SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12647-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

WILLIAM JOHN GREGORY OSMOND First Respondent

PAUL CHRISTOPHER FLAHERTY Second Respondent

Before:

Mr R Nicholas (in the chair)
Mr C Cowx
Mr B Walsh

Date of Hearing: 25 February 2025

Appearances

James Counsell KC instructed by the Solicitors Regulation Authority, for the Applicant.

The First Respondent appeared and was not represented.

Gregory Treverton-Jones KC instructed by Weightmans LLP, The Hallmark Building, 105 Fenchurch St, London EC3M 5JG for the Respondent.

JUDGMENT ON AN AGREED OUTCOME

Allegations

The First Respondent

1. The allegations made by the SRA against the First Respondent, William John Gregory Osmond are that, whilst in practice as a solicitor at Osmond Solicitors Limited ("the Firm") he:

1.1. Between 12 March 2014 and 3 October 2017, in respect of one or all of the matters identified in Appendix 2 to this Statement, caused or allowed payments to be made from the Firm's client account in circumstances other than in respect of instructions relating to an underlying transaction being undertaken by the Firm and the funds arising therefrom or in respect of the delivery by the Firm of a service forming part of its normal regulated activities.

In doing so, he breached or failed to achieve –

i. Rule 6.1 of the SRA Accounts Rules 2011 ("the SAR");
ii. Rule 14.5 of the SAR;
iii. Rule 20.1 of the SAR;
iv. Principle 2 of the SRA Principles 2011 ("the 2011 Principles");
v. Principle 6 of the 2011 Principles; and/or
vi Principle 8 of the 2011 Principles.

1.2 Between 12 March 2014 and 3 October 2017, in respect of one or all of the matters identified in Appendix 2 to this Statement, being at all relevant times a member of the Firm and the partner with primary responsibility for its relationship with Person A, in respect of matters connected to Person A, he materially contributed to the Firm's anti-money laundering failures by failing adequately or at all to:

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

1.2.3 apply enhanced customer due diligence measures ("EDD") and/or enhanced ongoing monitoring where indicated, contrary to Regulation 14 of the 2007 MLR's or, where such failings occurred on or after 26 June 2017, to Regulation 33 of the 2017 MLR's.

In doing so, he breached or failed to achieve: -

i. Principle 6 of the 2011 Principles;
ii. Principle 8 of the 2011 Principles; and/or
iii. Outcome 7.5 of the SRA Code of Conduct 2011**.**

The Second Respondent

2. The Second Respondent, whilst in practice as a solicitor, director and/or the COFA and COLP of the Firm, between 1 January 2015 and 3 October 2017, in respect of one or all of the matters identified in Appendix 2 to this Statement, he allowed payments to be

made from the Firm's client account in circumstances other than in respect of instructions relating to an underlying transaction being undertaken by the Firm and the funds arising therefrom or in respect of the delivery by the Firm of a service forming part of its normal regulated activities**.**

In doing so, he breached or failed to achieve –

i. Rule 6.1 of the Solicitors Accounts Rules 2011
ii. Rule 14.5 of the SAR;
iii. Rule 20.1 of the SAR;
iv. Outcome 7.2 of the SRA Code of Conduct 2011;
v. Principle 6 of the 2011 Principles; and/or;
vi. Principle 8 of the 2011 Principles;

Background

3. The First Respondent is the owner of the Firm. Both the First Respondent and Second Respondents had been directors of the Firm since 23 August 2010 and 23 June 2015 respectively and managers at the Firm. In addition, both were signatories to the Firm's Client Account and could authorise payments from it. Both were each responsible for the Firm's (and each other's) compliance with the SAR and remedying any breaches on discovery.

4. The Second Respondent was the Firm's Compliance Officer for Legal Practice ("COLP"). He was also the Firm's Compliance Officer for Finance and Administration ("COFA").

5. On 10 April 2019, the First Respondent was arrested by the Serious Fraud Office on suspicion of offences relating to money laundering. The Serious Fraud Office executed a search warrant at the Firm's premises which resulted in a number of the Firm's hard copy files being seized.

6. On the 11 April 2019, the SRA commissioned its own forensic investigation into the Firm's activities without notice and a detailed report dated 3 July 2020 was produced. The Forensic Investigating Officer's Report (FIR) identified six transactions conducted by the Firm on behalf of a specific client (Person A) and businesses associated with him. The Firm was alleged to have received and paid out £388 million in multiple currencies and charged nearly £1.2 million in fees

7. The Report focused on six exemplified matters relating to six of Person A's companies recording that between 12 May 2014 and 3 October 2017 the firm received £31,905,112.30 and paid out £28,337,021.19 without any underlying legal transactions to justify those payments. This was in breach of SAR and in breach of the Money Laundering Regulations (MLR 2007 and MLR 2017).

8. The Second Respondent, in a statement made in February 2025, explained that after becoming COFA and conducting checks on client ledgers, he had spotted some high volume transactions that did not relate to conveyancing matters and after conducting further checks established that these transactions related to Person A and his associated companies. He stated that when he spoke to the First Respondent to check the source

of funds and check that SAR was not being breached, he was assured by the First Respondent that the entries were properly made and that having known Client A for a long time and had no reason to doubt the propriety of any of the transactions. Based on these assurances, the Second Respondent did not conduct any further enquiries or check the files himself.

9. As a result of the report of the FIR, a decision was made by the SRA for the conduct of both of the Respondents to be referred to the Tribunal.

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

10. The parties invited the Tribunal to deal with the Allegation against the Respondents in accordance with the two Statements of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

11. The Applicant was required to prove the allegations against both of the Respondents 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 Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

12. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondents' admission to allegations and the associated breaches of the Principles, Rules and Codes of Conduct were properly made.

Sanction

13. The Tribunal considered the Guidance Note on Sanction (11th Edition February 2025). The Tribunal's overriding objective when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, the Tribunal's role was to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances. In determining the seriousness of the misconduct, the Tribunal was to consider the Respondents' culpability and harm identified together with the aggravating and mitigating factors that existed.

14. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondents' admission to all of the allegations and the associated breaches of the Principles, Rules and Codes of Conduct were properly made.

<u>The First Respondent</u>

15. The First Respondent admitted to knowingly allowing the Firm's client account to be used as a banking facility for no other reason than the convenience of a client. The Tribunal viewed this breach of SAR to be very serious in view of the policy reasons identified in: *<u>Fuglers LLP & Ors v Solicitors Regulatory Authority</u>* [2014] EWHC 179

(Admin) at Para 39, for a solicitor to ensure that their client account should not be used in such a way.

16. The Tribunal, in particular, considered the comments of Mr Justice Popplewell in ***Fuglers*** at Para 46, that allowing a client account to be used as a banking facility was misconduct that was serious enough in that case to:

> "*…justify a sanction which sends a clear message, so as to deter similar conduct by anyone in the future, that permitting a client account to be used as a banking facility in this way and on this scale is not misconduct of a technical kind, but misconduct which has the potential to cause real and substantial damage to the profession and its members*".

17. The misconduct in this instance was aggravated by the number of transactions in question and the fact that the misconduct took place over a period of over three years. Aside from the Firm's own written anti-money laundering policies, controls and procedures, there was clear guidance from the Law Society and the SRA warning of the need to mitigate the risks of the Firm's services being used for money laundering, which the First Respondent should have been aware of.

18. Despite the fact that the transactions did not result in loss to any client or third party and there being nothing to suggest that the First Respondent profited from the misconduct, the Tribunal took the view that misconduct fell within the range to merit striking off from the roll. However, given the indefinite restrictions proposed, in addition to the period of suspension, the Tribunal believed that the public would be adequately protected from the First Respondent in the future.

The Second Respondent

19. The Tribunal in addressing sanctions against the Second Respondent took account of the fact that the Second Respondent in his role as the COFA was aware of high value payments being made to third parties from the client account between 2015 and 2017 but did nothing to investigate whether there were any underlying transactions in respect of any services that the Firm was providing to Client A.

20. The Tribunal further noted that but for the fact that he was informed that the Firm's accountants would be producing a Qualified Accountant's Report, the breaches may have continued for a longer period of time.

21 The Tribunal acknowledged the regret that the Second Respondent expressed for his mistaken belief that he could rely on assurances provided to him from his co-partner whom he respected, trusted and had known for over 10 years. Despite this, the Tribunal assessed the Respondent's Misconduct to be moderately serious. It further determined that a Reprimand or a Restriction Order was not appropriate in the circumstances. However, given the specific nature of the misconduct, neither the protection of the public nor the protection of the reputation of the legal profession justified Suspension or Strike Off.

22. A fine was therefore deemed to be appropriate.

Costs

First Respondent

23. The Applicant and the Respondent agreed costs in the sum of £50,000

24. The Tribunal determined that the agreed costs were reasonable and proportionate Accordingly, the Tribunal ordered the Respondent, to pay costs in the sum of £50,00.00.

Second Respondent

25. The Applicant and the Respondent agreed costs in the sum of £15,000.00.

26. The Tribunal determined that the agreed costs were reasonable and proportionate Accordingly, the Tribunal ordered the Respondent, to pay costs in the agreed sum of £15,000.00.

Statement of Full Order

First Respondent

27. The Tribunal ORDERED that the Respondent, WILLIAM JOHN GREGORY OSMOND, solicitor, be suspended from practice as a solicitor for the period of 12 months to commence on the 25th day of February 2025 and it further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £50,000.00.

28. The Respondent may not:

- Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body; or as a freelance solicitor; or as a solicitor in an unregulated organisation;
- Be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration;
- Hold client money;
- Be a signatory on any client account;

Second Respondent

29. The Tribunal ORDERED that the Respondent, PAUL CHRISTOPHER FLAHERTY do pay a fine of £5,001.00. Such penalty to be forfeit to His Majesty the King and it further ordered that he do pay the costs of and incidental to, this application and enquiry fixed in the sum of £15,000.00.

