SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12281-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

KHURRAM MIAN Respondent

Before:

Mr J P Davies (in the chair)
Mrs C Evans
Mr R Slack

Date of Hearing:
24-27 May 2022

Appearances

Benjamin Tankel, barrister of 39 Essex Chambers, instructed by Capsticks LLP, for the Applicant.

Jonathan Goodwin, solicitor advocate of Jonathan Goodwin Solicitor Advocate Ltd for the Respondent.

JUDGMENT

Allegation

1. The allegation against Mr Mian was that, whilst in practice as a solicitor at HKH Kenwright & Cox Solicitors between 17 February 2015 and 12 June 2017, he provided banking facilities through a client account, in that he allowed payments into, and transfers and withdrawals from, a client account that were not in respect of instructions relating to an underlying transaction or to a service forming part of his normal regulated activities This was in breach of:

1.1 14.5 of the Solicitors Accounts Rules 2011 ("SARs"), and

1.2 Principles 6 and 8 of the SRA Principles 2011.

Documents

2. The Tribunal considered all of the documents in the case which were contained in an agreed electronic bundle.

Executive Summary

3. The Applicant alleged that Mr Mian had been using the firm's client account as a banking facility in breach of Rule 14.5. The Tribunal examined 38 transactions referred to by the Applicant and found two of those transactions did not relate to an underlying legal transaction and as such were in breach of Rule 14.5. It did not find a breach in relation to the remaining 36 transactions.

4. The Tribunal found Mr Mian to have breached Principle 8 but not Principle 6 and fined him £2,500 and ordered him to pay £10,000 in costs.

To view the Tribunal's Findings on Allegation 1 – Click Here
To view the Tribunal's decision on Sanction – Click Here

Factual Background

5. Mr Mian was admitted to the Roll in 1997. At the relevant time, he was a partner of HKH Kenwright & Cox Solicitors and was Compliance Officer for Legal Practice ("COLP"). The Firm subsequently closed but Mr Mian continued to practice as part of an ABS.

6. This matter related to Mr Mian's conduct in relation to the purchase and development of a large property in Scotland ("Property A"), and sums transferred into and out of client account.

7. The SRA conducted an investigation, which resulted in a Forensic Investigation Report ("FIR") dated 30 September 2019 being prepared by the Forensic Investigation Officer ("the FIO").

The Property A Development

8. From around 2010, Mr Mian acted on various matters relating to the redevelopment of Property A as a hotel and golf course. The project was undertaken by an interrelated group of corporate entities. Mr Mian acted for a range of these entities at various times, including KLL, a special purpose vehicle. The beneficial owner of KLL was the CJFT.: On 3 November 2014, Mr Mian sent a client care letter to KLL "to act for you generally in all your matters in the United Kingdom". This referred to KLL's matters on which it required legal advice and representation. Mr Mian was also, at this time, a director of KLL.

9. On 6 February 2015, the East Wing of Property A was separated from the main property title and transferred to KLL from then overall owner, MFL. The intention was for KLL to develop 52 hotel rooms or suites within the East Wing ("the East Wing project". KLL was therefore the "developer" and was the entity formally responsible for entering into a contract with the builder to carry out the development works, for paying for those works, and for selling individual units. KLL was a shell company. It was wholly beneficially owned and controlled by others. It did not have its own bank account and held no cash of its own.

Summary of funding arrangements for the East Wing project

10. The East Wing project was funded in three ways:

- Fractional sales
- Whole unit sales
- Loans

Fractional sales

11. The majority of funds came from "fractional" sales. "Fractional" investment was means of raising finance from non-traditional lenders by selling more affordable rights to "fractions" of the property to large numbers of ordinary investors. The fractional system in this case was a proprietary system designed by a company, FOC.

12. Each suite had its own title number, registered at the Scottish Land Registry. The ownership of each suite was transferred to a company limited by guarantee and registered as a UK company ("the suite company"). The company name corresponded to the suite number. For example, suite one was owned by "KLOneL". KLL was the founder member, and initially the sole owner, of each suite company. KLL then sold membership of the suite company to twelve other investors, retaining a share for KLL. In summary, therefore, each investor was purchasing from KLL 1/13th of the suite company, which owned the suite.

13. FOC prepared the contracts for the sale of the fractional units. An FOC subsidiary known as FAL administered the suite companies and BBW undertook the marketing of the suites. When a buyer/investor wished to enter into a contract with KLL, BBW also gathered anti-money laundering information.

