SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12481-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

CLYDE AND CO LLP First Respondent

EDWARD HENRY MILLS-WEBB Second Respondent

Before:

Mrs L Boyce (in the chair)
Mrs A Sprawson
Mrs C Valentine

Date of Hearing: 9-11 January 2024

Appearances

Andrew Tabachnik KC, barrister of 39 Essex Chambers, instructed by Capsticks LLP for the Applicant.

Ben Hubble KC and Saaman Pourghadiri, barristers of 4 New Square Chambers, instructed by Clyde and Co for the First Respondent.

Helen Evans KC and William Birch, barristers of 4 New Square Chambers, instructed by Herbert Smith Freehills for the Second Respondent.

JUDGMENT

Allegations

1. The Allegations made by the SRA against Clyde & Co LLP ("the Firm"), were that being the 'Relevant Person' with ultimate responsibility for compliance with the prevailing anti-money laundering regulations, on dates between approximately July 2014 and January 2019, and in respect of all or any of the entities scheduled at Appendix 1 to this Statement, it failed, adequately or at all:

1.1 to apply customer due diligence measures ("CDD"), contrary to Regulations 5 and 7 of the Money Laundering Regulations 2007 ("the 2007 MLR's") or, where such failings occurred on or after 26 June 2017, to Regulations 27 and 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the 2017 MLR's");

1.2 to conduct ongoing monitoring of its business relationships with such entities, contrary to Regulation 8 of the 2007 MLR's or, where such failings occurred on or after 26 June 2017, to Regulation 28(11) of the 2017 MLR's;

1.3 to cease transactions for and/or to terminate its business relationships with such entities when indicated, contrary to Regulation 11 of the 2007 MLR's or, where such failings occurred on or after 26 June 2017, to Regulation 31 of the 2017 MLR's;

1.4 to apply enhanced customer due diligence measures ("EDD") and/or enhanced ongoing monitoring where indicated, contrary to Regulation 14 of the 2007 MLR's or, where such failings occurred on or after 26 June 2017, to Regulation 33 of the 2017 MLR's; and that, by reason of such failures (or any of them), it –

1.5 breached all or any of Principles 6, 7 and 8 of the SRA Principles 2011 (the "Principles"); 1.6. failed to achieve Outcome 7.3 and/or Outcome 7.5 of the SRA Code of Conduct 2011 (the "Code").

2. The Allegation made by the SRA against Mr Mills- Webb, was that, being a member of the Firm and, at all relevant times, the partner with primary responsibility for its relationship with all or any of the entities scheduled at Appendix 1, he materially contributed to the Firm's anti-money laundering failures alleged at Allegation 1 above (or any of them); and that, in doing so, he –

2.1 breached all or any of Principles 6, 7 and 8;

2.2 failed to achieve Outcome 7.3 and/or Outcome 7.5 of the Code.

Admissions

3. The parties submitted a Statement of Agreed Facts and Admissions ("SAFA") on 21 December 2023, a copy of which is appended to this Judgment. The Tribunal was invited to proceed on the basis of the below admissions.

First Respondent

"[T]he Firm admits that in relation to the Relevant Transactions (being Transactions 1 - 14 on Appendix 1 to the Amended Rule 12 Statement):

a. It failed to carry out adequate CDD on Company A, contrary to regulations 5 and 7 of the 2007 MLRs;

b. It failed to carry out adequate ongoing monitoring of Company A contrary to:

i. Regulation 8 of the 2007 MLRs in Transactions 2 - 11; and

ii. Regulation 28(11) of the 2017 MLRs in Transactions 12 - 14;

c. It failed to carry out any or adequate CDD on the Principals in Transactions 1 - 11, contrary to regulations 5 and 7 of the 2007 MLRs;

d. It failed to carry out any or adequate CDD on the Principals in Transactions 12 - 14 contrary to Regulations 27 and 28 of the 2017 MLRs;

e. Either more CDD material should have been obtained for the Principals, or the Relevant Transactions ought to have ceased under:
i. Regulation 11 of the 2007 MLRs in relation to Transactions 1 - 11; and

ii. Under regulation 31 of the 2017 MLRs in relation to Transactions 12 - 14;

AND by reason of such failures the Firm admits that it breached principles 6, 7 and 8 of the Principles and failed to achieve outcome 7.3 and/or 7.5 of the Code."

Second Respondent

"EMW [the Second Respondent] admits that in relation to the Relevant Transactions (being Transactions 1 - 14 on Appendix 1 to the Amended Rule 12 Statement):

a. He materially contributed to the Firm's failure to carry out adequate CDD on Company A, contrary to regulations 5 and 7 of the 2007 MLRs;

b. He materially contributed to the Firm's failure to take adequate steps to check what ongoing monitoring of Company A was in fact being carried out, contrary to:

i. Regulation 8 of the 2007 MLRs in Transactions 2 - 11 ; and

ii. Regulation 28(11) of the 2017 MLRs in Transaction 12 - 14;

c. He materially contributed to the Firm's failure to carry out any or adequate CDD on the Principals in Transactions 1 - 11, contrary to regulations 5 and 7 of the 2007 MLRs;

d. He materially contributed to the Firm's failure to carry out any or adequate CDD on the Principals in Transactions 12 - 14 contrary to Regulations 27 and 28 of the 2017 MLRS;

e. Either more CDD material should have been obtained for the Principals, or the Relevant Transactions ought to have ceased under:

i. Regulation 11 of the 2007 MLRs in relation to Transactions 1 - 11; and

ii. Under regulation 31 of the 2017 MLRs in relation to Transactions 12 - 14;

AND by reason of the above, EMW admits that he breached principles 6, 7 and 8 of the Principles and failed to achieve outcome 7.3 and/or 7.5 of the Code."

4. The SRA 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 Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

5. The Tribunal was satisfied that these admissions were properly made, based on evidence before it. The Tribunal found these matters proved on the balance of probabilities in respect of both Respondents. For the sake of good order, the Tribunal dismissed any aspect of the original Allegations that had not been put forward as part of the admissions set out above.

Sanction

6. The Tribunal ordered that Clyde & Co LLP pay a fine of £500,000 and that it pay a contribution to the SRA's costs in the sum of £128,197.48.

7. The Tribunal ordered that Mr Mills-Webb pay a fine of £11,900 and a contribution to the SRA's costs in the sum of £54,941.77.

Documents

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

Preliminary Matters

9. Anonymity

9.1 In advance of the hearing, on 21 December 2023, the parties had applied for anonymity in respect of individuals and entities set out in a schedule appended to the application. The basis of this application was to maintain and protect the Legal Professional Privilege ("LPP") relating to these individuals and entities. That LPP had not been waived.

The Tribunal's Decision

9.2 The starting point was to consider whether LPP had been waived or not. In circumstances where it had not been waived, it was absolute and must be respected, as emphasised in SRA v Williams [2023] EWHC 2151 (Admin). The application had therefore been granted in order to protect the LPP of the individuals and entities. It was necessary to take all reasonable steps to preserve this right, including by avoiding jigsaw identification.

10. SRA application to be permitted to make a submission on Sanctions

Applicant's Submissions

10.1 Mr Tabachnik had indicated in his skeleton argument that he wished to make a submission on behalf of the SRA in respect of sanctions in relation to Clyde & Co, a submission he developed during the hearing. Mr Tabachnik told the Tribunal that he was not seeking to make "sweeping submissions about sanctions". He was not proposing to make submissions on aggravating or mitigating factors. He did not intend to suggest an appropriate level of fine and did not propose to add anything as to seriousness. Mr Tabachnik submitted that he should be heard on a limited point relating to the SRA's own guidance in relation to financial penalties. Mr Tabachnik submitted that the Tribunal should have regard to this document in order to avoid falling into error by not considering a relevant matter.

10.2 Mr Tabachnik noted that there was no rule preventing the SRA being heard on sanctions, though it was customary that the SRA did not usually make such a submission. This was a case where a submission would be appropriate. This was the first opportunity the SRA had open to it to make a submission based on the SRA's guidance, which had been re-published in May 2023. Mr Tabachnik noted that the skeleton argument on behalf of Clyde and Co suggested that the guidance may be something that the Tribunal wished to note, and he was not inviting the Tribunal to do more than that. Mr Tabachnik told the Tribunal that he was not inviting the Tribunal to apply the guidance to the exclusion of other factors.

Respondents' Submissions

10.3 Mr Hubble opposed the SRA's position. Mr Hubble noted that the SRA had had guidance on turnover-based fines since 2013 and had not been making submissions to the SDT on this point in that time. Mr Hubble submitted that Clyde & Co had come prepared to address the issue of sanctions based on the Tribunal's guidance. He submitted that what the SRA was attempting to do was to seek to have turnover-based fines adopted by the Tribunal when implementing its own guidance.

