SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12392-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

ALI NEWAZ First Respondent

AAMER MASOOD Second Respondent

Before:

Mr R Nicholas (in the chair)
Mr B Forde
Mrs L McMahon-Hathway

Date of Hearing: 13 February 2023

Appearances

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

Steve Roberts, solicitor of Richard Nelson LLP for the First Respondent.

Robert Forman, solicitor of Murdochs Solicitors for the Second Respondent.

JUDGMENT

Allegations

1. The Allegations against the First Respondent were that between 8 October 2018 and 17 June 2019:

1.1 He failed to ensure the prompt return of client funds from the proceeds of sales of two property transactions, as soon as there was no longer any proper reason to retain those funds, in breach of Rule 14.3 of the SRA Accounts Rules 2011 (the SAAR 2011).

1.2 In respect of the sale of a property at 7A Oxxxx Terrace, between 1 February 2019 and 17 June 2019 he authorised payment of the proceeds of sale to third parties in circumstances amounting to the provision of a banking facility in breach of Rule 14.5 of the SAAR 2011 and Principle 6 of the SRA Principles 2011.

1.3 As COLP, COFA, MLRO and sole principal of the Firm, he failed to run the business in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8 of the SRA Principles 2011.

2. The Allegations against the Second Respondent were that:

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

2.1.1 7A Oxxxx Terrace

2.1.2 12 Cxxxx Avenue and in so doing he breached any or all of Principles 6 and 8 of the SRA Principles 2011.

2.2 Between 1 February 2019 and 17 June 2019 (in respect of 7A Oxxxx Terrace) and between 8 October 2018 and 24 January 2019 (in respect of 12 Cxxxx Avenue), he failed to ensure the prompt return of client funds from the proceeds of sales of these two property transactions, as soon as there was no longer any proper reason to retain those funds, in breach of Rule 14.3 of the SAAR 2011.

2.3 Between 1 February 2019 and 17 June 2019, in respect of the 7A Oxxxx Terrace transaction, he initiated payment of the proceeds of sale to third parties in circumstances amounting to the provision of a banking facility in breach of Rule 14.5 of the SAAR 2011 and Principle 6 of the SRA Principles 2011.

3. In addition, it was alleged that the Second Respondent acted recklessly or with manifest incompetence with respect to Allegations 2.1 to 2.3 above. As is discussed below, the SRA applied to withdraw the allegation of recklessness.

Application for leave to submit an application for approval of a proposed Agreed Outcome out of time

4. Rule 25(1) of the SDPR 2019 states that:

> "25.—(1) The parties may up to 28 days before the substantive hearing of an application (unless the Tribunal directs otherwise) submit to the Tribunal an Agreed Outcome Proposal for approval by the Tribunal."

5. In this case, the deadline was 24 January 2023.

6. On 9 February 2023, the parties submitted an application for consideration of a proposed Agreed Outcome in this matter.

7. The Tribunal invited the parties to address it on the reasons for the late submission of this application.

8. Mr Tankel told the Tribunal that he and Capsticks were well aware of this as an issue. Mr Tankel told the Tribunal that he recognised that this was discourteous and he apologised on behalf of the SRA.

9. Mr Tankel said that he accepted that the timing was unsatisfactory and that there was no excuse. He invited the Tribunal to consider the Agreed Outcome, notwithstanding the lateness as both Respondents had made full admissions. It would be contrary to the overriding objective to hold a hearing in those circumstances.

10. The Tribunal pointed out to Mr Tankel that on 28 November 2022 the parties had made a joint application to vacate the Case Management Hearing listed for 6 December 2023. The basis of that application was that on variations of directions were sought and that the case remained listed, with a three-day time estimate, from 21 February 2023. The Tribunal also noted that the Answers were served on 16 and 17 November 2022 in which the admissions were made, admissions having been previously made to the FIO.

11. Mr Tankel offered no explanation or excuse and did not seek to argue that the situation was justifiable.

12. Mr Forman submitted that there had been a lack of respect on part of SRA specifically (not Capsticks). As far as Mr Masood was concerned, Mr Forman had requested possible Agreed Outcome terms on 22 September 2022. This was followed by full admissions being made on 16 November 2022. Since then, there had been repeated chasing of the SRA and it was not until 16 January 2023 that terms had been proposed, which were accepted the same day. On that date, Mr Forman had notified the Tribunal of a possible Agreed Outcome application in this matter. There was no further reply from the SRA until 1 February 2023, followed by a draft document on 9 February. Throughout this period, Mr Forman estimated he had sent at least 10 emails. He described it was "totally unacceptable" that it took so long to get a reply.

13. Mr Roberts added that it was known from the point at which the notice of referral was served in August 2022 that an Agreed Outcome would be proposed. In all the circumstances, Mr Roberts submitted it would be unfair to the Respondents for the Tribunal to refuse to consider it now.

The Tribunal's Decision

14. Mr Tankel had been very frank in his acceptance of failure on the part of the SRA. He

had indicated that he would take the Tribunal's concerns back to the SRA. The Tribunal appreciated Mr Tankel's candour and his offer to ensures the Tribunal's concerns were heard. Agreed Outcomes were an important part of the disciplinary system, but they must be presented in accordance with the SDPR 2019 so as to avoid causing significant inconvenience to the parties and the Tribunal and to avoid delaying other cases which could have been listed sooner.

15. In the circumstances of this case, the Tribunal was persuaded to allow the proposed Agreed Outcome to be considered, on the basis that it would be unfair to the Respondents, who were not at fault in any way for the delay, to do otherwise. The application for leave was therefore granted.

Application for approval of the proposed Agreed Outcome

16. The parties invited the Tribunal to approve the Agreed Outcome on basis of the Statement of Agreed Facts and Proposed Outcome appended to this Judgment. The Respondents admitted all allegations, save for the allegation of recklessness, which the SRA applied to withdraw.

17. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondents' 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.

18. The Tribunal was satisfied that the admissions made by each Respondent were properly made and supported by the evidence. The Tribunal was also satisfied that in the circumstances of the admissions and the nature of the evidence, it was in the interests of justice to withdraw the allegation of recklessness, which had only been made against the Second Respondent.

19. The Tribunal also granted leave to correct a typographical error in the Rule 12 statement.

20 In consideration of sanction, the Tribunal referred to its Guidance Note on Sanctions (10th edition – June 2022). It considered the seriousness of the misconduct in each case, having regard to the culpability and harm caused together with any aggravating and mitigating factors.

21. The Tribunal was satisfied that the parties had correctly identified all the relevant factors present in the misconduct. The sanction proposed against Mr Newaz was a fine of £5,000 and the sanction proposed against Mr Masood was a fine of £7,501. This reflected the fact that the actions of Mr Newaz were 'moderately serious whereas the actions of Mr Masood were 'more serious', albeit at the lowest end of that scale.

