BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No 12639-2024**

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

-and-

SIMPSON THACHER & BARTLETT LLP

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

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1. By a statement made on behalf of the Solicitors Regulation Authority ("**the SRA**") pursuant to Rule 12 of the Solicitors Disciplinary Proceedings Rules 2019 dated 8 July 2024 ("**the Rule 12 Statement**"), the SRA brings proceedings before the Tribunal against the Respondent firm **(**"**the Respondent**"). The parties have agreed the following Statement of Agreed Facts and Outcome ("**AO**").

2. In this document, the following abbreviations are references to:

    2.1. CMRA: client and matter risk assessments;

    2.2. CDD: customer due diligence;

    2.3. SDD: simplified customer due diligence;

    2.4. EDD: enhanced customer due diligence;

    2.5. AML: anti-money laundering;

    2.6. MLRO: money laundering reporting officer;

    2.7. MLCO: money laundering compliance officer;

    2.8. COLP: compliance officer for legal practice;

    2.9. FWRA: firm wide risk assessment;

2.10. PCPs: policies, controls and procedures;

2.11. PEPs: politically exposed persons.

3. The SRA has agreed to withdraw Allegation 1.1.2 and a separate application will be made. Subject to that and what is set out below, the allegations, made by the SRA in the Rule 12 statement, are admitted.

The Allegations

4. The Allegations are that, being the 'Relevant Person' with ultimate responsibility for compliance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("**MLRs 2017**") (*numbering retained from Rule 12 statement*):

1.1. The Respondent failed to have, in compliance with Regulation 18, of the MLRs 2017,

1.1.1. Between 26 June 2017 and 2 March 2020[1], a FWRA;

1.1.2. [to be withdrawn]

And in doing so, it breached or failed to comply with any or all of:–

Insofar as the conduct took place before 25 November 2019:

i. Principle 6 of the SRA Principles 2011 ("**the 2011 Principles**");

ii. Principle 8 of the 2011 Principles; and

iii. Outcome 7.5 of the SRA Code of Conduct 2011.

Insofar as the conduct took place on or after 25 November 2019:

iv. Principle 2 of the SRA Principles 2019 ("**the 2019 Principles**");

v. Paragraph 2.1(a) of the SRA Code of Conduct for Firms; and

vi. Paragraph 3.1 of the SRA Code of Conduct for Firms.

[1] Allegation 1.1.1 will be subject to an application to amend from 1 February 2020 to 2 March 2020

1.2. Between 26 June 2017 and 1 January 2023, the Respondent failed to have in place fully compliant PCPs, as required by Regulation 19 of the MLRs 2017

And in doing so, it breached or failed to comply with any or all of –

Insofar as the conduct took place before 25 November 2019:

i. Principle 6 of the 2011 Principles;

ii. Principle 8 of the 2011 Principles; and

iii. Outcome 7.5 of the SRA Code of Conduct 2011.

Insofar as the conduct took place on or after 25 November 2019:

iv. Principle 2 of the 2019 Principles; and

v. Paragraph 2.1(a) of the SRA Code of Conduct for Firms.

1.3. Between 26 June 2017 and 1 October 2022, the Respondent failed to have in place compliant CMRAs in relation to four files, as required by Regulation 28(12) and 28(13) of the MLRs 2017.

In doing so, it breached or failed to comply with any or all of:

Insofar as the conduct took place before 25 November 2019:

i. Principle 6 of the 2011 Principles;

ii. Principle 8 of the 2011 Principles; and

iii. Outcome 7.5 of the SRA Code of Conduct 2011.

Insofar as the conduct took place on or after 25 November 2019:

iv. Principle 2 of the 2019 Principles; and

v. Paragraph 2.1(a) of the SRA Code of Conduct for Firms.

Admissions

5. The Respondent admits Allegations 1.1.1, 1.2 and 1.3 and admits that those breaches were material and of sufficient seriousness as to amount to breaches of relevant Principles and failures to achieve the relevant Outcomes.

Background

6. The Respondent is a limited liability partnership and a recognised body. It states that its focus is providing legal advice related to corporate matters for FTSE100-sized public and private firms. The Respondent does not conduct conveyancing or hold client money. The Respondent states that it very rarely acts for individuals (and then only for individuals known to it through its private equity work and on instructions within its area of specialist expertise). The Respondent employs 249 qualified lawyer fee earners in its office in London. The Respondent's turnover figures, as reported to the SRA, for the accounting period in the year to 1 November 2023 amounted to approximately £299 million and averaged £191 million per annum over the period 1 November 2017 - 2023, as set out in the Respondent's Answer at paragraph 19.

