SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12365-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

PETER JOHN SMITH Respondent

Before:

Mr M N Millin (in the chair)
Mr R Nicholas
Dr S Bown

Date of Hearing: 30 November 2022

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations made against Mr Smith by the Solicitors Regulation Authority Limited ("SRA") were that:

1.1. From approximately January 2010 to October 2020, used a client account as a banking facility, and in doing so breached any or all of the following:

Prior to 6 October 2011

Guidance Note (ix) to Rule 15 of Solicitors Accounts Rules 1998 ("the 1998 SAR") and Rule 1.06 of the SRA Code of Conduct 2007 ("the 2007 Code");

On or after 6 October 2011 but before 25 November 2019

Rule 14.5 of the SRA Accounts Rules 2011 ("the 2011 SAR") and Principle 6 of the SRA Principles 2011 ("the 2011 Principles");

On or after 25 November 2019

Rule 3.3 of the SRA Accounts Rules 2019 ("the 2019 SAR") and Principle 2 of the SRA Principles 2019 ("the 2019 Principles").

Documents

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

- Rule 12 Statement and Exhibit MLR1 dated 12 August 2022
- Respondent's Answer and Exhibits dated 29 September 2022
- Statement of Agreed Facts and Outcome dated 30 November 2022

Background

3. Mr Smith was admitted to the Roll in September 1968. He retired from practice on 1 April 2021 and no longer held a Practising Certificate. Mr Smith admitted all allegations.

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

4. The parties invited the Tribunal to deal with the Allegations against Mr Smith in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

5. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Smith'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.

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

7. The Tribunal considered the Guidance Note on Sanction (10th Edition – June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. Mr Smith had used his client account as a banking facility for a number of clients over an extended period of time. The Tribunal noted that Mr Smith had no previous adverse findings, and that he had made full and frank admissions. He had fully recorded all of the transactions on the client ledgers and believed, at the material times, that he was entitled to make the payments on behalf of his clients. Mr Smith now accepted that using the client account in the way that he had was contrary to his regulatory obligations.

8. The Tribunal considered that the nature of the misconduct was such that sanctions of No Order or a Reprimand did not adequately reflect its seriousness. The Tribunal did not consider that the misconduct was so serious that Mr Smith's ability to practice should be interfered with. The Tribunal determined that a fine at the lower end of its Indicative Fine Band 3 adequately reflected the seriousness of the misconduct. The Tribunal determined that in all the circumstances, a fine in the sum of £7,501 adequately reflected the seriousness of the misconduct. Accordingly, the Tribunal approved the outcome proposed by the parties.

Costs

9. The parties agreed costs in the sum of £21,650. The Tribunal determined that the costs agreed were reasonable and proportionate in the circumstances. Accordingly, the Tribunal ordered Mr Smith to pay costs in the agreed sum.

Statement of Full Order

10. The Tribunal Ordered that the Respondent, PETER JOHN SMITH, solicitor, do pay a fine of £7,501.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,650.00.

Dated this 13th day of December 2022
On behalf of the Tribunal

M N Millin
Chair

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

PETER JOHN SMITH

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By a statement made by Mark Rogers on behalf of the Solicitors Regulatory Authority Limited ("the SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019, dated 12 August 2022 ("the Rule 12 Statement"), the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondent, set out below. Definitions and abbreviations used herein are those set out in the Rule 12 Statement. The Tribunal issued Standard Directions on 19 August 2022. There is currently a Substantive Hearing fixed for 5 December 2022.

2. The Respondent is prepared to make admissions to all Allegations in the Rule 12 Statement, as set out in this document.

3. The Applicant and Respondent agree that this case falls within the Level 3 fine range and that a fine of £7,501 is the appropriate sanction.

Admissions

4. The Respondent admits all of the Allegations made against him in the Rule 12 Statement:

> *The Allegations against the Respondent, Peter John Smith, made by the SRA, are that, having been admitted as a Solicitor of the Senior Courts, he:*
>
> *1.1. From approximately January 2010 to October 2020, used a client account as a banking facility,*
>
> *and in doing so breached any or all of the following:*
>
> *Prior to 6 October 2011*
>
> *Guidance Note (ix) to Rule 15 of Solicitors Accounts Rules 1998 and Rule 1.06 of the SRA Code of Conduct 2007;*
>
> *On or after 6 October 2011 but before 25 November 2019*
>
> *Rule 14.5 of the SRA Accounts Rules 2011 and Principle 6 of the SRA Principles 2011;*
>
> *On or after 25 November 2019*
>
> *Rule 3.3 of the SRA Accounts Rules 2019 and Principle 2 of the SRA Principles 2019.*

Agreed Facts

Background summary

5. The Respondent is a solicitor (SRA ID: 97473) who was admitted to the Roll on 3 September 1968. The Respondent retired from practice on 1 April 2021 and no longer holds a Practising Certificate.

6. The SRA's records contain the following employment history for the Respondent that are relevant to these Allegations:

6.1. Up until 31 August 2017, the Respondent was the Solicitor/Manager and Owner at E Smith & Co (SRA ID: 74211). The Respondent was a sole practitioner in this recognised sole practice. This firm ceased trading on 31 August 2017 due to its acquisition by Margraves Solicitors (SRA ID: 567462);

6.2. From 1 September 2017 until 31 July 2020, the Respondent was a Consultant Solicitor at Margraves Solicitors;

6.3. On 15 June 2020, Margraves Limited (incorporating E Smith & Co) (SRA ID: 670495) registered with the SRA;

6.4. From 1 August 2020 until his retirement on 1 April 2021, the Respondent was a Consultant Solicitor with Margraves Limited (incorporating E Smith & Co)[1].