Dated this 24th day of March 2025
On behalf of the Tribunal

R. Nicholas

R. Nicholas
Chair

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

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

WILLIAM JOHN GREGORY OSMOND

Respondent

DRAFT AGREED STATEMENT OF FACTS AND OUTCOME

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1. By a statement made by Matthew James Edwards on behalf of the Applicant, the Solicitors Regulation Authority Limited (the "SRA"), pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019, dated 19 July 2024 ("the Rule 12 statement"), the SRA brought proceedings before the Tribunal making allegations of misconduct against the Respondent.

2. Definitions and abbreviations used herein are those set out in the Rule 12 Statement. The numbering of the allegations as outlined in the Rule 12 statement has also been retained in this document for ease of reference.

THE ALLEGATIONS

3. The allegations made by the SRA against the Respondent, William John Gregory Osmond (SRA ID: 90805), are that, whilst in practice as a solicitor at Osmond Solicitors Limited ("the Firm") he:

    1.1 Between 12 March 2014 and 3 October 2017, in respect of one or all of the matters identified in Appendix 2 to this Statement, caused or allowed payments to be made from the Firm's client account in circumstances other than in respect of instructions relating to an underlying transaction being undertaken by the Firm and the funds arising therefrom or in respect of the delivery by the Firm of a service forming part of its normal regulated activities.

In doing so, he breached –

i. Rule 6.1 of the SRA Accounts Rules 2011 ("the SAR 2011");
ii. Rule 14.5 of the SAR 2011;
iii. Rule 20.1 of the SAR 2011;
iv. Principle 2 of the SRA Principles 2011 ("the 2011 Principles");
v. Principle 6 of the 2011 Principles; and/or
vi. Principle 8 of the 2011 Principles.

The facts and matter relied upon are set out at paragraphs 24 to 70 below.

1.2 Between 12 March 2014 and 3 October 2017, in respect of one or all of the matters identified in Appendix 2 to this Statement, being at all relevant times a member of the Firm and the partner with primary responsibility for its relationship with Person A, in respect of matters connected to Person A, he materially contributed to the Firm's anti-money laundering failures by failing adequately or at all to:

1.2.1 apply customer due diligence measures ("CDD"), contrary to Regulation 7 of the Money Laundering Regulations 2007 ("**the 2007 MLR's**") or, where such failings occurred on or after 26 June 2017, to Regulations 27 and/or 28 of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("**the 2017 MLR's**");
1.2.2 conduct ongoing monitoring of its business relationships with such entities, contrary to Regulation 8 of the 2007 MLR's or, where such failings occurred on or after 26 June 2017, to Regulation 28(11) of the 2017 MLR's; and
1.2.3 apply enhanced customer due diligence measures ("EDD") and/or enhanced ongoing monitoring where indicated, contrary to Regulation 14 of the 2007 MLR's or, where such failings occurred on or after 26 June 2017, to Regulation 33 of the 2017 MLR's.

In doing so, he breached or failed to achieve:–

i. Principle 6 of the 2011 Principles;
ii. Principle 8 of the 2011 Principles; and/or
iii. Outcome 7.5 of the SRA Code of Conduct 2011.

The facts and matter relied upon are set out at paragraphs 85 to 101 below.

ADMISSIONS

4. The Respondent admits Allegations 1.1, 1.2.2, and 1.2.3 and the associated breaches of the Principles and Codes of Conduct referred to, as set out in this document.

5. The Respondent does not admit Allegation 1.2.1. It is the Respondent's position that he did not materially contribute to the Firm's anti-money laundering failures by failing adequately to apply customer due diligence measures ("CDD"), contrary to Regulation 7 of the Money Laundering Regulations 2007 ("**the 2007 MLR's**") or Regulations 27 and/or 28 of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("**the 2017 MLR's**").

6. The Applicant has carefully considered the material submitted by the Respondent in the course of these proceedings and no longer considers there to be a realistic prospect of the Tribunal making an order in respect of Allegation 1.2.1. It is of note that the Respondent:

    6.1 Did not disclose any information in regards to the six exemplified matters during the course of the Applicant's investigation given the criminal investigation that was being conducted by the Serious Fraud Office ('SFO') at the time; and
    6.2 Did not provide a response to the Applicant's Notice dated 12 November 2020 in respect of these allegations.

7. On this basis the Applicant applies for permission to withdraw Allegation 1.2.1 pursuant to Rule 24 of The Solicitors (Disciplinary Proceedings) Rules 2019.

8. The Parties invite the Tribunal to approve this Agreed Outcome on this basis. The Parties consider, in all the circumstances that the proposed Agreed Outcome represents a proportionate outcome to the proceedings which is in the public interest. The SRA has considered the admissions being made and whether those admissions, and the outcomes proposed in this document, meet the public interest having regard to the gravity of the matters alleged. For the reasons explained below, and subject to the Tribunal's approval, the SRA is satisfied that the admissions and outcome do satisfy the public interest.

PROFESSIONAL DETAILS

9. The Respondent was admitted as a solicitor on 2 April 1979. At all material times he was the owner and manager of the Firm. He holds a current Practising Certificate with the conditions:

    a. The Respondent may not act as a manager or owner of any authorised body.
    b. Subject to condition one, the Respondent may act as a solicitor only as an employee and only where that employment has first been approved by the SRA.
    c. Conditions one and two to become effective 90 days from the date of this decision (16 April 2024).
    d. The Respondent may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body.
    e. The Respondent does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account.

THE FACTS AND MATTERS RELIED UPON IN SUPPORT OF THE ALLEGATIONS

Background

10. The Firm commenced trading as a legal practice on 1 May 2009, having previously traded as a partnership (Osmond & Osmond – SRA ID 363601). The Respondent is the owner of the Firm. The Respondent has been a director of the Firm since 23 August 2010 and is a manager of the Firm.

11. As a manager at the Firm, he was responsible for the Firm's compliance with the Accounts Rules and was obliged to remedy any breaches promptly upon discovery:

see Rules 6.1[1] and 7.2[2] of those rules. A principal's obligation to ensure compliance with the Accounts Rules is of course a matter of strict liability.[3]

12. The Respondent became the Firm's money laundering reporting officer ("MLRO") on 21 January 2018.

13. In addition, the Respondent was a signatory to the Firm's client account and could authorise payments from it.

14. On 10 April 2019, the Respondent was arrested by the Serious Fraud Office on suspicion of offences relating to money laundering. The SFO executed a search warrant at the Firm's premises which resulted in a number of the Firm's hard copy files being seized.

15. Following the Respondent's arrest, the SRA commissioned its own forensic investigation. This commenced on 11 April 2019 and ultimately resulted in a detailed report dated 3 July 2020 ("**the FI Report**").

Person A

16. The FI Report focused on transactions conducted by the Firm, on behalf of their client, Person A and his associated businesses which included:

a. Company 1 [3796];
b. Company 2 [4159];
c. Company 3 [3724];
d. Company 4 [4427];
e. Company 5 [4404]; and
f. Company 6 [4177].

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[1] *"All the principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm. This duty also extends to the directors of a recognised body or licensed body which is a company, or to the members of a recognised body or licensed body which is an LLP. It also extends to the COFA of a firm (whether a manager or non-manager)."*

[2] "*In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the firm. This duty extends to replacing missing client money from the principals' own resources, even if the money has been misappropriated by an employee or another principal, and whether or not a claim is subsequently made on the firm's insurance or the Compensation Fund."*

[3] See *R. (on the application of Holden) v Solicitors Regulation Authority* [2012] EWHC 2067 (Admin) per Irwin J at [19]

17. In a note written by the Respondent to the SRA dated 3 November 2019, he describes how he first met Person A in about 1996. He was told by Person A that he was qualified as an attorney in South Africa and was now working internationally as a businessman with interests in logistics and mining. The Respondent recalls first being instructed by Person A at that time to obtain an injunction against a former business associate. From 2003 to 2019, the Firm acted for Person A, or a company owned or controlled by him, in approximately 132 matters. Person A was described by the Respondent as a "*substantial client of the firm accounting for about 10% of its turnover*".

18. The FIR focused on six 'exemplified matters' relating to six of Person A's companies. The FIR records that between 12 May 2014 and 3 October 2017, the Firm received £31,905,112.30 into its client account in respect of these matters and paid out £28,337,021.19[4], without there being any underlying legal transactions to justify all those payments as required by the prohibition against using a client account as a banking facility set out in Rule 14.5 of SAR. The figures are broken down, company by company, in the table in the FIR at para 30.

Bank Accounts

19. The Firm held multiple bank accounts with HSBC, 31 Holborn Circus, London, EC1N 2HR; 8 Canada Square, London, E14 5HQ, and Santander, 21 Prescott Street, London, E1 8AD. Cheque and manual CHAPS payments can be authorised by the signatures of the Respondent and Paul Flaherty, another director and manager of the Firm. Additionally, the Firm operated online banking which could only be accessed and operated by the Respondent and Paul Flaherty.

Qualified Accountant's Report ("Qualified AR") and Osmond Corporate Limited

20. The Firm's Accountant's Report Form dated 4 October 2017 for the reporting period 1 April 2016 to 31 March 2017 considered there to be material breaches of the Solicitors Accounts Rules and outlined:

"We have identified a few client ledger accounts belonging to connected parties where it is apparent that some funds have been processed for purposes unconnected with legal advice. Such payments into and transfers or withdrawals from such ledgers have been made pursuant to instructions received from the client in circumstances where

[4] Those figures omit sums which represent inter-ledger payments in and out of the client account.

no underlying legal transactions are evident. In the circumstances, and in respect of such transactions, this constitutes a breach of Rule 14.5 of SAR 2011".

21. The Respondent informed the FIO that the matters identified in the Qualified AR were:

    a. Company 1 [3796]
    b. Company 2 [4159]
    c. Company 4 [4427]
    d. Company 5 [4404] and
    e. Company 7 [4397][5].