7. The Respondent estimates that approximately 92% of its work came within the scope of the MLRs 2017 during the period to which the allegations relate. The aspects of the Respondent's work that come within the scope of the MLRs, as defined by regulation 12(1), are those elements that relate to the buying and selling of business entities, the creation, operation or management of trusts, companies, foundations or similar structures or (by virtue of Regulation 11(d)) tax advice.

8. The SRA accepts that the Respondent's practice presented a low risk of money-laundering because of the nature of the Respondent's work in the private equity sector. The majority of its clients are very longstanding and well known to the partners acting for them and the Respondent did not and, in fact, still does not hold client money.

9. Although it is accepted that the Respondent's breaches caused a risk of harm, the risk of harm was low because of the matters referred to in paragraphs 6 - 8 and there was no evidence that any actual harm had been caused by any of the failures set out below.

10. On 30 April 2021, the SRA's Anti-Money Laundering Proactive Supervision Team selected the Respondent to undergo a desk-based review of the Respondent's AML controls. The intended nature of the review was to assess the Respondent's compliance with the MLRs 2017. The documentation supplied in response to the review included the Respondent's FWRA, adopted on 3 March 2020, and the then current PCPs, introduced in January 2021.

11. On 25 May 2021 the SRA requested further information in relation to matter

listings relating to ten fee earners at the Respondent.

12. On 10 June 2021, the MLCO provided the requested information. On 18 June 2021, as part of its review, the SRA requested four files to review. On 25 June 2021 the MLCO provided the requested documents.

13. On 31 January 2022 the MLCO provided additional documents in response to further requests, which included a Conflicts Check Checklist, last updated on 19 July 2021.

14. In relation to CMRAs, the MLCO stated that:

    '*Unless recorded otherwise, all clients accepted by the Respondent and all matters opened by the Respondent are low AML risk in the Respondent's assessment, consistent with the Respondent's PWRA [Practice Wide Risk Assessment] and its conservative firm-wide client/matter opening policies.*

    ……

    When we take on a new client or a new matter, the matter partner is required to complete a new client or new matter information form.'

15. On 8 March 2022, the SRA wrote to the Respondent setting out the outcome of its desk-based review ("**the Outcome Letter**"). The SRA had identified a number of concerns that appeared to be potential breaches of the MLRs 2017 and notified the Respondent that the matter had been referred to its AML Investigation Team for formal investigation. The Respondent responded to that letter on 28 March 2022 confirming that the matters identified would be addressed and the Respondent already had a review underway and had been in the process of recruiting a new Director of European Risk and Compliance to work at its London Office, explaining that the review would be accelerated and expanded and the Respondent would commission an audit once the relevant work had been completed.

16. The Respondent wrote to the SRA on 29 March 2023 updating the SRA as to the work undertaken, including (among other things) the introduction of Omnitrack in October 2022, through which to undertake and record CMRAs, an updated FWRA dated February 2023, and revised PCPs dated January 2023, and informing the SRA that an audit was scheduled for July 2023.

17. The Respondent wrote to the SRA on 4 September 2023 and attached a copy of the audit it had undertaken between July and August 2023. As a result of the audit, the Respondent said that it had updated its FWRA which was also attached.

18. The SRA served a Notice of Referral on 23 November 2023.

19. The Respondent responded to the Notice on 8 March 2024 making admissions as regards the matters which are subject to the Rule 12 Statement and has fully cooperated with the investigation and these proceedings and has remedied its failures.

Allegation 1.1.1 – Respondent's failure to discharge its AML obligations pursuant to Regulation 18 adequately or at all

20. Regulation 18 of the MLRs 2017 requires firms to "take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject". A written risk assessment must be maintained, giving consideration to risk factors such as:

    a. its customers;

    b. the countries or geographic areas in which it operates;

    c. its products or services;

    d. its transactions; and

    e. its delivery channels.

21. The SRA issued a Warning Notice on 7 May 2019 (updated on 25 November 2019) which reminded practitioners that a FWRA needed to be in writing, kept up-to-date and provided to the SRA upon request.

    "Failure to have a money laundering risk assessment in place for your firm is a significant breach of the money laundering regulations. We will take robust enforcement action where firms do not have one in place, where it is not sufficient to meet their responsibilities or where breaches are not rectified immediately".

22. In October 2019 the SRA published guidance on FWRAs, including a template FWRA for firms to use, to assist the profession in complying with the requirements of the MLRs 2017.

