SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12376-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

CHARLES AYODEMIJI EWAN Respondent

Before:

Ms A E Banks (in the chair)
Mrs L Boyce
Mrs S Gordon

Date of Hearing: 19 December 2022

Appearances

Michael Collis, barrister of Capsticks LLP for the Applicant

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against Mr Ewan were that, whilst practising as a solicitor at Ewan & Co Solicitors LLP ("the Firm"), he:

1.1. From approximately August 2017 to December 2018, used, or allowed the use of, a client account in circumstances amounting to the provision of a banking facility and in doing so breached any or all of Rule 14.5 of the SRA Accounts Rules 2011 ("the Accounts Rules") and/or Principle 6 of the SRA Principles 2011 ("the Principles"). Click here for Findings.

1.2. Between approximately 1 November 2018 and 30 November 2018 failed either to disclose to the lender client that the balance of the purchase price for Property A was not coming from the purchaser client, or failed to withdraw from the transaction, and in doing so breached any or all of Principles 4, 5 and 10 of the Principles, and/or failed to achieve Outcomes 1.2 and 3.5 of the SRA Code of Conduct 2011 ("the Code"). Click here for Findings.

Executive Summary

2. Mr Ewan allowed the use of the client account as a banking facility and also failed to disclose to his lender client that the balance of the purchase price for Property A was coming by way of a loan. Mr Ewan admitted all the Allegations and the Tribunal found them proved in full.

Sanction

3. Mr Ewan was ordered to pay a fine of £10,000 and was further ordered to pay £19,509.20 in costs. Click here for Sanction.

Documents

4. The Tribunal considered all of the documents in the case which were contained in an electronic bundle on CaseLines.

Preliminary Matters

5. Application to adjourn

5.1 The Tribunal considered an application to adjourn, which was conveyed verbally to Mr Collis in the course of a telephone call with Mr Ewan on the morning of the hearing. The principal basis for the application to adjourn was to allow more time to negotiate a proposed Agreed Outcome with the SRA. The background to this, and a secondary reason to adjourn, related to health issues in Mr Ewan's family.

5.2 Mr Collis invited the Tribunal to sit in private for the part of the application relating to those health issues.

5.3 Rule 35(2) of the SDPR stated:

> "(2) Any person who claims to be affected by an application may apply to the Tribunal for the hearing of the application to be conducted in private on the grounds of— (a) exceptional hardship; or (b) exceptional prejudice.

5.4 Rule 35(5) of the SDPR stated:

> "(5) The Tribunal may, before or during a hearing, direct without an application from any party that the hearing or part of it be held in private if— (a) the Tribunal is satisfied that it would have granted an application under paragraph (2) had one been made; or (b) the Tribunal considers that a hearing in public would prejudice the interests of justice."

5.5 The Tribunal was satisfied that it was in the interests of justice to sit in private for this limited and discreet part of the application relating to health issues. To do otherwise could cause exceptional hardship to those affected by the health issues. The Tribunal duly sat in private for a short time. The health issues are not set out in this judgment as a detailed account of them is not necessary to follow the arguments or the Tribunal's reasoning.

5.6 Mr Collis told the Tribunal that the SRA had only become aware of the point about health issues on the morning of the hearing. This followed engagement by Mr Ewan at the end of the previous week, following a period in which he had not responded to emails from Capsticks. Mr Collis took the Tribunal to correspondence dated 15 November 2022 in which Capsticks had asked Mr Ewan if an Agreed Outcome was something he wanted to pursue. He had not replied until 8 December, followed by further non-contact until 16 December, the working day before the substantive hearing. At that stage Mr Ewan repeated his desire to resolve the matter by way of an Agreed Outcome. Mr Ewan had explained that he had been dealing with the health issues referred to above and had also told Mr Collis that he would not be able to attend the hearing or any hearing date in the coming days for the same reason. Mr Ewan had provided some emails in relation to these issues to the Tribunal some weeks previously, but had only agreed that Capsticks and the SRA could see them on the morning of the hearing.