Whole unit sales

14 In these cases, rather than the purchase being of a fraction of a company, investors purchased the registered property itself. As the sale involved a conveyance of registered land in Scotland under Scottish Law, the Firm appointed a Scottish firm known as "Firm A" to act as its agents in Scotland.

Loans

15. The project was also funded by loans from a wide variety of sources. These included some external sources, as well as intra-group loans from individuals and other related entities working on other projects. These too were paid into the Firm's client account.

The transactions

16. The Rule 12 statement contained a table which summarised the payments received and made through the client account between 17 February 2015 and 12 June 2017. Those transactions are set out below:

Transaction No:	Payer/payee	Money received (£)	Money paid out (£)
1	Buyers/investors	4,287,949.08	545,613.99
2	Firm A (whole unit sales)	755,726.68	N/A
3	RCL (builders)	411,349.02	3,693,790.00
4	BBW (sales agents)	N/A	1,411,691.37
5	Firm B (the ABS of which Mr Mian was director)	N/A	63,750.00
6	CJF Settlement	N/A	102,100.98
7	AMB (developer's agent)	N/A	94,363.10
8	CCC	N/A	26,904.79
9	Person C	97,000.00	N/A
10	Salaries	N/A	18,109.20
11	CL	N/A	236,413.30
12	MIL		299,000.00
13	MF	63,379.04	N/A
14	Salmon Fisheries (payment for fishing rights)	N/A	2,234.40
15	FB	N/A	9,100.00
16	Person G	250,000.00	N/A
17	HGP	N/A	2,200.00
18	Person D	N/A	3,600.00
19	GMXP	N/A	9,373.00
20	Company A (property investment advisers)	N/A	19,080.00
21	Company B	129,221.79	N/A

22	M2 (owners of remainder of the property and previous owners of the East Wing)	N/A	309,265.00
23	Costs	N/A	16,000.00
24	The VAT People	N/A	1,860.00
25	CC	N/A	4,775.51
26	Uavend	150,00.00	N/A
27	Audit fee	N/A	2,412.56

17. The Rule 12 statement also contained a table which summarised the inter-client ledger transfers. Those transactions are set out below:

Transaction No:	**Client**	**Matter**	**To KLL client account (£)**	**From KLL client account (£)**
28	GVL	Loan planning development from Person H	839,542.62	N/A
29	WGIL	Sale of Property B	574,837.50	
30	KLL	Client account	N/A	185,799.32
31	CJFT	Coast Investments loan	N/A	307,226.16
32	CJFT	Merligan loan to CJFT	N/A	65,000.00
33	MTwoL	Registration of former land owned by TEL	N/A	12,750.00
34	HKH SM	HKH SM	N/A	3,000.00
35	MTwoL	Purchase of East Wing from KLL	5,000.00	N/A
36	MTwoL	Purchase of Property A from TCL	5,000.00	N/A
37	MTwoL	Transfer of TSC assets to UTL	278,000.00	N/A
38	F Services Ltd	Purchase of Property C	N/A	300,000.00

Witnesses

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

should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:

19. Sara Houchen (FIO)

19.1 Ms Houchen confirmed that her witness statement and FI report were both true to the best of her knowledge and belief.

19.2 Ms Houchen confirmed that Mr Mian had been fully co-operative with her investigation, including in the production of all documents requested. She agreed with Mr Goodwin that providing advice on title amounted to legal work. Ms Houchen initially agreed that there was an underlying transaction, but did not accept that there was an underlying legal transaction. In response to a question from the Tribunal to clarify her evidence however, Ms Houchen did confirm that the fractional sales, whole unit sales and loans all represented an underlying legal transaction. This was somewhat complicated by a subsequent answer in which Ms Houchen appeared to take issue with the instruction of Firm A, arguing that KLL could have instructed Firm A directly, rather than instructing Mr Mian and him then having to instruct Firm A as agent. Ms Houchen also told the Tribunal that the only movements on client account that she would have expected to see were the settlement monies and the payment of fees.

19.3 Ms Houchen was unable to recall a number of details and so could not assist with many of Mr Goodwin's questions. This included being unable to recall whether or not she had seen various documents put to her in cross-examination by Mr Goodwin.

