SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12262-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

CAROLINE JONES First Respondent
HILLYER MCKEOWN LLP Second Respondent

Before:

Mr D Green (in the chair)
Ms A Kellett
Dr S Bown

Date of Hearing: 27 October 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

The allegations against the First Respondent were as follows:

Failed to provide adequate advice to purchaser clients

1. Between approximately (a) June 2010 and October 2011, and (b) October 2011 and May 2014 the First Respondent failed to provide adequate advice to clients on the risks of entering into Stamp Duty Land Tax ("SDLT") avoidance schemes (defined below as the L scheme, the B scheme, and the S scheme). In so doing the Respondent breached any or all of: prior to 6 October 2011 Rules 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 and, after 6 October 2011, Principles 4, 5 and 6 of the SRA Principles 2011.

Failure to act in the best interests of purchaser clients: improperly seeking to limit liability

2. Between approximately (a) June 2010 and October 2011, and (b) October 2011 and May 2014 the First Respondent in approximately ten client matters improperly sought to limit liability in respect of claims and/or limit the timeframe in which a claim could be made; and in so doing the First Respondent breached all or alternatively any of: prior to 6 October 2011, Rules 1.04, 1.05, 1.06 or 2.7 of the Solicitors Code of Conduct 2007 and, after 6 October 2011, Principles 4, 5 and 6 of the of the SRA Principles 2011; and failed to achieve Outcomes 1.1, 1.2 and 1.8 of the SRA Code of Conduct 2011 ("the Code") or any of them.

Failure to inform lender clients

3. Between approximately (a) June 2010 and October 2011, and (b) October 2011 and May 2014;

3.1 The First Respondent failed to tell those lender clients particularised in Schedule 1 that purchaser clients intended to use a SDLT tax avoidance scheme. In so doing the First Respondent breached all or alternatively any of: prior to 6 October 2011, Rules 1.04, 1.05, and 4.02 of the Solicitor's Code of Conduct 2007 and after 6 October 2011 any of Principles 4, 5 and 6 of the SRA Principles 2011 and failed to achieve any or all of Outcomes 1.1 and 4.2 of the Code.

3.2 The First Respondent, when acting on the B scheme, when acting for purchaser and lender clients, between June 2010 and February 2012 improperly transferred purchase sums to a third party without the lender client's knowledge or consent. In so doing the First Respondent breached all or alternatively any of: prior to 6 October 2011 Rules 1.04, 1.05 and 4.02 of the Solicitor's Code of Conduct 2007, and after 6 October 2011 Principles 4, 5, 6 and 10 of the SRA Principles 2011 and failed to achieve any or all of Outcomes 1.2 and 1.12 of the Code.

Conflict of interest

4. Between approximately (a) June 2010 and October 2011, and (b) October 2011 and May 2014 the First Respondent acted in circumstances where there was a conflict of

interest between the purchaser client and the lender client or the significant risk of such conflict.

In so doing the First Respondent breached any or all of: Prior to 6 October 2011 Rules 1.04, 1.05 and 1.06 of the Solicitor's Code of Conduct 2007 and after 6 October 2011 Principles 4 and 5 of the SRA Principles 2011 and Outcome 3.5 of the Code.

Accounts Rule Breaches

5. Between approximately: (a) June 2010 and October 2011, and (b) October 2011 and May 2014 the First Respondent failed to comply with any or all of the SAR 1998 Rules 22, 32 (1) (2) and 32 (viii) and SRA Accounts Rules 2011 ("SAR") rule 20 and 29.1 and SAR 1998. In particular:

5.1 In respect of the B Scheme the lender's consent was not obtained before transferring the mortgage advance;

5.2 In respect of the L scheme, the sub-sale was not recorded on a separate ledger as the entire transaction was recorded on a single ledger (that is, the sale together with the sub- sale).

The allegations against the Second Respondent were as follows:

Failed to provide adequate advice to purchaser clients

6. Between approximately (a) June 2010 and October 2011, and (b) October 2011 and May 2014 the Second Respondent failed to provide adequate advice to clients on the risks of entering into SDLT tax avoidance schemes (defined below as the U scheme, the L scheme, the B scheme, and the S scheme). In so doing the Second Respondent breached any or all of: prior to 6 October 2011 Rules 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 and, after 6 October 2011, any or all of Principles 4, 5 and 6 of the SRA Principles 2011.

Failure to act in the best interests of purchaser clients: improperly seeking to limit liability

7. Between approximately (a) June 2010 and October 2011, and (b) October 2011 and May 2014 The Second Respondent in approximately ten client matters improperly allowed the attempt to limit liability in respect of the amount of claims and/or the timeframe in which a claim could be made; and in so doing the Second Respondent breached all or alternatively any of: prior to 6 October 2011, Rules 1.04,1.05, 1.06 and 2.7 of the Solicitors Code of Conduct 2007 and, after 6 October 2011, Principles 4, 5 and 6 of the of the SRA Principles 2011; and the Second Respondent failed to achieve Outcomes 1.1, 1.2 and 1.8 of the SRA Code of Conduct 2011 ("the Code") or any of them.

Failure to inform lender clients

8. Between approximately (a) June 2010 and October 2011, and (b) October 2011 and May 2014;

8.1 The Second Respondent failed to tell those lender clients particularised in Schedule 1 that purchaser clients intended to use a SDLT tax avoidance scheme. In so doing the Second Respondent: breached all or alternatively any of: prior to 6 October 2011, Rules, 1.05 and 4.02 of the Solicitor's Code of Conduct 2007 and after 6 October 2011 any of Principles 4, 5 and 6 of the SRA Principles 2011 and failed to achieve Outcomes 1.1 and 4.2 of the Code.

8.2 The Second Respondent, when acting on the B and U schemes, when acting for purchaser and lender clients, between June 2010 and February 2012 caused or allowed the First Respondent to improperly transfer purchase sums to a third party without the lender client's knowledge or consent.

In so doing they breached all or alternatively any of: prior to 6 October 2011 Rules 1.04, 1.05, 4.02 of the Solicitor's Code of Conduct 2007, and after 6 October 2011 Principles 4, 5, 6 and 10 of the SRA Principles 2011 and failed to achieve any or all of Outcomes 1.2 and 1.12 of the Code.

Conflict of interest

9. Between approximately (a) June 2010 and October 2011, and (b) October 2011 and May 2014 the Second Respondent caused and/or allowed a conflict of interest or significant risk of such conflict to arise between the purchaser client and the lender client. In so doing the Second Respondent: breached any or all of: Prior to 6 October 2011 Rules 1.04, 1.05 and 1.06 of the Solicitor's Code of Conduct 2007 and after 6 October 2011 Principles, 4 and 5 of the SRA Principles 2011 and Outcome 3.5 of the Code.

Accounts Rule Breaches

10. Between 2010 and 6 October 2011 the Second Respondent caused and/or allowed the First Respondent to fail to comply with any or all of Rule 22, 32 (1), (2) and 32 (viii) of the Solicitors Accounts Rules 1998 in that, when undertaking the U scheme, the First Respondent did not properly record the sub-sale, instead the entire transaction was recorded on a single ledger (that is, the sale together with the sub-sale).

