The Tribunal's decision dated 18 June 2024 is subject to appeal to the High Court (Administrative Court) by the Applicant. The Order remains in force pending the High Court's decision on the appeal.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12476-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

DENTONS UK AND MIDDLE EAST LLP Respondent

Before:

Mr B Forde (in the Chair)
Mr G Sydenham
Mr C Childs

Date of Hearing: 4 – 11 March 2024

Appearances

James Ramsden KC and Rory Mulchrone instructed by Hannah Lane of Capsticks LLP for the Applicant.

Richard Coleman KC and Marriane Butler of Fountain Court Chambers, instructed by Ian Miller of Kingsley Napley for the Respondent.

JUDGMENT

Allegations

1. The allegations made against Dentons UK and Middle East LLP ("the Firm" or "Dentons") by the Solicitors Regulation Authority Limited ("SRA") were that, while acting for Client A or associated entities, between approximately 1 May 2013 and 24 January 2017, it failed at any time to take adequate measures to establish the source of his wealth and/or funds, and that, in so failing, it:

1.1. breached Regulation 14 of the Money Laundering Regulations 2007 (the "MLRs");

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

1.3. failed to achieve Outcome 7.5 under the SRA Code of Conduct 2011 ("the Code").

Executive Summary

2. Dentons denied the allegations. The Tribunal found that Dentons had breached the MLRs, but that the breach did not amount to a breach of the Principles or the Code as alleged pursuant to allegations 1.2 and 1.3. The parties jointly submitted, and the Tribunal agreed that as a matter of law, it had no jurisdiction to impose a sanction where there was no breach of the Principles, Code or professional rules. The MLRs did not fall within those categories. Accordingly, whilst finding, as a matter of fact, that the Firm had breached the MLRs, the Tribunal had no jurisdiction to impose any sanction for those breaches. Mr Coleman KC submitted that given the position, the correct response would be to dismiss the matter, there being no finding of professional misconduct that engaged the Tribunal's jurisdiction. The Tribunal agreed that this was the appropriate course. Accordingly, and notwithstanding its finding as regards allegation 1.1, the Tribunal dismissed the case.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

- Rule 12 Statement and Exhibits
- Respondent's Answer and Exhibits
- Applicant's Reply to the Respondent's Answer
- Applicant's Schedule of Costs
- Applicant's skeleton argument for the substantive hearing
- Respondent's skeleton argument for the substantive hearing

Preliminary Matters

4. <u>Non-Party Disclosure Applications & Application to Lift Anonymity</u>

4.1 On 4 March 2024, Mr Tobin (on behalf of Reuters), applied for disclosure of:

- The Applicant's Rule 12 Statement

- The Applicant's Skeleton Argument
- The Respondent's Skeleton Argument.

4.2 Ms Magee (on behalf of Spotlight on Corruption) applied for disclosure of:

- The Applicant's Skeleton Argument
- The Respondent's Skeleton Argument
- The Proceedings Timetable
- The Anonymity order in relation to Person A

4.3 Mr Coyle (on behalf of MLex) applied for disclosure of:

- The Applicant's Skeleton Argument
- The Respondent's Skeleton Argument

4.4 There was also an application to lift the Anonymity Order in relation to Client A. Those applications were considered by the Tribunal on 6 March 2024, when both Mr Tobin and Ms Taylor (on behalf of Spotlight on Corruption) attended the Tribunal to make oral submissions.

4.5 Mr Ramsden KC set out the agreed position of the parties both as to the law and practice. The parties had discussed matters with Mr Tobin prior to the hearing in a constructive conversation.

4.6 Mr Ramsden KC submitted that the parties jointly recognised the importance of the principle of open justice, however this was not an open-ended principle. It was constrained according to the nature of individual cases and the nature of particular jurisdictions. This nature of matters dealt with by the Tribunal meant that dealings with clients, in order to establish whether there had been misconduct, were commonplace. Those clients, in most cases, were not parties to the proceedings. The discussion of client matters and advice to clients engaged the critical principle of client privilege and confidentiality in relation to their dealings with their lawyer, something which was absolute and may only be waived or derogated by the client.

4.7 Were it to be the case before this Tribunal that client privilege and confidentiality would be routinely waived, it would have a chilling effect on the regulation of lawyers as it would act as a distinct deterrent for any client to make a complaint about their lawyer knowing that as a consequence they may have aired in public what would otherwise remain their privileged and confidential legal affairs.

4.8 That policy imperative was restated by the High Court in 2023, in the case of SRA v Williams [2023] EWHC 2151 (Admin), which determined that client privilege before this Tribunal was absolute. There was no discretion on the part of the Tribunal, the SRA as regulator or indeed the firm which is defended before the Tribunal. The only party who may waive privilege before this Tribunal is the client. Accordingly, that privilege was absolute.

4.9 Williams was binding as an authority on this Tribunal. For that reason, the parties jointly opposed any order that the anonymity of Client A be lifted. The fact that Client A's identity may have been or may be capable of being ascertained, was not the

legal test and should not be relevant, less still a determining factor in the Tribunal's decision. Client A, unless he waived his right to privilege and confidentiality, was entitled to anonymity before the Tribunal just as any other client is who chooses to advance a complaint against their lawyer such that their lawyer's conduct is properly examined by their professional body.

4.10 As regards the disclosure of documents, the parties did not object to disclosure of the respective skeleton arguments in redacted form in order to protect Client A's privilege. It was accepted that where skeleton arguments were disclosed, the pleadings should also be disclosed, so there was no principled objection to that disclosure. There was, however, a practical difficulty which militated very strongly in favour of their delayed disclosure, namely the length of those documents and the need to redact information so as to protect Client A's privilege. Such an exercise was likely to take a day to a lawyer familiar with the case, which meant a lawyer who was part of the proceedings and participating in the ongoing hearing.

4.11 To order the immediate disclosure would mean adjourning the proceedings, which, it was submitted, would be wholly disproportionate.

4.12 In addition, Ms Butler submitted, as regards the application to lift the Anonymity Order:

- The proceedings unquestionably involved referring to information over which Client A, and his associated entities were entitled to assert privilege. By way of illustration, Ms Butler referred to correspondence that the Tribunal had been taken to in opening that contained advice to Client A that clearly attracted privilege.

- It was well-established that privilege was fundamental, and an absolute right which could not be overridden by some competing public interest. Lord Hoffmann observed in Morgan Grenfell v the Special Commissioner Income Tax [2003] 1AC 563: *"It is a fundamental human right long established in the common law"*. Lord Taylor observed in Derby Magistrate's Court [1996]: *"Legal professional privilege is thus much more than an ordinary rule of evidence limited in its application to the facts of a particular case. It is a fundamental condition on which the administration of justice as a whole rests."*

- By reason of that fundamental right, the Tribunal had a duty to protect the privilege of clients and former clients in relation to proceedings before it for the purposes of supporting the administration of justice. The Tribunal did so by anonymising the name of the client or former clients and other key information that would identify them in order to ensure that when privileged information came out, which was required during the course of proceedings in order to determine relevant issues, there was in fact no breach of privilege because no one knew to whom the communique was in fact directed.

- Rule 35(9) of the Solicitors (Disciplinary Proceedings) Rules provided the Tribunal with the express power to achieve that end.

- The fact that some members of the press or the public may, as a matter of fact, be able to work out who a client or former client was, was nothing to the point. The Tribunal's duty was to take such steps as it could to preserve privilege.

- Insofar as the press or members of the public relied upon a countervailing interest such as the principle of open justice or public interest in knowing the identity of Client A, such reliance was misconceived; there was no balancing act to be undertaken with those rights.

4.13 In relation to the request for documents, Ms Butler echoed the submissions of Mr Ramsden KC.

4.14 Mr Tobin confirmed that the identity of Client A was easily discernible, however, there was no intention to reveal that identity in contravention of the Tribunal's anonymity order. Mr Tobin explained that until the first day of the hearing, he was unaware that an anonymity order had been made by the Tribunal. Nor was he aware of the basis upon which the order had been made.

4.15 Mr Tobin submitted that it seemed wrong that, in line with Williams, a blanket policy of anonymising clients was being applied when that had not been conveyed to any media or civil society organisation who observed the proceedings. Had that been known, it was possible that a middle ground could have been reached whereby the privileged information was not referred to, allowing the client's identity to be published.

4.16 Mr Tobin submitted that following his discussions with the parties, he recognised the position as regards the application to lift the anonymity order. The application had arisen due to a lack of transparency.

4.17 Ms Taylor echoed the submission of Mr Tobin, and confirmed that she was content, at this stage, with disclosure of the skeleton arguments, understanding, as she did, the arguments regarding proportionality as regards the pleadings.

4.18 In reply, Mr Ramsden KC submitted that the fact of these proceedings had been public for some time. Accordingly, members of the press and public were aware of the proceedings. The applications were not sent in until the first day of the hearing.

4.19 The Senior Clerk confirmed that there had been hearings on 28 July 2023, when the current substantive hearing date was fixed. There had been further hearings on 7 December 2023 and 1 March 2024. All of those hearings were held in public.

4.20 The Tribunal determined that given the agreement of all parties, the pleadings and skeleton arguments requested should be disclosed, subject to appropriate redactions to protect the privilege of Client A and his associated entities.

5. The Tribunal's Anonymity Order

5.1 On 7 December 2023, the Tribunal Ordered that Client A (as referred to in the Rule 12 Statement) shall be anonymised in these proceedings and that the publication of Client A's name be prohibited.

5.2 On 7 March 2024, upon hearing from Mr Ramsden KC for the Applicant, Ms Butler for the Respondent, Mr Tobin for Reuters and Ms Taylor for Spotlight on Corruption,

the Tribunal ordered that no person may publish or cause to be published the identity of Client A or any entities associated with Client A.

Witnesses

6. The following witnesses provided statements and gave oral evidence:

- Sean Grehan – Forensic Investigation Officer.

7. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

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

9. <u>The Applicant's Case</u>

<u>Factual Background</u>

9.1 On or about 18 December 2018, the SRA's Regulatory Manager, Ms Watkiss, made a routine visit to the Firm and was informed of a possible report to the SRA being contemplated in relation to a systems failure concerning a Client A, former Chair of the Bank. The Firm had done some property matters for this client, who had wanted to open a bank in the UK, then later been arrested and convicted in 2015 or 2016. The Firm had continued to do the property work but had flags in place against the client and his companies. In two matters, these flags had not activated (by which time the Firm was acting for liquidators). The National Crime Agency ("NCA") had been in touch with the Firm, which was cooperating.

9.2 Ms Watkiss conducted an internet search and ascertained that Client A was the husband of the subject of an Unexplained Wealth Order. That order had been made without notice on 27 February 2018 and upheld by Supperstone J on 3 October 2018. His judgment recorded that in 2016, Client A had been convicted of fraud and embezzlement offences in the non-EEA Country, imprisoned for 15 years and ordered to repay around $39 million to the Bank.

9.3 There was evidence before the Court providing *"some corroboration for the allegations made against"* Client A *"relating to the misuse of the Bank's funds of which he was found guilty"*. In particular, information from Harrods indicated that, between September 2006 and June 2016, Client A's wife had spent over £16 million under its 'Customer Loyalty Rewards Card' scheme, including on credit cards issued by the Bank. The learned judge agreed with the NCA that such evidence was *"significant in the light of the reports of [Client A's] trial that allegations made against him included*

abuse of his position at the Bank by issuing credit cards in the names of family members, through which large debts were run up against the Bank". The judge firmly rejected a submission made on behalf of Client A's wife to the effect that Client A had not been *"a state employee"* between 1993 and 2015 and found no reason to depart from his earlier finding that it was *"very unlikely that such a position would have generated sufficient income to fund the acquisition of the Property"* in question.

9.4 On 1 August 2019 the SRA's Forensic Investigation Officer ("FIO") wrote to the Firm's General Counsel, Mr Cheung, pursuant to the SRA's responsibilities as a supervisory authority under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "MLRs 2017"), seeking information and evidence in relation to various points. The Firm provided a detailed response on 16 September 2019. This included a schedule of matters on which the Firm had acted for Client A and associated entities. It was accompanied by the Firm's AML policies and procedures and AML Risk Assessments and High-Risk Notifications.

9.5 The SRA commissioned a forensic investigation commencing on 21 January 2020. A Forensic Investigation Report ("FIR") was produced by Sean Grehan the FIO dated 14 October 2020.

Origin of the Retainers

9.6 In March 2013 the Firm combined through a Swiss Verein structure with a firm called Salans LLP ("Salans") to form the Global Firm. As part of that combination, the London office of Salans had been acquired by the Firm and matters and clients of Salans had been transferred to the Firm with effect from 1 May 2013. Client A had previously been a client of Salans. Accordingly, the Firm had acted for Client A and his associated entities from 1 May 2013. The Firm undertook no new matters for Client A after 25 January 2017; that final matter was closed on 12 June 2017.

9.7 The client relationship partner for Client A was a Mr François Chateau, formerly Chairman of the global board of Salans and subsequently global vice chairman of the Global Firm and a partner in its New York office. Mr Chateau was not and is not on the Roll of Solicitors or otherwise regulated by the SRA. Mr Chateau had met Client A a number of times since being introduced by other clients in 2008 and had confirmed that his passport photograph, held on file by the Firm, was a true likeness. A Mr Enoch, Senior Partner at Salans, had also met Client A in person. Salans had obtained a 'World Check' report on or about 29 March 2012, which confirmed that Client A was Chairman of the Board of the Bank and identified no adverse information about him.

9.8 Mr Chateau recalled reading reports suggesting that *"Client A was the most powerful financier in the region – it was clear to all that he was successful and his projects for the Bank were making money for both the [non-EEA country's] government, the [Bank] itself and its other shareholders, including [Client A]"*.

9.9 From an early stage following his transfer from Salans to the Firm, the Firm identified Client A as a politically exposed person ("PEP"), due to his role as Chairman of the Bank and his prominent and influential position in the non-EEA country's society. Client A and his associated entities were designated as 'high risk' by the Firm and were correctly identified as requiring enhanced due diligence and monitoring.

9.10 The Firm also correctly classified the non-EEA country as a high-risk jurisdiction. The Firm was aware during the relevant period (2013 to 2017) that the non-EEA country ranked between 122 and 127 internationally for corruption and scored poorly (i.e. between 28 and 31 out of 100) on Transparency International's corruption perception index ("CPI"). The Firm considered a score of less than 40 to be high risk.

9.11 An AML and risk clearance certificate for Client A dated 25 April 2014 [IWB1, p.359] stated that his *"source of wealth and funds derive from his employment"*. A further such certificate dated 25 September 2014 recorded that [Trust A] had been *"set up for the purpose of [Client A] and his family"* and that the beneficiary, Client A, was "the source of wealth through his employment as CEO of [the Bank] and the wealth is derived from investments of shares and property made".

9.12 However, staff never asked Client A or his family office what his salary was at the Bank, nor did they obtain evidence to confirm this. Nor did the Firm obtain any evidence to establish the extent of Client A's actual shareholding in the Bank (if any). The Firm's knowledge of Client A's source of wealth was largely based upon information gathered from the internet and Mr Chateau's knowledge of the client. Due to tax advice provided by the Firm to Client A, staff were also aware that Client A had accumulated substantial property assets in the UK prior to becoming a client. The ownership of Client A's property assets in the UK was structured through trusts and companies registered in foreign jurisdictions. The FIO was not provided with, and was unable to find, any documentation showing how such assets had been accumulated.

The KCS Report

9.13 Prior to completion of any of the transactions exemplified in the FIR, on or about 24 July 2014, the Firm obtained an "Intelligence Briefing Note" from a private intelligence agency called KCS Strategic Intelligence and Corporate Security in relation to Client A (the "KCS Report") in relation to the setting up of a UK Bank (although ultimately that matter did not proceed). It appeared that, in commissioning the KCS Report, the Firm had been seeking to evidence that Client A was a fit and proper person to be authorised by the relevant regulator. The KCS Report recorded its authors' instructions to investigate the affairs of Client A, with a *"specific focus"* on how he *"obtained his wealth and the extent of his network"*. It was to be inferred that, despite correctly identifying him as a high-risk PEP from a high-risk jurisdiction, the Firm had not previously investigated the source of Client A's wealth, adequately or at all.

9.14 The KCS Report recommended that any business dealings with Client A be conducted with *"extreme caution"* as *"his business dealings with the West could act as an entry point for a network of less well-intentioned individuals and organisations to apply their own standards and methods to Western institutions – to say nothing of [Client A's] own personal ruthlessness in business"*. Its authors noted, inter alia, that there was a distinct lack of open-source intelligence or negative reportage available on Client A and his family and considered it plausible that this was the result of a *"strict clean-up operation"* by his associates. They also opined that it was *"supremely unlikely that as the Chairman"* of the Bank, Client A *"would not have benefited in some way from"* monies totalling around "$1 billion", which were reported to have gone *"missing"* on his watch.

9.15 In addition to his Chairmanship of the Bank, it was observed that Client A was *"reputedly the de facto man in charge of the [another main bank in the region]" and that such control "of two of the country's biggest financial institutions would give him almost limitless opportunities to further his own interests"*. Allegations had been made against Client A of *"apartment fraud"* in 2012. Client A's personal profit (if any) was unknown, but KCS considered that his involvement did not speak well of his business credentials. In the authors' professional view, it was *"unlikely"* that Client A *"could have survived so long in [the non-EEA country's] business world – and hold such a high status – without involving himself in the corruption that is endemic in the ... region"*. It was noted that Client A enjoyed close connections, including family relationships, among the ruling elites of the non-EEA country's society. The KCS Report did not confirm Client A's salary at the Bank or the extent of his shareholding in the Bank (if any). It appeared that KCS offered to undertake a *"deep dive report into the issues identified",* which would likely have cost around "£10,000 to £15,000". In the event, no such report appeared to have been undertaken.

9.16 Mr Chateau strongly objected to and dismissed the accuracy of the contents of the KCS Report that had been commissioned by the Firm. By contrast, it was the considered view of the Firm's General Counsel, Mr Cheung, that:

> *"... the risks associated with this client are high. I am concerned he has cleaned his reputation online and I find the reports of his involvement in the kidnapping of his wife to set up a political opponent and the theft of $1b from the bank he was Chair of without personal consequences disturbing. This is clearly a person who is protected by the president and appears to be able to act in a way that would bring swift and permanent consequences to anyone else. I feel these immediate risks are of a different nature to the oligarchs who benefited from perestroika and are now legitimatised to an extent internationally (eg Abramovich), though there are also some of those who because of the way they conduct themselves would not be appropriate clients of the firm. It is not my call to determine the firm's risk appetite on issues like this but I personally don't think we should be acting for this individual, in particular on his personal financial affairs" (emphasis added).*

9.17 Following consideration by the Firm's then Managing Partner, Mr Ransley, the Firm continued acting for Client A and his associated entities. However, and notwithstanding the highly troubling contents of the KCS Report and its recommendation of *"extreme caution"* in relation to any dealings with Client A, the Firm did not take any further measures at this stage to establish the source of Client A's wealth. It is the SRA's case that, if the Firm wished to continue acting for Client A or his associated entities, such measures were plainly and objectively indicated by this stage (at the very latest) and that they ought to have included, at a bare minimum, taking steps to establish Client A's actual salary at the Bank and the actual extent of his shareholding in the Bank (if any).

Source of Wealth (in General)

9.18 In interview with the FIO, Mr Chateau indicated that he did not consider it appropriate or necessary to ask Client A how much money he earned in his role at the Bank and did not recall that figure being publicly available:

> *"FIO So, what did you understand when [Client A] had become a client of Dentons, how he had obtained his wealth? What, what his source of wealth was?*
>
> *FC My understanding; number 1, he was the Chairman of a large bank. So, I just ask him you know because you don't do that. I just ask him how much do you make? I mean maybe in the US we do that from time to time. Because it's the confidentiality,*
>
> *FIO But you didn't, sorry,*
>
> *FC it is not the culture.*
>
> *FIO you did, or you didn't ask him how much he earned?*
>
> *FC I did not.*
>
> *FIO You did not?*
>
> *FC I did not, yeah.*
>
> *FIO Ok.*
>
> *FC Again, because we don't do that. Erm…*
>
> *FIO Why, why would you not do that, just because – why would you not do that?*
>
> *FC In, in Europe, in my culture, we don't do that. You don't ask err, how much do you make? You know this is not something we do. And it was basically not relevant erm at the time because quite clearly the – knowing the second solicitors and knowing about, learning about him, he was an extremely prominent person. He owned, as I understand err up to 49% and certainly 30% of the bank."*

9.19 Again, no documentary evidence establishing Client A's shareholding in the Bank was ever obtained:

> *"FIO Yeah, sorry just sticking on this topic, did, did you ever get any documentary evidence of that ownership?*
>
> *FC No, I never.*
>
> *FIO So, so, so his wealth came from the shares in the bank, but nobody's ever asked him to, to show the ownership of the shares in the bank?"*

9.20 Mr Chateau also considered that Client A's wealth also came from his businesses before he became Chairman of the Bank. However, no documentary evidence of how Client A had obtained his wealth from his previous businesses was obtained by the Firm. Mr Chateau considered that compliance had to be taken care of locally, not by the client's relationship partner based in New York. In interview with the FIO, he commented:

> *"FC … I have, probably over the past thirty years, represented hundreds of clients, high networth individuals, international person, companies doing business internationally. In many, many foreign countries and I would not, especially families which control businesses, and I have never asked anybody for the – to show me their bank account and evidence that they own what is visible for everybody to see…"*

9.21 Further, the Firm never asked Client A or his family office to confirm and evidence his salary at the Bank or to evidence the extent of his shareholding in the Bank (if any). Even after receipt of the KCS Report, urging *"extreme caution"*, the Firm appeared to

have proceeded on the basis that it was dealing with a high net worth individual, who had UK property assets worth more than £30 million.

Source of Funds (for Specific Transactions)

9.22 The Firm had acted in a total of 38 matters for Client A or associated entities. There were two transactions in which the Firm had acted in purchasing or seeking to purchase assets for Client A and his associated entities (and therefore received funds into client account), namely: (i) the purchase of Property 1 (via a holding company) for £7,982,388.03; and (ii) an aborted purchase of Property 2 for €95 million (in respect of which the Firm received into and paid out of client account deposit monies totalling €1 million).

Purchase of Property 1

9.23 The Firm was acting on two matters in relation to Property 1 – a real estate transaction on which Client A was the client, and a corporate share purchase transaction. The client for the corporate transaction was Trustee A who were acting as trustee for Trust B. The Firm's due diligence on Client A and Trustee A were summarised in its letter to the SRA dated 16 September 2019. It appeared that Trustee A was a professional and regulated trustee services provider. Mr Ramsden KC submitted that there was no further information on the file giving any further information in relation to Trust B.

9.24 The purchase completed on 3 September 2014 as a corporate matter, being the purchase of the entire share capital of the company which owned the property. The funds received by the Firm for the purchase were recorded on the real estate matter ledger. The real estate matter had been incorrectly detailed as a low/medium AML risk on the Firm's system when it should have been recorded as a high AML risk matter.

9.25 Prior to completion, the purchase price had been received into client account from Trustee A in three tranches:

- 18 July 2014 £800,000.00
- 1 September 2014 £1,600,000.00
- 2 September 2014 £5,582,388.03

9.26 Funds were paid out to the seller's solicitors on 25 July and 3 September 2014.

9.27 An AML and Risk Clearance Certificate held by the Firm for Trustee A dated 29 September 2014 stated: "*The client [i.e. Trustee A] derives its source of wealth and funds from the principal of the fund. The principal is very high up in a foreign bank*". Again, the FIO could find no due diligence held by the Firm in relation to Client A's actual salary at the Bank or any investments and shares held by Client A, save that staff were aware that Client A had previously acquired properties in the UK. Accordingly, it was submitted, there was nothing contained in the file to evidence the facts asserted in the Certificate.

9.28 The £800,000.00 received from Trustee A into the Firm's client bank account on 18 July 2014 ostensibly derived from a *"gift/donation"* from Company C. The FIO could find no due diligence held by the Firm in relation to Company C's source of

wealth and funds. An email to Mr Phillip Hope dated 15 July 2014 recorded that: *"The UBO of Company C is a friend of the client"*. It appeared that "client" was a reference to Client A rather than to Trustee A, as the email went on to state: *"the client is the Protector and Beneficiary of Trust B"*. An internal email from Mr Hope to Mr Tinger on the same date records: *"In terms of the deposit funds, these are now with Trustee A on behalf of Trust B. I am informed that there are some matters that are being sorted out in the background relating to the funds being a donation… I have said that we will need all of the background information in terms of who is making the donation their place of domicile and incorporation etc…"*. Subsequent emails referred to a *"Deed of Donation"* and indicated that the Trustees were content to proceed.

9.29 The balance of the purchase price was derived from Trust B, the beneficiaries of which were Client A and his family. The FIO could find no due diligence held by the Firm in relation to the source of wealth and funds of Trust B. The Firm asserted reliance on the fact that the funds were received from a regulated entity, i.e. Trustee A, and from an account held by Trustee A at a regulated bank. At all material times, Regulation 17 of the MLRs 2007 provided that a relevant person might rely on certain persons to apply any customer due diligence measures subject to certain provisos. *"Customer due diligence measures"* were defined in Regulation 5 and did not include checks as to source of funds (or wealth).

9.30 In its Answer, the Firm stated:

> *"The Firm was not seeking to delegate responsibility for complying with its customer due diligence obligations to any third party and it is common ground that there was no formal arrangement with either entity by which they would apply customer due diligence in accordance with Regulation 17 of the MLRs 2007.*
>
> *In determining whether, viewed objectively, the Firm had taken reasonable, and therefore adequate, steps to establish the source of funds for the transaction pursuant to Regulation 14, however, it was reasonable and appropriate for the Firm to take comfort from the involvement of Trident and Investec as regulated entities subject to their own AML requirements."*

9.31 Mr Ramsden KC submitted that the point being taken by the Firm was not that it was entitled to rely on others, but that the involvement of those entities provided the Firm with *"comfort"*. In order to take comfort that it had taken the correct approach, the Firm would have needed to have taken steps to comply with Regulation 14. It could not take comfort from the involvement of the other entities in circumstances where it had not taken the necessary and appropriate steps itself. Further, and in any event, the Firm did not know what steps those other entities had taken, and nor did it ask.

9.32 Further, in relation to the purchase of Property A, the FIO could find no evidence that the Firm had made any specific enquiries about the source of funds received by Trustee A from Company C Ltd or Trust B, that were used to fund the purchase.

9.33 Mr Ramsden KC submitted that the purchase of Property 1 was a good and cogent example of the inevitability of what was likely to happen. A significant amount of money went through the Firm's client account in circumstances where the Firm failed

to establish where that money came from. Not only did the Firm fail to establish the source of the funds, it also failed in its duties of ongoing enhanced due diligence.

Aborted purchase Property 2

9.34 In respect of the aborted purchase of Property 2, the client was Client A. The seller was Company D. The sale price was €95 million. The transaction did not proceed, ostensibly because, despite having paid a deposit of €1 million via the Firm, Client A was unable to raise the remaining funds necessary to complete the purchase.

9.35 As to the source of the funds used for that deposit, on or about 3 March 2015, the Firm had received €1 million into client account from Company E. An AML and Risk Clearance Certificate for Company E dated 25 September 2015 stated that it was *"involved in property development"* and derived *"its source of wealth and funds from its business activities"*. The same document recorded that Company E was ultimately owned by Company F in its capacity as a trustee of Trust B, which was *"one of the trusts set up by"* Client A.

9.36 The customer due diligence conducted for Client A and Company E was summarised in the Firm's letter to the SRA dated 16 September 2019. The FIO could find no due diligence held in relation to Company E's business activities or the source of the funds totalling €1 million received into and paid out of client account by way of deposit. The matter partner, Mr Polin, believed that those funds derived from Client A and *"was relying on the Luxembourg bank to conduct the appropriate checks that it should have conducted"*. In an email dated 31 March 2020 the Firm relied on the fact that the funds were received from an account held by Company E at a regulated bank in Luxembourg.