22. In a witness statement dated 12 July 2019 the Respondent stated that Osmond Corporate Limited was incorporated on 22 December 2017 to 'deal with the payment of government charges and registered agents' fees in relation to the overseas companies which were beneficially owned by [Person A]'.

23. Within the note provided by the Respondent dated 3 November 2019, he stated that the *"company was established so that these services could continue to be rendered and funds could be received from [Person A] and disbursed to registered agents overseas without inviting the suggestion that the firm's client account was in anyway being used to provide banking services".*

Allegation 1.1 – provision of banking facility

24. Person A was a client of the Firm. As set out above between 12 May 2014 and 3 October 2017, the Firm received over £30 million into its client account in respect of 6 exemplified matters below and paid out a similar amount when there was no evidence of an underlying legal transaction linked to the transaction.

25. The Respondent caused or allowed these payments to be made in breach of Rule 14.5 of SAR 2011 for the reasons set out below.

Exemplified Matter 1 – Company 1 [3796]

26. The client care letter dated 12 May 2014, signed by Person A on 13 May 2014, outlined the scope of the Firm's instructions as follows:

[5] Company 7 was not exemplified as part of the FI report

"*My present understanding is that you require us to advise on the terms of the Agreement between the Company and Cross Country Logistics Limited ("Cross Country") for a loan of USD 8,000,000.00. Thereafter you require us to oversee and administer the activities of the Company including all matters relating to English law (save for the exceptions referred to below) and to disburse all funds subject at all times to the concurrence and approval of the directors of the Company*."

27. The client ledger demonstrates that $8,000,000.00 was deposited into the Firm's client account from Cross Country on 13 March 2014. On 14 and 17 March 2014, a total of $8,000,000.00 was paid to Company 1 via their Winterbotham bank account based in the Bahamas.

28. A further $2,342,673.61 was deposited into the client account from Cross Country on 20 March 2014 and was similarly paid out to the Winterbotham bank account. The matter documents did not explain why the additional $2,342,673.61 was deposited into the Firm's client account.

29. Company 1 deposited $8,499,989.11 into the Firm's client account on 6 May 2015. Person A explained in an email to the Respondent that this constituted a repayment of the Cross Country loan made on 14, 17 and 20 March 2014. In fact, no payments made to Cross Country could be identified from the client ledger. What can be seen from the ledger is payments being made to multiple third parties and multiple inter-ledger payments totalling $1,432,276.89 at the request of Person A. The total payments third parties is scheduled in the FI Report.

30. Documents recovered from the Firm evidenced requests made by Person A to the Respondent to transfer funds from the Firm's client account. These include requests to:

a. Transfer $975,000.00 to "Audley" using the same coordinates as in the previous payment;
b. Sell such USD as is necessary to purchase €100,000.00 and make an onward transfer of that €100,000.00 to Royal Oceanic;
c. Sell such USD as is necessary to purchase £250,000.00 and make an onward transfer of that £250,000.00 to Haymaker Property Company Limited; and
d. Transfer $100,000.00 to Helen Adelle Southey in Brisbane, Australia.

31. There was no documentation on the matter file:

a. To demonstrate that Cross Country was legally represented in respect of the loan agreement;
b. To demonstrate the underlying legal work undertaken by the Firm with regards to the initial receipt and payment of the $8,000,000.00;
c. To demonstrate the legal work undertaken by the firm in respect of the additional $2.342,673.61 received and paid out on 20 March 2014;
d. To demonstrate the legal work undertaken by the firm in respect of the $8,499,989.11 received from Company 1 on 6 May 2015, and the subsequent third party payments made by the Firm; or
e. To evidence the loan between Company 1 and Cross Country in respect of the $8,000,000.00 loan.

Exemplified Matter 2 – Company 2 [4159]

32. The client care letter dated 23 December 2015, unsigned, outlined the scope of the Firm's instructions as follows:

"My present understanding is that the Company is owed the sum of USD 7,500,000 by First Quantum for advisory services which it rendered to that company in connection with the restructuring of outstanding liabilities relative to the Echo Group of companies. You require this firm to recover this sum from First Quantum."

33. As part of the Firm's instruction a letter was sent by the Firm on behalf of Company 2 seeking payment of the sum of $7,500,000.00 by First Quantum.

34. The matter ledger demonstrated the following deposits into the Firm's client account:

a. $5,000,000.00 – 19 January 2016 – First Quantum Minerals Limited;
b. $3,999,989.73 – 22 April 2016 – Person A;
c. $2,500,000.00 – 8 July 2016 – First Quantum Minerals Limited; and
d. $999,990.58 – 12 July 2016 – Person A.

35. The payments from First Quantum and Person A funded payments totalling $10,342,431.15 to multiple third parties. This included multiple payments to a mining concern in the Democratic Republic of Congo.

36. In addition there were 30 inter-ledger transfer payments totalling $2,537,699.84 paid to other Person A client accounts.

37. Documents recovered from the Firm evidenced requests made by Person A to the First Respondent to transfer funds from the Firm's client account. These include requests to:

a. Transfer $500,000.00 to Audley Street Investments LLC using the new co-ordinates I have just sent you;
b. Transfer $250,000.00 to Audley using the same co-ordinates as your previous payment to them;
c. Transfer $500,000.00 immediately to "Audley" using the same coordinates as you used for your previous transfer to "Audley";
d. Transfer $200,000.00 to Mining & Mineral Contracting Services and $100,000.00 to Manono Minerals;
e. Transfer $120,000.00 to Manono Minerals SARL and $30,000.00 to Mining & Mineral Contracting Services;
f. Transfer $700,000.00 to Manono Minerals SARL and $50,000.00 to Mining & Mineral Contracting Services; and
g. Transfer $1,000,000.00 to Snupps Limited.

38. There was no documentation on the matter file:

a. To demonstrate the advisory services work conducted by Company 2 for First Quantum and how that work was connected to the underlying legal work that the Firm was engaged to undertake.
b. To demonstrate the underlying legal work undertaken by the Firm in respect of the additional monies totalling approximately $5,000,000.00 deposited by Person A or the payments made to the identified third parties.
c. To demonstrate that First Quantum was legally represented.
d. To demonstrate that the $7.5m receipt into the Firm's client account was approved by the management or directors of First Quantum.
e. To evidence advisory services agreement between Company 2 and First Quantum.

<u>Exemplified Matter 3 – Company 3</u>

39. The client care letter dated 24 October 2013, unsigned, outlined the scope of the Firm's instructions as follows:

"You have asked us to act on your behalf in respect of a proposed loan of approximately £4,000,000 to Mounissa Chodieva in relation to her purchase of 10 Hays Mews, London W1. I will draft the necessary loan agreement and deal with all matters relating to the transfer of the funds when required for the completion of the purchase. If you have any concerns regarding the information outlined above you should contact me immediately, it is very important that both you and I are clear about the scope of the instructions which have been given and the work which will be carried out"

40. A Land Registry search showed that Hays Mews was conveyed to Haymaker Property Company Limited (incorporated in British Virgin Islands) care of 5 Fleet Street Place, London, EC4M 7DR ("Haymaker") on 14 November 2013. The price stated to have been paid was £8,000,000.00. Ms Chodieva was not referenced in the official copy of register of title document.

41. Person A confirmed in an email to the Respondent on 24 October 2013 that the purchaser was "Haymaker Property Company Limited, a BVI company". Emails recovered from the file confirmed that Ian Cooke of Charles Russell was acting for Haymaker in the acquisition of the property.

42. The matter ledger demonstrated that £4,400,000.00 was deposited into the Firm's client account on 23 October 2013 under the description "*Turn Key*". A payment of £4,036,497.31 was made to Charles Russell on 6 November 2013.

43. The deposited monies from Turn Key also funded payments to the following third parties:

a. £200,000.00 – 23 January 2014 – Metro Bank [Portman Heritage];
b. £91,793.65 – 5 February 2014 – Wine Develop [Wine Development Ltd];
c. £1,700.00– 31 March 2014 – Willow Point [Willow Point (Guildford) Property Management Ltd]; and
d. £26,986.32 – 27 June 2014 – Holman Fenwick [Holman Fenwick Willan LLP].

44. Documents recovered from the Firm evidenced requests made by Person A to the Respondent to transfer funds from the Firm's client account:

a. Transfer £945.00 to Westminster Borough Council to pay the Council Tax for Hays Mews;

b. Transfer £200,000.00 to Portman Heritage;
c. Transfer £91,793.65 immediately to Wine Development Limited;
d. Transfer £1,700.00 to Willow Point (Guildford) Property Management Ltd; and
e. Transfer £26,986.32 to Holman Fenwick William LLP.

45. There was no documentation on the matter file to demonstrate the underlying legal work undertaken by the firm in respect of the above payments or to explain how it was linked to the loan to Ms Chodieva.

Exemplified Matter 4 – Company 4

46. The client care letter signed and dated 3 March 2017, outlined an agreement to provide legal services to Company 4 in connection with the administration and implementation of contracts which Company 4 had entered into with Kalumbila Minerals Limited. The client care letter was addressed to Person B.

47. The client ledger demonstrated that the following funds were deposited into the client account for this matter:

a. €4,000,000.00 – 6 March 2017 – Company 4; and
b. €36,000.00 – 27 April 2017 – Transfer from Company 1's client account.

48. The deposited monies from Company 4 funded payments to the following third parties:

a. €948,620.29.00 – 7 March 2017 – Pacifico Aquaculture;
b. €948,615.56 – 7 March 2017 – M&M Advocates;
c. €942,535.64 – 14 March 2017 – Wurl Inc;
d. €878,688.60 – 21 March 2017 – Global Source LLC;
e. €11,701.30 – 27 March 2017 – Minotaur Synergies;
f. €7,460.72 – 29 March 2017 – Hogan Lovells Johannesburg;
g. €28,244.73 – 30 March 2017 – Consultec;
h. €15,252.57 – 30 March 2017 – Water Research;
i. €130,000.00 – 19 April 2017 – Royal Oceanic Yacht Management; and
j. €116,890.77 – 27 April 2017 – Port Pin Rolland.