11. Between approximately: (a) June 2010 and October 2011, and (b) October 2011 and May 2014 The Second Respondent caused and/or allowed the First Respondent to fail to comply with the SAR 1998 Rules 22, 32 (1) (2) and 32 (viii) and SRA Accounts Rules 2011 ("SAR") Rule 20 and 29.1 and SAR 1998. In particular:

11.1 In respect of the U and B Schemes the lender's consent was not obtained before transferring the mortgage advance;

11.2 When undertaking the U scheme the sub-sale was not recorded on a separate ledger as the entire transaction was recorded on a single ledger (that is, the sale together with the sub-sale).

11.3 In respect of the L scheme, the sub-sale was not recorded on a separate ledger as the entire transaction was recorded on a single ledger (that is, the sale together with the sub-sale) 11.4 In respect of the S scheme, the sub-sale was not recorded on a separate

ledger as the entire transaction was recorded on a single ledger (that is, the sale together with the sub-sale)

Documents

12. The Tribunal had before it the agreed bundle of documents on CaseLines.

Background

13. The First Respondent was admitted to the Roll on 2 October 2006 and at the time of the hearing was a Manager and Partner at the firm. The First Respondent had been an associate solicitor working at the Firm when the schemes defined below commenced. In March 2012 the First Respondent had become a salaried partner of the Firm, and thereafter in October 2014 she became an equity partner. At the time of the hearing the First Respondent held a current practising certificate, free of conditions.

14. The Second Respondent, the Firm, trading as Hillyer McKeown is a limited company, HM Legal Services Limited was, until 1 November 2020, a Limited Liability Partnership. At the time of the conduct giving rise to these allegations (June 2010 to May 2014) the Firm was a recognised body. The Firm ceased to be a recognised body on 3 November 2014 and became a licensed body. According to the Firm's renewal application for 2021, the Firm employed 22 legally qualified fee earners. The total UK turnover from its last complete accounting period in the year 2018-2019 was approximately £5,125,836.00.

15. The Firm was responsible for the management and supervision of the solicitors engaged in transactions under the schemes set out below, including the First Respondent.

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

16. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome ("SAF") 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

17. The Applicant was required to prove the Allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondents' rights to a fair trial and to respect for the First Respondent's private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

18. The Tribunal reviewed all the evidential material before it and was satisfied on the balance of probabilities that the First and Second Respondents' admissions were properly made.

19. The Tribunal considered the Guidance Note on Sanction (8th edition – December 2020). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

20. The Tribunal considered that the matter was moderately serious as the Respondents ought to have been aware of the Warning Notices and of the caution that should have been taken when dealing with the SDLT schemes. The Tribunal noted that the role of the Respondents was not one that involved devising or marketing the schemes. The Tribunal recognised that the practice had come to an end before the SRA investigation and that there had been full co-operation with the SRA. This had included full admissions at an early stage.

21. In all the circumstances the Tribunal was satisfied that the appropriate sanction was a fine of £7,000 in respect of the First Respondent and £10,000 in respect of the Second Respondent. The Tribunal noted that the First Respondent's means had been taken into account and was satisfied that the level of fine adequately reflected the seriousness of the misconduct.

22. The Tribunal therefore agreed to dispose of the case in the manner sought in the SAF and approved the Agreed Outcome.

Costs

23. The parties had agreed that each Respondent would pay £15,000 in costs. The Tribunal was content to make the order in those terms.

Statement of Full Order

24. The Tribunal Ordered that the Respondent, CAROLINE JONES, solicitor, do pay a fine of £7,000.00, 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 £15,000.00.

25. The Tribunal Ordered that the Respondent, Hillyer McKeown LLP of Gorse Stacks House, George Street, Chester, CH1 3EQ, a firm, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that it do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00

Dated this 16th day of November 2021
On behalf of the Tribunal

D Green
Chair

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No:**

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

CAROLINE JONES (381934)

First Respondent

and

HILLYER MCKEOWN LLP (514842)

Second Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

By a statement made by Hannah Pilkington on behalf of the Solicitors Regulation Authority (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 13 October 2021, the SRA brings proceedings before the Tribunal making allegations of misconduct against the Respondents. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.

Admissions

First Respondent

The First Respondent admits that:

Failed to provide adequate advice to purchaser clients

1. Between approximately
   (a) June 2010 and October 2011, and
   (b) October 2011 and May 2014

   The First Respondent failed to provide adequate advice to clients on the risks of entering into Stamp Duty Land Tax ("SDLT") avoidance schemes (defined below as the U scheme, the L scheme, the B scheme, and the S scheme).

   In so doing the Respondent breached any or all of: prior to 6 October 2011 Rules 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 and, after 6 October 2011, Principles 4, 5 and 6 of the SRA Principles 2011.

Failure to act in the best interests of purchaser clients: improperly seeking to limit liability

2. Between approximately
   (a) June 2010 and October 2011, and
   (b) October 2011 and May 2014

The First Respondent in approximately ten client matters improperly sought to limit liability in respect of claims and/or limit the timeframe in which a claim could be made;

and in so doing the First Respondent breached all or alternatively any of: prior to 6 October 2011, Rules 1.04,1.05, 1.06 or 2.7 of the Solicitors Code of Conduct 2007 and, after 6 October 2011, Principles 4, 5 and 6 of the of the SRA Principles 2011; and

failed to achieve Outcomes 1.1, 1.2 and 1.8 of the SRA Code of Conduct 2011 ("the Code") or any of them.

Failure to inform lender clients

3. Between approximately
   (a) June 2010 and October 2011, and
   (b) October 2011 and May 2014

   3.1 The First Respondent failed to tell those lender clients particularised in Schedule 1 that purchaser clients intended to use a SDLT tax avoidance scheme.

In so doing the First Respondent breached all or alternatively any of: prior to 6 October 2011, Rules 1.04, 1.05, and 4.02 of the Solicitor's Code of Conduct 2007 and after 6 October 2011 any of Principles 4, 5 and 6 of the SRA Principles 2011 and failed to achieve any or all of Outcomes 1.1 and 4.2 of the Code.

3.2 The First Respondent, when acting on the B scheme, when acting for purchaser and lender clients, between June 2010 and February 2012 improperly transferred purchase sums to a third party without the lender client's knowledge or consent.

In so doing the First Respondent breached all or alternatively any of: prior to 6 October 2011 Rules 1.04, 1.05 and 4.02 of the Solicitor's Code of Conduct 2007, and after 6 October 2011 Principles 4, 5, 6 and 10 of the SRA Principles 2011 and failed to achieve any or all of Outcomes 1.2 and 1.12 of the Code.

Conflict of interest

4. Between approximately
   (a) June 2010 and October 2011, and
   (b) October 2011 and May 2014

The First Respondent acted in circumstances where there was a conflict of interest between the purchaser client and the lender client or the significant risk of such conflict.

In so doing the First Respondent breached any or all of: Prior to 6 October 2011 Rules 1.04, 1.05 and 1.06 of the Solicitor's Code of Conduct 2007 and after 6 October 2011 Principles 4 and 5 of the SRA Principles 2011 and Outcome 3.5 of the Code.

Accounts Rule Breaches

5. Between approximately:
   (a) June 2010 and October 2011, and
   (b) October 2011 and May 2014

The First Respondent failed to comply with any or all of the SAR 1998 Rules 22, 32 1) 2) and 32 (viii) and SRA Accounts Rules 2011 ("SAR") rule 20 and 29.1 and SAR 1998.