9.37 On 3 March 2015, the Firm paid the €1 million deposit to Company D. That substantial deposit was subsequently forfeited when Client A was unable to complete the purchase. Company D must therefore have retained the property and accrued a considerable windfall.

9.38 Further in relation to the aborted purchase of Property 2, the FIO found no evidence that anyone at the Firm had *"made any specific enquiries about the source of funds received from [Company E]"* that were used to pay the deposit of €1 million.

9.39 The Financial Action Task Force ("FATF") produced a report dated June 2013, entitled 'Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals'. The report detailed a number of red flags including:

- *"Red Flag 26: The transaction is unusual, eg: there are remarkable and highly significant differences between the declared price and the approximate values in accordance with any reference which could give an approximate idea of this value or in the judgment of the legal professional"*.

- *"Red Flag 34: Abandoned transactions with no concern for the fee level or after receipt of funds"*.

9.40 These red flags were detailed in the SRA's Warning Notice: 'Money laundering and terrorist financing', issued on 8 December 2014. The December 2014 Warning Notice was produced following the FATF report. It stated that warning signs included:

- Where *"the client was secretive or evasive about who they are, the reason for the transaction, or the source of funds*";

- Where *"the source of funds was unusual such as unexplained payments from a third party and the use of corporate assets to fund private expenditure of individuals"*

- Where the transaction *"had unusual features such as an excessively high value being placed on the assets"* and "*abandoning the transaction"*

9.41 Mr Ramsden KC submitted that there were a number of red flags in relation to the proposed purchase of Property 2.

9.42 The Tribunal was referred to an email dated 4 September 2014 from Mr Polin to Mr Chateau. Mr Ramsden KC noted that the purchase price was approximately sixteen times more than was paid in 2004. Further, Mr Chateau was advised that IA did not want the sale price to appear until *"the virtually final draft of the sale document"*. It was noted that there was layering of ownership; IA was the ultimate beneficial owner of Property 2, which was held through one company, which was in turn held through another company, which was controlled by IA. Such layering of the ownership of Property 2 was, it was submitted, a red flag. The inexplicably high purchase price together with the need for secrecy was, it was submitted, another red flag.

9.43 In his 24 February 2015 email, Mr Polin stated: *"If Dentons are to be paid the funds then there will be questions raised as to, for example, from where those funds emanate. If from within the EU, this should not be a problem."* Mr Ramsden KC noted that the Firm took no steps to ascertain the source of funds. As with Property 1 above, it was no answer that the money was received from within the EU. The Firm could not rely on another regulated entity as evidence that the Firm had complied with its obligation to establish source of funds. The fact that the monies were received from an entity within the EU did not give the Firm a free AML pass. Mr Ramsden KC submitted that for the reasons given above in relation to Property 1, the Firm's submissions as to the *"comfort"* it derived from the other entities involved, was not sustainable.

9.44 The abandonment of the transaction, and the forfeiture of the deposit monies were, it was submitted, another red flag. That Client A had walked away from the transaction with the loss of €1 million was highly suspicious.

<u>*Other relevant transactions*</u>

9.45 In the FIR, the FIO detailed five further transactions, involving the sale of valuable assets previously purchased by Client A or associated entities. The Firm distributed substantial proceeds of such sales, notwithstanding (i) its earlier failures to take adequate measures to establish the source of Client A's wealth and/or funds as described above and further analysed below and (ii) the KCS Report having urged *"extreme caution"* in relation to any business dealings with Client A. These transactions provided further illustration as to the seriousness of such breaches.

9.46 On 18 March 2015, Client A ceased being the Chairman of the Bank. On 15 April 2015, the Accuity report detailed that Client A was no longer the Chairman of the Bank. However, on 25 September 2015, the AML and Risk Clearance Certificate for Company E still detailed Client A as being Chairman of the Bank. Mr Ramsden KC noted that, the Firm, therefore, was still certifying to itself that Client A was Chairman of the Bank when it knew that this was not the position. Given the Firm's knowledge of Client A and the nature of the jurisdiction from which he came, the fact that he was no longer Chairman of the Bank should have aroused some concern or at least some enquiry.

Client A's Conviction and Imprisonment

9.47 Client A resigned from the Bank in March 2015. On 15 April 2015 the Firm obtained an 'Accuity' report which indicated that Client A was no longer the Chairman of the Bank, having resigned on or about 18 March 2015. A further such report dated 22 January 2016 identified that, in November/December 2015, Client A had been prosecuted, convicted and imprisoned for four months on charges of fraud and embezzlement. He faced several further charges including misappropriation, abuse of office, large scale fraud and embezzlement. An appeal had been rejected.

9.48 Thereafter, on 3 February 2016, an internal global red flag was placed against all new matters for Client A and associated entities. All new matters were to be reviewed and approved by Mr Cheung or Mr Koski.

9.49 On 16 September 2016 the Firm's AML and conflicts team conducted a public source internet search which identified that Client A's arrest terms had been extended by three months on 2 June 2016. A preliminary investigation into Client A and other individuals had completed and an indictment had been approved.

9.50 On 12 December 2016, the Firm's AML team conducted a further such search. This identified that Client A had been sentenced to 15 years imprisonment and ordered to pay approximately $39 million to the Bank. The charges were embezzlement on a large scale by an organised group, abuse of power resulting in grave crimes, official forgery, illegal storage and carrying of firearms.

Unexplained Wealth Order

9.51 The Firm became aware of the judgment of Supperstone J on or about 8 November 2018 and obtained the judgment on 19 November 2018. As detailed above, the judgment discussed evidence going to the source of Client A's wealth. It was the NCA's case that, as a *"state employee"* between 1993 and 2015, it was *"very unlikely that such a position would have generated sufficient income to fund the acquisition of the Property"* at issue in those proceedings. Evidence before the Court included letters from the Bank which showed that Client A's net income was only US$29,062, US$39,126, US$35,924, US$35,541, US$65,252 and US$70,648.70 in 2001, 2002, 2003, 2004, 2005 and 2008 respectively. It appeared that Client A also held shares in his name which generated a net dividend of US$88,911 in 2008. The judge accepted the NCA's submission and permitted a degree of reliance on Client A's conviction.

9.52 Mr Ramsden KC submitted that the SRA was not required to prove the truth of the criminal allegations against Client A for those to be illustrative of the importance of scrupulous compliance with the MLRs at all times. Nor was it necessary for the Tribunal to be satisfied that Client A's wife had spent in excess of £16 million in Harrods in funds effectively stolen from the Bank for that possibility to provide a vivid example of the policy considerations underlying the law and the perils of breaking it.

Further Evidence

9.53 Since the FIR was produced, the SRA had identified further relevant evidence in the matter files, going to the following facts and matters:

- Mr Chateau considered himself *"the sole originator of this client"*, i.e. Client A, and was resistant to other partners receiving any credit in relation to him.

- In August and September 2014, after receipt of the KCS Report urging *"extreme caution"* in relation to any dealings with Client A, the Firm appeared to have explored the commissioning of a further report by a different provider.

- On 4 September 2014, after receipt of the KCS Report urging *"extreme caution"* in relation to any dealings with Client A, Mr Polin emailed Mr Chateau to report a meeting with the ultimate beneficial owner of the entity selling Property 2. He noted that *"The sale price which has been agreed between [Client A] and [the seller's UBO] is approximately sixteen times the original price"* and that the seller's UBO did *"not wish the sale price to appear until the virtually final draft of the sale document"*. There were *"deep sensitivities on both sides as to the confidentiality"*. This meeting occurred prior to the publication of the SRA's Warning Notice on Money Laundering and Terrorist Financing in December 2014, but after publication (in June 2013) of the Financial Action Taskforce's 'Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals'. That document identified various 'red flag indicators' of money laundering, including excessive secrecy (Red Flag 1), excessively high price (Red Flag 19), discrepancies between actual and declared value (Red Flag 26) and complicated ownership structures without legitimate or economic reason (Red Flag 28). As noted above, despite correctly designating him as a high-risk PEP, the Firm had no evidence as to Client A's actual salary or establishing his actual shareholding in the Bank. The presence of such red flags was illustrative of the importance of obtaining such evidence.

- On 22 October 2014 Mr Polin emailed Mr Chateau regarding the proposed purchase of Property 2. It appeared that the authorities in the area in which Property 2 was located had attended Client A's *"current house"* and declared that it had not been *"constructed in accordance with planning regulations"*. Further, *"Accusations of bribes and general breaches of legislation had been made"* and Client A's local agent had been *"personally accused of certain criminal offences"*. These developments occurred after the Firm's receipt of the KCS Report urging *"extreme caution"* in any dealings with Client A.

- On 25 February 2015, i.e. after the Firm's receipt of the KCS Report and its General Counsel, Mr Cheung, having opined that the Firm should cease acting for Client A (which opinion had been resisted by Mr Chateau and overruled by the Managing

Partner, Mr Ransley), Mr Chateau emailed Mr Polin stating: *"I find Cheung to untrustworthy and a big prick, and I am sorry to see him become a partner because he is an inexperience amateur showing poor judgment and not knowing what he is doing!"*. Mr Polin asked Mr Chateau to bear in mind that Mr Cheung was *"the head of risk/compliance for UKMEA and Europe"*, to which Mr Chateau responded: *"I know and he is terribly bad at that!"*. The trigger for this intemperate outburst appeared to have been Mr Polin approaching Mr Cheung in connection with instructions for Mr Chateau to *"produce a memo in support of [Client A's] wish to be treated as a "fit and proper person" by the FCA/PRA in connection with a potential application to set up or take over a UK bank",* i.e. a *"clean bill of health"*. The KCS Report was clearly inconsistent with that wish. It was noted that Mr Cheung considered Mr Chateau to be a "volatile character at the best of times" a view apparently shared by the Managing Partner. Furthermore, it appeared that another partner, Rosali Pretorius, had expressed *"real concerns about [Mr Chateau's] closeness to the client and what he will do with the [KCS] report"*.

- On or about 2 March 2015, and notwithstanding the KCS Report, Mr Chateau drafted a letter to the Financial Services Authority opining that Client A was a fit and proper person to hold a UK banking licence. Thereafter, on 11 March 2015, Mr Polin wrote to Mr Chateau thanking him for the draft but noting that the approach being taken might not be acceptable:

  "It is clear that [Client A] is a PEP. That is disclosed in the Acuity report. It is highly likely as the FCA are sensitive to the risk of misuse of the UK financial systems that if a PEP is to be involved with the bank that they will need to dig more deeply into the source of his wealth and funds and his business reputation. Accordingly it is unlikely that the three documents that we produce are going to be of sufficient weight to obtain a clear supportive response from the FCA regarding [Client A]'s application. This is why Rosali suggested commissioning a detailed independent report from a risk intelligence agency…".

- In June 2015, there was a disagreement between Mr Polin and Mr Chateau as to whether the Firm should deduct its costs (around US$580,000.00) from the proceeds of the sale of Property 1. Client A's instructions appeared to have been that he needed the full amount for other purposes and was not expecting the Firm to make any deductions for their costs, as Mr Polin wished to do. Mr Chateau insisted that the Firm's costs would be paid the following month from the closing of another property and that they were a *"fraction of the total"* owed to the Global Firm. This exchange occurred long after receipt of the KCS Report urging *"extreme caution"* in any dealings with Client A. The National Crime Agency subsequently requested the Firm's assistance in relation to the sale of Property 1.

9.54 Mr Ramsden KC submitted that in 2005, when the United Kingdom was still a member of the European Union, the European Parliament and the Council issued a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. It stated:

> *"(1) Massive flows of dirty money can damage the stability and reputation of the financial sector and threaten the single market, and terrorism shakes the very foundations of our society. In addition to the criminal law*

approach, a preventive effort via the financial system can produce results.

...

(24) *Equally, Community legislation should recognise that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all customers should be established, there are cases where particularly rigorous customer identification and verification procedures are required.*

(25) *This is particularly true of business relationships with individuals holding, or having held, important public positions, particularly those from countries where corruption is widespread. Such relationships may expose the financial sector in particular to significant reputational and/or legal risks. The international effort to combat corruption also justifies the need to pay special attention to such cases and to apply the complete normal customer due diligence measures in respect of domestic politically exposed persons or enhanced customer due diligence measures in respect of politically exposed persons residing in another Member State or in a third country."*

9.55 Mr Ramsden KC submitted that in summary, some situations presented a greater risk of money laundering or terrorist financing. One of those situations was where one was dealing with a PEP. Dealing with such individuals carried with it an enhanced risk of money laundering and therefore required enhanced customer due diligence measures – especially where the individual in question was from a country where corruption was widespread.

9.56 Having set out the context of the policy, the Directive detailed the requirements for Member States as regards domestic legislation, in order to achieve the policy objectives.

9.57 Article 13 required:

"1. Member States shall require the institutions and persons covered by this Directive to apply, on a risk-sensitive basis, enhanced customer due diligence measures, in addition to the measures referred to in Articles 7, 8 and 9(6), in situations which by their nature can present a higher risk of money laundering or terrorist financing, and at least in the situations set out in paragraphs 2, 3, 4 and in other situations representing a high risk of money laundering or terrorist financing which meet the technical criteria established in accordance with Article 40(1).

...

4. In respect of transactions or business relationships with politically exposed persons residing in another Member State or in a third country, Member States shall require those institutions and persons covered by this Directive to:

> *(a) have appropriate risk-based procedures to determine whether the customer is a politically exposed person;*
>
> *(b) have senior management approval for establishing relationships with such customers;*
>
> *(c) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;*
>
> *(d) conduct enhanced ongoing monitoring of the business relationship."* (emphasis added).

9.58 The Directive was implemented in December 2007 by the MLRs. Regulation 14 provided that:

> *"(1) A relevant person must apply on a risk-sensitive basis enhanced due diligence measures and enhanced ongoing monitoring –*
>
> *(a) in accordance with paragraphs (2) to (4)*
> *(b) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.*
>
> ...
>
> *(4) A relevant person who proposes to have a business relationship or carry out an occasional transaction with a politically exposed person must –*
>
> *(a) have approval from senior management for establishing the business relationship with that person;*
>
> *(b) take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or occasional transaction; and*
>
> *(c) where the business relationship is entered into, conduct enhanced*
> *ongoing monitoring of the relationship."*

9.59 Mr Ramsden KC submitted that a "relevant person" included law firms undertaking certain types of work. It was common ground that Dentons was a relevant person for the purposes of the MLRs and there had been no suggestion that the retainers with Client A would have been out of scope for that purpose.

9.60 Dentons had asserted that the absence of a single solicitor Respondent in the proceedings meant that no one at the Firm had breached the rules, or at least that any breach was not serious enough to warrant prosecution at the Tribunal. Such a contention, it was submitted, was a misunderstanding of the Regulation which allowed for a corporate entity to be prosecuted as the relevant person on account of the acts or

omissions of its employees. It was the case that the SRA, under its regulatory regime, could join an individual solicitor in the proceedings. The fact that it had not done so in this case was not relevant to whether the Firm was in breach of the MLRs or its regulatory obligations. Further, the Firm relied upon the actions of Mr Chateau in its defence; Mr Chateau was not regulated by the SRA. Mr Ramsden KC noted that Regulation 14 was expressed in mandatory terms. This, it was submitted, was unsurprising given the important policy imperatives underlying the MLRs. Given the Firm's submissions as to the meaning of Regulation 14, the Tribunal was required to determine the proper ambit and construction of the Regulation.

9.61 The starting point for any analysis of the meaning of a provision of legislation – whether primary or secondary – was to consider the actual words used by the draughtsman. As Lord Steyn put it in the House of Lords in R v A (No.2) [2001] UKHL 25; [2002] 1 AC 45 at [44]:

> *"It is a general principle of interpretation of legal instruments that the text is the primary source of interpretation: other sources are subordinate to it".*

9.62 Parliament, it was submitted should be presumed to have drafted legislative provisions reasonably and correctly, and to have chosen its words carefully, in order *"to mean what it says"*: Bennion, Bailey and Norbury on Statutory Interpretation (8th ed.) ("Bennion"). There was a presumption that the grammatical meaning of an enactment is the one intended by the legislator. "*In Maunsell v Olins Lord Simon stated 'statutory language must always be given presumptively the most natural and ordinary meaning which is appropriate in the circumstances' "* – Bennion at 11.4.

9.63 Mr Ramsden KC submitted that Judges may therefore and regularly do consult dictionaries to refresh their memories as to the meaning of words:

> *"As Lord Coleridge said in R v Peters: I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books. It is clear from these remarks that the courts are free to reach their own conclusions which differ from those in the dictionaries. If the term has been judicially defined in a relevant context, for example, this may be treated by the court as a more reliable guide to its meaning than a dictionary is likely to provide."* – Bennion at 24.23.

9.64 The Tribunal was referred to dictionary definitions of key words in Regulation 14(4)(b) from the following sources:

- the Oxford English Dictionary
- Stroud's Judicial Dictionary of Words & Phrases
- Words & Phrases Legally Defined
- Black's Law Dictionary

9.65 Mr Ramsden KC submitted that the definitions demonstrated that the SRA's construction of Regulation 14(4)(b) was correct. For a measure taken by the Firm to be adequate within the meaning of Regulation 14, it essentially needed to be good enough

or sufficient to establish (i.e. to prove, verify or substantiate) the source (i.e. origin) of Client A's wealth and funds. For example, taking Client A's word for it (as a PEP) that he enjoyed a 30% shareholding in the Bank plainly would not be an adequate measure for the purpose of Regulation 14.

9.66 Not only was the SRA's construction consistent with the ordinary grammatical meaning of the words, but it was also supported by the approach taken by comparable disciplinary bodies to Regulation 14 during the relevant period. On 26 November 2015, the Financial Conduct Authority fined Barclays Bank £72,069,400 for failing to minimise the risk that it may be used to facilitate financial crime. In its 'Final Notice' to Barclays, dated 25 November 2015, at paragraph 2.5, the FCA held that:

> *"d) Barclays failed to establish adequately the purpose and nature of the Transaction and did not sufficiently corroborate the Clients' stated source of wealth and source of funds for the Transaction. These were fundamental due diligence checks which Barclays should have carried out.*
>
> *e) Barclays failed to monitor appropriately the financial crime risks associated with the Business Relationship on an ongoing basis. Barclays missed opportunities after it entered into the Business Relationship to identify and remedy gaps in its understanding of these risks;*
>
> *f) Barclays failed to maintain adequate records of the due diligence it undertook in connection with the Business Relationship and to ensure that that those records were readily identifiable and capable of retrieval."* (emphasis added)

9.67 Further or alternatively, the SRA's construction of Regulation 14(4)(b) was supported by the judgment of the First-tier Tribunal (Tax Chamber) in S L Wines Limited v The Commissioners for Her Majesty's Revenue & Customs [2015] UKFTT 575 (TC); [2015] 11 WLUK 591; [2016] Lloyd's Rep. F.C. 185, considering materially similar language in Regulation 5(b) of the MLRs. This provided that (standard) *"customer due diligence measures"* meant, inter alia, *"taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is…"*. Having determined that the facts warranted enhanced customer due diligence and enhanced ongoing monitoring ([43]), the FTT turned to the question of whether SLW had complied with the applicable regulations of the MLRs ([44]-[46]):

> "*We are satisfied that Mr Sangha identified MM as the individual controlling Jacobs and MT as the individual controlling Intercontinental. However we consider that he did not take any or any satisfactory measures to identify the beneficial owner involved in those entities (reg. 5(b) MLR 2007)…"* (emphasis added).

9.68 Thus, it was submitted, the FTT appeared to have construed the term *"adequate measures"* to mean 'satisfactory for the purpose in question', which was essentially the same as the construction urged by the SRA in relation to Regulation 14(4)(b). Mr Ramsden KC submitted that it was most unlikely that Parliament intended the term *"adequate measures"* to mean something less onerous in Regulation 14(4)(b) than what

it meant in Regulation 5(b). Indeed, it was a key principle of statutory construction that legislation was to be read in its context.

9.69 In that regard, the Tribunal should have regard to the legal context of the MLRs as detailed above. Given that the language used at both EU and domestic level focused on the adequacy, not the reasonableness, of the measures used to establish a PEP client's source of wealth and funds, and given the policy imperatives underlying the legislation, it appeared highly unlikely that the Firm's interpretation of Regulation 14(4)(b) could be correct. That adequacy to establish, not abstract notions of reasonableness, was the true touchstone of Regulation 14 was also illustrated by examining the language used in other provisions, from which it might readily be inferred that *"adequate measures to establish"* was a deliberate and considered choice on the part of the legislator:

9.70 Regulation 16(2) provided that "A credit institution must take <u>appropriate measures to ensure</u> that it does not enter into, or continue, a corresponding banking relationship with a bank which is known to permit its accounts to be used by a shell bank". (emphasis added)

9.71 Regulation 21 provided that "A relevant person must <u>take appropriate measures so that</u> all relevant employees of his are—(a) made aware of the law relating to money laundering and terrorist financing; and (b) regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing." (emphasis added)

9.72 Regulation 24 provided that a "supervisory authority" such as the SRA, "must effectively monitor the relevant persons for whom it is the supervisory authority and <u>take necessary measures for the purpose of securing compliance</u> by such persons with the requirements of these Regulations." (emphasis added)

9.73 In any case, it was submitted, while the context of a legislative provision was always relevant, where, as here, legislation had a plain meaning, *"No amount of purposive interpretation can... entitle the court to disregard the plain and unambiguous terms of the legislation"*. Plain meaning can only be *"circumvented"* and displaced by a *"strained interpretation where that is necessary to avoid absurd or perverse consequences"*, or where there has been a drafting mistake: per Lord Reed in <u>Shahid v Scottish Ministers</u> [2015] UKSC 58; [2016] AC 429. Mr Ramsden KC submitted that none of that applied here and there was no need for the reasonableness gloss being contended for by the Firm.

9.74 With regard to the Law Society guidance relied upon by the Firm, the SRA emphasised that *"it is for the court [or here, the Tribunal] and no one else to decide what words in a statute [or, here, a regulation] mean"* – (Bennion at 24.4). Whatever weight it had, guidance was not a source of law and could not alter the true legal meaning of the regulation. The judiciary, not the executive (nor a professional body), determine the meaning of legislation. Guidance that tries to explain what the legislation meant would be given no more weight than the quality of any reasoning contained in it deserved. If it was wrong, the courts would not hesitate in saying so. But where guidance was consistent with the view that the court was in any event inclined to adopt, the court may find it of some reassurance: (Bennion at 24.17).

9.75 Whilst the guidance had been considerably strengthened in recent years, the SRA did not need to persuade the Tribunal that the Law Society guidance available to the Firm at the time was wrong. As noted above, guidance published by professional bodies could not hope to address every conceivable factual situation that might present itself to a law firm or a solicitor. In any event, the guidance materials relied on by the Firm made it perfectly clear that what was adequate for an ordinary client might not be adequate for a PEP from a high-risk jurisdiction. Professional judgement and a risk-sensitive approach was paramount. Mr Ramsden KC submitted that in the instant case, it was entirely lacking.

9.76 Additionally, there was other relevant guidance available to the Firm during the relevant period:

- 'Financial crime: a guide for firms', published in 2011, counselled firms to establish *"the legitimacy of"* and to document *"the source of wealth and source of funds used in high-risk business relationships"*, and advised against relying on *"a single source of information for its enhanced due diligence"*. In this case, it was submitted, there was not even so much as a file note documenting that which Mr Chateau said he was told as to Client A's shareholding in the Bank.

- The Joint Money Laundering Steering Group Guidance for the UK Financial Sector on the Prevention of Money Laundering/Combatting Terrorist Financing (2013 revised version), referred to by the Firm in its Answer, stated (in addition to the passage quoted by the Firm) that, in relation to PEPs, firms should take *"adequate and meaningful measures to establish the source of funds and source of wealth"* and that *"Firms may wish to refer to information sources such as asset and income declarations, which some jurisdictions expect certain senior public officials to file and which often include information about an official's source of wealth and current business interests"*.

9.77 Mr Ramsden KC submitted that the meaning of Regulation 14 plainly could not differ depending on which guidance a relevant person might have consulted. Nor could its meaning be altered by revisions made to sector specific guidance over time. It was the SRA's case that Regulation 14 meant what it said, namely when dealing with PEPs, the Firm was required to take measures that were "*adequate"* (i.e. 'good enough' or 'sufficient') for the purposes of establishing source of wealth and funds. This was one of the prescribed ways in which the Firm had to apply enhanced due diligence. This would necessarily inform how the Firm conducted enhanced ongoing monitoring of the business relationship.

9.78 Further, and in any event, even if the SRA was wrong in its analysis of Regulation 14, and the Firm was merely required to take 'reasonable' measures in order to establish the source of Client A's wealth and funds, it would not follow that the Firm should be acquitted of the breach alleged. On the contrary, it was submitted that the breach was comfortably made out whichever construction is placed on the regulation, given that not only did the Firm fail to take adequate steps, it had also failed to take reasonable steps.

9.79 Having determined the proper construction of Rule 14 (and whether the Tribunal accepted the Applicant or the Respondent's interpretation), the Tribunal was required to consider the actions taken by the Firm and determine whether those actions were such as to comply with Regulation 14.

9.80 There were a number of factors that, it was submitted, were common ground between the parties:

- Client A was the Chairman of the Bank which was 51% State owned;

- By virtue of that position, Client A was a PEP;

- The non-EEA country was an authoritarian autocracy with a dubious reputation for corruption and money laundering;

- The non-EEA country was ranked between 122 and 127 out of 174 countries internationally for corruption, scoring poorly on Transparency International's Corruption Perception Index. The Index stated:

  "Corruption in [the non-EEA country] is widely perceived to be endemic and deeply institutionalised - permeating all spheres of public life, with entrenched political patronage networks and widespread conflicts of interest closely connected to the political elite. [The state] has thus been described as a consolidated authoritarian regime, which exercises "tight control over… society."… 58 per cent of people in [the country] believe that corruption in the public sector is a problem or a serious problem…"

- The Firm was aware of the non-EEA country's reputation for corruption. The Firm recognised from the outset that Client A was a PEP from a high-risk jurisdiction.

9.81 Mr Ramsden KC submitted that in order to consider the adequacy of the steps taken by the Firm to comply with Regulation 14, it was necessary to examine what individual partners and others from the Firm had stated in their interviews. The reason for that was that notwithstanding Client A's known status as a PEP from a high-risk jurisdiction, there was no file note recording the first meeting with Client A or what was said at the time. Rather, the Tribunal was left with the recollections of Mr Chateau. Mr Ramsden KC observed that it was striking that the Firm had not provided a witness statement from Mr Chateau detailing the measures he took to establish Client A's source of wealth and funds at the outset of the client relationship, particularly given that the Firm relied on the professional judgements made by Mr Chateau. Accordingly, the Applicant was unable to test his account. Mr Ramsden KC submitted that whilst usually, this would present a handicap for the Tribunal in considering the account given, in the instant case, it was clear that Mr Chateau had expressed himself in interview in a manner consistent with the way he had expressed himself in the contemporaneous documents. Both of those sources of information, it was submitted, depicted someone who was equally ignorant of, and apparently indifferent to, AML requirements.

9.82 Mr Ramsden KC submitted that the transcript of interview with Mr Chateau was evidence of what Mr Chateau knew (and therefore what the Firm knew) at the time of the acceptance and continuation of the retainer with Client A.