22. The Tribunal was content to approve the sanctions proposed in respect of each Respondent.

Costs

23. The Tribunal was content with the total sum of the costs together with the apportionment between the Respondents.

Anonymisation

24. The Applicant, with the support of the Respondents, applied for anonymisation of parts of the Agreed Outcome document as follows:-

> "The Applicant applies to anonymise the proposed Agreed Outcome. The Rule 12 statement contains two separate cases of misconduct, each of which involves a number of lay clients of the Respondents and various associated third parties and properties. The identification of the former clients will breach the right to LPP which they will, legitimately, have assumed would accrue to all their correspondence and conversations with the Respondents. Furthermore, the identification of other entities, including companies owned by the clients and the addresses of the properties, may in turn lead to the identification of former clients by a process of so-called jigsaw identification. Accordingly, the Agreed Outcome proposal anonymises the clients and associated entities but does not seek to anonymise other third parties."

25. The Tribunal noted that the starting point was one of open justice. The Tribunal also had regard to the right to privacy for lay clients. The Tribunal was satisfied that the reader of this Judgment and the appended Agreed Outcome would easily be able to follow the case and the Tribunal's reasoning, notwithstanding the anonymisation proposed. The Tribunal was further satisfied that the anonymisation was proportionate and did not go further than necessary. The application was therefore granted.

Statement of Full Order

26. The Tribunal Ordered that the Respondent, ALI NEWAZ, solicitor, do pay a fine of £5,000.00, 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 £9,722.50.

27. The Tribunal Ordered that the Respondent, AAMER MASOOD, 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 £12,500.00.

Dated this 23rd day of February 2023
On behalf of the Tribunal

R Nicholas
Chair

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 LIMITED

Applicant

- and -

(1) MR ALI NEWAZ (336793)

(2) MR AAMER MASOOD (326439)

Respondents

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By an Application and statement made by Mark Lloyd Rogers on behalf of the Applicant, the Solicitors Regulation Limited ("SRA"), pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 14 October 2022. The SRA brought proceedings before the Tribunal making allegations of misconduct against the Respondents. Definitions and abbreviations used herein are those set out in the Rule 12 Statement. The Tribunal made Standard Directions on 20 October 2022. There is a substantive hearing listed for 21 to 23 February 2023.

Admission

2. The Respondents, Mr Ali Newaz and Mr Aamer Masood, admit all of the Allegations and the facts set out in this statement and the parties have agreed a proposed outcome (the numbering of the Allegations are retained from the Rule 12 Statement).

3. The Allegations against the First Respondent are that, between 8 October 2018 and 17 June 2019:

1.1 He failed to ensure the prompt return of client funds from the proceeds of sales of two property transactions, as soon as there was no longer any proper reason to retain those funds, in breach of Rule 14.3 of the SRA Accounts Rules 2011 (the SAAR 2011).

1.2 In respect of the sale of a property at 7A Oxxxx Terrace, between 1 February 2019 and 17 June 2019 he authorised payment of the proceeds of sale to third parties in circumstances amounting to the provision of a banking facility in breach of Rule 14.5 of the SAAR 2011 and Principle 6 of the SRA Principles 2011.

1.3 As COLP, COFA, MLRO and sole principal of the Firm, he failed to run the business in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8 of the SRA Principles 2011.

4. The Allegations against the Second Respondent are that:

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

2.1.1 7A Oxxxx Terrace

2.1.2 12 Cxxxx Avenue

and in so doing he breached any or all of Principles 6 and 8 of the SRA Principles 2011.

2.2 Between 1 February 2019 and 17 June 2019 (in respect of 7A Oxxxx Terrace) and between 8 October 2018 and 24 January 2019 (in respect of 12 Cxxxx Avenue), he failed to ensure the prompt return of client funds from the proceeds of sales of these two property transactions, as soon as there was no longer any proper reason to retain those funds, in breach of Rule 14.3 of the SAAR 2011.

2.3 Between 1 February 2019 and 17 June 2019, in respect of the 7A Oxxxx Terrace transaction, he initiated payment of the proceeds of sale to third parties in circumstances amounting to the provision of a banking facility in breach of Rule 14.5 of the SAAR 2011 and Principle 6 of the SRA Principles 2011

5. In addition, it was alleged that the Second Respondent acted recklessly or with manifest incompetence with respect to Allegations 2.1 to 2.3 above.

Application to withdraw recklessness

6. Mr Masood admits all the allegations set out above. He admits Allegation 5 on the basis that he was manifestly incompetent, but not on the basis that he was reckless.

7. The allegations of manifest incompetence on the one hand, and recklessness on the other, were put in the alternative and were mutually exclusive: only one could be found. Both were and remain proper allegations for testing at trial. However the Applicant is of the view that (a) a finding of manifest incompetence is an appropriate conclusion of the matter on these facts; and in any event (b) the sanction would be materially similar either way.

8. In the circumstances, the Applicant seeks to withdraw the allegations of recklessness.

The facts and matters relied upon in support of Allegations 1.1 to 2.3

Executive Summary

9. The firm acted in two residential sale matters which bore hallmarks of being dubious property transactions:
    a. Mr A – Sale of 7A Oxxxx Terrace; and
    b. Mr B and Mr C – Sale of 12 Cxxxx Avenue.

10. In relation to both matters the firm failed to return client money – i.e. the sale proceeds – promptly, as soon as there was no longer any proper reason to retain the funds. The firm provided banking facilities through client bank account by making payments to third parties (not the firm's client) and making payment of sale proceeds in a piecemeal fashion in multiple payments over a period of time ranging from 3 to 4 months.

11. In both matters Mr Masood was the fee earner and was assisted by Ms Tecle, an unadmitted legal assistant.

Professional details

12. Mr Newaz was assisted by six qualified staff and six unadmitted staff, which included a legal cashier. According to a recent professional indemnity insurance proposal form, the firm's fee income is from the following areas:
    12.1. Commercial litigation – 8%.
    12.2. Commercial conveyancing – 23%.
    12.3. Residential conveyancing – 22%
    12.4. Immigration – 16%
    12.5. Matrimonial – 30%
    12.6. Wills, trusts and tax planning – 1%

13. Mr Newaz was the Firm's COLP, COFA and MLRO. He was the Firm's only manager and the only person with authority to release funds from the Firm's bank account.

14. Mr Newaz was the supervisor of Mr Masood and of the other fee-earners at the Firm.

15. In respect of each payment on the two transactions below:
    15.1. Mr Masood took the client's instructions and requested the payments.
    15.2. Ms Tecle processed the request and raised any queries.
    15.3. Mr Newaz authorised the payments.
    15.4. Mr Masood does not recall there being any discussions with Mr Newaz about these payments.