5.7 Mr Collis opposed any application to adjourn on the basis that there was no guarantee that Mr Ewan would engage consistently going forward or that agreement could be reached as to the proposed sanction that would form part of any Agreed Outcome. Mr Collis submitted that any adjournment would lead to increased costs. The SRA was ready to proceed with the substantive hearing and noted that Mr Ewan had made full admissions.

5.8 In response to a query from the Tribunal as to Mr Ewan's engagement before early November, when the health issues became apparent, Mr Collis confirmed that there had been a non-compliance hearing in October. Mr Ewan had attended that hearing but there had been intermittent engagement prior to that. Had the SRA been made aware of the health issues earlier, a joint application to adjourn may have been made, though not necessarily.

The Tribunal's Decision

5.9 The Tribunal had regard to the Guidance Note to Rule 23 (Adjournments) – November 2019 and reviewed all the correspondence, including that relied on by Mr Ewan.

5.10 The Tribunal noted that the intermittent lack of engagement by Mr Ewan pre-dated the health difficulties. There was no up to date documentary evidence about the health issues or about how long they may continue.

5.11 The Tribunal noted that there was no benefit to an adjournment for the purposes of trying to negotiate an Agreed Outcome at this stage. Typically, Agreed Outcomes were intended to avoid the matter going ahead to a substantive hearing. The matter was now listed for such a hearing and so adjourning it, in circumstances where an Agreed Outcome may not be agreed between the parties and may not be approved by the Tribunal, would only serve to delay matters and increase costs. Mr Ewan had made full admissions. If the Tribunal accepted those admissions then the issue of sanction and costs would fall to be determined. There was therefore no risk of injustice to Mr Ewan. There was a public interest in that taking place as soon as possible and absent any reason to delay, there was no basis to adjourn.

6. **Application to proceed in absence**

6.1 Mr Collis applied to proceed in Mr Ewan's absence. In doing so he relied on the submissions he had made when opposing the application to adjourn.

The Tribunal's Decision

6.2 The Tribunal noted that Mr Ewan was aware of the date of the hearing and SDPR Rule 36 was therefore engaged. The Tribunal had regard to the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> (ii) …;
> (iii) the likely length of such an adjournment;
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
> (v) …;
> (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
> (vii) …;

(viii) …;
(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
(x) the effect of delay on the memories of witnesses;
(xi) …;"

6.3 In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "…It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

6.4 Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account".

6.5 The Tribunal noted that many of its reasons for refusing the adjournment were relevant to the question of whether it was in the interests of justice to proceed in absence. It further noted that Mr Ewan would have a potential remedy if there was material available that he had not been able to put before the Tribunal, justifying his absence under Rule 37, which dealt with applications for a re-hearing.

6.6 The Tribunal was satisfied that Mr Ewan had voluntarily absented himself. There was no realistic prospect of him attending an adjourned hearing, which was one of the reasons the Tribunal had refused his application to adjourn. There was a public interest in regulatory disciplinary proceedings taking place in a timely manner. The application to proceed in absence was therefore granted.

7. Anonymity

7.1 Mr Collis applied for leave to anonymise individuals and properties referred to in the Rule 12 statement under SDPR Rule 35(9). Mr Collis told the Tribunal that the anonymity schedule had been reviewed following Lu v SRA [2022] EWHC 1729 (Admin) at [138]. Mr Collis submitted that Lu did not alter the position that clients were entitled to a degree of confidentiality arising from legal professional privilege in order to maintain confidentiality for those who have sought legal advice. Lu did not involve clients being named. Mr Collis submitted that if the property name was known then the name could be identified. In order to avoid jigsaw identification, Mr Collis submitted that the properties should also be anonymised.

The Tribunal's Decision

7.2 The Tribunal had regard to Lu and noted that the starting point was one of open justice. The general principle was that anonymity should be the exception rather than the rule. However it was also right that clients could instruct solicitors without being named in public proceedings unless it was necessary to enable a proper understanding of the case. The Tribunal did not consider that naming the clients was necessary for this purpose in this case. The Tribunal therefore agreed to anonymise the clients and the addresses. The position with companies was different to that of individuals, however, and the Tribunal therefore refused to anonymise the companies referred to in the Rule 12 statement.