In particular:

5.1 In respect of the B Scheme the lender's consent was not obtained before transferring the mortgage advance;

5.2 In respect of the L scheme, the sub-sale was not recorded on a separate ledger as the entire transaction was recorded on a single ledger (that is, the sale together with the sub-sale)

5.3 In respect of the S scheme, the sub-sale was not recorded on a separate ledger as the entire transaction was recorded on a single ledger (that is, the sale together with the sub-sale)

Second Respondent

The Second Respondent admits that:

Failed to provide adequate advice to purchaser clients

6. Between approximately
   (a) June 2010 and October 2011, and
   (b) October 2011 and May 2014

   The Second Respondent failed to provide adequate advice to clients on the risks of entering into SDLT tax avoidance schemes (defined below as the U scheme, the L scheme, the B scheme, and the S scheme).

   In so doing the Second Respondent breached any or all of: prior to 6 October 2011 Rules 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 and, after 6 October 2011, any or all of Principles 4, 5 and 6 of the SRA Principles 2011.

Failure to act in the best interests of purchaser clients: improperly seeking to limit liability

7. Between approximately
   (a) June 2010 and October 2011, and
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The Second Respondent in approximately ten client matters improperly allowed the attempt to limit liability in respect of claims and/or the timeframe in which a claim could be made;

and in so doing the Second Respondent breached all or alternatively any of: prior to 6 October 2011, Rules 1.04,1.05, 1.06 and 2.7 of the Solicitors Code of Conduct 2007 and, after 6 October 2011, Principles 4, 5 and 6 of the of the SRA Principles 2011; and

the Second Respondent failed to achieve Outcomes 1.1, 1.2 and 1.8 of the SRA Code of Conduct 2011 ("the Code") or any of them.

Failure to inform lender clients

8. Between approximately
   (a) June 2010 and October 2011, and
   (b) October 2011 and May 2014

   8.1 The Second Respondent failed to tell those lender clients particularised in Schedule 1 that purchaser clients intended to use a SDLT tax avoidance scheme.

   In so doing the Second Respondent: breached all or alternatively any of: prior to 6 October 2011, Rules, 1.05 and 4.02 of the Solicitor's Code of Conduct 2007 and after 6 October 2011 any of Principles 4, 5 and 6 of the SRA Principles 2011 and failed to achieve Outcomes 1.1 and 4.2 of the Code.

   8.2 The Second Respondent, when acting on the B and U schemes, when acting for purchaser and lender clients, between June 2010 and February 2012 caused or allowed the First Respondent to improperly transfer purchase sums to a third party without the lender client's knowledge or consent.

   In so doing they breached all or alternatively any of: prior to 6 October 2011 Rules 1.04, 1.05, 4.02 of the Solicitor's Code of Conduct 2007, and after 6 October 2011 Principles 4, 5, 6 and 10 of the SRA Principles 2011 and failed to achieve any or all of Outcomes 1.2 and 1.12 of the Code.

The facts and matters in support of this allegation are set out at paragraphs 9-48 and 110-123 below.

Conflict of interest

9. Between approximately
   (a) June 2010 and October 2011, and

(b) October 2011 and May 2014

The Second Respondent caused and/or allowed a conflict of interest or significant risk of such conflict to arise between the purchaser client and the lender client.

In so doing the Second Respondent: breached any or all of: Prior to 6 October 2011 Rules 1.04, 1.05 and 1.06 of the Solicitor's Code of Conduct 2007 and after 6 October 2011 Principles 4 and 5 of the SRA Principles 2011 and Outcome 3.5 of the Code.

Accounts Rule Breaches

10. Between 2010 and 6 October 2011 the Second Respondent caused and/or allowed the First Respondent to fail to comply with any or all of Rule 22, 32 (1), (2) and 32 (viii) of the Solicitors Accounts Rules 1998 in that, when undertaking the U scheme, the First Respondent did not properly record the sub-sale, instead the entire transaction was recorded on a single ledger (that is, the sale together with the sub-sale).

11. Between approximately:
(a) June 2010 and October 2011, and
(b) October 2011 and May 2014

The Second Respondent caused and/or allowed the First Respondent to fail to comply with the SAR 1998 Rules 22, 32 1) 2) and 32 (viii) and SRA Accounts Rules 2011 ("SAR") Rule 20 and 29.1 and SAR 1998.

In particular:

11.1 In respect of the U and B schemes the lender's consent was not obtained before transferring the mortgage advance;

11.2 When undertaking the U scheme, the sub-sale was not recorded on a separate ledger as the entire transaction was recorded on a single ledger (that is, the sale together with the sub-sale).

11.3 In respect of the L scheme, the sub-sale was not recorded on a separate ledger as the entire transaction was recorded on a single ledger (that is, the sale together with the sub-sale)

11.4 In respect of the S scheme, the sub-sale was not recorded on a separate ledger as the entire transaction was recorded on a single ledger (that is, the sale together with the sub-sale)

Agreed Facts

Professional Details

The First Respondent

1. The First Respondent, who was born September 1979, is a Manager and Partner at the firm having been admitted to the Roll on 2 October 2006. The First Respondent was an associate solicitor working at the Firm when the schemes defined below commenced. In March 2012 the First Respondent became a salaried partner of the Firm, and thereafter in October 2014 she became an equity partner. Her SRA ID is: 381934.

2. The First Respondent holds a current practising certificate, free of conditions.

The Second Respondent

3. The Second Respondent, the Firm, trading as Hillyer McKeown is a limited company, HM Legal Services Limited (Company registration number 09975109) and was formerly (until 1 November 2020) a Limited Liability Partnership. The Firm has several offices based in northern England undertaking a variety of commercial and private work, including residential and commercial conveyancing. At the time of the conduct giving rise to these allegations (June 2010 to May 2014) the Firm was a recognised body. The Firm ceased to be a recognised body on 3 November 2014 and became a licensed body.

4. According to the Firm's renewal application for this year, the Firm employs 22 legally qualified fee earners. The total UK turnover from its last complete accounting period in the year 2018-2019 was approximately £5,125,836.00.

5. The Firm was responsible for the management and supervision of the solicitors engaged in transactions under the schemes set out below, including the First Respondent.

Background

6. In 2016 the Complainant, Mr A, raised a complaint with the SRA in relation to the Firm's involvement in SDLT schemes. An inspection of the Firm commenced on 8 November 2017. The investigation was conducted by a Forensic Investigation Officer ("FIO") and he produced a Forensic Investigation Report ("the FIR") on 24 September 2018.

7. During the investigation the FIO identified that between the period from June 2010 and May 2014 the Firm had undertaken 113 SDLT avoidance transactions on behalf of clients. Of those, 85 involved the Firm also acting for the lender client. The First Respondent signed most of the certificates of title.

8. The schemes were promoted by two companies: Sterling Tax Strategies Ltd ("Sterling") (which subsequently went into administration) and Cornerstone Tax Advisory Services Ltd ("Cornerstone") with the majority of clients using the latter.

9. The amount of SDLT avoided was £3,096,085.00.

10. In addition to the standard conveyancing charges, the Firm charged its clients £90,890.00 in total for the additional work required in order to facilitate the schemes. HMRC has since confirmed that none of the SDLT schemes used and promoted by the Firm were capable of negating the need for clients to pay SDLT. At the date of the FIR (24 September 2018) HMRC had raised challenges in respect of 51 of the client matters handled by the Firm made subject to the SDLT schemes.

11. The admitted allegations arise as a result of the First and Second Respondent's involvement in the SDLT schemes. For the avoidance of doubt, the SRA did not make allegations regarding whether the schemes are, or were, proper means of reducing tax. The allegations concern the First Respondent's conduct in carrying out and the schemes' operations and the Firm's causing and/or allowing the schemes to operate in the manner that they did.

