

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12388-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

NIROSHA JAYAWARDENA

Respondent

Before:

Ms A Banks (in the chair)

Ms H Appleby

Mr P Hurley

Date of Hearing: 3 May 2023

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 Ms Jayawardena by the Solicitors Regulation Authority Limited (“SRA”) were that, whilst in practice as a solicitor at Tremont Midwest Solicitors, she:
 - 1.1 Between January 2019 and March 2019, failed to conduct adequate client due diligence and/or ongoing anti-money laundering and risk assessment checks in respect of the sales of:
 - 1.1.1 Kilburn Road
 - 1.1.2 Bexley Road

And in doing so she breached Principles 6 and 8 of the SRA Principles 2011 (“the Principles”).
 - 1.2 Paid the proceeds of the sale of Kilburn Road and Bexley Road to third parties that were unconnected to the underlying transaction, and in doing so breached Rule 14.5 of the Solicitors Accounts Rules 2011 (“the Accounts Rules”).
 - 1.3 Between November 2019 and January 2021, failed to discharge an undertaking given to Judge & Priestly LLP on 28 January 2019, and in doing so she failed to achieve Outcome 11.2 of the SRA Code of Conduct 2011 (“the Code”) and Principle 6 of the Principles (in respect of conduct prior to November 2019) and breached paragraph 1.3 of the Code for Solicitors, RELs and RFLs and Principle 2 of the SRA Principles (in respect of conduct on or after 25 November 2019).
 - 1.4 While acting as COFA and manager of the Firm, failed to obtain an accountant’s report within six months of the end of the accounting periods:
 - 1.4.1 2016/2017
 - 1.4.2 2017/2018
 - 1.4.3 2018/2019

And in doing so breached Principle 8 of the Principles, Rule 32A.1 of the Accounts Rules and failed to achieve outcome 7.2 of the Code.
 - 1.5 While acting as COFA and manager of the Firm, failed to deliver a cease to hold accountant’s report for the Firm for the period September 2019 to 29 December 2020, and in doing so breached Rule 12.4 of the SRA Accounts Rules 2019.
 - 1.6 Whilst acting as COFA and manager of the Firm, failed to carry out five-weekly reconciliations and in doing so breached Rule 29.12 of the SRA Accounts Rules 2019 and failed to achieve outcome 7.4 of the SRA Code of Conduct.
2. Ms Jayawardena admitted all the allegations.

Documents

3. The Tribunal had before it the following documents:-
- Amended Rule 12 Statement and exhibit HWP1 dated 6 December 2022
 - Answer dated 13 January 2023
 - Statement of Agreed Facts and Outcome
 - Respondent's financial evidence bundle

Background

4. Ms Jayawardena was admitted to the Roll in February 2007. She held a current practising certificate subject to the following conditions:
- Ms Jayawardena is not a manager or owner of any authorised body.
 - Ms Jayawardena may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body.
 - Ms Jayawardena may not practise on her own account under regulations 10.2(a) or (b) of the SRA Authorisation of Individuals Regulations.
 - Ms Jayawardena does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account.
5. Ms Jayawardena was the sole equity partner at the Firm. She was also the COLP, COFA and MLRO.

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

6. The parties invited the Tribunal to deal with the Allegations against Ms Jayawardena 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

7. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Ms Jayawardena'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.
8. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Ms Jayawardena's admissions were properly made.
9. 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. The Tribunal found that as a result of

Ms Jayawardena's failings, fraudulent property transactions had taken place. She had caused significant delay in failing to comply with the undertaking given to Judge & Priestly. Her misconduct had taken place over a period of time. The failure to submit accountant's reports meant that the Applicant did not have proper oversight of the Firm's accounts. Her conduct had caused harm to those involved in the transactions as well as harm to the reputation of the profession.