Factual Background

8. Mr Ewan was admitted to the Roll on 1 July 1998. At the time of these Allegations, he was an owner, manager, Compliance Officer for Legal Practice ("COLP"), Compliance Officer for Finance and Administration ("COFA"), Money Laundering Reporting Officer ("MLRO") and Money Laundering Compliance Officer ("MLCO") at the Firm. Mr Ewan held a Practising Certificate free from restrictions.

9. At the relevant time, the Firm operated from two offices – one in Ilford, where Mr Ewan was based, and one in West Hampstead, where the other two partners were based.

10. During the course of the SRA's investigation, Mr Ewan stated that the Firm provided a wide range of services, but stated that the largest proportion of their income came residential conveyancing, commercial conveyancing and general litigation.

11. The SRA's concerns about Mr Ewan's conduct arose due to the Firm's involvement with TN (UK) Consultancy Ltd ("TNCL"); a firm managed by a former solicitor, who was struck-off the Roll in April 2017. TNCL provided short term loans and bridging finance to companies and individuals in property transactions.

12. Following notice being given to the Firm a Forensic Investigation Officer ("FIO") commenced an investigation on 11 September 2018, which culminated in the production of a Forensic Investigation Report ("FIR") on 18 September 2019.

Allegation 1.1

13. In an e-mail to the FIO on 25 March 2019, Mr Ewan provided a list of 20 matters in which the Firm had acted which involved TNCL. The FIO conducted a review of a sample selection of the files relating to these matters and identified a number of instances where it seemed that the Firm's client account was being used as a banking facility as follows:

- Person B;
- Silk (Maxwell Street) Ltd ("Company E";
- Person F;
- Property H.

Person B

14. The relevant payments were made on 20 and 21 December 2018. These included an incoming payment of £382,000 on 20 December 2018 from a company by the name of Katrin Properties with a reference to "Loan Advance" and an out-going payment of £326,599 on 21 December 2018 back to Katrin Properties, with a reference of "[Person C] £ due".

15. Person B was the registered proprietor of Property D. His acquisition of the property was registered on 12 September 2018, along with a charge in favour of a company named PBF Investments Limited. On 2 November 2018 an e-mail was received by the Firm requesting that £249,950 be transferred to PBF Investments Limited from the £250,000 that had come in for Person B. The client ledger account recorded an outgoing payment to PBF Investments of £249,950 on 2 November 2018.

16. On 20 December 2018 a Facility Letter was sent from Katrin Properties to Person B relating to bridging finance for Property D. This letter appears to be signed and dated by Person B on 21 December 2018. A Legal Charge, dated 21 December 2018, and apparently signed by Person B, was created, relating to a charge agreed between Person B and Katrin Properties Limited in relation to Property D. On 20 December 2018 an e-mail was sent by Katrin Properties referring to a payment of £382,000 that had been sent in relation to Person B.

17. On 21 December 2018 an e-mail was sent from Madhu Bhajanehatti to Mr Ewan's e-mail address, but addressed as, "Dear Julie", referring to the £382,000 that had been received on Person B's file and requesting that £326,5999 was transferred to Katrin Properties Limited with a reference of, "[Person C]"

18. On 19 December 2018 a letter from Person B to Mr Ewan stated:

> "I give full authority for you to send £326,599 that you are holding on behalf (sic) to Katrin Properties Limited. This is to redeem the funding that they have provided to [Person C]."
>
> Please take this letter as full authority to remit the funds".

19. A CHAPS payment confirmation was created, relating to £326,599 transferred to Katrin Properties on 21 December 2021.

20. In relation to the receipt of £382,000 from Katrin Properties, received on 20 December 2018, the SRA's case was that there was no evidence of any underlying legal transaction or a service forming part of a solicitor's normal regulated activities in relation to the transfer of £326,599 back to Katrin Properties on 21 December 2018. With the exception of the words in the 19 December 2018 letter from Person B, there was no evidence within the file relating to the relationship between Person B, Person C and Katrin Properties, nor the nature of the legal work carried out by Mr Ewan in relation to this relationship.

