inherent belief in the honesty and professionalism of Mr Whiston-Dew was aligned with clients, peers and the courts view of Mr Whiston-Dew who was very well regarded prior to the material events.

46. The Respondent made plain that he had learnt from his failings and had spent two and a half years putting in place safeguards and a framework within the Firm to ensure that there would be no repetition.

47. The efforts he made to trace and recover client money was borne out of his regret at the position they had been placed in and the responsibility he felt in relation to that. He expended between 300 – 500 hours in respect of Client A which he did not charge her for. Client A was grateful for his assistance until the relationship broke down in December 2018 when Client A instructed Rosling King LLP. He provided all information requested of him to Rosling King LLP upon request.

48. His efforts to trace and recover client money was acknowledged by Client A in the High Court proceedings before Mr Nicholas Thompson (sitting as Deputy Judge) on 4 August 2021 namely:

> "…

> §95 [Client A] says that she only learned about GBT's role through talking to [the Respondent] later in November 2017 after [Mr Whiston-Dew] had been imprisoned…"

49. The Judge also gave the Respondent credit for his efforts in the following terms:

> "…
>
> §160 [the Respondent] took some considerable pains to get a clear understanding of the arrangements affecting GBT and its clients, and in particular the circumstances of the Azure Trust and what had happened to [Client A's] money. He produced two reports for [Client A] summarising his understanding of how the money had been used. He got into contact with Brian Narlborough and Mr Bruce Littman (who claim to be the beneficial owners of Onslow Developments Limited, then the owner of the Essex land) and enlisted their support for arrangements to recognise [Client A's] interest in the Essex Land, although ultimately this initiative appears to have failed when these individuals withdrew their cooperation.
>
> §161 [Client A] became his client in relation to these matters and [Client A] attended a number of meetings with [the Respondent]. However it appears that at one point [Client A] (and her then boyfriend) became suspicious of [the Respondent's] motives and the suspicions were recorded in an email, not intended for [the Respondent] but inadvertently copied to him. [The Respondent] terminated the retainer and [Client A] sought advice from different solicitors…
>
> §245 GBT accepts that, to the extent it did receive funds from [Client A], and still holds them in a manner such that they are identifiable as [Client A's] funds, they are held on trust for [Client A] (although it does not accept that it is still holding any such funds). However, GBT, under the stewardship of [the Respondent] has been concerned to give due consideration to any other creditors. In this, I think [the Respondent] has been operating quite properly. [The Respondent] and his firm can be criticised for their original involvement in allowing [Mr Whiston-Dew] to use the firm's client account as if it were a bank account. They will need to account for their actions in this regard to the SRA and may well suffer regulatory sanctions as a result. However, my impression has been that since taking over GBT, [the Respondent] has been doing his very best to act fairly in the interests of all of those who have a claim against GBT…

> §248 … I can understand [the Respondent's] caution about GBT paying or transferring assets to the Claimant ahead of other potential claimants without the sanction of a court order to justify this…"

50. When asked by Mr Harvey QC why he stepped into GBT Global Ltd, the Respondent stated that it was because his "investigation was hampered because of lack of information regarding GBT. [He] got piecemeal access to emails so reluctantly took over despite advise against it [which he] weighed against the clients interests and decided that the only way forward was [for him to] step into [Mr Whiston-Dew's] shoes. The only reason for taking over was to ensure the clients best interests".

51. When asked by Mr Harvey QC why he did not tell Client A to take independent legal advice the Respondent stated that was because "at the time Client A had no funds. [He] was unaware that [Rosling King] were supporting her. [He] took pity on her and felt partly responsible so wanted to protect her and use [his] resources. [He] accepted in hindsight it may have been the wrong decision."

52. The Respondent referred the Tribunal to the schedule of monies he had recovered for clients, which exceeded that which they believed they were entitled to, namely:

- 27/04/20 (original loan £650,000.00) £1,618,695.59 up to 30/06/20 with interest @ £641.09 per day.
- 01/04/20 (original loan £400,000.00) £603,966.84 and £10,200.00 costs = £614,166.84.
- 24.09.19 £291,493.00 repayment of loan.
- 04.04.19 £250,000.00 part repayment of loan.

53. With regards to his Firm issuing professional correspondence containing information that he had not verified, the Respondent stated that (a) Mr Whiston-Dew would draft a letter for his approval, (b) he did not check one letter (dated 5 May 2015) as he was away from the office at the time and (c) he accepted that he should have been more vigilant and less distracted in other high-profile litigation that he was conducting in 2015.