Mr A – Sale of 7A Oxxxx Terrace

16. The Firm acted for Mr A in relation to the sale of 7A Oxxxx Terrace.

17. 7 Oxxxx Terrace is a typical end of terrace home. 7A Oxxxx Terrace is a strip of land at the side of 7 Oxxxx Terrace, comprising a strip of land and garage attached to Number 7. On 9 September 2016, a TP1 (transfer of part of registered title) effected the transfer of 7A Oxxxx Terrace from a Mr Chandra to a Mr A for the stated price of £25,000. The Firm was not involved at this stage.

18. The Firm was instructed some months later, on or about 24 November 2016, to file Form AP1 to change the Register to reflect the above transaction. Mr Masood was the relevant fee-earner. The registration of part of the registered title was completed on 8 December 2016.

19. In December 2018, the Firm was instructed to act for Mr A in the sale of 7A Oxxx Terrace. Mr Masood was again the relevant fee-earner.

20. The other parties to the transaction were as follows:
    20.1. The purchaser was a company known as "Company B", represented by Carter Devile.
    20.2. The sole director of Company B was a Mr Y.
    20.3. There was a lender, Vida, represented by Metro Law.

21. On 18 December 2018, the Firm obtained a Land Registry office copy entry in respect of 7A Oxxxx Terrace which indicated that it had been purchased by Mr A for £25,000 on 9 September 2016.

22. On 19 December 2018, Ms Tecle completed a "client inception form". This described the matter details as being "sale of property/3 bedroom home." In fact, 7A Oxxxx Terrace was at all material times just a strip of land at the end of a row of terraced houses, with a garage on it.

23. At Mr Masood's direction, the client inception form indicated that "simplified" due diligence was acceptable as the client was already known to Mr Masood from the previous transaction. Mr A provided a copy of a Polish passport, but not the original.

24. The file contained the following due diligence materials:
    24.1. Copy Polish passport, certified by a Mr Inoma of Highland Solicitors. The date the copy was certified was not supplied.
    24.2. A utility bill issued to Mr A at 7A Oxxxx Terrace.
    24.3. A letter from HMRC issued to Mr A "T/As Company A" at 7 Oxxxx Terrace.
    24.4. A letter from Lloyds Bank issued to Company A.

25. By email dated 29 January 2019, Mr A wrote to the Firm requesting that £110,000 of the proceeds of sale be paid to a third party as follows:

> *"...I owe my friend Mr [xx] Ahmed a sum of £110,000.00 which I borrowed to renovate my property.*
> *I need to return him this money but he wants to have it back from the solicitors other wise he will put a charge on the property and this will delay our completion...*

To resolve this matter we have understood that if my solicitors i.e. Woodford wise sends him an undertaking that upon successful completion of my property 7A Oxxxx terrace [xxxxx] Woodford wise will transfer [Mr] Ahmed a sum of £110,000.00 (one hundred and ten thousand pound) the matter will be resolved. Please consider the above as my instructions to issue him an undertaking.

...

Many thanks

Mr A"

26. The Firm gave the relevant undertaking by email dated 31 January 2019. On 1 February 2019, Mr Ahmed asked only for £55,000 upon completion, instead of the £110,000 originally agreed.

27. On 30 January 2019, Carter Devile wrote to Ms Tecle asking amongst other things as follows:

"*2. Has the seller carried out any building work pursuant to the Conditional Planning consent dated 01/03/2017?*

3. We note that the seller purchased the property in 2016 for £25000. Our client is buying the property for £625,000.00. Has the seller's solicitors explained the reason for the increase in the price? If the property has been sold to the seller at an under value, we require the following:

a. An insolvency act indemnity policy

b. The rationale behind the transfer at an undervalue

c. A statutory declaration from the seller

d. A certified ID and proof of residence of the transferor

e. Bankruptcy searches in the name of the transferor, with and without middle names."

28. On the available evidence, this is the first occasion that the Firm became aware that the 7A Oxxxx Terrace was being sold at a price of £625,000.

29. The Firm must have been aware of the difference in price. It had acted in the registration of 7A Oxxxx Terrace, had a recent office copy entry, and was instructed in the new sale.

30. Ms Tecle forwarded the email to Mr A. A telephone attendance note dated 30 January 2019 records that:

"*I asked the client the...reason behind the uplift in price and he stated that was because Mr Chandra, the then seller of 7A Oxxxx Terrace owed him substantial amount of money as he had carried out building works for Mr Chandra. The money owed was offset and the client explained it was a gifted deposit*."

31. Later the same day, Mr A committed his explanation to writing as follows:

"*2. – No, the work was never carried out.*
3. – The property was transferred to me under gifted deposit
a. please provide the indemnity policy let me know the cost.
b. The property was transferred to me under gifted deposit.
c. please if you can send me a format I can sign it.
d. I will provide the certified id.
e. what do you need from me to do the search."

32. If it had been correct that 7A Oxxxx Terrace was transferred under "gifted deposit", that would have meant that the purchase price stated in the Land Registry was incorrect. It ought to have stated the full price inclusive Mr A's fees that had been offset against the purchase price. This did not prompt any further enquiries on the part of Mr Masood.

33. When asked how Mr Masood satisfied himself as to the increase in price, his answer was:

"*Please find attached the Town and Country Planning Act 1990 Decision Notice which states 'Demolition of existing garage and construction of two storey side extension' this was what I meant as works carried out to the property and therefore satisfying us (the firm). The buyers and their solicitors raised no further queries in relation to the price. The Buyers had a mortgage lender and therefore it is reasonable for one to presume a valuation would have been carried out and if there was a query in relation to the purchase/sale price then this would have been communicated to Carter Deville (the acting solicitors for the buyers). If this was not accurate at the time, further queries would have been raised with the vendors solicitors (WW)".*

34. However, the planning decision notice was not consistent with the accounts given by Mr A regarding the gifted deposit. Further, the planning notice was issued:

34.1. To Mr Chandra, not Mr A.

34.2. In respect of **7** Oxxxx Terrace, i.e. a different property, not 7A.

34.3. On 1 March 2017. i.e. after 7A Oxxxx Terrace had been hived off.

34.4. For demolition of a garage and construction of a two storey extension (presumably to a pre-existing building), rather than the construction of a new three-bedroom home.

35. In any event, a planning decision notice would not by itself have been sufficient evidence that development had in fact taken place, let alone development justifying such a significant increase in the price within such a short period of time.