21. On 6 August 2019, the FIO conducted an interview with the Mr Ewan. When asked why Katrin Properties would send money to the Firm, only for it to be returned the next day, Mr Ewan stated that Person B gave the instruction for monies to be sent to him and returned the next day. He was asked why the clients could not have dealt with this themselves directly and replied "are you saying it should be direct by client – client requested this to be done – they are associated companies lending". Mr Ewan also stated "Ledgers are done at the end of December and are not up to date – will need to review the file notes and speak to the paralegals – all legitimate work. Don't have all the files – loads of people working on the files – I don't necessarily have all the files. Funds were drawn down by [Person B] from the balance sheet on the ledger". When the FIO put to Mr Ewan the concerns that a banking facility had been provided, Mr Ewan refuted this.

Company E

22. In June 2018, the Firm acted on behalf of TNCL in their loan of £199,980 to Company E.

23. On 2 July 2018, Mr Ewan received a letter from Person N of TNCL. The letter stated that Mr and Mrs I were lending £200,000 to Person N personally as per the loan agreement, that this money would be transferred directly to the Firm, that this money would then be transferred on to Company E as a loan from TNCL and that Mr Ewan was instructed to draw up a security document for this loan from TNCL to Company E. The letter also stated that the loan from Mr and Mrs I had been secured by a charge in their favour over Property J.

24. The client file contained a 2 July 2018 e-mail exchange between TNCL and Mr I in relation to the loan of £200,000 and the fact that it was to be paid to the Firm's client account.

25. The client ledger account recorded an incoming payment of £200,000 from Mr and Mrs I on 2 July 2018 and an outgoing payment of £199,980 to Company E on 4 July 2018.

26. The SRA's case was that there was a lack of evidence of Mr Ewan and/or the Firm conducting any legal work or service in relation to the loan from Mr and Mrs I to Mr Chopra/TNCL. In the absence of an involvement in any underlying legal transaction between Mr and Mrs I and Person N/TNCL, the basis upon which the Firm received funds directly from Mr and Mrs I was said by the SRA to be unclear. Further, it was not clear why these funds were not transferred from Mr and Mrs I to either Person N or TNCL directly.

Person F

27. The Firm acted for TNCL in relation to a loan of £70,000 that was being provided to Person F. This loan was to be secured on Person F's residential property; Property G. The client ledger account recorded the following relevant transactions:

- An incoming payment from Hog Contract Limited for £70,000, recorded on 25 November 2017; and

- An outgoing payment to London Mason Bars for £70,000, recorded on 13 November 2017.

28. The file contained a standard loan contract between TNCL and Person F, dated 10 November 2017. The agreement provided for a loan of £77,500, with deductions of £3,500 for a broker's fee, £3,500 for the first month's interest and £500 for administration and legal costs. The net loan was therefore for £70,000. The contract was signed by Person F and witnessed by Mr Ewan on 13 November 2017.

29. The file contained a legal charge, dated 13 November 2017, between TNCL and Person F in relation to Property G. The charge was signed by Person F and witnessed by Mr Ewan.

30. In a RX1 application to the Land Registry relating to the legal charge for Property G, signed by Person F, Mr Ewan had signed as the conveyancer of the applicant on 10 November 2017. An AN1 application was submitted to the Land Registry to enter an agreed notice in relation to the legal charge on Property G, signed by Person F. Mr Ewan signed this as the applicant's conveyancer and the Firm's details were provided as the organisation sending the application. Mr Ewan had also witnessed a TR1 property transfer form for Property G signed by Person F.

31. In a letter dated 13 November 2017 from Person F to the Firm, authority was given for loan funds secured in connection with Property G to be transferred to London Mason Bars Ltd. The FIO's inspection of the Firm's client account bank statements revealed that there were no incoming payments from Hog Contract Limited in November 2017. However, a payment for £100,000 was received on 25 October 2017. The FIO's enquiries at Companies House revealed that Paul Smith was registered as the sole director and shareowner of Hog Contract Limited. The enquiries also established that London Mason Bars was a registered company, with an individual sharing the surname of Person F recorded as sole director and shareowner.

