SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12256-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

ROBYN MOIRA LYNCH Respondent

Before:

Ms A Horne (in the chair)
Mr G Sydenham
Dr S Bown

Date of Hearing: 26 April 2022

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against Ms Lynch made by the Solicitors Regulation Authority Ltd were that while in practice as a solicitor of Kenwright Lynch LLP ("the Firm") and whilst in the position of COLP and COFA and MLRO of the Firm:

1.1 Between 2 April 2001 and 15 May 2018, the Respondent allowed the Firm's client account to be used as a banking facility for third parties otherwise than in respect of instructions relating to an underlying transaction or to a service forming part of her normal regulated activities:

1.1.1 contrary to the principle identified (amongst other cases) in Wood and Burdett (Case No: 8669/2002 filed on 13 January 2004) that a solicitor is not a bank and should not use their client account as a banking facility;

1.1.2 further and in the alternative, insofar as the conduct post-dated 16 September 2011, the Respondent also acted contrary to Rule 14.5 of the SRA Accounts Rules 2011;

and in so doing, Ms Lynch breached Rule 1 (d) of the Solicitors Practice Rules 1990, Rule 1.06 of the Solicitors Code of Conduct 2007, and Principle 6 of the 2011 Code of Conduct (as applicable).

1.2 Between 2 September 2002 and 22 October 2013, Ms Lynch caused or allowed cash shortages to arise on the client account, and in doing so Ms Lynch:

1.2.1 insofar as the conduct took place during the period from on or around 2 September 2002 to and including 5 October 2011, breached any or all of Rules 1(c) and 7.1 of the Solicitors Accounts Rules 1998; Rules 1.01(c) and 1.01(d) of the Solicitors' Practice Rules 1990; and Rules 1.04 and 1.06 of the Solicitors Code of Conduct 2007;

1.2.2 insofar as the conduct took place on or after 6 October 2011, breached any or all of Rules 1.2(c) and 7.1 of the SRA Accounts Rules 2011 and, breached Principles 6, 8 and 10 of the SRA Principles 2011.

1.3 Between 14 July 2008 and March 2019, Ms Lynch caused or allowed the Firm to inappropriately hold residual balances and/or failed to promptly inform clients in writing of the amount of client money retained, and in doing so:

1.3.1 in respect of matters closing between 14 July 2008 and 5 October 2011, breached Rules 15.3 and 15.4 of the Solicitors Accounts Rules 1998, and any or all of Rules 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007;

1.3.2 insofar as the conduct took place on or after 6 October 2011, breached any or all of Rules 14.3 and 14.4 of the SRA Accounts Rules 2011, and breached any or all of Principles 4, 5, and 6 of the SRA Principles 2011.

Documents

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

- Rule 12 Statement and Exhibit HVL1 dated 22 September 2021
- Ms Lynch's Answer and Exhibits dated 5 November 2021
- Applicant's Reply dated 18 November 2021
- Statement of Facts and Agreed Outcome dated 21 April 2022

Background

3. Ms Lynch was the COLP, COFA and MLRO at the Firm. She held a current unconditional practising certificate. Ms Lynch was a solicitor having been admitted to the Roll in December 1982.

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

4. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Facts and Agreed 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

5. 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 Ms Lynch's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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

7. The Tribunal considered the Guidance Note on Sanction (9th Edition - December 2021). In doing so the Tribunal assessed the culpability and harm identified, together with the aggravating and mitigating factors that existed. Ms Lynch had used her client account as a banking facility for family members for an extended period of time. In using the client account in that way, Ms Lynch had placed client funds at risk, for the benefit of her family members. In mitigation, there was no actual loss to any clients and the misconduct was not deliberate. All shortfalls on client account were remedied within a short time of their discovery.

8. The Tribunal considered that the misconduct was of such seriousness that neither sanctions of No Order or a Reprimand were adequate. The Tribunal did not consider that the misconduct was such that Ms Lynch's ability to practise should be suspended, removed or otherwise restricted. The Tribunal determined that the appropriate sanction was a financial penalty. The Tribunal assessed the misconduct as being more serious, such that it fell within the Tribunal's Indicative Fine Band Level 3. The Tribunal considered a fine in the sum of £15,000 appropriately reflected the seriousness of the misconduct. Accordingly, the Tribunal approved the sanction proposed by the parties.

Costs

9. The parties agreed that Ms Lynch should pay costs in the sum of £20,000. The Tribunal considered the Applicant's costs schedule and concluded that the agreed sum was reasonable and proportionate. Accordingly, the Tribunal ordered that Ms Lynch pay costs in the agreed sum.

Statement of Full Order

10. The Tribunal Ordered that the Respondent, ROBYN MOIRA LYNCH, solicitor, do pay a fine of £15,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00.

Dated this 3rd day of May 2022
On behalf of the Tribunal

A Horne
Chair

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 (AS AMENDED)

BETWEEN:

SOLICITORS REGULATION AUTHORITY

(Applicant)

v

ROBYN MOIRA LYNCH

(Respondent)

STATEMENT OF FACTS AND AGREED 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 22 September 2021, the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondent. The Tribunal made standard directions on 24 September 2021. There is a substantive hearing listed for three days in the period 17 to 19 May 2022.

2. The Respondent is prepared to make admissions to the Allegations in the Rule 12 Statement, as set out in this document. The SRA is satisfied that the admission and outcome satisfy the public interest having regard to the gravity of the matters alleged.

The allegations

3. The allegations against the Respondent, Robyn Lynch, made by the SRA within the Rule 12 statement were that while in practice as a solicitor of Kenwright Lynch LLP ("the Firm") and whilst in the position of COLP and COFA and MLRO of the Firm (adopting the numbering of the allegations in that Statement):

    1.1 Between 2 April 2001 and 15 May 2018, the Respondent allowed the Firm's client account to be used as a banking facility for third parties otherwise than in respect of

instructions relating to an underlying transaction or to a service forming part of her normal regulated activities,:

1.1.1 contrary to the principle identified (amongst other cases) in *Wood and Burdett (Case No: 8669/2002 filed on 13 January 2004)* that a solicitor is not a bank and should not use their client account as a banking facility.

1.1.2 Further and in the alternative, insofar as the conduct post-dated 16 September 2011, the Respondent also acted contrary to Rule 14.5 of the SRA Accounts Rules 2011

and in so doing, the Respondent breached Rule 1 (d) of the Solicitors Practice Rules 1990, Rule 1.06 of the Solicitors Code of Conduct 2007, and Principle 6 of the 2011 Code of Conduct (as applicable).

1.2 Between 2 September 2002 and 22 October 2013, the Respondent caused or allowed cash shortages to arise on the client account, and in doing so the Respondent:

1.2.1 insofar as the conduct took place during the period from on or around 2 September 2002 to and including 5 October 2011, breached any or all of Rules 1(c) and 7.1 of the Solicitors Accounts Rules 1998; Rules 1.01(c) and 1.01(d) of the Solicitors' Practice Rules 1990; and Rules 1.04 and 1.06 of the Solicitors Code of Conduct 2007;

1.2.2 insofar as the conduct took place on or after 6 October 2011, breached any or all of Rules 1.2(c) and 7.1 of the SRA Accounts Rules 2011 and, breached Principles 6, 8 and 10 of the SRA Principles 2011;

1.3 Between 14 July 2008 and March 2019, the Respondent caused or allowed the Firm to inappropriately hold residual balances and/or failed to promptly inform clients in writing of the amount of client money retained, and in doing so the Respondent:

1.3.1 In respect of matters closing between 14 July 2008 and 5 October 2011, breached Rules 15.3 and 15.4 of the Solicitors Accounts Rules 1998, and any or all of Rules 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007;

1.3.2 insofar as the conduct took place on or after 6 October 2011, breached any or all of Rules 14.3 and 14.4 of the SRA Accounts Rules 2011, and breached any or all of Principles 4, 5, and 6 of the SRA Principles 2011;

Admissions

4. The Respondent admits the above allegations.

Agreed facts

Background

5. The Respondent is the COLP, COFA and MLRO at Kenwright Lynch LLP ("the Firm"), a recognised body based in Tooting, London. The Respondent holds a practising certificate free from conditions. The Respondent was admitted to the Roll on 1 December 1982.