Initial reporting of concerns

7. The underlying subject matter for these Allegations first came to the attention of the SRA following a query sent to the Applicant's Professional Ethics Advice Service by the Respondent on 18 December 2019. The e-mail stated as follows:

> *"I have acted for several Kuwaiti Nationals ever since 1968 through E Smith & Co which merged with Margraves in 2017. Our reporting Accountant has expressed some concern about my work and the funding from abroad in relation to the payment of outgoings on properties."*
>
> *The work involves purchase of properties, lettings and tenancy agreements, working with the Managers of Channel Island companies and accountants. The Clients mainly live abroad and have always relied on me to deal with everything for them because they are unfamiliar with procedures here.*
>
> *Apart from purchases the Clients provide a lump sum from abroad or from a London Bank account at intervals according to need and ask me to pay all*

[1] The term "the Firm" will be used to cover both Margraves Solicitors and Margraves Limited (incorporating E Smith & Co)

outgoings for properties when vacant and items such as Service Charges and repairs when let. In return I provide a cash account at intervals.

The main advantage of this system is that I am in a position to supply the Accountant with the cash account and vouchers so the UK Tax Returns and company accounts can be prepared. If direct debits were set up it would be difficult or impossible to give the Accountants all that is needed."

8. On 11 March 2020, the SRA responded to the Respondent's 19 December 2019 e-mail, by e-mailing Mr Bourdillon in his capacity as Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration for the Firm. In this e-mail, it was pointed out that the Respondent's 19 December 2019 e-mail raised concerns in relation to possible breaches of the SRA Accounts Rules ("the Accounts Rules") and requested that the following information was provided:

   8.1. The number of clients with whom the Respondent held such an arrangement;

   8.2. The amount of payments received in/paid out by the Respondent and their frequency;

   8.3. The consideration (if any) that had been given by the Respondent to any money laundering and/or professional rules relating to the services he had provided;

   8.4. Assuming that the Respondent had operated a client account, whether his own accountants had identified any concerns during any audits and whilst preparing Accountant's Reports; and

   8.5. Any other information that the Respondent was able to give about the nature of the transactions.

9. Mr Bourdillon replied on 30 April 2020, having consulted the Respondent, and made the following points:

   9.1. All payments from the client account related to underlying legal transactions on behalf of clients for whom the Respondent completed work throughout the year;

   9.2. As a result, there was no question of simply providing banking facilities;

   9.3. There were six clients with whom the Respondent held such an arrangement;

9.4. The payments in/payments out came to approximately £280,000 per annum, taking place on an irregular frequency, but totalling approximately 175 per annum;

9.5. That he was satisfied that as the Respondent had been COLP and COFA for E Smith & Co for many years that he (the Respondent) would have always followed money laundering and professional rules; and

9.6. That the Respondent operated the client account for E Smith & Co up until 31 August 2017, and at no stage did his reporting accountant raise any concerns about these matters.

10. On 26 October 2020, the Respondent e-mailed the SRA in relation to the forthcoming investigation. In the course of this e-mail, the Respondent made the following comments:

> *"I understand that an inspection is being arranged but do not know what form this will take, whether I shall be present and whether I can discuss the issues. After practising for 52 years I am concerned that no problems shall arise.*
>
> *Please correct me if I am wrong. The new Rule 3.3 uses very much the same words as the old rule albeit in a slightly different order. Both Rules clearly disallow the provision of anything in the nature of a banking service in contrast to the making of payments during the course of what is described as provision of regulated services.*
>
> *The payments I have been in the habit of making of making for some Middle Eastern Clients who were introduced to my Father in 1968 to 1971 for whom we have acted ever since. They are Clients whose conduct with us throughout has been impeccable. I have acted for them continuously rendering annual invoices relating to work involving tenancy agreements, property, instructing accountants to prepare tax returns, working with a company in the Channel Islands in relation to companies based there, liaising with letting and managing agents and when the occasion arises conveyancing work. Nothing has changed so that I have been doing similar work to that carried out 10 and 20 years ago. My reporting accountant saw this work and never raised any questions up to the point when I sold E. Smith & Co. to Margraves in September 2017.*
>
> *I have recently consulted my former reporting accountant and neither he nor I can see any difference regarding the effect of the old and new Rules. I am surely providing regulated services.*

I have ceased such payments until your investigation has been concluded. I shall be obliged by your assistance in clarifying the issues"

11. Despite the points made in the 26 October 2020 e-mail to the SRA, five days later, on 31 October 2020, the Respondent wrote to Fifthstreet Management Ltd on behalf of Client A in the following terms:

"I act for the above named and have always arranged to pay the service charge from funds held by me in our client account for many years. However, I am unable to do this this year due to a change in regulatory procedures"

12. The wording of this letter appears to suggest that the Respondent considered that:

12.1. The payments from the client account would be a breach of the Accounts Rules; and

12.2. That this had come about due to the change from the SRA Accounts Rules 2011 to the SRA Accounts Rules 2019.

13. The Respondent's correspondence with the SRA in relation to the interpretation of the relevant provisions of the Accounts Rules continued with two further e-mails on 5 November 2020. In the first, timed at 09:28am, he stated:

"Are you able to agree that Rule 3.3 consists of two statements. The first says a Client account must not be used to provide a banking services. The second and separate sentences states that payments etc. must "be in respect of the delivery by you of regulated services". Regulated services are defined as "legal and other professional services that you provide that are regulated by the SRA" etc.