32. In the course of the investigation, Mr Ewan sent an email dated 21 August 2019, in which he produced further documents including two letters dated 13 November 2017. One was from Paul Smith and TNCL, addressed to the Firm, requesting a transfer of £70,000 from the file of "Paul Smith Hog Contract Ltd" to the file of TNCL. The other was from Mr Ewan to TNCL, indicating that the loan for Person F, secured against Property G, was solely for business purposes and should be paid to London Mason Bars Ltd, for which Person F's son was a director, and for which Person F was the beneficial owner. The letter goes on to suggest that if the loan was paid to the company, and not Person F, the payment would be exempt from various legislative provisions.

33. The SRA's case was that there was no underlying legal transaction to justify the onward payment to London Mason Bars Ltd or the transfer of £70,000 from Paul Smith Hog Contract Ltd to TNCL.

Property H

34. TNCL entered into a joint venture agreement with a company called Property Investments and Acquisitions Limited ("Property Investments") in order to purchase Property H. The agreement was created in May 2017, and the signature page

demonstrated the involvement of Whitmore Law Solicitors. The client file contained a CHAPS payment confirmation for £226,903 to Whitmore Law on 6 July 2017. A loan contract, dated 5 July 2017, appeared within the file, which indicated that TNCL were lending Property Investments £227,000, secured against Property H. A 5 July 2017 e-mail exchange between Whitmore Law and TNCL referred to this transaction as a "sub-sale".

35. On 9 August 2017, Whitmore Law e-mailed the Firm indicating that Property Investments had contracted to sell Property H. The e-mail enquired:

> "Please could you provide a duly executed DS1 together with confirmation of the sum required to redeem the charge.
>
> Please could you also provide bank details as to where payment should be made"

36. On 15 August 2017 an e-mail sent by Whitmore Law to the Firm, with Mr Ewan copied in, referred to £264,390 being required to be repaid to TNCL in order to redeem the charge. The reply from the Firm dated 15 August 2017, confirmed the amount and provided the Firm's account details.

37. The client ledger account for this matter recorded the following transactions:

- incoming payment of £14,390 on 16 August 2017 from Whitmore;
- incoming payment of £250,000 on 16 August 2017 from Whitmore;
- incoming payment of £930 on 18 August 2017 from Property Investment;
- outgoing payment of £101,659.60 to "Denmar" on 16 August 2017; and
- outgoing payment of £163,660.40 to "Capil Bhanji" on 18 August 2017.

38. The SRA's case was that there was no evidence of an underlying legal transaction between TNCL and either Denmar and/or Capil Bhaji.

39. The total sum of the six separate transactions that the SRA relied on totalled £931,916.

Allegation 1.2

40. In October 2018, the Firm acted for Client K in relation to his purchase of Property A. This purchase was carried out with the assistance of a mortgage from NatWest Bank.

41. On 5 October 2018, NatWest Bank wrote to the Firm confirming their willingness to lend Client K £300,000 in relation to the purchase of Property A for £375,000. The Firm was instructed to act on behalf of NatWest Bank in accordance with the CML Lenders' Handbook for England & Wales ("the Handbook"). Section 5.13.1 stated:

> "You must ask the borrower how the balance of the purchase price is being provided. If you become aware that the borrower is not providing the balance of the purchase price from his own funds or is proposing to give a second charge over the property, you must report this to us if the borrower agrees (see part 2), failing which you must return our instructions and explain that you are unable to continue to act for us as there is a conflict of interest."

42. Part 2 of the Handbook, stated:

> "If the customer is receiving a gift from a third party (not sellers/vendors) we confirm we are happy to proceed without a further request from you provided that the gift is unconditional, bears no interest, is not repayable and the giftor will have no interest in the property.
>
> We accept second charges to protect the giftors interest provided we have a fully enforceable first legal charge (with a deed of postponement in place if applicable) and there are no repayments relating to the second charge. Again, no additional request is required from you in this instance. We confirm that no additional borrowing will be granted without prior consent from the second charge holder. Please kindly report any repayments."

43. Separately, a loan was agreed between Client K and Person M in the sum of £63,474.10 plus the deposit monies. It was agreed that the loan would be recorded as a restriction on the property on completion. The loan agreement was dated 30 November 2018.