10.4 Ms Evans told the Tribunal that Mr Mills-Webb also opposed Mr Tabachnik's application on principle, noting that it was not applicable to Mr Mills-Webb in any event.

The Tribunal's Decision

10.5 The Tribunal noted that neither the SDPR nor the Guidance Note on Sanctions made provision for the SRA to make submissions on sanctions. It therefore fell to panels to decide if they would be assisted by hearing from the SRA, on a case-by-case basis.

10.6 The Tribunal was independent of the SRA and it therefore operated with regard to its own policies, guidance notes, procedures and relevant case law. In relation to financial penalties, guidance was contained in the Guidance Note on Sanctions, which in turn referred to Fuglers LLP v SRA [2014] EWHC 179 (Admin). The factors to be considered in Fuglers are set out below. In determining whether the Tribunal would be further assisted by hearing how the SRA approached financial penalties when imposing internal sanctions, the Tribunal was satisfied that it was well-equipped to decide those matters based on its own guidance and would not be assisted by submissions as to how the SRA may choose to decide matters that were entirely within its remit.

10.7 The Tribunal therefore refused Mr Tabachnik's application and proceeded with mitigation and sanctions in accordance with the usual procedure.

Factual Background

11. The factual background to these matters is set out fully in the Statement of Agreed Facts SAFA, which is appended to this Judgment. The facts are therefore not rehearsed here as to do so would be repetitive and unnecessary.

Previous Disciplinary Matters

12. On 21 March 2017, Clyde & Co had been fined £50,000 by the Tribunal and ordered to pay £82,454 in costs (the costs being on a joint and several basis with the other Respondents in those proceedings). The details of this matter were set out in a Judgment dated 12 April 2017 (Case No: 11599-2017).

13. This followed admissions to the following Allegations:

> ***"Allegations***
>
> 1. *The allegations made against the Respondents in a Rule 5 Statement dated 12 January 2017 were that:*
>
> *1.1 In relation to all the Respondents, they allowed the Firm's client bank account to be used as a banking facility, and in so doing, acted contrary to:*
>
> *1.1.1 Rules 6 and/or 14.5 of the SRA Accounts Rule 2011 ("AR 2011"); and/or*
>
> *1.1.2 Principles 6, 8 of the SRA Principles 2011("the 2011 Principles") and thereby failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011 (the "2011 Code").*

1.2 In relation to all of the Respondents, they failed to act in accordance with their obligations under the Money Laundering Regulations 2007 ("MLR 2007"), and in so doing acted contrary to Principles 7 and 8 of the 2011 Principles and failed to achieve Outcome 7.5 of the 2011 Code.

1.3 In relation to the First, Second and Fourth Respondents, they failed to heed the guidance in the Law Society's Fraudulent Financial Arrangements warning and/or the Warning Notice on Money Laundering, in that they acted as escrow agent in transactions on behalf of a client, M, that had the hallmarks of dubious financial arrangements or investment schemes, and in so doing acted contrary to Principles 6 and 8 of the 2011 Principles and failed to achieve Outcome 1.3 of the 2011 Code.

1.4 In relation to the First Respondent, it failed to have in place adequate procedures to deal with dormant client balances in accordance with Rules 15(3) and (4) of the Solicitors Accounts Rules 1998 ("SAR 1998") insofar as the conduct concerned took place prior to 6 October 2011 and with Rules 14.3 and 14.4 of the AR 2011 insofar as the conduct concerned took place on or after 6 October 2011, and in so doing acted contrary to Principle 8 of the 2011 Principles and failed to achieve Outcome 7.2 and/or 7.3 of the 2011 Code."

14. Clyde & Co was the First Respondent in those matters.

15. There were no previous findings in relation to Mr Mills-Webb.

Mitigation

16. <u>First Respondent</u>

16.1 Mr Hubble reminded the Tribunal that the sanctions it imposed should be based on the SAFA. The admitted breaches of the Money Laundering Regulations (MLR) by Clyde & Co related to Company A and various principals. There was inadequate CDD in respect of Company A and the principals and Mr Mills-Webb was the partner with primary responsibility. The basis of the failings was that more complete documentation should have been obtained and that CDD had not been undertaken on principals who were not identified as clients. Mr Mills-Webb had failed to identify them as such on the file opening forms sent to the Business Acceptance Unit ("BAU") and Clyde & Co admitted that improved systems for the onboarding of clients could have assisted. In particular, it should have required the relevant fee earner to sign the matter opening forms.

16.2 Mr Hubble submitted that if the principals had been Mr Mills-Webb's client then they should have been identified as such and he accepted that Clyde & Co should have reviewed the earlier transactions. Mr Hubble told the Tribunal that Clyde & Co apologised for its failings and had undertaken work to prevent future repetition. Mr Hubble invited the Tribunal to disregard any attempt to put a "gloss" on the SAFA, a document which set the boundaries in relation to what had taken place.

16.3 In relation to the MLR guidance itself, Mr Hubble submitted that it was necessary to have regard the particular regulations in force at the relevant time. He submitted that this was not a case of "egregious breaches" of MLR. Clyde & Co did have systems and controls in place, but these were not sufficiently robust and the BAU had made judgments and carried out risk assessments in good faith. It was accepted that those judgments and risk assessments had been incorrect, however.

16.4 Mr Hubble referred to three levels of CDD, with reference to Regulations 7 (2007 MLRs) and 28 (2017 MLRs) respectively, "simplified", "ordinary" and "enhanced". The failure here related to "ordinary" CDD. The MLRs required a risk-sensitive analysis, which had been undertaken, albeit with the wrong conclusion being reached. Mr Hubble referred the Tribunal to the Law Society Anti-Money Laundering Practice Note October 2013 in support of this submission. Similarly, Mr Hubble submitted that determining what was required from ongoing monitoring was a qualitative assessment.

16.5 Mr Hubble addressed a point raised in the SRA's skeleton argument about potential criminal liability. He reminded the Tribunal that these proceedings were disciplinary and invited the Tribunal to take any submission by the SRA concerning criminal liability with caution.

16.6 Mr Hubble took the Tribunal through Clyde & Co's policies, systems and controls, which were contained in the hearing bundle. Mr Hubble submitted that it was not the BAU's role to determine who the client should be, as that would fall to the matter team handling the matter. He submitted that it was not the case that Clyde & Co had no systems in place, but that matters got missed.

16.7 Mr Hubble submitted that in relation to matter opening forms, Clyde & Co's processes were strengthening throughout the relevant period. This included moving to a system of 'Intap' forms, which generated questions that had to be answered in order to allow the form to be completed. These forms evolved over time.

16.8 Mr Hubble told the Tribunal that Clyde & Co had made improvements to its policies and procedures more generally in a way designed to meet the issues raised in this case. These improvements included a new file opening system launched in 2020, continued updates to the file opening form, requirements that partners submit evidence in relation to proof of funds as the same time as submitting the Intap forms. Mr Hubble told the Tribunal that there were now three lines of defence, namely a) matter opening form being better designed to ensure the correct information is elicited and signed off by the relevant fee owner b) a dedicated email address for issues relating to onboarding, which included the BAU and Risk Department working more closely and c) changes to the financial crime team to include more experience, and the appointment of a Money Laundering Officer. Money Laundering and related issues were now high on the management agenda and bespoke, mandatory training had been delivered.

16.9 Mr Hubble submitted that Clyde & Co was not automatically culpable, for and should not be sanctioned for, Mr Mills-Webb's misconduct but only for its own. Mr Hubble invited the Tribunal to apply the principle of totality when determining sanctions. He submitted that whilst there were multiple transactions, the failure arose principally from a single fundamental error and essentially was replicated over time.

16.10 In relation to culpability, Mr Hubble submitted that Clyde & Co had no culpable motivation. The fee income was relatively low – approximately 1500-2000USD per transaction. Clyde & Co's conduct had been inadvertent and not planned. There were systems in place but they did not prove effective, as opportunities were not taken to enquire further about underlying transactions. This was not a case involving a breach of a position of trust. Mr Hubble submitted that Clyde & Co did not have direct control over what information was provided to it and it had not misled the SRA, indeed it had self-reported in January 2019.

16.11 In relation to harm, Mr Hubble accepted that compliance with the MLRs was an important regulatory responsibility of the legal profession as a whole, hence the admission to breaches of Principle 6. There had been no direct harm caused to any individual, but Mr Hubble acknowledged that because insufficient CDD was done, a risk of money laundering could not be ruled out.