36. Ms Tecle was not a qualified solicitor. Her work was carried out under the direction and supervision of Mr Masood.

37. On 1 February 2019, contracts were exchanged for the property in the sum of £625,000, with a deposit of £80,000.[1]

38. By email dated 1 February 2019, Mr A asked for the deposit to be remitted to an account that he claimed was his business account, in the name of Company A, sort code 30-xx-xx, account number 58xxxxxx. This was not the same account from which Mr A had paid money on account of fees. Company A sounds like it could be the name of an Indian restaurant, whereas Mr A had said that he worked in construction. There is no record of the Firm raising any queries in respect of this change in instruction, establishing the link between Mr A and Company A, or conducting any due diligence in respect of Company A or its bank account. Mr Masood relied instead upon the due diligence materials already obtained as referred to above at paragraphs 21-22. Mr Masood did not carry out any searches of Company A for example on Companies House to establish its connection, if any, to Mr A. According to the complainant, an Experian search would have shown that the Company A business account was in fact owned not by Mr A, but rather by Mr Y, the director of Company B which was the purported purchaser. Companies House searches would have shown (i) that Mr Y was the director of Company A, a company with registration number 082xxxxx; (ii) there was no listed connection between Mr A and any company with the name Company A or a name containing the words “Company A”, and that the only

[1] It might be wondered how the lender’s surveyor did not recognise that the property was worth substantially less than £625,000. According to the lender’s representative, the mortgage application described the terraced house rather than the strip of land. Further, it transpires that, on the day of the survey, the property numbers were switched around. The SRA does not allege that the Respondents were or could have been aware of this.

reference on Companies House to an Person A is in connection with a company called Company B (with company number 107xxxxx). The inference to be reasonably drawn from this is that the purported purchaser and purported seller conspired to defraud the lender of the loan payment.

39. Further, the email in question contained three different spellings of Mr A's name.

40. By email dated 4 February 2019, Mr A asked the Firm to make a payment of £76,000 to the Company A business account (s/c 30-xx-xx a/n 58xxxxxx). The email contained the same three variations in the spelling of Mr A's name as set out above.

41. On 5 February 2019, the sale completed.

42. On 6 February 2019, Mr A asked for £55,000 to be remitted to Mr Ahmed and £110,000 to himself.

43. On 8 February 2019, Mr A asked for £25,000 to be transferred to his trading account, and "further indicated that he wishes us to hold the [balance of the] funds for now, because he was looking to purchase a commercial unit/lease and will let us have details soon".

44. On 17 May 2019, Mr A instructed the Firm that "the commercial deal might not be going ahead now. But negotiation was still ongoing and client wishes us to hold the balance for now. Client requested for £10,000 to be sent to him". No further instructions are recorded as having been received from Mr A in respect of this supposed purchase.

45. On 17 June 2019, Mr A asked for a further £5,000 to be transferred to him.

46. In summary, the movements on client account were as follows:

Date	**Payment in**	**Payment Out**	**From/To**	**Description**
February 2019	£80,000		Carter Devile	Deposit
1.2.2019		£80,000	Company A	Deposit
4.2.2019	£76,000		Carter Devile	No obvious explanation

4.2.2019		£76,000	Company A	No obvious explanation
4.2.2019	£433,198.00		Lender	Loan
5.2.2019	£35,713.00		Carter Devile	
6.2.2019		£110,000	Company A	Sale proceeds
6.2.2019		£55,000	Mr Ahmed	Purported repayment of loan from Mr Ahmed to Mr A in respect of renovation of Mr A's property
11.2.2019		£100,000	Company A	Sale proceeds
20.2.2019		£100,000	Company A	Sale proceeds
5.3.2019		£25,000	Company A	Sale proceeds
12.4.2019		£10,000	Company A	Sale proceeds
23.4.2019		£10,000	Company A	Sale proceeds
30.4.2019		£10,000	Company A	Sale proceeds
17.5.2019		£10,000	Company A	Sale proceeds
17.6.2019		£5,000	Company A	Sale proceeds

47. Each payment was requested by Mr Masood and authorised by Mr Newaz.

48. On 2 April 2019, the Firm carried out an "International Personal AML Search" in respect of Mr A. The "ID verification" part of the search was "referred". The "Additional Warnings" part

was “Passed”. At interview, Mr Masood explained that he was not entirely certain what this meant, that he believed it was a common issue with international passports where it was not possible to verify every detail, and that the practice of the Firm was to treat these as a positive identity check.

Mr B and Ms C – sale of 12 Cxxxx Avenue

49. On 6 March 2018, a Mr B instructed the Firm (by telephone) to act in the sale of 12 Cxxxx Avenue. The Firm sent a client care letter on the same date. Mr Masood was the relevant fee-earner in respect of this matter.

50. According to Land Registry records, Mr B and Ms C had purchased 12 Cxxxx Avenue for £375,000 on 18 August 2006.

51. Mr Masood explains that he knew Mr B and Ms C, as Mr Masood had acted on the purchase when they bought the property. The Firm therefore carried out “simple” due diligence i.e. obtaining a passport copy, proof of address, and identity checks.

52. The Firm obtained the following due diligence documentation:

    52.1. Copy bank statement for an account held in the names of Mr B and Ms C at Metro Bank.

    52.2. On 5 September 2018 the Firm conducted a “personal identity check” for Mr B and Ms C. The status of both checks was “identified”.

53. The purchaser was a company known as “Company B”, represented by Carter Devile. The sole director of Company B was, again, Mr Y.

54. On 5 September 2018, the Firm completed an AML check of Ms C and Mr B.

55. On 2 October 2018, contracts were exchanged. An email of that date from Mr B to Mr Masood requested the sale proceeds to be transferred to Mr B and Ms C s/c 23-xx-xx a/n 199xxxxx. The email attached a copy of the bank statement for the account. The email address had a different spelling for Mr B than the one otherwise provided to the Firm, an “a” was switched for an “e”.

56. On 16 October 2018, the sale completed.

57. On 2 November 2018 (i.e. post completion), the Firm obtained a Land Registry office copy entry. There is no evidence on the file of the Firm obtaining an office copy entry before this date.

58. On 2 March 2019, the Land Registry identified that there were discrepancies between Mr B and Ms C's signatures on the transfer, and the copy passports with documentation held on file by the Land Registry; that it had not been able to trace the witness to Mr B and Ms C's signatures on the transfer; and that it had doubts concerning the validity of the identity evidence which had been supplied.

59. On 11 March 2019, Mr Masood witnessed statutory declarations made by Mr B and Ms Cy to the effect amongst other things that:

    59.1. They had purchased 12 Cxxxx Avenue in or around October 2006. In fact, they had purchased it on 18 August 2006.

    59.2. They had owned 12 Cxxxx Avenue until they had sold it on 10 October 2018. In fact, they had sold it on 16 October 2018.

    59.3. They had both consciously changed their signatures upon renewal of their passports.[2]

60. On 12 March 2019, in response to these requisitions from HM Land Registry, Mr Masood certified copies of:

    60.1. French passports of Mr B and Ms C. This gave Mr B's date of birth as 11 August 1964.

    60.2. An Essex & Suffolk Water "Moving Property" Form. This gave Mr B's date of birth as 1 January 1975.[3]

61. Furthermore, the Firm held the proceeds of sale on client account for a substantial period, and paid them in piecemeal fashion to the account specified by Mr B and Ms C:

Date	Payment in	Payment out	From/To	Description

[2] Mr B renewed his passport on 17 September 2015. Ms C renewed her passport on 17 May 2016.