44. The SRA's case was that the Firm should have reported this loan by Client K from Person M to their lender client, NatWest Bank, assuming Client K agreed. If Client K did not agree, section 5.13.1 required the Firm to withdraw from acting for NatWest Bank in relation to this mortgage.

45. When Mr Ewan was questioned by the FIO in the 6 August 2019 interview about this matter.

46. Mr Ewan accepted that it had not been disclosed to Nat West as it was "not really borrowing" but rather "just lending money between partners – not really borrowing". He did not consider that it was necessary to disclose it as "they are not stranger clients – they work together"

<u>Mr Ewan's further responses</u>

47. Following the preparation of the FIR, Mr Ewan provided further correspondence to the SRA in which he denied having provided a banking facility.

48. In relation to the FIO, Mr Ewan stated:

> "It is clear that Mr Sangha is not a conveyancer but a forensic accounts investigator. Whilst he may be qualified to look at and analyse the accounts of a firm he is ill equipped to make legal conclusions. He has no conveyancing experience and therefore has misunderstood the manner in which conveyancing transactions are conducted".

49. In relation to Person F, Mr Ewan stated: "The firm did not act for TN but were instructed by [Person F] and her family company London Mason Bars Ltd. [Person F] was the beneficial owner of the company although the legal shares were held by her son, who is also a director".

50. In relation to Company E, Mr Ewan stated: "The funds from [Mr and Mrs I] were loaned to TN secured by a third party legal charge over a property owned by the directors of TN. This is common practice and is recorded in the books of TN as a director's loan".

51. In relation to the NatWest bank mortgage for Client K, Mr Ewan denied having failed to protect the interests of a lender client by failing to notify the lender of the loan between Client K and [Person M] as, "…the Client and [Person M] are business partners and deal with their property investments together and the loan was merely to identify what was outstanding between them". Mr Ewan stated: "There was no loan between [Person M] and [Client K] as such. They are long standing business partners who simply wanted a record of what was owed between them at that particular time. There was no suggestion that this loan would in any way have any security or priority over the charge of the lender client and there was no intention to take security over any beneficial interest in the Property. It is worth noting that this position was indeed merely temporary and the fact is that nothing was owed between the parties at the time of completion. There was no conflict of interest. I have known them for a considerable amount of years".

52. Mr Ewan sent a further letter to the SRA, which was received on 30 December 2021, responding to a request for clarification dated 10 June 2021 in which he stated that:

> "The payments into, and transfers or withdrawals from, our client account are justified under Rule 14.5 of the SRA Accounts Rules 2011 as they relate to an underlying transaction or service forming part of our normal conveyancing process carried out on behalf of the clients involved".

53. Mr Ewan reiterated points made earlier in relation to the other matters.

Findings of Fact and law

54. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to Mr Ewan'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.

55. The Tribunal considered carefully all the documents presented.

56. **Allegation 1.1**

Applicant's Submissions

56.1 Mr Collis referred the Tribunal to the Warning Notices and case law in relation to using a client account as a banking facility. This included the Warning Notice, entitled *"*Improper use of a client account as a banking facility*"*, issued on 18 December 2014,

updated on 6 August 2018, which referred to Patel v SRA [2012] EWHC 3373 (Admin) and Fuglers & Ors *v SRA* [2014] EWHC 179 (Admin) (QB).

56.2 In addition to the general guidance and authorities on this topic, on 19 July 2016, Mr Ewan had received a letter of advice from the SRA in relation to the client account being used as banking facility. That letter included the following:

> "…money was retained on account for your client… …in respect of a conveyancing transaction which eventually fell through. Instead of returning this money directly to your client, you agreed to make payments upon her behalf in respect of her children's school fees, a rental payment and a payment to settle outstanding legal fees."
>
> "This letter sets out our concerns so that you can take steps to address them and ensure your future compliance. I would therefore advise you to make sure that you and your staff are familiar with the provisions which are relevant in this matter."

56.3 Mr Collis submitted that Mr Ewan was therefore aware that receiving instructions from a client to make an onwards transfer of funds would not prevent this transaction from being viewed as using the client account as a banking facility, if that onwards transfer was not connected to instructions arising from an underlying legal transaction.