9.83 When asked if he had appreciated anything about Client A's money laundering status as the Chairman of the Bank, Mr Chateau replied:

> *"No. It, it erm, I had basically check him out, check him out, check him out from erm, in term of compliance purpose. Erm there was zero reason why I should think about erm, erm money laundering, because if I was thinking about money laundering at the time, I would even as I said, I wouldn't even have taken the flight, the flight to err, to [a place within in the non-EEA country]. So, no, it didn't cross my mind and it was not discussed in any way, shape or form."*

9.84 Mr Chateau was then asked what was his understanding at the time as to how Client A had obtained his wealth. He replied:

> *"But I didn't, at the time I didn't know anything, and I was not interested in whether he was, his wealth. I was interested in working for [the Bank] which I did. It was the money of his bank. The bill went to the bank."*

9.85 Mr Ramsden KC noted that the point fairly being made by Mr Chateau was that it was initially the Bank that was the Firm's client and not Client A. However, as was common ground between the parties, there came a time when Client A became a client of the Firm in his own right. When asked whether it had been appreciated that Client A was a PEP, Mr Chateau stated:

> *"Well, I think it came up late in the process that he was a PEP"*

9.86 Mr Chateau explained that he became aware of this after Client A transferred to the Firm. He continued:

> *"I don't think we discussed the PEP – I think all this – you know I'm not sure what the status of PEP of how prevalent it was back in erm 2010 or whatever. Erm you know in 2009.10/11. I'm not sure exactly but – and I don't recall whether there were any specific discussions about PEP,"*

9.87 Mr Ramsden KC submitted that it appeared that Mr Chateau was saying that he did not appreciate Client A's status as a PEP until after Salans had merged with the Firm. That this was the position was made plain during further questions and answers in the interview:

> *"FIO But you, but you did become aware that he was a PEP when - at some point in time when he moved as a client to Dentons, is that correct?*
>
> *FC I - yeah I have to get to - I've no idea when it started, the discussion on PEP, but yeah, at the end of the day I, I understand he was a PEP ... That just means I knew at the time erm that he was a PEP.*
>
> *FIO Sorry?*
>
> *FC There was no specific discussions about that ... But yes again, again, keep in mind, keep in mind I am in New York. I basically - that relationship partner, I am not into transaction and I do not practice*

English Law ... I'm not, I am not a solicitor, I'm not a member of the English Bar."

9.88 When asked what he understood when Client A became a client of the Firm as to how he had obtained his wealth and what Client A's source of wealth was, Mr Chateau replied:

> *"My understanding; number 1, he was the Chairman of a large bank. So, I just ask him you know because you don't do that. I just ask him how much do you make? I mean maybe in the US we do that from time to time. Because it's the confidentiality"*

9.89 Mr Ramsden KC submitted that following that reply, there was a conversation between Mr Chateau and the FIO which 'bordered on the surreal' in all the circumstances:

> *"FIO But you didn't, sorry,*
>
> *FC it is not the culture.*
>
> *FIO you did, or you didn't ask him how much he earned?*
>
> *FC I did not.*
>
> *SC You did not?*
>
> *FC I did not, yeah ... Again, because we don't do that. Erm ...*
>
> *FIO Why, why would you not do that, just because - why would you not do that?*
>
> *FC In, in Europe, in my culture, we don't do that. You don't ask err, how much do you make? You know this is not something we do. And it was basically not relevant erm at the time because quite clearly the - knowing the second solicitors and knowing about, learning about him, he was an extremely prominent person. He owned, as I understand err up to 49% and certainly 30% of the bank.*
>
> *FIO Did, did ...*
>
> *FC You make quick calculation based on numbers and you tell yourself that he's wealthy*
>
> *FIO So, so ...*
>
> *FC He was not buying assets of millions of dollars."*

9.90 Mr Chateau, it was submitted was stating, in terms, that he did not ask Client A what his salary was as to do so would have been impolite. Further, and in any event, such a question was irrelevant as he understood that Client A owned at least a 30% share in the Bank. Mr Ramsden KC noted that there was no evidence upon which Mr Chateau,

or the Firm could rely to show that it had established this, as was required by Regulation 14. Given the above dialogue, the FIO continued to question Mr Chateau on this point:

> *"FIO Yeah. Can we just stop there. So, Mr Chateau, so in relation to the shares in the bank, so I've seen, so I've seen your letter from the firm that was sent to me, which first raises your knowledge of his shares in the bank. Was that knowledge you had at the time, or is that knowledge that you have subsequently obtained?*
>
> *FC No, I – the knowledge we/I had at the time was that he owned 30% of the bank.*
>
> *FIO And there's some confusion about whether – was that in his name or family members name?*
>
> *FC I have no idea. I don't know*
>
> *…*
>
> *FIO Yeah, sorry, just sticking on this topic, ... did you ever get any documentary evidence of that ownership?*
>
> *FC No, I never.*
>
> *FIO ... so his source of wealth came from the shares in the bank, but nobody's ever asked him ... to show ownership of the shares in the bank?*
>
> *FC And his businesses before he became Chair of the bank ... which information I had.*
>
> *FIO And do you have any documentary information in respect of those businesses, so their accounts for example?*
>
> *FC No ... But again, one of the reasons there was no suspicion on my side in any way, shape or form, is that he was the senior banker, extremely well connected with the right institutions, from the British Chamber of Commerce, to Harvard, to erm, to many other things. He was considered at the time to be the best banker in the region by far. He was erm trying to basically take this region to the .. 21st century ... to a sophisticated bank, international banking, and to a bigger size"*

9.91 When asked if he knew *"at the time that in relation to PEPs in the UK, the [MLRs] require an enhanced level of customer due diligence and enhanced ongoing monitoring"*, Mr Chateau replied: *"No, I don't. Because again, I'm not an English Lawyer."*

9.92 Mr Ramsden KC submitted that whilst this might be a fair point for Mr Chateau personally, it was detrimental to the Firm in circumstances where it was the Firm's obligation to comply with the requirements of Regulation 14, as it was the Firm that

was instructed by Client A, who, as was agreed, the Firm knew was a PEP from a high-risk jurisdiction.

9.93 When Mr Chateau was asked whether he had ever made any independent enquires as regards Client A's source of wealth, he described what he had been told by the people working in the local office.

9.94 The FIO enquired as to Mr Chateau's knowledge of Client A's source of wealth or funds that had enabled Client A to amass a property portfolio in the UK. He replied:

> *"This issue – ok. If you do a little map, number 1, it depends what you define ... as large property ... and assets. Because as far as I'm concerned, it's the property I know of worth probably a total of ... 30 at the top – 30 or 40 million sterling. If we assume this is correct, and if we assume, as I did, that he owned at least a third of the bank - you do the maths – and there was distribution of dividends. You do the maths and he could afford these kind of things ...*
> *I told you, and you know, I had no reason ... to, basically, ask him for evidence of his, of whether he owned shares in the bank or not. I mean, this guy was – until there was this terrible ... event and he was arrested and convicted in a banana republic court of law ... it's not even called a court of law ... he was a first-class citizen, and there is no reason why I would, I would ask ... me and not the firm, the firm's something else, ... ask him for evidence of his shareholding.".*

9.95 It was significant, Mr Ramsden KC submitted, that Mr Chateau *"assumed"* that Client A owned at least a third of the Bank, and that he *"had no reason to second guess it"* particularly as the only real basis for that assumption appeared to be Client A saying that this was the case. As detailed above, there was no documentary evidence sought or obtained by the Firm to substantiate this. Further, Client A was not asked what the value of the shares he held was. Nor was he asked what, if any, dividend income he obtained from any shareholding. Mr Ramsden KC submitted it was therefore impossible for the Investigating Officer or indeed the Tribunal to *"do the maths"*.

9.96 Further, it was submitted, the distinction that Mr Chateau drew between himself "there is no reason why I would ask" and the Firm "the firm's something else" was important. In its defence, the Firm made no such distinction. It stood behind Mr Chateau's approach and pled consistent reliance on Mr Chateau's views as justifying its position on compliance with Regulation 14.

9.97 Mr Chateau further stated:

> *"I have, probably over the past 30 years, represented hundreds of clients, high net worth individuals, international person, companies doing business internationally. In many, many foreign countries and I would not, especially families which control businesses, and I have never asked anybody for the – to show me their bank account and evidence that they own what is visible for everybody to see. Unless, on the other hand if you have a discrepancy, it will potentially what you know the – in order to find the wealth. You know a wealth of 40 million pounds for erm, for something like that, 30, 40, because there are debts as, as we certainly know, and if he was the kind of guy he's going to*

> *describe, there would not have been able to finance him right away. If you had – there is a discrepancy and there's billions verses billions of assets verses compensation or wealth of 40 million, then there is a problem yes, and then we'll react, I react and take care of business."*

9.98 It was unclear, Mr Ramsden KC submitted, whether Mr Chateau's reference to taking care of business was literal or was a reference to compliance with source of wealth and source of funds requirements. However, what was plainly clear was that there was no contemporaneous documentary evidence recording that which Mr Chateau stated that he was told by Client A regarding his shareholding in the Bank or, indeed, when Client A told Mr Chateau that information.

9.99 The only contemporaneous document that made any reference to Client A's source of wealth and source of funds was an AML Risk Clearance Certificate. The Firm sought to rely on the Risk Clearance Certificate as evidence of its compliance with Regulation 14. However, the Certificate was only as good as the information that was input. The Certificate stated that Client A's source of wealth and funds derived from his employment. As detailed, there had been no enquiry made as to his salary. Further, Mr Chateau had focussed on Client A's shareholding in the Bank as his source of wealth, however there was no mention of his shareholding in the Certificate. Given the wording in the Certificate, most people would assume that it was making reference to the salary and any bonus Client A received. It would not be assumed that this referred to his ownership of the entity he was employed by.

9.100 It was clear that the AML Risk Certificate was deficient and did not meet the standards required. Mr Ramsden KC submitted that at the point of on-boarding Client A, the attempt to describe what Mr Chateau knew was woefully inadequate. Even taking Mr Chateau's knowledge at its highest, in circumstances where Client A was a PEP from a high-risk jurisdiction, where money laundering and corruption were known to be rife, it could not be said with any real credibility that adequate measures were taken by the Firm, at the outset, to establish source of wealth.

9.101 That this was the case was made plain by Mr Chateau in his interview where he stated about Client A's home jurisdiction:

> *"there is no due process. It's a dictatorship controlled by one family, five more families around which basically either you are part of the families, or you are the enemy."*

9.102 Mr Chateau and the Firm, Mr Ramsden KC submitted, could not have it both ways. Plainly, if this was the nature of the jurisdiction then there was no way in which Mr Chateau's credulous approach to Client A could have satisfied the requirements of enhanced due diligence and a risk-based approach pursuant to Regulation 14. Mr Chateau's obviously initial failures in that regard were never remedied by the Firm at any stage. Further those failures were never identified notwithstanding the Firm's duties of enhanced ongoing monitoring under Regulation 14(4)(c).

9.103 There was, it was submitted, an obvious and very difficult conflict between Mr Chateau's (and therefore the Firm's) dismissal of Client A's home country as being run by a corrupt clique of kleptocrats who run everything including the courts and

judiciary, at the time of Client A's arrest and imprisonment as opposed to the position it plainly and obviously took towards the risk associated with the territory and its PEPs, before his arrest and imprisonment. Rather than resolving that conflict, the Firm, in its Answer, doubles down on the conflict in defence of the proceedings.

9.104 In its Answer, the Firm stated:

> *"The Firm became aware in January 2016 (through an Accuity report dated 22 January 2016 identified by the AML team and online searches carried out by Mr Polin) of reports in the press in [the non-EEA country] that the Client had been sentenced on 5 December 2015 for between 3 and 4 months, having been prosecuted on 18 November 2015 for fraud and embezzlement. His appeal had been rejected [the] Court of Appeal on 10 December 2015, 5 days after he had been sentenced. ...*
>
> *On the basis of Mr Chateau's knowledge of the Client and his reputation and affairs in [the non-EEA country] and internationally, Mr Chateau's view was that the prosecution of the Client, as a known anti-corruption reformer, was trumped up and politically motivated. The Firm was well aware, from its own research into [the non-EEA country] ... of the levels of corruption within its government and judiciary, as well as in the local media."*

9.105 Mr Ramsden KC submitted that Supperstone, J when considering the unexplained wealth order had not discounted the conviction:

> *"Independent of the conviction there is evidence which provides some corroboration for the allegations made against him relating to the misuse of the Banks funds of which he was found guilty… information from Harrods… shows that three separate loyalty cards were issued to Mrs A. Between September 2006 and June 2016, a total of £16,309,077.87 was spent by the use of these cards under the Harrods Customer Loyalty Rewards Card Scheme. This included spending on numerous different credit cards. Enquiries show that a significant number of these cards, namely 35 American Express, Mastercard and Visa cards were issued by the Bank. I agree with the NCA that this evidence is significant in the light of the reports of Mr A's trial that allegations made against him included abuse of his position at the Bank by issuing credit cards in the names of family members, through which large debts were run up against the Bank."*

9.106 The Firm also stated:

> *"Mr Chateau's view that the charges were politically motivated and without substance was given credence by: (i) the lack of corroborating information in the media outside of the local ... reports despite the Client's high profile role in banking reform in the non-EEA country; (iii) the lack of detail provided in [local] reports as to the nature of the charges; (iv) the striking and absurdly short period of time between the Client having been apparently prosecuted and sentenced (a matter of several weeks), with his appeal having been thrown out immediately thereafter (5 days later); and (v) the illogical and inconsistent imposition of a light prison sentence of a few months relating to unspecified*

alleged charges of fraud. In any event it did not follow from such a light sentence that monies received historically by the Firm from the Client were the proceeds of criminal activity."

9.107 As to that, Mr Ramsden KC submitted, following the logic of Mr Chateau meant that Client A could only be in the position that he was in if he was deemed acceptable by the very elite that Mr Chateau depicted as being corrupt.

9.108 With regard to the merger, it was not the SRA's case that the Firm failed to take appropriate steps with regards to its obligations to 'Know Your Client'; it took appropriate steps to verify Client A's identity and correctly identified him as being a PEP from a high-risk jurisdiction. Having done so, the Firm ought to have been put on enquiry, as part of its duty of enhanced ongoing monitoring under Regulation 14(4)(c) and at the very least, should have taken active steps to identify whether there was any evidence of Client A's source of wealth. The Firm failed to do so. Mr Chateau's (and thus the Firm's) position that there was "no need to second guess" what Client A had stated was insufficient to comply with the obligation – the mandatory duty of ongoing due diligence meant that the Firm was obliged to make those enquiries.

9.109 The fact that the Firm, having given tax advice to Client A in 2014, was aware that Client A was the ultimate beneficial owner of a substantial property portfolio in the UK was no answer. That merely established the existence of wealth – it did not establish the source of wealth, which was what the Regulation required.

9.110 The Firm, it was submitted, did not obtain any evidence, at any stage, to establish the extent (if any) of Client A's shareholding in the Bank. Had it complied with its duties of enhanced ongoing monitoring in accordance with Regulation 14 in respect of Client A (who was a high-risk PEP from a dubious jurisdiction), the Firm could not have failed to notice that Salans had taken no adequate or meaningful measures to establish Client A's source of wealth.

9.111 It was the Firm's position that the SRA was looking at this matter with the benefit of hindsight and not applying the standards prevailing at the time. In doing so, the SRA was being unreasonable and unfair. This was not accepted by the SRA. Furthermore, the Firm's own policies and procedures in force during the relevant time illustrated the emptiness of that complaint. The Firm produced a document entitled *"Understanding Anti-Money Laundering Policies and Procedures (UKEMA)"*. In a section entitled *"Enhanced Due Diligence Procedures – What Happens With High Risk Clients?"* the document stated:

> *"The money laundering regulations require additional protections to be in place to manage the high risk associated with these types of clients. The enhanced due diligence procedure (set out below) is deliberately onerous. It may influence your decision to accept work from a high risk client.*
>
> <u>*Client Identification*</u>
>
> *In terms of identification evidence and CDD, for high risk clients it will be necessary to:*

(a) seek further verification of the client's identity and beneficial ownership;
(b) obtain documents independently confirming the ownership structure of the client; and
(c) request further information on the purpose of the retainer and/or source of funds for the transaction.

Because of the increased risks associated with this class of clients, it's important that you know about the client's background and, in particular, confirm for yourself whether the source of funds that they are using in any transaction are legitimate. One useful way of determining this for PEPs is looking at what their published salary is and comparing this against the money that they are using for the transaction. For example, in late 2006 the High Court found that the ex-president of Zambia, Frederick Chiluba, had stolen 223 million from the Zambian Government. President Chiluba was known for his extravagant spending on clothing, including a reported £600,000 spent in one Swiss shop. His annual government salary was approximately £5,000. It's unlikely that he could afford any kind of considerable investment and any attempt to do so should arouse your suspicion."

9.112 This, it was submitted, was exactly the sort of scenario that ultimately eventuated in this case. The Judgment of Supperstone J recorded evidence to the effect that:

- Client A's net income in the years preceding the retainer was strikingly modest;
- He was essentially a state employee between 1993 and 2015: *"I was not led into serious error, as Mr Lewis suggests, when I made the order I did premised on a finding that Mrs A's husband was "a state employee"... That is what he was. I do not consider that there is any reason to depart from the finding I made on that application that "As a state employee between 1993 and 2015, it is very unlikely that such a position would have generated sufficient income to fund the acquisition of the Property",* and that;
- Between 2006 and 2016, Client A's wife had spent over £16 million at Harrods on credit cards issued by the Bank, the learned judge agreeing with the National Crime Agency that *"this evidence is significant in the light of the reports of Mr A's trial that allegations made against him included abuse of his position at the Bank by issuing credit cards in the names of family members, through which large debts were run up against the Bank."*

9.113 Accordingly, it was submitted, the complaint that the SRA had approached the case unfairly with the benefit of hindsight, was clearly unsustainable. However, Mr Ramsden KC submitted, the position was worse than that as the unhappy end to the retainer was easily foreseeable from a very early stage. This was not only because of the very high-risk nature of Client A and the jurisdiction from which he came, but also because the Firm was in possession of the KCS report, which urged *"extreme caution"* in any dealings with Client A.

The KCS Report

9.114 Mr Ramsden KC submitted that given the Firm's attempts to play down and dismiss the findings of the KCS Report, the Tribunal should consider the content of two emails sent by Mr Cheung.

9.115 On 29 July 2014, Mr Cheung sent an email to a number of senior partners at the Firm entitled "GMC Emergency Briefing – Project Fire". Project Fire was the name given to that part of the Firm's retainer with Client A which aimed for Client A to gain approval for him to operate a Bank in the UK. In his email, Mr Cheung set out the background and explained that the KCS Report was commissioned as Client A was seeking to *"purchase or alternatively establish a bank in the UK"*. In order to do so, Client A would effectively need to establish that he was a fit and proper person. Mr Cheung described KCS as a "*risk intelligence agency with expertise in the CIS and Eastern Europe (run by the former head of M16 for that Region)*", and that the report itself was "*produced using deep data mining of open source intelligence (using secret service methodology and equivalent systems) and intelligence operatives on the ground in [the non-EEA country"*.

9.116 In a further email sent on 14 August 2014, Mr Cheung described Mr Chateau in the following terms:

> *"He's a volatile character at the best of times. Let's send him the report. I can speak to its veracity and KCS's credentials and if you mention the other EU regulators who have turned this down then I think it will be difficult for [Mr Chateau] to sway the decision that it would it (sic) hopeless to proceed."*

9.117 Mr Ramsden KC submitted that when assessing the Firm's contention that the KCS Report consisted of unsubstantiated, speculative and far-fetched rumour, the Tribunal should keep in mind that it was commissioned by an agency that Mr Cheung considered to be credible and reputable. It was noted that the Firm had not called Mr Cheung as a witness to assist the Tribunal with the apparently stark difference of perspective.

9.118 Mr Ramsden KC referred the Tribunal to key passages in the Report:

- KCS was asked "*to investigate the affairs of*" Client A, Chairman of the Bank, with a "*specific focus*" on how he "*obtained his wealth and the extent of his network*".

- "*It is notable in the first instance that there is a distinct lack of open-source intelligence (OSINT) available on his family or personal associates. Plenty exists on* [Client A's] *business affairs and position in the international banking community, most of it in glowing terms, but personal information regarding his family and history is almost non-existent.*"

- It is a tradition in Client A's country, "*a closed" society under the authoritarian rule of* [a particular] *clan where patronage and cronyism still decides the occupants of positions of power - that those in high positions are mentioned in media only positively. Analysis of publications in English, Russian and* [the local language] *indicates an almost total lack of negative reportage on* [Client A]. *It is perfectly*

plausible that this is a result of [his] *'people' conducting a strict clean-up operation. The traces of such activity are dead links to deleted Internet pages.*"

- during a 2006 trial of an alleged plotter of a coup to oust the President, Client A's wife was "*kidnapped by men working for the Deputy Interior Minister*". It was "*suspected that this kidnapping was politically motivated; a point of view seemingly confirmed by*" the Minister himself, who, when testifying, stated "*I was forced to kidnap* [Client A's wife] *... [and] not for the money*". It was even suggested by KCS' local source that Client A may have staged the kidnapping himself, in order to damage the defendant and "*demonstrate his own loyalty to the President*". The Defendant's conviction was said to have "*marked the end to the local opposition to the President*".

- "*This incident is indicative of* [Client A's] *status as PEP (Politically Exposed Person). He retains significant influence… particularly within the financial sector, and it is reported from local sources that he is attempting to acquire shares in other banks, or take them over entirely, in order to solidify this power base. Leaked Wikileaks cables confirmed his close relationship with* [the President]. *He is additionally loyal to the President's clan, which in the society of the* [country's] *elite confers upon him a great deal of honour and respect.*"

- "*In addition to this, in 2012* [Client A's] *daughter married the son of the National Security Minister. Given the high-ranking position and influence of both fathers, this union could be the focal point for increasing power and patronage … If via this marriage, as is suspected,* [Client A] *would have access to the power-brokers of ... security then this would allow him to wield even more soft power. This also ties* [Client A] *further into the social elite… as there are numerous occasions of the child of one political heavyweight marrying the child of another.*"

- "*It is apparent that* [Client A] *operates a 'take no prisoners' attitude to business. As well as his attempts to expand the International Bank's influence at the expense of others, he is also reputedly the de facto man in charge of the Central Bank of* [the country in question]*... Such control of two of the countries biggest institutions would give him almost limitless opportunities to further his own interests.*"

- "*However* [Client A] *is not wholly immune from disgrace… Reports emerged in 2010 that the International Bank… was being mismanaged and that* [Client A] *had been dismissed, although the latter claim was demonstrably false. Further reports alleged that a Finance Ministry audit found that the Bank was unable to repay a debt of US$1 billion, Such reports were largely disavowed and deleted from the Internet save for sparse search indexes and an Armenian online source. In any instance,* [Client A] *remains in control of the International Bank.*"

- Client A "*was additionally accused of 'apartment fraud' in 2012 over his ownership of… companies which funded construction of apartment blocks… These flats were supposed to go to victims of an earthquake but instead 80 of them were put up for sale and the victims ignored. When asked to fill in forms during construction, the residents signed papers which were later transformed into 'first refusals' without their knowledge.* [Client A's] *personal profit (if any) is unknown but his*

involvement via the three companies listed does not speak well of his business credentials."

"***Conclusions & Recommendations***"

"*It is apparent that* [Client A] *is extremely well-connected in the… political elite. His retention of the Chairmanship of the Bank despite allegations of mismanagement and possible corruption is indicative of the sway he holds with* [the] *President … as is his personal loyalty. He is well- connected to the political elite by both family and reputation and is likely to receive significant "protection' from* [the President] *as well.*

The predominant lack of any publicised derogatory comments on [Client A] *indicates one of two possibilities: either that he is genuinely 'clean' and has no negative connotations, or that these have been removed. Given his close connection to the political elite and the propensity of such figures to receive preferential treatment, the second possibility is more likely.*

There is no firm indication that [Client A] *has directly participated in any financial fraud or corruption from his work at the … Bank. However, it is supremely unlikely that as the Chairman he would not have benefited in some way from the $1 billion that went missing - even 'puppets' acting as frontmen for a hypothesised elite cabal have to be offered scraps.*

It would appear that he is truly attempting to modernise [the country's] *financial sector (and a man who receives multiple awards from respected banking institutions must be doing something right), but from within the prism of cronyism amongst the elite and continued loyalty to* [the] *President… both have the potential to cause serious problems in the future.*

It is unlikely that [Client A] *could have survived so long in* [the country's] *business world – and hold such a high status – without involving himself in the corruption that is endemic in the Central Asian region. The nature and extent of this is unclear but* [Client A's] *powerful friends must have been sufficiently placated in order to allow* [him] *to sweep across* [the] *financial sector unchallenged and to remain in his position against the 2010 allegations.*

It is recommended that any business dealings with [Client A] *be conducted with* _extreme caution_ *as his business dealings with the West could act as an entry point for a network of less well- intentioned individuals and organisations to apply their own standards and methods to Western Institutions - to say nothing of* [Client A's] *own personal ruthlessness in business. His image has been cleaned up to present him to the West as a whiter-than-white modern businessman but the truth is that his image is tarnished via long-standing connections with, and collusion in, the unsavoury elements of… society.*"

9.119 Mr Ramsden KC submitted that the "Conclusions & Recommendations" section of the KCS report was, on any view, sobering reading.

9.120 For the avoidance of doubt, it was not the SRA's case that the Firm was necessarily required to cease acting for Client A on receipt of the KCS Report. It was however the SRA's case that, if the Firm wished to continue acting for Client A, it should not have done so without first undertaking a root-and-branch review of the measures it had previously taken to establish the source of his wealth, consistent with a risk-based approach. That, it was submitted, was the very least that the situation warranted. Had the Firm taken those steps, which were plainly and objectively indicated and required as part of enhanced ongoing monitoring, it would undoubtedly have discovered that it had no evidence of Client A's source of wealth at all, and that, effectively all it had was Mr Chateau's belief, or more accurately, his assumption, that Client A owned at least 30% of the Bank, and was therefore a very wealthy man.

9.121 Mr Cheung, it was submitted, quite properly escalated the KCS Report to senior management. His concerns, contrary to the Firm's position, were not merely reputational. Rather, they went to the heart of the policy imperative underlying the MLRs (and indeed the POCA).

9.122 In his email of 6 August 2014 to the Firm's then CEO, Mr Cheung stated:

> *"… The report simply sets out the risks but doesn't say we should not act, only that we exercise "extreme caution" if we do decide to act. As is always the case with these reports, they are never definitive in terms of proof of wrong-doing. By their nature they can't be. The question is really whether we think (a) there is a risk that the firm could be (un)wittingly used to facilitate an illicit or improper transaction involving criminal property and (b) what is the extent of our reputational impact? The answer to (a) and (b) could both be 'very high' and we could still act for an appropriate reward and with appropriate measures in place to closely manage the matter. The important thing is to make the decision to act completely appreciating those risks."*

9.123 It was clear, Mr Ramsden KC submitted, that Mr Cheung was not simply taking the KCS Report at face value and urging the path of least resistance from a 'box ticking' compliance perspective. On the contrary, the email continued:

> *"The independent risk intelligence agency's view, and mine after discussing the issue with them, is that the risks associated with this client are high. I am concerned he has cleaned his reputation online and I find the reports of his involvement in the kidnapping of his wife to set up a political opponent and the theft of $1b from the bank he was Chair of without personal consequences disturbing. This is clearly a person who is protected by the president and appears to be able to act in a way that would bring swift and permanent consequences to anyone else. I feel these immediate risks are of a different nature to the oligarchs who benefited from perestroika and are now legitimatised to an extent internationally (eg Abramovich), though there are also some of those who because of the way they conduct themselves would not be appropriate clients of the firm. It is not my call to determine the firm's risk appetite on issues like this but I personally don't think we should be acting for this individual, in particular on his personal financial affairs. The risks are different for matters for the* [Bank]*, so long as they legitimate business transactions."*

9.124 In its letter of 9 March 2020 to the SRA, the Firm confirmed that following receipt of the KCS Report a telephone call took place which included Mr Cheung, Mr Chateau and others, during which Mr Cheung read out the main adverse reputational findings. Mr Chateau dismissed the findings as lacking in substance, being based on unverified rumour and being factually incorrect. Mr Chateau considered that no reliance should be placed on the KCS Report, that it should be dismissed in its entirety and that a new report should be commissioned. The Firm explained that whilst there was no file note of Mr Chateau's expressed view, he confirmed his position in an email relating to Project Fire:

> *"As to the report, it would not cross my mind to send it to the client or any third party since, as you know, I have been told of some of its findings that are just plain wrong or represent part of the facts and those facts have been proven wrong!*
>
> *In fact, I believe that sending such a document to the client would lead Dentons (or any other lawyer/law firm in a similar case) to be fired by the client and the client rightfully asking about the business judgment of his lawyers."*

9.125 Mr Ramsden KC observed that it was not the business judgment that was of concern but the regulatory judgment of the Firm. If complying with regulatory obligations meant that the Firm would no longer be instructed, the Firm was still required to comply with those obligations.