[3] It is worth noting that Mrs C's date of birth was listed in her passport as 1 January 1974, which might explain an error on the part of the utilities company. However, there is no record of the Firm following up this discrepancy.

2.10.2018	£89,000		Carter Devile	Part deposit
5.10.2018	£90,000		Carter Devile	Part deposit
8.10.2018		£30,000	Mr B & Ms C	
8.10.2018		£25,000	Mr B & Ms C	
9.10.2018		£35,000	Mr B & Ms C	
16.10.2018	£471,000		Carter Devile	Balance
19.10.2018		£200,000	Mr B & Ms C	
22.10.2018		£10,000	Mr B & Ms C	
22.10.2018		£2,500	Firm costs	
1.11.2018		£24,998.91	Bank of Scotland	Redemption of charge
2.11.2018		£25,000	Mr B & Ms C	
7.11.2018		£25,000	Mr B & Ms C	
7.11.2018		£1,910.13	Redemption CCJ	
8.11.2018		£50,000	Mr B & Ms C	
12.11.2018		£834.89	Mr B & Ms C	
16.11.2018		£25,000	Mr B & Ms C	
27.11.2018		£20,000	Mr B & Ms C	
3.12.2018		£25,000	Mr B & Ms C	
12.12.2018		£25,000	Mr B & Ms C	
12.12.2018		£3,750	Firm costs	
18.12.2018		£20,000	Mr B & Ms C	
2.1.2019		£6,000	Mr B	
24.1.2019		£6,000	Q Mahmood	Described as an estate agent, but supplied no invoice to the Firm

62. Each payment was requested by Mr Masood and authorised by Mr Newaz.

63. On 27 March 2019, the Land Registry cancelled the registration because:

> *"...Whilst HM Land Registry notes what the declarants have said in their statutory declarations regarding the signatures changing over time, in our experience, signatures do not change to such an extent as appears to be the case here.*

There are errors in the statutory declarations regarding the dates of the declarants' purchase and sale of the property.

...no explanation has been provided for the untraceability of the witness...

As far as the additional documentation lodged in support of the transferors' identity is concerned, we note that the Essex & Sussex Water "Moving Property" print-out shows a date of birth for Mr B which does not correspond to the date of birth specified in his passport and his stated mobile phone number does not correspond with the number given on the ID1 form for Mr B, which was lodged previously.

HM Land Registry continues to have doubts concerning the validity of the identity evidence which has been supplied."

Allegations

First Respondent: Allegations 1.1 and 1.2

64. For the avoidance of doubt, the SRA does not allege that Mr Newaz had any knowledge of the particular circumstances of either transaction.

65. Nevertheless, Mr Newaz was the sole signatory for the Firm's bank account and therefore it was he who physically authorised each of the payments out of client account referred to above. In doing so, Mr Newaz facilitated a breach of **Rule 14.3 of the SRA Accounts Rules 2011**, which provides that *"Client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds."* In respect of both transactions, the Firm retained the proceeds of sale in client account long after the sale took place. When funds were returned, they were returned in piecemeal fashion over several months.

66. In neither case was there any proper reason for the retention of the funds:

66.1. In respect of the 7A Oxxxx Terrace transaction, the reason provided was that the client intended to purchase a commercial property with the proceeds of sale. However, that was a separate matter and was not itself a reason to retain the funds. The purported onward purchase of a commercial property was not a part of a chain. In any event, once funds were being drawn down in piecemeal fashion it should have become obvious that the funds were not being used in the manner suggested.

66.2. No reason was provided in respect of the Cxxxx Avenue transaction.

67. Mr Newaz also breached **Rule 14.5 of the SRA Accounts Rules 2011**. Rule 14.5 of the SARs stated: *"You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities".*

68. The Guidance Notes of the Rules, under (v) stated:

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

69. The origins of the Rules stem from the principle identified in the decision of the Solicitors Disciplinary Tribunal in *Wood and Burdett No. 8669/2002*, as reiterated and reinforced by *Patel v SRA* [2012] EWHC 3373 (Admin), which established that it was not the proper part of a solicitors' everyday practice to operate a banking facility for third parties, even if they were clients – which is, it is submitted, the reality of what the Respondent caused or allowed to happen in this instance. Paragraph 36 of the judgment in Patel sets out that:

> *"While many of the functions associated with conveyancing and acting as an executor are of an administrative nature, their long association with the legal profession gives them the character of professional services. They are part of the everyday practice of solicitors. What the appellant did here, as described in the client care letter, was purely administrative. He was the custodian of funds. That had no association with the professional duties of a solicitor and was not in relation to an underlying legal transaction."*

70. In *Fuglers v SRA (2014) EWHC 179 (Admin),* per the Hon. Mr Justice Popplewell (at paragraph 40) found that irrespective of a risk of the abuse of the client account for money laundering, providing banking facilities through a client account is objectionable per se. At paragraph 39 it sets out:

> "… *it is objectionable in itself for a solicitor to be carrying out or facilitating banking activities because he is to that extent not acting as a solicitor. If a*

solicitor is providing banking activities which are not linked to an underlying transaction, he is engaged in carrying out or facilitating day to day commercial trading in the same way as a banker. This is objectionable because solicitors are qualified and regulated in relation to their activities as solicitors, and are held out by the profession as being regulated in relation to such activities. They are not qualified to act as bankers and are not regulated as bankers. If a solicitor could operate a banking facility for clients which was divorced from any legal work being undertaken for them, he would in effect be trading on the trust and reputation which he acquired through his status as a solicitor in circumstances where such trust would not be justified by the regulatory regimen: see Patel v SRA per Cranston J at [34]. Such behaviour has the potential to cause significant damage to the standing of the profession. This is all the more so if the solicitor is not merely allowing the client to use the client account to pay trade debts, but is himself involved in directing the payment of creditors and making the decisions as to who should be paid, as Mr Berens was in this case. Moreover such conduct involves determining or implementing commercial decisions as to which creditors should be paid when, and whether some creditors should be paid in priority to each other, as a matter of timing or at all. Even in the absence of any risk of insolvency, that is not an activity for which a solicitor is qualified or regulated, and the more favourable treatment of one creditor ahead of another may attract criticism and opprobrium which is capable of damaging the solicitor's standing and that of the profession."

71. On 18 December 2014 (updated 6 August 2018), the SRA issued a Warning Notice titled 'Improper use of a client account as a banking facility'. This Warning Notice refers to the above Rules and Guidance Notes, as well as referring to relevant authorities which address concerns about the improper use of client accounts. The Warning Notice reiterates the SRA's concerns that a solicitor, or their firm, should not be used to provide banking facilities to clients or third parties, that the courts have confirmed that operating a banking facility for clients divorced from any legal or other professional work is in itself objectionable.