10. The Tribunal found that given the seriousness of the admitted misconduct, sanctions such as No Order, a Fine or a Reprimand, were insufficient. The Tribunal determined that a short suspension together with indefinite restrictions and training adequately reflected the seriousness of the misconduct and afforded both the public and the reputation of the profession protection from any future harm by Ms Jayawardena.
11. The parties agreed that the appropriate sanction was to suspend Ms Jayawardena from practice for a period of 1 month to commence on 3 May 2023. Thereafter Ms Jayawardena was to be subject to the following conditions:

She may not:

 - be a Manager or Owner of any authorised body;
 - act as a Compliance Officer for Legal Practice (COLP), Compliance Officer for Finance and Administration (COFA), Money Laundering Compliance Officer (MLCO) or Money Laundering Reporting Officer (MLRO) for any authorised body;
 - practise on her own account under regulations 10.2(a) or (b) of the SRA Authorisation of Individuals Regulations;
 - hold or receive client money, or act as signatory to any client or office account or have the power to authorise transfers from any client or office account;
12. Further, Ms Jayawardena was required to complete a course on each of Anti-Money Laundering and the SRA Accounts Rules from a third-party course provider (to be approved by the SRA) within 12 months and the Respondent to provide proof of completion to the SRA within 28 days of completion.
13. The Tribunal agreed that the sanction proposed and agreed by the parties was appropriate and proportionate. Accordingly, the Tribunal approved the agreed sanction.
14. Ms Jayawardena applied for the suspension to be deferred so that it did not take effect until 1 June 2023. The deferment would enable her to hand the files over so that there was a smooth transition. The Applicant was content to agree to the suspension coming into effect on 1 June 2023 on the basis that it was a relatively short period and might be beneficial to the clients. The Applicant submitted that were the deferment to be granted, the restrictions on practise should come into effect in the usual way and not be delayed. This would provide a reduction of ongoing risk pending suspension.

15. The Tribunal was not minded to grant the application. Ms Jayawardena had been aware of the hearing date for some time, Standard Directions having been issued on 19 December 2022. Ms Jayawardena was aware of the allegations she faced, and was thus aware that the Tribunal might remove her ability to practice with immediate effect.
16. Further, this matter had been dealt with by way of an Agreed Outcome. This meant that, in the event the Agreed Outcome was approved, Ms Jayawardena would be suspended. The Tribunal did not consider that it was in the interests of justice to defer the suspension. Accordingly, the application to do so was refused.

Costs

17. The parties submitted that due to Ms Jayawardena's limited means, it was appropriate to make no order as to costs. The Tribunal considered the financial bundle provided by Mr Jayawardena which evidenced her lack of means. The Tribunal agreed that in the circumstances, it was reasonable and appropriate to make no order as to costs.

18. Statement of Full Order

1. The Tribunal ORDERS that the Respondent, NIROSHA JAYAWARDENA, solicitor, be suspended from practice as a solicitor for the period of 1 month to commence on the 3rd day of May 2023 and it further Ordered that there be no Order as to costs.
2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions imposed indefinitely by the Tribunal as follows:
 - 2.1 The Respondent may not:
 - 2.1.1 be a Manager or Owner of any authorised body;
 - 2.1.2 act as a Compliance Officer for Legal Practice (COLP), Compliance Officer for Finance and Administration (COFA), Money Laundering Compliance Officer (MLCO) or Money Laundering Reporting Officer (MLRO) for any authorised body;
 - 2.1.3 practise on her own account under regulations 10.2(a) or (b) of the SRA Authorisation of Individuals Regulations;
 - 2.1.4 hold or receive client money, or act as signatory to any client or office account or have the power to authorise transfers from any client or office account;
3. The Respondent must complete a course on each of Anti-Money Laundering and the SRA Accounts Rules from a third-party course provider (to be approved by the SRA) within 12 months and the Respondent to provide proof of completion to the SRA within 28 days of completion.
4. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 19th day of May 2023
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
19 MAY 2023

A handwritten signature in black ink, appearing to read 'A E Banks', written in a cursive style.

A E Banks
Chair

Case No: 12388-2022

IN THE SOLICITORS DISCIPLINARY TRIBUNAL

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

B E T W E E N:-

SOLICITORS REGULATION AUTHORITY

Applicant

- and -

NIROSHA JAYAWARDENA

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By a Statement made by Hannah Pilkington on behalf of the Applicant (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 11 October 2022 (the "Rule 12 Statement"), the SRA brought proceedings before the Tribunal making allegations of misconduct against the Respondent, (the "Tribunal Proceedings"). An amended Rule 12 statement was filed and served on 6 December 2022 (the "amended Rule 12 Statement").
2. The Respondent's Answer ("the Answer") to the Rule 12 Statement was served on 13 January 2023. However, having reviewed her position as set out in the Answer, the Respondent is now prepared to make full admissions to the allegations pleaded in the amended Rule 12 Statement.