16.12 In relation to aggravating factors, Mr Hubble submitted that the one relevant factor was that the failures took place on a number of occasions over a period of time. He submitted that this was a consequence of the initial onboarding failures.

16.13 Mr Hubble acknowledged that Clyde & Co had a previous sanction from the Tribunal. He submitted that those matters had arisen principally due to a former partner, who was also fined by the Tribunal in those proceedings. The firm had reviewed and changed its processes in 2015. The matters in the current case related to a matter where the client was onboarded in October 2014.

16.14 Mr Hubble told the Tribunal that the blame was not being placed on others, as each Respondent accepted shortcomings on their own part. Mr Hubble submitted that it would be wrong for Mr Mills-Webb to present himself as unfairly accused in circumstances where he had admitted breaches. Clyde & Co could not be responsible for the length and scope of the SRA investigation.

16.15 In relation to mitigating factors, Mr Hubble submitted that Clyde & Co had co-operated with the investigation and had approached the proceedings in a constructive manner. This had included consenting to the amendment to the Rule 12 statement earlier in the proceedings and openly accepting breaches. Mr Hubble submitted that Clyde & Co had demonstrated insight, as evidenced by the improvements in systems and controls referred to above.

16.16 Mr Hubble drew the Tribunal's attention to fines imposed by the SRA, Mischon de Reya (£232,000) and Ashfords (£101,000). He submitted that the SRA's approach to fines, based on turnover, was a blunt approach and those decisions were not binding on the Tribunal. Mr Hubble submitted that the Tribunal decision in White and Case (11592-2016), in which a fine of £250,000 was imposed, demonstrated the "outer reaches" for a large firm in what was a more serious matter including recklessness.

16.17 Mr Hubble submitted that the firm's misconduct was moderately serious. This was on the basis that it was inadvertent not intentional, there had been no absence or total failure of systems and there was no recklessness or lack of integrity.

16.18 Mr Hubble told the Tribunal that Clyde & Co's revenue in England and Wales was £259m and the global profit per partner was £708,000. Mr Hubble submitted that the Tribunal should be wary of imposing a higher fine based on turnover, on the basis that revenue did not equal profit. There should be a fair evaluation of all the factors in the Guidance Note on Sanctions. Mr Hubble submitted that any fine that reached six-figures would be significant to the firm, not just in terms of financial impact. He submitted that the appropriate amount was £100,000-£150,000.

17. Second Respondent

17.1 Ms Evans told the Tribunal that Mr Mills-Webb apologised for his misconduct, and that anything said in mitigation was not intended to deviate from the SAFA.

17.2 In relation to culpability, Ms Evans highlighted paragraphs 19, 25 and 26 of the SAFA, with particular emphasis on paragraph 26. This set out Mr Mills-Webb's understanding of how his team had interacted with the BAU. Ms Evans submitted that this demonstrated that Mr Mills-Webb had not been acting "blindly or in a vacuum". He had checked and had understood that they were acting appropriately. In hindsight that had been wrong, as admitted in the SAFA.

17.3 Ms Evans reminded the Tribunal that it had heard no evidence of the evolution of the file opening forms or what Mr Mills-Webb would have seen at the material times. She invited the Tribunal to base its sanction on the SAFA and not go beyond it.

17.4 Ms Evans told the Tribunal that Mr Mills-Webb accepted he had misinterpreted the email referred to at paragraph 35 of the SAFA. In relation to the email of 20 March 2015, Mr Mills Webb admitted that he had not paid adequate attention. He accepted that these emails represented a missed opportunity to correct earlier deficiencies and to get to the bottom of what had gone wrong. Ms Evans submitted that Mr Mills-Webb's failures were due to carelessness and misunderstandings about what was required. The MLRs are not clear cut or prescriptive and there was a lot of latitude inherent in them on the basis of risk-based assessment.

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17.5 In relation to Mr Mills-Webb's experience, he was a partner at the firm and was therefore experienced. Ms Evans submitted however that Mr Mills-Webb was not an expert in MLRs, and she invited the Tribunal to consider the question of experience in relation to the area of the misconduct, not simply his years of post-qualified experience.

17.6 In relation to harm, Ms Evans submitted that there was no evidence in any of the allegation that any third parties were involved in funding Company A or the SPVs or that they were involved in money laundering. Ms Evans referred the Tribunal to Person A's letter dated 17 July 2019 in that regard. As with Clyde & Co, however, Ms Evans conceded that due to the failure to conduct adequate CDD, the risk of money laundering could not be ruled out.

17.7 In relation to aggravating factors, Ms Evans rejected any suggestion that Mr Mills-Webb's actions amounted to criminal liability.

17.8 In relation to mitigating factors, Ms Evans submitted that Mr Mills-Webb had shown insight and had made significant admissions of fact at an early stage. Ms Evans referred

the Tribunal to the letter from his then-solicitors in May 2020 and December 2021 in that regard and to the section in his witness statement headed 'Reflections' in which Mr Mills-Webb had set out in detail his acceptance of responsibility for his failings and the steps he had taken to ensure there was no repeat. This included extensive training and discussing each new client and matter with the Director of Risk and Compliance at his current firm. Mr Mills-Webb had fully co-operated with the SRA, beginning with his first interview in February 2020.

17.9 Ms Evans submitted that a financial penalty was the appropriate sanction, either at the top of Level 3 or the bottom of Level 4 in the indicative fine bands set out in the Guidance Note on Sanctions. Ms Evans referred to previous decisions of the Tribunal in Ogbonna and Topstone Solicitors (12206-2021), Traube (12258-2021) and Newaz and Masood (12392-2022). In Newaz and Masood, a fine of £7,501 had been imposed in a case that included manifest incompetence, which this matter did not. In Traube, the Tribunal had imposed a fine of £25,000 where, unlike this case, the misconduct was deliberate. In Ogbonna and Topstone, the first and second Respondents had been fined £12,500 (£25,000 reduced by 50% due to means) and £15,000 respectively for conduct found by the Tribunal to have been, on the part of the first Respondent, motived by profit and planned. Again, this was not the case with Mr Mills-Webb. Ms Evans submitted that there was no basis to place this matter into Level 5.

17.10 Ms Evans invited the Tribunal to reduce the fine to take account of what she submitted was unreasonable delay in the investigation, caused in part by Clyde & Co pointing the SRA in the wrong direction at the outset.

17.11 Ms Evans took the Tribunal through the chronology of matters. In summary, the report made by Clyde & Co took place on 31 January 2019, with a fuller report made on 4 March 2019. Mr Mills-Webb had no input into those reports and Ms Evans submitted that it was a feature of the case that things Mr Mills-Webb had to say were not properly actioned by Clyde & Co or the SRA. Ms Evans submitted that the SRA had taken its lead from Clyde & Co and focussed exclusively on Mr Mills-Webb, thus delaying the proper investigation and making matters more complex than it need to have been.

17.12 In May 2019, Mr Mills-Webb had been interviewed by an internal panel at Clyde & Co. The firm had not spoken to Mr Goodchild or anyone from BAU as part of its own investigation. Ms Evans described this as a significant gap in the investigation and one that led to a report being produced that was a "manifestation" of the firm not examining its own role. The report made serious assertions about Mr Mills-Webb's conduct.

17.13 The SRA formally opened its investigation in September 2019. Ms Evans told the Tribunal that it was not known why there was a delay between January and September of that year. The investigation was only into Mr Mills-Webb at this point. Ms Evans submitted that this "unduly narrow" approach led to significant delays later on.

17.14 Mr Mills-Webb provided detailed representations including a report from a shipping lawyer and an opinion from Tim Dutton KC (then QC) in October 2019. Mr Mills-Webb was not formally interviewed until February 2020.

17.15 Ms Evans told the Tribunal that further letters were sent to the SRA in May 2020. The Forensic Investigation Report (FIR) was produced in June 2020. Ms Evans submitted

that this was wide-ranging in its criticisms of Mr Mills-Webb but did not review whether Clyde & Co should be criticised and did not address points raised by Mr Mills-Webb during the investigation to that point.

17.16 In September 2021 – 15 months later – a notice of intention to refer to the Tribunal was served, based on the contents of the June 2020 FIR. At this stage an allegation of manifest incompetence was made, along with question marks over Mr Mills-Webb's integrity. On 21 January 2022, the Authorised Decision Maker (ADM) refused to refer the matter to the Tribunal and instead asked for further investigation. Ms Evans submitted that it was only at this stage that the SRA started to appreciate the need to investigate the firm. Ms Evans submitted that the delay in reaching this point was unjustified. The decision to refer the matter to the Tribunal was finally made in early 2023 and the proceedings commenced in July 2023. This hearing was taking place almost exactly five years since the initial report.