49. One document recovered from the matter file was a document titled "MEMORANDUM ON AUDIT LEDGER 4427 – QUERY RELATING TO THE JUSTIFICATION FOR THE PAYMENTS BY REFERENCE TO THE UNDERLYING TRANSACTIONS" which was

provided by Person A to the Respondent on 18 September 2017 and addressed all of the recipients of the third party transactions on the file save for Port Pin Rolland. It would appear to be the Qualified AR (dated March 2017) which prompted these queries of Person A by the Respondent.

50. Documents recovered from the Firm evidenced requests made by Person A to the Respondent to transfer the following funds from the Firm's client account:

a. Transfer $1,000.000.00 to Pacifico Aquaculture using the same co-ordinates as used in the previous payment;
b. Transfer $1,000.000.00 to M&M Advocates;
c. Transfer $1,000.000.00 to Wurl Inc;
d. Transfer $1,000.000.00 to Global Source LLC;
e. Transfer $12,140.00 to Minotaur Synergies Ltd;
f. Transfer ZAR 102,289.83 to Hogan Lovells Johannesburg;
g. Transfer €28,211.00 to Consultec;
h. Transfer MUR 567,387.00 to Water Research;
i. Transfer €130,000.00 to Royale Oceanic International Yacht Management; and
j. Transfer €116,871.43 to Port Pin Rolland.

51. There was no documentation on the matter file:

a. To demonstrate the nature and purpose of the consultancy arrangement between Company 4 and Kalumbila Minerals Limited;
b. To explain the link between the consultancy agreement and the payments to the identified third parties; or
c. To demonstrate that the Firm provided any legal work relating to the third party payments made by the Firm.

<u>Exemplified Matter 5 – Company 5</u>

52. The client care letter dated 24 January 2017, signed by Person A on 25 January 2017, outlined the scope of the Firm's instructions as follows:

"My present understanding is that you require us to oversee and administer the Euro funds in the Trust including advice on all matters relating to English law (save for the

exceptions referred to below) and to disburse all funds subject at all times to the concurrence and approval of the Trustees."

53. In the opening paragraph of the client care letter, it outlined "*We are already assisting in relation to the management of the sterling funds which are held in the Trust and this letter is to confirm our instructions in relation to the Euro funds*". The client care letter was addressed to Person A personally and did not identify the capacity in which he was associated to Company 5. The file held an uncertified copy UK passport for Person A and a Maltese utility bill dated 8 June 2017.

54. The client ledger demonstrated that the following funds were deposited into the client account for this matter:

a. €65,000.00 – 25 January 2017 – transferred from ledger 3890:
b. £8,241.80 – 29 September 2017 – transferred from ledger 3890;
c. £2,586.32 – 29 September 2017 – transferred from ledger 4401; and
d. £203.88 – 29 September 2017 – transferred from ledger 4427.

55. The funds transferred from other ledgers funded payments to the following third parties:

a. €7,019.17– 25 January 2017 – Mediterranean Yacht Sales;
b. €1,801.91 – 12 May 2017 – Blue Harbour Association;
c. €1,838.93 – 16 May 2017 – Mizzi Projects;
d. €10,019.07 – 16 May 2017 – Mediterranean Yacht Sales;
e. €2,348.06 – 17 May 2017 – Mizzi Projects;
f. €3,558.28 – 2 August 2017 – Jonathan R Schembri; and
g. €49,318.45 – 29 September 2017 – Person A.

56. Documents recovered from the Firm evidenced requests made to the Respondent to transfer the following funds from the Firm's client account:

a. Transfer €1,782.50 to Blue Harbour Association;
b. Transfer €1,819.86 to Mizzi Projects;
c. Transfer €2,329.37 to Mizzi Projects; and
d. Transfer €3,540.00 to Jonathan R. Schembri.

57. There was no documentation on the matter file:

a. Which identified the details of Company 5, including a copy of the following documents:
   i. A copy of the Company 5 trust deed.
   ii. Details about Company 5 in respect of the type of trust.
   iii. Details of the settlor or beneficiaries.
b. To demonstrate legal work undertaken by the firm in respect of Company 5 generally or in respect of the receipt of funds and payments made.

Exemplified Matter 6 – Company 6

58. The client care letter dated 29 January 2016, outlined the scope of the Firm's instructions as follows:

"My present understanding is that the Company [Company 1] has received funds from Cross Country which were advanced pursuant to the terms of a loan agreement. Some of those funds have been converted to South African Rand and you require this firm to oversee and administer the activities of the Company including all matters relating to English law and to disburse all funds subject at all times to the concurrence and approval of the directors of the Company."

59. The file held the same uncertified copy UK passport for Person A and a Maltese utility bill dated 8 June 2017 referred to at paragraph 43 above.

60. In the opening paragraph of the client care letter, it outlined "*We are already assisting in relation to the management of the sterling funds which are held in the Trust and this letter is to confirm our instructions in relation to the Euro funds*". The client care letter was addressed to Person A personally and did not identify the capacity in which he was associated to Company 5. The file held an uncertified copy UK passport for Person A and a Maltese utility bill dated 8 June 2017.

61. The client ledger demonstrated that the following funds were received into the client account from inter-ledger receipts:

a. ZAR 185,000.00 – 01 February 2016 – from Company 1;
b. ZAR 6,000,000.00 – 17 February 2016 – from Company 2;
c. ZAR 800,000.00 – 23 March 2016 – from Company 2;

d. ZAR 450,000.00 – 4 May 2016 – from Company 2;
e. ZAR 200,000.00 – 30 June 2016 – from Company 2;
f. ZAR 81,410.00 – 29 September 2016 – Transfer
g. ZAR 402,463.87 – 6 October 2016 – from Company 2;
h. ZAR 332,013.06 – 31 October 2016 – from Company 2;
i. ZAR 690,500.40 – 15 December 2016 – Not exemplified; and
j. ZAR 257,563.35 – 17 May 2017 – from Company 1.

62. The matter was therefore predominantly funded from six transfers from Company 2 and two transfers from Company 1.

63. The monies transferred from the other matters funded payments to the following third parties:

a. ZAR 52,716.06 – 3 February 2016 – Person A;
b. ZAR 127,106.02 – 3 February 2016 – Hogan Lovells;
c. ZAR 5,891,855.93 – 23 February 2016 – Dabmar Manufacturing;
d. ZAR 100,551.08 – 26 February 2016 – Person A;
e. ZAR 123,506.84 – 24 March 2016 – Hogan Lovells;
f. ZAR 603,036.29 – Bowman Gilfillan – 31 March 2016;
g. ZAR 396,314.23 – 6 May 2016 – Hogan Lovells;
h. ZAR 97,081.86 – 7 July 2016 – Hogan Lovells;
i. ZAR 31,717.64 – 5 September 2016 – Hogan Lovells;
j. ZAR 82,055.62 – 22 September 2016 – MCF logistics;
k. ZAR 120,447.23 – 26 September 2016 – Person A;
l. ZAR 82,057.86– 22 September 2016 – MCF logistics;
m. ZAR 197,838.74 – 22 September 2016 – MCF logistics;
n. ZAR 332,426.64 – 22 September 2016 – MCF logistics;
o. ZAR 94,912.36 – 22 September 2016 – MCF logistics;
p. ZAR 620,440.56 – 22 September 2016 – MCF logistics;
q. ZAR 1,562.36 – 9 January 2017
r. ZAR 159,799.12 – 20 January 2017 – Arabella Caccia
s. ZAR 10,406.27 – 20 February 2017 – De Villiers, Scholtz Trust Account
t. ZAR 33,288.43 – 17 July 2017 – Inanda Club
u. ZAR239,366.68 – 3 October 2017 – Person A

64. Documents recovered from the Firm evidenced requests made to the Respondent to transfer the following funds from the Firm's client account:

a. Transfer ZAR 100,000.00 to Person A;
b. Transfer ZAR 150,000.00 to Person A;
c. Transfer ZAR 197,407.00 to MCF Logistics; and
d. Transfer ZAR 32,800.00 to Inanda Club.

65. There was no documentation on the matter file:

a. To demonstrate the legal work undertaken by the firm in respect of the third party payments, including the payments to Person A in Geneva and South Africa.
b. To demonstrate why this matter was primarily funded by transfers from the Company 2 matter.

66. The Respondent stated that the first enquiry from the SFO was *'probably'* in May 2018. There is also reference to a further request by the SFO to access the Firm's LEAP system.

67. At interview with the FIO, the Respondent stated that he did not agree with the finding by the Firm's accountant there had been a breach of Rule 14.5 of the SAR::

'*I didn't agree with it at the time… I really still don't agree with it, but they, they [the Accountant] saw fit to make that qualification and so I thought well take, take the cautious view' [app b6 page 8]*

68. The Respondent stated that:

a. '*During the 17 years from April 2002 until April 2019 (when the SFO executed their warrants over my office and residential premises) I estimate that I have acted for James or his companies in excess of 100 transactions'*

b. '*Over time Person A has instructed me to acquire offshore companies for his business and ventures and he often required special purpose vehicles for such transactions. My services included the acquisition and/or maintenance of these companies from a compliance perspective by ensuring that annual government and registered agent's fees were duty and timeously paid. These services*

included receiving monies into my firm's client account and disbursing them to the registered agents for their services when required.

c. '*Over the years I acted on a number of commercial transactions for [Person A] and drafted loan, consultancy and investment agreements for him. In relation to these transactions it was necessary for my firm to hold money from time to time. Funds would be transferred from my firm's client account and then disbursed when the loan or investment documentation was complete'.*

BREACHES OF THE ACCOUNTS RULES, CODE OF CONDUCT AND PRINCIPLES

SAR 2011

69. On 18 December 2014, the SRA issued its 'Improper use of a client account as a banking facility' warning notice which stated (amongst other things):

"The fact that you have a retainer with a client does not give you licence to process funds freely through client account on the client's behalf. Throughout a retainer, you should question why you are being asked to receive funds and for what purpose. You should only hold funds where necessary for the purpose of carrying out your client's instructions in connection with an underlying legal transaction or a service forming part of your normal regulated activities. You should always ask why the client cannot make the payment him or herself. The client's convenience is not the paramount concern and, if the client does not have a bank account in the UK, this considerably increases the risks. You should be prepared to justify any decision to hold or move client money to us where necessary."