9.126 Notwithstanding the Firm's position as regards the veracity of the KCS Report, it relied on the report when considering its advice to Client A as regards his intention to run/acquire a bank in the UK. In an email dated 12 August 2014, Ms Pretorius proposed sending the following to Client A:

> *"Dear* [Client A]
>
> *Report.*
>
> *As you know we have recently commissioned a risk report for the purposes of addressing the questions of the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) on your own standing and connections, in anticipation of your seeking authorisation for a small specialist bank in the UK.*
>
> *Having studied the report, and asked for clarification on its contents, it is our firm belief that if the PRA and FCA were to commission a similar report, the proposed bank would not satisfy the threshold conditions for authorisation, and in particular the condition on controllers. In other words, an application for authorisation would not even pass the pre-approval stage which we discussed.*
>
> *At this juncture, we think the best course of action would be to drop the idea of setting up or acquiring a UK bank quietly, without further engagement with the regulator."*

9.127 Mr Chateau replied stating, amongst other things, that the draft should not be sent to Client A.

9.128 Mr Ransley considered that Client A should be advised not to proceed with the application to own a bank, but that this advice should be given by Mr Chateau rather than by *"the fairly blunt email"*. He considered that Mr Chateau *"should make it clear the client would not succeed."*

9.129 In an email to Mr Ransley dated 13 August 2014, Mr Jones stated:

> "[Mr Cheung] *has real concerns that we shouldn't act.*
> *Based on the report my view (and obviously Peter's and although I have not spoken to him, [Mr Chateau's] is that we can act. I understand that* [Mr Chateau] *has acted for him for quite some time.*
>
> *What we advise is his application to own a bank will fail and that advice must be given (probably by* [Mr Chateau] *...)*
>
> *Anything further will involve a call with KCS."*

9.130 Mr Cheung had set out the issues to be considered in his email to Mr Ransley of 5 August 2014:

> *"I think there are 3 issues that we need to work through, one of which is fairly straight-forward and the other 2 more difficult.*
>
> *1. Does ukmea cease acting on the current banking instruction based on the report? Rosali's unequivocal view is 'yes we should' on the basis that the PRA will not authorise him to own or operate a bank based on the allegations.*
>
> *2. Should the firm cease acting for* [Client A] *based on the allegations made in the report?*
>
> *3 Ditto* [the Bank] *given* [Client A] *is chair of that bank?*
>
> *The view of KCS is that we should steer clear of* [Client A]*."*

9.131 Mr Ramsden KC noted that in all of the emails between senior managers and partners at the Firm, there was no discussion of ongoing enhanced due diligence or any suggestion that the Firm needed to consider Client A's source of wealth or funds. The Tribunal, it was submitted, might find it bizarre that the Firm, at the highest level, had reached the view shortly after receipt of the KCS Report and in obvious reliance upon it, that Client A had no chance of persuading the FCA and the PRA that he was a "fit and proper person" for the purpose of holding a UK Banking Licence, but that it considered that it could continue to act for Client A, relying upon no more that Client A's word as regards his source of wealth and funds, and the assumptions of Mr Chateau.

9.132 It was deeply unattractive that having advised Client A, in reliance of the KCS Report, (advice that the Firm never withdrew), the Firm now sought to persuade the Tribunal that the KCS Report should be disregarded as salacious and inaccurate. It was of note that none of the senior management that were involved in the emails on this matter had attended at the Tribunal to explain the apparent contradiction in the Firm's position at the time and its position in the proceedings.

9.133 Mr Ramsden KC submitted that it was not the SRA's case that that the Firm was not entitled to act based on its own risk appetite. However, if the Firm had that appetite for risk it came with a clear and obvious responsibility. If it wished to continue acting for Client A notwithstanding the KCS Report and the "*real concerns*" expressed by its General Counsel that it should not do so, then as a bare minimum, it was obliged at this point to undertake a root-and-branch review of its due diligence on Client A, pursuant to its duties of enhanced ongoing monitoring under regulation 14(4)(c). Such an exercise would undoubtedly have identified that the Firm held no evidence, at all, going to the source of his wealth, and that would – or certainly ought to have been – of profound concern to the Firm given the contents of the KCS Report and its assessment of Client A and the risks he presented. As it was, the Firm did not take any further steps at this stage or subsequently to establish the source of Client A's wealth.

9.134 These were the circumstances in which the Firm acted in the transactions for Properties 1 and 2, and distributed the proceeds of sale in 5 further transactions. Whilst the SRA was not required to establish that any money laundering occurred, there were a number of 'red flag' indicators of money laundering in connection with those transactions, which were illustrative (if any illustration was needed) of the importance of taking adequate measures to establish the source of wealth and/or funds when dealing with a PEP from a high-risk jurisdiction.

9.135 Not only were such measures not taken in this case, but the global relationship partner for Client A, Mr Chateau, appeared to have taken a strikingly hostile approach to anyone seeking to carry out the most elementary compliance checks. This led him, over 6 months after the e-mails detailed above – assessing that Client A's chances of establishing "fit and proper" person status was so hopeless he should not even try, to draft a memorandum entirely supportive of Client A's attempt to operate a UK Bank.

9.136 On 25 February 2015, Mr Polin writes to Mr Cheung with a query about compliance software, and explains that the issue has been raised in connection with Client A. The email was headed "*Worldcheck - Availability of obtaining a report which can be used?*". It stated:

> "*Francois has been asked to produce a memo in support of* [Client A's] *wish to be treated as a "fit and proper person" by the FCA/PRA in connection with a potential application to set up or take over a UK bank.*
>
> *Francois has printed off the Accuity search which in his view gives the client a "clean bill of health". The report appears to be clear. In fact our client's representative in the UK… thinks that we need to obtain the additional comfort of a Worldcheck search. Is that available? I would appreciate your prompt response and for you to keep this matter confidential as regards Rosali* [another partner]."

9.137 So, it was submitted, notwithstanding the KCS Report and the Firm's ongoing failure to take any or adequate measures to establish the source of Client A's wealth, and the Firm's opinion that Client A should be advised to abort any application to hold a UK Banking Licence, Mr Chateau was still seeking to help Client A enter the UK banking market.

9.138 Mr Chateau responded: "*Why give so much explanation to this guy? Next time please ask me before asking "in house" something as sensitive as that.*" Mr Polin replies: "*Apologies. Not intended to circumvent you. Andrew is trustworthy. He is being made a partner in May of this year. Call me if you wish to discuss.*"

9.139 Mr Chateau's response to this was, it was submitted, extraordinary:

> "*It is not a matter of circumventing me*[.] *I find cheung to untrustworthy and a big prick, and I am sorry to see him become a partner because he is an inexperience amateur showing poor judgment and not knowing what he is doing!*"

9.140 Mr Polin asked Mr Chateau to bear in mind that Mr Cheung "*is the head of risk/compliance for UKMEA and Europe!!*", to which Mr Chateau replies: "*I know and he is terribly bad at that!*"

9.141 Mr Ramsden KC submitted that the unfortunate exchanges were brought to the Tribunal's attention, not for the purpose of embarrassing those involved, but because the conduct and the attitude displayed was the exact opposite of what behoved a reasonable and cautious professional seeking to apply enhanced due diligence and enhanced ongoing monitoring in respect of a PEP client from a high-risk jurisdiction. This was an enhanced due diligence case that cried out for the Firm to stop, assess and take adequate measures to establish the true position about Client A, consistently with a risk-based approach.

9.142 It was clear from the emails of August 2014, that Mr Ransley, as Global CEO, had said Client A should be told in blunt terms that he should not pursue an application to the FCA and PRA to be authorised to operate a bank in the UK. The Tribunal might, therefore, find it remarkable that on or about 2 March 2015, and notwithstanding the KCS Report and the lack of any evidence held by the Firm remotely capable of establishing Client A's source of wealth, Mr Chateau drafted a letter to the Financial Services Authority opining that Client A was a fit and proper person to hold a UK banking licence:

> *"I write this letter in support of* [Client A's] *application for a [banking license).*
>
> *I have known* [Client A] *for approximately ten years and Dentons (formerly Salans) has been representing* [Client A] *and* [the Bank] *for as many years where* [Client A] *serves as Chairman and CEO. We also assist him with his personal and family investments.*
>
> *Based in New York, I am a partner at Dentons where I am involved in international transactions for U.S and foreign companies and families. I am the former Vice Chairman of Dentons and Chairman of Salans until it became a founding partner of Dentons. In addition, I act as a general legal adviser to corporations, wealthy families with a multinational background for their business affairs and also act as Trustee for numerous family trusts.*
>
> *As such, I can confirm that* [Client A] *is a fit and proper person to hold a UK banking license, as his impeccable credentials reflect and his highly respected*

career confirms. My partners in [various international locations including London and New York]*, where we have been rendering services for* [the Bank] *and* [Client A]*, also find him to be a very intelligent, reliable businessman, listening to advises and with whom they are all eager to continuing working with him.*

It is my opinion that [Client A] *is an individual of extraordinary ability in business and banking and would make a formidable banker in the U.K. I would be happy to answer any question and provide any additional information if needed."*

9.143 On 11 March 2015, Mr Polin, wrote to Mr Chateau thanking him for the draft but noting that the approach being taken might not be acceptable:

> "*It is clear that* [Client A] *is a PEP. That is disclosed in the Acuity report. It is highly likely as the FCA are sensitive to the risk of misuse of the UK financial systems that if a PEP is to be involved with the bank that they will need to dig more deeply into the source of his wealth and funds and his business reputation.* [Mr Ramsden KC submitted that the most obvious reading of that was to mean "dig more deeply than Dentons"]. *Accordingly, it is unlikely that the three documents that we produce are going to be of sufficient weight to obtain a clear supportive response from the FCA regarding* [Client A's] *application. This is why Rosali suggested commissioning a detailed independent report from a risk intelligence agency. We can still go down the route of providing this information and seeing what response we receive but I did think it would be worthwhile mentioning the above as it would be better to put our "best foot" forward when we go into bat with the FCA.*"

9.144 The Tribunal may think that, in circumstances where the Firm itself had taken no or no adequate measures to establish the source of Client A's wealth, this email was as ironic as it was insightful. It specifically addressed everyone's minds to the concerns the FCA and the PRA would have regarding source of wealth and source of funds. This, it was submitted, was significant in terms of the inferences that the Tribunal was entitled to draw. It was also a clear indication that the Firm had failed in its statutory and mandatory requirement to conduct ongoing enhanced due diligence. It was noteworthy that notwithstanding the Firm's current position as regards the validity of the KCS Report, at the time, it was considered valid enough for Client A to be advised not to pursue his application to own/run a UK bank.

9.145 Mr Ramsden KC submitted that when looking at the commencement of the Firm's work for Client A, the wholesale failure of compliance was evident. Project Fire (Client A's attempt to run a UK Bank) commenced on 1 July 2014. Seventeen days later, on 18 July 2014, the Firm was instructed on the Purchase of Property 1. Six days thereafter, 24 July 2014, the KCS Report was received urging *"extreme caution"* in the Firm's dealings with Client A. On the very next day, 25 July 2014, the Firm paid the £800,000 deposit on Property 1 on behalf of Client A to the seller.

9.146 Mr Ramsden KC submitted that, reflecting on the Firm's response and in the absence of witness evidence, it was proper for the Tribunal, when determining the allegations, to infer what happened and why from the documentary evidence referred to. The

Tribunal, it was submitted, would be compelled to conclude that the Firm's failures arose as a result of an overbearing, disrespectful, excessively influential and poorly managed client relationship partner, who had failed to establish Client A's source of wealth and source of funds, as he considered that it was impolite to do so. As can be seen from the internal emails, there was more concern about managing Mr Chateau's sensibilities and personality than there was about establishing Client A's source of wealth and source of funds.

9.147 With the exception of Mr Cheung, no-one within the Firm challenged Mr Chateau's assertions and the judgments that underpinned those assertions. These failings were compounded by systems within the Firm that should have worked, but that, in the case of Client A, failed decisively.

9.148 Mr Ramsden KC referred the Tribunal to the interviews with the Firm's Money Laundering Reporting Officer, Mr Griffiths, and its Head of Anti-Money Laundering, Ms Begum.

9.149 In his interview, when asked about his understanding of Client A as a client of the Firm, Mr Griffiths stated:

"NG *What I, what I do recall is that* [Mr Cheung] *spoke to me and said that he was concerned about a proposed matter for* [a non-EEA country] *based client, where he had received - concerning intelligence about the client, and which he had referred to the business acceptance committee. And he told me that he was receiving some considerable opposition from Francois Chateau, who was the, the client partner, partner in Dentons in Europe, and he asked me for my view based on that information. And I recall telling him that I thought he was right to raise concerns and, and that it should press ahead, but then obviously it's a matter for the business acceptance committee to, to make their decision.*

FIO *So, so you knew in 2014 that* [Client A] *was from* [the non-EEA country]. *Did you know that he was classified as a PEP?*

NG *Erm I, I don't recall that being discussed.*

FIO *So, so, and I know earlier in this interview we've gone through your role as MLRO, but did you, do you have any involvement in the firm acting for clients which pose a higher risk, or that are identified as PEPs?*

NG *Erm no, those matters were dealt with by the AML team ... I - if it helps, as far as I can recollect, I think that that email on 28 August 2014 which* [Mr Cheung] *sent to me, which is simply forwarding a previous string of emails, the latest of which is dated 6 August. I think that would have been sent to me by* [Mr Cheung] *after we'd had the conversation I mentioned."*

9.150 As regards the KCS Report, the interview recorded:

> *"FIO And then, on 24 July 2014 subject to the matter which you've spoken about, the 'Project Fire', the firm obtained or received a copy of a KCS Group Report. But, but you state that you never actually saw that report.*
>
> *NG I saw it for the first time on 4 December 2018.*
>
> *FIO Yeah. Ok but, but there is some email correspondence that you're copied into that makes reference to it.*
>
> *NG Yes, the email string which we discussed earlier.*
>
> *FIO Yeah. But, but that didn't lead you to go and ask for a copy of the report and to review it?*
>
> *NG No, because I didn't think that there was a money laundering issue.*
>
> *…*
>
> *FIO So, so the question is that, that AML risks have been highlighted from the receipt of the KCS report, and they've been considered by Mr Cheung. But it is your position that the AML risks identified from the KCS Report were not brought to your attention as the firm's MLRO?*
>
> *NG Well, certainly I can say that it was not brought to my attention as an AML issue, and that implies to me that the conclusion must have been reached that there was nothing which required an internal report to be made."*

9.151 When asked about her position as the Head of AML, Ms Begum explained:

> *"As a, as a Head of AML I managed the AML team, which consisted of about eight staff. I managed the firm's AML programme. I was a point of escalation from the AML team on CDD issues. I dealt with training, updating qualities and procedures. Drafting the firm's annual profile risk assessment. Supporting the MLRO's and submission of SAR's and maintaining the SAR register."*

9.152 When asked who at the Firm was responsible for conducting source of wealth checks, Ms Begum stated:

> *"So, in terms of source of wealth checks, as I mentioned, when, when you've got a new client that's coming through the door, the AML team will see what's publicly available in terms of the information. They will also heavily rely on what the partners on the ground who are acting on it, know about it. In terms of the source of funds, the AML team don't really get involved in the source of funds because that's not contained in our MBI system when we open a matter. That is within the matter teams' knowledge."*

9.153 The FIO asked Ms Begum when she first became aware that the Firm was acting for Client A. Ms Begum replied:

> *"So, in - on 5 August 2014 a query came in from Phillip Hope into the risk department in-box. One of the risk analyst or AML analyst, actually flagged that with me because they were helping* [Mr Cheung]*, and I think that was the time that* [Mr Cheung] *was dealing with the KCS Report. I had a general awareness that* [Mr Cheung] *had commissioned at KCS Report in relation to* [Client A] *in relation to a matter. I did not know or see, I did not see the content of that KCS Report, but I knew that it had flagged some negative news. So, Phillip's query that came to the risk department in-box was basically, he had you know, where he had two properties trying to refinance, and they're both owned by two different entities, corporate entities and trust. How do we set up that matter on the system? So, his was a matter opening query. I then, when that was flagged to me because of what I knew that* [Mr Cheung] *was dealing with, I sent an email to* [Mr Cheung] *to ask whether or not we can open further matters for* [Client A]. *And* [Mr Cheung] *then responded back to say, Brandon Ransley, who was our managing director at the time, had approved the opening of, there was no restrictions applied and approved the matters.*

9.154 Mr Ramsden KC submitted that it was evident from the answers given in interview that both Mr Griffiths and Ms Begum were aware of the existence of the KCS Report. Ms Begum knew that the KCS Report raised concerns, but she did not read it.

9.155 It was unclear, it was submitted, whether Mr Cheung knew throughout the period that there was nothing on the file to establish source of wealth or source of funds. It was clear that neither Mr Griffiths nor Ms Begum knew that this was the position. It was also unclear whether Mr Cheung knew that neither Mr Griffiths nor Ms Begum had seen or read the KCS Report.

9.156 Whilst the Firm's systems seemed to be good, they did not work with Client A. Neither Mr Cheung as the Firm's General Counsel, Mr Griffiths, as the Firm's Money Laundering Reporting Officer, nor Ms Begum, as the Firm's Head of Anti-Money Laundering, knew what each of the others knew.

9.157 The responsibility for ensuring that this did not happen lay with the Firm as the relevant person. It was plain and obvious that the Firm failed in its obligations in this regard.

9.158 Mr Ramsden KC submitted that Mr Chateau's judgement (both at the outset of the client relationship and to the extent that it persisted following Salans' merger with the Firm) that it was not necessary to ask Client A for details of his salary at the Bank was plainly not reasonable in circumstances where (i) such inquiries were the bare minimum indicated by the prevailing Law Society guidance at the time, (ii) Client A was a PEP from a high-risk jurisdiction, and (iii) Mr Chateau had neither asked for nor obtained any evidence to support Client A's claim of being a substantial shareholder in the Bank (or any other reliable evidence of his wealth). Indeed, not only was Mr Chateau's approach unreasonable, it was directly contrary to the Firm's own internal policy at material times.

9.159 This, it was submitted, was underscored by Mr Chateau's answers to the FIO's questions in interview. They were astonishing, evincing not only complete ignorance of the MLRs (which might be understood given that he was not an English lawyer) but also an extraordinarily credulous attitude towards individuals of apparently spectacular wealth. His contemptuous reaction to the KCS Report and overt hostility to the entirely reasonable concerns raised by colleagues in light of the same, including the Firm's General Counsel, Mr Cheung (whom Mr Chateau abused in writing to Mr Polin in the most unflattering and unprofessional terms), were the exact opposite of what behoved a reasonable and cautious professional seeking to apply enhanced due diligence and enhanced ongoing monitoring in respect of a PEP client from a high-risk jurisdiction.

9.160 It necessarily followed that, to the extent that the Firm relied on any judgement exercised by Mr Chateau, such reliance was not reasonable. In particular, it was not reasonable for the Firm to fail to check, when inheriting the retainer from Salans, whether there was any evidence of Client A's salary and shareholding. Further, when faced with the KCS Report and the serious concerns raised by its General Counsel, Mr Cheung, it was unreasonable for the Firm to continue acting for Client A without first undertaking a root and branch review of the measures it had previously taken to establish the source of his wealth and funds, as required by Regulation 14(4)(c) and 14(1). Had such a review been undertaken at that stage or subsequently, it would have uncovered that, contrary to its own policy, the Firm had no evidence of Client A's salary or the actual extent of his shareholding in the Bank.

9.161 In those circumstances, the Firm was not entitled to take any comfort from the involvement of other regulated third parties in Client A's affairs, much less was it reasonable to do so. Nor was it reasonable for the Firm to rely on documents evidencing that Client A enjoyed a substantial UK property portfolio. Such evidence went merely to the existence of client's wealth, not to its source.

9.162 Mr Ramsden KC submitted that one did not need the benefit of hindsight to have known that Mr Chateau's trenchantly held views and judgments were a woefully inadequate basis upon which to make legally critical compliance decisions. If those views were disregarded by the Tribunal (as they should have been by the Firm) the Tribunal would inevitably find that the Firm took no measures, less still reasonable measures (on the Firm's case) less still adequate measures (as required by Regulation 14) to establish Client A's source of wealth and source of funds. Whilst the construction point that the Firm sought to argue was an important one, on the facts of this case and given the Firm's failings, it was not relevant; even taking the lower threshold of reasonableness, the Firm came nowhere near to complying with Regulation 14. Accordingly, it followed that the Firm failed to comply with Regulation 14 as alleged.

9.163 Mr Ramsden KC addressed some of the assertions made by the Respondent in its skeleton argument.

9.164 It was stated that the SRA's case that the Firm did not comply with Regulation 14(4)(b) proceeded on a serious misunderstanding or mischaracterisation of the evidence. It said that *"the Firm essentially took Client A's word for it that he enjoyed a substantial and valuable shareholding in the Bank"*. That was simply incorrect. Client A's substantial shareholding in the Bank was a well-known fact in the non-EEA country where the Firm's predecessor, Salans had an office. Salans had already established Client A's

source of wealth in accordance with Regulation 14(4)(b) by the time the Firm was engaged.

9.165 Mr Ramsden KC submitted that there was nothing from Salans evidencing that it had established (adequately or otherwise) Client A's shareholding. There was nothing on the file to evidence source of wealth and/or funds by either Salans or the Firm. This was relevant not just when the Firm inherited Client A, but on each and every occasion that the need for enhanced due diligence arose.

9.166 The Firm asserted that there was cogent evidence before the Tribunal that the Firm's understanding that Client A derived substantial wealth from a substantial shareholding in the Bank was correct. According to that evidence, Client A had earned more than $50 million in dividends by 2015. The SRA did not contend that Client A's shareholding was not a source of substantial wealth. Its case amounted to a complaint that it did not take adequate measures to establish that Client A's shareholding was a source of substantial wealth, notwithstanding that (i) that is what the Firm understood one of his sources of wealth to be, and (ii) that understanding appeared to have been correct.

9.167 The Firm's assertion, Mr Ramsden KC submitted, relied on an article published in 2018, after the Firm had ceased to act for Client A. For the assertion to be credible, it should relate to evidence prior to the cessation of the retainer. If such an assertion was truly to be relied upon, it should have been detailed in the Firm's AML risk certificates or somewhere else within the Firm's records. It was not.

9.168 The Firm asserted that it was the SRA's position that the measures required to establish Client A's sources of wealth and funds was a matter for the Firm's professional judgment. Since that judgment was arrived at honestly and reasonably, the allegation must fail. The central problem with that assertion, Mr Ramsden KC submitted, was that in this case, professional judgment was lacking.

9.169 As to the Firm's reliance on (i) a Worldcheck report dated 29 March 2012, (ii) Wikipedia print-out dated 30 October 2012, and (iii) a print out from Businessweek dated 30 October 2012 forming part of the due diligence on the part of Salans' due diligence into Client A and thereafter being reviewed by the AML team following the merger, disclosing no negative information and confirming among other things that Client A was the chairman of the Bank, this did no more than confirm what Mr Chateau had already stated. The Firm had no evidence, at any stage, establishing Client A's <u>actual</u> salary or <u>actual</u> shareholdings. It could easily and should have asked for such evidence in order to <u>*"establish"*</u> the <u>*"source"*</u> of Client A's wealth and funds. Although the Firm had evidence that Client A enjoyed substantial property interests in the UK, acquired prior to its instruction, such evidence goes to the existence of the client's wealth, not to its source.

9.170 The Firm sought to rely on Client A's dealings with other UK banks and other UK regulated law firms who had been acting for Client A. Mr Ramsden KC submitted that, as a matter of law, the Firm was not entitled to rely on what those other entities may or may not have done as regards compliance with the MLRs. Comfort was something that could be taken in addition to the work done; comfort could not be <u>the</u> something done.

Further, and in any event, as detailed above, Regulation 17 could not be relied upon for establishing source of wealth and funds.

9.171 Mr Ramsden KC agreed with the Firm's submission that there was no requirement to establish source of wealth and funds beyond a reasonable doubt. However, simply taking Client A's word for his source of wealth and funds could not possibly be adequate for the purposes of compliance with Regulation 14.

9.172 The Firm argued that the MLRs did not define what constituted *"adequate measures"* for the purposes of Regulation 14. Further, the Guidance available to the Firm at the time, including from the Law Society, did not stipulate that it needed to obtain independent documentary evidence of Client A's source of wealth or funds in order to comply with Regulation 14. Mr Ramsden KC submitted that the fact that contemporaneous Law Society guidance may not have expressly counselled the Firm to obtain documentary evidence of Client A's source of wealth had no relevance to liability. The anti-money laundering legislation was there to be complied with. The Firm did not need to be guided to do so. It was and remained a major international law firm with considerable compliance resource. Guidance published by professional bodies could not hope to address every conceivable factual situation that might present itself to a firm, nor could it absolve a firm of failing to comply with its legal obligations. While guidance might properly seek to interpret legislation, the meaning of a legislative provision was a question of law; it was not determined by guidance postdating the provision coming into force. In any case, the guidance materials relied on by the Firm made perfectly clear that what was adequate for an ordinary client may not be adequate for a PEP from a high-risk jurisdiction.

9.173 Mr Ramsden KC submitted that not only were the measures taken to establish the source of Client A's wealth objectively and plainly inadequate contrary to Regulation 14 of the MLRs 2007, on the face of it, they were also inconsistent with the Firm's own memorandum on understanding its own AML policies and procedures:

> *"Because of the increased risks associated with this class of clients, it's important that you know about the client's background and, in particular, confirm for yourself whether the source of funds that they are using in any transaction are legitimate. <u>One useful way of determining this for PEPs is looking at what their published salary is and comparing this against the money that they are using for the transaction.</u> For example, in late 2006 the High Court found that the ex-president of Zambia, Frederick Chiluba, had stolen £23 million from the Zambian Government. President Chiluba was known for his extravagant spending on clothing, including a reported £600,000 spent in one Swiss shop. <u>His annual government salary was approximately £5,000. It's unlikely that he could afford any kind of considerable investment and any attempt to do so should arouse your suspicion</u>"* [emphasis added].

9.174 In summary, it was submitted that the Firm's failure to take any or adequate measures to establish the source of Client A's wealth (in general) was followed by at least two failures to take adequate measures to establish the source of funds for particular transactions, namely the purchase of Property 1 and the aborted purchase of Property 2 (in which the funds in question were apparently forfeited to a third party). Notwithstanding such failures and the existence of the KCS Report urging *"extreme*

caution", the Firm went on to distribute substantial proceeds of sale in relation to the transactions without exercising the extreme caution urged by the KCS report.

9.175 Mr Ramsden KC submitted that on no view could the Firm credibly contend that in the circumstances, adequate (or even reasonable) measures were taken to establish source of wealth and funds. Accordingly, the SRA had made out its case as regards a breach of the MLRs as alleged.

9.176 Mr Ramsden KC submitted that it was the SRA's case that the Firm's failure to comply with Regulation 14 in its dealings with Client A automatically constituted a breach of Principle 7 and a failure to achieve mandatory Outcome 7.5. Further, it was also sufficiently serious and sustained to amount to a breach of Principle 6 and/or Principle 8.

9.177 Members of the public rightly expect regulated law firms (especially leading, global firms such as Dentons) to heed and comply with all applicable anti-money laundering legislation. Such expectations were all the more justified in circumstances where – as here – a firm was dealing with a high-risk PEP from a high-risk jurisdiction where corruption and money laundering was known to be rife. Failure to heed and comply with these important laws was liable to undermine public trust, particularly where continued over a period of years, as here, and in spite of (i) the KCS Report urging *"extreme caution"* in any dealings with the *"ruthless"* Client A and (ii) General Counsel Mr Cheung's expression of serious misgivings about retaining him as a client in light of the same. In failing to do so, the Firm breached Principle 6 as alleged.