<u>Official guidance on the use of SDLT schemes</u>

12. HMRC have issued warning notices regarding SDLT schemes, stating in August 2010 that they considered them to be: *"contrived transactions, including those involving sub-sales"* and that they *"produce a charge to SDLT on the full amount paid for the property".*

Additionally, HMRC introduced the General Anti-Abuse Rules (GAAR) in April 2013. The guidance to the Rules stated: *"Taxation is not to be treated as a game where taxpayers can indulge in any ingenious scheme in order to eliminate or reduce their tax liability…Accordingly, it is essential to appreciate that, so far as the operation of the GAAR is concerned, Parliament has decisively rejected this approach, and has imposed an overriding statutory limit on the extent to which taxpayers can go in trying to reduce their tax bill. That limit is reached when the arrangement put in place by the taxpayer to achieve that purpose goes beyond anything which could reasonably be regarded as a reasonable course of action".*

13. The SRA issued a Warning Notice on 16 February 2012 warning the profession of the dangers of SDLT Schemes. The Warning Notice stated:

    "Make sure you properly considered all the clients' interests and that no client will be disadvantaged by the scheme;
    Ensure that you account to the buyer for any benefit received by you, and disclose any referral arrangement connected to the scheme;
    If you act for a lender as well as the buyer, robust consideration needs to be given to whether the scheme could prejudice the interests of the lender. It is our view that it is very important to ensure that the lender is fully informed that the property is subject to an SDLT scheme with sufficient detail of how the scheme operates. Recent findings of the SDT would support this approach".

14. The SRA issued a further Warning Notice on tax avoidance on 21 September 2017. The Notice again warned of the dangers of solicitors and firms becoming involved directly or indirectly with tax affairs schemes or arrangements. Whilst it is accepted that this warning notice post-dated the current allegations, it is also submitted that the Warning Notice re-stated a point of general principle, long-established, which the Respondents failed to heed.

15. The Council of Mortgage Lenders Handbook [Version updated 01/06/2007] part 1 rule 5.1.2 states;
    "If any matter comes to your attention that you reasonably expect us to consider important in deciding whether or not to lend to the borrower (such as whether the borrower has given misleading information to us or the information which you might reasonably expect to have been given to us is no longer true) and you are unable to disclose that information to us because of a conflict of interest, you must cease to act for us and return our instructions

stating that you consider a conflict of interest has arisen…". The Handbook further states at Rule 10.3.4 "*You must hold the loan on trust for us until completion…*".

16. In the case of SRA v Chan, Ali and Abode Solicitors Ltd [2015] EWHC 2659 (Admin), the Administrative Court considered SDLT transactions undertaken by Abode Solicitors Ltd between 2009 and 2011. In 2015 Lord Justice Davis provided the following comment regarding the lenders involvement in SDLT schemes *"It is of little relevance to say that no lender suffered actual loss; the point is that they should have had the opportunity to decide whether to continue to lend when new entities, such as companies, were inserted into the purchasing process and when the funds being lent were not always being held to the order of the lenders nor were they being applied strictly as they should have been in the course of the purchasing process and they would have intended. Moreover, some lenders may well, for reputational reasons, have not wished to involve themselves in such transactions at all; and at least should have been given the chance to decide"*.

17. The schemes placed lender clients at risk of detriment on the basis that they were not provided with full information as to the nature of the title being granted in cases where this was different to the title being sold, or the transfer of funds through or rights to third parties, or notified that the transactions were not conventional.

18. The schemes place purchaser clients at risk of detriment and uncertainty, including:
    18.1. The risk of successful challenge by HMRC resulting in penalties, interest and/or additional costs to the purchaser;
    18.2. The risk that the purchaser gains a complex title which requires rectification or which reduces the potential for conventional re-mortgage or re-sale;
    18.3. In relation to the L scheme, the risk that the option holder (Roserita BVI) Limited was dissolved.

19. At the relevant times both Respondents should have been aware of the relevant HMRC notice (published in 2010) and SRA Warning Notice (published in 2012), and the risks entailed in clients utilising the various SDLT schemes. The Firm was on the Panel of solicitors for Cornerstone and should therefore have ensured that appropriate management and supervision of the work, the solicitors responsible for the work and the associated risks were in place. Both Respondents should have ensured that adequate advice was given to both the lender and the purchaser client to the effect that:

19.1. The purchaser client may have a more complex title than would ordinarily be the case which might affect the ease of an onward sale;

19.2. The risk that the purchaser client may have to pay SDLT in any event if the scheme was later challenged by HMRC;

19.3. The associated risk that fees for using the scheme may be wasted if there was a challenge from HMRC.

The schemes

20. In all of these matters, the firm acted for buyers of property. This is a simple transaction; the vendor sells the property to the buyer. Instead, using the SDLT schemes, the transactions became complex, as follows. The schemes are:

20.1. unlimited company scheme (the U scheme);

20.2. the Brawn scheme (the B scheme);

20.3. the Lazarus scheme (the L scheme);

20.4. the Serenity scheme (the L scheme).

21. Sterling promoted the U scheme. Cornerstone promoted the B scheme, the L scheme, and the S scheme.

22. The U scheme was that the buyers, instead of buying a property, set up an unlimited company. The buyers used the purchase money to buy shares in the unlimited company. The unlimited company bought the property, and dissolved itself immediately, with its assets going to its shareholders – namely the buyers.

23. The B scheme was that a company based in Guernsey bought the property. The buyers used the purchase money to buy a 999 year lease from the Guernsey company.

24. The L scheme was that the buyers bought the property, and sold, for £1, an option to buy the property from them for full market value in 25 years' time, to a British Virgin Islands company. However the option was to remain unregistered.

25. The S scheme (which replaced the L scheme) was that the buyers bought the property, and then entered into a subsale contract (described as a bond) with a British Virgin Islands company to buy the property, for a price of 101% of the property purchase price. However,

the parties would delay completion for 25 years. This was described as a "bond" which the First Respondent considered to be akin to a promissory note.

26. The Firm was on the Panel of solicitors for Cornerstone, the promoters of the B, L, and S schemes. The Firm facilitated four separate SDLT schemes for purchasers as conveyancing clients between 2010 and 2014 and the First Respondent acted on behalf of the purchaser in the majority of these transactions (and the mortgage lender where involved):
    - U scheme (five transactions, all promoted by Sterling[1])
    - B scheme (seven transactions, all promoted by Cornerstone)
    - L scheme (56 transactions, majority promoted by Cornerstone)
    - S scheme (19 transactions, promoted by Cornerstone)

27. In brief, the schemes all involved a second transaction. A normal conveyancing transaction involves a vendor selling to the buyer. In the schemes, the buyer either bought the property from someone who was not the vendor, or provided an interest in the property to a third party.

28. Potential buyers of property approached Cornerstone with the intention of participating in these schemes. Cornerstone referred some of these buyers to the Firm. The First Respondent agreed that "*the end client would not have been using us in 90% of the cases, unless we were doing the SDLT planning*". The Firm charged additional fees for implementing the schemes.

29. In both the U scheme and the B scheme, the Firm received money – usually from the lender client – that in a conventional conveyancing transaction the Firm would have paid directly to the vendor. Instead of doing this, the Firm passed the money to a third party. The third party then bought the property from the vendor. The Respondents failed to tell the lender that the lender's money was not going to the seller, but to a third party. This was in breach of the requirement set out in The Council of Mortgage Lenders Handbook part 1 rule 5.1.2 under which the Respondents had an obligation to inform the lender client of any information material to the transaction.