72. The Warning Notice reminds solicitors that allowing a client account to be used as a banking facility carries with it the additional risk that they may assist money laundering and sets out the Warning Notices which solicitors should be familiar with including on money laundering and terrorist financing, stating that solicitors must remain alert to any unusual or suspicious factors such as concern about the source of funds or what you are asked to

do with them and states: "*Your obligation to comply with rule 14.5 offers an important 'first line defence' against clients or others who seek to use your client account to launder money*".

73. It also provides that:

> *"The rule* [rule 14.5] *is not intended to prevent usual practice in traditional work undertaken by solicitors such as conveyancing, company acquisitions, the administration of estates or dealing with formal trusts. So, it does not affect your ability to make usual and proper payments from client account when they are related to the transaction (such as the payment of estate agents' fees in a conveyancing transaction).*
>
> *Whether there is such a proper connection will depend on the facts of each case. The fact that you have a retainer with a client is insufficient to allow you to process funds freely through client account. You need to think carefully about whether there is any justification for money to pass through your client account when it could be simply paid directly between the clients."*

74. The SRA's Warning Notice "Improper use of a client account as a banking facility" published on 8 December 2014 (updated 2 March 2018), states:

> *"There must be a reasonable connection between the underlying legal transaction and the payments. Whether there is a reasonable connection is likely to depend on the facts of each case but where the legal services are purely advisory, it will clearly be more difficult to show a reasonable connection. The fact that you have a retainer with a client does not give you licence to process funds freely through client account on the client's behalf. Throughout a retainer, you should question why you are being asked to receive funds and for what purpose. You should only hold funds where necessary for the purpose of carrying out your client's instructions in connection with an underlying legal transaction or a service forming part of your normal regulated activities. You should always ask why the client cannot make the payment him or herself. The client's convenience is not the paramount concern and, if the client does not have a bank account in the UK, this considerably increases the risks. You should be prepared to justify any decision to hold or move client money to us where necessary"* (MLR1, p.382).

75. Out of proceeds of sale of 7A Oxxxx Terrace, Mr Newaz authorised payments to:
    75.1. A Mr Ahmed;
    75.2. A bank account Mr Masood believed to be held in the name of Company A. Even if this had been a business account of Mr A, it would have been inappropriate to pay the proceeds of sale to the bank account of a different entity. As it transpired, however, the bank account does not appear to have been connected to Mr A.

76. The underlying transactions were the sales of the two Properties. In general, proceeds of sale should be paid directly to the vendor. The only exceptions are where there are payments to be made which are directly connected with the property transaction itself, such as payments for estate agents' commission, or the Land Registry. By contrast, payments of proceeds to third parties who are not legally or directly connected with the transaction fall foul of Rule 14.5 and indeed are a classic red flag for potential property fraud or money laundering.

77. Property fraudsters routinely request funds to be paid into a third party account. Banks are generally better equipped to be able to make adequate checks than solicitors are; by contrast a solicitor's client account may be relatively susceptible to fraudulent use. By preserving the proper division of expertise between solicitors and banks, Rule 14.5 offers an additional basic layer of protection against this kind of fraud. The Respondent's breach of Rule 14.5 allowed the funds to flow through without having to pass through a bank account opened in the name of the purported sellers.

78. As COLP, COFA, MLRO, principal, and supervisor, Mr Newaz bore ultimate responsibility for compliance by the Firm with its regulatory and legislative obligations. Moreover, despite being responsible for physically authorising the relevant payments, Mr Newaz failed to question the relevant fee-earner as to why funds were being retained in client account, paid out in piecemeal fashion, or (in respect of the 7A Oxxxx Terrace transaction) paid out to a different bank account. Mr Masood says that he did not appreciate that the payments were a breach of the accounts rules. Ms Tecle says that she had no knowledge of the accounts rules. At interview, Mr Newaz recognised that the payments were breaches of the accounts rules but explained that the only compliance check he undertook was to ensure that there were sufficient funds in client account for payments out. It follows from all of this that, in breach of **Principle 8 of the SRA Principles 2011**, Mr Newaz failed to

ensure there were adequate systems in place for avoiding breaches of the above account rules.

79. In so acting, Mr Newaz also breached **Principle 6 of the SRA Principles 2011**. Mr Newaz breached the rules set by his regulator, ignored two longstanding Warning Notices, and undermined the principles underlying rule 14.5 as set out above at paragraphs 65-72. These principles have been well-established since at least *Wood and Burdett*. The breach was an egregious one, involving a large number of payments over a substantial period of time and to a number of different accounts.

Second Respondent allegations 2.1 – 2.3

Allegation 2.1: Failure to make adequate enquiries/cease to act

80. The SRA accepts that Mr Masood attempted to apply customer due diligence measures, such as meeting his clients in person and obtaining identification document. However, the evidence shows that he did not adequately scrutinise or verify the information that he had been provided with.

81. The sale of 7A Oxxxx Terrace had the following risk indicators, which enhanced the level of due diligence that was required:
    - 81.1. Significant increase in property price (of £600,000) within a short space of time without an adequate explanation;
    - 81.2. Distribution of proceeds of sale to third parties (including Mr Ahmed and Company A);
    - 81.3. Retention of proceeds of sale in client account, and piecemeal distribution over a long period of time.
    - 81.4. In two emails, Mr A gave three different spellings of his own name.
    - 81.5. On 4 February 2019, £76,000 of the deposit appears to have moved around in a circle with no obvious legitimate explanation.

82. Mr Masood ought to have made further enquiries about the increase in price, and about the identity of the bank account to which Mr A requested payments be made.

83. The Applicant does not allege misconduct in respect of the completion of the sale of Cxxxx Avenue. However, after completion, the remaining aspects of the transaction had the following red flags:

83.1. Retention of proceeds of sale in client account and distribution of funds in piecemeal fashion over a substantial period.

83.2. Mr B spelled his name differently in different contexts.[4]

83.3. In response to HMLR requisitions, Mr B provided documents with two very different dates of birth, and two different mobile numbers.

83.4. In response to HMLR requisitions, it became apparent that the signatures of both Mr B and Ms C had changed significantly.

83.5. The explanation given by both of them was that they had consciously changed their signatures just prior to obtaining new passports, which is itself inherently unlikely and therefore an inadequate explanation, without more, of the change in signatures.

83.6. Mr B's "new" signature was extremely simplified – it essentially just reads "aLi" in block script – and bore no resemblance to the old, more conventional, signature. It seems inherently unlikely that a person would alter their signature to such an easily forgeable form.

83.7. Neither "new" signature bore any resemblance to the old signatures. This too is inherently unlikely. Moreover, both Mr B and Ms C purported to be able to recreate their old signatures on demand.[5]

83.8. The dates given by the clients for the purchase and subsequent sale of 12 Cxxxx Avenue were incorrect.

84. At the point of responding to Land Registry requisitions, Mr Masood ought to have carried out further and better checks of the identity of Mr B and Ms C.