9.178 The SRA acknowledged that the failures at issue related to a single client and his associated entities. It was also acknowledged that the Firm's systems and processes were audited by the SRA during the relevant period and found to be compliant, based on the data reviewed. It was nonetheless submitted that the failings in relation to Client A were serious, systemic in nature and persisted for a period of years. Proper governance and/or sound financial and risk management principles must, at a minimum, require scrupulous adherence to the prevailing AML regime. That was sorely lacking in this matter, especially following receipt of the KCS Report, which ought to have prompted a root and branch review of the Firm's due diligence in respect of Client A and associated entities as part of its duties of enhanced ongoing monitoring. Accordingly, the Firm breached Principle 8 as alleged.

The Respondent's Case

9.179 The Firm denied the allegation in its entirety. It was the Firm's case that in compliance with the MLRs, it took adequate measures to establish Client A's source of wealth and funds. Further, and in any event, if the Tribunal found that the Firm was in breach of the MLRs, the Firm's conduct was not sufficiently serious, reprehensible and culpable to warrant either a finding that the Firm breached the Principles or the Code or the imposition of any sanction.

9.180 Mr Coleman KC submitted that there were a number of salient features that the Tribunal should keep in mind when considering the allegations.

- In making no allegations against any individual at the Firm, the SRA accepted that no one at the Firm committed any rule breach, or at least none serious enough to warrant prosecution.

- No issues arose in relation to the Firm's systems and controls, which had been commended by the SRA at the time.

- There was no criticism of the extensive customer due diligence measures undertaken by the Firm in relation to Client A and his associated entities.

- There was no allegation that the Firm had grounds to suspect that Client A was involved in money laundering during the period when it acted for him and his associated entities, or that the Firm became unwittingly involved in money laundering.

- There was no allegation of a failure by the Firm to report serious misconduct pursuant to Outcome 10.4 of the Code.

- The SRA's contention that, in relation to one client, the Firm inadvertently breached the MLRs in relation to the adequacy of the measures taken to establish Client A's sources of wealth and funds was dependent upon reading into Regulation 14(4)(b) words that were not there. Its argument that the Firm was required to take measures adequate to "prove, substantiate or demonstrate" Client A's source of wealth and funds found no support in the MLRs and was contradicted by the SRA's own guidance.

- The case against the firm proceeded on a serious misunderstanding or mischaracterisation of the evidence. The SRA stated that *"the Firm essentially took Client A's word for it that he enjoyed a substantial and valuable shareholding in the* [Bank]*"*. That was simply incorrect. Client A's substantial shareholding in the Bank was a well-known fact in the non-EEA country where Salans had an office. Salans had already established Client A's source of wealth in accordance with Regulation 14(4)(b) by the time the Firm was engaged.

- There was cogent evidence before the Tribunal that the Firm's understanding that Client A derived substantial wealth from a substantial shareholding in the Bank was correct. According to that evidence, Client A had earned more than $50 million in dividends by 2015. The SRA did not contend that Client A's shareholding was not a source of substantial wealth. Its case amounted to a complaint that it did not take adequate measures to establish that Client A's shareholding was a source of substantial wealth, notwithstanding that (i) that was what the Firm understood one of his sources of wealth to be, and (ii) that understanding appeared to have been correct.

- The Firm acted in accordance with market practice as regards the measures that firms typically took to establish the source of wealth and funds.

9.181 Mr Coleman KC outlined the headlines of the Firm's case namely that:

- The Firm took adequate measures to establish the source of wealth of Client A prior to the commencement of the business relationship in May 2013.

- The Firm was not required to take additional measures to establish the source of wealth in the light of the KCS report.

- The Firm took adequate measures to establish the source of funds in relation to the purchase of Property 1.

- The Firm took adequate measures to establish the source of funds in relation to Property 2.

- Even if nonetheless the Tribunal finds that the Firm did breach the MLRs, nevertheless any such breach was not sufficiently serious, reprehensible or culpable to warrant a finding of a breach of the Principles or the Code or to warrant disciplinary sanction.

Adequacy and the proper construction of Regulation 14

9.182 Mr Coleman KC submitted that in the context of a disciplinary case, Regulation 14(4) was drawn in broad and imprecise terms, making it a difficult provision to understand as regards how far the obligation to establish wealth and funds went. The result of that inherent uncertainty led to the clarification of the obligations in the 2017 regime.

9.183 Regulation 14 necessitated two questions of construction, namely (i) what did *"adequate"* mean; and (ii) what did *"establish"* mean.

9.184 On the SRA's case, the taking of reasonable measures to establish source of wealth and funds could, still be a breach of the MLRs for inadequacy. Mr Coleman KC submitted that it was difficult to see how, if measures taken were reasonable, those same measures could be considered to be inadequate. Adequate, it was submitted, was synonymous with reasonable.

9.185 The purpose of the Directive (and of the MLRs that implemented it in the UK) was to update and enhance European legislation so as to bring it in line with the international standards on combating money laundering and terrorist financing as contained in the 40 recommendations of the FATF recommendations.

9.186 The Preamble to the Directive stated: *"Since the FATF Recommendations were substantially revised and expanded in 2003, this Directive should be in line with that new international standard."*

9.187 The Explanatory Memorandum to the MLRs stated:

> *"7. Policy Background Objectives*
>
> *7.1. The principal policy objective behind the Third Directive is to update and enhance European legislation to bring it in line with the international standards on combating money laundering and terrorist*

financing set out in the Financial Action Task Force's (FATF) 40 Recommendations."

9.188 As regards the FATF Recommendations, Recommendation 6 provided (as of 2004):

> *"financial institutions should, in relation to politically exposed persons, in addition to performing normal due diligence measures... Take reasonable measures to establish the source of wealth and source of funds."*

9.189 The FATF's position remained the same in the more recent FATF PEP Guidance 2013. The Tribunal, it was submitted should note the reference to *"reasonable measures"*, which was material to the construction of Regulation 14(4)(b).

- In considering the proper construction of Regulation 14, the following principles of statutory interpretation applied.

- A legislative instrument needed to be read as a whole: (Bennion at Section 21.1)

- The starting point for statutory interpretation was to consider the ordinary meaning of the words: (Bennion at Section 22.1)

- The MLRs (including Regulation 14(4)) fell to be construed in light of the Directive's purpose: (Bennion at Section 28.3)

- A person (or firm) should not be penalised except under clear law. This principle formed part of the context against which legislation is enacted and, when interpreting legislation, a court should take it into account: (Bennion at Section 26.4). Consistent with that, one aspect of the rule of law was that when determining whether solicitors had breached the standards expected of them, solicitors should be able to ascertain what was demanded of them.
- Explanatory notes to an Act or to secondary legislation may be used to understand the background to and context of the legislation and the mischief at which it was aimed: (Bennion at Section 24.14)

9.190 Mr Coleman KC submitted that whilst the drafters of the MLRs preferred *"adequate"* to *"reasonable"*, (reasonable being the word used by FATF) given that the MLRs were to give effect to the FATF recommendations, it was clear that the drafters had something akin to reasonableness in mind when drafting the MLRs.

9.191 There was an important dispute between the parties as to the meaning of *"take adequate measures to establish the source of wealth and source of funds"*.

9.192 Regulation 14(4)(b) did not impose an absolute obligation on the relevant person to establish the sources of wealth and funds. Had that been the intention of the Directive and the MLRs, there would have been no need to refer to *"adequate measures"*. They would have simply stated that the sources of wealth and funds must be established (or must be conclusively established).

9.193 The adequacy of the measures taken to establish the sources of wealth and funds must be assessed in light of the risk of money laundering (or terrorist financing) posed by the particular business relationship. Regulation 14(1) required a relevant person to apply enhanced customer due diligence and enhanced ongoing monitoring *"on a risk-sensitive basis"*.

> *"Adequacy"* in the context of regulation 14 connoted reasonableness. Regulation 5 defined *"Customer due diligence measures"* as meaning:
>
> *"(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;*
>
> *(b) identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and*
>
> *(c) obtaining information on the purpose and intended nature of the business relationship."*

9.194 Regulation 14(2) prescribed the enhanced customer due diligence to be undertaken where the customer had not been physically present for identification purposes:

> *"Where the customer has not been physically present for identification purposes, a relevant person must take specific and adequate measures to compensate for the higher risk, for example, by applying one or more of the following measures – (a) ensuring that the customer's identity is established by additional documents, data or information; (b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution which is subject to the money laundering directive; (c) ensuring that the first payment is carried out through an account opened in the customer's name with a credit institution" (emphasis added).*

9.195 Thus, it was submitted, the MLRs recognised that facts might be established by the receipt of information and that supporting documents were not necessarily required to establish facts. In contrast, where the MLRs required facts to be verified, this entailed an obligation to obtain documents to support the facts being verified.

9.196 The Law Society's October 2013 "Anti-money laundering Practice Note" stated at paragraph 4.3.2:

> *"Identification and verification*
> *Identification of a client or a beneficial owner is simply being told or coming to know a client's identifying details, such as their name or address. Verification is obtaining some evidence which supports this claim of identity". (emphasis added)*

9.197 Given the above, the SRA's apparent reliance on the various dictionary definitions of *"to establish"* was misplaced as the construction was to be taken from the Directive and MLRs as a whole, construed purposively in its relevant context and taking account of FATF Recommendation 6 to which it was intended to give effect. The drafters of the MLRs 2007 (including Regulation 14) clearly had in mind the distinction between "establishing" facts on the one hand and proving/verifying/certifying facts on the other. Regulation 14(4) did not require the relevant person to verify or certify the sources of wealth and funds.

9.198 Mr Coleman KC submitted that there were sound reasons why the Directive, the MLRs and FATF did not require a relevant person to obtain evidence that proved the source of wealth and funds. As the SRA correctly accepted, source of wealth and funds was not the same as existence of wealth and funds. The existence of wealth and funds might be readily susceptible to proof. A client's wealth would often have been accumulated over many years, from a variety of sources. Investigation of the source of a client's wealth and funds with a view to being able to prove the source would potentially involve a broad, complex historical enquiry which it would generally not be practicable to undertake in the context of a prospective or an actual client relationship. Mr Coleman KC submitted that it could be inferred that this was why the framers of the Directive opted for no more than the taking of adequate measures to establish the source of wealth and funds on a risk-sensitive basis.

9.199 The SRA's contentions that: *"it is not accepted that 'reasonable' and 'adequate' are synonyms in this context"*, and that this was *"an unhelpful gloss on the statutory language"*, were misconceived. The suggestion that a relevant person who had taken reasonable measures to establish the sources of wealth and funds could nevertheless breach Regulation 14(4)(b) involved, it was submitted, reading Regulation 14(4)(b) as imposing an obligation far more onerous than was intended by FATF in its Recommendation and by the framers of the Directive. If a firm had taken reasonable steps in all the circumstances to establish the source of wealth and funds, then it would have discharged its obligation under Regulation 14.

9.200 The SRA, it was submitted, sought to add its own substantial gloss to the statutory wording. Its contention – on which the entire prosecution was based - that "*to establish"* meant *"proving"* or *"substantiating"* or *"demonstrating'*, was wrong. There was a clear distinction in the MLRs about establishing facts and verifying or certifying facts.

9.201 As to when adequate measures to establish source of wealth were required was common ground between the parties; the Firm was to take such measures at the outset of its business relationship in May 2013.

9.202 As regards source of funds, it could be argued that Regulation 14(4) only required the relevant person to take adequate measures to establish the source of funds for whatever transaction or transactions were being proposed at the point of proposing to enter into the business relationship. There were in fact no such transactions when the Firm was first retained in May 2013. However, the Firm accepted that Regulation 14(4) required it to take adequate measures to establish the source of funds in relation to subsequent transactions on which it was proposing to act. That reading of Regulation 14(4) gave

effect to the Directive's purpose of combatting money laundering and was supported by Article 13(4)(c) of the Directive, which stated:

> *"In respect of transactions or business relationships with politically exposed persons residing in another Member State or in a third country, Member States shall require those institutions and persons covered by this Directive to… take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction".*

9.203 Mr Coleman KC submitted that the language of referring to source of funds being *"involved in business relationships"* obviously covered transactions during the life of the business relationship and not merely those that were envisaged at the outset.

The adequacy of the measures taken by the Firm to establish Client A's Source of Wealth

9.204 It was common ground that Client A was a PEP, and that by virtue of his status as a PEP and the criminal proceedings he faced, he remained a PEP until the termination of his relationship with the Firm in January 2017.

9.205 In March 2013, Salans combined through a Swiss Verein structure with the Firm and Dentons US LLP to form Dentons Group. As part of that combination, the London office of Salans was acquired by the Firm and matters and clients of Salans were transferred to the Firm with effect from 1 May 2013. Mr Chateau was asked about this in his interview:

> *"FIO: And what you are referring to is* [Client A] *being a client of Salans and then transferring to Dentons in effect.*
>
> *AC: That is actually right. So we combined which meant that the advice Salans to join Dentons which it did, and as a result of that … transaction, a number of our offices … merged, and the London office was merged with the London office of Dentons and we became, in effect, the successor practice for the Salans practice and for London.*
>
> *FIO: And, did specifically come to your attention that* [Client A] *would be, as part of that merger, be coming to the Firm.*
>
> *AC: No, it didn't. Look, we were looking at a thousand … clients so ever matters, so no and that's why I say I didn't become directly aware or involved. But there would have been papers produced in the lead up to the combination in 2013 which would have included* [Client A's] *name.*

9.206 Client A had thus been an existing client for approximately 5 years, with Mr Chateau's first dealings with him being in 2008. Mr Chateau estimated that he had met with Client A at least 12 times prior to the merger. As part of the merger process, the Firm created a 'Legacy Salans Clients – Risk Clearance Summary' dated 26 April 2013, which recorded that an Accuity report revealed that Client A was a PEP. The Firm had reviewed from the Salans' files a copy of Client A's passport and an email received in October 2012 from Mr Chateau and the matter partner (Mr Enoch) that they had each met Client A in person. The email asked *"In order to comply with UK AML*

Regulations" whether either Mr Chateau or Mr Enoch had met Client A, and whether the photo in the passport was a true likeness of the individual they had met. In providing that confirmation, Mr Chateau stated expressly that Client A *"has been my longtime client"* and Mr Enoch additionally made it clear in his email that he had met Client A on more than one occasion. Mr Coleman KC submitted that at the time of the merger, the Firm knew that Client A was long-term established client of Salans.

9.207 A Worldcheck report dated 29 March 2012, Wikipedia print-out dated 30 October 2012, and print out from Businessweek dated 30 October 2012 (which had formed part of Salans' due diligence into Client A and was reviewed by the AML team following the merger), confirmed among other things that Client A was the chairman of the Bank, which position he had held since 2001 and disclosed no negative information about his reputation or good financial standing. Prior to 2001, Client A had worked in the non-EEA country's Ministry of Foreign Economic Relations for two years in the 1990s. A number of prestigious positions and awards were referenced, including that in May 2012 a press agency had reported that the British publication EMEA Finance had named Client A as 'leader of the year' and as 'best CEO in the Central and Eastern Europe and the CIS up to 2011'.

9.208 Mr Coleman KC submitted that at the time of the first engagement, the Firm had established that the sources of Client A's wealth were as follows:

- Mr Chateau, a senior partner at Salans and a former chairman and member of its board, had worked with Client A since 2008, when Salans' relationship with the Bank began. Mr Chateau was the relationship partner. By the time Client A became a client of the Firm following its merger with Salans, Mr Chateau had known and worked with him for at least five years and had met him on around 12 occasions including at the Bank's headquarters.

- The Firm's local office had told Mr Chateau prior to the commencement of Salans' business relationship with the Bank that Client A was the chairman of the Bank, which was operating internationally, that Client A was a large shareholder of the bank, that he was a wealthy man who was very successful in finance, that he was known for being opposed to corruption and that he was extremely well connected.

- Mr Chateau's first meeting with Client A took place at the Bank's headquarters in 2008. Client A told him that he was one of the largest shareholders of the bank, owning at least 30% of it. Mr Chateau understood that much of Client A's wealth had been generated before he became the chairman of the Bank through other investments. The information obtained from Client A confirmed what Mr Chateau had already been told by Salans' local office. As stated, the SRA was wrong to claim that Mr Chateau simply relied on Client A's word.

- The Firm's understanding as to the source of Client A's wealth, derived from what Salans had previously established, was further evidenced by an AML and risk certificate dated 25 September 2014 *"Advising on the refinancing of* [Properties 3 and 4]*"* which recorded that Trust A had been set up for Client A and his family and that Client A was a beneficiary. It stated that Client A obtained, *"the source of wealth through his employment as CEO of the* [Bank] *and the wealth is derived from investments of shares and property made"*. That information could only have

been derived from Mr Chateau and/or Mr Enoch. To the same effect, an AML and risk certificate dated 16 July 2015 in relation to the sale of Property 1 by Company A stated: *"The client derives its source of wealth and funds from investment activities of the shareholder. The individual is* [Client A]*"*. Mr Coleman KC submitted that whilst the descriptions in the AML certificates were general, what mattered was not the generality, but the knowledge of Mr Chateau.

- Mr Enoch had been the matter partner for Client A at Salans since 2012 and had met him on three occasions. He carried out consultancy work for the Firm following his retirement when the firms merged in May 2013. He also understood that Client A held a substantial shareholding in the Bank through private investments.

- The first matter that the Firm acted on for Client A was opened on 1 May 2013 and was inherited from Salans. It involved assisting Client A with his personal trusts and estates. The matter file contained documents evidencing that Client A owned property in the UK worth around £30 million. That was consistent with, and supportive of, the picture of Client A's wealth and standing that Mr Chateau and Mr Enoch had obtained at Salans and carried with them to Dentons. There were also documents showing that Client A had obtained personal funding facilities from UK banks such as HSBC and Barclays who were EU regulated and subject to the MLRs, and that Client A had been instructing, and had been represented by eminent and well renowned law firms in the UK.

9.209 Thus, it was submitted, by the time the Firm was first engaged by Client A in May 2013, he was well known to the Firm (through Mr Chateau and others who had acted for him at Salans) and his source of wealth had been established. Furthermore, he had already been integrated into the regulated Western financial and legal system and been the subject of numerous AML checks by a variety of reputable banks and law firms. That position, it was submitted, was relevant to the assessment of the adequacy of the measures taken to establish the source of wealth and funds on a risk-sensitive basis.

9.210 Those measures to establish Client A's source of wealth at the time of his first retainer with the Firm should be assessed in the context of the Firm's client acceptance and AML systems and processes which, it was submitted, met or exceeded the standards of the day:

- The SRA gave the Firm positive feedback following its audit in 2014: *"[The SRA] struggled to think of anything negative to mention and said that overall they were impressed."*. The SRA's record of that audit stated that the Firm was found to be compliant in all respects and that *"Overall, a sophisticated, thorough and efficient system which together with the data of high-risk clients, reports etc, is reviewed and analysed annually"*.

- Kindleworth LLP, independent experts in law firm management including AML policies and procedures, produced reports commissioned by the Firm in 2018 and 2019 for the purposes of complying with Regulation 21(1)(c) of the MLRs 2017 commending the Firm's policies and procedures. Its findings included: *"high risk clients were truly subject to Enhanced Due Diligence"*; clients *"with PEP associations were rightly prioritised and scrutinised, with escalation processes*

followed"; and *"AML/CDD processes implemented by Dentons amount to significantly more than a mere box-ticking exercise"*.

- The Firm had a central specialist AML team operating in London which vetted prospective clients and reported through its head to the Firm's General Counsel. The AML team would carry out open-source checks to investigate source of wealth and funds of clients considered high-risk, including PEPs. That would include using the Accuity software system, which was (and still is) widely used in the City of London by banks and law firms to check sanctions lists, criminal offences databases (where publicly available), and any publicly available negative news. In addition, the AML team would rely upon information provided by partners and other fee earners. PEPs and other clients that posed reputational risks to the Firm were referred to the Firm's Business Acceptance Committee ("the BAC").

- In May 2014, the Firm implemented a new business intake system, the Frayman NBI system. Every time a new matter was opened for a client marked as high-risk, it was reviewed by a member of the AML team to re-run Accuity checks, to check the risk assessment and any other apparent changes from publicly available sources and record the results on the new business intake form, which included a section on source of wealth and funds. AML & Risk certificates ("AML certificates") were then automatically generated recording, among other things, the client's source of wealth and funds. Prior to May 2014, the AML certificates were manually created.

- The matter partner was required to confirm the accuracy of the information held by the AML team. From May 2014, when a matter was opened for a high-risk client, the AML teams would send an email to the matter partner with a link to the AML tab on the new business form. The AML tab contained information held by the Firm in relation to the client. It was visible to the AML team and the matter team working on the relevant matter. The matter partner would be asked to complete a declaration on the form in the following terms ("the high-risk declaration"):

  "The information contained in this request is consistent with my knowledge of the client, their business and their risk profile. I accept and undertake responsibility to apply enhanced ongoing monitoring to this matter, meaning I will:

  (a) Closely monitor my dealings with the client to ensure that its ownership and details change or any third parties appear to have actual ownership or control over control structures, as recorded above, [sic] and report immediately to Risk if these the client;

  (b) Closely scrutinise the matter to ensure that it is consistent with my knowledge of reputational concerns, bearing in mind the client and or matter has been assessed the client and their business and does not raise AML suspicions, bribery or as high risk;

  (c) Ensure all payments through the client account are reviewed and that I am satisfied that these do not raise any concerns."

- Following the introduction of the Frayman NBI system in May 2014, once the matter was opened, the matter partner would then receive a further email reminding them as follows ("the responsibility for ongoing monitoring email"):

  "As the matter partner for this matter, you are responsible for ensuring the information contained in the request is full and correct to the best of your knowledge. For new clients you are responsible for ensuring the AML information contained in the request is consistent with your knowledge of the client, their business and risk profile. You accept and undertake responsibility for the ongoing monitoring of this client and matter and its relationship with the firm in accordance with Firm policy and applicable AML laws. If you believe the information contained in the request is incorrect or require further assistance, please contact the Risk team."

- The Firm had written policies in place that required its matter partners to understand the client's business, the purpose of the retainer and source of wealth and funds and in relation to reporting any suspicions.

- When funds were received by the Firm into the client account for high-risk clients, the following notification was sent from the system to the matter partner:

  "The following monies were received into Client Account today. The Money Laundering Regulations 2007 and the Firm Policy require you to consider whether this raises a suspicion of money laundering as part of your ongoing monitoring of the client. You need to be confident that the source of these funds are legitimate and scrutinise the clients transaction to ensure that it is consistent with your knowledge of the client, their business and their risk profile. For further details on ongoing monitoring see Ongoing Monitoring Notification – High Risk Clients, Ongoing Monitoring Notification – Low to Medium Risk Clients and Understanding AntiMoney Laundering. If you have any suspicions that money laundering may be occurring, you must immediately contact Neil Griffiths or Andrew Cheung".

9.211 Mr Coleman KC submitted that in addition to the systems and processes that were set up by the Firm to ensure that the AML team appropriately scrutinised high-risk clients and that there were appropriate routes for escalating concerns, the Firm made it clear to its matter partners that they had responsibility: (i) for the information that was held by the AML team (including in relation to the client's source of wealth and funds) being accurate; (ii) for scrutinising each matter undertaken for the client to make sure that it was consistent with what the Firm knew about the client and did not raise AML concerns; and (iii) for subjecting any monies coming into the Firm's client account to further scrutiny in order to be confident that the source of the funds was legitimate and that the transaction was consistent with what the matter partner knew of the client, their business and their risk profile.

9.212 Mr Coleman KC noted that the SRA did not dispute or criticise any of the facts as regards the systems and procedures in place at the Firm.

9.213 As regards the adequacy of the measures taken by the Firm, Mr Coleman KC noted that although Client A was a PEP from a high-risk jurisdiction, he had already been integrated into the EU regulated financial legal system, and by necessity would already have passed the AML screening as to source of wealth and funds for satisfaction of a considerable number of reputable banks and law firms, who were each subject to exactly the same enhanced customer due diligence obligations as the Firm was. Those circumstances, it was submitted, materially mitigated any risk that his sources of funds were illegitimate or were anything other than that which Client A said they were.

9.214 Client A had already acquired a property portfolio in the UK worth at least £30 million, by the time the Firm was instructed, with the assistance of SRA regulated firms. At least one of the properties was funded by way of a mortgage from Barclays, and at least one other was funded with a mortgage from HSBC. Real estate transactions requiring a mortgage were, by their nature, less likely to be fraudulent as there could be no question of the mortgage monies being dirty money.

9.215 The market practice at the time was that when a firm acquired an existing client relationship from another recognised body, subject to the MLRs, the acquiring firm was entitled to rely on the fact that the predecessor firm would already have taken adequate measures to establish the source of wealth and funds in accordance with its obligations under the MLRs. For the purpose of compliance, the Firm was not required to apply the requirements of Regulation 14.4(b) to the Client A as if he was a new client to the Firm. It was reasonable for the Firm to have placed reliance upon Salans to verify Client A's source of wealth and funds. Market practice, it was submitted, was a relevant factor for the Tribunal to consider in its assessment of the adequacy of the measures taken to establish source of wealth and funds.

9.216 The SRA had referred, in its opening, to Regulation 17, which dealt with reliance in respect of customer due diligence measures, on other regulated entities. Regulation 5, the SRA submitted, was not engaged when it came to enhanced customer due diligence measures. There was nothing in the MLRs that precluded reliance on market practice when assessing whether the measures taken were adequate. Market practice was one of the points relied upon by the Firm to evidence the adequacy of the measures taken by the Firm. Mr Coleman KC submitted that the FIO's unsolicited evidence as regards market practice was surprising and concerning in circumstances where it had not formed part of his report. Such evidence, it was submitted, was entirely anecdotal and should be ignored by the Tribunal. There was no basis for inferring that what was said by the FIO as regards market practice was what was actually happening in the market generally. Further, the SRA's own anti-money laundering report suggested otherwise:

> *"Some MLROs and their firms had a lack of knowledge and understanding of when and how to establish a client's source of funds and source of wealth, with some firms failing to distinguish between the two. This is a concern given that it is a requirement under the MLRs in respect of PEPs and best practice for all other high risk client matters. We identified that in most cases fee earners were making enquiries of clients in respect of their source of funds and source of wealth. However, the client's response was often taken at face value with no request for any supporting documentation or corroborating information. This is of relevance to small firms as the definition of a PEP is broad (and will be*

> *wider following implementation of the 4th Money Laundering Directive) and will trigger these requirements."*

9.217 Additionally, in circumstances where the Firm's application to rely on expert evidence as to market practices had been refused by the Tribunal, it would be unfair for the SRA to adduce such evidence via its FIO, particularly when it had opposed such evidence being adduced on the part of the Firm.

9.218 The Firm, it was submitted, had not simply relied on the measures taken by Salans. It had reviewed the information on the file, including the emails in which both Mr Chateau and Mr Enoch confirmed their knowledge of Client A, who had been a longstanding client of Salans.

9.219 At the commencement of the business relationship with Client A, Mr Chateau had an appropriate understanding of Client A's source of wealth. He did not simply rely on what Client A told him; he relied on what he was told by the local branch of Salans, namely that Client A was a very wealthy individual who had acquired his wealth through business activities, including a 30% shareholding in the Bank. The SRA asserted that it was surprising that Mr Chateau had made no file note of the information he was told. Mr Coleman KC submitted that this was beside the point for three reasons:

(i) There was no dispute as to what Mr Chateau was told either by Client A or by the local office;

(ii) There was no allegation that the Firm had breached its duty to keep records; and

(iii) If Client A had not been a major shareholder in the Bank, that would have quickly become apparent in the course of Mr Chateau's dealings with the Bank and Client A in the period from 2006 – 2014.