30. In the U scheme, the Firm acted for the ultimate buyer of the property, and separate lawyers acted for the unlimited company, which bought the property from the vendor.

[1] In relation to which it is accepted the First Respondent did not have conduct of relevant transactions.

31. The L and the S schemes did not require the actual movement of funds (beyond the buyer paying the vendor) as the "sub-sale" (the option or bond) was postponed for a specified period (to coincide with the mortgage term of, typically, a period of twenty-five years).

32. In respect of the U and B Schemes, the funds provided by the lender client were transferred to a third party unlimited company (the sub-sale), the Respondents should have told their lender client, and asked for the lender client's consent, before using the lender's advance to fund the sub-sale[2]. This is because the terms of the contract between the Firm and the lender client included a condition that the Firm should tell the lender client of any information that is material to the sale (clause 5.1.2 of the standard conditions of lending, which formed part of the contract).

33. The Firm and the First Respondent confirmed that neither Respondent had told the lender, or asked for the lender's consent, in any of the transactions. This is in breach of the guidance provided by The Council of Mortgage Lenders Handbook part 1 rule 5.1.2.

34. All the conveyancing transactions undertaken by the Firm that featured the use of a SDLT avoidance scheme involved a second transaction. If the second transaction was not postponed, i.e. under the U and B schemes, then it was a requirement that it be completed simultaneously with the initial conveyance. It was the use of the second transaction that gave rise to the purported tax advantage (pursuant to either s.45 or s.52 Finance Act 2003).

35. The Respondents required all of their clients to confirm that they had sufficient funds to meet the full SDLT liability prior to completion. Once the Firm had facilitated the scheme, registration was complete and it deducted the associated costs, it returned the balance of funds to the client.

36. The Firm compiled a schedule of all the transactions that featured a scheme and a mortgage. The SDLT schemes were provided by Sterling and Cornerstone.

[2] SRA Accounts Rules 2011, rule 29.1l Solicitors' Accounts Rules 1998, rule 32

Knowledge of Warning Notices

37. During the course of the interview which took place on 29 January 2018, the First Respondent stated that she was familiar with the SRA Warning Notice regarding SDLT schemes.

38. The Firm, as a Panel Member, and involved in tax avoidance schemes, should have been aware of the Warning Notices and the Firm did have such knowledge at the relevant times.

39. The SRA issued warning notices in August 2010 and on 16 February 2012. HMRC also published similar information giving guidance to the profession. Both the First Respondent and the Firm continued to facilitate SDLT schemes as previously without giving additional information or advice as to attendant risks to lender or purchaser clients until May 2014.

Number of transactions undertaken by the Respondents

The Firm

40. At the date of the investigation, the Firm had undertaken 113 conveyancing transactions for clients who had participated in SDLT schemes. Of these, 85 involved lender-clients.

The First Respondent

41. The First Respondent signed at least 46 Certificates of Titles.

Value of potential tax revenue

42. Approximately £3,096,085.00 worth of revenue (an average of over £27,000 per transaction) was potentially lost to the public purse as a result of this activity. HMRC maintained at the date of the FIO report that none of the schemes referred to in section F of the FIO report provided any client with a tax advantage and had raised challenges in respect of 51 client matters.

Allegation 1 (First Respondent) and Allegation 6 (Second Respondent) – Failure to provide adequate advice to purchaser clients

Nature of the advice which should have been given

43. The incorporation of SDLT schemes within a conventional conveyancing transaction required the creation of an unlimited company as in the U scheme. This scheme required the use of a sub-sale that was intended to provide the client with a tax advantage. Following the initial purchase, the sub-sale (at market price) was completed simultaneously to a SPV, previously incorporated by the clients. The SPV disposed of the property *in specie* on the date of the simultaneous completion of the initial purchase and sub sale. Alternatively, the schemes used third-party controlled companies or trusts (as in the other schemes).

44. The transactions involved complicated transfers of funds which required purchaser clients to understand and execute a variety of documents.

45. The Respondents should have advised purchaser clients of the following (where appropriate):
    a) the resulting complex title, with the purchaser (under the B scheme) obtaining a leasehold rather than the intended freehold title;
    b) that the complex title may be less attractive to a potential purchaser on a re-mortgage (which may incur additional costs and require payment of SDLT);
    c) that (in circumstances where a leasehold title would be obtained) a leasehold title has clear differences to and imposes additional obligations to a freehold title and includes a termination clause;
    c) that the use of the schemes carried a high level of risk;
    d) whether the schemes could be challenged by HMRC, the approach of HMRC and the consequences of an HMRC enquiry;
    e) Sterling's insurance policy's suitability.

46. With regard to the B scheme, the clients had intended to purchase a freehold title yet obtained a leasehold interest and its restrictions. The B, L and S schemes resulted in the client obtaining a complex title that was potentially unattractive to a potential purchaser on a sale. To resolve the position would be potentially costly and may result in SDLT becoming payable. All schemes carried a high level of risk and the Respondents should have explained it to the Respondents' clients in writing but did not.

47. The types of risk associated with the schemes are well within the remit and expertise of the First Respondent and the Firm who were experienced in and familiar with the schemes, and where the Firm was included in the Panel of solicitors and regularly received referrals under the various schemes.

48. Even if advice as to the legal and other risks was outside the scope of the retainer, as set out in *Chan*, the Respondents still had a duty to advise as to obvious risks which came or ought to have come to their attention whilst carrying out the retainer.

49. The legal implications of the SDLT schemes would also extend to whether the schemes could be challenged by HMRC, but the Respondents did not warn the clients of HMRC's approach to the schemes as the enquiries increased. However, this did not alter the approach taken to the schemes or the advice given to clients.

Undue Reliance on Counsel's Advice

50. With all of the schemes, the Respondents were provided with a copy of counsel's advice. Undue reliance was placed upon counsel's advice on SDLT schemes in circumstances where:
    a) the Respondents did not see the instructions to counsel and any documentation in support;
    b) Counsel owed no duty to the Respondents as they were not involved in the instructions;
    c) The opinions stressed caution referring to the schemes structure as aggressive with no guarantee of success;
    d) the advice expressly excluded liability for anyone relying on it;
    e) The opinions were all theoretical and do not offer any practical advice on the application of the schemes in day to day residential conveyancing, particularly when they involved the use of mortgages.

51. The Respondents did not query the fact that the advice did not refer to the involvement or impact on High Street mortgages or to the Respondents' duties to the lender client.

52. The advice provided by Sterling was limited and incorrect. The Respondents did not advise the clients that the promoters were unlikely to provide impartial advice or critical analysis of the schemes they were promoting.

53. Neither the Firm nor the First Respondent obtained independent legal advice as to the viability of the schemes.

Solicitor's duty to advise – common law principles

68. The basic principle is that in the ordinary way a solicitor is not obliged to travel outside his instructions and make investigations which are not expressly or impliedly requested by the client: Pickersgill v Riley [2004] UKPC 14. On the other hand, there is generally a duty to point out any hazards of the kind which should be obvious to the solicitor but which the client, as a layman, may not appreciate: Boyce v Rendells (1983) EG 268 at 272, col.2. A solicitor carrying out a transaction for an inexperienced client is not justified in expressing no opinion when it is plain that the client is rushing into an unwise, not to say disastrous, adventure: Neushul v Mellish Karkavy (1967) 111 SJ 399, per Danckwerts LJ. There is no distinction between legal consequences and financial implications in this case: in this case the significance of the legal consequences lie in the financial implications (compare County Personnel Ltd v Alan R Pulver & Co [1987] 1 WLR 916 per Bingham LJ at 924A). The risks identified in relation to these schemes were precisely the types of hazards about which the Respondents ought to have advised their clients, applying these principles.