56.4 Mr Collis submitted that the totality of the payments referred to above did not relate to instructions arising from an underlying legal transaction. Whilst Mr Ewan may have been providing legal services to individuals or companies hoping to benefit from those funds, that did not permit the direct transfer of funds into the Firm's client account by a third party. when neither Mr Ewan nor the Firm were providing a legal service to that third party in connection with that transfer. There had therefore been a breach of Rule 14.5 of the Accounts Rules.

56.5 Mr Collis submitted that such a failure to adhere to the strict requirements relating to the use of the client account, particularly when the SRA had previously sent Mr Ewan a letter of advice in relation to identical conduct one year previously, was the type of conduct likely to damage the public's trust and confidence in Mr Ewan and the profession. Mr Collis therefore submitted that Principle 6 had been breached.

The Tribunal's Findings

56.6 Mr Ewan had admitted this Allegation. The Tribunal was satisfied that the admission was properly made, based on the evidence before it, which was overwhelming.

56.7 Mr Ewan been given advice in a specific warning letter to him by the SRA and issues identified in that correspondence were the same as these matters. Mr Ewan should have been even more alert and aware of the requirements of Rule 14.5 and the importance of adhering to them. Despite that, within a year he had breached it. The Tribunal noted that large sums of money and multiple transfers were involved.

56.8 The Tribunal found Allegation 1.1 proved in full on the balance of probabilities.

57. **Allegation 1.2**

Applicant's Submissions

57.1 Mr Collis submitted that by failing to disclose the loan received by Client K to NatWest Bank, Mr Ewan had failed to protect the interests of his lender client. On that basis he had failed to achieve Outcome 1.2 of the Code of Conduct as he had failed to provide services to his lender client in a manner which protected their interests. Mr Collis also submitted that Mr Ewan had failed to act in the best interests of, and provide a proper standard of service to, his lender client. In doing so he had breached Principles 4 and 5.

57.2 Mr Collis submitted that disclosure of the loan may have impacted on Client K's ability to secure or maintain the mortgage arrangement with NatWest bank. Mr Collis told the Tribunal that an obvious client conflict had arisen. However, Mr Ewan had neither disclosed the loan nor withdrawn from acting. He had therefore failed to achieve Outcome 3.5.

57.3 Mr Collis further submitted that by not disclosing this loan, in particular in circumstances where it appears it was secured against a charge on Property A, Mr Ewan could have put his lender client's funds at risk. This was because Nat West's lending decision may have been different if they knew that the funds for the balance purchase monies were being supplied by Person M and that he was securing a charge against Property A. Mr Collis therefore submitted that Mr Ewan had breached Principle 10.

The Tribunal's Findings

57.4 Mr Ewan had admitted this Allegation. The Tribunal was satisfied that the admission was properly made, based on the evidence before it. The facts were clear and straightforward and the evidence showed that Mr Ewan was aware of the loan and should have disclosed it. The Tribunal found the allegation proved in full, including the breaches of Principles 4, 5 and 10 and the failure to achieve Outcome 3.5.

Previous Disciplinary Matters

58. On 20 May 2010, Mr Ewan had appeared before the Tribunal and admitted the following allegations:

> "1. That the Respondent failed, or in the alternative delayed in delivering Accountant's Reports to the SRA within the permitted time contrary to s.34 of the Solicitors Act 1974.
>
> 2. That no proper accounting records had been kept or maintained in breach of Rule 1, 32(2) and (4) of the Solicitors Accounts Rules 1998 ("SAR").
>
> 3. That no bank reconciliation had been prepared in breach of SAR 1998 32(7)."

59. The Tribunal had made the following Order:

> "The Tribunal Ordered that the Respondent, Charles Ayodemiji Ewan of Ewan & Co Solicitors, [address redacted], solicitor, do pay a fine of £4,000.00, 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 £4,800.00."

Mitigation

60. Mr Ewan did not advance any mitigation.

Sanction

61. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition). The Tribunal assessed the seriousness of the misconduct by considering Mr Ewan's culpability, the level of harm caused together with any aggravating or mitigating factors.