17.17 Ms Evans submitted that the impact on Mr Mills-Webb of the delays had been significant. She referred the Tribunal to his character references which covered this issue, as did Mr Mills-Webb's witness statement. In September 2021, Mr Preston from Mr Mills-Webb's current firm had asked the SRA if Mr Mills-Webb could hold a management role in the firm. The SRA had said that it was minded to recommend refusal due to the ongoing investigation. Ms Evans submitted that this was one example of the negative impact of matters hanging over his head.

17.18 Ms Evans referred to Graham v Nursing and Midwifery Council [2008] CSIH 45 at [19]:

> *"[19] We therefore take the view that, in certain significant respects, in considering disposal, the committee took into account some material which they should not have done, and ignored some material which was available to them, and which was not disputed. We conclude therefore that the disposal can properly in that sense be described as excessive and disproportionate. As the matter of disposal is at large for this court, we also think it entirely reasonable in considering what disposal would be appropriate, also to take into account that following the interview of the appellant which took place shortly after the incident, it was then nearly three years before her case was heard. At the time of the interview it would appear that all the relevant information needed for proffering charges against the appellant was available to the respondent. We accept that this matter was not discussed before us, and we do not consider that this issue is decisive. However, significant or excessive delay in bringing a matter such as this before the appropriate tribunal causes considerable distress to the subject of the proceedings, and it is normally appropriate to bear this in mind in the question of disposal. In all the circumstances, we therefore propose to quash the decision to remove the appellant's name from the register and substitute a caution."*

17.19 Ms Evans also referred to Okeke v Nursing and Midwifery Council [2013] EWHC 714 (Admin) at [29]:

> *"29. The approach which the court should adopt in considering whether the time that elapsed was reasonable is also common ground. I was referred to the*

decision of the Privy Council in Dyer v Watson [2004] 1 AC 379 and in particular to a passage in the judgment of the Privy Council given by Lord Bingham, who (at paragraph 52) said this:

"In any case in which it is said that the reasonable time requirement (to which I will henceforward confine myself) has been or will be violated, the first step is to consider the period of time which has elapsed. Unless that period is one which, on its face and without more, gives grounds for real concern it is almost certainly unnecessary to go further, since the Convention is directed not to departures from the ideal but to infringements of basic human rights. The threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. But if the period which has elapsed is one which, on its face and without more, gives ground for real concern, two consequences follow. First, it is necessary for the court to look into the detailed facts and circumstances of the particular case. The Strasbourg case law shows very clearly that the outcome is closely dependent on the facts of each case. Secondly, it is necessary for the contracting state to explain and justify any lapse of time which appears to be excessive."

Lord Bingham went on to refer to certain areas calling for particular enquiry.

"It was common ground before me that the relevant circumstances, which need to be considered, include the importance of the matter to the individual concerned, the complexity of the case and the conduct of the parties to the relevant proceedings."

17.20 Ms Evans submitted that delay was relevant under Article 6 and under common law principles of fairness. Ms Evans was not arguing that a hearing could not take place but that the sanction should be reduced to take account of the delay.

18. <u>Applicant's response on the submissions as to delay</u>

18.1 On the specific submissions about delay, Mr Tabachnik submitted that Ms Evans' arguments were legally flawed.

18.2 Mr Tabachnik submitted that Ms Evans' arguments were only relevant if she could demonstrate a breach of Article 6. Mr Tabachnik further submitted that the only remedy, if Ms Evans could demonstrate a breach of Article 6, was a stay of proceedings. This would require inexcusable delay as well as prejudice to be made out. There was no reference to delay in the Tribunal's Guidance Note on Sanctions.

18.3 Mr Tabachnik rejected the argument that there had been any culpable delay in the SRA's investigation. He noted that there was no witness statement dealing with these matters and reminded the Tribunal of the pandemic that began in 2020. Mr Tabachnik submitted that the SRA had not been assisted by "finger-pointing" between the Respondents. He submitted that the "tit-for-tat" had continued up until the signing of the SAFA in December 2023.

18.4 Mr Tabachnik submitted that the primary cause of delay, however, was the lack of admissions. While errors had been admitted previously, there were no admissions to professional misconduct until 21 December 2023.

18.5 In relation to the financial implications of delay advanced by Ms Evans, Mr Tabachnik submitted that this was pure speculation, absent any evidence about his earnings or potential earnings in the period.

Sanction

19. The Tribunal had regard to the Guidance Note on Sanctions (June 2022). The Tribunal assessed the seriousness of the misconduct by considering each Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

20. General points

20.1 The Tribunal had been urged by each of the parties to refrain from allowing any of the other parties to put a "gloss" on the SAFA, to go beyond its scope or to in some other way depart from it when considering the question of sanction. The Tribunal had no intention of doing so. The Tribunal had found the admitted Allegations proved as set out in the SAFA. The scope of those admissions were contained in that document. The Tribunal proceeded to consider the question of sanction and costs based solely on that document and the mitigation advanced. To the extent that any submission from any of the parties deviated from the SAFA in anyway, those parts of the submissions would not form part of the Tribunal's decision on sanction or costs.

20.2 There had also been reference made to criminal liability. For the avoidance of doubt, the Tribunal did not consider the question of criminal liability in any of its decisions. The Tribunal's role was to deal with professional misconduct. There had been no findings of criminal liability and therefore there was no basis for that to form any part of the Tribunal's decision-making.

21. First Respondent

21.1 In assessing culpability, the Tribunal accepted that there was no blameworthy motivation for the misconduct. It arose out of carelessness and was not planned. Clyde & Co were, however, by reason of being a firm, directly responsible and had full control over the circumstances giving rise to the misconduct. Their responsibility in these transactions was shared with Mr Mills-Webb, for whom they had overarching responsibility. Clyde & Co was entitled to rely on Mr Mills-Webb to ensure that all the relevant information was provided, but it was also responsible for having systems in place in case this did not happen, in order to prevent breaches of important regulations.

21.2 The firm was a long-established firm, including in this line of work. The firm was responsible for ensuring it had put in place systems that were appropriate to the nature of its business. Money laundering checks were not a new or unusual set of requirements, and the firm was experienced enough to have been able to ensure full compliance.

21.3 The Tribunal found that Clyde & Co's level of culpability was high.

21.4 In relation to harm, the Tribunal noted that Clyde & Co was regarded as a prestigious firm with a global reputation. The larger firms shoulder a greater responsibility to uphold the reputation of the profession and so the harm caused by professional

misconduct is also greater. The Tribunal further noted that while there was no evidence of money laundering having taken place, the possibility could not be discounted in the circumstances of these breaches.

21.5 The misconduct was aggravated by the fact it was repeated and included missed opportunities to correct earlier errors. The firm had failed to 'join the dots' over a significant period of time.

21.6 The firm had initially sought to blame Mr Mills-Webb for the entirety of the failings. Clearly, in light of his own admissions, some of that blame was justified. However Clyde & Co had failed to reflect on its own role until a late stage and had not focussed enough attention on its own weaknesses in procedures and policies until recently.

21.7 The matter was also significantly aggravated by the fact that Clyde & Co had a previous finding at the Tribunal related to failures to comply with money laundering regulations. Despite that finding, the firm had not, at the material time, put adequate and robust measures in place.

21.8 The matter was mitigated by the fact that Clyde & Co had shown genuine insight. This was reflected in the improvements made to the matter opening forms, the changes made to the way in which the BAU and Risk Team operated, the intensification of the training programme and the higher priority placed on these issues at management level.

21.9 The firm had co-operated with the SRA and admissions had been made, albeit at a late stage in proceedings.

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

21.11 The Tribunal determined that the seriousness of the misconduct was such that the appropriate sanction was a financial penalty. The Tribunal considered the level of the fine with reference to the indicative fine bands and the guidance set out in Fuglers at [35]:

> *"Where a fine is the appropriate category, factors which will influence the appropriate level of fine will include the following:*
>
> *"(1) Whether the seriousness of the misconduct, and giving effect to the purpose of the sanctions, puts the case at or near the top, middle or bottom of the category. So, for example, where the seriousness of the misconduct is such as to justify a range of sanctions which spans a fine or suspension, and the tribunal concludes that it almost justifies suspension, a fine at the highest level will be justified; whereas if the misconduct only just exceeds that for which a reprimand would be appropriate, a fine at the bottom end of the bracket will be called for.*
>
> *(2) The level of fines imposed by other disciplinary tribunals or this court in analogous cases.*

(3) The size and standing of the solicitor or firm in question. It is permissible to impose larger fines on more substantial or well known firms because of the important purpose of the sanctions in sending out a message to promote and maintain the standards in, and standing of, the profession.