69. The High Court built on these principles in Chan to set out an express duty to advise on these matters in relation to SDLT avoidance.

70. As part of his ordinary duty to explain legal documents, a solicitor should in particular explain any unusual provisions: Sonardyne Ltd v Firth & Co [1997] EGCS 84 QBD. The instant cases were clearly very different from ordinary property transactions in the UK. The Respondents ought to have drawn the purchaser and lender clients' attention to these differences. Doing so would have given them a more informed view as to the risks they were taking on.

Specific Examples

U Scheme: Mr and Mrs A

71. In relation to clients Mr A and Mrs A who proceeded under the U scheme, the advice the Firm gave can be summarised as being that the scheme:
    71.1. was typical for the value of the property being purchased (£1.2 million);

71.2. had counsel's approval and was a legitimate scheme and was therefore accepted by HMRC;

71.3. that HMRC only had nine months and 30 days in which to challenge the scheme, and that

71.4. if HMRC successfully challenged the scheme, the insurance policy would cover the cost of the scheme and the purchaser would only need to pay the normal amount of SDLT with no penalties imposed.

72. The Firm's letter of instruction dated 2 November 2011 stated under the sub-heading "*Advice"* the following: "We [the Firm] cannot guarantee that this scheme will be successful"

B Scheme: Mr and Mrs G

73. In relation to clients Mr and Mrs G whose transaction proceeded under the B scheme, the clients instructed the Respondents in the sale of the clients' home and the purchase of a new property.

74. By letter dated 7 October 2010 the Firm provided advice to the purchaser clients that included "*You should be aware that the Inland Revenue [sic] can review the transaction at a later date and you should refer to Cornerstone Tax Advisors for full advice and details."*

75. On 25 October 2010, the Firm wrote to the lender client. The Firm outlined that the property being purchased was leasehold, that there was a sale and lease back arrangement involving a third party, and that on completion the freehold would be owned by a protected cell company based in Guernsey. There was no reference to the property being sold being a freehold title to the Guernsey company, that completion of the freehold purchase having to be completed before the leasehold could be created, or it being a transaction being structured to avoid paying SDLT.

76. On 4 November 2010 the Firm was emailed by Cornerstone in relation to the implementation of the scheme. The email stated, inter *alia "Funds received by you from the client/lending institution are for payment of the client's premium on the Lease as a Tenant."* and referred to obtaining instructions from solicitors for the Company (Vale Property Finance PCC Limited) to "…*hold the completion funds to their order and discharge them as they direct…and ensure that appropriate ledger entries are made for all three parties involved in the transaction*".

L scheme: Mr and Mrs W

77. In relation to Mr and Mrs W whose transaction proceeded under the L scheme the clients instructed the Respondents. On 9 December 2010 a client information letter specific to the B scheme was provided by the First Respondent. By the time of completion, the scheme in use had changed to the L scheme. The lender client also instructed the Respondents. There is no evidence that Respondents provided any advice to the lender client in relation to the use of the scheme.

78. There was no advice as to the effect of the option – especially given that, as an unregistered option, the option was effectively null and void, and therefore only existed as a means to avoid SDLT.

S scheme: Mr S and Ms X

79. In relation to Mr S and Ms X, whose purchase proceeded under the S scheme, the clients instructed the Respondents in early November 2012. On 8 November 2012 the First Respondent provided a client care letter enclosing a letter of advice explaining the S scheme which included a warning, inter alia "*if you are in any way uncomfortable with the thought that the off shore company will buy your home for full market value in the future then this form of tax mitigation is not for you…"*

80. On 8 January 2013 Cornerstone emailed the client, copied to the First Respondent enclosing details of the scheme, an engagement letter, details of the planning and an insurance policy "*should the planning not be successful*". The purchaser client asked the First Respondent whether the documentation received was "OK". The First Respondent replied stating *"I cannot advise you on the tax planning element beyond that set out in my letter of advice dated 08.11.2012."*

81. There is no evidence that the Respondents provided any advice to the lender client as to the future sub-sale.

82. There was no advice as to the effect of the future sub-sale – especially given that, as an unregistered document, it was effectively null and void, and therefore only existed as a means to avoid SDLT.

Insurance Protection:

83. In respect of Sterling insurance "protection" the Respondents did not offer any advice to the client as to the insurance policies' suitability or whether they were fit for purpose. The case of Mr and Mrs A illustrates the inadequacy of the policy offered by Sterling. When Inventive Tax Strategies, of which Sterling was a subsidiary, went into administration on 24 October 2013 the administrators stated the following in respect of the insurance policy:

> *"The Companies are the policy holders and should any insurance monies be received in accordance with insolvency legislation which the administrators are bound to adhere to, they will be paid to the Companies and consequently in to the general pool of funds for eventual distribution to unsecured creditors. Please note that any insurance repayments cannot be paid directly to individual clients".*

84. Mr and Mrs A held a policy brokered by Equity and General Insurance which ran for a period of 9 months and 30 days from the date that the individual transaction was completed. There was no evidence that the Respondents had provided advice in respect of the limitation of the policy which, it transpired, did not apply to them but to Sterling Tax Strategies.

<u>First Respondent: failure to provide adequate advice</u>

85. The First Respondent failed to provide adequate advice to clients regarding the legal consequences of incorporating the schemes including the information and advice set out above.

86. The First Respondent was or should have been aware of the legal consequences of incorporating such schemes, and should have ensured that adequate advice was provided.

87. The First Respondent was also aware that the Firm did not provide such advice and therefore should have ensured that she did so. The solicitor is the most appropriate if not the only professional qualified to provide advice as to the legal risk and the First Respondent should have ensured that proper advice was given.

88. The First Respondent placed undue reliance on counsel's advice notwithstanding clear limitations to that advice and that the opinions stressed caution referring to the schemes'

structure as aggressive with no guarantee of success. The First Respondent failed to ensure that clients were made aware of the risks arising from this.

89. Having become aware of the HMRC challenges to the schemes, the First Respondent failed to provide updated or adequate advice to purchaser clients.

90. Subsequently, the First Respondent wrote the following statement to the client which sought to distance them from the need to provide appropriate advice in response to SDLT schemes and the response of HMRC as it unfolded and was contradictory:

"I did not advise on the SDLT planning, [I] simply deployed the advice given to you by the tax advisors…However, as your legal advisors we are obliged to remind you yet again that there is the potential that the form of tax planning you have undertaken may not succeed and, as such, you would be liable for all SDLT plus interest and potential penalties [emphasis added]*".*

91. In circumstances where the First Respondent acted for the purchaser client, the duty to provide clear advice was paramount and yet she failed to do this in a timely, adequate manner or at all. The First Respondent sought not to give advice as to the planning around the use of SDLT schemes which were inherently risky.

The Firm: caused or allowed a failure to provide adequate advice

92. The Firm, whilst acting as Panel member for tax avoidance schemes as set out above, failed to ensure that adequate advice was provided, and thereby caused or allowed the failure to provide adequate advice on the risks of entering into SDLT avoidance schemes.