6. Around 2/3 of the Firm's work is probate; around 1/3 is conveyancing.

7. On 25 March 2019, the Sra commenced a forensic investigation into the Firm. The Forensic Investigation Officer ("FIO") produced a forensic investigation report dated 11 November 2019.

Allegation 1: Banking facility

8. During the investigation into the Firm, the Respondent produced a number of matter files and ledgers which appeared to show the Respondent using the client account as a banking facility for various family members. The matter files did not contain a client care letter or any document which identified the nature of any legal retainer. They consisted, largely, of invoices, requests by family members for payments, and instructions from the Respondent to make the payments as requested. By way of example, on 20 January 2014 the Respondent's daughter wrote attaching an invoice for school fees and asking for payment of AUS$5651.75. A handwritten note on the email reads "please pay from surplus rent ie client acct £3800.00". Four relevant matter files are considered below.

Matter 1: Family N – Sundries Trust Fund (N75\5)

9. The matter ledger showed the following payments being made in and out. In many cases, funds were paid out the same day, or within a matter of days, of their arrival.

Date	Credit	Debit	Narrative
12.6.2011	£7,000.00		Monies from client
21.6.2011		£7,000.00	Person SN
15.9.2011	£8,000.00		Trf from N123[1] to N75.1[2]
15.9.2011		£8,000.00	The Respondent; Person RN; Person SN
27.4.2011	£1,000.00		Office to Client Trsf

[1] The Firm's reference for the matter referred to as Person SN: Sundries - Rent, dealt with below
[2] The Firm's reference for the instant matter

27.4.2011		£1,000.00	Person RN
21.5.2013	£70,000.00		Person SN
22.5.2013		£70,000.00	Company RN Ltd
5.9.2013	£215,000		Family N
11.9.2013		£20,500.00	Person DOR
19.9.2013		£130,000.00	Company RN Ltd
30.9.2013		£50,000.00	Loan to Business – Person RN and Person SN
4.10.2013		£3,500	Person SN
22.10.2013		£6,951.08	Person DOR
24.20.2013	£10,000		From Client
24.10.2013		£8,735.90	Person DOR
20.3.2014	£3,000.00		Trf from N123.3 to N75.3
20.3.2014		£3,000.00	Person SN
Total	£314,000	£308,686.98	

Matter 2: Person SN: Sundries - Rent (Ref: N123/3)

10. The matter ledger showed the following receipts (in summary):

Date range	**From**	**No. of payments**	**Cumulative amount**
13.8.13 to 18.3.19	Andrews Letting[3]	36	£68,203.22
1.10.16 to 17.8.18	AEA L&M[4]	18	£32,179.20
28.3.14 to 31.5.18	Dividends (from HBOS,	8	£358.72

[3] A lettings agency responsible for letting out property said to be part of the subject of the trust
[4] When asked at interview, the Respondent was unable to identify who AEA L&M was. In subsequent representations dated 9 February 2021, her representative has explained that this was a managing agent.

	Lloyds, and Scottish Widows)		
2.7.14 to 23.3.18	Person SN	9	£629,583.33
Total			**£730,324,47**

11. The matter ledger showed the following payments out:

Date	**Third Party**	**Amount**
20.01.2014	Person SN (school fees)	£3,800.00
07.07.2014	Person DOR	£12,674.62
31.07.2014	HMRC	£6,557.00
31.07.2014	Person DOR	£20,000.00
08.07.2014	Company RN Ltd – 18.11.14 [RNL]	£34,510.00
05.12.2014	Fanning and Kelly	£90,090.00
15.05.2018	Respondent; Person SN; Person RN	£313,820.00
Total		£477,651.62

12. At interview, the Respondent was unable to explain some of the payments into the trust not arising from rent (including, for example, payments from A E A L&M, payments from the Firm's office account, and payments from Person SN herself).

Matter: Person MB – Sale 22 Woodland Way Mitcham (B857\2)

13. Person MB was the husband of Person SN.

14. The matter related to the sale of 22 Woodland Way, Mitcham. The Respondent was the registered (and therefore the legal) owner of the property. In interview, the Respondent explained that she held it on trust for Person MB and Person SN.

15. The agreed sale price was £285,000 and completion took place on 31 May 2013. The matter ledger then showed the followings payments in and out:

Date	**Credit**	**Debit**	**Description**
	£284,779.12		Proceeds of sale
		£251,069.88	Mortgage redemption
		£3,420.00	Property agent
04.06.2013		£5,000.00	Trf to Office-Bus Loan
04.07.2013		£3,600.00	Fanning and Kelly Solicitors
18.07.2013		£4,000.00	Person SN
19.07.2013		£32,600.00	Person DOR
30.07.2013	£14,910.76		(Replaces cash shortage caused by over-distribution to Person DOR)
25.04.2014	£61,000		Person MB
25.04.2014		£25,361.40	Person DOR –Int & Cap On Loan
28.04.2014		£2,500.00	Person RN
28.04.2014		£1,570.00	P King
28.04.2014		£4,000.00	Person SN

18.08.2016		£24,768.39	Person MB – Balance Sale
Totals	£360,689.88	£357,889.67	

16. It is to be noted from the above that:
    a. None of the proceeds of sale were distributed to Person MB or Person SN as might have been expected if the property was held on trust for them.
    b. There was a second credit, in the sum of £61,000, approximately one year after the completion of the sale of 22 Woodland Way. It is unclear what if any connection the second credit had with the sale of the property. Most of the £61,000 was then re-distributed within the next three days. When asked, the Respondent was unable to explain how the second payment of £61,000 related to the transaction in question.
    c. The file did not include any documents which identified the reason for, and nature of, any of the payments listed above (save for the mortgage redemption and payment to property agents).

Matter 4: Family N – Trust (N75\1)

17. The following receipts were identified from the ledger account (in summary):

Date Range	**From**	**Number of Receipts**	**Total**
01.10.02 to 14.12.10	The Firm	7	£52,140,70
05.04.04 to 23.07.08	The Respondent and Family N	4	£259,000.00
10.07.01 to 02.06.10	Trust	13	£790,994.80
20.01.05 to 21.10.05	Person RN	2	£270,274.19
17.08.05	The Respondent	1	£200,000
02.04.01 to 19.09.07	Third Parties	13	£417,834.78
19.12.05	John Hales	1	£50,033.64
Total		**41**	**£2,040,278.11**

18. The following payments were identified from the ledger account:

Date Range	**Payee**	**Number of payments**	**Total**
16.09.02 to 25.02.13	Person SN	15	£487,340.00
02.09.05 to 23.01.13	The Respondent	3	£283,500.00
23.08.04 to 25.05.06	Company RN Ltd	9	£64,000.00
07.09.04 to 30.07.08	Person RN	5	£380,173.54
26.01.05 to 04.05.06	Inland Revenue & HMRC	5	£39,933.42
01.05.02 to 23.07.08	The Respondent; Person RN; Person SN	1	£212,000.00
01.05.02 to 04.07.07	Person RN; Person SN	2	£49,998.33
05.04.04 to 13.04.05	Person LL	3	£32,000
17.05.05 to 06.07.05	Model Agencies[5]	2	£476.25
17.05.05 to 04.04.06	Utilities	5	£1,483.21

[5] Person RN owned a fashion company [Company RN Ltd]

08.05.06 to 18.05.07	Companies & Other Parties	28	£411,324.39
02.09.05	John Hales	1	£55,000
Total		**79**	**£2,017,229.14**

19. The FIO was not able to review the matter file for N75\1 because, according to explanations given by the firm, the matter file had been destroyed. In the absence of the matter file being unavailable, it was not possible for the FIO to review any documentation for the transactions recorded by the ledger account.