9.220 The SRA made much of the fact that Mr Chateau was a US-qualified lawyer, practising in New York, not qualified in England. This, it was submitted, was not relevant to the adequacy of the measures taken by the Firm to establish source of wealth. The SRA referred to Mr Chateau's candidness in his interview that he was not aware of the English MLRs. This was not surprising given his practice, and was likely to be the same for an English solicitor as regards knowledge of New York money laundering regulations. The FIO did not seek to elicit any details from Mr Chateau as to his general understanding of money laundering, and the roles that lawyers played internationally in combatting that. What was clear from the interview was that, as any New York lawyer doing transactional work would be, Mr Chateau was aware of money laundering and the importance of it. In interview he stated: *"I'm aware ... generally speaking, as any lawyer should be ... of money laundering ... regulations ... but ... I don't know anything specific about the British regulations."*.

9.221 It was common ground that, notwithstanding that Mr Chateau was not (and had never been) a member of the Firm, his knowledge of Client A's source of wealth was attributable to the Firm.

9.222 Mr Coleman KC submitted that apart from the legal position of the Firm obtaining its knowledge by virtue of Mr Chateau's role in the Firm, Mr Chateau, as a matter of fact, has shared his knowledge of Client A's source of wealth with the partners at the Firm who worked on Client A's matters. This position was supported by the AML certificates which described Client A's source of wealth. This was also confirmed in the witness statement of Mr Polin, a former partner at Salans and then the Firm. Mr Polin was the partner with conduct of the Property 2 transaction. Mr Polin stated:

> *"I understood from Mr Chateau that [Client A] was a long-standing client at Salans, and following the combination, Dentons and that Client A was a wealthy businessman who had a significant financial interest in [the Bank] not merely as a result of his role as a chairman and CEO of that entity."*

9.223 As detailed in the salient features, the SRA's case that the Firm simply took Client A's word for his source of wealth was incorrect and a mischaracterisation of the evidence. Client A was well known, as was his wealth. The information he gave to Mr Chateau was confirmation of the already well-known position. The information from Client A was corroborated by those working in the local branch at Salans.

9.224 The SRA sought to deploy the inappropriate emails by Mr Chateau in support of its case. Mr Chateau was not a member of the Firm at any time, and the Firm did not seek to defend the terms in which he wrote those emails. Whilst he was entitled to express his strongly held views, he should not have expressed them in the terms that he did. The terms of those emails did not assist the SRA's case and should not be held against, or attributed to, the Firm. The sole relevance of Mr Chateau to the case was that he had established Client A's source of wealth which meant, as a matter of law, that the Firm had established Client A's source of wealth as it was obliged to do.

9.225 Mr Coleman KC submitted that the Firm complied with the guidance that was available. In particular it acted consistently and in accordance with the three anti-money laundering practice notes of February 2008, October 2012, and October 2013, issued by the Law Society and approved by the Treasury, as well as other guidance issued by the Law Society, none of which supported the SRA's construction of Regulation 14(4)(b).

9.226 In the Rule 12 Statement, the SRA recognised the relevance of guidance, where it asserted that the Tribunal might be assisted by the relevant guidance published by the Law Society *"in considering the adequacy of the measures taken by the Firm."* The SRA, it was submitted, had backtracked from that position. In its Reply to the Firm's Answer, the SRA stated that *"the Fact that Law Society guidance may not have counselled the Firm to obtain documentary evidence of the Client's source of wealth has no relevance to liability."* To suggest that the guidance was irrelevant was directly contrary to the statement made in the Practice Note:

> *"… the Solicitors Regulation Authority (SRA) has advised it will take into account whether a solicitor has complied with this practice note when undertaking its role as regulator of professional conduct, and as a supervisory authority for the purposes of the regulations. A solicitor may be asked by the SRA to justify a decision to deviate from it."*

9.227 Compliance with the guidance, it was submitted, was relevant to the question of adequacy, and was a strong factor indicating compliance with the MLRs.

9.228 Whilst the meaning of some regulations in the MLRs was clear, Regulation 14(4) was not such a provision. It was drafted in broad, imprecise terms. It is for that reason that Regulation 14(4) and its successor provision, Regulation 35 of the MLRs 2017, were supplemented by increasingly detailed guidance. It was Parliament's express intention when drafting the MLRs that guidance issued by the Law Society and approved by the Treasury (as the Practice Notes were) was relevant to any assessment of whether the MLRs had been breached. Regulation 45 of the MLRs provided in relevant part:

> *"In deciding whether a person has failed to comply with a requirement of these Regulations, the designated authority must consider whether he followed any relevant guidance which was at the time – (a) issued by a supervisory authority or any other appropriate body; (b) approved by the Treasury; and (c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it".*

9.229 Although Regulation 45 did not directly apply, it nevertheless established Parliament's intention as to the relevance of guidance issued by the Law Society and approved by the Treasury.

9.230 Other guidance issued by the Law Society was also relevant to the assessment of the Firm's compliance with the MLRs, even though it was not approved by the Treasury. The Law Society was the authorised regulator of solicitors under the Legal Services Act 2007, albeit one which had separated its representative function from its regulatory function (the latter function is performed by the SRA, which had not published any guidance at the material time). In determining whether a relevant person had taken adequate measures to establish the source of wealth and funds, it was obvious that the views of the authorised regulator were relevant to that question.

9.231 Mr Coleman KC invited the Tribunal to note that the MLRs 2017 also recognised the importance, indeed necessity, of the MLRs being supplemented by guidance as an aid to compliance. Regulation 35(4) of the MLRs 2017 ('Enhanced customer due diligence: politically exposed persons'), provided: *"In assessing the extent of [EDD measures] to be taken in relation to any particular person (which may differ from case to case), a relevant person – (a) must take account of any relevant information made available to the relevant person under regulations 17(9) and 47; and (b) may take into account any guidance which has been – (i) issued by the FCA; or (ii) issued by any other supervisory authority or appropriate body and approved by the Treasury".* Regulation 47(1) provided that *"A supervisory authority must, in any way it considers appropriate, make up-to-date information on money laundering and terrorist financing available to those relevant persons which it supervises ("its own sector")".*

9.232 The SRA, it was submitted appeared to have felt driven to argue that the guidance issued by the Law Society, and approved by the Treasury, was irrelevant to the question whether the Firm complied with the obligation to take adequate measures to establish Client A's source of wealth and funds, as the guidance provided no support for its case that Regulation 14(4)(b) required relevant persons to obtain evidence to *"prove, substantiate or demonstrate"* the PEP's source of wealth and funds. That was an

unattractive position for the regulator to adopt as a body required to prosecute responsibly, fairly and in the public interest.

9.233 That the prevailing guidance did not support the SRA's case was evident. The October 2012 and October 2013 Practice Notes stated:

> ***"Establishing Source of Wealth and Funds***
> *Generally this simply involves asking questions of the client about their source of wealth and the source of the funds to be used with each retainer. When you know a person is a PEP, their salary and source of wealth is often publicly available on a register of their interests. This may be relevant for higher risk retainers.*
>
> ***Enhanced Monitoring***
> *You should ensure that funds paid into your client account come from the account nominated and are for an amount commensurate with the client's known wealth. Ask further questions if they are not".*

9.234 The Practice Notes defined *'may'* as: *"A non-exhaustive list of options for meeting your obligations or running your practice. Which option you choose is determined by the profile of the individual practice, client or retainer. You may be required to justify why this was an appropriate option to oversight bodies".*

9.235 Mr Coleman KC submitted that this definition meant that this was a matter of judgment from the relevant person and accordingly did not require evidence. It was clear that where the MLRs required something to be verified, then evidence of that verification was also required. This was expressly stated in the MLRs. There was no such express statement as regarding establishing a position. Looking at the guidance as a whole, it did not clearly instruct or guide the obtaining of evidence to support establishing a fact such as source of wealth and funds. This, Mr Coleman KC submitted was a distinction which had been lost by the SRA when it put its case.

9.236 There was also other guidance available to Firms. In 2002, the Law Society published the first edition of its 'Anti-Money laundering Toolkit' written by Alison Matthews (formerly the Chair of the Law Society's Money Laundering Taskforce and a member of the Government's Money Laundering Advisory Committee). It was the current edition throughout the Relevant Period. The Law Society AML Toolkit provided:

> *"Nature of retainer and source of funds":*
>
> *"Establishing the source of funds is about understanding how the client is funding the retainer, while establishing the source of wealth (which you need to know for a PEP) is about looking at all of the sources of income for an individual, including historical or family funds. <u>While proof of source of funds or source of wealth is not required</u>, some supporting documentation will help to demonstrate the steps taken to protect the legal practice".* (emphasis added)

9.237 This extract from the AML toolkit correctly identified the potentially historical nature of a client's source of wealth, which no doubt was part of the reason why it advised that proof was not required. It was also clear evidence of market practice and was directly contrary to the SRA's case that proof of source of wealth and funds was required.

9.238 To similar effect, the third edition (the current edition during the Relevant Period) of the Law Society published *"Solicitors and Money Laundering – A Compliance Handbook"* dated 2009 was written by Peter Camp (the author of the "Companion to the Solicitors' Code of Conduct" and visiting Professor of Legal Ethics at the College of Law) provided:

> *"...reg 14(4)(b) requires firms to take adequate measures to establish the source of wealth and source of funds which are involved in the proposed retainer. This can be satisfied by asking the client about their source of funds and wealth. It does not necessarily require the information to be obtained from an independent source, although a higher than normal risk assessment of a PEP might suggest that this would be appropriate".*

9.239 Mr Coleman KC submitted that it was clear that the guidance did not require the relevant person to obtain evidence to *"prove, substantiate or demonstrate"* the sources of wealth and funds. The circumstances in which it might be appropriate to require the client to provide supporting documents, was a matter for the relevant person's reasonable professional judgment.

9.240 The SRA's case on this point was categorical. It asserted: (i) *"In particular, the Firm never asked Client A or his family office to confirm and evidence his salary at the Bank or to evidence the extent of his shareholding in the Bank (if any)"*; (ii) *"The Firm had no evidence, at any stage, establishing Client A's actual salary or actual shareholdings. It could easily and should have asked for such evidence in order to "establish" the "source" of Client A's wealth and funds"*; and (iii) *"To establish something means to prove or substantiate it, or at the very least to demonstrate it."*

9.241 That incorrect position, it was submitted, was the crux of the SRA's case. However, that stated position ran contrary to both the statutory guidance and the Law Society's guidance.

9.242 Further, the guidance issued by the Law Society since the Relevant Period in respect of the more detailed and onerous AML regime contained in the MLRs 2017 again made it clear that a solicitor or firm was not required to obtain proof of the PEP's source of wealth and funds. The Law Society's Guide provided (under the heading 'Supporting documents and proof'):

> *"There is no obligation to obtain proof of the source of funds at all, let alone beyond a reasonable doubt. However, it may be prudent to ask for some supporting evidence to confirm the information provided...."*

9.243 Whilst that was no longer the position, it was until at least May 2022. The current guidance from the Legal Sector Affinity Group stated that source of wealth should be verified with evidence until the relevant person is comfortable that they understand where the wealth derives from. This should be documented in a file note. That was a very different position to the guidance at the relevant time. Mr Coleman KC noted that as regards any guidance from the SRA in relation to source of wealth and source of funds – there was none, until the SRA issues its Warning Notice in 2014. There was nothing in that Warning Notice in relation to the obligation to establish source of wealth

and funds, in circumstances where the SRA would have been fully aware of the guidance already issued and available to the profession.

9.244 Mr Coleman KC submitted that the Firm reasonably believed in good faith that Client A's wealth did derive from business activities prior to the acquisition of his shareholding in the Bank, and subsequently his 30% share in the Bank. A number of sources and circumstances supported that belief, including Client A's status as someone who had already been accepted into the western regulated financial and legal system, and who had passed the AML screening, (including as to source of wealth and funds) by a number of well-known banks and law firms. All of that indicated that his source of wealth was what it was understood to be, and indeed that it was legitimate. Accordingly, it was submitted, the Firm took adequate measures to establish source of wealth at the commencement of the business relationship in compliance with its obligations under the MLRs.

9.245 Given that it was the SRA's case that the Firm failed "at any time" to take adequate measures to establish source of wealth and funds, if the Tribunal found that the Firm did take adequate measures at the commencement of the business relationship, to establish the source of Client A's wealth, then the allegations against the Firm failed. Had the SRA put its case on the basis that the Firm failed to take adequate measures throughout the retainer, then it would have been sufficient for the SRA to identify a failure at any point in time during the course of the retainer, however that was not the way the case had been put.

9.246 Mr Coleman KC noted that a curious feature of the SRA's case was its failure to acknowledge that Client A had passed the AML checks and controls of a wide range of UK banks and law firms. Accordingly, either all of those other regulated entities got it wrong (as was alleged against the Firm), or, which was far more likely, those other regulated entities got it right. If, however, they did get it wrong, it was noted that no regulatory action was being taken against any other firm in relation to their dealings with Client A.

9.247 Further, there was ample evidence that Client A did in fact have the wealth that the Firm understood him to have as a result of his shareholding in the Bank and he was well able to explain and justify how his wealth was obtained:

- An article published in a reputable independent non-EEA newspaper in 2018 provided independent evidence of the source of Client A's wealth. The Guardian has described that newspaper as *"one of the country's most important independent publications"*. Its co-founder and editor won a Nobel Peace Prize for defending freedom of expression. The article as translated stated:

  "It should be recalled here that [Client A] took the post of the chairman of the board of the [Bank] *in March 2001, accepting the proposal of [the President of the non-EEA country]. By that time* [Client A] *was already a successful entrepreneur, and his shift to working at the bank was not a shift to government service. Despite the fact that more than half of the shares of the* [Bank] *belong to the government, it is not a state bank in its purest form. Having headed up the bank,* [Client A] *began to acquire shares of the bank owned by individuals and legal entities. And by 2010 he personally controlled around 30% of the*

> *shares. But he registered only 0.02% for himself, and the rest for his relatives and close friends.*
>
> *The* [Bank's] *annual financial reports indicate that the bank regularly pays dividends. For example, in 2008-2010, around 10 million dollars were paid on ... shares controlled by [Client A]. In 2011, the* [Bank] *reduced payments of dividends, redirecting most of its profits to the development of the bank. But even during this year, around 2.5 million dollars in dividends was paid on shares controlled by* [Client A]. *Until 2015, more than 50 million dollars was paid just as dividends on* [the Bank's] *shares controlled by* [Client A]. *This amount, in fact, significantly exceeds the amount* [Client A's wife] *spent on the purchase of real estate in London, which the British authorities require her to report."* (emphasis added)

- A summary balance sheet for the Bank for the years 2010 to 2018 showed that, between 2010 and 2015, shareholders' funds in the Bank amounted to between US$264m and US$705m. Clearly, Client A's 30% shareholding of the Bank would have been worth a very considerable sum.

- Similarly, a website believed to have been created in 2019 by Client A's legal team (who were not from the Firm) and Client A provided details about Client A's purchasing of shares in the Bank from the late 1990s onwards, when there was little demand for them. The website explained that from 2001 the Bank began to perform so well that shares regularly paid dividends at a rate of 48% per annum.

- The Supperstone Judgment recorded at paragraph 60 X3770 that a document dated 31 August 2011 prepared by Werner Capital recorded Client A's net worth to be US$72,560,000. The judgment also refers at paragraph 36 X3766 to a PwC auditor's report dated 30 June 2008, the Bank's annual report dated 2013 and a Deloitte auditor's report dated 2013, which identified the state-owned shareholding as 50.2% (31 December 2007), 51.06% (31 December 2012) and 60.06% respectively. That is consistent with Client A having had the shareholding that Mr Chateau had reported (30%).

- In the extradition proceedings against Client A's wife, the Magistrate recorded that in a court in the non-EEA country, Client A had been, *"under pressure to sign away shares to act as some sort of compensation."*

9.248 The evidence, it was submitted, strongly suggested, therefore, that if the Firm had required Client A to provide documentary proof of his source of wealth, then Client A would have been able to furnish it. Indeed, it was no part of the SRA's case that he could not have done.

9.249 The SRA's case, it was submitted, amounted to a complaint that the Firm did not take adequate measures to establish that Client A's shareholding was a source of substantial wealth. This was despite the fact that (i) that is what the Firm understood one of his sources of wealth to be, and (ii) that understanding, on the evidence, appeared to have been correct. It had not been part of the SRA's pleaded case that the Firm was required to investigate whether the shareholding was properly obtained or whether it was legitimate. The sole objection, on the pleaded case was that the Firm did not obtain

evidence, notwithstanding that the evidence indicated, that had such evidence been requested, it would have been provided. And notwithstanding that, the guidance indicated clearly, evidence was not required.

9.250 As to the SRA's reliance on the fine issued to Barclays Bank by the FCA because of that bank's failings, this did not advance the SRA's case and did not assist the Tribunal in circumstances where the guidance issued in that sector required Barclays to obtain detailed evidence, which it had failed to do. That was not the position in this case where the guidance did not prescribe the obtaining of evidence to establish source of wealth and funds.

9.251 Accordingly, and for the reasons given, the Tribunal should find that the Firm did take adequate measures to establish the source of wealth at the commencement of the business relationship in May 2013.

The Firm was not required to take additional measures to establish the source of wealth in the light of the KCS report.

9.252 The KCS report, it was submitted, might be seen as the high water of the SRA's case. However, the KCS report did not call into question the Firm's understanding that Client A's wealth was derived from a substantial shareholding at the Bank, and his prior business activities.

9.253 The SRA, it was submitted, had wrongly implied that the instruction for KCS to investigate the affairs of Client A with a specific focus on how he had obtained his wealth, meant that the Firm had not already established Client A's source of wealth.

9.254 The firm recognised that the enquiries into Client A's source of wealth in order to set up a bank would be different to those required for the Firm, and would be far more exacting in line with FCA guidance. The FCA would have to fully establish, in detail, the source of wealth, and conduct an intensive historical enquiry. The suggestion that Regulation 14.(4)(b) required relevant firms to obtain evidence of wealth of the same extent and quality as that of the FCA when considering approving someone to run a bank in the UK, was, it was submitted, absurd.

9.255 No doubt the FCA spent many months investigating the fitness of a person to run a bank in the UK, and the Firm in commissioning the report was simply anticipating that reality. The SRA was therefore wrong to suggest that there was any inconsistency on the one hand, between recognising that the client would not pass the FCA's fit and proper test, and on the other, continuing to be reasonably satisfied as to his source of wealth for the purpose of Regulation 14.

9.256 The *"fit and proper person"* test applied by the FCA, included a reputation element to it: *"In the FCA's view, the most important consideration will be the person's: (1) honesty, integrity and reputation; (2) competence and capability; and (3) financial soundness"*. The fact that the KCS report indicated that an application by Client A to run a bank in the UK was very unlikely to succeed, was a completely separate question from the source of wealth and source of funds test in Regulation 14.

9.257 The findings of the KCS report should be scrutinised with careful consideration.

9.258 The KCS Report observed: *"It is notable in the first instance that there is a distinct lack of open-source intelligence available on Client A's family or personal associates. Plenty exists on [his] business affairs and position in the international banking community, most of it in glowing terms, but personal information regarding his family and history is almost non-existent".* Mr Coleman KC submitted that this entirely supported the Firm's understanding at the time; Client A was a leading banker in the country, inasmuch as plenty existed on his business affairs and position in the international banking community, most of it in glowing terms.

9.259 The KCS Report stated: *"It is a tradition in [the non-EEA country] - a closed society under the authority and rule of a [particular] clan, where patronage and cronyism still decides the occupants in positions of power - that those in high positions are mentioned in the media only positively. Analysis of publications in English, Russian and the [local language] indicates an almost total lack of negative reporting of [Client A]. It is plausible that this is a result of [Client A's] 'people' conducting a strict cleanup operation. The traces of such activity are deadlinks to deleted Internet pages."* As to that, it was difficult to see how anything could be inferred from the absence of negative reporting. And as the report acknowledged, Client A might be, "Clean".

9.260 The KCS Report referred to the kidnapping of Client A's wife, in connection with a trial, said to be politically motivated. The KCS Report stated: *"It is suspected that this kidnapping was politically motivated, a point of view seemingly confirmed by [named person] himself, who, when testifying against [a certain person] stated that 'I was forced to kidnap [Client A's wife], and not for the money'. It was even suggested by KCS local source that [Client A] may have staged the kidnapping himself in order to damage [a certain person] even further, and demonstrate his own loyalty …"* Mr Coleman KC submitted that as to the suggestion that Client A may have even staged the kidnapping of his wife, this was entirely speculative, if not farfetched. It was not supported by any evidence. Further, and in any event, this had nothing to do with source of wealth.

9.261 The KCS Report stated: *"This incident is indicative of Client A's status as a PEP. He retains significant influence in [the non-EEA country], particularly within the financial sector, and it is reported from the local sources that he's attempting to acquire shares in other banks, or take them over entirely in order to solidify his power base. Leaked WikiLeaks cables confirmed his close relationship with the president. He is additionally loyal to the president's clan, which [in the society of the local elite] confers upon him a great deal of honour and respect".* Mr Coleman KC submitted that his significant influence in the financial sector confirmed the Firm's understanding as regards Client A's position as Chairman and major stakeholder in the Bank. The paragraph confirmed that Client A was a man of substantial wealth and high status, who was well known. Importantly, there was no suggestion that his wealth had been obtained illegally under local law. As regards the reference to buying shares, on the face of it, there was no impropriety suggested.

9.262 The KCS Report stated: *"In addition to this, in 2012 [Client A's] daughter married the son of [a minister]. Given the high-ranking position and influence of both fathers, this union could be the focal point in increasing power and patronage within the [non-EEA*

country]. If via this marriage, as suspected, [Client A] would have access to the power brokers of [the local] security then this would allow him to wield even more soft power. This also ties [Client A] further into the social elite of the [non-EEA country], as there are numerous occasions of the child of one political heavyweight marrying the child of another." In his interview, Mr Chateau knew this assertion in the report to be untrue. He knew the family sufficiently to know that it was a marriage based in love and affection, not politics.

9.263 *"It's apparent that [Client A] operates a 'take no prisoners' attitude in respect to business."* Such a description, it was submitted, could be said of some businessmen in this country, no doubt. Businessmen who nonetheless acted lawfully, and engaged the services of regulated banks and law firms.

9.264 *"As well as attempts to expand the [Bank's] influence at the expense of others, he is also reputedly the 'de facto' man in charge of [another major bank] in the country".* Again, this simply confirmed what was understood by the Firm; Client A held an extremely influential position as the Chairman of the Bank in which he held a substantial stake. There was nothing improper in being the *"de facto man in charge"* of the central bank of a country; the KCS Report did not suggest any illegality. What the KCS Report did confirm was that Client A was a PEP – something which the Firm already knew. By definition, PEPs had opportunities to further their own interests. That was why they were so categorised. But it did not follow that Client A was unlawfully furthering his own interests.

9.265 *"Such control of two of the country's biggest financial institutions will give him almost limitless opportunities to further his own interests. Additionally, he owns three football clubs ... and, according to KCS's source on the ground, looks set to assume control of two more from [someone else]".* Mr Chateau knew, from his knowledge of Client A, that the assertion Client A owned three football clubs was untrue.

9.266 The KCS Report stated: *"[Client A] is not wholly immune from disgrace within [the country]. Reports emerged in 2010 that [the Bank] was being mismanaged, and that [he] had been dismissed, although the latter claim was demonstrably false. Further reports allege that a Finance Ministry audit found that the Bank was unable to repay a debt of $1 billion. Such reports were largely disavowed and deleted from the Internet save for sparce research indexes and an ... online source. In any instance, [Client A] remains in control of the Bank."* Mr Coleman KC submitted that the report of Client A's dismissal was *"demonstrably false"*. There was also the *"disavowed"* report about a $1 billion debt being unable to be paid. The fact that Client A remained in post, cast doubt on whether there was indeed a $1 billion debt that could not be paid, because if there had been, one would expect that he would not have remained in post.

9.267 *"[Client A] was additionally accused of 'apartment fraud' in 2012 over his ownership of three firms ... companies which funded construction of apartment blocks ... These flats were supposed to go to victims of an earthquake, but instead, 80 of them were put up for sale and the victims ignored. When asked to fill in forms during the construction, the residents signed papers which were later transformed into 'first refusals' without their knowledge. [Client A's] personal profit (if any) is unknown but his involvement via the three companies listed does not speak well of his business credentials".* Mr Coleman KC submitted that this was an entirely unattributed suggestion. As described,

it did not sound like fraud in any conventional sense, certainly as regards Client A's involvement. It was not suggested that Client A was involved in misleading anyone. His involvement was as owner of one of the companies. It did not call into question the fact that he was a substantial shareholder in the leading bank in the country in question.

9.268 As to the conclusions and recommendations (detailed in the SRA's submissions above), they confirmed what was already known – Client A was a PEP who was held in good standing in the non-EEA country. The conclusion acknowledged that Client A could be *"genuinely clean"* and *"have no negative connotations"*, although his connection to the political elite meant that any such negative connotations had been removed. The logic of the KCS Report thus seemed to be that a close connection to the political elite meant that Client A was 'unclean' although he could genuinely be 'clean'. Mr Coleman KC submitted that this was a no-win situation for Client A. He was 'unclean' due to his connections but seemed to be 'clean' because any negative information had been removed from public access.

9.269 The KCS Report concluded that *"There is no firm indication that* [Client A] *has directly participated in any financial fraud or corruption from his work at* [the Bank]". Mr Coleman KC submitted that there was no such indication in the KCS Report at all. *"However, it is supremely unlikely that as the Chairman, he would not have benefitted in some way from the $1 billion that went missing"*. However, that had already been disavowed in the KCS Report. This was thus a reference to something which, according to the KCS Report, did not actually happen. Accordingly, this part of the conclusion was confusing, given that it appeared to be proceeding on false factual premises. The KCS Report continued: *"even 'puppets' acting as frontmen for a hypothesised elite cabal have to be offered scraps"*. This was all pure speculation and colourful language, not supported by evidence.

9.270 *"It would appear that he is truly attempting to modernise [the country's] financial sector (and a man who receives multiple awards from respected banking institutions must be doing something right)"*. This was an important assertion as it entirely supported the Firm's understanding at the time. He was the Chairman of the leading bank in the country, and he owned a substantial stake in that bank. Further, recognition of his efforts was not just from within his own country, but were international. The KCS Report continued *"but from within the prism of cronyism amongst the elite, and continued loyalty to* [the President] - *both have the potential to cause serious problems in the future"*. Again, this did nothing more than confirm, as the Firm knew, that Client A was a PEP.

9.271 *"It's unlikely that* [Client A] *could have survived so long in [the country's] business world - and hold such a high status - without involving himself in the corruption that is endemic in that region of the world. The nature and extent of this is unclear, but* [Client A's] *powerful friends must have been sufficiently placated in order to allow* [Client A] *to sweep across the country's financial sector unchallenged, and to remain in his position against the 2010 allegations"*. Well, the 2010 allegations had been disavowed, and Client A remained in post. In this paragraph, it appears that Client A is being damned on the sole basis that he was the leading banker in the country, a fact already known.

9.272 In the final paragraph of the KCS Report it was recommended that: *"... any business dealings with* [Client A] *be conducted with <u>extreme caution</u> as his business dealings with the West could act as an entry point for a network of less well-intentioned individuals and organisations, to apply their own standards and methods to Western institutions - to say nothing of* [Client A's] *own personal ruthlessness in business. His image has been cleaned up to present him to the West as a whiter-than-white modern businessman, but the truth is that his image is tarnished via longstanding connections with, and collusion in, the unsavoury elements of [the country's] society."* Those unsavoury elements were a reference to the president and the ruling class in the country. The basis of the suggested *<u>extreme caution</u>* was that Client A was a leading public figure in his home country, where the political and economic system was not based on Western political and economic values. Mr Coleman KC surmised that that was the central point of the KCS Report – 'we do not have much of anything on this man, nothing concrete, but what we do know is that he is a leading banker, a man of influence in a country whose political and economic system is not based on western democratic and economic values'. It was from that perspective that inferences were drawn, those inferences being speculative, not based on any solid evidence. The KCS Report was, to a significant extent, undermined by contradiction in relation to the disavowal of the $1 billion that went missing. It was also undermined by what Mr Chateau personally knew about Client A.