(4) The means available to an individual or a firm can be taken into account in respect of the amount of the fine: see D'Souza v Law Society [2009] EWHC 2193 (Admin); Matthews v SRA [2013] EWHC 1525 (Admin) at [22]. In considering means, it is relevant to take into account the total financial detriment which is suffered, including any costs order, and any adverse financial impact of the decision itself. That is because the reason why means are taken into account is that justice requires regard to be had to the ability of the individual to pay a particular sum: see Matthews at [24-25] and D'Souza at [18]."

21.12 In relation to the level within the indicative fine bands, the Tribunal found the misconduct to be very serious and placed it in Level 4. It had not been deliberate or caused by any blameworthy motivation. There had been no lack of integrity, recklessness, or manifest incompetence and so it did not cross into Level 5. However, Clyde & Co was a global firm with a previous matter before the Tribunal. The shortcomings were evidenced by the steps now put in place to prevent a repeat. The Tribunal deemed the notional starting point of the fine to be £50,000. The Tribunal then decided how to apply that fine having regard to the means available to the firm as set out in [35(4)] of Fuglers. The previous decisions of the Tribunal that had been referred to in mitigation were of limited assistance as the multitude of factors that existed in cases such as this were such that each decision of the Tribunal was necessarily case-specific.

21.13 The Tribunal decided that the fair way to determine this was to apply a percentage uplift based on the size and resources of the firm, the principle being that the larger the firm, the greater the uplift. Clyde & Co were a large global firm with significant resources, and so a greater uplift was required. Pursuant to paragraph 30 of the Guidance Note on Sanctions, the fine needed to be a meaningful deterrent for the profession. The appropriate uplift for this firm was 1000%, making a total fine of £500,000.

22. Second Respondent

22.1 In assessing Mr Mills-Webb's culpability, the Tribunal again found there to be no blameworthy motivation, the mistakes also having arisen out of carelessness on his part and not from any planning. Mr Mills-Webb was a partner and head of department. By reason of those roles, he shared the responsibility with Clyde & Co for ensuring that there were no breaches. Had either of them discharged their duties properly, the breaches would not have occurred.

22.2 The Tribunal noted Ms Evans' submission as to Mr Mills-Webb's experience but did not find it persuasive. Mr Mills-Webb was in a senior role in his firm and the area of business he worked in – shipping – was one where he should have been fully alert and alive to issues of compliance with the MLR regulations. The Tribunal considered Mr Mills-Webb to be experienced when assessing culpability.

22.3 In relation to the harm caused, the Tribunal again noted that the potential for harm was the possibility that money laundering could have occurred. The reputation of the profession was harmed by non-compliance with regulations put in place to prevent this.

22.4 The misconduct was aggravated by the fact that it was repeated. The Tribunal accepted that it was essentially the same error carried forward, though there were missed opportunities to have spotted it.

22.5 There had been an element of blame attributed to Clyde & Co by Mr Mills-Webb. This was not considered as an aggravating factor in this case, in light of the matters admitted and proved in respect of Clyde & Co. Mr Mills-Webb had taken responsibility for errors on his part at an early stage of the investigation.

22.6 The matter was aggravated by the fact that Mr Mills-Webb ought to have known that he was in material breach of his obligations, though the Tribunal accepted that he had not known this at the time.

22.7 The misconduct was mitigated by Mr Mills-Webb's genuine and complete insight. The Tribunal was impressed by the section in his witness statement headed 'Reflections'. This was consistent with his early admission to errors, referred to above. The Tribunal considered that it was not unreasonable for him to wait until the Allegations were clear, noting the late amendment to the Rule 12 Statement. It was also understandable that he wanted to be clear as to Clyde & Co's position. Mr Mills-Webb had no previous findings at the Tribunal and had submitted a number of character references that spoke highly of him.

22.8 The Tribunal found that making 'no order' or imposing a Reprimand was insufficient to reflect the seriousness of Mr Mills-Webb's misconduct. The factors identified above, including the potential for significant harm, required a greater sanction.

22.9 The Tribunal agreed with Ms Evans that the seriousness of the misconduct was such that the appropriate sanction was a financial penalty. The Tribunal again considered the level of the fine with reference to the Indicative Fine Bands and the guidance in Fuglers. The Tribunal had regard to the previous decisions of the Tribunal. In Ogbonna and Topstone a fine of £25,000 was imposed for planned conduct and in Traube, the same fine was imposed for deliberate misconduct. Mr Mills-Webb's conduct did not fall within those categories and therefore did not justify a fine within Level 4. The appropriate level in this matter was Level 3 on the basis that it was "more serious".

22.10 The Tribunal had regard to Mr Mills-Webb's senior role and the potential for risk and considered that the appropriate amount of fine would be £14,000, placing at the higher end of Level 3.

22.11 The Tribunal then considered whether to reduce that on account of the delay described by Ms Evans. The Tribunal rejected Mr Tabachnik's submission that delay could only be addressed by means of a stay or that Ms Evans needed to demonstrate a common law basis for taking it into account at sanction stage. The Tribunal's Guidance Note on Sanctions did not exclude any factor from being relevant to personal mitigation.

22.12 The Tribunal considered there to have been significant delay between January 2019 and Mr Mills-Webb's first formal interview in February 2020. There was further delay between June 2020 and September 2021. Even allowing for some delay in the latter period caused by the pandemic, the overall delay to the resolution of these matters was not justified and had caused stress, anxiety and potential career-limitation to Mr Mills-Webb. It was appropriate to make some reduction in sanction to reflect that. The Tribunal decided to reduce the fine by 15%, making a total of £11,900.

Costs

Applicant's Submissions

23. Mr Tabachnik applied for costs, based on the schedule of costs, but with reductions to take account of the fact that the hearing had not taken 10 days, as originally listed. Mr Tabachnik told the Tribunal that the arrangements between Capsticks and the SRA had changed on 1 November 2023 from fixed fees inclusive of disbursements to a fixed hourly rate of £145 excluding disbursements. The schedule reflected that change.

24. Mr Tabachnik told the Tribunal that he was not seeking a joint and several order for costs and he did not have any submissions on apportionment.

25. In total, Mr Tabachnik's final application for costs was in the sum of £183,139.25, based on the hearing concluding on 11 January 2024, which it did.

26. In response to the objections to costs raised by the Respondents, Mr Tabachnik told the Tribunal that the admissions that gave rise to the SAFA were made so late in the proceedings that much of the preparation for a fully contested 10-day hearing had been undertaken. Mr Tabachnik rejected the suggestion that the SRA's investigation costs be reduced by £20,000. The FIR was 75 pages with 1000 pages of exhibits. It had been a difficult process for the Forensic Investigation Officer to unpick the paperwork and financial trails. The electronic material comprised 8GB of information.

27. In relation to matters not ultimately pursued in the proceedings, Mr Tabachnik submitted that they still needed to be investigated as they were part of Clyde & Co's self-report. If there was anything in this point it might go to apportionment, not quantum.

First Respondent's Submissions

28. Mr Hubble told the Tribunal that he agreed with Ms Evans' submissions about the quantum of cost, set out below.

29. In relation to apportionment of the costs, Mr Hubble submitted that they should be divided on a 50-50 basis. Mr Hubble submitted that the suggestion that Clyde & Co pay more did not bear analysis. Mr Hubble rejected the criticism made by Ms Evans of the firm's approach to these matters. Mr Hubble submitted that Mr Mills-Webb was "at least as culpable" as Clyde & Co and a pragmatic division of costs would be to split them equally.

Second Respondent's Submissions

30. Ms Evans submitted that the investigation had covered a number of matters that had not been pursued before the Tribunal. Ms Evans referred the Tribunal to the relevant section of [42] in Broomhead v SRA [2014] EWHC 2772 (Admin):

> *"Even if the charges were properly brought it seems to me that in the normal case the SRA should have to shoulder its own costs where it has not been able to persuade the Tribunal that its case is made out. I do not see that this would constitute an unreasonable disincentive to take appropriate regulatory action."*

31. Ms Evans took issue with the 101 hours spent on information review and 275 hours of report preparation, which she submitted were disproportionate. Ms Evans invited the Tribunal to reduce the SRA's costs by £20,000.

32. Ms Evans noted that Capsticks fixed fee was capped at approximately £42,000 despite overall costs equating to approximately £60,000 in that period. Ms Evans submitted, however, that some of those costs were irrecoverable, for example the costs of the amendment of the Rule 12 Statement and work on the application concerning the scope of the Allegations, that did not need to be pursued as a result of this amendment. Ms Evans noted that the Tribunal had previously directed that those costs could not be recovered. Ms Evans further submitted that the change of counsel had necessitated some duplication of work that had previously been included in the fixed fee.