The position appears clear: a bare banking service must not be provided but all payments relating to services are authorised. I find it difficult to see any problem relating to what I have done for years, surely all my services are regulated by the SRA.

Can you perhaps provide an answer unrelated to the matter in hand in which I appreciate you have decided to inspect the files"

14. Having received a response from the SRA at 13:01 on 5 November 2020, the Respondent sent the second of the two 5 November 2020 e-mails at 15:42:

> *"I am sorry you are not prepared to answer my question of today.*
>
> *Rule 3.3. is admirably clear and straightforward so that I am surprised an inspection should be deemed necessary in the circumstances and following the disclosures in April.*
>
> *I regret to note that the whole matter has been placed in abeyance in view of the long delay since Margraves letter of 15 April. This makes it very difficult for me to look after my Clients of 50 years standing adequately in accordance with their instructions; their bills remain unpaid, do you have any suggestions about that"* **[page 202 of MLR/1]**

15. The two 5 November 2020 e-mails were followed up a week later, on 12 November 2020, with a further e-mail from the Respondent to the SRA:

> *"May I please make a few observations beyond the fact that payments were made during the course of delivery of regulated services:*
>
> 1. *Following full disclosure on 15.4.20 to the six questions raised by the SRA the SRA made no response. Had they any concerns surely they would have raised them in April so why an investigation 7 months later.*
> 2. *If the Rule is focused on Money Laundering although always an important consideration I have acted for the Clients continuously over a period of 30 to 50 years. They are members of one family plus a friend of theirs introduced in 1971 and have throughout dealt with me impeccably.*
> 3. *It seems I now have to ask these Clients to make other arrangements to pay for their service charges, repairs, professional fees and other outgoings; not easy to explain"*

SRA's investigation

16. Following notice being given to the Firm, the SRA's investigation started on 26 January 2021. The Forensic Investigation Officer ("FIO"), Parjbit Sidhu, conducting the investigation completed the Forensic Investigation Report ("FIR") on 23 July 2021.

17. In the course of the investigation, the Respondent provided the FIO with a document setting out the history of his arrangement with the clients he referred to in the 18 December 2019 e-mail. The following points were made in this document:

17.1. The Respondent had been introduced to the first of his Kuwaiti clients in October 1968, who had needed assistance from a solicitor to purchase a flat in London;

17.2. Through these first clients, the Respondent was introduced to their family and friends, and had provided assistance to them as well with purchasing property;

17.3. *"This was 50 years ago when the concepts of client care letters and concern about ID did not exist and one depended on introductions and common sense. Conveyancing fees in the 1960s were charged according to a scale laid down by the Law Society. The Client account was strictly regulated with an annual Accountants Report to the Law Society following inspection"*;

17.4. More properties were bought by the Respondent's Kuwaiti clients over the years, particularly following the Gulf War. The Respondent's work included, *"…conveyancing, mortgages, tenancy agreements, ongoing administration of let flats, liaision* (sic) *with letting and managing agents, instructing an accountant to prepare UK Tax Returns, company accounts and ATED returns; contact with Coopers & Lybrand in Jersey about formation and administration of Jersey companies (migrated to Guernsey in 2012) and later with Fort Management Services in Guernsey; payment of all associated bills, accounting for funds, preparing rent schedules and checking rent receipts"*;

17.5. The Respondent's work was, *"….ongoing year after year without interruption so that it stems from the original instruction over a property purchase in each case and requests to deal with aspects as they arose over the years"*;

17.6. The Respondent had client ledgers for the six Kuwaiti clients from 1991 which included:

17.6.1. Client B, set up in 2004 to hold four properties;

17.6.2. Client C, that owned two properties bought in 1976 and 2005;

17.6.3. Client D, that owned three properties; two bought in 1996 and one bought in 2001;

17.6.4. Clients E and F, who owned on property bought in 1992;

17.6.5. Client A, that owned one property bought in 1992; and

17.6.6. Client G, who owned one property bought in 1972.

17.7. Most old files had been destroyed over the years, so only a small proportion remained from before 2012; and

17.8. The Respondent obtained Accountant's Reports from Baker Tilly, or its predecessor firm, until 2014. Thereafter, the Respondent had had used a firm called Acre Accountancy. At no point had any of the accountants raised any issues in relation to the payment of bills on behalf of these clients. The files inspected by the accountants tended to include a considerable proportion from the, *"Kuwaiti Clients."*

18. In addition, the Respondent provided the FIO with a series of handwritten notes in relation to these six clients. From these notes, it would appear that the following information can be discerned:

Client	**Properties purchased**	**Date of purchase**
B	5 and a licence for a pontoon (boat pier) on the Thames	1991 – 1996
A	1	24 April 1992
C	2	One in 1972 and one in 2005
D	3	Two on 6 March 1996 and one on 8 March 2001
G	1	27 April 1972

E and F	1	1992

19. The Respondent provided the FIO with the client ledgers held for all matters relating to the clients identified in the table above. From these six client ledgers, the FIO was able to identify that the Respondent had:

    19.1. Continued to receive funds from these clients following completion of the property purchase; and

    19.2. Utilised these funds to pay for utility bills and other costs associated with maintaining the properties.

20. The FIR provided a summary of the FIO's findings in relation to their review of the client files for two of the clients referred to above; Client A and Client B. The FIO's findings are summarised below.