3. As set out more fully below, having investigated and considered the Respondent's financial position, and subject to agreement and approval of this Agreed Outcome Proposal, the SRA makes no application for costs.

Admissions

4. The Respondent admits all of the allegations made against her at paragraph 1 of the amended Rule 12 Statement, namely that whilst in practice as a solicitor at Tremont Midwest solicitors, she:

- 4.1. Between January 2019 and March 2019, failed to conduct adequate client due diligence and/or ongoing anti-money laundering and risk assessment checks in respect of the sales of:

- 1.1.1 Kilburn Road

- 1.1.2 Bexley Road

and in so doing she breached Principles 6 and 8 of the SRA Principles 2011.

- 4.2 Paid the proceeds of sale of Kilburn Road and Bexley Road to third parties that were unconnected with the underlying transaction, and in doing so breached Rule 14.5 of the Solicitors Accounts Rules 2011.
- 4.3 Between November 2019 and January 2021, failed to discharge an undertaking given to Judge & Priestly LLP on 28 January 2019, and in so doing she failed to achieve outcome 11.2 of the SRA Code of Conduct 2011 and Principle 6 of the SRA Principles 2011 (in respect of conduct prior to November 2010) and breached paragraph 1.3 of the Code of Conduct for Solicitors, RELs and RFLs and Principle 2 of the SRA Principles 2019 (in respect of conduct on or after 25 November 2019)
- 4.4 While acting as COFA and manager of the Firm, failed to obtain accountant's reports within six months of the end of the accounting periods:
 - 4.4.1 2016/2017
 - 4.4.2 2017/2018
 - 4.4.3 2018/2019

And in so doing breached Principle 8 of the SRA Principles 2011, Rule 32A.1 of the SRA Accounts Rules 2011 and failed to achieve outcome 7.2 of the SRA Code of Conduct 2011.

- 4.5 While acting as COFA and manager of the Firm, failed to deliver a cease to hold accountant's report for the Firm for the period September 2019 to 29 December 2020, and in so doing breached Rule 12.4 of the SRA Accounts Rules 2019.
- 4.6 While acting as COFA and manager of the Firm, failed to carry out five-weekly reconciliations and in so doing breached Rule 29.12 of the SRA Accounts Rules 2019; and failed to achieve Outcome 7.4 of the SRA Code of Conduct.

Agreed Facts

Professional Details

5. The Respondent was admitted to the roll of solicitors on 1 February 2007. She has dealt with conveyancing matters since 2005. The Respondent is a solicitor with a practising certificate which is subject to conditions as below:
 - 5.1. Ms Jayawardena is not a manager or owner of any authorised body.
 - 5.2. Ms Jayawardena may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body.
 - 5.3. Ms Jayawardena may not practise on her own account under regulations 10.2(a) or (b) of the SRA Authorisation of Individuals Regulations.
 - 5.4. Ms Jayawardena does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account.
6. The Respondent owned 100% of the equity at Tremont Midwest Solicitors (the "Firm"). She was the sole partner, COLP, COFA and MLRO at the Firm, a partnership law practice that specialised in immigration and conveyancing work. The Firm closed on 31 January 2021.
7. According to the Respondent's explanations, she was assisted by one qualified staff member and one professional assistant. The Firm's fee income was from the following areas, approximately:

- 7.1. Immigration – 60%
- 7.2. Conveyancing – 30%
- 7.3. Family law – 5%
- 7.4. Probate – 5%