23. In responding to the SRA's questionnaire on 21 May 2021, the Respondent confirmed that its Regulation 18 MLR 2017 FWRA was first drafted in February 2020; and last updated in May 2021.

24. The Respondent, therefore, admits that it failed to have a FWRA in place from 26 June 2017 until 2 March 2020, a period of approximately 32 months. The Respondent has not provided a reason for this failure.

25. The purpose of a FWRA is to help a firm identify the money laundering risks it is, or could be, exposed to, and consider how any risks could be mitigated. It is to assist the firm in (a) taking a risk-based approach to preventing money laundering; and (b) developing appropriate PCPs.

Allegation 1.2 – Failure to have fully compliant PCPs: Regulation 19 of the MLRs 2017

26. Regulation 19(1) of the MLRs 2017 required the Respondent to establish and maintain PCPs to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment under Regulation 18.

27. The PCPs must be proportionate to the size and nature of the firm/business and approved by its senior management. The PCPs must include:

    a. risk management practices;

    b. internal controls;

    c. customer due diligence;

    d. reliance and record keeping; and

    e. the monitoring and management of compliance with, and the internal communication of, the policies, controls and procedures.

28. In addition, the PCPs must, amongst other things, provide for the identification and scrutiny of any case where:

    a. a transaction is complex;

    b. a transaction is unusually large;

    c. a transaction has an unusual pattern of transactions;

    d. a transaction has no apparent economic or legal purpose; and

    e. any other activity or situation which the firm regards as particularly likely by its nature to be related to money laundering or terrorist financing.

29. In responding to the SRA's questionnaire on 21 May 2021, the Respondent attached copies of its current AML policies and procedures under Regulation 19 which had been

last updated in January 2021, namely the Respondent's Anti-Money Laundering (AML) Policy 2021, the Respondent's Tax Evasion Policy (introduced in June 2018 and updated in January 2021) and its 2020 FWRA (as regards the period after 3 March 2020) ("**the 2021 PCPs**"). The Respondent had begun work in 2018 to draft new policies but accepts that the draft was never adopted by the Respondent. Upon reviewing the Respondent's policies, controls and procedures, which were provided, they were considered by the SRA to be non-compliant as set out below.

30. The Respondent admits that its PCPs were not fully compliant until the 2023 PCPs were adopted on 1 January 2023 in that the 2021 PCPs omitted certain matters which they were required to address and some other areas were not covered in sufficient detail such that, viewed cumulatively, the 2021 PCPs were materially deficient and in breach of Regulation 19.

31. In relation to the risk factors identified in Regulation 19(4), the Respondent accepts that the PCPs addressed the following matters but in insufficient detail:

    a. identifying transactions that are complex and unusually large (Regulation 19(4)(a)(i)(aa));

    b. identifying and scrutinising transactions with no apparent economic or legal purpose (Regulation 19(4)(a)(i)(bb));

    c. identifying and scrutinising activities or situations with a particularly likely risk of money laundering or terrorist financing (Regulation 19(4)(a)(ii)); and

    d. taking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products or transactions which might favour anonymity (Regulation 19(4)(b)).

32. In relation to the matters outlined in the Outcome Letter:

    a. The Respondent admits that its PCPs prior to January 2023 did not address:

        i. the requirement introduced in January 2020 to report Companies House discrepancies (Regulation 30A);

        ii. when SDD may be applied (Regulation 37 and 19(3)(c));

        iii. reliance on third parties (Regulation 39 and 19(3)(d)); and

iv. EDD (Regulation 33 and 19(3)(c)).

b. The Respondent accepts that it addressed, albeit in insufficient detail, the following matters:

i. measures to be applied for PEPs Regulation 33, 35 and 19(3)(c));

ii. ongoing monitoring (Regulation 28(11) and 19(3)(c)); and

iii. high risk jurisdictions and third countries (Regulation 22 and 19(3)(c)).

Allegation 1.3 – Respondent's failure to have in place compliant CMRAs – Regulations 28(12) and 28(13) of the MLRs 2017

33. Given that the Respondent conducted work, which was in scope of the MLRs 2017, it was necessary for it to carry out a written CMRA, pursuant to Regulation 28 (12) and (13) of the MLRs 2017, in respect of each client/matter. The SRA's position is that this was, on a proper construction of the regulation, mandatory. The Respondent accepts that it was, at the very least, good practice by the relevant time period. It is common ground that the allegation falls to be admitted, either way.