Client file for Client A

21. Following the review of the client ledger for Client A, the FIO formed the view that the only legal work conducted on the file was the purchase of Property A, which had completed in April 1992. The remainder of the client file related to administration work related to Property A, which included:

    21.1. Paying bills relating to utilities;

    21.2. Accounting to the client; and

    21.3. Perusing correspondence from the managing agents and service charge accounts.

22. The client ledger available for this matter was only available from 3 October 2013, and the final transaction recorded took place on 18 December 2020 when the balance of the funds (£14,883.08) was returned to the client. The FIO's analysis of this client ledger revealed the following information in relation to the recorded transactions between 3 October 2013 and 18 December 2020:

Type of transaction	**Total amount**	**No. of transactions**
Funds received from the client	£124,258.62	14 payments received
Funds paid for utilities	£13,432.63	77 payments made
Funds paid for service charges	£82,236.79	14 payments made
Funds paid for council tax	£9,902.12	7 payments made
Funds sent to client	£14,883.08	1 payment made
Funds paid to firm	£3,804	6 payments made

Client file for Client B

23. The Respondent acted for in the purchase of Property B, which was completed on 24 May 1990. 18 flats were also purchased at Property B1 for Client B in 1996. Following completion of the purchases, the file was kept open to deal with the administration of the flats. This work included paying bills and accounting to the clients. The Respondent would also peruse correspondence from the managing agents and deal with the renewal of the insurance policies and payment of the service charge.

24. The rent paid for these properties was paid into a Barclays bank account in London, but all payments made by the Respondent in relation to these properties were paid from the client account.

25. The client ledger for this client file was only available from 22 January 2010. The last entry on the client ledger was dated as 21 January 2021, and recorded a transfer of £450 from a related client ledger.

26. The FIO's analysis of the client ledger revealed the following information in relation to the recorded transactions between 22 January 2010 and 21 January 2021:

Type of transaction	**Total amount**	**No. of transactions**
Funds received from the client	£965,515.81	83 payments received
Fees refunded	£1,200.00	2 refunds received
Funds paid for utilities	£287,530.54	250 payments made
Funds paid for service charges	£166,057.11	22 payments made
Funds paid for council tax	£22,475.57	11 payments made
Funds paid to Port of London	£106,127.81	44 payments made
Payments made to client	£366,316.10	67 payments made
Funds paid to firm	£16,966.50	10 payments made

Correspondence with FIO

27. On 26 February 2021, during the course of the FIO's investigation, the Respondent sent an e-mail to the FIO, in which the following comments were made:

> *"I do not know if you have seen my correspondence with Ajmer Nahal but wish to summarise my work as follows:-*
>
> 1. *The payments have been made to a similar pattern since about 1990 when the Clients purchased more properties and have been part of the overall service provided throughout.*
> 2. *No question has ever been raised by the reporting accountants; each year they inspected files and vouchers for such payments.*
> 3. *The current rule 3.3 and its predecessor 14.5 permit payments in the course of provision of regulated services or activities. All work carried out for the clients has of course been regulated by the Law Society and later by the SRA.*

I cannot see the need for any further investigation in this respect. If the Rule was intended to stop the type of work I carried out for so long it would have been worded differently."

28. The Respondent's correspondence with the FIO continued and on 5 April 2021 he sent a further e-mail in the following terms:

"Although I no longer intend to practice I feel some explanation should be given. I have spent much time looking at the Rules and other guidance, it seems perfectly clear that there can be no breach of the Rule as written.

I need not quote but 3.3 permits payments "in respect of the delivery by you of regulated services".

Regulated services are defined as "legal and professional services that you provide that are regulated by the SRA etc."

The SRA questions answered 2.6.2020 item 2.1 "once the service the firm is engaged to provide has been completed then the firm has no requirement to hold on to any funds etc." The service which I provided to these Clients for many years was never completed at any point and therefore funds could be held continuously."

Please, how else can the above be interpreted."

29. In anticipation of his interview with the FIO, the Respondent sent a further e-mail on 11 May 2021. In the course of this e-mail, the following points were made:

"I note you will be here on 20 May at 10am although I am unclear what the interview hopes to resolve.

I wish to note that I have not had any reply (apart from acknowledgements) to various emails to Ajmer Nadal [sic], professional ethics and you such as 26 February.

1. *Rule 3.3 permits payments in respect of regulated services (defined as legal or other professional services).*
2. *The Case Studies updated 25.11.19 give a number of examples of breaches of 3.3 none of which is remotely parallel my activities.*
3. *I have looked for further guidance and found the attached item 2.1. The change from "underlying transaction" to "regulated services" seems to*

broaden what is permitted. Regarding the last sentence the service which I was engaged to provide was never completed (therefore funds can be retained).