20. The Respondent

20.1 Mr Mian told the Tribunal that his witness statement was true to the best of his knowledge and belief.

20.2 Mr Mian told the Tribunal that there were some 'staged payments' which related to the sale of the whole unit. He explained that the development of East Wing was one development. Whether a whole unit or fractional sale was involved was irrelevant. Firm A, acting as agents had conducted the purchase done in Scotland in accordance with Scottish legislation. When Firm A had received the payment they sent those funds to Mr Mian's firm. His firm then remitted those funds to the company that was carrying out the servicing and development works in the East Wing.

20.3 Mr Mian told the Tribunal that he had authority to release those funds in that way. Once registration of titles had occurred, he was permitted to release funds to certain companies. Mr Mian told the Tribunal that the funds could not be released to KLL as it was specifically agreed that this would not happen. KLL was not a secure entity as its only asset was the East Wing, which was derelict and needed development.

20.4 Mr Mian told the Tribunal that he had undertaken legal work on all the transactions.

20.5 In cross-examination, Mr Mian was asked what advice he was providing to clients. Mr Mian told the Tribunal that he went through the contract and explained how it worked, what their obligations would be once they signed it and what they had to

provide. He had suggested some minor amendments, for example schedules of works in relation to the utilities.

20.6 Mr Mian confirmed that he had sought advice on VAT as that was outside his area of expertise

20.7 Mr Tankel took Mr Mian to the statement of RS from Firm A. Mr Tankel asked if, in light of the work being undertaken by Firm A, Mr Mian had simply populated a proforma with title numbers and names. Mr Mian denied that it was limited to this. He told the Tribunal that he checked the registration independently, having downloaded the Scottish register. This occurred for each of the suites.

20.8 In relation to the due diligence and anti-money laundering checks, Mr Mian confirmed that the documents had been compiled by BBW, who had a contractual obligation to check this. Mr Mian told the Tribunal that BBW had been required to adopt the firm's processes for undertaking this. He told the Tribunal that as solicitors the firm carried out more stringent checks and he maintained that this was part of the legal process.

20.9 In relation to the fractional payments, Mr Mian confirmed that no monies went to KLL. He told the Tribunal that the reason for this was that FOC would not allow it. Mr Mian agreed with Mr Tankel that this was possibly because FOC did not want to lose credibility if the scheme failed. He also told the Tribunal that FOC did not want the funds to leave the jurisdiction and KLL was registered in the British Virgin Islands. Mr Mian told the Tribunal that he did not envisage a situation arising in which he would need to account to KLL, as he had instructions to pay out the monies – all of which were related to the development. In the unlikely event that the situation had arisen then it would have been considered at that stage.

20.10 In relation to the loans, Mr Mian told the Tribunal that the purpose of all the loans was the development of the East Wing – the underlying legal transaction.

20.11 Mr Tankel asked Mr Mian what his role was in the requests for the drawdown of funds. Mr Mian explained that he would set up a meeting, go over the programme and reconcile the figures. He told the Tribunal that he was part of the decision-making process but that it was not his decision.

20.12 Mr Tankel asked Mr Mian if he was concerned that he was involved in a decision-making process as to who could be paid when it was coming from funds in the client account. Mr Mian replied that he was not concerned as he acted on instructions from his client and had safeguards in place. Mr Mian stated that he had to be satisfied that all the boxes had been ticked so that the funds could be paid out, but ultimately the client decided who got paid.

20.13 Mr Tankel took Mr Mian through number of specific payments made out of the client account, including the invoice for furniture. Mr Mian was asked why KLL could not buy the furniture for itself. He explained that furniture was part of the contractual terms of the sales of the whole and fractional units. It was part of the development of the East Wing. Mr Mian stated that he had been instructed to check that what was being purchased was consistent with what was in the contract.

20.14 Mr Mian confirmed that his position in relation to payments to the builders was similar.

20.15 In relation to the payment of £3,000 for the charitable golf day event, Mr Mian accepted that there was no underlying legal transaction to that.

20.16 Mr Tankel asked Mr Mian where the underlying transaction lay in relation to the payment of the wages of golf club staff. Mr Mian told the Tribunal that he had instructions from the client in relation to golf workers at the site, which was part of the underlying transaction. Mr Mian told the Tribunal that it was "not something we normally did", but it was related to development work on site.