34. Regulations 28(12) and 28(13) of the MLRs 2017 require firms to take steps to identify the risks posed by a particular customer (or 'client' in this particular context) and matter. A client risk assessment must identify and assess the risks posed by an individual client and must always be carried out at the beginning of a client relationship. A matter risk assessment should focus on the specific risk factors that a matter presents, beyond, or different to, the client risks already identified.

35. As part of its desk-based review the SRA requested four files on 18 June 2021. The files were subsequently reviewed by the SRA. The Respondent accepts that, on each of the four matter files, the Respondent failed to have in place a CMRA and that it did not have in place a process to ensure that all information required by the MLRs 2017 was recorded and held in a documented CMRA. The Respondent accepts that it ought to have recognised the need to record its consideration of such risk factors in written CMRAs by 2021 and that it did not introduce a requirement for written CMRAs until 1 October 2022.

36. The Respondent states that, during the period 26 June 2017 and 1 October 2022, the risks presented by a given client or instruction were considered by its Conflicts Group and relevant matter partners. The Respondent's systems and processes failed to

include documenting the risk in the client/matter risk assessment as required by Regulation 28 of the MLRs 2017.

37. It is accepted by the SRA that, had written CMRAs been carried out by the Respondent, they would have been likely to have recorded that the risks were low.

Admissions to breaches of the Principles and failures to achieve outcomes (in respect of the failures admitted in all three allegations)

Principle 6

38. Principle 6 of the 2011 Principles/Principle 2 of the 2019 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 firms) to scrupulously comply with all applicable legislation. Such expectations are all the more justified in circumstances where the purpose of that legislation is to protect against the use of UK professional service providers being used to launder money and finance terrorist activity.

39. The Respondent's failure to comply with key requirements of the MLRs 2017 in such circumstances and to take the steps that are expected, is clearly likely to undermine public trust in the profession, particularly where it continued over a lengthy period of time and the purpose of Regulation 28 is to assist the Respondent in identifying the level of client due diligence to apply and the ongoing monitoring that is necessary. Not to have fully compliant PCPs creates an increased risk of money laundering. By adhering to AML regulations that form the basis of identifying and monitoring the risks of money laundering, the Respondent plays a key role in preventing financial crime that can undermine the economy and the reputation of the legal profession.

Principle 8

40. 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 admitted by the Respondent related to key requirements of the MLRs 2017 and continued for a period of years. Risk management requires such compliance even where the relevant risks are understood to be low. Proper governance and/or sound financial and risk management principles must, at a minimum, require scrupulous adherence to the prevailing AML regime by the Respondent.

Outcome 7.5

41. Outcome 7.5 of the SRA Code of Conduct 7.5 required the Respondent to "comply with legislation applicable to your business, including anti-money laundering…legislation".

42. The admitted breaches involved significant delay in achieving full compliance with the MLRs 2017, in that the Respondent failed to have a FWRA in place between 26 June 2017 and 2 March 2020, had only partially compliant PCPs in place between 26 June 2017 and 1 January 2023 and did not introduce a process requiring written CMRAs until 22 October 2022 in circumstances where the Respondent accepts that it ought to have recognised the need for this earlier. No reason has been given by the Respondent for these failings.

Paragraph 2.1(a) of the SRA Code of Conduct

43. Paragraph 2.1(a) of the SRA Code of Conduct for Firms required the Respondent to have "*effective governance structures, arrangements, systems and controls in place that ensure; (a) you comply with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements which apply to you*". The Respondent breached this paragraph for the reasons set out above.

Paragraph 3.1 of the SRA Code of Conduct for Firms

44. Paragraph 3.1 of the SRA Code of Conduct for Firms required the Respondent to "keep up to date with and follow the law and regulation governing the way you work". The Respondent breached this paragraph for the reasons set out above.

45. Those admissions are made (and were made in the Respondent's Response to the Notice of Referral and the Answer) on the basis that the Respondent accepts:

    a. Outcome 7.5 of the 2011 Code and paragraph 2.1(a) of the 2019 Code for Firms are necessarily breached by material non-compliance with the strict and mandatory requirements of the MLRs 2017 (and paragraph 3.1 required firms to keep up to date with developments in that respect);

    b. risk management (Principle 8 of the 2011 Code) requires such compliance even where the relevant risks are understood to be low; and

    c. the public would expect strict compliance by law firms with AML legislation given the importance of combatting money laundering (Principle 6 of the 2011 Code and Principle 2 of the 2019 Code).