54. In relation to the conditions imposed by the Applicant on his practising certificate for the current year, the Respondent stated that he understood why they were in place, he had taken steps to ensure that the Firm could operate within those parameters and that he hoped to be able to practice until his intended retirement in 2022.

55. Under cross examination from Mr Collis the Respondent accepted that he (a) trusted Mr Whiston-Dew implicitly until the High Court Civil proceedings were instigated by Client A, (b) post Mr Whiston-Dew's conviction he did not consider commissioning an audit of the client account as it was regularly audited and overseen by accounts without concern, (c) with the benefit of hindsight he acknowledged the conflict in acting for Clients A and B but did not appreciate the same at the material time, (d) he did charge Client B for the work undertaken on his behalf because Client B had "substantial

resources" and (e) he did not appreciate at the material time the potential conflict in acting for two clients one of which was paying and one of which was not. The Respondent further asserted that (a) he considered that there was "enough money in the pot" to recover all of the clients missing funds, (b) he did not issue Client A with a client care letter immediately as he was not charging her so did not think it was necessary, (c) he was not at any time seeking to protect Mr Whiston-Dew or promote his interests, (d) he initially believed that Mr Whiston-Dew had been wrongfully convicted and (e) when he became sole director of GBT Limited he realised that was not the case and sought to "make good" the loss caused to clients.

Sanction

56. The Tribunal referred to its Guidance Note on Sanctions (Eighth Edition) when considering sanction.

57. The Tribunal considered the regulatory breaches found proved were serious and abundant but paid significant regard to the fact that they were predicated on recklessness as opposed to dishonesty. The Tribunal noted the lengthy unblemished career of the Respondent, the fact that no loss was caused to clients by his failures, he did not personally benefit from Mr Whiston-Dew's fraudulent activity and that he was labouring under substantial health concerns throughout the material time.

58. With regards to culpability the Tribunal determined that the Respondent was motivated by misplaced belief in the honesty and integrity of Mr Whiston-Dew as well as his misguided intention to help clients recover their lost money. The efforts he made to do so were remarked upon by Mr Nicholls Thompsell (Deputy Judge) in the High Court proceedings and the Tribunal found his assessment of the Respondent as highly persuasive. The Respondent, albeit belatedly, appreciated the fraudulent conduct on the part of Mr Whiston-Dew and its impact on him as well as the Firm. His response to that appreciation was to expend his Firm's resources and finances to investigate the same which was hugely to his credit. The Respondent was essentially treading his way through the mess caused by Mr Whiston-Dew in a way that was not planned or anticipated but which quickly began to unravel. The Respondent should have known better given his position in the Firm and significant experience.

59. With regards to harm, the Tribunal found that the Respondent did not intend to act in the manner that he did but was eminently reckless in the number of regulatory breaches that ensued as a consequence. The Respondent was not directly responsible for the harm caused to clients and sought to address the same once Mr Whiston-Dew's fraudulent activities came to light and admirably so. However, the harm caused to clients, whilst not intended, was reasonably foreseeable and the Respondent should have been aware. His failures to foresee detrimentally impacted on the reputation of the profession.

60. The Tribunal found the following aggravating features to the Respondent's misconduct, (a) his actions were deliberate and repeated in all respects, (b) his failures occurred over a protracted period of time and (c) he ought reasonably to have known that his failures amounted to material breaches of his professional Code of Conduct.

61. The Tribunal found the following mitigating features to the Respondent's misconduct, (a) he was deceived by Mr Whiston-Dew, (b) he made sterling efforts to make good the harm caused to clients, (c) he had taken extensive remedial action within the parameters of the Firm to make good the harm caused to the profession, (d) he demonstrated significant and genuine insight into failings, (e) he made open and frank admissions from the outset of and the duration of the Applicant's investigation, (f) he co-operated fully with the Applicant throughout the investigation and (g) he made open and frank admissions throughout the Tribunal proceedings.

62. Weighing all of the factors found above in the balance, the Tribunal determined that the misconduct was significantly serious, such that No Order or a Reprimand would not protect the overarching public interest. The Tribunal did not consider that the misconduct was so serious that a period of suspension or an Order striking the Respondent from the Roll was required. The Tribunal concluded that the proportionate and appropriate sanction was a Level 5 financial penalty in conjunction with a Restriction Order.

63. With regards to the financial penalty, the Tribunal had regard to the Respondent's Personal Financial Statement and noted that he was in the process of selling the family home and "downsizing". The Tribunal therefore considered the appropriate level of financial penalty to be £30,000.00.