The inadequate due diligence

Kilburn Road

- 8. The Respondent acted in the sale of a residential property at Kilburn Road, London. The property was registered to an elderly brother and sister ("Mr and Ms A").
- 9. On 26 February 2019, a person purporting to be Mr A called the Firm and instructed the Respondent to act in the sale of Kilburn Road, London. It has since transpired that this was an imposter as the real Mr A had recently died, whilst his sister lacked capacity and had been moved by the local authority into residential care.
- 10. On 4 March 2019, the Firm sent a client care letter which identified the Respondent as the solicitor with overall supervision and day-to-day conduct of the matter.
- 11. On 4 March 2019, the person purporting to be Mr A called the Firm and asked for the contract to be sent out as soon as possible. The Respondent informed Mr A that she needed to see him and Ms A urgently with their identity documents and proof of address. Mr A explained that Ms A could not move very well and would not be able to come into the office. The Respondent advised that she could visit both of them at home but was unable to do so that week.
- 12. That afternoon, the Respondent received a telephone call from the person purporting to be Mr A informing her that he and Ms A were waiting in a taxi outside. The Respondent went out to speak with them.
- 13. The client file provided by the Respondent contained no attendance record of either of the above calls.
- 14. The Respondent obtained copies of Mr and Ms A's ID documents in the form of a driving licence and passport; and proof of address documents in the form of a TV licence and

bank statement. She told the FIO that these were originals but it is not possible to tell from the file whether this is the case.

15. The Legal Sector Affinity Group (LSAG) Guidance 2018 (in force at the time of the relevant conduct) states at page 43 that Regulation 28 requires that you *“identify the client and verify their identity on the basis of documents or information obtained from a reliable source which is independent of the client, unless the identity of the client is already known to you and has been verified by you”*. It further states at page 44 that *“you should not ignore obvious forgeries”* whilst acknowledging that solicitors are not required to be an expert in forged documents.
16. The passport of Ms A spelled her middle name – Ann – as “Annn”. This was an obvious anomaly that anyone conducting adequate due diligence in the circumstances of this case would have picked up on.
17. The Firm’s AML policy required the Respondent to carry out electronic AML checks on new clients. There is evidence that she did so in similar circumstances on separate unconnected client matters at around the same time as she was acting in the sale of Kilburn Road. However, she carried out no such searches in respect of Mr and Ms A.
18. On 6 March 2019, exchange of contracts on the sale took place.
19. On 8 March 2019, completion of the sale took place.
20. The Respondent subsequently explained, in a witness statement she was required to make in separate proceedings, that Mr and Mrs A returned to the Firm’s offices to sign Form TR1, and that she met them both outside in a car. The Respondent explained further as follows:

“18...They said they have given the management of all their money to a company which they got to know through a friend who is an accountant and they will invest their money in there. I asked them what kind of business this company does. They said it is an asset management company and they are comfortable for them to do the management of their money as their accountant friend knows all about it and he was helping them. They also said that they had signed a contract with Hermes of Mayfair too.

19. The matter was completed and it was too late to send the balance sales proceeds to Hermes of Mayfair, the asset management company. Also, I asked Mr and Mrs [A] to put that in writing before I can transfer the money to them...
20. I did a company search on companies house web site and I was satisfied the company search results of Hermes of Mayfair.”
21. On 9 March 2019, the person purporting to be Mr A emailed the Respondent and provided her with the account details for Hermes.
22. On 11 March 2019, the Respondent transferred £293,482.12 to Hermes bank account, having carried out a Companies House search into the company.
23. Later on 11 March 2019, the Respondent received a telephone call from Westminster Council inquiring about the property sale. The caller explained that Mr A had recently died and that Ms A was in the care of the Council.
24. The Respondent took immediate steps to recall the funds and was eventually able to do so in full.
- Bexley High Street*
25. The Respondent acted for clients purporting to be a Mr and Mrs B in the sale of their property, Bexley High Street, Bexley. In the event, they appear to have been imposters connected with the same fraudsters that were involved with the fraudulent sale of Kilburn Road.
26. The Respondent was instructed on or around 6 February 2019. The property was to be sold “asap” to a cash buyer who was willing to purchase the property as seen and without making any inquiries, accepting that it needed “a lot of repairs”.
27. The Respondent told the Forensic Investigation Officer that she had taken a copy of the clients’ original passports, original bank statements, and original utility bills, although it is not possible to tell from the copies on file whether this is the case. The Respondent conducted electronic AML searches on 12 February 2019. The identity documents were not submitted as part of these searches.
28. However, the Firm’s client file showed that, whilst AML searches had been conducted, the identity documents had not been submitted.