33. In relation to apportionment, Ms Evans submitted that Clyde & Co should pay the "lion's share" of the costs. She submitted that the firm had driven the scope of the investigations at the outset and had made serious allegations against Mr Mills-Webb that they maintained until he had served his Answer. The chronology that Ms Evans had referred to in mitigation was also relevant to her submissions on costs.

The Tribunal's Decision

34. The Tribunal began by assessing the SRA's costs and considering if they were reasonable and proportionate. This was a complex case that the SRA had been required to investigate thoroughly. The case had remained contested until a late stage, though that appeared to be due in part to the late amendment to the Rule 12 Statement. The Tribunal noted that the costs of that amendment were not recoverable. However, they were not separately claimed and they formed part of the work undertaken within the fixed fee and so no further reduction was required to deal with that point.

35. The fact that not all matters within the investigation report were the subject of allegations within the Rule 12 Statement was not uncommon and reflected the appropriate review of matters at the point of settling the pleadings.

36. The Tribunal was content to order that the SRA receive its costs in full, as claimed by Mr Tabachnik. Those costs took account of the reduced hearing time.

37. On the matter of apportionment, the Tribunal decided that the fairest way to determine this was to apportion the costs by having regard to the levels of culpability applicable to each Respondent. The Tribunal decided that in this case, Clyde & Co should pay 70% of the costs and Mr Mills-Webb should pay 30%.

38. There had been no statement of means from Mr Mills-Webb and no suggestion from either Respondent that they would be in difficulty in paying the costs, and so no further reduction was justified.

Statement of Full Order

39. The Tribunal Ordered that the First Respondent, Clyde and Co LLP, do pay a fine of £500,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that it do pay a contribution to the costs of and incidental to this application and enquiry fixed in the sum of £128,197.48.

40. The Tribunal Ordered that the Second Respondent, Edward Henry Mills, solicitor, do pay a fine of £11,900.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay a contribution to the costs of and incidental to this application and enquiry fixed in the sum of £54,941.77.

Dated this 8th day of February 2024
On behalf of the Tribunal

L. Boyce

L Boyce
Chair

Case Number: 12481-2023

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

CLYDE & CO LLP

EDWARD HENRY MILLS-WEBB

Respondents

STATEMENT OF AGREED FACTS AND ADMISSIONS

Introduction

1. By an amended statement made on behalf of the Solicitors Regulation Authority (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 16 November 2023 ("the Amended Rule 12 Statement"), the SRA brings proceedings before the Tribunal making allegations of misconduct against the Respondents.

2. In this Statement of Agreed Facts and Admissions, references to:
    a. **"The Firm"** are to the First Respondent;
    b. **"EMW"** are to the Second Respondent;
    c. **"Company A"** are to a company involved in the shipping industry, the handling of whose matters gave rise to the Amended Rule 12 Statement;
    d. **"The Principals"** are to entities which were said to be companies used by Company A to purchase / own / sell the relevant ships, with Company A acting as their agents, adopting numbering contained in Appendix 1 to the Amended Rule 12 Statement;
    e. **"BAU"** is to the Firm's Business Acceptance Unit.

The Allegations

3. The allegations made by the SRA against the Firm are that, being the "Relevant Person" with ultimate responsibility for compliance with the prevailing anti-money laundering regulations, on dates between approximately July 2014 and January 2019, and in respect of all or any of the entities scheduled at Appendix 1 to the Rule 12 Statement, it failed, adequately or at all to act as follows:

    a. Allegation 1.1: to apply customer due diligence measures ("**CDD**"), contrary to Regulations 5 and 7 of the Money Laundering Regulations 2007 ("**the 2007 MLRs**") or, where such failings occurred on or after 26 June 2017, to Regulations 27 and 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("**the 2017 MLRs**");

    b. Allegation 1.2: to conduct ongoing monitoring of its business relationships with such entities, contrary to Regulation 8 of the 2007 MLRs or, where such failings occurred on or after 26 June 2017, to Regulation 28(11) of the 2017 MLRs;

    c. Allegation 1.3: to cease transactions for and/or to terminate its business relationships with such entities when indicated, contrary to Regulation 11 of the 2007 MLRs or, where such failings occurred on or after 26 June 2017, to Regulation 31 of the 2017 MLRs;

    d. Allegation 1.4: to apply enhanced customer due diligence measures ("**EDD**") and/or enhanced ongoing monitoring where indicated, contrary to Regulation 14 of the 2007 MLRs or, where such failings occurred on or after 26 June 2017, to Regulation 33 of the 2017 MLRs;

    AND THAT, by reason of such failures (or any of them), it:

    e. breached all or any of Principles 6, 7 and 8 of the SRA Principles 2011 (the "**Principles**");

    f. failed to achieve Outcome 7.3 and/or Outcome 7.5 of the SRA Code of Conduct 2011 (the "**Code**").

4. The allegation made by the SRA against EMW is that, being a member of the Firm and at all relevant times, the partner with primary responsibility for its relationship with all or any of the entities scheduled at Appendix 1 to the Rule 12 Statement, he materially contributed to the Firm's anti-money laundering failures set out at Paragraph 3 above (or any of them);

    AND THAT, in doing so, he:

    a. breached all or any of Principles 6, 7 and 8;

b. failed to achieve Outcome 7.3 and/or Outcome 7.5 of the Code.

5. The SRA's Amended Rule 12 Statement refers to a table of Transactions at Appendix 1. The body of the SRA's Original Rule 12 Statement itself sets out details in relation to two of them (Transactions 1 and 13 using the numbering in the Amended Rule 12 Statement). The Forensic Investigator's Report exhibited to the Rule 12 Statement also sets out details in relation to four further Transactions (Transactions 2, 7, 9 and 16 using the numbering the Amended Rule 12 Statement). By the Amended Rule 12 Statement, the SRA made clear that in fact it did not make allegations of MLR breaches in respect of Transaction 16 but instead relied on it for particular events bearing on the Respondents' responsibility for the failings alleged in respect of Transactions 1 - 14. This Statement of Agreed Facts and Admissions proceeds principally by reference to the 6 Transactions as referred to in the documents described in this paragraph. However, the 6 Transactions form part of a larger spread of over 30 transactions in respect of which the Firm acted for Principals associated with Company A, and in respect of which just under $50 million passed through the Firm's client account. As to these:
    a. So far as the onboarding of Company A is concerned, similar issues to those arising in relation to the 6 transactions set out in this Statement of Agreed Facts and Admissions arose in respect of the larger spread of transactions;
    b. So far as the onboarding of the Principals is concerned, and subject to Paragraph 33 below, similar MLR breaches to those arising in relation to the 6 transactions set out in this Statement of Agreed Facts and Admissions arose in respect of the other 9 transactions named in Appendix 1 to the Amended Rule 12 Statement.

Admissions

6. As more fully set out below, the Firm admits that in relation to the Relevant Transactions (being Transactions 1 – 14 on Appendix 1 to the Amended Rule 12 Statement):
    a. It failed to carry out adequate CDD on Company A, contrary to regulations 5 and 7 of the 2007 MLRs;
    b. It failed to carry out adequate ongoing monitoring of Company A contrary to:
        i. Regulation 8 of the 2007 MLRs in Transactions 2 - 11; and
        ii. Regulation 28(11) of the 2017 MLRs in Transactions 12 - 14;
    c. It failed to carry out any or adequate CDD on the Principals in Transactions 1 - 11, contrary to regulations 5 and 7 of the 2007 MLRs;

d. It failed to carry out any or adequate CDD on the Principals in Transactions 12 - 14 contrary to Regulations 27 and 28 of the 2017 MLRs;
e. Either more CDD material should have been obtained for the Principals, or the Relevant Transactions ought to have ceased under:
    i. Regulation 11 of the 2007 MLRs in relation to Transactions 1 - 11; and
    ii. Under regulation 31 of the 2017 MLRs in relation to Transactions 12 - 14;

AND by reason of such failures the Firm admits that it breached principles 6, 7 and 8 of the Principles and failed to achieve outcome 7.3 and/or 7.5 of the Code.

7. For the avoidance of doubt, no allegations of wrongdoing were made in relation to any individual member of the Firm (other than in relation to EMW's material contribution to the Firm's failures, set out at Paragraph 4 above, while performing the functions set out at Paragraph 10 below) and the admissions in this document are made on this basis.