4. *No point was ever taken by my reporting accountant who always inspected files for these Clients each year, nor by Margraves' accountants until Margraves raised the issue.*
5. *The SRA left the matter following Margraves' letter of 15 April 2020 with replies to 6 specific questions which surely suggested nothing was regarded as wrong.*
6. *Maybe the nature of my work is unusual as it continues year after year without interruption but there must be parallels such as ongoing Trusts.*
7. *There is nothing clear in the Rules which suggests the service provided is wrong."*

Interviews with the FIO

30. On 20 May 2021, the FIO interviewed the Respondent as part of the SRA's investigation into these concerns. The Respondent made the following comments in the course of this interview:

30.1. That he was familiar with the wording and meaning of both Rule 14.5 of the SRA Accounts Rules 2011 and Rule 3.3 of the SRA Accounts Rules 2019;

30.2. That none of the case studies provided by the SRA as to what constituted a "banking service" were parallel to the service that he had been providing to his clients, as they had been running for many years and had never terminated;

30.3. When asked why the file for Client A had not been closed in 1992 when the property transaction completed, the Respondent asserted that, *"…things were very different in 1992"* and went onto say that, *"….they probably asked me to arrange their electricity account and their telephone account, and they probably asked me to pay the service charge when it was due and insure their furniture when they furnished the flat. And I suppose there was a certain amount of contact with the people running the Guernsey company I think it is in this case"*;

30.4. Since 1992, in relation to Client A, he, the Respondent, had mostly been paying bills for the flat, but also dealing with questions about the deeds and tax aspects;

30.5. When asked why he had continued to pay bills for the flat, the Respondent replied, *"Well because the client asked me to…And certainly in 1992 there was nothing to suggest it was wrong. In fact, there was nothing to suggest it was wrong until the end of 2019"*;

30.6. If his reporting accountant had questioned the payments he was making, he might have done something to change the service he was providing, but he saw no reason to interpret the rule to stop him doing what he had done previously;

30.7. That these payments he was making on behalf of the client stemmed from the purchase of the property as they started immediately from the purchase;

30.8. That the words, *"underlying transaction"*, which appear in Rule 14.5 of the SRA Accounts Rules 2011 do not feature in Rule 3.3 of the SRA Accounts Rules 2019;

30.9. That in his view, the words, *"underlying transaction"*, without any further definition, could cover any professional service;

30.10. When referred to the decision in *Fuglers & Ors v SRA* [2014] EWHC 179 (Admin) (QB), he stated, *"Well I wouldn't be familiar…with that"*;

30.11. That he, the Respondent, had no reason to believe that the words, *"underlying transaction"*, prevented him from providing this service, as it had been continuous;

30.12. That Rule 3.3 of the SRA Accounts Rules 2019 had introduced the concept that payments be in respect of the delivery of, *"regulated services"*, and the definition of that which the Respondent had located was, *"legal or other professional services"*;

30.13. The Respondent believed that payment of these bills fell within the definition of, *"other professional services"*;

30.14. That most of his clients for whom he was providing this service did have a bank account in London, but because of the, *"close friendly relationship"* he had with them, they wanted him to continue to provide this service and they were happy to pay him for it;

30.15. That he did not consider the service he was providing to be a breach of either Rule 14.5 or Rule 3.3;

30.16. When asked about payments from the client account in relation to Client B, the Respondent stated: *"….we were continuously letting flats and accounting for deposits and accounting for rent and paying the bills and keeping the Channel Island company running and instructing the accountant and paying the income tax"*;

30.17. When asked about why rent for these properties was being paid into a Barclays account in London, when bills were being paid from the client account, the Respondent replied, *"I could make sure bills were kept up to date and weren't neglected. I could see that if a letting came to an end, somebody had to do something about paying the council tax and the electricity between lettings, and then no more after that. I could feed the accountant annually with a complete picture of the rents and all payments so she could prepare the UK Tax Returns and the company accounts"*;

30.18. The Respondent agreed with the description of the service he was providing for his clients as *"property management"*;

30.19. From the point at which he stopped making these payments for his clients from the client account, he had made payments from his personal bank account on their behalf, but that was just to, *"tide them over while they made other arrangements"*; and

30.20. He repeated his comments that he did not believe the rules in question were, *"100% clear"* as there was no clear definition of *"underlying transaction"* or, *"continuing professional services"*, and that his reporting accountant had never questioned these payments.

31. On 21 May 2021, the FIO interviewed Patrick Bourdillon and Justin Lingard from the Firm. In the course of that interview, the following comments were made by Mr Bourdillon and Mr Lingard:

31.1. In 2017, leading up to the acquisition of E Smith & Co, Margraves Solicitors had liaised with the Respondent in relation to the nature of his work. In the course of that correspondence, the Respondent had stated, *"I still pay bills for the flats owned by the Kuwaiti's and would hope to continue to offer this service as they depend on me."* Mr Bourdillon stated that he did not question this at the time, but with the benefit of hindsight, he would have done;

31.2. Mr Bourdillon stated that there was nothing to make him suspicious that the Respondent was doing anything wrong and that he was a, *"….well-known local solicitor"*;

31.3. When asked if there had been any questioning of the Respondent of his work after he had joined Margraves, Mr Bourdillon stated, *"…it was not obvious to me that he was doing anything wrong as far as the Kuwaiti clients was concerned…"*;