29. Both AML searches had been returned with warnings:

29.1. Mr B's report stated *"date of birth entered conflicts with data source returned by this check"* and *"Found on previous but not current electoral roll"*

29.2. Mrs B's report stated *"Applicant's identity has not been independently verified. Date of birth entered could not be checked as no available data sources hold this data. Found on previous but not current electoral roll."*

30. The Respondent said that as a result of these warnings:

"I contacted Infotrack to see whether they have any system for me to get an additional AML report, but they said "No" and I have to seek assistance from the client for alternative methods. Client's driving licence was obtained as secondary ID."

31. There is no copy of the driving licence on file.

32. Even if she did obtain it, the Respondent does not recall carrying out a further AML check with the information contained in the driver's licence.

33. The 2018 Legal Sector Affinity Group (LSAG) Guidance includes the following (at pages 44 and 45 of the Guidance):

"Electronic verification

You should consider whether any electronic verification system you use properly establishes the customer's identity, rather than just establishing that the identity exists.

You should consider the risk implications in respect of the particular retainer and be on the alert for information which may suggest that your client is not the person they say they are."

34. On or around 7 March 2019, the transaction completed.

35. The proceeds of sale in the sum of £164,940.83 were paid into an account held in the name of Infinity Jewels. There is no evidence on the client file provided to the SRA, nor

has the Respondent explained, the circumstances in which the proceeds of sale came to be paid to a third party account.

36. HM Land Registry thereafter advised that it had reservations as to the identity of the sellers. It stated that it had been provided with copies of the seller's passports and it considered them to be forgeries.

Undertaking to Judge & Priestley LLP

37. Judge & Priestley LLP acted on behalf of a landlord in the matter of a proposed assignment of a lease.

38. On 28 January 2019, the Respondent sent an email to Judge & Priestley LLP in which she gave an undertaking to pay their costs of the licence to assign, limited to £850 plus VAT, whether or not the matter proceeded to completion.

39. By letter dated 3 October 2019, the Respondent advised that her client did not wish to pursue the assignment of the lease.

40. On 24 October 2019, Judge & Priestley LLP sent the Respondent an invoice in the amount of the agreed costs.

41. On 29 November 2019, Judge & Priestley LLP sent an email chasing payment of the costs. This was acknowledged by the Respondent the same day. A further chasing email was sent on 24 January 2020 and acknowledged by the Respondent on the same date. A yet further chasing email was sent on 21 July 2020.

42. On 12 October 2020, Judge & Priestley LLP referred the matter to the Applicant.

43. Payment remains outstanding. The Respondent has confirmed that she is in the process of arranging funds and intends to repay this in full by the end of May 2023.

Accounts Rules breaches

44. In respect of the extraction date of 29 February 2020, the Respondent failed to provide:

- 44.1. Client listing;
- 44.2. Details of funds held by the Firm;
- 44.3. Copy of the client account reconciliation.

45. On 2 July 2020, the Respondent informed the Forensic Investigation Officer that the Firm carried out monthly client account reconciliations but that the last client account reconciliation had been conducted 31 January 2020 and that the books of account had not been written up since 14 March 2020, i.e. just prior to Covid lockdown.
46. On 28 September 2020, the Respondent informed the SRA that she had decided to close down her practice.
47. On 19 January 2021, in connection with the closure of the Firm, the Respondent sent the SRA its last accountant's report. This covered the period 30 September 2017 to 30 September 2018, but had not been produced until 8 October 2020.
48. On 31 January 2021, the Firm closed.
49. By email dated 23 April 2021, the Investigation Officer asked the Respondent "*Please can you advise if your accountants have now completed the final set of accounts and if so, please provide me with a copy.*"
50. On 10 May 2021:
- 50.1. The Investigation Officer asked for the contact details of the accountants;
 - 50.2. The Respondent provided these on the same day;
 - 50.3. The Investigation Officer asked the accountants for the final report;
 - 50.4. The accountants responded that they had been instructed to complete a "closing down account" for the firm, but that there were COVID-related delays.
51. On 21 July 2021, the Investigating Officer asked the Respondent to provide copies of the Firm's accountant's reports for the periods 2016/2017, 2018/2019 and 2019/2020, and for clarification as to why the 2017/2018 report was dated 8 October 2020. He also reminded the Respondent that a final accountants report was yet to be provided.
52. On 16 August 2021, the Respondent explained that the 2017/2018 report was dated 8 October 2020 due to having to re-do the books following a software change.
53. She did not explain the absence of the other reports.