64. With regards to the terms of a Restriction Order, the Tribunal had regard to the conditions imposed on the Respondent's practising certificate by the Applicant which were due to come into force on 24 October 2021. The Tribunal considered the matter afresh and found that those conditions did not go far enough to either address the gravamen of the matters found proved and further that they did not adequately reflect the risk to the public and the profession as a consequence of the Respondent's misconduct. The Tribunal therefore adopted the proposed conditions and further added that the Respondent be restricted from acting as MLCO and MLRO. The restrictions on the Respondent's practice were indefinite and took effect immediately.

Costs

65. Mr Collis applied for costs in the sum of £61,470.25. The Respondent did not oppose the application. Mr Harvey urged the Tribunal to determine the application in line with Rule 43(4)(c) of the Solicitors (Disciplinary Proceedings) Rules 2019 namely that consideration be given to proportionality and reasonableness of the time expended by the Applicant in the context of the full admissions made by Respondent from the investigation interview with the FIO, throughout the Applicant's investigation and throughout the Tribunal proceedings.

66. The Tribunal made plain to Mr Collis that it was not concerned with the commercial fixed fee arrangement that Capsticks LLP held with the Applicant. The Tribunal, in its application of Rule 43(4)(c) sought justification of the time spent on the matter, the number of fee earners instructed, the lack of hourly rates set out in the Schedule of Costs and the level of duplication (if any).

67. Mr Collis submitted that it was a sizeable investigation in which a voluminous amount of papers were generated in relation to a wide ranging list of issues all of which had to be reviewed by Capsticks LLP. Mr Collis accepted that a great deal of the "legwork" was undertaken by the FIO but asserted that a great deal of work was required by Capsticks LLP to "bring the case to a high standard" for the Tribunal. The lack of hourly rate on the Schedule of Costs was intentional as it was not charged. A fixed fee was charged which provided a notional hourly rate (amount claimed divided by the total number of hours spent by all fee earners) of £162.00.

68. The Chair enquired of Mr Collis why 69.5 hours were required following receipt of the Respondent's witness statement dated 17 August 2021 and schedule of admissions appended thereto in respect of all allegations. Mr Collis stated that efforts were made to draw up an agreed statement of facts with the Respondent which took time but which ultimately did not result in an Agreed Outcome Proposal. The time claimed for the substantive hearing was predicated on the Tribunal retaining three days for the listing despite the parties agreement that two days was sufficient.

The Tribunal's Decision

69. The Tribunal carefully considered the application and the submissions made. The Tribunal paid significant regard to the fact that the FIO had interrogated all of the Respondent's client files (including 41 matters in respect of which no criticism was made), reviewed the same and the findings of which were provided to Capsticks LLP. The FIO costs were found to be reasonable and proportionate in all respects. When Capsticks LLP were instructed by the Applicant, the Respondent had made full admissions, the groundwork regarding the background to the allegations and evidence in support was already obtained and only one witness statement needed to be taken. If there was any doubt on the part of the Applicant and/or Capsticks LLP regarding the extent of the admissions made by the Respondent that must have been eradicated upon receipt of his witness statement and schedule of admissions on 17 August 2021 and as such the Tribunal did not accept that a further 69.5 hours was needed to bring the case to the substantive hearing.

70. The Tribunal therefore concluded that the costs claimed were not reasonable and not proportionate to the case. The Tribunal summarily assessed the reasonable and proportionate amount of costs due to the Applicant to be £35,000.00 in total and awarded the same.

71. **Statement of Full Order**

The Tribunal Ordered that the Respondent, John Davis, solicitor;

1. do pay a fine of £30,000.00 such penalty to be forfeit to Her Majesty the Queen; and be subject to the conditions set out in paragraph 2 below.

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

2.1. The Respondent may not:

2.1.1. Be a Compliance Officer for Legal Practice, Compliance Officer for Finance and Administration, Money Laundering Compliance Officer or Money Laundering Reporting Officer.

2.1.2. Act as a manager or owner for any authorised body other than Davis-Law Associates (SRA number 522432).

2.1.3. Provide legal services as a freelance solicitor offering reserved or unreserved services under Regulations 10.2(a) or (b) of the SRA Authorisation of Individuals Regulations.

3. The Tribunal further Ordered that the Respondent do pay the costs of and incidental to this application and enquiry fixed in the sum of £35.000.00.

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

Dated this 3rd day of November 2021
On behalf of the Tribunal

A N Spooner
Chair