Analysis

20. The principles concerning the use of client account as a banking facility, and the development of the SRA's rules in relation to the same, are set out in more detail at Appendix 3 attached hereto. In short, however, there is a very longstanding principle (dating back at least to the late 1990s/early 2000s) that a solicitor is not a bank, that they should not use their client account as a banking facility, and that doing so is inherently objectionable[6]. The SRA has sought to encapsulate that principle in its rules in different forms at different times. Nonetheless it has been recognised that use of client account as a banking facility amounted to professional misconduct from well before there were specific SRA rules about it.[7]

21. On the face of it, the Respondent was using the Firm's client account as a banking facility, in breach of these principles, from around April 2001 until around March 2019.

22. The Respondent sought to explain that all of the payments referred to above represented disbursements from a family trust in respect of which she was settlor and sole trustee and members of her family were the beneficiaries. Though the matter was divided across separate ledgers, she explained that they all related to the same single trust. The Respondent sought to invoke the principle that acting as trustee as a family trust is a service forming part of a solicitor's normal regulated activities, and that she therefore falls within the second limb of rule 14.5 of the Solicitors Accounts Rules.

[6] It is capable of facilitating money laundering; it can lend a veneer of respectability to otherwise illegitimate schemes; and it is inconsistent with the division in the statutory regulatory regimes governing financial services on the one hand and legal services on the other.
[7] Indeed, as is clear from some of the earlier cases, solicitors were found guilty of misconduct in this area even before the SRA had sought to articulate any specific rule about it at all.

23. For the reasons set out in more detail below, the Applicant does not accept this explanation:

a. The arrangement was a highly informal and flexible one. It is no part of a solicitor's normal role to administer a family's finances in the informal and ad hoc manner that this Respondent did.
b. Even if it were, technically, part of a solicitor's normal regulated activities to administer a family's finances in this way, it would nevertheless offend against the spirit of the principle. It is not open to solicitors to seek to circumvent that principle in this way.

Manner of operation of the "family trust"

24. As set out in more detail immediately below, according to the Respondent's own explanations during interview the trust in the instant case was informal and unconventional. There was no trust deed governing the trust. It is unclear to the Applicant how the trust first came into being[8]. There is nothing setting out or identifying the property the subject of the trust, the trustee's powers in relation to the trust, the objects of the trust, or the beneficiaries of the trust. The Respondent had complete discretion as to how trust funds should be distributed, and to whom. Funds were paid in every direction: from the trust to beneficiaries; from beneficiaries to the trust; from one beneficiary to another; and from the trust to third parties. Some of the payments were described as "loans". Further, it remains unclear to the Applicant why many of these funds needed to pass through a solicitor's client account at all.

25. First, there was lack of clarity over the ownership of the property the subject of the trust. The Respondent described herself as "settlor" of the trust, which tends to suggest that it was created by her by way of verbal declaration of trust in respect of property to which she was absolutely entitled:

JC: Could I just clarify, was there a Trust Deed?
RL: Um no, there's no Trust Deed, it's a verbal trust.
JC: ...And whose the settlor of that trust and who are the beneficiaries?
RL: Well I'm the settlor and the children are the beneficiaries.

26. However, a declaration of trust respecting any land or any interest therein (which is what is implied by the Respondent describing herself as the "settlor" of the trust) must be manifested and proved by some writing signed by some person who is able to declare such trust: s.53(1)(b) of the Land Property Act 1925.

[8] Whether, for example, by way of declaration of trust, transfer under a will, or by operation of law.

27. On the other hand, other descriptions of the ownership of trust property tend to suggest that it had other owners. In respect of a particular development comprising eight properties in Ireland, the Respondent explained:

> *"RL: The land was owned by three of us as joint tenants and was developed...*
> *JC: And how was that funded?*
> *RL: From other things such as sales of property that we've owned over the time. Some property sold in New Zealand, Australia, those kind of things. All of which were owned by all of us...*
> *When property was sold, belonging to the trust, the proceeds would go into that client account"*

28. Pausing there, it is impossible as a matter of law for the Respondent to have been trustee, and her children to have been beneficiaries, of a trust of land in respect of which she and the children were joint tenants. They would not then have had the unity of interest that is the defining feature of joint tenancy, because (amongst other things) the Respondent would have a legal interest and her children an equitable one.

29. Other property appears to have been owned solely by Person SN and Person RB, the Respondent's daughter and son-in-law.

30. Still other property appears to have been owned by Person SN and a third party. In relation to a payment of £70,000 into client account from Person SN, the Respondent explained in interview that: "*My daughter had a property with a friend of ours which was bought, rented and then a transfer of equity from her to the other person therefore, money came into that account*"

31. Similarly, the Respondent explained that:

> *"RL: from time to time my children did property development, built houses, bought houses, did them up, sold them as a sort of family project and we always considered that to be a trust.*
> *FJ: so this is where all the monies from those trust and activities?*
> *RL: Well I would say the monies from buying and selling of properties"*

32. In subsequent written representations from the Respondent, she disclosed two unexecuted documents:
    a. A declaration of trust dated 12 May 1997, subsequent to a deed of conveyance, which declares that a property in Ireland was to be held as to the legal title 100% by the Respondent, and as to the equitable interest 1% to the Respondent, and 49.5% to each of Person RN and Person SN to be held by them as tenants in common, that the Respondent's 1% equitable interest was also held on trust in equal shares for Person RN and Person SN, and that the same was all in consideration of the payment of a sum. The payment of consideration seems inconsistent with

the existence of an overarching family trust. The land is described as being held as tenants in common rather than as joint tenants. This trust (or part of the trust) was not discretionary in the sense that only the three named beneficiaries had an equitable interest in the property, and in fixed shares.

b. A declaration of trust, from 2002, in respect of other property in Ireland whereby the Respondent, Person RN and Person SN jointly held the property on trust for an entity known as "The Harrier Bar Limited".[9] This is a completely different ownership structure from the ownership structures described above.

33. Further, as set out in the tables above, large payments were sometimes made *by* beneficiaries *to* the trust, before being paid out to other beneficiaries, despite the Respondent claiming that she was the sole settlor of the trust. That is the opposite of the direction in which one would expect distributions to be made under a trust.