54. On 27 August 2021, the Respondent provided a copy of the 2016/2017 accounts report. This had been produced on 5 October 2020. Copies of the remaining reports were not provided.

55. Neither these reports, nor a final accountants report, were provided by the Respondent to the SRA.

56. As a result of these failings, the Forensic Investigation Officer (“FIO”) was unable to calculate whether the Firm held sufficient funds in the client bank account to satisfy client liabilities.

Non-agreed mitigation

57. In respect of the property transactions, the Respondent states that she did not do anything deliberately, and that her Firm was a victim of fraud. She points to the steps she took by way of due diligence and AML. She recovered the funds in respect of Kilburn Road, and in respect of Bexley Road the fraud did not come to light until seven or eight months later.

58. As to the accounts rules breaches, the Respondent notes the difficulties caused by a change in software.

59. The Respondent also points to her personal circumstances and the Tribunal is respectfully referred to further relevant details in the letter dated 26 April 2023 which the parties consider should not be published given the private information relating to the Respondent and her family.

60. As a result of these mistakes and the stress that it has caused her the Respondent does not wish to be a manager, COLP, or COFA again.

Proposed sanction including explanation of why such order would be in accordance with the Tribunal’s Guidance Note on Sanction

61. Subject to the Tribunal’s approval, it is agreed that the Respondent should be subject to the following sanction:

61.1. A period of suspension of 1 month;

61.2. Indefinite restrictions on practice, with liberty to apply, that the Respondent:

- 61.2.1. is not a manager or owner of any authorised body.
 - 61.2.2. may not act as a compliance officer for legal practice (COLP), compliance officer for finance and administration (COFA), Money Laundering Compliance Officer (MLCO) or Money Laundering Reporting Officer (MLRO) for any authorised body;
 - 61.2.3. may not practise on her own account under regulations 10.2(a) or (b) of the SRA Authorisation of Individuals Regulations;
 - 61.2.4. does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account;
 - 61.2.5. is to complete a course on each of Anti Money Laundering and the SRA Accounts Rules from a third-party course provider (to be approved by the SRA) within 12 months and the Respondent to provide proof of completion to the SRA within 28 days of completion.
62. The sanctions outlined above are considered to be in accordance with the Tribunal's sanctioning guidance (10th edition) taking into account the guidance set out in *Fuglers and Others v Solicitors Regulation Authority* [2014] EWHC 179 (as per Popplewell J) and as set out in the guidance at paragraph 8. Reference is also made to the points of mitigation raised by the Respondent above.
63. As set out at paragraphs 31 and 32 of the Guidance, a Restriction Order may be combined with any other sanction made by the Tribunal. If the conditions are for an indefinite period it must be part of the order that the solicitor subject to the condition(s) has liberty to apply to the Tribunal to vary or discharge the conditions. With reference to paragraph 37 of the Guidance in imposing any restriction the Tribunal must consider that restriction necessary and appropriate.
64. The seriousness of the misconduct is such that a financial penalty is not a sufficient sanction or in all the circumstances appropriate. There is a need to protect both the public and the reputation of the legal profession from future harm from the Respondent, but neither the protection of the public nor the protection of the reputation of the legal profession justifies a striking off the Roll.
65. The Parties agree that a suspension is an appropriate sanction in all the circumstances and that taking into account the admissions and the mitigation relied upon by the

Respondent, a short suspension of one month is appropriate. This takes into account the seriousness of the misconduct giving rise to the allegation.