8. As more fully set out below EMW admits that in relation to the Relevant Transactions (being Transactions 1 – 14 on Appendix 1 to the Amended Rule 12 Statement):
    a. He materially contributed to the Firm's failure to carry out adequate CDD on Company A, contrary to regulations 5 and 7 of the 2007 MLRs;
    b. He materially contributed to the Firm's failure to take adequate steps to check what ongoing monitoring of Company A was in fact being carried out, contrary to:
        i. Regulation 8 of the 2007 MLRs in Transactions 2 - 11 ; and
        ii. Regulation 28(11) of the 2017 MLRs in Transaction 12 - 14;
    c. He materially contributed to the Firm's failure to carry out any or adequate CDD on the Principals in Transactions 1 – 11, contrary to regulations 5 and 7 of the 2007 MLRs;
    d. He materially contributed to the Firm's failure to carry out any or adequate CDD on the Principals in Transactions 12 – 14 contrary to Regulations 27 and 28 of the 2017 MLRs;
    e. Either more CDD material should have been obtained for the Principals, or the Relevant Transactions ought to have ceased under:
        i. Regulation 11 of the 2007 MLRs in relation to Transactions 1 - 11; and
        ii. Under regulation 31 of the 2017 MLRs in relation to Transactions 12 - 14;

    AND by reason of the above, EMW admits that he breached principles 6, 7 and 8 of the Principles and failed to achieve outcome 7.3 and/or 7.5 of the Code.

Background

The parties

9. The Firm is a limited liability partnership (LLP) and a recognised body. It has approximately 405 members, i.e. partners. It undertakes a wide range of commercial and litigation work including shipping work. At material times, the Firm had a Business Acceptance Unit ("**BAU**") which dealt with the onboarding and monitoring of clients and inception of new matters. The Firm also had a Risk Department to which any issues relating to the same could be escalated.

10. EMW was admitted as a solicitor on 1 October 2003, having trained and qualified at the Firm. EMW was part of the Firm's Marine Team. In 2010 EMW became a partner in the Firm. In 2017, after many of the matters referred to in Appendix 1 had taken place, he was appointed Chair of the Marine Global Practice Group. EMW's practice primarily involved litigation and arbitration although he also advised on non-contentious matters arising in typical shipping or commodities transactions. In relation to the Relevant Transactions, EMW's acts and omissions arose during the course of his work on the matters and not while performing functions of management at the Firm.

The background to the Transactions

11. Prior to the Transactions giving rise to the Rule 12 Statement, the company referred to as "Company A" was a client of the Firm. Company A was onboarded as a client in a matter in 2012 with which EMW was not involved. EMW also acted for Company A in litigation matters prior to the Transactions giving rise to the Amended Rule 12 Statement.

12. At all material times, the sole Ultimate Beneficial Owner ("UBO") of Company A was understood by the Respondents to be Person A. At all material times, EMW understood that Person A was also the UBO of all of the Principals. In July 2019, Person A wrote to EMW in terms stating that (a) his business was not dependent on third party funding or external investors and (b) the funds used to acquire the vessels were derived from retained earnings and/or corporate entities or trusts for which he and his wife were the ultimate beneficial owners. The parties agree that it is not possible to say with the requisite degree of assurance who exactly were the UBOs of Company A or each of the Principals at the material times. Company A was a large business and it is not alleged in the Rule 12 Statement and the SRA has no evidence that Company A relied on third party funding or external investors. Furthermore, it is not alleged in the Amended Rule 12 Statement and the SRA has no evidence

that Company A, the Principals or Person A were in fact involved in money laundering or financial crime in relation to the Relevant Transactions, although all Transactions carried risks of both, and the fact that inadequate CDD was carried out in this instance meant that such a risk was not properly addressed. As such the risk of money laundering cannot be ruled out.

13. In or around July 2014, Company A entered into discussions with EMW about whether the Firm could hold money as an escrow agent in ship purchases regarded as giving rise to a particular credit risk. EMW approached the Firm's Risk Department to discuss the proposals. In that context, EMW informed the Firm that the party to the escrow arrangements would be a Principal.

14. As EMW was a shipping lawyer, and the Firm had a large shipping practice, EMW expected that it would be understood within the Firm's BAU function (and to the extent that they were involved in the Relevant Transactions, the Firm's Risk Function) that in fact, multiple different Principals might be used. It was a commonly used structure in the shipping industry to use multiple Principals, with each Principal owning either a single vessel or a small number of vessels.

15. EMW accepts that he should have taken more steps to pro-actively ensure that the Firm's Risk and/or BAU functions were in fact aware that multiple Principals might be used in the Transactions. The Firm accepts that its Risk and BAU functions should have done more to elicit this information, and to recognise that material in the Firm's possession (including emails from, and past dealings with, Company A) indicated the same. In addition, both the Firm and EMW accept that they were at fault in failing to identify the Principal in the Relevant Transactions as a client of the Firm, and hence a "customer" for purposes of the MLR Regulations, and that this failure materially contributed to the admitted MLR breaches.

16. When opening a new contentious matter in August 2014, EMW informed Mr Goodchild of BAU that a particular Principal used by Company A as a principal wished to maintain confidentiality in the identity of its shareholders. The Firm and EMW recognise that this should have alerted them to ensure punctilious CDD in relation to Company A and any Principal / subsequent instructions associated with Company A.

Transaction 1

17. In September 2014 a representative of Company A revived discussions in relation to escrow arrangements. The representative stated that *"The key is that our principals would like to protect their shareholders identity"*. Unlike in respect of the matter described at paragraph 16, EMW did not draw the Firm's attention to this feature of the escrow arrangements, as he accepts he should have done.

18. The first matter involving moneys being paid into the escrow account ("Transaction 1") was onboarded in October 2014. Until 24 October 2014, EMW understood that the money for the Transaction would come from Company A, although the purchasing party would be a company, understood to be a Special Purpose Vehicle, acting as Company A's Principal.

19. On 17 October 2014, Company A faxed its Certificate of Registration, Memorandum and Articles of Association and a Bank Letter to a fax number in the Firm's BAU Department. BAU did not ask EMW to seek any additional CDD documents for Company A. EMW and the Firm accept that they should have checked whether the CDD documents for Company A were adequate.

20. On 20 October 2014, EMW signed a Client Identification Form for Company A. At or around the same time, the Firm's BAU completed a document headed "Client Due Diligence Requirements". This stated that Person A was the 100% owner of Company A.

21. At all material times, EMW was of the view that Company A posed a normal level of risk from an AML perspective. EMW suggested, and the Firm agreed, to place periodic checks on both Company A and Person A. Later, on 21 October 2014, a member of the Firm's BAU Department made a file note stating that World Checks should be run each time a new matter request was received for Company A.

22. Also on or around 21 October 2014, the BAU carried out further CDD on Company A, including obtaining a summary from a leading market intelligence source in Company A's industry about Person A and his background, conducting internet searches (including of archived websites) to establish that Company A had existed for a number of years, a "World Check" search into both Person A and Company A, and information about litigation involving Person A and Company A. EMW also sent a client care letter to Company A, which Company A signed and returned.

23. On 22 October 2014 a junior member of EMW's team sent BAU an email stating that Person A remained the 100% shareholder in Company A.

24. It is admitted by both Respondents that in this case more complete CDD documents should have been obtained for Company A. In particular, more up to date documents evidencing the shareholding (and ownership/control structure) of Company A should have been obtained, plus a certified copy of Person A's passport. The company documents that were obtained dated from 2008 and were therefore around 6 years old. They identified Person A as the 100% shareholder in Company A. In addition, the Respondents should have sought further documents from Company A, in order to understand better the nature and structure of its business.

25. In the late afternoon of 21 October 2014, Company A identified the Principal that it intended to use as its buyer in Transaction 1. The company was incorporated in Liberia, a jurisdiction commonly used to flag vessels. Under the 2007 MLRs, solicitors had to consider the extent of due diligence on a risk-sensitive basis, depending on the type of customer, business relationship, product or transaction. EMW did not regard the Principal in Transaction 1 as giving rise to a high risk of money laundering because use of such a company in Liberia was common in the shipping industry and both Company A and Person A were based outside Liberia and were considered by EMW to be reputable. However, he accepts that he failed to consider whether the use of a Principal incorporated in Liberia heightened the risk of money laundering.

26. On 24 October 2014 EMW discovered that the money for Transaction 1 would be provided by the Principal rather than Company A. EMW understood from his team that they had interacted with the Firm's BAU Department and that BAU had confirmed that his team needed to be satisfied that the Principal was one of Person A's companies, but did not need to see or provide documents showing shareholder details. Thereafter EMW's team checked with Company A that the UBO of the Principal was Person A but did not seek any documents to substantiate this.