70. In *Fuglers v SRA* [2014] EWHC 179 (Admin), Mr Justice Popplewell considered the policy reasons that a solicitor could not use their client account as a banking facility:

"… it is objectionable in itself for a solicitor to be carrying out or facilitating banking activities because he is to that extent not acting as a solicitor. If a solicitor is providing banking activities which are not linked to an underlying transaction, he is engaged in carrying out or facilitating day to day commercial trading in the same way as a banker. This is objectionable because solicitors are qualified and regulated in relation to their activities as solicitors, and are held out by the profession as being regulated in relation to such activities. They are not qualified to act as bankers and are not regulated as

bankers. If a solicitor could operate a banking facility for clients which was divorced from any legal work being undertaken for them, he would in effect be trading on the trust and reputation which he acquired through his status as a solicitor in circumstances where such trust would not be justified by the regulatory regimen: see Patel v SRA per Cranston J at [34]. Such behaviour has the potential to cause significant damage to the standing of the profession. This is all the more so if the solicitor is not merely allowing the client to use the client account to pay trade debts, but is himself involved in directing the payment of creditors and making the decisions as to who should be paid, as Mr Berens was in this case. Moreover such conduct involves determining or implementing commercial decisions as to which creditors should be paid when, and whether some creditors should be paid in priority to each other, as a matter of timing or at all. Even in the absence of any risk of insolvency, that is not an activity for which a solicitor is qualified or regulated, and the more favourable treatment of one creditor ahead of another may attract criticism and opprobrium which is capable of damaging the solicitor's standing and that of the profession." [**Paragraph 39**]

71. The Applicant does not allege that there were warning signs either of illegitimate transactions or of insolvency. However, there is no need for there to be warning signs for Rule 14.5 to apply. As explained in Fuglers, Rule 14.5 exists precisely because such risks always exist, it is not a solicitor's role to eliminate these risks entirely, and because it is objectionable in itself for solicitors to use their status and client account in such a manner, to simply assist with secrecy in high-value, cross-border transactions. In order to maintain public confidence in the profession solicitors need to comply with such rules and be insulated from such risks as much as possible.

72. In the instant case, the Respondent admits breaching Rule 14.5 by allowing the Firm's client account to be used as a banking facility, for no other reason than the convenience of the client. There was no evidence discovered by the FIO to suggest the Respondent ever questioned Person A to ask why he was being asked to receive/make payment of funds and for what purpose. This was despite the significant amount of payments made to third parties across all six matters.

73. As the payments from the client account were not made in connection with the delivery of regulated services by the firm, they were not properly required. The Respondent admits breaching Rule 20.1 of the SAR 2011.

74. In doing so, and as a director of the Firm, a recognised body, the Respondent admits breaching Rule 6.1 SAR 2011.

Principle 2 SRA 2011 Principles – (integrity)

75. Principle 2 of the 2011 Principles requires that solicitors "*act with integrity*": as per *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366 this "*connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty… a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse*".

76. The Respondent admits failing to act with integrity, by continuing to authorise transactions over a thirty nine month period which allowed the Firm's client account to be used as a banking facility, in breach of the SRA Accounts Rules, and creating a clear risk of the Firm facilitating money laundering and/or the circumvention of other rules on insolvency. The Respondent, as demonstrated by his emails, was aware of the significant deposits into the client account and asked directly to authorise payments out of the client account. The Respondent was the partner with conduct of the matter and the FIO was unable to find any evidence within the matter documents that the funds were in respect of instructions relating to an underlying transaction being undertaken by the Firm. Nevertheless, in the face of instructions from his client, the Respondent continued to receive money into the client account and authorise payments from it without raising any queries with the client, in breach of the SAR 2011. This willingness to consciously act in this manner shows a lack of integrity in breach of Principle 2 of the 2011 Principles.

Principle 6 of the 2011 Principles – (maintaining trust)

77. Funds tainted by insolvency, fraud, or other wrongdoing that pass through client account risk damaging public confidence in the profession. A solicitor cannot and is not expected to eliminate all risks of fraud or insolvency. Rule 14.5 therefore seeks to establish a clear demarcation to ensure that, even in cases where there are no obvious warning signs, the reputation of the profession is properly protected. By allowing Person A to use the Firm's client account as a banking facility, the Respondent admits failing to maintain public trust.

Principle 8 of the 2011 Principles - proper governance and sound financial and risk management principles

78. Principle 8 states you must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles. By knowingly not complying with the SAR 2011, and transferring money from the Firm's client account to third parties as a financial 'middle-man', which risked facilitating money laundering, fraud and/or insolvency the Respondent breached Principle 8 of the 2011 Principles. SRA Code of Conduct 2011

79. The Respondent admits as a director and manager of the Firm, he failed to comply with legislation applicable to his business including anti money laundering and data protection legislation. He therefore admits he failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011.

Allegation 1.2 – First Respondent materially contributing to the Firm's failure to discharge its AML obligations

The legislative framework

80. The relevant legislative obligations are set out in the Rule 12 Statement. In broad summary, however:

a. The Firm was the 'Relevant Person' with ultimate responsibility for ensuring compliance with the prevailing AML regime.[6]

b. As such, the Firm was required to apply "*customer due diligence measures*" when establishing a business relationship or carrying out an occasional transaction (and to existing customers on a risk-sensitive basis).[7]

c. "*Customer due diligence measures*" meant, at a bare minimum:[8]

i. Identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;

[6] See the 2007 MLRs, reg 3 and the 2017 MLRs, regs 8 and 12
[7] See 2007 MLRs, reg 7 and the 2017 MLRs, reg 27
[8] See the 2007 MLRs, reg 5 and 2017 MLRs, reg 28

ii. Identifying, where there was a beneficial owner who was not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify their identity, so that the Firm was satisfied that it knew who the beneficial owner was, 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

iii. Obtaining information on the purpose and intended nature of the business relationship. The Firm was also required to conduct ongoing monitoring of its business relationships, i.e. to (i) maintain up-to-date records and (ii) to scrutinise transactions undertaken, including, where necessary, source of funds, in order to ensure consistency with the Firm's knowledge of the customer, their business and risk profile.[9]

iv. It is the SRA's case (and does not appear to be in dispute) that scrutiny as to a buyer's source of funds would always be "*necessary*" in any large transactions and/or transactions where the transferor/transferee was an entity incorporated, resident and/or domiciled in or connected to a higher-risk jurisdiction. This is not least because, without such scrutiny, no reasonably diligent and competent solicitor or law firm could satisfy themselves that the funds were not the proceeds of criminal activity. It is noted that the Firm's own policies and procedures recognised as such at material times, insofar as proper scrutiny as to source of funds was recognised on paper to be an essential aspect of (standard) ongoing monitoring, but evidently the Firm did not have adequate and effective governance structures, systems and controls in place to ensure compliance.

d. Furthermore, the Firm was required to apply, on a risk-sensitive basis, enhanced customer due diligence measures and enhanced ongoing monitoring, in any situation which by its nature could present a higher risk of money laundering or terrorist financing.[10] It is the SRA's case that the international transactions at issue manifestly presented a higher risk of money laundering, including, without limitation, by reason of:

[9] See the 2007 MLRs, reg 8 and the 2017 MLRs, reg 28(11)
[10] See the 2007 MLRs, reg 14 and the 2017 MLRs, reg 33

i. the use of the Firm's client account for no other reason it would seem than to enable Person A to withhold his identify and/or disguise the origin of funds which were paid to third parties in transactions; and

ii. The unusual and multiple requests for payments to be made to third parties in breach of the SAR 2011.

As such, enhanced customer due diligence and enhanced ongoing monitoring were objectively indicated in respect of Person A.

81. The Respondent failed to comply with such obligations under the 2007 MLRs and the MLRs 2017. In particular, and without limitation, the Respondent failed:

a. To conduct any or adequate ongoing monitoring of Person A, in that he failed properly to scrutinise all or any of the relevant transactions, including as to source of the purchaser's funds and/or failed to maintain up to date CDD records; and

b. To undertake client and matter risk assessments in respect of Person A's transactions in accordance with Regulation 28 of the 2017 MLR's.

The facts and matters relied upon in support of the allegations

The Firm's AML Policies, Controls and Procedures

82. The Firm's AML Policies were set out in a number of documents provided to the SRA.

Client Due Diligence Procedure

83. Effective from 12 December 2012, this document set out the procedure for identifying and verifying clients in accordance with the firm's AML obligations. The document outlined, amongst other things:

a. CDD information and risk assessment must be reviewed for all existing clients when they instruct Osmond & Osmond on any new retainer and consideration given as to whether CDD information needs to be updated.

b. For relevant clients, Osmond & Osmond requires information on the nature and purpose of the retainer and on the source of funds to be used in the retainer where relevant.

c. The fee earner or AML team will assess the appropriate standard of due diligence required and ensure that the appropriate verification, as outlined in the relevant

'Client ID Requirements', is undertaken and recorded both on the file and in the central directory.

d. The fee earner must obtain information about the source of funds on all retainers and monitor whether monies are coming from expected and credible sources.

e. The fee earner must advise the MLRO and the accounts team if there are large or unusual levels of funding involved in a retainer or if they are coming from unusual or high-risk sources or jurisdictions.

f. If a payment is being made by a third party, the fee earner must ask why the third party is helping with funding, obtain the name of the third party and evidence of identity and require that the funds are provided from an account in the third party's name.