66. This assessment takes into account that the level of the Respondent's culpability in respect of the allegations above is high as the:

66.1. conduct cannot be described as spontaneous;

66.2. Respondent had direct control of or responsibility for the circumstances giving rise to the misconduct;

66.3. The conduct gave rise to a foreseeable loss and/or risk of loss to the owners of both properties, and to the clients of Judge & Priestley to whom the undertaking had been given as well as to the reputation of the profession. Judge & Priestley have experienced considerable delay in payment which remains outstanding with the Respondent seeking to repay this in full by the end of May 2023. The proceeds of sale for the Bexley High Street property could not be recovered and is likely to be subject to insurance claims thereby causing financial loss and harm to others.

66.4. Respondent was an experienced solicitor, with experience of managing a law firm and was aware of the relevant Rules and Principles

67. It is acknowledged that the Respondent did not have a dishonest motive for the conduct with regards to the property transactions. It is not alleged that the Respondent deliberately misled the regulator.

68. As to the harm caused by the misconduct, the Respondent's conduct in relation to the property transactions allowed scam property transactions to progress. It was reasonably foreseeable that failures in identification procedures in the context of these property transactions could lead to harm to those involved and to the reputation of the profession. However, it is acknowledged that the Respondent took steps to recover the proceeds of sale and engaged with enquiries made by the Land Registry. The Respondent's conduct in failing to comply with an undertaking has caused a foreseeable delay in the proper payment of funds owing as well as damage to the reputation of the profession. The Respondent's conduct in failing to meet obligations as to accounting took place over a period of time and had the potential to cause harm in preventing the SRA having oversight of the Firm's accounts particularly during its closure.

69. It is considered that the agreed training in matters of AML and the SRA Accounts Rules is necessary and proportionate to limit the risk of future re-occurrence or harm.

70. Aggravating factors relied upon are that the:

- 70.1. misconduct is such that the Respondent knew or ought reasonably to have known that the admitted conduct was in material breach of obligations to protect the public and the reputation of the legal profession;
- 70.2. misconduct took place over a period of time

71. The mitigating factors are that the:

- 71.1. misconduct in the context of the property transactions was impacted upon by deception by a third party;
- 71.2. Respondent made efforts to recover proceeds of sale and engaged with the Land Registry to limit the extent of any loss arising from the misconduct and has confirmed that she intends to repay the sum owing by the end of May 2023;
- 71.3. Respondent has illustrated insight and has made full admissions.

72. In respect of the property transactions, the SRA accepts that the Respondent attempted to apply some customer due diligence measures, such as meeting her clients in person and obtaining identification documents. However, the evidence shows that she did not adequately verify or scrutinise the information that she had been provided with.

73. In respect of allegations 1.4 to 1.6 (the accounts rules breaches), it appears that the combination of lockdown, the Respondent's health, and her decision to close her Firm, led her effectively to cease any ongoing compliance with the requirements of the Accounts Rules. None of these, however, released the Respondent from complying with her ongoing obligations.

74. Matters of personal mitigation are noted as set out in paragraphs 57 to 60 above and in the letter dated 26 April 2023. It is acknowledged that the Respondent has provided medical and other evidence (which is before the Tribunal) and which has been taken into account by the SRA. In accordance with the Guidance Note to paragraph 21 of the Guidance, whilst not of relevance in determining the seriousness of the misconduct they will be considered by the Tribunal when determining the fair and proportionate sanction.

75. The Respondent has provided evidence of limited financial means which has been taken into account by the SRA in relation to the proposed order as to costs. That evidence is also placed before the Tribunal.

76. 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 outcome represents a proportionate resolution of the matter which is in the public interest. It is submitted that the proposed restriction order is both necessary and proportionate.

Costs

77. Subject to the Tribunal's approval of this Agreed Outcome Proposal, it is agreed that there shall be no order as to costs. The SRA has carefully considered the Respondent's financial position and is satisfied that no order for costs is fair, just and reasonable in all the circumstances of this case.

Signed by/on behalf of the Respondent

Name: Nirosha Jayawardena

Date: 28/04/23

Signed by/on behalf of the Applicant

Oliver Sweeney

Head of Legal & Enforcement

Date: 26 April 2023