27. EMW accepts that he should have done more to check the position, such as seeking written confirmation from BAU of the position, or discussing the position with BAU himself. The Firm accepts that improved systems, in particular in relation to onboarding clients, could have

better assisted in this process. The on-boarding system could have (i) better enabled the identification of the role of various parties to transactions, better identified parties who might be "co-clients", and also better identified the CDD required in respect of them; (ii) involved sharper focus on verifying source of funds. Better designed matter opening forms would have helped EMW recognise that the Principal needed to be onboarded as a client, and consequently CDD should be done in respect of it. They would have also assisted in relation to source of funds issues.

28. EMW accepts that he should have taken more steps to ensure that the Principal was expressly identified to the Firm's BAU as the Firm's client, for reasons including that the matter opening form on Transaction 1 (previously completed on 21 October 2014) had named Company A as the Firm's only client. The Firm also accepts that its BAU function (taking account of what was available to it at the material time) should have done more to elicit this information.

29. The CDD information obtained for the Principal in Transaction 1 was confined to its certificate of incorporation, certificate of good standing and copies of passports of the directors. It is admitted by both Respondents that the CDD undertaken on the Principal was inadequate and in breach of the MLR Regulations 2007. In particular, it should have included documents to verify who held the shares and to substantiate that Person A was the sole UBO of the Principal (assuming that were the case).

<u>Transactions 2, 7, 9 and 13</u>

30. Transactions 2, 7, 9 and 13 took place between December 2014 and October 2018. At all times, EMW believed that Person A was the sole UBO of the Principals. In February 2015 EMW met with Person A in person at Company A's head office and he stated that he was the UBO of the Principals which were used by Company A as vehicles to acquire ships.

31. As to the position regarding Company A on Transactions 2, 7, 9 and 13:
    a. At all times, EMW believed that Company A gave instructions on ship purchase transactions through one legal entity incorporated in the Middle East and that it did not have separate relevant corporate entities carrying out this type of business in different countries;

b. Although the Firm had agreed with EMW that it would carry out a periodic "World Check" search into Company A and Person A (as set out at Paragraph 21 above), it did not do so in relation to Transactions 2, 7, 9 or 13;
c. The Firm and EMW accept that because the CDD held for Company A was that obtained in Transaction 1 above, it was inadequate for reasons set out at Paragraph 24 above.

32. As to the position regarding the Principals on Transactions 2, 7, 9 and 13:
    a. Transactions 2, 7 and 9 took place before the 2017 MLRs came into force and only Transaction 13 took place after the 2017 MLRs came into force;
    b. The matter opening forms prepared by members of EMW's team identified the Principals as the buyers in the Transactions and/or described them as parties "related" to Company A or "client friendly" parties. The forms were ambiguous as to whether the Firm would be acting for that buyer (i.e. the Principal);
    c. EMW accepts that he should have taken more steps to ensure that the Principals were identified as the client and that he should have personally reviewed the matter opening forms. The Firm accepts that its systems and controls should have better assisted this process by requiring a fee-earner responsible for the work to sign off the new matter form;
    d. No CDD documentation was received for the Principals in Transactions 2, 7, 9 and 13. At all material times EMW proceeded on the basis that Person A was the sole UBO of these Principals. He did not expressly discuss that position with the Firm's Risk or BAU functions. It is admitted that either adequate CDD should have been obtained on these Transactions, or the Respondents' involvement with them should have ceased;
    e. The Principals were variously based in Nevis (for Transactions 2, 9 and 13) and Liberia (for Transaction 7). These are both jurisdictions commonly used to flag vessels, and in respect of which:
        i. Under regulation 7 and 14 of the 2007 MLRs (which applied to Transactions 2, 7 and 14) solicitors had to consider the extent of due diligence on a risk-sensitive basis, depending on the type of customer, business relationship, product or transaction. EMW did not regard the Principals as giving rise to a high risk of money laundering because use of such a company was common in the shipping industry and both Company A and Person A were based outside Liberia or Nevis and were considered by EMW to be reputable.

ii. Under regulation 33 of the 2017 MLRs (which applied to Transaction 13), solicitors had to consider a more detailed list of features of the transaction, including whether the customer was based in a high risk third country. The Principal in Transaction 13 was based in Nevis, which was not on the EU's List of High-Risk Third Party Countries in relation to Money Laundering/Financing Terrorism. EMW did not regard the Principal as giving rise to a high risk of money laundering, because use of such a company was common in the shipping industry and both Company A and Person A were based outside Nevis and were considered by EMW to be reputable.

iii. Irrespective of this, EMW accepts that he failed to consider whether the use of a Principal incorporated in either Liberia or Nevis heightened the risk of money laundering.

Transaction 16

33. Transaction 16 involved litigation in early 2016 under a management agreement in relation to vessels already in the ownership of Principals which were understood by EMW to be used by Company A to purchase ships, rather than a purchase transaction. By the Amended Rule 12 Statement, the SRA does not rely on the matter for MLR breaches but instead relies on certain features of the transaction in support of its case on other transactions. In transaction 16, the money referred to in the Forensic Investigator's Report that was paid into the Firm was repaid to the sender Principals as set out more fully below.

34. As to events in Transaction 16:

    a. There were 5 Principals on Transaction 16. They were described to the Firm's BAU in matter opening forms prepared by EMW's department as the registered owners and "client related". The five Principals were incorporated in either Nevis or Liberia;

    b. After the money referred to in the Forensic Investigator's Report was paid into the Firm's client account by the five Principals, there was a request for it to be returned. On 3 February 2016:

        i. EMW emailed the Firm's Risk Team to seek their agreement that this could be done. EMW's email made clear that the five Principals each owned a ship and that he understood that each had the same UBO, Person A;

        ii. The Firm's Risk Department gave clearance for the money to be returned.

        iii. Thereafter, the Firm's BAU queried who the Firm's client was;

iv. In a further email, EMW described Company A as the Firm's "billing client" and as Person A's "public commercial vehicle". He explained that Company A did not own the vessels and that this (i.e. the use of Principals) was a normal ownership structure in shipping. He also stated that the Principals had been listed as "client friendly" and that he understood that their UBO was Person A;

c. On 4 February 2016:

i. The Firm's BAU informed EMW that the Principals should have been registered as clients, particularly if the Firm was "going on the record" in litigation for them;

ii. The Firm's BAU also informed EMW that it was checking what CDD information it had on the Principals, in order to discount AML concerns;

iii. One of the Firm's MLROs suggested that "World Check" searches should be carried out on the Principals;

d. On 10 February 2016 BAU informed EMW that it had carried out "World Check" reports on the Principals and that whilst there was not quite enough to "onboard" them as clients, there was enough to provide comfort about returning the money. By this stage, BAU had also obtained:

i. Information from Lloyds List Intelligence about the Principals;

ii. An up to date "World Check" report for Company A.

e. Thereafter, on or about 10 February 2016 the money paid into the Firm was repaid to the Principals.

35. The five Principals were not identified as the client in Transaction 16. EMW incorrectly interpreted the BAU email of 4 February 2016 as stating that Principals had to be named as clients in litigation matters where the Firm was going on the record. He accepts that this interpretation of the email was incorrect. In addition, EMW failed to pay adequate attention to a previous email to a colleague from the Firm's BAU dated 20 March 2015 in Transaction 4, which was forwarded to him, stating that if the buyer Principal was his client, it would be a "new client". Further, the Firm accepts that the 4 and 10 February 2016 emails should have caused it to review earlier Transactions with Company A to check whether MLR requirements had been addressed; and that it should have taken specific measures to ensure that any subsequent Transaction with Company A (here, Transactions 8 – 14) did not exhibit the deficiencies set out in those emails.

General

36. The escrow monies paid into the Firm in relation to all the Relevant Transactions were, in all cases, paid by the respective Principal. Both the Firm and EMW accept that a consequence of the failures at the onboarding stage was that such payers of funds to the Firm were not identified as clients nor as third-party payers, even in the case of 2017/18 matter opening forms which specifically inquired whether there were co-clients or non-client third-party payors. Had the Principals been identified as either of these, they would then have been the subject of CDD and/or source of funds checks. The result was that funds were received, without further checks, either because the Firm's accounts' staff were proceeding on the basis that the correct entities had been onboarded at the outset such that any payer would have been the subject of appropriate checks, or because EMW was proceeding on the erroneous basis that the Firm had or would undertake any necessary checks. The Firm accepts that its accounts' staff should, as part of their monitoring functions, have clarified that acceptance of such funds did not involve MLR breaches. EMW accepts that, as the partner with primary supervisory responsibility for the Transactions, he should have taken appropriate measures in accordance with the terms of the 2007 MLRs and 2017 MLRs (as appropriate) to ensure that the Principals were the subject of CDD and/or source of funds checks.

SIGNATURE REDACTED

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Ian Brook (Partner, Capsticks)

For and on behalf of the SRA

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For and on behalf of the Second Respondent

DATED: 21 December 2023