Practice Risk Assessment Policy

84. Effective from 14 December 2012, this document sets out the firm's procedure for assessing the risk of money laundering breaches. It stated:

a. The management team, MLRO and COLP will identify, assess and record the AML/CTF and sanctions risks applicable to Osmond & Osmond using the Law Society standard `Risk Identification Matrix' and management review. Taking into account the risks identified, the management team, MLRO and COLP will complete the risk mitigation form, setting out how the legal practice will meet its regulatory and legal obligations. The COLP and MLRO will ensure that this information is added to the risk register and compliance plan for Osmond & Osmond.

b. The MLRO will review the risk profile of Osmond & Osmond during the preparation of the MLRO report to management

Procedure for accepting cash and monitoring accounts

85. Effective from 14 December 2012, this document sets out the firm's procedure for minimising the risks regarding the firm's bank account being used by money launderers or terrorist financers. It stated:

a. The client account must not be used to provide banking services; there must be an underlying legal transaction, e.g. acting as an attorney or trustee. Guidance as to whether there is an underlying legal transaction must be sought from the MLRO Osmond & Osmond's procedures for the receipt of monies into the client account are set out in its accounting procedures.

b. Osmond & Osmond will require information about the source of any cash funds.

c. All clients must provide payment details for material payments including their name, reference, bank statement or letter showing debited funds and the account holder's name and account number or other evidence.

d. Accounts staff must raise any concerns or queries about a transaction, source of funds or financial issue with the MLRO, providing details of the client, matter number, type of retainer and nature of query. The MLRO will record those details on the MLRO query log and provide appropriate guidance, recording what advice was provided and when and how it was provided.

86. The "*Client Details Form"* set out the client details that needed to be obtained for each transaction.

87. The "*Entity Client ID Requirements"* and "*Private Client ID Requirement*" forms set out the identification verification requirements for when the clients were an entity/legal arrangement and individual respectively.

Exemplified Matter 1 – Company 1

88. Paragraphs 26 to 31 are repeated for the purpose of this allegation.

89. The matter documents in respect of in respect of the Firm acting for Company 1 did not include any of the following:

a. Any document to demonstrate that the Firm conducted a risk-sensitive assessment of this matter before the funds were transacted through the firm's client account;

b. Any document to demonstrate that the Firm assessed this matter in terms of AML risks;

c. Any document to demonstrate that the Firm conducted ongoing monitoring of the AML risks from 13 March 2014 to 27 April 2017;

d. Any document to demonstrate that the firm kept any records in respect of AML enquiries or ongoing monitoring from 13 March 2014 to 27 April 2017;

e. Any document to demonstrate that the Firm assessed the receipts and payments as presenting a risk of money laundering or to demonstrate that they conducted EDD; or

f. Any document to demonstrate that the Firm queried or obtained information regarding the intended nature of the business relationship between Company 1 and the payments to the identified third parties.

90. The Firm failed to comply with its own AML procedures and policies by:

a. Failing to complete the Firm's compliance documents for the retainer, including (a) the risk outline for the retainer; and (b) the client details form.

b. Failing to assess this matter according to its cash acceptance policy, in particular with its requirement for information about the source of funds.

Exemplified Matter 2 – Company 2

91. Paragraphs 32 to 38 are repeated for the purpose of this allegation.

92. The matter documents in respect of the Firm acting for Company 2 did not include any of the following**:**

a. Any document to demonstrate that the Firm conducted ongoing monitoring of the AML risk from 19 January 2016 to 7 February 2017.

b. Any document to demonstrate that the Firm conducted a risk-sensitive assessment of this matter before the funds were transacted through the Firm's client account.

c. Any document to demonstrate that the Firm kept any records in respect of AML enquiries or ongoing monitoring from 19 January 2016 to 7 February 2017.

d. Any document to demonstrate that the Firm assessed the receipts and payments as presenting a risk of money laundering or to demonstrate that they conducted EDD.

e. Any document to demonstrate that the firm identified and verified the identities of the directors of Company 2 or the ultimate beneficial owners of Company 2.

f. Any document to demonstrate that the firm considered the payments to Manono Mineral, in the Democratic Republic of the Congo as a circumstance that by its nature presented a higher risk of money laundering.

93. The Firm failed to comply with its own AML procedures and policies by:

a. Failing to complete the Firm's compliance documents for the retainer, including (a) the risk outline for the retainer; and (b) the client details form.

b. Failing to assess this matter according to its cash acceptance policy, in particular with its requirement for information about the source of funds.

Exemplified Matter 3 – Company 3

94. Paragraphs 39 to 45 are repeated for the purpose of this allegation.

95. The matter documents in respect of in respect of the Firm acting for Company 3 did not include any of the following:

a. Any document to demonstrate that the Firm assessed or conducted a risk-based assessment of this matter before the funds were transacted through the Firm's client account.

b. Any document to demonstrate that the Firm conducted ongoing monitoring of the AML risks from 23 October 2013 to 9 March 2017.

c. Any document to demonstrate that the Firm kept any records in respect of AML enquiries or ongoing monitoring from 23 October 2013 to 9 March 2017.

d. Any document to demonstrate that the firm assessed the receipt and payments as presenting a risk of money laundering or to demonstrate that they conducted EDD.

e. Any document to demonstrate that the Firm considered the nature of the retainer presented a risk of money laundering, in particular when Person A told the Firm that Hays Mews would be purchased by Haymaker and not Ms Chodieva.

f. Any document to demonstrate that the firm had conducted any source of funds enquiries against the receipts of funds from Turn Key or to explain why the money came from Turn Key instead of Barrow.

96. The Firm failed to comply with its own AML procedures and policies by:

a. Failing to complete the Firm's compliance documents for the retainer, including (a) the risk outline for the retainer; and (b) the client details form.

b. Failing to assess this matter according to its cash acceptance policy, in particular with its requirement for information about the source of funds.

Exemplified Matter 4 – Company 4

97. Paragraphs 46 to 51 are repeated for the purpose of this allegation.

98. The matter documents in respect of in respect of the Firm acting for Company 4 did not include any of the following:

a. Any document to demonstrate that the firm assessed this matter in terms of AML risks.

b. Any document to demonstrate that the firm conducted ongoing monitoring of the AML risk from 6 March 2017 to 2 October 2017.

c. Any document to demonstrate that the firm kept any record in respect of AML enquiries or ongoing monitoring from 6 March 2017 to 2 October 2017.

d. Any document to demonstrate that the firm assessed the receipt and payment as presenting a risk of money laundering or to demonstrate that they conducted conducted EDD.

e. Any document to explain why the €4m credit was received from Company 4 instead of Kalumbila Minerals Limited.

f. Any document to demonstrate that the firm conducted any enquiries regarding Person B's identity (Company 4) or verification of his identity.

g. Any document to demonstrate that the firm conducted any CDD or EDD on Person B.

h. Any document to demonstrate that the firm conducted AML enquiries or assessment in respect of the AML risks associated to making payments to Mexico and Zambia

99. The Firm failed to comply with its own AML procedures and policies by:

a. Failing to complete the Firm's compliance documents for the retainer, including (a) the risk outline for the retainer; and (b) the client details form.

b. Failing to complete a risk-sensitive assessment of this matter before the funds were transacted through the Firm's client account.

c. Failing to assess this matter according to its cash acceptance policy, in particular with its requirement for information about the source of funds.

Exemplified Matter 5 – Company 5

100. Paragraphs 52 to 57 are repeated for the purpose of this allegation.

101. The matter documents in respect of the Firm acting for Company 5 did not include any of the following:

a. Any document to demonstrate that the firm assessed this matter in terms of AML risks.

b. Any document to demonstrate that the Firm conducted ongoing monitoring of the AML risk from 25 January 2017 to 21 February 2018.

c. Any document to demonstrate that the firm kept any records in respect of AML enquiries or ongoing monitoring form 25 January 2017 to 21 February 2018.

d. Any document to demonstrate that the firm assessed the identified third party payments as presenting a risk for money laundering.

e. Any document to demonstrate that the firm conducted any CDD or EDD on Jonathan R. Schembri or considered him to be a party to the Trust.

102. The Firm failed to comply with its own AML procedures and policies by:

a. Failing to complete the Firm's compliance documents for the retainer, including (a) the risk outline for the retainer; and (b) the client details form.

b. Failing to complete a risk-sensitive assessment of this matter before the funds were transacted through the Firm's client account.

Exemplified Matter 6 – Company 4

103. Paragraphs 26 to 38 and 58 to 70 (Companies 1 and 2) are repeated for the purpose of this allegation.

104. The matter documents in respect of the Firm acting for Company 6 did not include any of the following:

a. Any document to demonstrate how the identified third parties were linked to the loan between Company 1 and Cross Country and the underlying legal instruction.

b. Any document to demonstrate that the firm monitored the retainer or considered the nature of the funding arrangements or third-party payments as a situation which by its nature presented a higher risk of money laundering, in particular the payments to Person A

c. Any document which demonstrated the legal work undertaken by the firm in respect of the payment to Inanda Club.

Breach of the Code of Conduct and Principles

105. The foregoing facts and matters constituted material breaches of the Firm's obligations under all or any of regulations, 8, and 14 of the 2007 MLR's and Regulations 28, and 33 of the 2017 MLR's, notably:

a. the failure properly or at all to conduct ongoing monitoring of the business relationship with Person A, including the absence of proper scrutiny of the transactions as set out above, and the absence of any matter risk assessments across all relevant transactions;

b. the failure to apply enhanced due diligence or enhanced ongoing monitoring, in spite of the presence of multiple factors objectively indicating a higher risk of money laundering or terrorist financing, in respect of Person A's transactions.

c. the failure to conduct a risk assessment of Companies 1-5 and/or their respective matters in accordance with Regulation 28 of the 2017 MLRs.