34. Second, the identity of the beneficiaries of the trust was unclear. A "discretionary trust" usually means a trust where the beneficiaries are a finite group that are either expressly identified or able to be identified by reference to a particular description[10], but where the trustee has powers to decide which of those beneficiaries receive distributions from the trust and in which sums. A trust in respect of which the identity of the beneficiaries is uncertain is usually unenforceable. Nevertheless, in this case the Respondent appears to have understood that the beneficiaries of the trust were whoever she as trustee decided to make distributions to:

> *"FJ: Have Company RN Limited[11] been a beneficiary of this trust?*
> *RL: Well it's a discretionary trust so probably yes*
>
> *...*
>
> *FJ: Is [Liam Lynch][12] a beneficiary of the trust?*
> *RL: He hasn't been a beneficiary so far, it's discretionary*
> *...*
> *FJ: So he's not a beneficiary of this trust then?*
> *RL: Well he could be, it's discretionary. He may have been*
> *...*
> *FJ: Do you have a file for Liam Lynch?*
> *RL: Well there may have been one but that's 2013*
> *FJ: Because I'm trying to find is that connected to this trust and the monies being paid out.*

[9] According to Irish companies house data, this would appear to be a bar or public house, in respect of which the Respondent, Person SN and Person RN were joint shareholders and directors.
[10] Such as "Such of Mrs X's male descendants as reach the age of 18".
[11] A company of which both the Respondent and her son were directors.
[12] The Respondent's ex-husband

RL: Well it could be. I mean he is a member of the family, or he probably was at that time"

35. Third, there was no obvious principle governing distributions made from the trust. Trust funds were distributed in an ad hoc fashion, upon demand by the beneficiaries, for expenses such as school fees or building works. Sometimes, the funds were paid directly to third parties. One would have expected a trustee to pay a set allowance to identified beneficiaries each year, for them to spend as they saw fit.

36. For the three reasons above, it is doubtful that there was even a legally enforceable trust at all. In the premises, what the Respondent appears to mean is that there was some kind of informal understanding that there was some property which belonged jointly to all of the family members, rather than an enforceable trust in the strict legal sense.

37. Additionally, fourth, there was lack of clarity over the correct identity of the Firm's client. When a solicitor is acting for a trust, it is usually the trust itself (through its trustees) which is the client. However, in this case the Respondent believed that the beneficiaries were the client. This was important for two reasons:

a. It means that the Respondent treated requests by family members for payments as "instructions", which tends to suggest that the Respondent understood beneficiaries to have the power to demand payments from the trust. However, under a trust (and in particular a discretionary trust) it is for the *trustee*, not the *beneficiaries*, to decide who from amongst the identified class of beneficiaries should receive distributions, when, and in what amount.
b. It tends to suggest a lack of understanding on the Respondent's part as to rights and responsibilities of the various parties to a properly constituted trust, which is consistent with this being a more informal kind of arrangement.

38. Fifth it is unclear to the Applicant why, whatever the correct legal status of the trust, funds needed to pass through client account at all. It is notable that, as set out in the tables above, some payments were paid into client account and then paid out again the same day or within a matter of days. At interview, the Respondent explained as follows:

"JC: what was the need for those transactions to pass through your bank account? Why couldn't they have been paid directly from A to B instead of passing from A to you and then onto B?
RL: well my daughter lives in Australia so she doesn't have any account here
JC: So your daughter doesn't have a UK bank account?

RL: she doesn't. She has a joint account with me which hasn't been used for many, many years since she was a schoolgirl here. But I always thought that I wasn't supposed to be putting client account money into an account of mine. So, I would never use an account that's a joint account for that reason."

...

RL: *Person SN rents out the properties and the rent is paid, which I thought was correct because she's the client, into client account, from the managing agents, and then it's paid to her from time to time. She doesn't have a bank account into which it could go...living in Australia I mean* [FIR/51/lines 26-30]
...
FJ: *So what's the role of this firm in terms of the client account?*
RL: *Just acting for the client Person SN and receiving the rent.*
JC:*...had Person SN had a bank account in the UK, would the money have been paid directly there from the managing agents?*
RL: *I would say so, yeah*
JC: *And just out of interest, why couldn't it be paid to her Australian bank account, directly by the managing agent?*
RL: *it could be now. I mean now this is flagged up, I obviously will ask them to change wherever they send the rent to*
JC: *So you agree that the only reason that it came into client account was because Person SN didn't have a UK bank account?*
RL: *That's not really the only reason but it is a reason*
JC: *What are the other reasons?*
RL: *I mean just that I'm her mother, I'm for many years, and that goes back a long way, I've been the person that they go to when they had some kind of legal, commercial, transaction, because I'm a lawyer.*"

39. Finally, it is also notable that none of the Respondent's work as trustee was charged or invoiced; that there was no retainer, client care letter, or written instructions (with the exception of occasional requests for money); and that although there was only one family "trust", the matter was split across a number of different files.

40. The Applicant accepts that acting as trustee, or upon the instructions of a trustee, of a family trust is in principle capable of being part of a solicitor's ordinary regulated activities. For example, the SRA's Guidance on "*Improper use of client account as a banking facility*" (published 15 December 2014, update 25 November 2019) considers the example of trust administration work, and provides:

"*A law firm administers family or other trusts, mainly for longstanding, UK-based private clients. For some of the trusts the solicitor is the trustee, in others they are acting on the trustees' instructions.*

The firm's work may involve collecting trust income (for example, from investment managers and rental income generated by properties which are trust assets) and making trust payments, such as distributions to beneficiaries and payment such as school fees

and trust asset maintenance payments (ie payments to surveyors), on their trustee clients' instructions, using client account.

In some cases, the firm may be instructed to carry out transactional work, using trust funds to buy or sell real estate. In other cases, the firm's role will be more administrative in nature, documenting the sale or purchase of other assets eg cars or artwork, receiving receipt of investment income and paying out trust distributions to beneficiaries (on the trustees' instructions). Firms will also arrange for the drawing up of trust accounts, using either internal or externally sourced accountancy resource.

Our view

Where the solicitors are acting as trustees (for example, as trustees under a discretionary trust, or as an executor), they will be providing a regulated professional service. In this situation, receiving trust income into client account and making payments out of it, would not give rise to a breach of rule 3.3.

The situation is different when the law firm acts for trustees, rather than as trustees. Here the firm's role is more limited to undertaking routine trust administration services, such as collecting income, preparing accounts and possibly checking the terms of the trust arrangement. On the basis that this type of work is part of the normal and longstanding regulated services of law firms, we do not consider that this type of work, of itself, will breach rule 3.3.

41. In substance, however, the arrangements in this case amounted to little more than the informal administration of a family's wealth, albeit subject to a vague understanding that that wealth is the common property of all (or at least some) family members. A solicitor asked to use their client account for administering such an arrangement would and should refuse the instruction.

42. Even if it *were* technically part of a solicitor's normal regulated activities to act in this way, that would drive a coach and horses through the principle that a solicitor is not a bank and cannot operate their client account as a banking facility. The facts of this case are a good example. But for the informal understanding described above, it would be clear that the client account was impermissibly being used as a banking facility. That cannot be rendered permissible by reliance upon a vague understanding about how property was to be shared.

43. At interview and in written representations, the Respondent also stated that she carried out some legal work on behalf of the trust. That may explain why certain specific transactions passed through client account (e.g. proceeds of sale of a property). But it does not explain most of the payments that were paid in and out of client account including, for example, the collection and subsequent distribution of rent.

Allegation 1.1: Breach of the principle identified in *Wood and Burdett* and of Rule 14.5

44. In *Wood and Burdett*, the SDT held that it is not a proper part of a solicitors everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account. This principle has been in existence since at least the late 1990s/early 2000s.

45. Additionally, the SRA published a series of rules including, from October 2011, rule 14.5 of the SRA Accounts Rules has provided: "*You must not provide banking facilities through a client account. Payment into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities*". This sought to embody the principle referred to above i.e. rule 14.5 reflected a principle that existed for many years before it was given its own, bespoke, rule within the Solicitors Accounts Rules.

46. As set out above, the Respondent used the Firm's client account as a banking facility. As the Applicant understands it, she does not seek to rely on the first limb of rule 14.5 (connection with an underlying transaction). She does seek to rely upon the second limb of rule 14.5 (service forming part of a solicitor's normal regulated activities). For the reasons given above, however, the Applicant does not accept this. Accordingly, the Respondent breached the principle identified in *Wood and Burdett*. Further and alternatively, she should have at the least reviewed and ceased the practice as the published rules and warning notices developed from at least March 2004.

Maintenance of Public Trust: Rule 1 (d) Solicitors Practice Rules 1990, Rule 1.06 Solicitors Code of Conduct 2007, Principle 6 Code of Conduct 2011

47. The Respondent did not behave in a manner that maintains public trust in her and the provision of legal services. The Respondent was required to act in such a way by Rule 1 (d) of the Solicitors Practice Rules 1990, Rule 1.06 of the Solicitors Code of Conduct 2007, and Principle 6 of the 2011 Code of Conduct.

48. There are strong, and well known, reasons why solicitors are not permitted to provide banking facilities through their client accounts. At paragraph 39 of *Fuglers and others v Solicitors Regulation Authority* [2014] EWHC 179 (Admin), the Divisional Court held:

> *"If a solicitor is providing banking activities which are not linked to an underlying transaction, he is engaged in carrying out or facilitating day to day commercial trading in the same way as a banker. This is objectionable because solicitors are qualified and regulated in relation to their activities as solicitors, and are held out by the profession as being regulated in relation to such activities. They are not qualified to act as bankers and are not regulated as bankers. If a solicitor could operate a banking facility for clients which was divorced from any legal work being undertaken for them, he would in effect*

be trading on the trust and reputation which he acquired through his status as a solicitor in circumstances where such trust would not be justified by the regulatory regimen".

49. The Warning Notices further serve to highlight the inherent and recognised risks in solicitors using client accounts to provide banking facilities, being money laundering, lending a veneer of credibility to illegitimate schemes, and eroding the regulatory distinction between financial and legal services.

50. The public are entitled to expect and would expect that a solicitor would act in compliance with long-established principles as to the use of client account. It would not expect a solicitor to make exceptions for members of their own family. Nor would it expect a solicitor to seek to escape the consequences of that rule by invoking vague and informal arrangements. Moreover as set out further below under Allegation 1.2, the use of client account as a banking facility for members of her own family meant in this case that, when the family's client account was in debit (as it not infrequently was), the Respondent was in effect borrowing other clients' funds for her own family's benefit. A solicitor acting in compliance with Rule 1(d), Rule 1.06 and Principle 6 would have declined to receive and transfer funds into and out of client account in this way. Alternatively, she would have at the least reviewed and ceased the practice as the published rules and warning notices developed from at least March 2004.

Allegation 1.2: cash shortages on client account

51. Each of the ledgers above showed debit balances (i.e. cash shortages) from time to time:

Date Overdrawn	**Amount**	**Date remedied**	**Number of days overdrawn**
Matter 1 – Family N – SUNDRIES TRUST FUND (N75\5)			
01.07.2011	£4,000	13.7.2011	12
08.09.2011	£3,000	30.9.2011	24
03.09.2013	£2,384.20	5.9.2013	2

22.10.2013	£6,951.08	24.10.2013	2
Matter 2 – Person SN: SUNDRIES – RENT (REF: N123/3)			
13.8.2013	£2,384.20	29/08/2013	16
6.3.2018	£1,108.10	20/03/2018	15
Matter 3 – Person MB – SALE 22 WOODLAND WAY MITCHAM (B857\2)			
19.7.2013	£14,910.76	30.7.2013	11
Matter 4 – Family N – TRUST (N75\1)			
16.9.2002	£35,010.00	1.10.2002	10
17.5.2005	£9.26 to £835.76	17.5.2005	41
25.7.2005	£21.17	05.08.2005	11
02.09.2005	£31,838.42	21.09.2005	19

52. These debits/shortages must have been funded from other balances held on the client account. In effect, the Firm's client account (and thus other clients' money) was being used as an overdraft facility for the family.

53. For the avoidance of doubt, the Applicant does not allege that any clients lost money. All shortages on client account were duly repaid.

Allegation 1.2: shortages on client account

54. The individual matter files comprising the family trust matter were repeatedly overdrawn. This affected all four matter files referred to above. It happened on multiple occasions across the entire time period of approximately 18 years. Some of the shortages were substantial, the largest being £35,010.00. They often lasted for several weeks. The shortages must have been funded from elsewhere, i.e. other clients' funds in client account. In effect, the Respondent used the client account as an overdraft facility for her family, repeatedly borrowing other clients' funds. This further demonstrates the danger of the misconduct referred to in Allegation 1 i.e. of the mixing of informal family affairs and client funds in the client account.

55. In so doing, the Respondent breached:

a) Rule 1.04 of the Solicitors Code of Conduct 2007, Principle 4 of the SRA Principles 2011 (best interests of all clients): it was not in the best interests of all clients for their funds to be used to finance an overdraft facility for the Respondent's family.
b) Rule 1.06 of the Solicitors Code of Conduct 2007, Principle 6 of the SRA Principles 2011: the public would be alarmed by a solicitor lending funds held on Firm's client account to family members. The misconduct continued over a very long period of time, repeatedly, and in substantial amounts.
c) Principle 8: The firm breached sound financial principles, by using the Firm's client account to lend money to family members, repeatedly and over a long period of time. As observed above, there was an inherent risk in mixing informally-held family funds with other client money in client account.
d) Rule 1.2(c) of the Solicitors Accounts Rules 2011: by withdrawing more from client account for family members than was available to them, the Respondent used other client's money for her own family's matter
e) Rule 7.1 of the Solicitors Accounts Rules 2011: the breaches were often not remedied promptly. Some of them lasted for several weeks, up to a maximum of 42 days. Moreover, the inherent risk that led to the repeated breach was not addressed, over a very long period.

Allegation 1.3: residual balances

56. The Firm produced a matter list dated February 2019, which identified that the firm held £537,977.80 in residual balances for 1,143 clients dating back to 2003. Fourteen of these matters were more than £5,000 (a total of £359,556.35 altogether).

57. The fourteen matters with residual balances above £5,000 were all probate and conveyancing matters. The residual amounts range from £5,000 to £92,779.93. The date of last movement on the

files range from 16 January 2013 (£30,218.37 on a conveyancing matter) to 1 February 2018 (£52,777.57 on a probate matter).

58. The FIO reviewed eight of the matter files with residual balances exceeding £5,000.00. The reviewed matter files did not include any documents to demonstrate that the firm had contacted the relevant clients or beneficiaries about the residual balances held on account by the firm. Two matters are exemplified in the FIR as follows.

Person EL (Deceased) – Residual balances of £5,852.15

59. The matter file for Person EL deceased demonstrated that the residue of her estate was left to three beneficiaries – Person RM; Person SB; and Person DD. The matter ledger showed that the firm paid £53,179.09 to each beneficiary on 4 & 5 September 2013.

60. This left a balance on the ledger account of £8,852.15. This was held on account subject to a £3,000.00 legacy to Person RWR on attaining his majority on 14 August 2016. The ledger showed that on the 15 August 2016, the firm paid £3,000.00 legacy to Person RWR leaving a residue of £5,852.15.

61. The balance remained on the client ledger account as at the 28 February 2019. According to the codicil this remaining £5,852.15 should have been distributed between equally between Person RM; Person SB; and Person DD.

62. On 14 August 2019, prompted by the investigation, the Firm provided paid the remaining £5,852.15 to Person DD and Person RM equally.[13]

63. The matter file did not include any document to show that firm had communicated to the beneficiaries or executors about £5,852.15 within the last 12 months, including when the firm revisited the matte file in August 2016.

Person VH (Deceased)

64. The matter file for Person VH (Deceased) demonstrated that the firm drafted her Will. The Will made a gift of 50% of her estate to "Air Ambulance" and the remaining 50% to St Georges Hospital Charity.

[13] This was an error. The residue should have been divided three ways, with £1,950.71 going to Person SB. She had died but the money was nevertheless due to her estate. However, the Applicant considers that this was a simple error rather than professional misconduct, and the Firm has in any event taken steps to rectify the situation.

65. The matter ledger demonstrated that the firm was in a position to distribute the estate in April 2017. Estate accounts dated 1 February 2018 showed that £102,252.74 was available for distribution. The firm paid £51,126.37 to St Georges Hospital Charity on 1 February 2018.

66. The matter file did not include any document to show that that the firm had contacted the Charity Commission Commissioner prior to the commencement of the investigation.

67. Since and apparently prompted by the SRA's investigation, the Respondent took steps to regularise the position regarding the residual balances.

Allegation 1.3: residual balances

68. The Respondent held large residual balances on client account, some in substantial amounts and some very old. There was no evidence that she had written to clients within the past 12 months. She has provided partial explanations for why some of these were delayed but it is not clear the extent to which see seeks to rely upon these partial explanations as a defence to the allegation. In any event, the Respondent took steps to remedy the situation as a result of the investigation. The steps she took should all have been taken more promptly; it is insufficient to wait until an SRA investigation to take action. In relation to these residual balances, the Respondent breached (as applicable):

    a) Rule 14.3 of the SRA Accounts Rules 2011 and Rule 15(3) of the Solicitors' Accounts Rules 1998 (as amended): of the eight matters the FIO investigated, there was no proper reason to retain the funds. They ought to have been returned promptly, but were not.
    b) Rule 14.4 of the SRA Accounts Rules 2011 and Rule 15(4) of the Solicitors' Accounts Rules 1998 (as amended): there was no evidence that the Respondent provided twelve-monthly updates to clients about client money still held, and the reason for the retention.
    c) Principle 4 and Rule 1.04: It was not in the best interests of clients for their funds to remain in the Firm's client account when there was no good reason for it so to be held, rather than being distributed to them for their own use.
    d) Principle 5 and Rule 1.05: By failing to distribute residual balances promptly, and to provide regular updates to clients, the Respondent failed to provide a proper standard of service to clients in accordance with Rules 14.3 and 14.4 of the SRA Accounts Rules 2011.
    e) Principle 6 and Rule 1.06: The misconduct extended to over 1,000 cases, dating back to 2003. As such, the issue seems to have been routine. The Firm held a substantial sum of £537,977.80 in residual balances. There were fourteen matters with more than £5,000, and one with over £90,0000. As observed above in relation to Allegation 1.2, the balance on

client account was used effectively as an overdraft facility for family members during this period. Solicitors are entrusted to distribute estates and proceeds of sales promptly. The public would be alarmed by a solicitor who routinely held on to residual balances, over lengthy periods, and in substantial sums. They would be especially alarmed in circumstances where a solicitor was also using the client account as an informal overdraft facility for family members.

f) Principle 8: The routine failure to distribute residual balances, over long periods of time and across many cases, was a systemic issue which demonstrated that there was not proper governance in place.

Mitigation

69. The following points are advanced by way of mitigation on behalf of the Respondent, but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:

69.1 In relation to allegation 1.1, the Respondent genuinely believed, at the time, that she was entitled to act as she did, and that the payments into, and out of, client bank account related to a family Discretionary Trust.

69.2 The Respondent was never alerted by her reporting accountants, or indeed anyone else, at any time, to the fact that the receipt and payments may be inappropriate and/or in breach of the Solicitors Accounts Rules. Moreover, not only did the firm's accountants not raise any concerns with her in relation to the operation of the client bank account, but to the best of her knowledge, the accountants did not submit qualified reports to the SRA, meaning that at all relevant times, the Respondent was of the genuine belief that she was entitled to proceed as she did.

69.3 The Respondent now accepts, informed with the benefit of hindsight and reflection, and based upon the matters set out within this document, that she acted as alleged.

69.4 Importantly, no allegation of lack of integrity or dishonesty is raised, in any respect, and which must be an acknowledgement that the Respondent proceeded on a genuinely held belief that she was entitled to act as she did, at the time. There was no deliberate intent on the part of the Respondent to act, in any way, contrary to the Rules.

69.5 In relation to allegation 1.2, the Respondent did not deliberately, or intentionally, act contrary to the Accountants Rules and, at all times, acted in the best interests of her client(s).

69.6 That which occurred was a consequence of error, for which the Respondent offers her sincere apology.

69.7 The debit balances were unintentional, inadvertent and in error. The majority of the historical debit balances related to the family Trust involving the Respondent's children. Whilst the Respondent acknowledges that any identified cash shortage is a matter of concern and serious, the matters relied upon can fairly be described as historical and corrected.

69.8 Importantly, paragraph 52 of the Rule 12 Statement confirms that the Applicant does not allege that any client has lost money and concedes that all shortages on client account were duly repaid. Indeed, in respect of all of the identified debit balances, same were corrected within 2 – 41 days, with the majority being corrected within 2 – 12 days (see section at G.6, paragraph 53 and section J.3, paragraph 91 of the Report dated 11 November 2019). (X18 and X27).

69.9 The Respondent offers her sincere, and genuine, apology for the identified breaches. Other than the current proceedings, the Respondent is a person of impeccable, exemplary and unblemished character. The Respondent was admitted as a solicitor on 1 December 1982, having originally qualified in New Zealand in around 1970 and has been practising as a solicitor in New Zealand and England and Wales collectively for over 50 years and who is an honourable, hardworking and highly regarded solicitor. The Respondent has always held an unconditional Practising Certificate.

69.10 Factors mitigating the seriousness of the identified breaches include, but are not limited to:

- the absence of any allegation of dishonesty, lack of integrity or deliberately acting in breach of the identified Rules and Principles.

- genuine insight into her failings to include open and frank admissions within this document.

- full co-operation with the SRA during the course of its investigation and full co-operation following the issue of the SDT proceedings.

Proposed sanction

70. Subject to the Tribunal's approval, it is agreed that the Respondent should receive a Level 3 fine in the sum of £15,000.00. The Respondent also agrees to make a contribution towards the costs incurred by the SRA in the sum of £20,000 (inclusive of VAT). The sums set out above take account of the severity of the conduct.

71. In reaching this agreement, the parties have carefully considered and had regard to the Tribunal's Guidance Note on Sanctions (9th edition). The parties have also had regard to the principle of proportionality and have considered the possible sanctions in ascending order of seriousness.

72. In assessing culpability, three reasons are usually cited for the principle that client account should not be used as a banking facility: (i) it is capable of facilitating money laundering; (ii) it can lend a veneer of respectability to otherwise illegitimate schemes; and (iii) it is inconsistent with the division in the statutory regulatory regimes governing financial services on the one hand and legal services on the other. There is no evidence of any risk of the first two in this case. However, the third reason was present. Moreover, the conduct extended over a very long period of time (approximately nineteen years) and involved significant sums of money.

73. Further, in the context of the Firm's client account being used as a banking facility for the family, debit balances on the family ledgers must have been funded from elsewhere within client account, such as (at least notionally) the large amount of residual balances held by the Firm. In other words, the Respondent's conduct enabled her family members effectively to borrow funds from the client account. This occurred eleven times during a nineteen year period, included sums of up to £35,000, and lasted for days or weeks each time. This was a mis-use of client funds for the benefit of the Respondent's family, and placed these client funds at risk. There is no evidence that the misconduct was deliberate or planned. Further, all shortages were rectified within days or weeks of the debit arising.