85. Both transactions required customer due diligence pursuant to Regulation 27(1) and (2) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "2017 Regulations"). The ways in which Mr Masood was required to comply with the requirement to take customer due diligence measures, and the extent of the measures taken, had to reflect the Firm's overall risk assessment and his assessment of the risk arising in any particular case.

86. The combination of risk factors in these two cases ought to have prompted additional inquiries on the part of Mr Masood as set out above, and/or a decision that Mr Masood could not continue to act.

[4] Mr Masood says that he did not notice at the time that the names were spelled differently: MLR1, p.141, lines 2-3.

[5] See the alternative signatures provided on the statutory declarations at MLR1, p.374-375.

87. Mr Masood did not carry out electronic AML searches in respect of the sale of 7A Oxxxx Terrace at the time of the sale. When he did eventually carry them out, the searches were returned with “referred” which the Firm accepted as a pass.

88. Mr Masood nevertheless continued to act. These were missed opportunities to prevent potentially fraudulent sales from occurring. In so doing, he breached **Principle 8 of the SRA Principles 2011**. Solicitors are required to run their business in accordance with proper governance and sound financial and risk management principles. Whilst Mr Masood went through some of the motions of obtaining some due diligence materials, he did not properly validate or check it. Failing to properly validate or check the contents of the materials received rendered the requests worthless for the purposes of undertaking due diligence. The concerns raised in both cases ought to have prompted additional questions and/or a decision that he should not act.

89. Mr Masood also breached **Principle 6 of the SRA Principles 2011**. Solicitors are an important first line of defence against illegitimate transactions. Some of the red flags here were very obvious, in particular the drastic increase in the value of the property, and the differences in client signatures. Mr Masood’s culpability was increased in respect of each transaction by the long period during which he was paying out the proceeds of sale, and the many opportunities the piecemeal nature of these payments presented for reconsidering the position. The clients were unable to provide satisfactory answers when questions were asked. Mr Masood was at best credulous and at worst reckless. The public would be alarmed by a solicitor who failed to discharge his responsibilities in this way.

Allegation 2.2: Failure to ensure prompt return of client funds

90. Mr Masood was the fee-earner with conduct of the case. He (and not Mr Newaz) had knowledge of the particular circumstances of the transaction. He was primarily responsible for the retention of funds on client account.

Allegation 2.3: Third party payments

91. Mr Masood was the fee-earner with conduct of the case. He (and not Mr Newaz) had knowledge of the particular circumstances of the transaction. He was primarily responsible for facilitating the payment of funds to the third parties.

92. In so acting, Mr Masood also breached **Principle 6 of the SRA Principles 2011**. Mr Masood breached the rules set by his regulator, ignored two longstanding Warning Notices, and undermined the principles underlying rule 14.5 as set out above at paragraphs 65-72. These principles have been well-established since at least *Wood and Burdett*. The breach was an egregious one, involving a large number of payments over a substantial period of time and to a number of different accounts. The seriousness of the conduct was aggravated further by the fact that it took place in the context of a transaction which already showed a series of red flags.

Allegation 3: manifest incompetence

93. A competent solicitor would have known that the due diligence carried out in this case was inadequate in that:

93.1. The transactions involved the sale of properties, which are a known target for fraud.

93.2. The property sales involved the red flags referred to above at paragraphs 78 and 80.

93.3. The risks of acting in the sales were heightened by the retention of client funds and their subsequent payment, in piecemeal fashion, to third parties.

93.4. The piecemeal nature of the payments out meant that Mr Masood had many opportunities to consider his position.

93.5. When he sought explanations in respect of each transactions, the responses he received were unsatisfactory.

93.6. The requisite due diligence standards for property sales are well-established.

93.7. He departed from the expected standards of the Firm.

94. To the extent that Mr Masood was not aware of the risk of undertaking a property transaction with inadequate due diligence, or that the due diligence he had undertaken was inadequate, then he was manifestly incompetent.

Mitigation

95. The following points are advances by way of mitigation on behalf of Mr Newaz but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:

95.1. Mr Newaz is a solicitor qualified in 2007, he has no previous regulatory history with the SRA, he can properly be described of a solicitor of hitherto unblemished character;

95.2. Mr Newaz was entitled to rely on the knowledge and experience of Mr Masood as a senior solicitor having qualified in 2005. There had been no cause to question his understanding of the SRA Accounts Rules;

95.3. Mr Newaz made an early admission to the allegations. The accounts rules breach was admitted when he was interviewed by the Forensic Investigation Officer in January 2020, he has therefore demonstrated good insight;

95.4. Mr Newaz has co-operated entirely with the FIO and SRA throughout the investigation and subsequent disciplinary proceedings;

95.5. Whilst the allegations relate to two incidents, there were no other issues identified by the FIO during his visit to the Firm. This demonstrates that there are systems in place and that in the main, those systems are effected. The two incidents can properly be described as isolated incidents which do not reflect the overall compliant nature of the Firm;

95.6. Since the issues were identified, the Firm have voluntarily implemented additional controls to ensure that the issues cannot arise again;

95.7. The allegations against Mr Newaz arise as a result of his position as manager of the Firm. There is no suggestion he set out to misconduct himself in any way, the breaches can properly be characterised as inadvertent rather than deliberate.

96. The following points are advances by way of mitigation on behalf of Mr Masood but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:

96.1. Mr. Masood repeats his earlier and sincere apology for his incompetent conduct on these two matters. They do not reflect the standards he aspired and continues to aspire to achieve and unfortunately did highlight a lacuna in his understanding and approach to AML and the rule prohibiting the provision of a banking facility.

96.2. Mr. Masood welcomes the SRA's acceptance that he acted with integrity and honestly throughout, if incompetently.

96.3. As indicated by the Applicant, Mr. Masood attempted to apply customer due diligence, but did not do so competently. To assist the Tribunal, he sets out below the steps taken, in order that it may be better informed of the extent of his culpability. Mr. Masood does not provide this explanation in justification of his performance, which he accepts was incompetent.

96.4. In the Sale of 7a Oxxxx Terrace Mr. Masood believed that he had verified the identity of his client by :

96.4.1. Examining and certifying a copy of the client's passport on 23 November 2016 i.e. when the firm acted in registering Mr A as proprietor of 7A OxxxxTerrace.

96.4.2. Receiving a further copy of the same passport purportedly signed by Highland Solicitors. As Mr. Masood had already certified a copy of the same passport, he did not consider that it was necessary to check with Highland Solicitors whether their certification was correct;

96.4.3. Receiving a copy of the client's driving licence;

96.4.4. Undertaking an electronic AML search which was returned 'Passed' on 17 May 2019 (and which utilised the said driving licence as the evidence of identity);

96.4.5. Having met with the client (as had Ms. Tecle, who had day to day conduct of the file, at the outset of the matter); and

96.4.6. Noting that Ms. Tecle had completed a client inception form indicating that the photographic evidence supplied was a good likeness to the person that attended upon her.