106. The Respondent admits, as the client/matter partner on the exemplified matters and manager of the Firm[11], he was an individual responsible for ensuring the Firm's compliance with the 2007 MLR's and the MLRs 2017.

107. Despite the requirements of the Firm's policies, there was no evidence in the client matter papers of any monitoring, including source of funds checks, or consideration of the need for enhanced due diligence, or record keeping as required by the 2007 MLR's. The discretion under the policies rested with the Respondent, as the fee earner with conduct of the files and the duties conferred upon him as the MLRO.

Professional Misconduct

108. It is acknowledged that not every breach of a statutory regulation by a solicitor or law firm will amount to misconduct. However, the Respondent admits that the AML failures at issue here were so serious and sustained that they constituted breaches, by him of the following Principles:

a. Principle 6 of the 2011 Principles ("*You must… behave in a way that maintains the trust the public places in you and in the provision of legal services*"). Members of the public rightly expect regulated persons (especially experienced solicitors and partners) to heed and scrupulously comply with all applicable anti-money laundering legislation. Such expectations are all the more justified in circumstances where there was no evidence to justify such significant funds being transferred through the Firm's client account given that the Firm were not performing a service forming part of its normal regulated activities. The Respondent's failure to heed and comply with such laws in such circumstances, or to take even basic steps that would be expected, is clearly likely to undermine public trust in the profession, particularly where it continued over a lengthy period of time and involved large amounts of money, as here.

[11] Rule 8.1(a)(ii) of the SRA Authorisation Rules 2011

b. Principle 8 of the 2011 Principles ("*You must… run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles*"). The failures identified by the FIO and particularised above were basic but systemic in nature and continued 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 by the Firm and its responsible partners, including the Respondent. That was sorely lacking in these matters and the partner running the relevant matters failed to run the business and/or carry out his role effectively in this respect.

109. Further:

a. Outcome 7.5 of the SRA Code of Conduct required the Respondent to "comply with legislation applicable to your business, including anti-money laundering…legislation". The Respondent admits breaching this paragraph for the reasons set out above.

NON-AGREED MITIGATION

110. The Respondent advances the following points by way of mitigation but their inclusion in this document does not amount to acceptance or endorsement of such points by the SRA:
    110.1 None of the transactions referred to above resulted in loss to any client or third party;
    110.2 The Respondent did not profit from any or the transactions referred to above;
    110.3 The Respondent had not been fully cogniscent of the provisions of Rule 14.5 of the 2011 Solicitors Accounts Rules and as soon as he was informed of its terms by the firm's accountants stopped making any payments and returned all the funds held by the firm to Person A.

PROPOSED SANCTION INCLUDING EXPLANATION OF WHY SUCH ORDER WOULD BE IN ACCORDANCE WITH THE TRIBUNAL'S GUIDANCE NOTE ON SANCTION

111. Subject to the Tribunal's approval, it is agreed that the Respondent should receive a fixed term of suspension for a period of 12 months together with an indefinite restriction order in the following terms:

The Respondent shall be subject to conditions imposed by the Tribunal as follows:

The Respondent may not:

- *practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body; or as a solicitor in an unregulated organisation;*
- *be a Head of Legal Practice / Compliance Officer for Legal Practice or a Head of Finance and Administration / Compliance Officer for Finance and Administration;*
- *hold client money; or*
- *be a signatory on any client account;*

112. The sanction outlined above is considered to be in accordance with the Tribunal's Guidance *Note on Sanctions* (11th edition) taking into account the guidance set out in *Fuglers & Ors v Solicitors Regulation Authority* [2014] EWHC 179 (as per Popplewell J) and as set out in the guidance at paragraphs 8 and 48.

113. The misconduct giving rise to the allegations is serious. Given the nature of the alleged misconduct, lesser sanctions such as a Restriction Order, Reprimand or a Fine, would not be adequate or suitable. To safeguard the integrity of the legal profession, it is necessary to interfere with the Respondent's practise, by imposing (a) an immediate suspension; and (b) indefinite conditions on his practising certificate. The protection of the public from risk of harm and the protection of the reputation of the legal profession justifies such a sanction.

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

    a. The Respondent's conduct cannot be described as spontaneous; it was planned, deliberate and took place over a protracted period of no less than 3 years.
    b. The Respondent acted in breach of a position of trust given his position as owner/manager of the Firm.
    c. The Respondent had direct control of or responsibility for the circumstances giving rise to the misconduct as the partner with primary responsibility for the Firm's relationship with Person A.
    d. The Respondent was an experienced solicitor having been on the Roll for more than 35 years at the outset of the misconduct.

115. As to the harm caused, the admitted failures and breaches of the Code and Principles caused significant sums of money (approximately £30 Million) to pass through the client account where there was no underlying legal transaction, in circumstances where (a) there was no ongoing monitoring of the Firm's business relationships with the entities involved in those transactions; and (b) the Firm failed to conduct enhanced due diligence. The complete disregard for the Solicitors Accounts Rules and relevant Money Laundering Regulations in force at the time, over a lengthy period of time and the Respondent's departure from the "complete integrity, probity and trustworthiness" expected of a solicitor, caused great harm to the legal profession's reputation.

116. This harm must have been reasonably foreseen by the Respondent.

117. Factors that aggravate the seriousness of the misconduct include:

    a. The misconduct was deliberate, calculated and repeated.
    b. The misconduct continued over a period of time.
    c. The misconduct involved the abuse of a position of authority.
    d. The Respondent ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession.
    e. The Respondent appeared before the SDT in February 1995 and July 2015 and admitted that:
        i. [in February 1995] he had failed to comply with Rules 7 and 8 of the Solicitors Accounts Rules 1991 in that he drew out of the client account money other than permitted by Rule 7 and was suspended for two years;
        ii. [in July 2015] he had been 'less than wholly frank' when giving evidence on oath as a solicitor in breach of Rule 1.06 of the Solicitors Code of Conduct 2007 and was fined £10,000.00.

118. The parties therefore consider that in light of the admissions set out above and taking due account of the guidance, the proposed outcome represents a proportionate resolution of the matter, which is in the public interest. The admitted conduct involves a breach of the requirement to act with integrity. Accordingly, the parties agree that the appropriate outcome in this case is for the Respondent to receive an immediate term of suspension and for a restriction order to be imposed.

COSTS

119. Subject to the approval of this Agreed Outcome Proposal, the SRA is agreeable to the following Order as to costs being made: £50,000 inc VAT. The SRA is satisfied that this is a reasonable and proportionate contribution by the Respondent in the circumstances of this case, which adequately reflects both the seriousness of the conduct, as well as the fact that related proceedings were brought against a further Respondent.

On behalf of the SRA:

Dated: February 2025

Signed: ……..

William John Gregory Osmond

Respondent

Dated: February 2025

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No: 12647-2024**

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

PAUL CHRISTOPHER FLAHERTY

Second Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction/ Executive Summary

1. By an application, dated 19 July 2024, and a Rule 12 statement, signed by Matthew Edwards on behalf of Solicitors Regulatory Authority Limited ("the SRA"), pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 19 July 2024, the SRA has brought Tribunal proceedings raising allegations of professional misconduct against Mr Flaherty ("the Respondent"). The matter has been listed for a substantive hearing to commence on 25 February 2025.

2. Proceedings have also been commenced against another Respondent, William Osmond, a colleague of Mr Flaherty, who is the subject of a separate proposed agreed outcome document.

3. Having reviewed the position which he adopted in his Answer, dated 5 June 2024, and having taken advice from his solicitors and Counsel, the Respondent is now prepared to make admissions which are acceptable to the SRA and, subject to the Tribunal's approval, to accept a sanction of a fine of £5,001.00.

4. For its part, the SRA is prepared to seek the Tribunal's permission to amend the allegations by way of a separate application under Rule 24 in the event that this statement is approved. This separate application is made on the basis that the SRA takes the view that, if the statement is approved and an Agreed Outcome is also approved in respect of the case of SRA v William Osmond,

then a trial of any outstanding allegations would not be proportionate and in the public interest.

Allegations admitted

5. Accordingly for the purposes of agreeing a disposal, the Respondent has admitted the following facts:

The Respondent, whilst in practice as a solicitor, director and/or the COFA and COLP of the Firm, between 1 January 2015 and 3 October 2017, in respect of one or all of the matters identified in Appendix 2 to this Statement, he allowed payments to be made from the Firm's client account in circumstances other than in respect of instructions relating to an underlying transaction being undertaken by the Firm and the funds arising therefrom or in respect of the delivery by the Firm of a service forming part of its normal regulated activities.

In doing so, he breached and/or failed to achieve –

i. *Rule 6.1 of the Solicitors Accounts Rules 2011 ('SAR 2011');*
ii. *Rule 14.5 of the SAR 2011;*
iii. *Rule 20.1 of the SAR 2011;*
iv. *Outcome 7.2 of the SRA Code of Conduct 2011;*
v. *Principle 6 of the 2011 Principles; and/or*
vi. *Principle 8 of the 2011 Principles.*

Professional details

6. The Respondent was admitted as a solicitor on 15 January 2007 and holds a current practising certificate, free from conditions. Along with Mr Osmond, he was a manager at a firm, Osmond Solicitors Limited ("the Firm") and, from 1 January 2015, he was the Compliance Officer for Finance and Administration ("COFA") and Compliance Officer for Legal Practice ("COLP"). As COFA, he was under an obligation to take all reasonable steps to ensure that the Firm and its managers complied with the obligations imposed upon them under the SAR 2011.

7. In April 2019, the SRA commissioned a forensic investigation into the activities of the Firm which resulted in a detailed forensic investigation report ("FIR"), which focused on transactions conducted by Mr Osmond on behalf of the Firm for a client, based Overseas, known in these proceedings as Person A. At the FIR's request, Mr Osmond provided a note, dated 3 November 2019, setting

out the business relationship between his firm and Person A. Person A was clearly an important client of the Firm because, according to that note, the work done for him accounted for about 10% of the Firm's turnover.