31.4. Concerns were raised with the Respondent in relation to the service he was providing to his Kuwaiti clients in 2018, as in a 20 February 2018 e-mail the Respondent stated, *"…I have had clear instructions from the Kuwaiti clients for many years to pay bills relating to their flats without reference to them except in the case of none [sic] routine items. Yvonne Schaller manages the flats of the Kuwaiti clients and since 1990…has passed bills needing payment to me, others come direct. I do not follow the suggestion of illegality please explain your concern"*;

31.5. From the rest of the period of 2018 and into 2019, Mr Bourdillon had resolved that he needed to speak to the Respondent about this issue given the new Solicitors Accounts Rules coming into force that year and also the Respondent's belief that he was not doing anything wrong;

31.6. Having discussed the matter with their reporting accountant (who was not in a position to rule on it one way or another), the issue was raised with the Respondent. His response was to say that the SRA needed to adjudicate on it

and so the Firm encouraged him to write to the Ethics team in December 2019;

31.7. That the Firm had raised it with their reporting accountant, and it had been agreed that the best thing to do was obtain an adjudication from the SRA;

31.8. That Mr Bourdillon had contacted the SRA's Ethics web chat prior to the Respondent's letter to the SRA**,** and it was on their advice that the payments on behalf of the clients had not stopped at that stage;

31.9. That Mr Bourdillon had attended a seminar on the SRA Accounts Rules 2019 in the summer of 2019;

31.10. That Mr Bourdillon not seen the full set of ledgers or client files for these clients until 2020 – 2021;

31.11. That Mr Bourdillon now viewed the payments that had been made from the client account as a breach of the SRA's Accounts Rules;

31.12. That with the benefit of hindsight, it was accepted that it was within the control of the Firm to stop these payments;

31.13. That in September 2020, the Respondent was instructed that he must not undertake this work and that no bills had been charged after July 2020;

31.14. That the Firm had not received any monies or benefit from this work undertaken by the Respondent;

31.15. That in order to make the payment from the client account, the Respondent would have raised a request and it would then have been actioned; this did not require authorisation from a partner;

31.16. That given that the Respondent owned his own business and had been practising for so long, Mr Bourdillon had the utmost faith that he would have been doing things correctly;

31.17. That Mr Lingard sent an e-mail to the Respondent on 7 October 2020 informing him that his (the Respondent's) opinion of the SRA's Accounts Rules 2019 was not shared and that he must inform his clients that it would no longer be possible to make payments of that kind on their behalf from the client account;

31.18. That Mr Lingard also viewed the payments that had been made from the client account as a breach of Rule 14.4 and Rule 3.3 of the respective Accounts Rules; and

31.19. That the Respondent had been suspended on 1 April 2021 and had resigned the same day.

Engagement with the SRA following service of Notice

32. Following service of the Notice recommending referral to the Tribunal, along with the accompanying bundle, on 17 January 2022 upon the Respondent, the Respondent sent a further e-mail to the SRA on 18 January 2022:

> *"I have received your email of 17 January. I note this matter has been revived after lying dormant for perhaps 7 months (as happened in 2020).*
>
> *You are aware that I retired fully on 1 April 2021, have not practised since and do not hold a Practising Certificate; I cannot therefore be subject to regulation by the SRA.*
>
> *Apart from this I have not received replies to emails sent to you and to Parbjit Sidhu nor are they included in the list of documents. These state my case fairly fully. These include emails to you on 26.10.20, 5.11.20(2), 6.11.20 and 12.11.20. Also emails to Parbjit Sidhu 26.2.21, 5.4.21 and 11.5.21. Finally the letter from Margraves to you of 15.4.20 is missing.*
>
> *You have failed to respond in writing to all the vital points made.*
>
> *Similarly I received no response (save bare acknowledgements) to emails sent to Professional Ethics seeking guidance.*
>
> *I am not happy the way [sic] the whole matter has been conducted since it started."*

33. The SRA replied to this e-mail on 19 January 2022, which in turn led to a further response from the Respondent on 19 January 2022 at 3:49pm. This 19 January 2022 e-mail contained the following comments:

> *"Without prejudice to my clear demonstration that there has been no breach of the Rule and guidance on the subject (on all of which the SRA remains silent), I request you to point to definitions of "underlying transaction" in the old rule and "legal or professional services" in the new Rule.*
>
> *I ask you to agree that no requirement to return funds to a Client can arise if the services provided do not cease and are continuous over many years. If you do not agree kindly explain and point to the relevant Rule.*
>
> *The SRA some time ago provided case studies none of which remotely resemble the service given to my Clients but all are examples of a lump sum being provided for a purpose where no services are carried out; if my type of service was not allowed an example should have been included and the Rule clarified in this respect. There is no way my work could be described as a bare banking service.*
>
> *My letters of yesterday and today together with the correspondence listed yesterday are to be regarded as representation in the event you proceed with any further action.*
>
> *Maybe you would care to explain what can be achieved in this particular situation where clearly no Client has been prejudiced in any way, on the contrary they were more than happy with the service provided from 1968. You appear to want to enforce a Rule for the rule's sake and in spite of all I have said to demonstrate that there was no breach.*
>
> *I wish to note that to date I remain without response from the SRA to my careful arguments."*

34. The 19 January 2022 e-mail from the Respondent was followed by a 27 January 2022 letter to the SRA. The Respondent's comments in this letter echoed, to an extent, his previous representations to the SRA about the service he had been providing to his clients and whether that fell within the activities prohibited by Rule 14.5 and then Rule 3.3 of the respective Accounts Rules. At paragraph 20 of this letter, though, the following point was made in relation to the SRA's Warning Notices:

> *"I would have received and been aware of Warning Notices at the time (and kept such items in a folder) but as demonstrated my service was within the*

Rules as written. They must not be interpreted in part when they contain an alternative. When terms are undefined they cannot be interpreted restrictively. Going back to 1998 item relating to banking services, neither then nor at any time was my service a pure banking one, it comprised an overall professional service"

35. The SRA responded to this letter on 1 February 2022, attaching the correspondence that the Respondent had complained was missing from the Notice bundle. This 1 February letter, and the attached correspondence, was before the Authorised Decision Maker that referred the case to the Tribunal on 21 March 2022.