93. Further, the Firm sought to limit advice on this part of the transaction. In particular, the Firm's client care letter stated; "*When we have further details of the tax planning that you are being advised to undertake then we will write to you with any further advice on the legal implications of such planning".*

94. The Firm did not provide specific detailed advice regarding the legal consequences of incorporating the schemes and did not ensure that the First Respondent did so.

95. The Firm was provided with and placed undue reliance on counsel's advice notwithstanding clear limitations to that advice and that the opinions stressed caution

referring to the schemes structure as aggressive with no guarantee of success. The Firm failed to obtain independent advice and failed to ensure that clients were made aware of the risks arising from this and from the schemes.

96. Having become aware of the HMRC challenge to the schemes, the Firm failed to provide updated or adequate advice to purchaser clients, despite the fact that they were listed as their agents. The Firm stated that it would: *"write to you with any further advice on the legal implications…"* but did not do so. The Firm failed to ensure that steps were taken to provide appropriate advice to purchaser clients and therefore caused or allowed the failure to provide advice on the risks of the SDLT avoidance schemes.

Allegation 2 (First Respondent) and Allegation 7 (Second Respondent): improperly sought to limit liability

Limitation or exclusion of liability and indemnity requirements

97. The Limitation Act 1980 provides that claims for negligence or breach of contract must be brought within 6 years of the act or omission or (if later) 3 years of becoming aware of the act or omission.

98. The SRA Indemnity Insurance Rules 2011, clause 1.3 (c) and (d) includes a requirement that the insured must include each principal, former principal, each employee and former employee within the cover.

99. Rule 2.7 of the SRA Code of Conduct 2007 states that *'…you must not exclude or attempt to exclude by contract all liability to your clients. However, you may limit your liability, provided that such limitation: (a) is not below the minimum level of cover required by the Solicitors' Indemnity Insurance Rules for a policy of qualifying insurance…* '

100. Outcome 1.8 of the SRA Code of Conduct 2011 states that "*clients have the benefit of your compulsory professional indemnity insurance and you do not exclude or attempt to exclude liability below the minimum level of cover required by the SRA Indemnity Insurance Rules*;". In the Firm's client care letters prepared by and on behalf of the Firm and signed by the First Respondent the Respondents sought to limit claims from purchaser clients by requiring them to sign an engagement letter in which they agreed not to bring a claim against any staff or members of the Firm. It is submitted that no choice was provided

to clients in this respect, although in fact it was not actually possible to limit a claim in law in the way the Respondents purported to.

101. In approximately ten client matters client care letters prepared on behalf of the Firm and signed by the First Respondent also sought to limit the time in which it was possible to make a claim against the Respondents to: *"Three years from the date of the alleged act or omission or twelve months from the date you became aware of it as appropriate".* It was not proper to seek to limit a claim for damages to half of the length of the Limitation Act 1980 in the way that the Respondents attempted to do.

Allegations 3.1 and 3.2 (First Respondent) and Allegations 8.1 and 8.2: Failure to inform lender clients

Transactions involving lenders and SDLT schemes

102. The Firm undertook 119 conveyancing transactions that involved SDLT schemes. Of the 119 transactions, 85 of the purchases required the use of a mortgage from a lender for whom the Firm also acted. The First Respondent acted on behalf of purchaser and lender clients on the majority of these transactions.

Advice and/or notification which should have been given to lender clients

103. Neither Respondent provided any advice or notification to the lender client in relation to the schemes. Irrespective of whether they obtained a charge on the title, the intended use of the scheme as part of the proposed conveyance in relation to which they were instructed should have been made clear to the lender client by the Respondents. Paragraph 5.1.2 of the Mortgage Lender Handbook, under which the lender clients instructed the Respondents, makes it clear that the Respondents should have told the lender about any factor which "*you reasonably expect us to consider important".*

104. As stated in *SRA v Chan and Ali* [2015] EWHC 2659 (Admin), the use of an SDLT avoidance scheme is something of which the lender should have been aware:

the point is that they should have had the opportunity to decide whether to continue to lend when new entities, such as companies, were being inserted into the purchasing process and when the funds being lent were not always being held to the order of the lenders nor were they being applied strictly as they should have been in the course of the purchasing

process and as they would have intended. Moreover, some lenders may well, for reputational reasons, have not wished to involve themselves in such transactions at all: and at the least should have been given the chance to decide"

105. The Respondents should have made the lender client aware of material information, and that in the context of the transactions under the SDLT schemes, this should have included:

(1) Any relevant matters which involved their indirect (and unknowing) participation in SDLT avoidance schemes;
(2) Any relevant matters relating to SDLT avoidance schemes which may not have complied with their lending policies and/or instructions;
(3) The use to which their advance monies were to be put;
(4) That in some cases (for example transactions utilising the B scheme) the transaction involved the granting of a leasehold interest, and that the freeholder was an offshore Company;
(5) That they were exposed to loss of mortgage funds owing to the risky and aggressive nature of the SDLT schemes.

106. The SRA Warning Notice issued on 16 February 2012 stated, inter alia, that robust consideration needs to be given to whether the scheme could prejudice the interests of the lender

107. The mortgage's incorporation within the schemes resulted in the Accounts rules and CML Handbook breaches, including failure to report material information to the lender clients. These breaches alone should have prompted a disclosure to the lender. Any financial transaction which may have caused a lender client to come to the adverse attention of HMRC, should have been the subject of careful and detailed advice. That the lenders were not even notified of the SDLT schemes was a serious omission in terms of culpability.

108. As to allegations 3.2 and 8.2, in respect of the U scheme, if the funds used to complete the sub-sale contained a mortgage advance, then the lender's consent would be required before the advance could be used to fund the sub-sale. The Firm confirmed that the lender's consent to use the funds for the purposes of tax planning was not obtained for any of the transactions. This was a breach of SAR 2011, Rule 29.

Allegation 4 (First Respondent) and 9 (Second Respondent): Conflict of interest

Nature of Conflict or risk of conflict arising from transactions

109. The incorporation of an SDLT avoidance scheme within a conventional residential conveyance renders the conveyance no longer conventional.

First Respondent

110. In the circumstances outlined above, the First Respondent failed to provide information to lender clients and continued to act on behalf of the purchaser and lender clients in circumstances giving rise to a conflict of interest or the significant risk of such conflict.

The Firm

111. In the circumstances outlined above, the Firm was aware that it and the First Respondent acted in circumstances giving rise to a conflict of interest or a significant risk of such a conflict. The Firm failed to ensure that such information was provided to the lender clients, and caused or allowed the Firm and/or the First Respondent to continue to act on behalf of the purchaser and lender clients in circumstances giving rise to a conflict of interest or the significant risk of such conflict.

Allegations 5 (First Respondent) and Allegations 10 and 11 (Second Respondent): Accounts Rule Breaches

112. As to allegations 11 between 2010 and 6 October 2011 the Firm failed to comply with any or all of Rule 22 and 32 (1), (2) and 32 (VIII) of the Solicitors Accounts Rules 1998 in that, when undertaking the U scheme, the Firm did not properly record the sub-sale, instead the entire transaction was recorded on a single ledger (that is, the sale together with the sub-sale).

113. The operation of the SDLT schemes between June 2010 and May 2014 gave rise to breaches of rules 20 and 29 of the SAR 2011, and rules 22 and 23 of the SAR 1998, in that:

U and B schemes: 5.1, , 10, 11.1, 11.2

114. In respect of the U and B Schemes the lender's consent was required before the mortgage advance. A failure to obtain this was a breach of SAR 2011, Rule 29.