8. The FIR focused on six 'exemplified matters' relating to six of Person A's companies. The FIR records that between 12 May 2014 and 3 October 2017, the Firm received £31,905,112.30 into its client account in respect of these matters and paid out £28,337,021.19[1], without there being any underlying legal transactions to justify all those payments as required by the prohibition against using a client account as a banking facility set out in Rule 14.5 of SAR. The figures are broken down, company by company, in the table in the FIR at para 30.

9. As the Second Respondent only became the Firm's COLP and COFA in January 2015, it is not alleged he was responsible for any breaches arising out of payments made prior to 2015.

10. In the case of each of those company matters, numerous payments were made out of the client account to third parties abroad when the payments could not be said to relate to the underlying transaction on which the Firm, through Mr Osmond, was acting for Person A. The client account was effectively used as a banking facility with payments being made in and then payments to multiple third parties being made out of the client account on the instructions of Person A. As such these payments were being made in breach of rules 14.5 and 20.1 of SAR 2011 and, as a principal of the Firm, the Respondent did not ensure compliance with the SAR by the other principal and by everyone employed in the Firm, as was required by Rule 6.1 of SAR 2011.

11. In December 2014 the SRA had issued a warning notice entitled "Improper use of a client account as a banking facility". That notice reminded solicitors that:

> "The fact that you have a retainer with a client does not give you licence to process funds freely through client account on the client's behalf. Throughout a retainer, you should question why you are being asked to receive funds and for what purpose. You should only hold funds where necessary for the purpose of carrying out your client's instructions in connection with an underlying legal transaction or a service forming part of your normal regulated activities. You should always ask why the client cannot make the payment him or herself. The client's convenience is not the paramount concern and, if the client does not have a bank account in the UK, this considerably increases the risks. You

[1] Those figures omit sums which represent inter-ledger payments in and out of the client account.

should be prepared to justify any decision to hold or move client money to us where necessary."

12. The warning notice followed on from the High Court judgment in *Fuglers v SRA* [2014] EWHC 179 (Admin), in which Popplewell J had emphasised that solicitors should not allow their client account to be used as a banking facility.

13. The Respondent now accepts, with hindsight, that payments were being made out of the client account in breach of Rule 14.5 but it is accepted that he was not aware of this at the time, nor was he involved in approving the payments when instructions came in from Person A.

14. In his witness statement dated 4 February 2025 (para 47-49), he describes how, shortly after becoming COFA and whilst checking the client ledgers, as part of his duties, he spotted some high-volume transactions which did not appear to relate to conveyancing matters. On checking the entries and the ledgers, he established that the transactions related to Person A and his associated companies, whereupon he spoke to Mr Osmond to check the source of funds and to check that the Firm was not breaching Rule 14.5 SAR. He says that Mr Osmond assured him that instructions were coming from Person A and that the entries were "properly made", stressing that he (Mr Osmond) had known Person A for a very long time and had no reason to doubt the propriety of the transactions or any of his work on the transactions. The Respondent knew about Person A from his time when he was Mr Osmond's trainee and accepts that he took that assurance on trust without making any further inquiries or checking the files himself. He had worked with Mr Osmond for ten years, starting as his trainee and ending as his co-partner and he trusted and respected him.

15. It was only in September 2017 when the Firm's auditor told him that the accountant's report to the SRA would be qualified because there appeared to have been breaches of Rule 14.5 that he then had a further discussion with the Mr Osmond and insisted that the payments could not continue.

16. In the meantime, between early 2015 and late 2017, a number of high-value payments were made out of the client account to third parties, but despite being aware of these payments, he made no further attempt to investigate whether there was any connection between the payments and the underlying transaction in respect of which the Firm was providing services for the client. Had he done so, then he would then have appreciated that the Firm's client

account was being used as a banking facility, in breach of Rule 14.5, and would have taken steps to stop them, as he did later.

17. It is accepted by the SRA that there were no warning signs that these payments were or might be illegitimate or arise out of insolvency. Nevertheless the Respondent accepts that, as COFA, he was under a duty to ensure that the firm, its managers, including Mr Osmond, complied with the Firm's obligations under the SAR and that he had access to all of the client accounting records in the office records. In taking no further action but simply relying upon the word of Mr Osmond, he was allowing payments to be made in breach of Rule 14.5.

18. This failure only related to his inquiries relating to the cases being dealt with by Mr Osmond and there is no suggestion by the SRA that the steps the Respondent took in respect of his duties as COFA or Manager were in any other way inadequate.. As is clear from his witness statement, the Respondent treated Mr Osmond differently from all others at the Firm. In his statement, he says:

> "With hindsight, it is clear that there was a hole in the systems I operated, because I relied too heavily on the assurance given to me by Mr Osmond on the [Person A] matters and after that assurance I did not think it was necessary to question the transactions on [Person A]'s files. Whilst I regret that happened, I thought at the time that it was reasonable to operate a system in which I could rely on that assurance from a respected and trusted co-partner whom I had known for over 10 years."

19. As a result of that "*hole in the systems* [he] *operated*", the Respondent accepts that he has breached Principle 6 (maintaining public trust) and Principle 8 (running the business in accordance with proper governance and sound financial risk management principles) and has failed to achieve Outcome 7.2 (effective systems and controls to comply with handbook).

20. As to Principle 6, funds tainted by insolvency, fraud, or other wrongdoing that pass through a client account risk damaging public confidence in the profession. A solicitor cannot and is not expected to eliminate all risks of fraud or insolvency. Rule 14.5, therefore, seeks to establish a clear demarcation to ensure that, even in cases where there are no obvious warning signs (as here), the reputation of the profession is properly protected. In allowing Person A to use the Firm's client account as a banking facility and failing to ensure that the Firm and its managers complied with their obligations imposed upon them by the SAR 2011, the Respondent failed to maintain that public trust.

21. Principle 8 provides that a solicitor must run their business or carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles. By failing to ensure that the Firm and its managers complied with their obligations imposed upon them by the SRA Accounts Rules in his role as COFA of the Firm, he contributed towards the Firm breaching Rule 14.5 of the SAR 2011. This amounted to a failure to carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles.

Mitigation (not agreed)

22. The following points are advanced by way of mitigation on behalf of the Respondent, but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:

    22.1. Person A was a high net worth individual and a successful businessman. The value of the transactions carried out for him was consistent with his standing as a successful businessman and, although a banking facility was provided, there is no suggestion by the SRA that the work carried out for him was tainted by fraud or insolvency

    22.2. The complaint relating to the Respondent is limited to four matter files within a busy practice. As soon as the Respondent became aware of breaches of rule 14.5 SAR on those four matter files, he ensured that the firm did not carry out any further work for Person A which might result in a breach of rule 14.5 SAR

    22.3. As referred to at paragraph 18, above the SRA acknowledges that there is no suggestion by the SRA that the steps the Respondent took in respect of his duties as COFA or Manager were in any other way inadequate

    22.4. Mr Flaherty has provided evidence as to how seriously he took his roles as COLP and COFA at the relevant time, and the many steps he took to discharge those roles in a compliant fashion.

    22.5. As stated below, the SRA accepts that Mr Flaherty has no previous regulatory history.

Proposed Sanction

23. The parties invite the Tribunal to determine that an appropriate sanction is a fine of £5,001.00. Neither the protection of the public nor the protection of the reputation of the legal profession justify suspension or strike-off.

24. The sanction outlined above is considered to be in accordance with the Tribunal's Guidance *Note on Sanctions* (11th edition) taking into account the guidance set out in *Fuglers & Ors v Solicitors Regulation Authority* [2014] EWHC 179 (Popplewell J) and as set out in the guidance at paragraphs 8 and 48.

25. The misconduct giving rise to the allegations is moderately serious. Given the nature of the alleged misconduct, lesser sanctions such as a Restriction Order or a Reprimand would not be adequate or suitable.

26. This assessment takes into account the following factors:

    26.1. The Respondent's conduct cannot be described as spontaneous; it took place over a protracted period of nearly 3 years.

    26.2. The Respondent acted in breach of his obligations as COFA and as a director of the Firm.

    26.3. The Respondent had responsibility for the circumstances giving rise to the misconduct. As the COFA of the Firm he had a duty to take all reasonable steps to ensure the Firm and its managers, complied with *"any obligations imposed upon them"* under the Accounts Rules.

    26.4. The Respondent was an experienced solicitor having been on the Roll since 2007; and

    26.5. The number of and value of the payments made.

27. As to the harm caused, by failing to take proper steps to limit the risks of money laundering the admitted failures and breaches of the Code and Principles caused significant sums of money to pass through the client account where there was no underlying legal transaction. This failure over a lengthy period of time risked causing harm to the reputation of the legal profession.

28. Factors that aggravate the seriousness of the misconduct include:

28.1. The misconduct continued over a period of time.

28.2. The Respondent ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession.

29. Besides the mitigation advanced above, the mitigating features are:

29.1. The Respondent has now admitted the misconduct and the breaches alleged such that a contested hearing has been avoided;

29.2. The Respondent has cooperated with the SRA's investigation; and

29.3. His previous good character with no regulatory history

30. The parties therefore consider that, in the light of the admissions set out above and taking due account of the guidance, the proposed outcome represents a proportionate resolution of the matter, which is in the public interest. Accordingly, the parties agree that the appropriate outcome in this case is for the Respondent to receive a fine of £5,001.00.

Costs

31. As noted above, subject to the approval of this Agreed Outcome, it is agreed that the Respondent will contribute £15,168.40 to the SRA's costs of the Application and Enquiry, including VAT.

Signed:

(Respondent)

Date:

Signed:

(On behalf of Solicitors Regulation Authority Limited)

Date: 24 February 2025