20.17 Mr Mian told the Tribunal that he was fully up to date with all the guidance on Rule 14.5 and maintained that he had acted properly in respect of all the transactions in this matter.

Findings of Fact and Law

21. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Mian's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

22. **Allegation 1 - The allegation against the Mr Mian was that, whilst in practice as a solicitor at HKH Kenwright & Cox Solicitors between 17 February 2015 and 12 June 2017, he provided banking facilities through a client account, in that he allowed payments into, and transfers and withdrawals from, a client account that were not in respect of instructions relating to an underlying transaction or to a service forming part of his normal regulated activities This was in breach of:**

1.1 14.5 of the Solicitors Accounts Rules 2011 ("SARs"), and

1.2 Principles 6 and 8 of the SRA Principles 2011.

Applicant's Submissions

22.1 Mr Tankel took the Tribunal to the Guidance Notes to the Solicitors Accounts Rules, which stated:

> "Rule 14.5 reflects decisions of the Solicitors Disciplinary Tribunal that it is not a proper part of a solicitors' everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account ..... It should also be borne in mind that there are criminal sanctions against assisting money launderers".

22.2 Mr Tankel also relied on Patel v SRA [2012] EWHC 3373 (Admin), specifically [36] which he submitted was what the Mr Mian had been involved in:

> "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. What the appellant did here, as described in the client care letter, 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."

22.3 Mr Tankel referred to Fuglers v SRA (2014) EWHC 179 (Admin) in which it was said that providing banking facilities through a client account was objectionable per se. He also referred to the SRA Warning Notice, issued in 2014 and updated in 2018 and 2019, which stated:

> "You must therefore only receive funds into your client account where there is a proper connection between receipt of the funds and the legal services you are providing. It is not sufficient that there is simply an underlying transaction if you are not providing legal advice on the matter, or if the handling of money has no proper connection to that service ..... You need to think carefully about whether there is any justification for money to pass through your client account when it could be simply paid directly between the clients".

22.4 The 2014 Warning Notice had stated:

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

22.5 Mr Tankel submitted that there were important policy considerations in relation to Rule 14.5. If the firm had gone into administration, it would have been difficult to unpick all the inter-ledger transactions. Mr Tankel described Rule 14.5 as a safety net. Even where there were no red flags, as in this case, the client account should not be tainted with risks that the profession could not take on.

22.6 Mr Tankel accepted that this was a 'bona fide' scheme for which Mr Mian had done some legal work. There had been no red flags and insolvency did not arise, but Mr Tankel submitted that this went to mitigation and was not a defence to the allegation that he had breached Rule 14.5. Mr Tankel invited the Tribunal to look at each of the transactions and ascertain if they involved legal work as part of an underlying legal transaction. In some of the transactions, even if the money coming into the firm was within Rule 14.5, it should not have stayed there and should not have been paid out for various expenses.

22.7 Mr Tankel submitted that much of the work undertaken by Mr Mian had been administrative and generic in nature. It involved checking contracts, checking that the due diligence and AML checks had been done and repeating generic advice about the contracts. Mr Mian had acted as a go-between between BBW and FOC. He had also not done much of the legal work as it had been undertaken by Firm A, based in Scotland. Mr Tankel accepted that payment of Firm A's fees fell within the scope of Rule 14.5 as Firm A was acting as the firm's agents.

22.8 Mr Tankel told the Tribunal that Rule 14.5 was one of strict liability and submitted that Mr Mian's failure to comply represented a breach of Principles 6 and 8.

<u>Respondent's Submissions</u>

22.9 Mr Goodwin submitted that Mr Mian had provided consistent explanations throughout the investigation and in these proceedings. Mr Mian had fully co-operated with the SRA including complying with the Production Notice served on him. Mr Goodwin invited the Tribunal to read the letters of representation that had been sent to the SRA.

22.10 Mr Goodwin submitted that Mr Mian's evidence was compelling and should be accepted. He submitted that Mr Mian had been straightforward and honest and he invited the Tribunal to accept his oral and written evidence. Mr Goodwin also reminded the Tribunal of the unchallenged evidence of Mr Mian's two witnesses whose statements were agreed and who were not required to attend the hearing.

22.11 Mr Goodwin reminded the Tribunal of the burden and standard of proof and submitted that that the Applicant's case involved "inference, concern and speculation" but no evidence. In contrast, Mr Mian had provided evidence and supporting documentation.

22.12 Mr Goodwin told the Tribunal that the fractional sales were not, in themselves, problematic. He submitted that the Applicant was wrong to argue that carrying out due diligence and anti-money laundering checks was purely administrative. There was clear evidence that Mr Mian did significantly more legal work than simply having a retainer. The payments related to the receipt of instructions which related to the underlying transaction. Mr Goodwin noted that the wording of Rule 14.5 did not require an underlying <u>legal</u> transaction but accepted that in <u>Patel</u> this had been interpreted to require it.

22.13 Mr Goodwin reminded the Tribunal of the two limbs of the wording of Rule 14.5 and submitted that the first limb was satisfied and that this was sufficient, but that if the Tribunal was not with him on that argument, then the second limb was also satisfied.

The Tribunal's Findings

22.14 The Tribunal went back to the wording of Rule 14.5 which stated as follows:

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

22.15 Mr Goodwin had submitted that there was no requirement for the underlying transaction to be an underlying legal transaction. Rule 14.5 had been considered in detail in Patel. [18] included the following:

> "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. Thus the import of the first limb of the second sentence of r 14.5 is that movements on a client account must be in respect of instructions relating to an underlying transaction which is part of the accepted professional services of solicitors. In shorthand the instructions must relate to an underlying legal 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."

22.16 The Tribunal was satisfied that the reference to underlying transaction clearly meant an underlying legal transaction as defined in [18] of Patel.

22.17 The Tribunal moved on to consider whether the East Wing project represented an underlying legal transaction. In other words, was the work being undertaken by Mr Mian part of the accepted professional services of solicitors. It followed that work that was purely administrative would not relate to an underlying legal transaction. That did not mean that all administrative work would fall foul of Rule 14.5 however – it would only do so if it was purely administrative and bore no relation to the accepted professional services of solicitors.

22.18 The Tribunal was not satisfied that Mr Mian's work on the East Wing project was purely administrative. Mr Tankel had accepted that the payments to Firm A were compliant with Rule 14.5. These payments were made as Firm A was acting as the firm's agent as it did not have practising rights in Scotland, where the property was located. The work undertaken by Firm A was on behalf of Mr Mian's firm, who would have otherwise conducted the work had the property been located in England or Wales. The work undertaken by Firm A was fundamental to the East Wing project and Mr Tankel had not suggested that it was not legal work or that there was anything inappropriate with the firm paying Firm A to carry out this work on its behalf. If those payments fell within Rule 14.5 then it stood to reason that there was an underlying legal transaction as otherwise these payments would have fallen foul of Rule 14.5 The East

Wing project was a significant development. The Tribunal was satisfied that this development constituted an underlying legal transaction on the facts.

22.19 The next question for the Tribunal was whether the transactions identified by the Applicant were related to that underlying legal transaction. The Tribunal went through the tables set out above and considered whether the Applicant had proved on the balance of probabilities that those matters were not related to the underlying legal transaction.

Transactions 1, 2, 4, 13, 17, 19, 20, 22, 35, 36

22.20 The Tribunal found that these transactions were directly related to the underlying legal transaction as transactions 1 and 2 related to the fractional sales and the whole unit sales. Transactions 4, 17 and 19 related to the commissions on those sales and transaction 20 related to the promotional material for the sales. Transactions 35 and 36 related to the purchase of the East Wing. The Tribunal noted that transaction 13 also related to legal services provided by Scottish solicitors. Transaction 22 involved the previous owners of the East Wing and the owners of the remainder of the property. The Tribunal was not satisfied on the balance of probabilities that these transactions represented breaches of Rule 14.5.

Transactions 3, 7, 14

22.21 Transaction 3 involved payments to and from the builders. The Tribunal accepted Mr Mian’s evidence that the redevelopment was an integral part of the scheme and the basis on which the purchase of the East Wing and the subsequent fractional and whole unit sales were entered into. The payment schedule could only be approved when checked against the whether the works conducted had been undertaken. The Tribunal did not find that payments relating to the redevelopment of the site were in breach of Rule 14.5. The Tribunal was not satisfied on the balance of probabilities that these transactions represented breaches of Rule 14.5.

Transactions 5, 6, 9, 11, 12, 16, 21, 26, 28, 29, 31, 32, 33, 38

22.22 These transactions related to the funding arrangements for the scheme, either by way of loans and/or inter-ledger transfers – in some cases arising out of sales of other properties to raise funds. The Tribunal was satisfied that matters such as Anti-Money Laundering checks did amount to work related to the underlying legal transaction. It was a key and fundamental part of a solicitor’s duties and responsibilities. The Tribunal did not find that payments relating to the redevelopment of the site were in breach of Rule 14.5. The Tribunal was not satisfied on the balance of probabilities that these transactions represented breaches of Rule 14.5.

Transactions 8, 15, 18, 23, 24, 25, 27, 30, 37

22.23 Transaction 30 related to legal fees which were related to an underlying legal transaction.

22.24 In relation to Transactions 8, 15, 18, 23, 24, 25, 27 and 37 the Tribunal noted that Mr Mian had not been challenged on the evidence provided in his witness statement during the course of cross-examination. The Tribunal was not satisfied on the balance of probabilities that these transactions represented breaches of Rule 14.5.

Transactions 10 and 34

22.25 Transaction 10 related to salaries for the golf club staff. The Tribunal noted the following explanation in Mr Mian's witness statement in relation to the payment of these wages:

> "There were two occasions when salaries for staff on the [Property A estate] were paid via the HKH Designated Client Account. From recollection, Person C was overseas and unable to access banking facilities."

22.26 The Tribunal noted that Mr Mian himself had referred to the payment being made as Person C was unable to access "banking facilities". The logical conclusion was that Mr Mian had therefore provided those banking facilities instead. The Tribunal was therefore satisfied that these payments amounted to a breach of Rule 14.5 on the balance of probabilities.

22.27 Transaction 34 was the money for the charity golf day. Mr Mian had accepted in his oral evidence that there was no underlying legal transaction behind this. The Tribunal found this to be a breach of Rule 14.5 on the balance of probabilities.

22.28 The Allegation was therefore proved on the balance of probabilities in relation to transactions 10 and 34 and not proved in relation to any of the other transactions.

22.29 Principle 6

22.29.1 In light of the fact that the Tribunal had only found two transactions of relatively low value, to be in breach of Rule 14.5, the Tribunal was not satisfied on the balance of probabilities that this was sufficient to undermine the trust the public placed in Mr Mian or in the legal profession. The Tribunal found the breach of Principle 6 not proved.

22.30 Principle 8

22.30.1 It followed as a matter of logic, however, that any breach of the accounts rules, particularly in relation to the client account, was inconsistent with a solicitor carrying out their role in the business effectively and in accordance with proper governance and risk management principles, the Tribunal found the breach of Principle 8 proved on the balance of probabilities.

Previous Disciplinary Matters

23. There were no previous disciplinary findings in respect of Mr Mian.

Mitigation

24. Mr Goodwin told the Tribunal that Mr Mian had been qualified for 25 years and had a previously unblemished career. He had co-operated throughout the investigation and the proceedings. Mr Goodwin noted that bulk of the Allegations had not been proved. In view of the fact that the findings related to two discreet payments, it was possible that the matter could have been dealt with internally by the SRA and/or by way of a Regulatory Settlement Agreement.

25. Mr Goodwin submitted that Mr Mian posed no risk to the public and that it would therefore be disproportionate to strike him off or suspend him. The circumstances also did not justify restrictions, and none had been imposed on Mr Mian's Practising Certificate at any stage. Mr Goodwin submitted that a reprimand may be an appropriate sanction, but if the Tribunal was not minded to adopt this suggestion then he proposed a fine. In considering the level of fine, Mr Goodwin submitted that a level one fine in the sum of £2,001 might be reasonable, fair and proportionate, given that the SRA's internal fining powers were limited to £2,000.

Sanction

26. The Tribunal had regard to the Guidance Note on Sanctions (9th Edition). The Tribunal assessed the seriousness of the misconduct by considering Mr Mian's culpability, the level of harm caused together with any aggravating or mitigating factors.

27. In assessing culpability, the Tribunal concluded that Mr Mian was entirely culpable as he had full control and conduct of this matter. The Tribunal considered that his motivation was to keep his client happy. The Tribunal accepted that the breaches of Rule 14.5 were not planned but noted that Mr Mian was very experienced.

28. In assessing harm caused, the Tribunal was satisfied that no harm was caused to any individual by the breach. There was always a degree of harm caused to the reputation of the profession when a solicitor breached the accounts rules, but in this instance it was not dramatic.