9.273 The Directive of the European Parliament and of the Council dated 20 May 2015, on which the 2017 MLRs were based directed:

> *"The requirements relating to politically exposed persons are of a preventive and not criminal nature, and should not be interpreted as stigmatising politically exposed persons as being involved in criminal activity. Refusing a business relationship with a person simply on the basis of the determination that he or she is a politically exposed person is contrary to the letter and spirit of this Directive and the revised Recommendations".*

9.274 Whilst this case concerned the 2005 Directive and the 2007 MLRs, the same point applied. This was not a diminishment of the importance of the source of wealth and source of funds obligations in Regulation 14, but it did inform the understanding of those obligations in the context of PEPs.

9.275 The KCS Report, on its face, did raise some matters of concern which required careful consideration; such consideration was given to the Report by the Firm. The KCS Report, it was submitted, was poorly reasoned, in some respects contradictory, and in some respects, clearly wrong.

<u>The Firm's consideration of the KCS Report</u>

9.276 It was clear that Mr Chateau did not accept the findings of the KCS Report, based on his knowledge of Client A. Substantial work had been undertaken for the Bank by the time of the merger. In interview Mr Chateau explained that he considered the KCS Report to be full of speculation, with no evidential basis for its findings; there was speculation of corruption on the part of Client A without any evidence to support that position. Mr Chateau considered that the investigators/report writers *"don't know what they're doing"* – Client A did not own football clubs, it was the Bank that acquired the

clubs; Client A did not have a daughter – he had a step-daughter. The marriage was a love marriage to someone she had grown up with. Whilst he had only given two examples, he could think of many more. The additional examples were not pursued in the interview by the FIO. Mr Chateau expressed that the production of such a report without any evidence to support the assertions made therein was *"amazing"*.

9.277 In a contemporaneous email dated 13 August 2014 in relation to the KCS Report, Mr Chateau stated: *"I have been told that some of its findings are just plain wrong, or represent part of the facts, and those facts have been proven wrong"*.

9.278 Mr Cheung's evidence demonstrated that the Firm gave the KCS Report careful consideration. Importantly, the conclusion reached following those considerations was that the KCS Report did not give rise to a reasonable suspicion of money laundering such that a report to the NCA was required. That conclusion was not challenged by the SRA. When asked if he had spoken to Mr Chateau about the Report, Mr Cheung explained that he had and that:

> *"Well, Mr Chateau I think is also recorded in the contemporaneous email correspondence which has been provided to you. He's very critical of the report. You know, the issues in the report did not accord with his knowledge and understanding of the client, which is because he based, he had based, which he'd based on a relationship going back to 2008. He felt the report was very light and very unsubstantiated. I think he called the report, you know, irresponsible, or words to that effect, word to that effect rather. You know, he was critical in every respect. When he revisits the text of the report, there is some force to Mr Chateau's criticisms, criticisms of some of the negative news that's reported, you know, in the KCS report. And two bits of news which became more relevant later in 2016, and later when we first had notice of the Unexplained Wealth order issued by the High Court. And these reports about fraud, and the Ministry ordered the finding that there was a $1 billion hole potentially in [the bank]. Now, in relation to these allegations, the report expressly stated that those reports were largely disavowed, and you know, in the other case where patently it couldn't be true, but it still went on to conclude that they felt there were concerns about this individual because of his connections with others. So Mr Chateau's criticisms of the report were very strong, and I think to some degree actually, he was justified in providing such strong criticism of the report. And he asked that this report, no weight be given to the report, and that a new report be commissioned going forward."*

9.279 It was clear that Mr Cheung had, what appeared to be a full discussion with Mr Chateau, and took those views into account in consideration of the KCS Report. Mr Cheung explained that no further report was commissioned as Client A understood that his chances of a successful application for a UK Banking Licence were small, and thus he did not proceed with this application. Mr Cheung confirmed that he had discussed the KCS Report with the Firm's MLRO, but not on the basis that there was reasonable grounds to suspect money laundering. When asked whether the KCS Report highlighted any money laundering concerns, Mr Cheung explained:

> *"No, it didn't, because you know, there are only two parts to the KCS report that touch on possible fraud. And they discount themselves. There wasn't any*

evidence of his involvement in fraud, or that he had, you know, been responsible for fraudulent mismanagement at the bank. And those elements in the paragraph at the beginning of the second to last page of the report, and clear that, you know, in relation to mismanagement, that that claim is demonstrably false. And then in relation to orders, the bank was unable to pay a debt of $1 billion, such reports were largely disallowed and deleted from the Internet. So I wasn't concerned that the KCS report raised Proceeds of Crime Act issues which could have triggered a report. I wasn't concerned about that at the time. Simply, you know, there was just not enough evidence and information referencing the KCS report, in my view, to have formed that suspicion, to crystalise it".

9.280 The concerns that it did raise for Mr Cheung were reputational risk for the Firm, and so it was from that perspective that he was considering whether the Firm should continue to act. Mr Coleman KC submitted that the unchallenged evidence of Mr Cheung was that he spoke to a number of people about the KCS Report including the Firm's MLRO. The considered conclusion was that the report did not give rise to a reasonable suspicion of money laundering, such as to require a report to the NCA.

9.281 The SRA had referred to Mr Cheung's email dated 6 August 2014, in which he stated:

"As is always the case with these reports, they are never definitive in terms of proof of wrongdoing. By their nature, they can't be. The question is really whether we think (a) there is a risk that the firm could be unwittingly used to facilitate an illicit or improper transaction involving criminal property, and (b) what is the extent of the reputational risk? The answer to (a) and (b) could both be 'very high', and we could still act for an appropriate reward, and with the appropriate measures in place to closely manage the matter. The important thing is that we make the decision to act completely appreciating these risks".

9.282 Mr Coleman KC submitted that those were entirely proper questions for general counsel to raise. But it was clear from his interview that those questions were considered and resolved. As regards source of wealth, in interview Mr Cheung stated:

"I just want to re-emphasise my comments about the report. It doesn't suggest that he doesn't have, you know, [Client A] doesn't have substantial wealth. In fact, it suggests that he does and that he was a man of significant influence in [the country]. Sorry, it doesn't suggest that, it says that expressly. So, all of that is entirely consistent with our understanding of his source of wealth. You know, and his assets which he purchased in the UK and ultimately for which we provided you, we had to provide, it was all fairly along in the relationship in 2013, all entirely consistent with that."

9.283 Mr Coleman KC submitted that the conclusion reached by Mr Cheung was that the KCS report did not call into question the Firm's understanding that Client A's wealth was derived from a substantial shareholding at the Bank, and his prior business activities.

9.284 Mr Griffith, the Firm's then MLRO stated that he had spoken to Mr Cheung about Client A's intention to apply for a UK Banking Licence *"in the context of risk and business acceptance. There was no conversation between us on the subject of money laundering at that time"*. Mr Griffith considered that the KCS Report had not been brought to his attention as it *"implies to me that the conclusion must have been reached that there was nothing which required an internal report to be made"*.

9.285 Mr Coleman KC submitted that the conclusion reached by the Firm, having carefully considered the KCS Report at the highest levels (including consideration by the Firm's Global Chief Legal Officer and the Firm's then Managing Partner) was that the Firm was content to continue acting. That conclusion, it was submitted, was one that was reasonably open to the Firm. The KCS Report did not call into question the Firm's understanding of Client A's source of wealth, on the contrary, it was entirely consistent with the Firm's understanding in that regard.

9.286 Mr Coleman KC submitted that if he had persuaded the Tribunal that (in the light of the guidance prevailing at the time, the practice notes, the AML toolkit) the Firm had taken adequate measures to establish the source of wealth, that source being the shareholding, and the prior business activities that led up to it, that was the end of the KCS Report point. All the surrounding questions in the KCS report as to whether that shareholding had been obtained by foul means or fair, was not something the Firm was required to investigate. It was not something it could investigate in the context of a prospective or actual business relationship.

9.287 Mr Ramsden KC had referred in his oral submissions to the fact that Mr Chateau wrote a draft memorandum, apparently in pursuit of the possible idea of an application to the FCA. That application did not proceed and was not relevant to the Tribunal's considerations.

The Firm took adequate measures to establish the source of funds in relation to Property 1.

9.288 The facts detailed by the SRA in relation to the purchase of Property 1 were not disputed. Further:

- In relation to the due diligence undertaken by the Firm on Client A and Trustee A, no complaint was made by the SRA as regards the Firm's due diligence measures.

- All of the funds received by the Firm into the client account were received from Trustee A's bank account. At the material times, both Trustee A and its bank were regulated and subject to AML requirements requiring them to verify the source of funds and report suspicious activities. Trustee A was (and remained) as it described itself. The matter partner for the Property 1 transaction, was familiar with Trustee A as a professional trustee service provider.

- In relation to the ultimate source of the monies for the purchase, and what was known by the firm at the time:

    - o The firm knew that the funds for the purchase came from Trust B, of which Client A and his family were known to be the beneficiaries pursuant to a

trust deed, which was obtained by the Firm and from a donation of £800,000 from Company C to Trustee A.

- o The submissions above as regards Client A's source of wealth were repeated. Mr Hope, the matter partner, had personally met with Client A and Mr Chateau on at least two occasions at the Firm's offices in London prior to the purchase of Property 1, at which Client A was introduced to Mr Hope by Mr Chateau as a pre-existing client of Salans, the Head of the Bank, a very successful businessman, and a high net worth individual whom Mr Chateau knew very well.

- o In relation to the Client A's source of funds for this transaction the previous paragraph was repeated. In the context in which the client was an established high net worth individual, the property, which cost £8 million was a relatively small acquisition that Client A could readily finance. It was explicable and consistent with the Firm's understanding of the source of wealth and funds.

- o In relation to the funds from Company C that's the £800,000, described as a gift or donation, which were to be paid to the Firm via Trustee A and its bank, the Firm made reasonable enquiries before receipt of those monies. In particular, Mr Hope had been informed by a Spanish lawyer that (i) on 14 July 2014, that the bank would not release any funds until enquiries about Company C had been clarified; (ii) on 15 July 2014, that the ultimate beneficial owner of Company C was a friend of Client A and that the transfer from Company C was by way of donation. In an internal email, Mr Hope stated: *"*[Trustee A] *are the professional trustees for* [Trust B] *and need to consider whether they are comfortable with the source of funds …"* ; and (iii), on 16 July 2014 Trustee A had *"got themselves comfortable"*, were happy to proceed and were awaiting a signed deed of donation. It was clear from the correspondence that Trustee A was considering the source of Client A's funds, and were *"comfortable"* in that regard.

- o In relation to the monies received into the Firm's client account, on 18 July, 1 and 2 September 2014, Mr Hope received the "responsibility for ongoing monitoring" email (detailed above), as part of the standard AML processes within the Firm, in response to which no issues were raised.

- The deposit money did not come into the Firm's client account from Company C, but was paid to Trustee A's account at the bank before coming into the Firm.

9.289 In his interview, Mr Hope, when asked about his understanding of the SRA handbook and the SRA Standards and Regulations explained that he had a good and reasonable understanding but did not profess to be an expert. He considered that he had a reasonable understanding of the MLRs and a limited understanding of the Proceeds of Crime Act. Mr Coleman KC submitted that Mr Hope knew the relevant regulatory scheme, and understood his obligations.

9.290 Mr Hope also confirmed that he had met Mr Chateau and Client A at least a couple of times at the Firm's offices. As regards his understanding of Client A's source of wealth, Mr Hope explained: *"He was introduced to me as a pre-existing client of Salans, who had merged with Dentons in 2013, as the head of [the Bank], and a very successful businessman, a high worth individual, who Mr Chateau knew very well, and had worked with for a number of years, and was doing a number of projects and work within you know, across the firm, as I understood it. And with various partners in the London office. And my piece was very much just limited to the real estate piece".* As regards due diligence, Mr Hope explained that he relied on what he had been told by one of the Firm's managers and Mr Chateau.

9.291 Mr Hope detailed that Trustee A was a longstanding professional trustee company who was well established and a well-known regulated trustee firm, *"subject to the full rigour of the AML, European AML regulatory scheme"*. He explained that if Trustee A were comfortable as professional regulated trustees, with the source of funds, then he was comfortable. Mr Hope confirmed that at the time he had absolutely no suspicions of money laundering.

9.292 Mr Coleman KC submitted that the purchase was consistent with the Firm's understanding of the source of Client A's wealth. It was no part of the SRA's case that Property 1 was not consistent with the Firm's knowledge of Client A, his business and risk profile or that there was anything about the purchase of Property 1 that ought to have cast doubt about what was understood by the Firm about Client A's general wealth. Mr Hope had met Client A on at least two occasions at the Firm's offices prior to the purchase and had been told about Client A's financial and business status.

9.293 The purpose of establishing the source of funds to fund a particular transaction was to inhibit money laundering. Where, as here, Client A was an established high-net- worth individual, who had already been accepted into the Western regulated financial and legal system and could finance numerous transactions (including, as Client A needed on occasion, with the assistance of financing), that risk was necessarily reduced.

9.294 The Firm only accepted the three tranches of funds into its client account when Mr Hope, as the matter partner, was comfortable with the source of the funds and the Firm reasonably relied upon him to scrutinise the transaction concerned.

9.295 All of the funds received by the Firm into the client account were received from Trustee A's bank account. Both Trustee A and its bank were, at all material times, regulated and subject to AML requirements requiring them to verify the source of such funds and report suspicious activities. Further, Mr Hope was familiar with Trustee A as a professional trustee services provider.

9.296 As a result of its inquiries, the Firm understood that the funds for the transaction were coming in part from Trust B and in part from Company C, via Trustee A, and it understood the relevant connections between Trust B, Company C, Trustee A and Client A. It therefore acted consistently with the Legal Sector Affinity Group guidance in relation to source of funds (albeit that the transaction predated that guidance).

9.297 Mr Coleman KC submitted that the Firm acted reasonably in the steps it took to establish the source of funds. In all the circumstances, the measures taken by the Firm were adequate to establish Client A's source of funds. Further, the Firm complied with its obligation to carry out enhanced ongoing monitoring.

The Firm took adequate measures to establish the source of funds in relation to the Property 2 transaction.

9.298 The facts in relation to Property 2 were not denied save that the Firm opened two matter files. The file opened on 10 September was for Client A as the intended purchaser. The file opened on 25 September was for Company E for the purposes of the Firm advising on termination issues resulting from the fact that a preliminary sale agreement for the purchase had been registered at a Land Registry abroad.

9.299 On 5 September 2014 the NBI form:

- Identified Client A as the Client
- Confirmed that there were no bribery concerns
- Recorded that Client A was high risk as he was a PEP
- Identified the European law firm involved in the transaction
- Identified the source of wealth and funds as deriving from Client A's employment
- Identified that enhanced ongoing monitoring was required

9.300 Mr Polin, the matter partner confirmed the required declaration which stated:

> *"Partner declaration*
>
> *The information contained in this request, consistent with my knowledge of the client, their business and their risk profile, I accept and undertake responsibility to apply enhanced, ongoing monitoring of this matter, meaning I will:*
>
> *(a) closely monitor my dealings with the client to ensure that its ownership and control structures as recorded above, and report it immediately to Risk if these details change, or any third parties appear to have actual ownership and control over the client:*
>
> *(b) closely scrutinise the matter to ensure that it is consistent with my knowledge of the client and their business and does not raise AML suspicions, bribery or reputational concerns, bearing in mind the client and or matter has been assessed as high risk;*
>
> *(c) ensure payments to the client account are reviewed and that I am satisfied that these matters do not raise concerns."*

9.301 On 9 September 2014, Mr Polin received the completed form which he was asked to approve given Client A's status as high risk. On 10 September 2014, Mr Polin received the Responsibility for Ongoing Monitoring email which stated:

> *"As the matter partner for this matter, you are responsible for ensuring the information contained in the request is full and correct to the best of your*

knowledge. For new clients you are responsible for ensuring the AML information contained in this request is consistent with your knowledge of the client, the business and risk profile. <u>You accept to undertake responsibility for the ongoing monitoring of this client and matter and its relationship with the firm in accordance with Firm policy and applicable AML laws</u>.

If you believe the information contained in the request is incorrect or require further assistance, please contact the Risk Team". (emphasis added)

9.302 In November 2014, the Firm was provided with the SRA's AML & Counter Terrorist Financing Evaluation Report having carried out an audit of the Firm. The Firm was found to have been compliant in all areas. The Report recorded: *"Gold standard applicable across all regions"* and that *"overall, a sophisticated, thorough and efficient system which together with the data of high risk clients, reports, etc, is reviewed and analysed annually."*

9.303 On 23 February 2015, Mr Polin emailed the proposed vendor in relation to the potential purchase of Property 2, noting that it had been agreed in principle (amongst other things):

"1. The advance payment will be reduced from €10,000,000 to €1,000,000

2. The advance payment will only be repayable to the Purchaser in the event that you fail to fulfil the Preliminary Fulfilments as set out in the Preliminary SPA. The advance payment will otherwise be forfeited if the Purchaser fails to fulfil its obligation to enter into the Final Agreement."

9.304 Mr Coleman KC submitted that the reduction of the deposit from €10 million to €1 million was an indicator away from money laundering. If the purpose of this transaction was to set up some sort of faux sale which then collapsed with a deposit forfeited, the deposit would be as high as possible. Anyone attempting to launder money would not seek to reduce the amount of money being laundered.

9.305 On 3 March 2015, the €1 million was received into the Firm's client account from Company E. Those monies were paid to the vendor (who was represented by a highly reputable firm). Mr Coleman KC reminded the Tribunal that no complaint was made by the SRA as regards the customer identification and beneficial ownership due diligence undertaken in respect of Company E.

9.306 On receipt of the funds, Mr Polin received the client account monitoring email, reminding him that: *"The Money Laundering Regulations 2007 and the Firm Policy require you to consider whether this raises a suspicion of money laundering as part of your ongoing monitoring of the client. You need to be confident the source of these funds are legitimate, and scrutinise the client's transactions to ensure that it is consistent with your knowledge of the client, their business and their risk profile."*

9.307 In his witness statement, Mr Polin explained that Client A was not known to him until he heard his name mentioned by others at Salans in connection with a joint venture. He met Client A on two occasions, both of which involved Mr Chateau. He:

"... understood from Mr Chateau that [Client A] *was a longstanding client of Salans and following the combination, Dentons and that* [Client A] *was a wealthy businessman who had a significant interest in* [the Bank] *not merely as a result of his role as Chairman and CEO of that entity.*

...

... I was under the impression, given by Mr Chateau and Dentons continuing to act in other material investments that [Client A] *was a man of independent means and his source of wealth and income had been properly verified by others, including the Risk and Compliance Team of both international law firms - Salans and Dentons. Dentons acted for* [Client A] *on the acquisition of* [Property 1] *in London which involved a purchase of £8 million. As has been explained at the interview, I was not involved with the purchase of* [Property 1]. *At the time I was asked to act for* [Client A] *I assumed that* [his] *source of wealth and income had been considered properly prior to my involvement by way of due diligence, AML, KYC checks by the Risk and Compliance teams at two well recognised international law firms, Dentons and Salans, and no negative information had been brought to my attention when I was asked to act on specific engagements connected with him.*

…
The only matter in which I acted where [Client A] *or his trusts were potentially to incur significant sums was the abortive purchase of* [Property 2]. *The* [Property 2] *transaction commenced in September 2014 when Phillip Hope, a former partner at Dentons, and I met with an individual along with ... the ultimate beneficial owner of* [Property 2]. *As it transpired it was made clear at the outset of the transaction our client in fact wanted to raise bank or alternative finance to purchase* [Property 2]. *Accordingly, to the review of source of wealth and funds was not as detailed as it would have been had the client intended to make the purchase with its own funds. The seller was represented by* [a highly reputable firm]. *A preliminary sale and purchase agreement was fully negotiated and entered into for the acquisition of* [Property 2]. *A deposit of €1 million was paid. (this amount was 10% of the normal expected deposit for a transaction of this nature). The contract provided that completion was subject to a number of preconditions. The preconditions were satisfied by the seller but the buyer was unable to raise the finance necessary to complete the purchase. In accordance with the executed preliminary sale and purchase agreement, the deposit (advance payment) was forfeited as a consequence of the buyer's failure to complete.*

...

With regards to the receipt of €1 million on or around 3 March 2015, I confirm that the checks which I undertook regarding the provenance of those monies were appropriate and sufficient for this purpose. I was initially told by [Client A's representative] *that an existing company incorporated [abroad] which was part of Client A's trust structure would be used as the purchasing entity. We conducted a conflict check and obtained KYC documentation for that company. we were informed that the funding would be provided by* [Client A] *through one*

of his companies. The monies were ultimately received by Dentons from a bank [abroad] *on behalf of the named* [foreign] *private company. Based on the above and on the previous background which I had been given, along with the further assurance given to me that a respected international trust company,* [Trustee A], *continued to act for* [Client A] *and his trusts, I did not have any suspicion regarding* [Client A] *during 2014 and 2015*.

9.308 In interview, Mr Polin explained that he considered that he had a *"pretty good knowledge of the standards and regulations in the new handbook"* having received good training, and that he took *"seriously the issue of compliance and risk"*. Mr Polin also considered that he had a pretty good knowledge of the MLRs as to which he underwent regular update training and continuing education.

9.309 As to his understanding of Client A's source of funds and source of wealth at the time, Mr Polin stated:

> *"As I explained to you, all my knowledge about [Client A] and any assets and resources that he had, was primarily based on assurances from Mr Chateau and others, and the fact that I knew that files had been opened for him previously. So, I assumed the relevant checks as far as source of funds and source of wealth had been properly conducted."*

9.310 Mr Polin explained that his position as to source of wealth was summarised in his email dated 23 January 2015 to an AML analyst in the Firm, in which Mr Polin stated that Mr Enoch had *"confirmed that all the funds in the structure come from* [Client A] *and if you need further information in that regard then I suggest you ask Francois Chateau directly."*

9.311 As regards the purchase price, Mr Polin confirmed that he asked about Client A's ability to purchase the property. This was raised by him at the first meeting (although not in front of the seller) and again in subsequent emails. He was told that Client A's representative (on behalf of Client A) would be raising funds for the transaction and that finance might be raised via a third-party institution. Client A, according to what Mr Polin had been told, was looking to raise a 90% loan to value mortgage in respect of the property. *"So therefore, he would, he wouldn't be making an acquisition. He wouldn't be putting his hand in his pocket for the €94 million. He would be responsible for 10% of that. That was his intention."*

9.312 As to his understanding of where the €1 million derived from, Mr Polin explained that an email dated 3 February informed him that the funding would be provided by Client A, most likely through one of his companies, and that: *"My understanding would have been that that money, as you explained, came from the company, came from a bank within* [the EU] *and, and to us but, therefore, I wouldn't normally go behind the curtain to look further. So when we got the money, the money came, the money came from the* [EU country's] *bank on behalf of the [EU] company. So I would have thought that I was relying on the* [EU] *bank to conduct the appropriate checks that if should have conducted, before the money came to us. My suspicions, my suspicions at the time weren't raised. I don't think, you know, even sitting here now, that if I'd got money from* [a company in the EU country] *... I wouldn't go beyond that'.*

9.313 It was thus clear that Mr Polin considered that as regards source of funds, the money was safe as it was coming from a regulated bank in the EU. Mr Coleman KC submitted that this was entirely in accordance with the market practice of the time, as reflected in the Legal Sector Affinity Group guidance of August 2018. That this was Mr Polin's contemporaneous view was evidenced in the 24 February 2015 email in which he stated: *"If Dentons are to be paid the funds then there will be questions raised as to, for example, from where those funds emanate. If from within the EU, this should not be a problem"*.

9.314 Whether or not the Firm's submissions as regards market practice were accepted, it was clear that Mr Polin's understanding of market practice was that if monies came from within the EU, that was all one needed to know in respect of source of funds, unless there was a reason to look further which Mr Polin did not think there was.

9.315 In his interview, Mr Chateau explained that he thought Property 2: *"... was either 90 or 100 million and I discussed the transaction with* [Client A]. *I had told him, based on what I know, that he told me he, he had to get financing. I told him he should not even start then because it's way too expensive from what I know of ... He was used to buying properties 5-10 million, property which is much more expensive ... I tried to tell him not to do it"*. So that's Mr Chateau.

9.316 Mr Coleman KC submitted that source of wealth had already been established. The Firm identified the issue regarding the affordability of the property and was told that a 90% mortgage would be raised. In the event the mortgage was not obtained, the transaction would not proceed so the question of affordability and any consideration that might be given to the terms of the mortgage, the length it was and so on did not arise. As regards source of funds, the Firm took adequate measures to establish the source of the €1 million deposit received from Company E.

9.317 The receipt of the €1 million was consistent with the firm's understanding of Client A's wealth. The Firm ascertained that the money came from Company E, a company within Client A's trust structure, and came from an account held by that company with an EU bank regulated by an EU regulator. Mr Polin's emphatic evidence confirmed that the Firm acted in accordance with market practice in not further questioning the source of funds received from a regulated European bank; in other words, it acted in accordance with the standards of reasonably competent solicitors at the time and in accordance with the Legal Sector Affinity Group guidelines. The fact that Mr Polin was satisfied as to the source of funds was confirmed not only by what he said but also by the fact that when he received the Responsibility for Ongoing Monitoring email, he raised no concerns. Nor did he raise any concerns following receipt of the Client Account Monitoring email, which was sent when the Firm received the €1 million deposit.

9.318 Mr Coleman KC submitted that the matters asserted by the SRA to be 'red flags' as regards Property 2 were not. The deposit of €1 million received by the firm had, in fact, been negotiated down from €10 million. As previously submitted, this pointed away from money laundering for the reasons given. It was suggested that the fact that the sale price was 16 times the purchase price was another red flag. However, the previous sale had occurred 20 years before the proposed purchase. Further, Property 2 was to be financed by way of a mortgage which inherently reduced the risk of fraud, as was

detailed in the 2013 Practice Note: *"Transactions that do not involve a mortgage have a higher risk of being fraudulent"*.

9.319 A highly reputable firm was acting for the seller, and a further firm had been instructed by the client. Those factors also served to reduce the risk of fraud.

9.320 Accordingly, the Tribunal should find that the Firm took adequate measures to establish the source of funds in relation to Property 2.

9.321 Mr Coleman KC directed the Tribunal to the Firm's policy on 'Understanding Anti-Money Laundering Policies and Procedures which stated (amongst other things):

> *"Enhanced Due Diligence Procedures - What Happens With High Risk clients?*
>
> ...
>
> *Because of the increased risks associated with this class of client it's important that you know about the client's background and, in particular, confirm for yourself whether the source of funds that they are using in any transaction are legitimate. One useful way of determining this for PEPs is looking at what their published salary is and comparing this against the money that they're using for the transaction. For example, in late 2006 the High Court found that the ex-president of Zambia, Frederick Chiluba, had sold £23 million from the Zambian Government. President Chiluba was known for his extravagant spending on clothing including a reported £600,000 spent in one Swiss shop. His annual government salary was approximately £5,000. It's unlikely that he could afford any kind of considerable investment and any attempt to do so should arouse your suspicion."*

9.322 Mr Coleman KC noted that the SRA did not suggest that Client A's salary was a matter of public record. That had not been established by the evidence and seemed, given the jurisdiction, unlikely.

9.323 Nor had it been clearly advanced by the SRA that the Firm failed to act in accordance with its policy. The Firm had, in any event, acted in accordance with that policy, as the Firm had confirmed for itself that the source of funds was legitimate, in circumstances where the Firm was not required, under the MLRs, to undertake a complex historical investigation into the origins of Client A's wealth. The case bore no comparison with that of President Chiluba who appeared to have had no credible explanation for his extravagant wealth and expenditure. On the contrary, Client A did, namely his ownership of a very substantial stake in the largest bank in the country.