96.5. In respect of 12 Cxxxx Avenue Mr. Masood attempted to verify the identity of his clients by :

96.5.1. Having undertaken KYC for the clients when acting for them in the purchase of the same property in 2006 while at another firm;

96.5.2. Having been instructed by the clients in 2009 regarding a debt owed to the lender and therefore had previous dealings with the known clients;

96.5.3. The firm obtaining the clients' ID both at the outset of the matter and following communications with HM Land Registry; and

96.5.4. In Ms. Tecle having carried out electronic searches in respect of the client's ID, which were returned 'Identified' (238, 363).

96.6. Mr. Masood believed that he had identified the ultimate beneficial owner of Company A in receiving a letter from HMRC dated 5 August 2018 addressed to the client (Mr A) as 'T/As Company A. HMRC's letter did not refer to a separate corporate vehicle, rather that the client was a sole trader with a trading name.

96.7. He was not aware that Company B or Company A were owned by Mr Y and therefore was not aware that he had carried out a circular payment.

96.8. Mr. Masood did investigate the uplift in the property price. He was not suspicious of the client's verbal and written instructions as they matched a) the client's instruction at the outset that he was a builder/developer and b) Mr. Masood's knowledge of the neighbour as a property investor that engaged builders.

96.9. The buyer's solicitors were satisfied with the client's explanation without requiring further information.

96.10. Mr. Masood understood that Mr A had purchased 7a Oxxxx Terrace on the assumption that he would be obtaining planning permission to build a house on the site. He saw various references to planning permission being provided but did not spot the inconsistencies. He accepts that such failure was incompetent.

96.11. Mr. Masood accepts that there were features that demanded further scrutiny in the matter of 7a Oxxxx Terrace and that EDD should have been undertaken.

96.12. Mr. Masood has reflected that his incompetent performance on these files was, in addition to knowledge gaps, the result of being less alert by having had previous unremarkable dealings with the said clients, and perhaps as a result of personal problems he was encountering at the time.

96.13. Mr. Masood has cooperated at all stages in the SRA's investigation and demonstrated real insight in accepting and understanding where he went wrong.

96.14. The knowledge gaps have now been addressed by Mr. Masood through further training, and he now applies rigorous and substantive checks to all clients, no matter what previous dealings have been conducted. Equally, further training has ensured that the Second Respondent understands the strict application of the rules prohibiting the provision of a banking facility requiring client funds to be returned immediately, directly and demonstrably to the client following completion of a transaction.

Agreed outcome

97. Mr Newaz admits all of the above Allegations 1.1 to 1.3 and agrees:

97.1. To pay a financial penalty in the sum of **£5,000.00**

97.2. To pay costs to the SRA agreed in the sum of **£9,722.50** (being 40% of the SRA's costs).

98. The costs set out above include a reduction for the case having concluded by way of an Agreed Outcome and is an apportioned amount of the overall SRA costs incurred in total.

99. Mr Masood admits all of the above Allegations 2.1 to 2.3 and agrees:

99.1. To pay a financial penalty in the sum of **£7,501.00**

99.2. To pay costs to the SRA agreed in the sum of **£12,500.00**. The parties agreed that the Second Respondent would have been responsible to pay **£14,533.50** being 60% of the SRA's costs, but the SRA has accepted £12,500 in light of evidence of his financial means.

100. The costs set out above include a reduction for the case having concluded by way of an Agreed Outcome and is an apportioned amount of the overall SRA costs incurred in total.

Explanation as to why such an order would be in accordance with the Tribunal's sanctioning guidance (10th edition)

101. The parties consider and submit that in light of the admissions set out above and taking due account of the mitigation put forward by Mr Newaz and Mr Masood, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanction (10th edition).

102. It is agreed that:

102.1. The seriousness of the misconduct is such that a reprimand is not sufficient for the protection of the public and the protection of the reputation of the profession;

102.2. Neither the protection of the public nor the protection of the reputation of the legal profession justifies suspension from or striking off the Roll;

102.3. Considering the facts above and the aggravating and mitigating factors discussed below, the seriousness of the misconduct giving effect to the purpose of the sanction, this case falls in a bracket in which a fine is appropriate for Mr Newaz and Mr Masood. Public confidence in the legal profession demands no lesser sanction;

103. In respect of the level of culpability of Mr Newaz:

103.1. Mr Newaz had no direct knowledge of the underlying transactions

103.2. Mr Newaz authorised all the outgoing cheques from the business, and included within that was the piecemeal payment of proceeds to third parties. This amounted to twelve payments across the space of four months.

103.3. There is no evidence that Mr Newaz was aware that anything was amiss.

103.4. It was open to Mr Newaz to place a significant degree of reliance upon Mr Masood given the seniority and experience of the latter.

103.5. Mr Newaz was the Firm's COFA. He was therefore required to ensure compliance with the Solicitors Accounts Rules by both himself and by everyone in the Firm.

104. In respect of the level of culpability of Mr Masood:

104.1. Mr Masood was directly involved in both transactions.

104.2. Mr Masood had been on the Roll for approximately 17 years at the time of these allegations (Allegation 2.1 to 2.3). He was an experienced solicitor.

104.3. Some of the significant items of correspondence may have been dealt with by a legal secretary.

104.4. There were obvious warning signs in respect of the Oxxxx Terrace transaction which Mr Masood failed to identify.

104.5. It is not alleged that Mr Masood was at fault in respect of the underlying Cxxxx Avenue transaction. The allegation relates to the fact that the answers that the clients provided in response to subsequent requisitions from HMLR raised some red flags, and that Mr Masood failed to make sufficient enquiries about these before passing the information on to HMLR.

104.6. Mr Masood made some effort in respect of AMLR compliance, including by meeting clients in person. The allegation is that he then did not scrutinise the information received, or follow it through, as thoroughly as he ought to have done.

105. The harm caused by Mr Newaz and Mr Masood was that:

105.1. The Oxxxx Terrace transaction may have involved defrauding the lender of a six-figure sum.

105.2. There was a risk of the Cxxxx Avenue transaction being registered in circumstances where it ought not to have been.

Aggravating factors

106. The aggravating factors are that:

106.1. Both Mr Newaz and Mr Masood were senior and experienced solicitors

106.2. The misconduct was repeated across two transactions and spread across several months

106.3. Mr Masood was manifestly incompetent.

Mitigating factors

107. The agreed mitigating factors are that:

107.1. Both Mr Newaz and Mr Masood were the victims of wrongdoing by third parties.

107.2. Both Mr Newaz and Mr Masood have engaged fully with the regulator

107.3. Both Mr Newaz and Mr Masood made early admissions

107.4. Mr Newaz immediately sought to remedy the systemic issues identified as a result of the matters with which these allegations are concerned

107.5. Both Mr Newaz and Mr Masood have a good level of insight.

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

Signed:

ALI NEWAZ

Date:

Signed:

AAMER MASOOD

Date:

Signed:

ON BEHALF OF THE SRA

Date: 9 February 2023