29. Mr Mian's conduct was aggravated by the fact that it occurred on more than one occasion and that he ought to have known he was in breach of Rule 14.5 by making those two payments.

30. The misconduct was mitigated by the fact that while it occurred on more than one occasion, it was in the context of one matter and in that sense was of brief duration. Mr Mian had a previously unblemished career and had co-operated fully with the SRA and with the proceedings.

31. The Tribunal concluded that making 'no order' or imposing a Reprimand was insufficient to reflect the seriousness of the misconduct. The breaches may not have been extensive but they still represented a misuse of the client account, which was sacrosanct. The breaches were therefore not simply minor breaches of regulation and the protection of the reputation of the legal profession required a greater sanction.

32. The Tribunal determined that the seriousness of the misconduct was such that the appropriate sanction was a financial penalty. The Tribunal considered the level of the fine with reference to the Indicative Fine Bands. The Tribunal determined that the appropriate level was a Level 2 fine in the sum of £2,500, reflecting the fact that Mr Mian's conduct was moderately serious and taking into account all the factors identified above.

Costs

33. Mr Tankel sought an order for costs in the sum of £59,026.50, as detailed in the Costs Schedule served prior to the hearing. Mr Tankel was unable to obtain instructions on costs in light of the Tribunal's limited findings or an offer made by Mr Mian until the following day. The Tribunal therefore heard the submissions on costs but delayed its decision on that matter until the next day to give Mr Tankel an opportunity to receive instructions. In the event, no agreement was reached on costs between the parties and so the Tribunal assessed costs based on the submissions made to it.

34. Mr Tankel told the Tribunal that Capsticks had reduced its fixed fee from £48,000 to £34,500 and the figure claimed reflected that reduction.

35. Mr Tankel submitted that the case had been properly brought. He noted that two discrete matters had been proved and he submitted that Mr Mian ought to have "seen the writing on the wall" in respect of these rather than denying them. Mr Tankel noted that Mr Goodwin had conceded that the case justified a financial penalty and told the Tribunal that most cases of this type were not dealt with by way of Regulatory Settlement Agreements. This had been a complex investigation, albeit not all of the Allegations that the FI Officer thought were there had been pursued.

36. Mr Tankel submitted that Mr Mian had given more detailed and specific answers in his evidence than he had previously. Had these answers been forthcoming at an earlier stage, the outcome may have been different.

37. Mr Tankel denied the case was "wholly without merit" and noted that there had been no half time submission of no case to answer. He also noted that the Tribunal had deliberated for most of a day and so it could be inferred that the submissions he had made had not fallen on "deaf ears". The case had been narrowed significantly due to various levels of review.

38. Mr Goodwin invited the Tribunal to make no order for costs. He submitted that the SRA should have been reviewing the case over the previous 5-6 years, such that they should have realised that matters not proved today were wholly without merit. The investigation resulted in a report being prepared. Once representations had been made on Mr Mian's behalf, everything fell away except the Rule 14.5 matters.

39. Mr Goodwin told the Tribunal that Mr Mian had incurred significant costs himself. While he was not seeking an order for those costs, he invited the Tribunal to take this into account and make no order for costs. Mr Goodwin further noted that if the matter had been dealt with by way of a Regulatory Settlement Agreement, the costs would have been £1,350.

The Tribunal's Decision

40. The Tribunal took into account the fact that the Allegations had been properly brought. The transactions in question called for explanation and a hearing had been necessary to consider those explanations. The Tribunal recognised that there ought to be a significant reduction in the costs to reflect the fact that the majority of the Allegations had not been proved.

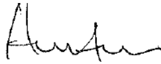
41. The Tribunal considered Mr Mian's statement of means. He had a shortfall on his monthly income/expenditure but was in employment and this would not be jeopardised by the Tribunal's sanction. Further, he had significant equity in his property which would enable the SRA to apply for a charging order if this was considered appropriate.

42. Taking all matters into account, the Tribunal concluded that there ought to be an order for costs and that the appropriate and proportionate figure was £10,000. There was no basis on which to make an order deferring enforcement and so the Tribunal made the order in the usual terms.

Statement of Full Order

43. The Tribunal Ordered that the Respondent, KHURRAM MIAN, solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

Dated this 4th day of July 2022
On behalf of the Tribunal



J P Davies
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
04 JULY 2022