Matters relied on by the Respondent in mitigation (but not agreed or endorsed by the Applicant)

46. The Respondent has no regulatory history.

47. The Respondent deeply regrets the admitted breaches. The Respondent had taken steps to remedy the breaches prior to receipt of the SRA's Outcome Letter dated 8 March 2022 and the breaches were fully remedied prior to the SRA's decision to refer the Respondent's conduct to the Tribunal.

48. The Respondent has co-operated with the SRA throughout, shown insight and made open and frank admissions at the earliest possible opportunity.

49. The Respondent has taken steps to prevent a repetition of these breaches. By letter dated 29 March 2023, the Respondent updated the SRA in relation to the work undertaken by the Respondent to date and the work to be undertaken including:

    a. the appointment on 13 June 2022 of a Director of European Risk and Compliance and, as from 22 July 2022, that same person as MLRO;

    b. the introduction of Omnitrack in October 2022 through which all CMRAs were undertaken and recorded;

    c. the provision of training sessions in AML compliance for all partners;

    d. its updated FWRA dated February 2023;

    e. its updated PCPs dated January 2023 ("**the 2023 PCPs**");

    f. scheduled training sessions in AML compliance for all fee-earners and business services personnel; and

    g. an audit scheduled for July 2023.

50. The nature of the Respondent's practice and client base is such that at all relevant times it presented a low risk of money laundering.

51. There is no evidence of actual harm or that money-laundering has taken place and the risk of harm caused by these breaches was low.

52. On 4 September 2023 the Respondent wrote to the SRA attaching a copy of the audit it had undertaken between July and August 2023. The audit was undertaken by [redacted]

of Teal Compliance. Other than some minor recommendations for limited improvements as set out in the letter and promptly implemented by the revised FWRA dated September 2023 ("**the 2023 FWRA**") attached to that letter, the conclusions of the audit were positive as to the Respondent's compliance with the requirements of the MLRs 2017.

53. The SRA served a Notice of Referral on 23 November 2023. By that time, all of the matters which are subject to the allegations had been fully remedied.

54. The Respondent is committed to maintaining full compliance and there is no risk of further breaches. Further improvements to the CMRA process and updates to the 2023 PCPs and 2023 FWRA have taken place since their adoption and a further independent audit has been scheduled for June 2025. The Respondent's current AML policies and FWRA are fully compliant and there are no concerns as to ongoing compliance.

55. A comprehensive programme of high-quality and tailored training has been delivered to partners, associates and relevant business services personnel and further training has been scheduled, in addition to guidance and regular updates from the Respondent's AML team.

Proposed Sanction

56. The parties invite the Tribunal to determine that an appropriate sanction is a fine of £300,000.

57. This figure is consistent with the principles set out in 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 Tribunal's *Guidance Note on Sanctions* at paragraphs 8 and the table at page 15 and, on the part of the SRA, has regard to the SRA's own guidance.

58. The sanction is considered to be proportionate taking into consideration (a) the seriousness of the misconduct; and (b) the size and financial resources of the firm including revenue generated by the firm (*SRA v Clyde & Co; Edward Henry Mills-Webb* [12481-2023])

59. The misconduct giving rise to the allegations falls into the category of 'more serious' (level 3 of the fine bands).

60. This assessment takes into account the following factors:

a. The Respondent's conduct cannot be described as spontaneous; it took place over a protracted period as set out at paragraph 42 above;

b. The Respondent had direct responsibility for the circumstances giving rise to the misconduct. The Respondent had a duty to comply with the MLRs 2017; and

c. The Respondent was a well-resourced international firm with a global reputation. The level of any fine should represent a meaningful deterrent for the profession, as explained in *Clyde & Co.*

61. As to the harm caused, there is no evidence that any actual harm had been caused by any of the failures and it is accepted that the risk of harm caused by the breaches was low given that the Respondent's practice and client base presented a low risk of money laundering. However, the Respondent's failure over a lengthy period of time risked causing harm to the reputation of the legal profession.

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

a. The misconduct continued over a period of time; and

b. The Respondent ought reasonably to have known that the misconduct was in material breach of its obligations to protect the public and the reputation of the legal profession.

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

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

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

c. The Respondent's previous good character with no regulatory history

64. 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 £300,000.

Costs

65. As noted above, subject to the approval of this Agreed Outcome, it is agreed that the Respondent will contribute £62,000 to the SRA's costs of the Application and Enquiry, including VAT.

SIGNED:

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Ian Brook, Capsticks Solicitors LLP, on behalf of the SRA, APPLICANT

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Julie Norris (partner), Kingsley Napley, on behalf of the RESPONDENT

Dated 7 March 2025