36. On 3 March 2022, the SRA received further representations on behalf of the Respondent from David Barton. These representations made the following points:

    36.1. That the Respondent's relationship with his clients for whom he provided this service was extremely long, personal and well-established; the history of that relationship was relevant to the consideration of whether the Accounts Rules had been breached;

    36.2. That the payments that had been made on behalf of these clients were for, *"routine lawful purposes"* and were linked to a service forming part of the Respondent's legal practice; and

    36.3. That SRA guidance to the profession on this topic has changed over time and any assessment of the Respondent's conduct should be measured against the Accounts Rules and guidance that were in force at the relevant time

Allegations and Breaches of Principles and the Code of Conduct

37. For an extended period of time, the Respondent used the client account to make payments on behalf of six clients for their routine outgoings in respect of renting out their properties, such as repairs, service charges and council tax.

38. It is acknowledged that on the Respondent's own account, this conduct has been on-going for some considerable period of time. However, Allegation 1.1 has been drafted to encompass the timeframe of January 2010 to October 2020 only. This is to cover the timeframe for which the remaining client ledgers for Clients A and B record these payments. Whilst on the Respondent's own case, this conduct covered a much greater timeframe, it is only during this period that there is evidence of the frequency and size of such payments, and so only for this timeframe can the Tribunal properly assess the seriousness of the conduct.

39. It is the Applicant's contention that it has never been appropriate for a solicitor to use a client account to make payments on behalf of a client that are not connected to an underlying legal transaction or for the provision of services for which a solicitor is regulated. Whatever uncertainties that may have existed in the profession in relation to this, these were removed by the publication of the decision of *Wood & Burdett* in December 2003 and the subsequent amendment to the note on Rule 15 of the Solicitors Accounts Rules 1998.

40. The prohibition on the use of a client account to provide a banking facility was then expressly prohibited by Rule 14.5 of the Solicitors Accounts Rules 2011, and further clarification of this point was provided in the 18 December 2014 Warning Note and the authorities to which this document drew attention.

41. As the Respondent conceded in his interview with the FIO, he was effectively using the client account to provide a property management service for the six clients in question. The payments he was making were not related to an underlying transaction which is part of the accepted professional services of solicitors.

42. To put it another way, the service that the Respondent was providing to these clients could have been provided by either a property management company or a letting agent; nothing in the nature of these payments required the input of a regulated legal professional.

43. The Respondent was not acting as a solicitor when he made these payments, and yet was trading on his status as one. It follows that payments of this nature amount to precisely the type of conduct complained of in *Wood v Burdett* and then both the 2011 and 2019 Accounts Rules.

44. Whilst the Respondent's initial contact with these clients, and the initial service he provided in relation to conveyancing, was a result of his practice as a solicitor, the

subsequent service he went onto provide for them was precisely the type of *"administrative"* function which attracted criticism from the High Court in *Patel*. The simple fact that the Respondent was positioned to provide these services to his clients as a result of an initial legal transaction, does not change the nature of the administrative services he went on to provide.

45. Following the decision in *Wood v Burdett*, Guidance Note (ix) for Rule 15 of the Solicitors Accounts Rules 1998 was updated on 17 March 2004. This Guidance Note made it clear that solicitors were not permitted to provide a banking facility to their clients. It follows that the Respondent's conduct represents a breach of this Guidance Note.

46. In *Wood v Burdett*, the Tribunal in that case determined that the Respondents, in using the client account in that way, had, *"…acted in breach of their own good reputation and the good reputation of the solicitors' profession…"* On that basis, it is asserted that the Respondent's conduct prior to 6 October 2011 represents a breach of Rule 1.06 of the 2007 Code of Conduct.

47. Thereafter, the use of the client account to receive monies and make these payments on behalf of these clients represents breaches of Rule 14.5 and 3.3 of the 2011 and 2019 Accounts Rules respectively.

48. Furthermore, it is submitted that using a client account in this manner, despite the clear condemnation and warnings against such conduct from the Tribunal, the SRA and from the High Court represents conduct that would undermine public trust in both the Respondent and the legal profession. On that basis, breaches of Principles 6 and 2 of the 2011 and 2019 Principles are alleged.

Non-agreed Mitigation

49. The Respondent advances the following points by way of mitigation, but their inclusion in this document does not amount to acceptance or endorsement of such points by the SRA:

50. The Respondent, now aged 78 years, retired fully from practice on 1 April 2021. He was admitted to the Roll of Solicitors on 3 September 1968 and has enjoyed an unblemished professional career lasting 52 years.