74. In assessing harm, no client funds were lost. However, client funds were placed at risk by being removed from client account and effectively borrowed by family members. Additionally, there is harm to the reputation of the profession when a solicitor uses her client account as a banking facility for her own family's wealth.

75. The misconduct was aggravated by the fact that the Respondent was an experienced practitioner, that it continued over a long period of time, that it was repeated, and that it benefitted (even if unintentionally) her own family.

76. It is agreed that this is not a case where either no order or a reprimand would be an appropriate outcome.

77. The Respondent's professional misconduct is assessed (taking into account the suggested mitigation outlined above) as justifying a fine falling at the top end of "level 3", i.e. "conduct assessed as more serious". There is no tariff and each case turns on its own particular facts. Nevertheless, misconduct involving "pure" Rule 14.5 breaches is usually sanctioned by way of fine between the lower to middle of Level 4. In the instant case, there is no allegation of a risk of money laundering or lending a veneer of respectability to suspect schemes, which reduce the seriousness to Level 3. However, the occasions on which family members effectively borrowed from client account, and the length of time for which the misconduct continued, mean that the appropriate sanction is at the very top end of Level 3.

78. The parties agree that this is not a case which requires the Respondent's temporary or permanent removal from the Roll of Solicitors.

79. The parties consider and submit that in light of the admissions set out above, and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions (9th edition).

Signed:

Robyn Lynch

Dated: 21/4/22

Signed:

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

Dated: 21 April 2022

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 (AS AMENDED)

BETWEEN:

SOLICITORS REGULATION AUTHORITY LIMITED

(Applicant)

v

ROBYN MOIRA LYNCH

(Respondent)

APPENDIX 3: RELEVANT RULES, CASE LAW AND GUIDANCE REGARDING PROVISION OF A BANKING FACILITY

1998

Note [ix] to Rule 15 of the Solicitors Account Rules 1998 provides that: "*Solicitors may need to exercise caution if asked to provide banking facilities through a client account. There are criminal sanctions against assisting money launderers."* Rule 2(1) provides that *"the rules are to be interpreted in light of the notes."*

13 January 2004

On 13 January 2004, the Tribunal gave judgment in the case of *Wood and Burdett* [HVL1, pp.522-547]. In that case, the IO had identified £2,247,298.50 worth of transactions that had passed through client account that did not appear to be associated with any underlying transaction in respect of which the Respondent's firm was acting. Mr Burdett explained as follows (as summarised at [8]):

> *"Mr Burdett explained that the firm had exempted their client account from the provisions of the Cheques Act and that this enabled them to present any cheque to their bank for payment regardless of the payee. Mr Burdett explained, in general terms, that the facility was used to enable clients and third parties to „cash" cheques against which payments would be made to the party concerned, or at the direction of the party concerned, by way of cash or bank transfer. This had the benefit for the client or third party of allowing cleared funds to be immediately available."*

The SRA alleged that this was a breach of Practice Rule 1 and Rule 1 of the Solicitors Accounts Rules 1998 (the general rule that a solicitor must act with integrity, in the client's best interests, and in a manner that maintained the good repute of the solicitor and the profession). Mr Burdett submitted that it was appropriate to use the client account as he had done and that he had not breached any specific rule. The Tribunal rejected his defence and held, at [55]-[58], that:

> *"With regard to allegation vi), namely that the Respondents acted in breach of Practice Rule 1 and Rule 1 of the Solicitors Accounts Rules 1998 relating to the use of client account as a banking facility for clients, associates and/or members of staff, it was conceded by the Applicant that there was no specific Practice or Accounts Rule which had been breached. The Tribunal noted that the practice of allowing payment in and encashment of cheques had been adopted in respect of a number of clients and two members of staff and involved very substantial amounts of money.*
> *56. The Tribunal found that even though there had been no breach of any specific rule the Respondents had acted in breach of their own good reputation and the good reputation of the solicitors" profession in allowing their client account to be used in this way.*
> *57. The Tribunal reiterated its findings in the case of Wayne[15]. It was not a proper use of a solicitor's client account to allow it to be used by clients and/or members of staff as a bare banking facility. The proper use of a solicitors client account was to hold money and disburse it as required in connection with a client matter of which the solicitor has conduct on behalf of that client.*
> *58. Whilst it was accepted in this case that no question of prime bank instrument fraud or money laundering arose, the facility which the Respondents made available to their clients and others could have been utilised by an unscrupulous person as a vehicle for money laundering without the knowledge of the Respondents and that was a mischief which solicitors should actively seek to obstruct. The Tribunal did find allegation xii) to have been substantiated."*

March 2004

In or around March 2004[16], Note [xi] to Rule 15 of the Solicitors Account Rules 1998 was amended to read: "*In the case of Wood and Burdett (Case No: 8669/2002 filed on 13 January*

[15] An earlier case, which in turn referred to yet earlier cases. At [72] of *Wayne*, the SDT held: "The Tribunal has had cause in the past to make the observation which it again makes. A solicitor is not a bank. A solicitor can have no business simply in receiving and paying out money with no purpose attached to it."
[16] See Paragraph 15 of the judgment in *Patel v SRA* [2012] EWHC 3373

2004)[17] *the Solicitors Disciplinary Tribunal said that it is not a proper part of a solicitors everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account. Further, solicitors are likely to lose the exemption under the Financial Services and Markets Act 2000 if deposit is taken in circumstances which do not form part of a solicitors practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers."*

March 2009

In March 2009, Rule 2(1) was amended to read: *"the notes form part of the rules and are mandatory."*

October 2011

In October 2011, the SRA Accounts Rules replaced the Solicitors Accounts Rules 1998. The relevant rule is Rule 14.15 which states: "*You must not provide banking facilities through a client account. Payment into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities."*

Rule 2(1) was again amended, now to read: *"The guidance notes do not form part of the rules."* For completeness, Guidance Note (v) reads: *"Rule 14.5 reflects decisions of the Solicitors Disciplinary Tribunal said that it is not a proper part of a solicitors everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account. Further, solicitors are likely to lose the exemption under the Financial Services and Markets Act 2000 if deposit is taken in circumstances which do not form part of a solicitors practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers."*

29 November 2012 - Judgment of the High Court in Patel v SRA[18]

In 2012, the High Court considered an appeal from a decision of the Solicitors Disciplinary Tribunal. In that case, it had been alleged that Mr Patel had received funds into his client account between 2006 and 2008 as part of an arrangement to enable investors to purchase motor vehicles imported by his client. Mr Patel's client was able to use the client account as a

[17] In Wood and Burdett [HVL1, pp.522-547], clients of the firm were able to deposit cheques with the firm and to receive immediate, cleared payments in cash or by way of bank transfer. It was said to be for the convenience of clients who referred work for the firm. The Tribunal held that there had been no breach of any specific rule but that the solicitors had acted in breach of their own good reputation and the good reputation of the profession by allowing their client account to be used in this way (see paragraphs 20 and 21 of the judgment in *Patel* (below)). The note to Rule 15 was subsequently amended.

[18] [2012] EWHC 3373 (Admin)

banking facility when he could not obtain access to the ordinary banking system for this business. The use of the client account was not confined to the client's own funds but was available for the monies of investors who did not want to pay the client but wanted the security of the money being held by a solicitor.