9.324 As the so called other relevant transactions relied upon, they were irrelevant to the matters to be considered by the Tribunal. There was no free-standing allegation of breach in relation to those matters; they were deployed as illustration of the seriousness of the alleged breaches of the failure to establish source of wealth and source of funds at (i) the commencement of the relationship, (ii) the purchase of Property 1, and (ii) the abortive purchase of Property 2. Should the Tribunal find, as had been submitted, that the MLRs had not been breached, then the relevance of the other transactions fell away.

9.325 Mr Coleman KC submitted that given all of the above, the Tribunal was invited to find that the steps taken by the Firm to establish source of wealth and source of funds were both adequate and reasonable for the purposes of compliance with Regulation 14. It was not the policy of this country to exclude money earned in countries whose political legal system was not underpinned by Western or liberal democratic values or free market values. Client A's country in evidence was very clearly such a country. That country, however, was a friendly foreign state. In discharging its obligation under the MLRs, the Firm was not required to form a value judgment about the political and economic system in that county. It was sufficient that it had established Client A's source of wealth and funds in the way it did. Importantly, it did not have to investigate historical origins of his wealth or that the means by which he had acquired it, going back many years, accorded with our liberal democratic free market values.

9.326 As regards the construction of Rule 14, by characterising it as the core issue, the SRA must have been complicity acknowledging that if it lost on that issue, its case against the Firm would be seriously undermined and difficult to establish on the facts, otherwise it was not a core issue. The SRA it was submitted, was correct to recognise that. If adequate measures meant reasonable measures, the SRA had to persuade the Tribunal that no reasonable firm would have acted as the Firm did in relation to the measures taken to establish source of wealth and funds. Indeed, that was the way that Mr Ramsden rightly put it in his opening.

9.327 The Firm, it was submitted, had acted in accordance with the Practice Notes, the Law Society AML toolkit guidance and market practice prevailing at the time. The reasonableness of the Firm's actions was evidenced by the fact that it did not occur to anyone of a number of SRA regulated individuals who were involved in the matter, (Mr Polin, Mr Hope, Mr Cheung, Mr Griffiths, the MLRO, or anyone at the AML Team) (all of whom were operating within the framework of excellent AML systems and processes and had a good understanding of the MLRs), that the Firm was required to do more as a result of its statutory obligations.

9.328 The FIO's oral evidence suggested that the SRA now saw AML as a greater regulatory priority than it did in the relevant period. He stated that "Historically at this time the SRA were getting off the ground in terms of investigating whether there had been money laundering breaches" and that it was "new territory to the SRA". A specialist AML team was set up by the SRA in around 2018. That approach, it was submitted, was in stark contrast with that of the FCA which had issued detailed guidance to the financial sector dating back at least to 2011, if not before. The SRA's comparative non-involvement in this area was reflected in its own findings in the 2016 Anti-money laundering report, in which it detailed issues as regards compliance. Those issues, it was submitted, were unsurprising in circumstances where the statutory guidance approved by the Treasury did not clearly indicate that supported documentation was required, on the contrary it indicated that it was sufficient to ask questions generally.

9.329 The position was now very different. However, in its assessment of the Firm's conduct, the SRA was seeking to apply retrospectively to past transactions the standards contained in the enhanced MLR regime that was now to be found in the 2017 MLRs and the associated guidance that simply was not available during the relevant period.

9.330 Even if the Firm did breach the MLRs, any such breach was not sufficiently serious, reprehensible or culpable to warrant a finding of a breach of the Principles or the Code or to warrant disciplinary sanction

9.331 It was common ground that only a breach of the MLRs that could be described as serious, reprehensible and culpable could give rise to breach of Principle 6 (You must behave in a way that maintains the trust the public places in you and in the provision of legal services) or Principle 8 (You run your business or carry out your role effectively and in accordance with proper governance and sound financial risk management principles). As regards Principle 7 (You must comply with your legal and regulatory obligations and deal with your regulators and ombudsman in an open, timely and co-operative manner) and Outcome 7.5 (You comply with legislation applicable to your business, including anti-money laundering and data protection legislation) the Firm contended, (but the SRA disputed), that they were also subject to the threshold of seriousness, reprehensibility and culpability.

9.332 The SRA's position, it was submitted, was contrary to the findings in SRA v Leigh Day [2018] EWHC 2276, in which the Divisional Court stated at paragraph 156:

> *"[…] In truth, if such an allegation under Principle 5 is to be pursued before a tribunal then it ordinarily needs to have some inherent seriousness and culpability. It no doubt can be accepted that negligence may be capable of constituting a failure to provide a proper standard of service to clients. But even so, questions of relative culpability and relative seriousness surely still come into the equation under this Principle if the matter is to be the subject of disciplinary proceedings before a tribunal. We do not, we emphasise, say that there is a set standard of seriousness or culpability for the purposes of assessing breaches of the core principles in tribunal proceedings. It is a question of fact and degree in each case. Whether the default in question is sufficiently serious and culpable thus will depend on the particular core principle in issue and on the evaluation of the circumstances of the particular case as applied to that principle. But an evaluation of seriousness remains a concomitant of such an allegation."*

9.333 Such general reasoning, it was submitted, applied to Principle 7 and Outcome 7.5 as much as it applied to any other Principle. In support of its approach, the Divisional Court in Leigh Day cited the Scottish case of Sharp v the Law Society of Scotland [1984] SC 129:

> *"… whether a breach of the rules should be treated as professional misconduct depended on whether it would be regarded as serious and reprehensible by competent and responsible solicitors and on the degree of culpability: see the opinion of the court delivered by the Lord President (Lord Emslie) at page 134."*

9.334 In Leigh Day, the Divisional Court acknowledged that Sharp had been decided by reference to the applicable Scottish legislation but concluded at [158] that *"[w]e consider that, though the statutory schemes are by no means the same, the like*

approach is generally appropriate and required for the English legislative and regulatory regime in the treatment of alleged breaches of the core principles".

9.335 In Sharp, the Lord President opined:

> *"A failure on the part of a solicitor to comply with a relevant rule may be treated as professional misconduct .... whether such a failure should be treated as professional misconduct must depend upon the gravity of the failure and a consideration of the whole circumstances in which the failure occurred including the part played by the individual solicitor in question. We have only to add that the Tribunal may have been encouraged to misconstrue section 20 (3) by the way in which the complaint was framed and by the line taken by the fiscal for the complainers.*
>
> ...
>
> *There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actions or omissions the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is made."*

9.336 Mr Coleman KC submitted that seriousness, in this context, was synonymous with reprehensibility. In Sharp the threshold for a finding of misconduct was identified as conduct which, *"would be regarded by competent and reputable solicitors as serious and reprehensible".* This reflected the approach of the Court of Appeal in Ridehalgh vs Horsefield [1994] Ch 205 J1377 the Court of Appeal described professional misconduct as:

> *"conduct which would be regarded as improper according to the consensus of professional, including judicial, opinion…whether it violated the letter of a professional code or not".*

9.337 Mr Coleman KC submitted that there were good reasons why the threshold of seriousness, and culpability must apply to Principle 7 and Outcome 7.5. The SRA's position would have highly unsatisfactory consequences - (i) the SRA could prosecute every single transgression of any statutory provision, no matter the triviality, and the Tribunal would be bound to find a breach of Outcome 7.5 and Principle 7 proven; and (ii) it necessarily followed that any transgression of any statutory provision, no matter the triviality, would need to be reported by any solicitor or firm to the SRA pursuant to their reporting obligations under their respective Codes of Conduct. That would not make for a reasonable and proportionate regulatory scheme.

9.338 However, it went further. The SRA's position in the present case was impossible to reconcile with its own position that only serious breaches of the MLRs need to be reported, and even then, they were only *"potentially"* investigated. In response to the

question, *"Am I required to report breaches of the Money Laundering Regulations?"* the SRA counselled as follows:

> *"You must report serious breaches of the money laundering regulations to us. Schedule 4(12) of the regulations state that supervisors must collect information regarding 'the number of contraventions of these Regulations committed by supervised persons'.*
>
> - *Serious breaches are where there are:*
> - *serious or persistent compliance failures involving safeguards designed to prevent money laundering*
> - *clear risks of money-laundering activity taking place, or*
> - *where there has been potential loss or harm to businesses or individuals."*

9.339 In answer to the question *"What sort of breaches should be reported?"* the SRA's position was that:

> *"The principles of what could constitute serious breaches of the MLRs are as follows (this is not an exhaustive list):*
>
> - *Intentional or reckless breaches of legal requirements in relation to applicable anti money laundering legislation or regulation*
> - *Systemic regulatory breaches associated with a failure of AML-related policies, controls or procedures*
> - *The facilitation of business activities which bear the hallmarks of money-laundering activity (this does not replace the legal requirement to file a SAR where appropriate)*
> - *You do not need to report one-off breaches of the regulations which are limited in scope and impact."*

9.340 Mr Coleman KC noted that there was no allegation of intentional or reckless breaches, systemic breaches or facilitation of activities which bore the hallmarks of money laundering.

9.341 Accordingly, the SRA's considered position in the guidance it provided to the profession was that there may be breaches of the money laundering regulations that were not sufficiently serious, reprehensible and culpable to warrant disciplinary action or disciplinary findings. The SRA, it was submitted, could not properly depart from that position for the purposes of securing any conviction against the Firm in this case. Further, the SRA's position, as expressed in that guidance, was correct.

9.342 Mr Coleman KC submitted that the Firm's conduct, (in the event that the Tribunal found the Firm to have breached the MLRs) was not sufficiently serious, reprehensible or

culpable to warrant a finding that the Principles or the Code were breached or that there should be any sanction.

9.343 Any breach of the MLRs by the Firm was entirely inadvertent and the SRA did not suggest otherwise.

9.344 Regulation 14 was a vague provision of uncertain scope. In accordance with the principle of doubtful penalisation, a person (or firm) should not be penalised except under clear law. This principle formed part of the context against which legislation was enacted and, when interpreting legislation, a court should take that into account. Mr Coleman KC referred the Tribunal to the comment as regards this principle which stated:

> *"In the context of legislation, the principle that a person should not be penalised except under clear law gives rise to what is sometimes described as a presumption against doubtful penalisation. The rationale is that the legislature is presumed to intend that a person on whom a hardship is inflicted should be given clear warning. The presumption against doubtful penalisation is of long-standing. For example, in Dickinson and Fletcher, Brett said: 'Those that contend that a penalty may be inflicted must show that the words of the Act distinctly enact that it shall be incurred under the present circumstances. They must fail if the words are merely equally capable of a construction that would, or one would not, inflict the penalty.*

9.345 This principle was reflected in Patel v SRA [2012] EWHC 3373 (admin), where Cranston J addressed the approach that a Tribunal should take when determining whether solicitors had breached the standards expected of them, observing that:

> *"One aspect of the principle of legality* [i.e. the rule of law] *is that solicitors should be able to ascertain what is demanded of them."*

9.346 Applying that principle to this case, Mr Coleman KC submitted that solicitors should have been able to understand what was required of them from the statutory guidance, but they could not. The statutory guidance was far from clear. Indeed, it indicated that documentary evidence was not required to support the establishing of source of wealth and funds. That was the market practice as reflected in the AML toolkit.

9.347 The Firm complied with such guidance as was available at the time in the Practice Notes approved by the Treasury, which stated that the SRA would take into account whether or not a solicitor had complied when it considered how to exercise its role as regulator and supervisory authority. The SRA, it was submitted, had not made good on that promise in this case. It was not open to the SRA to contend, as it had in this case, that the Practice Notes had no relevance to liability.

9.348 Any breach of the money laundering regulations did not stem from the Firm's systems and controls. On the contrary, the Firm had fully compliant AML systems and processes in place which had been commended by the SRA itself in 2014 in glowing terms - the gold standard.

9.349 It was noted that these proceedings related to one client of the Firm. In 2016, the Firm onboarded 1,724 new clients, 238 of them were high risk, of which 95 were high risk

as they were PEPs. As regards the single instance with which this case was concerned, the Firm was entitled to rely on the matter partners properly to assess the source of wealth and source of funds in accordance with its processes and in accordance with the reminders in the matter opening documentation and the follow up emails which reminded them of their ongoing monitoring responsibilities.

9.350 The Firm complied with market practice in relation to mergers at the time in placing substantial reliance on the AML checks already conducted by Salans. Further, the Firm complied with market practice more generally as evidenced by the fact that Client A appeared to have passed the source of wealth and source of funds checks from a number of other banks and law firms.

9.351 In all the circumstances, it was submitted, if the Tribunal found there was a breach of the MLRs, any such breach should be found to be akin to the category of cases referred to in cases such as Connolly v The Law Society [2007] EWHC 1175 (Admin) and Wingate and Evans v SRA [2018] EWCA Civ 366.

9.352 In Connolly, Stanley Burton J stated: *"I accept that generally the honest and genuine decision of a solicitor on a question of professional judgment does not give rise to a disciplinary offence".*

9.353 In Wingate Jackson LJ stated:

> *"Principle 6 is aimed at a different target from that of principle 2. Principle 6 is directed to preserving the reputation of, and public confidence in, the legal profession. It is possible to think of many forms of conduct which would undermine public confidence in the legal profession. Manifest incompetence is one example. A solicitor acting carelessly, but with integrity, will breach principle 6 if his careless conduct goes beyond mere professional negligence and constitutes "manifest incompetence": see Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin) and Solicitors Regulation Authority v Libby [2017] ACD 81.*
>
> *In applying principle 6 it is important not to characterise run of the mill professional negligence as manifest incompetence. All professional people are human and will from time to time make slips which a court would characterise as negligent. Fortunately, no loss results from most such slips. But acts of manifest incompetence engaging the principles of professional conduct are of a different order."*

9.354 There was a category of cases involving negligent mistake or misjudgement made in good faith which should not ordinarily result in a finding of breach, or, indeed, in disciplinary action being taken. This case, (if there was a breach of the MLRs) should fall into the broad category akin to a negligent mistake or misjudgement made in good faith to which a number of partners and employees at the Firm must have contributed. The fact that so many people participated in a genuine error, (if there was one), suggested that this was not the sort of mistake that should be stigmatised with a finding of breach of the Principles and Code, or should result in sanction. The SRA (correctly) acknowledged that the matters required to establish source of wealth and source of

funds were a matter of professional judgment. Mr Coleman KC submitted that if the Firm got that judgment wrong, it was an error made entirely in good faith.

9.355 As regards the alleged Principle breaches:

9.355.1 Principle 6: whilst it is obviously right that members of the public would generally expect regulated law firms to comply with anti-money laundering legislation, it was denied that, properly understood in the light of all the circumstances, the Firm's approach to dealing with Client A would be liable to undermine public trust in the profession.

9.355.2 Principle 7: if the Firm did breach Regulation 14 then the failure was a single fundamental error (and not a sustained and thereby significant failure as contended by the SRA), namely the failure to appreciate that, properly construed, Regulation 14(4) required the Firm to obtain documentary evidence to prove/verify Client A's source of wealth and funds.

9.355.3 Principle 8: the SRA's case as to why the Firm breached Principle 8 was completely unparticularised and, in reality, amounted to no more than a bald assertion that if the MLRs were breached over a period of time, it necessarily followed that the failure was a systemic one. That clearly did not follow. Further it was impossible to reconcile with: (i) the SRA's position that *"the Firm's systems and processes in general are not the subject of this prosecution"*; or (ii) the fact that the Firm complied with sound financial and risk management principles by having systems and processes in place that, if properly used and applied, met or exceeded the appropriate standards at the time.

9.356 Mr Coleman KC reminded the Tribunal that it was the Firm's position that the Principles were not engaged in any event as (i) the Firm did not breach the MLRs and (ii) even if it did, such breach did not cross the threshold of seriousness, reprehensibility, culpability for it to amount to professional misconduct or warrant the imposition of any sanction.

9.357 Mr Coleman KC noted that the Tribunal might be concerned that if it found the matters not proved, it would be sending out the wrong message about compliance with the MLRs. The Tribunal need not have that concern. The Firm, it was submitted, understood that the approach that it took to Regulation 14.4 in relation to Client A would not pass regulatory muster today, and that there were lessons to be learned from this case, not only for the Firm but for other firms as well. The Firm has learned those lessons and had proactively taken various steps to improve its policies, including requiring supporting evidence of source of wealth and source of funds as the modern guidance now clearly indicated it should.

9.358 Mr Coleman KC submitted that for all the reasons detailed, the allegation against the Firm should be dismissed.

The Tribunal's Findings

9.359 The Tribunal had listened to all the submissions made and had examined the documents with care. The Tribunal determined that the first issue to be considered was the pleading

point made by Mr Coleman KC, as its decision in that regard would affect the matters to be determined.

9.360 It was the Firm's position that in pleading the case in the way that it had, should the Tribunal find that at the commencement of the business relationship the Firm had taken adequate measures to establish Client A's source of wealth, then the allegations against the Firm failed. The SRA had not put its case on the basis of a failure at any time throughout the retainer.

9.361 Mr Ramsden KC submitted that such a submission was incorrect both as a matter of fact and as a matter of law. Regulation 14 required the Firm to establish source of wealth and funds at the beginning of the business relationship or at the point of each occasional transaction. However, Regulation 14 required the ongoing monitoring of high-risk clients. As a matter of law, that obligation arose in two ways (i) each time there was a change or development in the circumstances of the retainer and (ii) there would be regular checks as part of the ongoing monitoring obligation.

9.362 The Tribunal agreed with Mr Ramsden KC's assessment of the law. It did not accept that the pleaded case meant that a finding that, at the outset of the retainer, source of wealth and funds were established meant that the allegations against the Firm failed. Notwithstanding the construction issue, the terms of Regulation 14 were clear. A relevant person was required to *"conduct enhanced ongoing monitoring of the relationship."* (Regulation 14(4)(c)). Further, given that the SRA had, in its allegation, defined the operative dates, the Tribunal read allegation 1.1 as a failure at "anytime" between approximately 1 May 2013 and 24 January 2017.

9.363 Accordingly, the Tribunal did not accept the Firm's submissions as to the pleading of the allegation.

9.364 As to any reliance on the due diligence of other regulated entities, Regulation 17 provided:

> *"17(1) A relevant person may rely on a person who falls within paragraph (2) ... to apply any customer due diligence measures provided that-*
>
> *(a) the other person consents to be relied on; and*
>
> *(b) notwithstanding the relevant person's reliance on the other person, <u>the relevant person remains liable for any failure to apply such measures.</u>"* (Tribunal's emphasis)

9.365 The Tribunal found that the terms of Regulation 17 were clear. Whilst other regulated entities could be relied upon by the Firm, the Firm was not entitled to rely on those entities as regards establishing source of wealth and/or funds. Further, and in any event, the Firm had adduced no evidence to show that any of those other entities from which the Firm stated that it gained "comfort", had consented to being relied upon. Accordingly, reliance upon those other entities (whether or not that was the practice of the market at the time) was of no assistance to the Firm as regards compliance with its obligations under the MLRs.

The construction of Rule 14

9.366 As detailed, Regulation 14 required the Firm to take adequate measures to establish the source of wealth and source of funds for Client A. The parties had differing interpretations as to what adequate meant. The SRA's position, as detailed in its pleadings and submissions, was that *"adequate"* needed to be read together with *"establish"*, as establishing the source of wealth and source of funds was the statutory purpose. To establish something meant to *"prove, or substantiate it, or at the very least to demonstrate it"*.

9.367 It was the Firm's position that reasonable measures to establish source of wealth and source of funds were sufficient to satisfy the obligations under Regulation 14.

9.368 Adequacy was not defined in the MLRs. Its meaning was the subject of much debate and contention between the parties. The Tribunal was not assisted by the dictionary definitions relied upon by either of the parties. It was not helpful to the Tribunal for individual words to be defined in isolation. As to whether adequate and reasonable were synonymous for the purposes of Regulation 14 was a debate of semantics into which the Tribunal would not be drawn. Such a debate was unnecessary for the purposes of construing Regulation 14. The Tribunal determined that in construing the meaning of Regulation 14, the words had to be read in the context of the Regulation as a whole (and not read and defined individually), taking into account the context and the purpose of the MLRs in general.

9.369 Accordingly, the Tribunal, when considering the measures taken by the Firm to establish source of wealth and source of funds, would be considering whether those measures were satisfactory for the purpose in question.

The KCS Report

9.370 The Tribunal agreed that the relevance of the KCS Report was to the Firm's duty of ongoing monitoring. The Tribunal noted the inconsistencies within the KCS Report, and the fact that, as submitted by Mr Coleman KC, there was no evidence to substantiate the assertions made therein. The Tribunal also agreed with the submission that the Firm had considered the KCS Report with care, (as was evidenced by the contemporaneous communications) and came to the conclusion that it was able to continue acting. This was a matter of professional judgment, and given the content of the Report, was a judgment that the Firm was entitled to make. To the extent that the SRA relied on the KCS Report as evidence of any breach on the Firm's part as regards its MLR obligations, those were not accepted by the Tribunal. At most, it was found, the KCS Report might have put the Firm on notice that further enquiries were appropriate. However, as detailed, the Firm considered, in reliance on Mr Chateau, that its obligations in that regard had been satisfied. Further, there was nothing in the KCS Report that cast doubt on what the Firm considered to be Client A's source of wealth or source of funds.

The measures taken by the Firm

9.371 As detailed above, the parties made full submissions about the measures that were (or were not) taken by the Firm at the inception of the retainer with Client A. The Tribunal

did not intend to rehearse those measures in its Findings. What was abundantly clear (and was not in dispute) was that the Firm relied on the measures taken by, and the knowledge of Mr Chateau.

9.372 The SRA (i) in its pleaded case, (ii) in the submissions of Mr Ramsden KC, and (iii) in the evidence of the FIO, complained of the Firm's lack of documentary evidence to show the measures it had taken to establish Client A's source of wealth and funds at the outset of the retainer. The Tribunal was taken to the Law Society Practice Notes and to the Law Society AML toolkit, none of which stated that documentary evidence was required in order to comply with the obligations in Rule 14(4). The Tribunal determined that there was nothing in Rule 14(4) which required there to be documentary evidence. Nor was there anything in the guidance that mandated obtaining documentary evidence as proof that a relevant person had adequately established source of wealth and source of funds. It was not surprising therefore, that the Firm did not think that it was obliged so to do; it was not. The Tribunal therefore determined that to the extent that the lack of documentary evidence of source of wealth and source of funds was relied upon as evidence of a breach of the MLRs, such reliance was misplaced.

9.373 What the guidance did make clear, was that the relevant person was to ask questions of the client in order to satisfy the obligation under Regulation 14. Where the PEP has a higher-than-normal risk assessment, obtaining information from an independent source might be appropriate.

9.374 The Firm relied upon the actions of Mr Chateau as regards establishing sources of wealth and funds. The Tribunal accepted that the Firm had, in good faith, relied on the assertions made by Mr Chateau that Client A's wealth derived from his business activities prior to the acquisition of his shareholding in the Bank, and subsequently his 30% share in the Bank. However, it was clear that Mr Chateau had failed to ask the relevant questions of Client A in order to satisfy the obligations under Regulation 14. As detailed above, Mr Chateau did not ask Client A questions about his wealth or source of funds as *"it is not the culture ... because we don't do that in Europe ... this is not something we do"*.

9.375 Whilst it might have been plain to Mr Chateau that Client A was wealthy, this was not the same as establishing the source from which that wealth arose. Equally, knowledge that Client A was in funds did not equate to establishing source of funds. And establishing the source from which that wealth and those funds arose was what was required by the MLRs.

9.376 The Firm and the other partners who worked on matters for Client A, had all relied on Mr Chateau to have established source of wealth at the outset of the retainer. That this was the case was clear from the interviews with the matter partners and others at the Firm. That erroneous belief meant, the Tribunal found, that the failure to establish source of wealth endured throughout the retainer, including in relation to the purchase of Property 1 and the aborted Purchase of Property 2.

9.377 In failing adequately (or even reasonably) to establish source of wealth, the Tribunal found that the Firm had breached Regulation 14 as alleged.

Misconduct

9.378 Having determined that the Firm had breached Regulation 14, the Tribunal considered whether the Firm had breached the Principles and the Code as alleged.

9.379 The Tribunal considered with care the case law that it had been referred to by the parties. The Tribunal did not accept that Principle 7 and Outcome 7.5 were, in effect, strict liability. As had been submitted, if that was the case, every breach that failed to comply with applicable legislation, (no matter how trivial or inadvertent) would amount to a breach of Principle 7 and Outcome 7.5.

9.380 The test to be applied was, as had been submitted, whether the breach was serious, reprehensible and culpable such that it amounted to professional misconduct.

9.381 The Tribunal accepted that whilst the breach was enduring, it had been inadvertent. As detailed above, the Firm had relied on what it was told by Mr Chateau, in the belief that Mr Chateau had complied with Regulation 14. It was plain that the breach was not systemic, indeed, the Firm had been commended by the SRA for its AML systems and controls. Those systems and controls had been deployed by the Firm for each of the Property Transactions. It was clear that the Firm not only had relevant and responsible AML policies in place, but that it enforced those policies.

9.382 The Tribunal found that in all the circumstances, the breach did not amount to a breach of the Principles or Code as alleged; the breach was entirely inadvertent and thus fell within the small category of cases where wrongdoing did not amount to professional misconduct. Accordingly, the Tribunal dismissed allegations 1.2 and 1.3.

9.383 As allegation 1.1 was not a stand-alone allegation as regards professional misconduct, (the Tribunal therefore having no jurisdiction in that regard save for its factual findings) the Tribunal dismissed the matter.

Costs

10. Mr Ramsden KC applied for the costs to be paid, at least in part, given the Tribunal's finding that the Firm had breached the MLRs. There was no suggestion, (nor could there be), that the allegations, including those found not proved, were not properly brought.

11. Additionally, there were the costs incurred in addressing the Firm's application to rely on expert evidence, that application having been refused by the Tribunal. Specifically, that application related largely, but not exclusively, to the admissibility of expert opinion evidence at the liability stage. Given the Tribunal's finding, as regards that evidence, the Applicant should be awarded some costs for its successful defence of that application.

12. Further, the matter had achieved an important finding. The Tribunal's rationale for its decision in relation to the breach of Regulation 14 was an important yardstick both for the profession and for the SRA.

13. Ms Butler resisted the application for costs. Whilst the SRA had been wholly unsuccessful on its case in conduct terms, it was not suggested that the SRA had acted unreasonably or improperly in bringing the case. However, there were four aspects of the case that were relevant to the Tribunal's determination on whether the SRA should be awarded any costs:

    (i) the SRA did not take into account the Law Society practice notes, despite stating in terms in those practice notes that it would take them into account when deciding whether to bring proceedings for misconduct.

    (ii) in relation to Principle 6, there was no allegation of manifest incompetence.

    (iii) in relation to Principle 8, the SRA had, at no stage, made any criticism of the Firm's systems and controls, and nor realistically could it in a context in which its own audit of the firm in 2014 found that those systems and controls to be the "gold standard"; and

    (iv) the SRA did not follow is own guidance in bringing the prosecution.

14. Given the authorities on costs for the successful Respondent, the Firm was not in a position to make an application for its own costs, as it could and would have done had these proceedings been civil litigation. Ms Butler submitted that in all the circumstances, an order for costs against the Firm would be extraordinary. As to the submissions at the CMH in relation to expert evidence, that hearing had been ordered by the Tribunal in its usual way in order to manage the case. The further hearing did not incur any additional costs.

15. Mr Ramsden KC's closing point about the significance of this decision to the Tribunal and to the wider profession, in terms of the relevance of having found the breaches of the MLRs was not to the point. The Tribunal's decision in that regard would stand regardless of the outcome on costs. It did not follow that the Firm, having been found not culpable, should, in some way, have to pay costs for the SRA to make a point to the profession.

16. The Tribunal agreed in full with Ms Butler's submissions. Accordingly, the Tribunal made no order as to costs.

Statement of Full Order

17. The Tribunal Ordered that the allegations against DENTONS UK AND MIDDLE EAST LLP, be DISMISSED.

    The Tribunal further Ordered that there be No Order as to costs.

Dated this 18th day of June 2024
On behalf of the Tribunal

B Forde

B Forde
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
18 JUN 2024