115. When undertaking the U scheme, the Firm did not properly record the sub-sale as the entire transaction was recorded on a single ledger: that is, the sale together with the sub-sale. The sub-sale was to a separate entity which was unconnected to the client purchaser (Finance Act 2003, s.75A). This meant that the sub-sale transaction should have had its own ledger (SAR 2011, Rule 29.1 SAR 1998, rule 32) but it did not.

116. In respect of the B scheme completion funds were paid to solicitors acting for the company before being paid to the vendors solicitors in six transactions. All six transfers totalling £6,380,000.00 were sent to solicitors acting for the company and returned on the same day.

L scheme: 5.2. 5.3, 11.3, 11.4

117. In respect of the L and S schemes, the sub-sale should have been recorded on a separate ledger but was not. Failure to do so was a breach of SAR 2011 R29.1.

118. A review of the Firm's banking records revealed that whilst there was no physical movement of funds, a Bond was issued with a face value to the original purchase by the Company. The Firm recorded the transaction on one client ledger but the sub-sale should have been recorded on a separate ledger as a separate transaction. The credits to a separate ledger should have included any mortgage funds.

First Respondent:

119. The First Respondent, in respect of those transactions where she acted for purchaser clients, should have ensured that the transactions were properly recorded in compliance with the Solicitors Accounts Rules.

The Firm

120. The Firm, in respect of those transactions where it acted for purchaser clients, should have ensured that the appropriate accounting systems and practices were in place

and enforced in order that the transactions were properly recorded in compliance with the Solicitors Accounts Rules.

Admissions

121. The Respondents make admissions as to each of the allegations in the Applicant's Rule 12 statement.

Mitigation

122. The following mitigation, which is not agreed by the SRA, is put forward by the Respondents:

123. Neither of the Respondents intended to breach any regulatory rule or principle, and there is no suggestion that either of them acted in any way without integrity. Neither Respondent breached any position of trust.

124. The First Respondent intended to serve her clients to the best of her abilities and is mortified the fact that her Regulator believes that she has failed to do so. At the time she genuinely believed that she was acting appropriately and properly, in particular as her conduct reflected advice from both regulatory and tax Counsel. The First Respondent can see now that a different approach should have been taken in relation to the detail of advice given to her clients in respect of the schemes, disclosures to and the obtaining of informed consent from her lender clients.

125. The First Respondent wishes to emphasise that none of her purchaser clients has made any complaint against her. In addition, so far as she is aware, none of her lender clients have suffered a loss as a result of her conduct. The First Respondent believes that this speaks to the fact that on a fair assessment of her conduct and the efforts she made at the time (so she believed), she provided a good overall service to her clients.

126. The Second Respondent recognises and does not seek to shy away from the shortcomings that occurred in these transactions. However, the Second Respondent wishes to emphasise that such shortcomings were inadvertent and that the fee earners involved, particularly the First Respondent, believed themselves to be acting appropriately and properly at all times.

127. In respect of the contractual time bar which was present in around 10 client care letters, both Respondents wish to make clear that this was completely inadvertent and occurred by mistake as the Respondents inadvertently used a precedent client care letter from a previous employer for a limited period of time in a small number of cases. Such clauses did not form part of the Second Respondent's standard client care letters. The inclusion of such clauses was wholly inadvertent and not due to a conscious decision by the Respondents to try to exclude liability in some improper way. As to the limitation upon individuals within the Second Respondent being sued as Defendants, the Respondents' understanding is that such a limitation is not unusual in client care letters across the profession. In any event, the clauses have not been relied upon by the Respondents.

128. The First Respondent did not seek to make any personal financial gain from the matters complained of and the fees generated were a limited amount of the Second Respondent's overall turnover in the relevant period.

129. Both Respondents have co-operated fully, openly and promptly with the SRA in every respect and at every stage of the investigation into these matters.

130. Both Respondents have demonstrated genuine insight and there is no risk whatsoever of the Respondents committing similar breaches in the future. Indeed the Respondents had ceased to have any involvement in the transactions long before the SRA commenced its investigations.

Penalties proposed

131. The First Respondent agrees:

131.1. To pay a financial penalty in the sum of £7,000 (reduced to take into account her personal financial means)

131.2. To pay costs to the SRA agreed in the sum of £15,000.

132. The Second Respondent agrees:

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

132.2. To pay costs to the SRA agreed in the sum of £15,000.

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

133. The sanctions outlined above are considered to be in accordance with the Tribunal's sanctioning guidance taking into account the guidance set out in Fuglers and Others v Solicitors Regulation Authority [2014] EWHC 179 (as per Popplewell J) and as set out in the guidance at paragraph 8.

134. Reference is made to the points of mitigation raised by the Respondents above.

135. The misconduct giving rise to the allegations is moderately serious.

136. This assessment takes into account that the level of each Respondent's culpability in respect of the allegations above is moderate due to:

First Respondent

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

136.2. The Respondent's level of experience at the time of the relevant conduct, having four years of post-qualification experience at the commencement of the misconduct. The First Respondent should have been aware of the SRA Warning Notice published in 2010.

136.3. The conduct cannot properly be described as spontaneous and continued for a period of time of 4 years.

136.4. The conduct led to the generation of fees for the Firm and billing for the First Respondent in the region of £90,000;

136.5. It is recognised that the First Respondent's misconduct did not involve dishonesty, lack of integrity or ulterior motivation.

Second Respondent

136.6. The 2nd Respondent having direct control and responsibility for the circumstances giving rise to the conduct.

136.7. The Firm was appointed to the Panel of the Stamp Duty Land Tax scheme provider and was therefore well practiced and held expertise in the relevant area. The First Respondent should have been aware of the SRA Warning Notice published in 2010.

136.8. The conduct cannot properly be described as spontaneous and continued for a period of time.

136.9. It is recognised that the Second Respondent's misconduct did not involve dishonesty, lack of integrity or ulterior motivation.

137. As to the harm caused, the admitted misconduct by both Respondents led to potential risk to clients in that they were not informed about the true/complex nature of the transactions and the potential risks arising. The witness statement of Mr A is also referred to as an example of evidence of harm/risk of harm to clients, at least in relation to the stress and uncertainty of challenge to the SDLT scheme and attendant demands requiring payment of interest. The lack of information provided to lender clients and the impact on the lender's ability to make an informed decision would foreseeably undermine the trust in the legal profession. There was therefore foreseeability of harm arising from the misconduct.

138. As to the principal factors which aggravate the seriousness of the misconduct, include:

138.1. The absence of self-reporting by either Respondent;

138.2. The period of time for which the conduct continued.

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

139.1. Neither Respondent has relevant regulatory history and both can be said to be of good character;

139.2. Open admissions have been made by the Respondents in relation to each allegation;

139.3. The Respondents have engaged with the SRA and shown genuine insight, having ceased the practice prior to being notified of the concerns of the SRA;

140. The First Respondent has provided evidence as to her personal financial means and the parties have agreed that it is appropriate to take these into account when reaching agreement as to sanction and in relation to costs.

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

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Mark Rogers, Partner, Capsticks LLP

On behalf of the Solicitors Regulation Authority

Date: 13th October 2021

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On behalf of the Solicitors Regulation Authority

Date: October 2021

Caroline Jones, First Respondent
Date: 13TH October 2021

~~[add name]~~ Lindsey Kidd
On behalf of Hillyer Mckeown LLP, Second Respondent
Date: 13 October 2021