62. In assessing culpability, the Tribunal noted that Mr Ewan had full control of the matters giving rise to his misconduct. The Tribunal could not identify any particular motivation on his part, as this appeared to be his normal way of working at the time, despite the previous warning he had received. There was no breach of trust. Mr Ewan was an experienced solicitor who was fully responsible for his conduct.

63. In considering the question of harm, the Tribunal acknowledged that there was no evidence of any actual harm caused to any individual or company. However, the potential for harm which was reasonably foreseeable was to Nat West in that they were deprived of the opportunity to make a fully informed decision as to lending. This in turn caused harm to the reputation of the profession.

64. The misconduct was aggravated by the fact that it was repeated and took place over a period of time. Mr Ewan knew, or ought to have known, that he was in material breach of his obligations, particularly having regard to his previous correspondence with the SRA. Mr Ewan also had a previous finding of misconduct. Although this related to different matters, the common theme was the operation of the client account. The Tribunal did not find there to be any insight on Mr Ewan's part. The admissions that had been made had come in November 2022 and were without explanation.

65. The Tribunal found that making 'no order' or imposing a Reprimand was insufficient to reflect the seriousness of the misconduct. The level of culpability, the potential for significant harm, the fact that these were not simply minor breaches of regulation and the protection of the public and the reputation of the legal profession required a greater sanction.

66. 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 misconduct required a significant fine be imposed and the Tribunal determined that the appropriate level was Level 3. The appropriate sum within Level 3 was £10,000 having regard to the specific warnings Mr Ewan had received from the SRA and his previous appearance before the Tribunal.

67. The Tribunal considered whether it was necessary for the protection of the public to impose restrictions on Mr Ewan. The Tribunal noted that the SRA had chosen not to impose any restrictions and that the end date of the misconduct was four years ago. The

Tribunal was not satisfied that such restrictions were therefore necessary and it did not impose any.

Costs

68. Mr Collis applied for the Applicant's costs in the sum of £39,964.20. Approximately half that sum related to the forensic investigation costs and the remainder was the fixed fee for the proceedings. The notional hourly rate, taking into account that the hearing had taken one day rather than two, was £245.69.

The Tribunal's Decision

69. The Tribunal had concerns about the lack of information relating to the forensic investigation costs. There was nothing to indicate exactly how many days were spent at the firm's offices. The papers referred to at least two dates, but there was no detail beyond that. The travel time, time spent at the firm and the hotel costs were not properly explained. The schedule detailed that 67.5 hours had been spent at the firm's offices along with 67 hours travelling. The schedule also claimed £2,292 in hotel/overnight expenses. The firm's offices were in London and the SRA was based in Birmingham. This was reflected in the mileage, which appeared to work out at 362 miles. It was unclear if the FI officer(s) had travelled long distances each day or if they had stayed overnight.

70. In the absence of proper explanation of these matters, the Tribunal reduced the costs claimed by deducting the hotel/overnight expenses in their entirety. It reduced the travel time claim from £3,149 to £249. The Tribunal reduced the attendance at the firm claim from £6,345 to £2,632, reflecting 28 hours attendance time on the basis of two people attending for two days.

71. This reduced the forensic investigation costs from £16,414.20 to £7,509.20.

72. In relation to the legal costs, the Tribunal noted that this was not a particularly complex case. Mr Ewan had admitted the allegations in his Answer and so it was clear from that point that it would not be contested. There was a non-compliance hearing and there had been some correspondence for the SRA to deal with, which the Tribunal took account of. The substantive hearing had also gone short and the Tribunal considered there ought to be a reduction to reflect that. The Tribunal concluded that the appropriate level of costs for the proceedings was £10,000 plus VAT, reduced from £18,500 plus VAT.

73. The total level of costs was therefore assessed at £19,509.20.

74. Mr Ewan had not submitted a statement of means, which he was required to do pursuant to the standard directions, if he wished them to be taken into consideration. There was therefore no basis to reduce the costs further.

Statement of Full Order

75. The Tribunal Ordered that the Respondent, CHARLES AYODEMIJI EWAN, solicitor, do pay a fine of £10,000, 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 £19,509.20.

Dated this 11th day of January 2023
On behalf of the Tribunal

A E Banks
Chair