At paragraphs 17 and 18, Cranston J considered the interpretation of the second sentence of Rule 14.5 as follows:

> *"17. On behalf of the appellant Mr Bodnar submitted that rule 14.5 was the crystallization of the rule established in Wood and Burdett. Moreover, he submitted, the second sentence of rule 14.5 had to be read disjunctively: payments into and out of a client account to relate to either (a) an underlying transaction or (b) a service forming part of the solicitor's normal regulated activities. To read in a requirement that the underlying transaction be a legal transaction would be to elide the two categories identified in the rule. Solicitors must not permit their client account to be used as a banking facility but will not be in breach of the rule if its use occurs as a consequence of a client's instructions in relation to an underlying transaction, albeit not a legal transaction.*
>
> *18. For my part I agree with Mr Bodnar that rule 14.5 is a crystallization of the principle established in Wood and Burdett. I return to that decision below. However, it seems to me clear that even taking rule 14.15 in isolation Mr Bodnar's interpretation is not tenable. The first sentence of the rule contains the prohibition on the use of a client account to provide banking facilities. Use of the term "instructions" in the next sentence of the rule implies professional instructions, in other words instructions relating to the accepted professional services of solicitors. The term is being used in rules concerned with the work of solicitors and takes its meaning from that context. [our emphasis] Thus the import of the first limb of the second sentence of rule 14.5 is that movements on a client account must be in respect of instructions relate to an underlying transaction. The other limb of that second sentence requires that movements on a client account must be in respect of instructions related to a service forming part of the normal regulated activities of solicitors. That is a provision the ambit of which is to be measured in terms of the regulatory regime for solicitors. There is no need to explore in detail how the reach of these two limbs may differ although I agree with the observations of Moore-Bick LJ on the matter."*

In his judgement at paragraphs 42 and 43, Moore-Bick LJ states:

> *"42. [Rule 14.5 of the SRA Accounts Rules 2011] was not in force at the time when Mr Patel operated the "German Autos" client account, but Mr Bodnar submitted that it fairly encapsulates the principles enunciated in Wood and*

Burdett. Like Cranston J, I think that is right, but the decision itself is illuminating in as much as it sheds light on the meaning to be given to the expression "underlying transaction (and the funds arising therefrom)". Mr Bodnar submitted that the word "or" is to be read disjunctively and that the existence of an underlying transaction of any kind which a solicitor can lawfully undertake, including one that does not form part of a solicitor's normal professional activities, is capable of supporting the use of a client account. The tribunal, he submitted, had erred in conflating the two limbs of rule 14.5 which had led it to hold that there must be an underlying transaction of a legal nature.

43. In my view that argument states the position too broadly. The primary purpose of maintaining a client account is to segregate funds for the client from the solicitor's own funds in order to provide the client with a measure of protection. One would therefore expect it to be used to hold funds which have come into the solicitor's hands in relation to services carried out for the client, to be paid out in due course to the client or in accordance with his instructions. Rule 14.5 of the SRA Accounts Rules refers to instructions relating to an underlying transaction or a service forming part of the solicitor's normal regulated activities. The expression "regulated activities" includes in this context all forms of legal activity as defined in section 12 of the Legal Services Act 2007[19]. That means the provision of legal advice or assistance in connection with the application of the law or with any form or resolution in legal disputes. It follows that in most cases the receipt of client funds will result from the provision of services forming part of the solicitor's normal regulated activities, but some recognised professional services, such as acting as an executor, will not fall into that category. There is clearly scope, therefore, for funds to arise from underlying transactions of a kind which, although they form an accepted part of the professional services provided by solicitors, do not fall within the definition of regulated activities. They are likely, nonetheless, to be legal activities in the broad sense."

In the *Patel* case, the Court concluded that *"there was no underlying transaction out of which the funds in question arose, much less one that could be said to involve the provision by the appellant of legal or other recognised professional services."* The services provided were administrative and involved no more than the solicitor satisfying himself that the conditions for transferring funds to the sellers had been satisfied. The Court considered that *"there is a*

[19] Section 12(3) Legal Services Act 2007: In this Act "legal activity" means — (a) an activity which is a reserved legal activity within the meaning of this Act as originally enacted, and (b)any other activity which consists of one or both of the following — (i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes; (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes.

distinction between what the appellant was doing and the role of a solicitor operating an escrow account or acting as a conveyancer or the executor of a will….. While many of the functions associated with conveyancing and acting as an executor are of an administrative nature, their long association with the legal profession gives them the character of professional services. They are part of the everyday practice of solicitors." The Court concluded that the solicitor's function in this case was purely administrative – he was the custodian of funds. That had no association with the professional duties of a solicitor and was not in relation to an underlying legal transaction.

5 February 2014 – Judgment of the High Court in Fuglers & Ors v SRA[20]

The Court again considered an appeal in respect of a decision of the SDT regarding breaches of Rule 14.5 in respect of the use of client account as a banking facility, *Fuglers & Ors v SRA*. In that case, the firm and its partners had allowed the firm's client account to be used by a client of the firm, a football club, as a banking facility between October 2009 and February 2010. A total of about £10 million passed through the account in this way over a found month period. Throughout the period, the club's banking facilities had been withdrawn by its bank because HMRC had presented a winding up petition. The appeal was brought on the basis that the sanction imposed (fine against the firm and two partners was excessive). The Court, when determining the seriousness of the misconduct, considered that there were three strands to the mischief, namely:

1. that 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;

2. in allowing a client account to be used as a banking facility carries with it the obvious risk that the account may be used unscrupulously by the client for money laundering;

3. in the particular context of insolvency or risk of insolvency, to allow a client account to be used for banking facilities is also objectionable for several reasons, namely that the solicitor is offering the client a service which would not be open to him, there is a risk of creditor disaffection and a risk of personal liability to the solicitor in making payments.

Warning Notice issued by the SRA on 18 December 2014

On 18 December 2014, the SRA issued a Warning Notice in respect of the improper use of a client account as a banking facility [HVL1, pp.87-91]. The Warning Notice set out Rule 14.5 of the SRA Accounts Rules 2011 and extracts from the recent High Court Judgments in *Patel*

[20] Fuglers LLP, David Anthony Berens & Bryan Myer Fugler and SRA [2014] EWHC 179 (Admin)

and *Fuglers & Ors*. The Warning Notice provides the following information about Private Client Services:

> "*Historically, some solicitors have agreed to receive and hold funds for clients to enable them to pay routine bills and invoices on their client's behalf. This has been predominantly for the client's convenience as they may be based abroad or because they are incapacitated so that operating their own bank accounts is problematic.*
>
> *In view of technological advancements, in particular the use of internet and telephone banking, we consider that allowing a client account to be used in this way is no longer appropriate. Clients can now operate their bank accounts from their own homes or indeed anywhere in the world. Allowing clients to hold anonymously what might be significant funds in a client account gives rise to significant risks in relation to potential money laundering and other breaches of the law, such as Exchange Control Consent Regulations. The anonymity of client accounts is attractive to criminals.*
>
> *In each case, you must therefore carefully consider all of the relevant circumstances and the risks involved before you agree to hold funds in this way. You should be prepared to justify your decision to us where necessary.*
>
> *This guidance is not intended to affect your ability to make reasonable and proper payments on your client's instructions when related to an underlying legal transaction on which you have been instructed, for example, upon completion of a house purchase on your client's instructions under Accounts Rule 20.1(f). Once a transaction is complete, we would remind you that Rule 14.3 provides that client money must be returned to the client promptly, as soon as there is no longer any proper reason to retain those funds. If you retain funds in client account after completion of a transaction the risk of a breach of Rule 14.5 increases. Risk factors of laundering in particular would involve the payment of substantial sums to others, including family members, or to corporate entities, particularly overseas, since there is no reason why the client could not receive the money into their own account and transfer it from there.*