51. There has never been any adverse professional finding by the SRA or its predecessors, or the Tribunal. He has never had a qualified Practising Certificate or a qualified Accountant's Report. He has served the public and the legal profession with pride, honesty and integrity throughout his entire professional life.

52. These proceedings have been a source of great sadness, stress and anxiety. The entire process has lasted almost exactly 3 years. The Respondent has only ever been open and straightforward with the Applicant throughout its entire investigation and subsequent prosecution. He has taken a different approach to the interpretation of the Accounts Rules as they have historically applied to the transactions he conducted and has robustly stated his views, but has been open and transparent in everything he has said to the Applicant. His interpretation is set out in his written responses to the Applicant and that it permitted the services he carried out for his clients. He has come to accept his interpretation was wrong and he made prompt and full admissions in his Answer dated 29 September 2022

53. The Rules engaged by this Application provide that a solicitor must not provide banking facilities through client account. The prohibition stated further that payments into and out of client account had to 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. The Respondent believed that the second limb permitted him to act as he did.

54. The Applicant has not said the Respondent lacked integrity, was dishonest or reckless. Services underpinning the allegations were provided to long standing clients alongside the provision of services which were entirely proper. Legal services were provided in relation to London properties after purchase including preparing tenancy agreements and renewals, liaising with letting and managing agents, working with the UK accountant about tax returns, working with administrators of Channel Island Companies, advising in relation to Inheritance Tax and other taxation matters, providing advice on renewal of loan facilities.

55. Further, the transactions which form the basis of the Application have only ever been recorded properly and openly in properly maintained client ledgers. This is not a case in which the Respondent opened and operated obscure ledgers for the provision of banking facilities, or used his good name or that of the solicitors' profession to afford such facilities to clients or third parties. He recorded all financial transactions meticulously, consistent with an honest belief that he was acting properly.

56. At all times he honestly, but erroneously, believed he was providing legitimate services to legitimate clients. This is a case in which he knew his clients well and knew exactly what he was doing with the sums of money identified in the Application. There were no questionable or nefarious transactions. These characteristics are supported by the absence of allegations impugning the Respondent's honesty or integrity. In short, the Respondent believed at all times that he had interpreted the relevant Accounts Rules correctly. This is a case in which the Respondent misinterpreted the nature of the Rules, making an honest mistake as he did so.

57. The Respondent was supported in his view by the absence over many years of indications or qualifications from his reporting accountants. Not once did he have cause to question the propriety of anything he or his clients were doing. Despite the number of transactions and the cumulative total, he only ever paid sums of money properly due to legitimate third parties for legitimate liabilities. He saw it as a logical extension to his property work. When he did have cause to question what he had bene doing in 2109 he made contact with the Applicant's Professional Ethics Helpline following which the investigation was commenced.

58. No client or third party ever lost money. No one was ever taken advantage of. No client or third party has ever made a complaint against the Respondent. Notwithstanding the interpretational error made, the Respondent acted throughout with honesty and integrity. He was never reckless. His approach to his work never lacked thought or consideration. He knew clients personally for between 28 and 52 years. He met them at various times. Apart from one individual all others were related to each other. They also made the introduction to the friend in 1972. Whilst not oversimplifying what has gone wrong, he simply made an interpretational error over the years as these transactions were conducted. The Respondent never breached a position of trust. He only ever dealt with money belonging to his clients. He was never motivated by money to act as he did. He did not consider at any time that he was providing and charging for a banking facility. He saw it as a natural extension of his legal work for which he charged. He did not provide a banking facility in isolation.

Agreed Outcome

59. The parties consider and submit that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, that a Level 3

fine represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions (10th Edition).

60. In respect of the level of culpability:

60.1. The Respondent had been on the Roll for forty-one years at the start of this Allegation, and was COLP and COFA for his sole practitioner business;

60.2. The clients were charged for the banking facility which the Respondent provided to them; and

60.3. Whilst there may been uncertainty to the appropriateness of a solicitor providing such a service to international clients at the time of some of the original conveyancing transactions in this case, that uncertainty no longer existed by 2010; the start date for the Allegation.

61. In respect of the level of harm:

61.1. The public are entitled to expect that members of the legal profession manage their client accounts in accordance with the regulatory regime. Failure to do so, whether that be through a mistake, ignorance, or an intentional disregard of the regime, threatens the trust and confidence the public places in solicitors to handle their funds appropriately.

62. In respect of mitigating features, the Respondent's mitigation is set out at paragraph 49-58 above.

63. It is agreed that:

63.1. A reprimand is insufficient to meet the seriousness of this conduct, but neither protection of the public nor the protection of the reputation of the profession requires the Respondent to be made subject to a Restriction Order, suspended, or struck off the Roll of solicitors; and

63.2. Considering the factors described, the seriousness of the misconduct, and giving effect to the purpose of sanction, this case falls within a level 3 fine bracket and a fine of £7,501 is appropriate.

64. In addition to the fine, the Respondent agrees to pay a contribution to the SRA's costs of £21,650. This includes a reduction for the case having concluded by way of Agreed Outcome.

65. The parties consider that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed approach

represents a proportionate resolution of the matter which is in the public interest and consistent with the overriding objective.

Signed:

Name: Mark Rogers (on behalf of the SRA)

Dated: 30 November 2022

Signed:

Named: Peter John Smith

Dated: