SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12029-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BIPLAB KUMAR PODDAR Respondent

Before:

Mr B Forde (in the chair)
Mr P Booth
Dr S Bown

Date of Hearing: 17-18 March and 7-8 September 2020

Appearances

Andrew Bullock, barrister of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent appeared and represented himself.

JUDGMENT

Allegations

1. The allegations made by the Applicant against the Respondent were set out in a Rule 5 Statement dated 20 day of November 2019 and were that:

1.1 Between 27 April 2016 and 14 June 2016 he accepted instructions on an international transaction which involved accepting £122,160.87 into his firm's client account and subsequently paying out £112,000.00 of those funds to various third parties ("the international transaction"). In relation to this matter he failed to apply appropriate customer due diligence measures and/or failed to undertake appropriate ongoing monitoring of the business relationship. He thereby:

i. Failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011 ("the Code of Conduct"); and/or

ii. Breached any or all of Principles 6, 7 and 8 of the SRA Principles 2011 ("the Principles")

1.2 In relation to the international transaction referred to in 1.1 above, he accepted money into his client account, which he then paid out to third parties, when there was no underlying legal transaction. In doing so he breached any or all of:

i. Rule 14.5 of the SRA Accounts Rules 2011 ("the Accounts Rules")
ii. Principle 6 of the Principles.

1.3 In acting on the international transaction he facilitated a transaction bearing the hallmarks of being dubious. He thereby breached any or all of Principles 2, 3, 6 and 8 of the Principles.

1.4 He paid out £30,007.45 on 4 April 2016 to a third party on behalf of a client, from funds held for the client from the sale of a property on which his instructions regarding his legal work had concluded. In so doing he breached any or all of:

i. Rule 14.5 of the Accounts Rules;
ii. Principle 6 of the Principles

Documents

Applicant

- Application and Rule 5 Statement with exhibit "JRL1" dated 20 November 2019
- Authorities: SRA v Patel [2012] EWHC 3373 (Admin)
  Fuglers LLP & Ors [2014] EWHC EWHC 179 (Admin)
  Simms v The Law Society [2005] EWHC 408 (Admin)
  Baxendale-Walker v The Law Society [2007] EWCA Civ 233
  Bryant & Bench v The Law Society [2007] EWHC 3043 (Admin)
  SRA v Dar [2019] EWHC 2831 (Admin)
- Schedule of Costs dated 20 November 2019; 20 March 2020 and 30 August 2020
- E-mail re costs dated 8 September 2020 from Mr Bullock

Respondent

- Respondent's statement dated 22 December 2019
- Further statement dated 9 February 2020
- Witness statement dated 24 February 2020
- Skeleton Argument dated 11 March 2020
- Respondent's amendments to interview transcript and schedule of discrepancies
- Personal Financial Statement 19 February 2020
- Schedule of costs dated 16 March 2020
- Copies of: LLM certificate in International Law and World Economy 2010
  Post Graduate Diploma in International Trade Law
  LLB in Law 2006
  LLB in Law 1997

Preliminary Matters

2. Prior to the opening of the Applicant's case the Tribunal were asked by the parties to determine applications with respect to the following:

3. <u>The addition of documents to the bundle</u>

3.1 Mr Bullock, for the Applicant addressed the Tribunal on matter of additional documents to the hearing bundle. The first was uncontroversial, being authorities filed by both sides and the Respondent's assessment of his costs. The second was correspondence between the parties regarding the Respondent's request for disclosure of information relating to Mr Dagadu, the Forensic Investigation Officer who had conducted the investigation, interviewed the Respondent but had since left his job with the Applicant.

3.2 Mr Bullock explained that the Respondent had sought disclosure from the Applicant of matters relating to Mr Dagadu's employment history with the Applicant and whilst the Applicant did not object in principle to the documents being disclosed it questioned their relevance to the matters which were before the Tribunal. However, the documents were readily available if required.

4. <u>The Transcript of the Respondent's interview with Forensic Investigation Officer Mr Dagadu dated 22 June 2018 and application for strike out.</u>

4.1 The Respondent submitted that the transcript of the interview, appended to the report of Mr Dagadu, and set out in the Tribunal's bundle was compromised by inaccuracies and transcription errors. The Respondent had noted 75 such errors within the body of the transcript. The Respondent had set out the errors in a document he styled 'Schedule of Discrepancies' which he had added to the bundle for the Tribunal's consideration.

4.2 The Respondent submitted that the Applicant, as guardian of the solicitors' profession in England and Wales, had a duty to 'get things right' and to produce accurate evidence.

4.3 In the Respondent's submission the errors in the transcript were all material errors which undermined the cogency of the evidence brought against him by the Applicant to such an extent that the Tribunal should 'strike out' the Applicant's case. The Respondent said that Mr Dagadu had been the primary investigator and the Respondent

had met with Mr Dagadu on every occasion and had been interviewed by him twice. There were unacceptable mistakes in the transcript of the interview and because Mr Dagadu had left the Applicant's employment the Respondent had been deprived of the opportunity to cross-examine Mr Dagadu on how the investigation was conducted, the mistakes in that investigation and the inaccuracies in the interview transcript.

4.4 Mr Dagadu's absence from the hearing had deprived the Respondent and the Tribunal of the opportunity to assess Mr Dagadu's credibility under questioning. Essentially, the Respondent submitted that Mr Dagadu had been under training at the time (he had been under the supervision of Mr Chambers), he had made mistakes and was now not present to be questioned on those mistakes which undermined the force of the Applicant's case against the Respondent.

4.5 Further, without calling Mr Dagadu, his report was merely hearsay and of no evidential use to the Applicant or the Tribunal. Additionally, the decision to proceed against the Respondent alone and not others of his firm was arbitrary and wrong; that there had been no consideration of .his medical issues by the Applicant and the Applicant had not lodged a skeleton argument.

4.6 To proceed with the case in such circumstances was unfair and unjust and amounted to an abuse of process.

4.7 Mr Bullock, for the Respondent, accepted that there were typographical mistakes in the transcript but that they were of no real significance to the case against the Respondent in which there was a body of other evidence which did not relate to the transcript. Mistakes in the transcript alone would not have impacted on the decision to refer the Respondent's case to the Tribunal.

4.8 Mr Bullock indicated that following the concerns raised by the Respondent with respect to the accuracy of the transcript the Applicant had finalised another version of the transcript in which the amendments from the original version had been colour coded: red for changes adopted from the Respondent's schedule of discrepancies; blue for other changes or slight differences and yellow for amendments set out in the Respondent's schedule of discrepancies and which the Applicant did not consider were inaccurate but were not of a substantive nature in any event. Mr Bullock suggested that the Tribunal may wish to listen to the interviews in their entirety to assess the accuracy of the transcript and the amendments to the transcript.

4.9 With respect to the Respondent's application for dismissal Mr Bullock referred to it as a hopeless application and stated that the Respondent had a very high hurdle to vault before he could be successful and in his opinion the Respondent's application was more akin to a half time submission of no case to answer.

4.10 An abuse of process argument based upon flaws in the Applicant's transcript and the other matters raised by the Respondent could not succeed. Mr Bullock stated that the decision to refer the Respondent to the Tribunal had not been made on the basis of the transcript of the interview alone but on other evidence which would be put before the Tribunal and which, cumulatively, demonstrated the Respondent had involved himself in transactions which were high risk, bore the hallmarks of being dubious and which were outside the range of the Respondent's experience and business. Mr Bullock, made

reference in this regard to Hamlet Solicitors own Anti-Money Laundering Policy (AML policy) which itself identified the transaction as high risk, and the Financial Services Agreement which had contained many typographical errors. This document was self-contradictory and meaningless and on any analysis bore the hallmarks of an advance fee fraud to a degree that any reasonable reviewer of the material could conclude that there was a case to take forward in the absence of any admission from the Respondent.

4.11 The Report prepared by Mr Dagadu was not hearsay as it had been completed by Mr Chambers, Mr Dagadu's supervisor, and Mr Chambers had prepared a statement of truth and would be called by the Applicant to give evidence.

4.12 Mr Bullock stated that the Respondent's health had been considered by the Applicant but this had been weighed properly against the inherent seriousness of the allegations and the Respondent's health did not render the decision to refer as wrong.

4.13 Mr Bullock asked the Tribunal to rule on the issue of the correspondence first before determining the Respondent's application to strike out the proceedings on the basis of abuse of process.

The Tribunal's Rulings

4.14 Having read the material relating to Mr Dagadu the Tribunal considered that in the interest of justice it should be placed in the bundle in order for the Respondent to make use of it in his arguments before the Tribunal.

4.15 With respect to the transcript, the Tribunal stated it had now read all three documents: the original transcript; the Respondent's amendments and the colour coded document produced by the Applicant. The Tribunal was an expert Tribunal and was able to use all three documents to form an assessment of the interview overall without the need to listen to the recording of the interview.

4.16 As to the Respondent's application for the matter to be struck out the Tribunal considered that any such application had a very high hurdle to cross and could only be sustained where it was clearly merited and to prevent the waste of Tribunal time and further costs. On the basis of the submissions put forward by Respondent the Tribunal considered the application to be premature. This, essentially, was a half-time submission which should be considered after the close of the Applicant's case and it was appropriate at this stage for the case to proceed and the Tribunal to hear the Applicant's evidence. However, the Tribunal would keep the matter under careful review as the evidence progressed.

5. Respondent's Half-Time Submission of No Case to Answer on all allegations

The Respondent's Application

5.1 At the close of the Applicant's case the Respondent made an application of no case to answer with respect to all the allegations on the basis they were founded upon the investigation and report of Forensic Investigation Officer, Mr Dagadu, however, the Applicant had not called Mr Dagadu to give evidence but had instead relied upon the

hearsay evidence of Mr Chambers. Therefore, in the Respondent's submission, there was simply no admissible evidence for the Tribunal to consider and the case against him should be dismissed on that basis.

The Applicant's Response

5.2 Mr Bullock stated that the Respondent had not addressed the Tribunal upon the legal underpinnings of an application of no case to answer and he reminded the Tribunal that the appropriate test to apply in determining a submission of no case to answer was that set out in R v Galbraith [1981] 1WLR 1039 and that the Tribunal should find no case to answer if there was no evidence to support the allegation, or if the Tribunal considered the evidence to be of a tenuous or inconsistent nature. In the latter case, the Tribunal had to consider whether the evidence, taken at its highest, was such that a Tribunal correctly directing itself could not properly convict upon it.

5.3 In this case Mr Bullock stated that hearsay evidence was fully admissible: the appropriate Civil Evidence Act notices had been served and the Respondent had made no objection to the Applicant's reliance upon this evidence.

5.4 Mr Bullock submitted that the documents in the case, to which he had taken the Tribunal, spoke for themselves and revealed a case for the Respondent to answer. There was no weakness or vagueness in the Applicant's evidence such as to allow the Tribunal to dismiss the case on either limb of the test set out in Galbraith.

5.5 Mr Bullock also submitted that the Respondent had not challenged the Applicant's case in his cross-examination of Mr Chambers which had effectively been limited to the Respondent's concerns regarding Mr Dagadu's investigation and not to any inherent mistakes or inaccuracies within the body of the Applicant's evidence. Mr Bullock also pointed to the apparent admissions made by the Respondent when he had been interviewed and his later correspondence with the Applicant.

The Tribunal's Decision

5.6 The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondents' rights to a fair trial and to respect for their private and family lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

5.7 The Tribunal weighed up carefully the Respondent's submissions and the submissions made by Mr Bullock on the Applicant's behalf. The Tribunal observed that the Respondent had made no reference to Galbraith but noted the comments made by Mr Bullock.

5.8 The Tribunal was satisfied that the relevant notices under the Civil Evidence Act with respect to hearsay evidence had been served by the Applicant at the appropriate time and there had been no objection raised by the Respondent. The Applicant had therefore been entitled to rely upon hearsay evidence.

5.9 The Tribunal did not consider that either limb of the test in Galbraith had been engaged and that there was sufficient evidence for the case to proceed further. The Respondent's application of no case to answer was dismissed.

Factual Background

6. The Respondent was born on 12 July 1973 and was admitted to the Roll of Solicitors on 15 September 2011. The Respondent practised at Hamlet Solicitors LLP, First Floor, 16-18 Whitechapel Road, London, E1 1EW ("the firm") and at all material times he was a partner in the firm and the firm's Compliance Officer for Legal Practice.

7. The Respondent currently holds a practising certificate, free from conditions.

8. On 29 September 2017, a qualified accountant's report for the firm was produced by the firm's accountants (for the period 1 April 2016 - 31 March 2017). An SRA Forensic Investigation was subsequently commissioned. This commenced on 4 December 2017. The lead SRA Investigation Officer, Mr S Dagadu, left the SRA on 31 August 2018, with his draft report being finalised on 30 November 2018 (and produced by) his Team Leader, Mr Jonathan Chambers.

9. The firm's work was predominantly focussed on immigration matters and it had two partners, the Respondent and Mr AT. The firm's gross fee income for the tax year 2016/2017 was £103,236.00.

10. The issues which formed the subject matter of the allegations related to two non-immigration matters, for which the Respondent was the fee-earner and solicitor/partner with conduct. These were an apparently high value, cross-border financial transaction ("the international matter") and a domestic conveyancing transaction ("the conveyancing matter").

11. On 8 December 2014, the SRA had issued a warning notice identifying potential warning signs in transactions in respect of money laundering concerns, and re-stating that there was an expectation that solicitors applied appropriate customer due diligence (CDD).

12. On 18 December 2014 the SRA had issued another warning notice in relation to "improper use of a client account as a banking facility". This warning notice included a warning that a solicitor should not act as an 'escrow only' agent and also a statement that: "... You must not allow money to move through client account unless it is in connection with a genuine transaction about which you are providing legal services. You should ensure that you undertake proper due diligence before accepting any funds into client account and you should not act if you do not fully understand the transaction on which you are advising. Compliance with Rule 14.5 offers an important 'first line of defence' to clients who may seek to take advantage of your client account to launder money".

Witnesses

13. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the

Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

14. The following gave evidence:

- Jonathan Chambers – Forensic Investigation Officer
- The Respondent

Findings of Fact and Law

15. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

16. Mr Chambers said that he is a Team Leader in the Forensic Investigation Unit at the Solicitors Regulation Authority ("SRA") a role he had held for four years.

17. Mr Chambers confirmed that the statements set out in the FI Report were true to the best of his knowledge. He explained that the FI report was in the name of Mr S Dagadu, who had been the investigation officer on this matter and he confirmed that prior to his leaving the SRA, Mr Dagadu was working within the team of investigators whose work Mr Chambers managed.

18. During Mr Dagadu's investigation Mr Chambers was kept informed of the issues and progress of the matter and that he, Mr Chambers, attended and took part in the final interviews with the partners of the firm.

19. After Mr Dagadu left the SRA, Mr Chambers reviewed his draft report and papers, before finalising the FI Report.

20. In cross-examination Mr Chambers said that he attended the firm with Mr Dagadu on 23 June 2018 and that Mr Dagadu had made 6 previous unaccompanied visits to the firm. He said that Mr Dagadu had recently been assigned to his team and although he did not routinely attend at firms with his investigators he did so when other commitments allowed and as part of his management responsibilities.

21. Mr Chambers attended on 23 June 2018 as he was aware that the investigation had reached a significant stage and that the final interview would take place on that day.

22. Mr Chambers recalled that Mr AT and the Respondent had been partners in the firm and that Mr AT had been COFA and the Respondent COLP. He was also aware that another partner, Mr K, had left the firm in March 2017.

23. It was put to Mr Chambers by the Respondent that Mr K as practice manager of the firm and counter-signatory to the cheque requisition forms along with Mr AT, as COFA of the firm and its anti-money laundering officer should both have been interviewed.

24. Mr Chambers explained that neither Mr K nor Mr AT were interviewed regarding these matters as they were not relevant to the matters in hand. In this case the Respondent had had conduct of the transactions in question and had been the person who had taken the instructions and it was the Respondent's conduct which had been investigated.

25. Mr Chambers confirmed that the Respondent had co-operated when he had been interviewed on 23 June 2017. Whilst he had had no involvement in the preparation of the transcript he accepted that there had been some transcription errors but that no transcript could ever be perfect. The decision to take proceedings against the Respondent was not based purely upon the matters said in interview but upon a review of all the material in the case.

The Applicant's Case (relating to Allegations 1.1; 1.2 and 1.3)

The international matter

26. The concerns regarding this matter included the transaction raising various warning signs regarding the nature of the transaction; a lack of clarity over who the Respondent's client was; significant funds being received from the private account of an unidentified third party; with no, or insufficient, due diligence being undertaken on the transaction or any of the people/companies involved.

27. Essentially, a new client instructed the Respondent to accept $300,000 into his client account in relation to a transaction. It was not clear exactly who the client was, but the Respondent accepted instructions and/or funds from a number of individuals. On instructions, the Respondent undertook to pay most of this money to third parties and, on instructions, later did pay this money out to third parties.

28. It appeared that with respect to this matter the Respondent did not do any legal work; did not do due diligence on a number of the individuals involved, including those from whom he received funds (and those to whom he was sending money); did not receive the full amount he was originally instructed to receive. This is despite the matter involving an $80m financial instrument, several overseas parties, and areas which were outside the Respondent's area of expertise.

Initial Instructions documents and ledger

29. On 27 April 2016, the Respondent prepared a client care letter, addressed to TR of "Company A", at an address in China. The client care letter:

- Identified the client as TR of "Company A", in China, and the Respondent as the solicitor and partner responsible for the matter.
- Sets out a fixed fee of £11,000 to cover "taking instructions" and "corresponding with you and others in your matter"
- Summarised TR's instructions as being that:
    - he, as part of Company A (in Hong Kong, China), was to enter a business relationship with a company in Birmingham, UK ("Company B").

- TR/Company A were to receive financial services from Company B and, on receiving the service, will pay Company B US$300,000.

- The Respondent's firm was to hold the money on behalf of TR/Company A, and provide an undertaking to Company B to pay them the money "upon being received the financial service (UEBOM (sic) Proof of Fund MT 799 Block Fund swift through top bank in UK) you require from them".

- The Respondent/the firm "must get your final written confirmation to release the payment US$300,000 to [Company B]"

- Summarised the Respondent's advice as being that the matter had been discussed with TR and that "we have advised you to do all the due diligence on your part by yourself…we do not have any liability whatsoever, if you incurred any sort of loss, whatsoever."

30. Also dated 27 April 2016 was a "Letter of Authority", from TR. This stated that TR was of US nationality (but of Company A in Hong Kong, China) and that:

- He had instructed the firm "to represent our commercial Transaction (sic) between (Company B] and [Company A]".

- "according to our agreement you will release the money to (Company B] and his Consultant AKH including Dr AH according to our instructions"

- "You will give undertaking to [Company B] and AKH after reserving our funds to your client account when required".

- "I have authorised Hamlet Solicitors LLP to receive any papers, proceedings or other correspondence on my behalf..."

31. The initial "Rough copy" ledger for the file identified the client as "A". A second version of the ledger identified the client as being WP. WP was stated on later documents to be the President of Company A. The Respondent was unable in interview to give a clear explanation of who he had acted for, for example stating "on the face of it WP is a client, but in reality TR is a client...because I got instructions from him..." and that TR had asked that the ledger (and subsequent invoice) be in the name of WP to "show respect" to WP and that he did this on TR's instruction.

"Financial Services Agreement"

32. On 5 May 2016, the Respondent received an email to his private account from TR (whose email address was of a separate US company called A Group LLC, not of Company A). This email attached a copy of a financial services agreement apparently signed by WP on behalf of Company A, and requested that the Respondent "prepare the escrow agreement between Hamlet Solicitors LLP and Company A".

33. There was no record on the files provided of the Respondent undertaking any work, or giving advice on the agreement, or of the Respondent drafting or using an escrow agreement.

34. On 9 May 2016, the Respondent received an email to his private email account from Dr AH, which identified Dr AH as an Independent Financial Services Professional. The email attached a document saved as "Signed Contract for $80M Blocked Fund". Dr AH told the Respondent the signed contract was attached, and asked him to "certify" signatures of SB and AKH (who were not the Respondent's clients) on page three, and then send it on to TR.

35. The "Financial Services Agreement" appeared to be the same as the document received by the Respondent on 5 May 2016 from TR - now also apparently signed by SB and AKH on behalf of Company B. In summary, the document:

- Stated that Company A (Party B in the agreement) would provide its own KYC (know your client) information. The "KYC" for Company A was set out in the second of the two "Exhibit C" documents, and Exhibit D of the agreement. It included a small copy of a passport photo of WP and some contact information, including a "gmail" email address.;

- Referred to the firm as being the "Solicitor (Attorney Escrow) Firm";

- Stated that the cost of the US$80m Proof of Fund Block Fund would be US$300,000, by solicitors undertaking within 7 - 10 days;

- Stated the firm would remit the US$300,000 to the client account of [another firm of Solicitors], after the "Block Fund MT799 Swift received by the Receiving Bank and confirmed bia (sic) bank to bank";

- Stated that Company B would arrange issuance of the [financial instrument] within seven banking days of receipt of the solicitors undertaking - with a copy of the Swift MT799 to be sent by email to the Respondent "for Traking" (sic);

- Contained multiple spelling and layout errors (e.g. containing two Schedule C sections and the various spelling errors);

36. The client file contained no documentation showing the firm provided any legal advice on the content of the agreement or had any role in drafting the document.

37. In interview, the Respondent confirmed that the documents on the file were all drafted by others and he had no evidence of any legal advice. He stated that he spoke with TR over the phone and "put my advice where necessary", but had no evidence of any such advice.

Invoice and receipt of funds

38. The Respondent provided to the FI Officer an email from TR dated 16 May 2016. This appeared to forward an email from someone else, whose details were not included in the forwarded email, and which stated that the $150k fee was wired from "the sister LW's personal bank account" and appeared to ask the TR to provide the "escrow agreement signed by the attorney including your notary".

39. There was no record of the Respondent drafting, preparing or using a formal escrow agreement.

40. The bank statement showed that on 16 May 2016, Miss L, understood to be LW, sent $102,092.19 into the firm's client account. Miss L sent the funds from China.

41. The Respondent produced no evidence verifying the relationship of LW to Company A or any other individual involved. He also did not obtain identification documents in relation to her, or information relating to the source of her funds. The Respondent's business partner, AT, stated in interview that he had understood from the Respondent that the reference to Miss L being a 'sister' may have been a customary reference (rather than a familial link).

42. The firm's invoice dated 16 May 2016 was for $10,100.87 (£8,417.39 plus VAT). The Respondent addressed the bill to WP of Company A with no detail of any legal work other than a narrative of "Agreed Fees for our professional charges - Acting for your commercial matter".

43. There was no explanation on the file for why the bill was lower than the agreed fee of $11,000. The Respondent confirmed in interview that he did not record any time for the matter, so no time records were available, and that he had no experience of any such corporate finance type matters. He stated that the reason the fee was reduced was because "my client requested me this discount" and that the fee was much lower than larger, city firms would charge. The fee was nevertheless large for the Respondent, comprising approximately 9.8% (or 8.2% depending on the net figures) of the firm's annual 2016/2017 turnover, with the Respondent describing "this £10,000 or £11,000" fee at his interview with the FI Officer as a "huge money one off in my life".

44. On 20 May 2016, the firm received £20,068.68 - identified as being paid by Company A. The Respondent identified to the FI Officer that this was also received from a Chinese bank account.

45. The firm had received £122,160.87 (approximately US$176,000 at that time) - not the figure of US$300,000 set out in the client care letter and financial agreement. No documents were on the client file to explain the variation in the amounts involved, but in interview the Respondent stated this change in amount was "between the parties."

Undertakings

46. On 17 May 2016, TR asked the Respondent to issue undertakings to pay US$100,000 "in favour of SB and $US50,000 "in favour of" AKH.

47. On 20 May 2016, the Respondent provided an undertaking to transfer US$50,000 (in Sterling equivalent) to "AZ Consultant's designated bank account upon providing of swift copy of proof of fund to the extent of 80 Million US Dollars in favour of my client, and within three banking days my client will verify the authenticity of the swift message and thereafter the fees will be paid to AZ Consultants' (page 129). AKH is understood to be connected to "AZ Consultants".

48. On 23 May 2016, the Respondent provided an undertaking to transfer US$100,000 (in Sterling equivalent) to "[Company B]'s designated bank account upon providing of swift copy of proof of fund to the extent of 80 Million US Dollars in favour of my client, and within three banking days my client will verify the authenticity of the swift message and thereafter the fees will be paid to [Company B]'.

"Proof of Fund" document

49. On 8 June 2016, SB sent an email to the private account of the Respondent, identifying SB as a representative of Company B. The email:

- Referred to their transaction "for Client M/s [P P] Limited" and to a "Proof of Fund for US$80 million as swift copy attached";
- Referred to the Respondent's undertakings of 20 and 23 May 2017;
- Requested the Respondent "to transfer proceed the funds to below account, deducing (sic) your fees to net";
- Thanked the Respondent and said that SB/Company A looked forward to a long lasting relationship and more business to come.

However, SB (or Company B) were not clients of the Respondent.

50. The Proof of Fund document attached to the email dated 8 June 2016 was dated 3 June 2016. The sender bank was stated to be a branch in Germany of Deutsche Bank AG, whilst the receiver bank was stated as being the China Construction Bank in Hong Kong.

51. In essence, the document stated that Deutsche Bank AG was holding $US80 million in cash fund in the name of their client W GMBH; represented by this instrument in favour and for the benefit of M/S [P P] Limited, with Deutsche Bank AG said to be stating that the funds were not permitted to be withdrawn, moved, transferred or pledged to any other entity for 45 days.

52. The client matter file did not contain any documents:

- showing the firm provided any legal advice on the content of the banking document;
- showing the firm had any contact with the bank to confirm authenticity; or
- explaining the roles of the two different companies named at this stage as parties to the document (W GMBH and M/S [P P] Limited), or their apparent connection(s) to Company A and Company B who were the only parties referenced in the client care letter

Payments Out

53. On 7 June 2016, a letter from TR to the Respondent stated that the transaction had been successful, and funds should be released to SB, AKH and Dr AH.

54. As set out above, on 8 June 2016 SB wrote to the Respondent requesting a payment be made to Company B.

55. On 9 June 2016, AKH sent an email to the Respondent's private email, providing bank account details for AZ Consultants and requesting transfer of £34,250 by reference to his undertaking of 20 May 2016.

56. Also on 9 June 2016, the Respondent engaged in email correspondence with WP. The Respondent provided WP with the name of the other firm of solicitors named in the Financial Agreement, and was authorised by WP to "release the fee fund to the provider's solicitor bank account". In interview the Respondent stated that Company B did not have a solicitor as they had withdrawn their solicitors from the transaction to "minimise costs". No documents were provided or available from the file showing correspondence between the Respondent (or others) and this firm of solicitors, or between the Respondent and WP explaining the transaction or the actual payments being made.

57. On 10 June 2016 Dr AH wrote to the Respondent, requesting the transfer of £5,200 to Is P Ltd.

58. Between 9 and 13 June 2016, the Respondent made the following payments from the firm's client account:

Date	Payee	Amount
09/06/16	Company B	£15,000
10/06/16	Company B	£53,000
10/06/16	AZ Consultants	£9,000
10/06/16	AKH	£25,000
13/06/16	Dr AH	£4,800
13/06/16	IP Ltd	£5,200
14/06/16	Hamlet Solicitors (costs)	£10,100.87
14/06/16	Hamlet Solicitors	£20 (x 3)

59. These payments did not accord with the firm's initial client care letter, and involved payments to (and in some cases on the instructions of) various third parties and companies.

60. None of the recipients of the payments were identified on the firm's ledger(s), and none of the payments involved legal work on an underlying legal transaction.

Customer/Client due diligence (CDD) and Risk Assessment

61. The client matter file did not demonstrate that the transaction had been risk assessed prior to the firm acting, or during the retainer.

62. In interview, the Respondent stated that he was aware of all relevant SRA warning notices and rules. Also in interview, the Respondent initially agreed with the statement that he was "operating on good faith that they were good people" and stated that he "did not assign any risk assessment because I did not see any risk" - before stating that he thought there was "no risk at all...in this transaction" but had assigned it as low risk on money laundering issues.

63. Several of the warning signs from the 8 December 2014 warning notice applied to the international transaction including:

- Secrecy: LW personally provided the majority (84%) of the funding, but was not mentioned in any of the formal paperwork as having a link to the matter.

- Client not appearing to be directing the transaction: the identity of the client to whom the Respondent was ultimately responsible was unclear - ledger and invoice were in the name of WP but most funds came from LW and instructions nearly all came from TR, whose formal link to Company A was unclear.

- Documentation suspicious: self-certified KYC images provided of WP (a small passport image); poor drafting in documentation; the key 'proof of fund' document referring to two other companies being the central parties, to whom no mention is made in other documentation or instructions.

- High value placed on assets/securities - $US80 million proof of funds being provided.

- Complicated structures and instructions outside the firm's ordinary competence involving holding money in client account: the transaction involved multiple jurisdictions - funds from China, Banks and apparent lending companies in Germany and intermediaries and recipients of funds based in the US and UK.

- High fees: based on a gross fee turnover for 2016/2017 of $103,236.00, the firm's gross fees on this matter of £10, 100.87 were approximately 9.8% of the firm's annual turnover.

- General unusual features: the client was an international client instructing the firm to act as an escrow agent for dealing with an $80m fund. The firm was instructed to hold money and make payments to third parties but there was no reason for instructing the firm, or, indeed, any firm, given there was no legal work involved.

64. The firm had an Anti-Money Laundering (AML) Policy which set out policies including that:

> "If the matter.. .involves the movement of money...through this company (firm]...we have to be satisfied that the relevant transaction is legitimate....it may

be necessary to ask you a series of questions touching upon your own identity, place of residence and source of any relevant funds".

"At the start of any matter we will normally ask you to tell us the source of any funds you will be using".

65. On the international transaction, the Respondent did not comply with (or make serious attempts to comply with) the firm's own AML policy. He also confirmed that during the transaction he did not alert, or take advice from, his partner AT - who was the COFA and Money Laundering Reporting Officer (MLRO) of the firm.

66. The FI Report set out a review of the limited or non-existent steps taken by the Respondent to undertake customer (or third party/transaction) due diligence, or checks on the source of funds, including his explanations from interview. In summary:

- He photocopied the US passport photograph of TR in person, at the start of the business relationship. As noted above, TR's formal link to Company A was unclear/not established.

- He looked online [for Company A] to check the identity of WP, but there was no evidence of this on the client file;

- He did not check the relationship between TR, WP and LW and had no documentation on file at all concerning the identity of LW.

- After being provided with a small photocopy of WP's passport photo, in contract documents produced by TR or WP (or others), he performed no further checks.

- He had no documentation on file to verify the identity of various third parties who he was asked to send money to (or who were providing instructions to him on where to send money to). There was also no documentation to explain why they had received payments in the proportions requested.

- He carried out no checks on sources of funds - with the Respondent stating in interview that he "did not ask into details", in relation to why LW was making a payment, and did not ask what her source of wealth was.

67. In summary, in relation to the international transaction:

- There was a lack of clarity concerning who the firm's client was (Company A, WP or TR), with no or insufficient client due diligence being recorded on the file for any of those involved.

- The vast majority of the funds received were from the private account of another third party (LW), whose link to the transaction was unclear and for whom he obtained no customer/client due diligence documentation, in interview, the Respondent confirmed he made no enquiries as to the source of funds.

- The Respondent paid funds out at the direction of various parties, to different accounts.

- The amounts involved and/or the parties to be paid changed after the start of the transaction (not being consistent with the client care letter), with no record made of the reason(s) for such changes.

- The "proof of funds" document provided to the Respondent as the basis of the transaction named two other companies, whose roles and links to other parties were not clarified or made clear.

- There was no evidence on the client file of the Respondent providing legal advice, e.g. on the agreement between the parties or on the structure of the financial instrument documentation provided. From the papers on the file the firm's role was: (1) to pass correspondence between the parties and provide undertakings to release money and (2) to receive, hold and then distribute money.

68. **Allegation 1.1 - Money Laundering Regulations 2007 (MLR 2007)**

68.1 It was said by Mr Bullock that with respect to the 'international transaction' in which the Respondent involved himself the MLR 2007 applied to the Respondent at the applicable time, as a solicitor and partner in the firm.

68.2 A solicitor complying with his legal and regulatory obligations, and complying with relevant legislation, would take required steps to undertake appropriate identification of all relevant customers/clients and ongoing monitoring of transactions.

68.3 With reference to section 14 of the MLR 2007 the circumstances of the transaction and instructions were such that the Respondent should have applied enhanced customer due diligence. In this respect, neither WP nor any other director of Company A was physically present (with money moving from overseas), and the nature of the situation presented a higher risk of money laundering (albeit the Respondent stated he considered the risk to be low). That position required a relevant person to undertake specific and adequate measures to compensate for the higher risk.

68.4 It was said that the Respondent failed to undertake enhanced due diligence, but even if that were not required he failed in any event to undertake sufficient due diligence under the normal (non-enhanced) provisions. In this respect, he failed to:

- verify adequately the identity of those instructing him, including in this respect ascertaining and understanding the beneficial ownership of Company A, from reliable and independent sources to an extent that is appropriate (sections 5 - 7 MLR 2007). The extent of the Respondent's own steps in relation to obtaining and retaining documents regarding the identity of anyone involved was to obtain a copy of TR's passport.

- conduct ongoing monitoring of the business relationship on a risk sensitive basis, including where necessary the source of funds (section 8 MLR 2007) No scrutiny of the source of funds was undertaken (or identification obtained regarding the provider of most of the funds).

68.5 The Applicant submitted that with respect to Allegation 1.1 the Respondent's conduct amounted to:

Breach of Principle 6 of the Principles

68.6 A solicitor must behave in a way that maintains the trust the public places in them and in the provision of legal services.

68.7 Solicitors hold a trusted and privileged role in society, including in relation to holding and transferring other people's money. However, they are expected to comply with legislation relevant to them. In this respect, the MLR 2007 regulations are (or were) to a large extent preventative, intended to make it more difficult for people to use regulated businesses for (potentially or actual) improper purposes.

68.8 The Respondent made no significant attempts to comply with important legislation fundamental to ensuring that proper checks are in place in relation to transactions of this nature. In acting in that manner, he behaved in a way that would reduce trust in him and the provision of legal services and therefore breached Principle 6 of the Principles.

Breach of Principle 7 of the Principles and failure to achieve Outcome 7.5 of the Code of Conduct

68.9 A solicitor must comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner. In this case it was said that under section 11 MLR 2007, if the Respondent was unable to apply required customer due diligence measures, he was required to withdraw from the transaction and it followed that the Respondent failed to have sufficient regard for his basic duties under the MLR 2007 (or accordingly any enhanced duties that applied) and failed to comply with that legislation, thereby failing to achieve

68.10 Similarly, with respect to Outcome 7.5 a solicitor must comply with legislation applicable to their business, including anti- money laundering and data protection legislation.

Breach of Principle 8 of the Principles

68.11 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 and a solicitor carrying out their role in the business in accordance with this Principle would follow the relevant and required procedures set out within the firm to undertake proper due diligence on clients and sources of funds. The Respondent failed to do this, including failing to adhere to his own firm's policies in this regard or to bring awareness of the matter to the attention of his partner (and COFA/MLRO) in a timely manner. He therefore breached Principle 8 of the Principles.

<u>The Respondent's Case</u>

68.12 The Respondent denied that he had failed to apply the appropriate customer due diligence measures and/or failed to undertake appropriate ongoing monitoring of the business relationship.

68.13 The Respondent said that he knew the identity of his clients. There were two parties to the transaction: WP and TR of Company A (combined Party A and the Respondent's

clients); and Company B and its representatives AZ Consultants, Dr AH and AKH (combined Party B)

68.14 The Respondent said that he knew TR personally and understood him to be an international financier based in New York and representing WP and Company A. Whenever TR came to London the Respondent and TR would meet to discuss many professional and other matters as they were both from Bangladesh. The Respondent's client care letter was addressed to TR and Company A.

68.15 The Respondent obtained TR's passport as part of client due diligence and he had no reason for suspecting his identity.

68.16 With respect to WP the Respondent said that he obtained a full Know Your Client ("KYC") as president of Company A. The Respondent also obtained WP's passport and the Respondent said that the Applicant had completely ignored the section 'Establishing client identity and Money Laundering' section of the client care letter. It was denied that the Respondent did not carry out any client due diligence and the Applicant had listed the clients' due diligence in its statement.

68.17 Furthermore, both parties to the transaction had bank accounts in reputable banks and those banks must have carried out their own due diligence concerning their identity and the Respondent in good faith relied upon the checks carried out by the banks.

68.18 The Respondent was instructed that those in Party B (who were based in the UK) would be represented by another solicitors based in London and he therefore considered it was not necessary for him to carry out client due diligence on them as he believed that this would be carried out by their own solicitors. However, during the course of negotiations, the Respondent became aware that, to save costs, Party B would not be using as solicitor and that the Respondent would be handling all correspondence.

68.19 This did not unduly concern the Respondent as he was already in direct conversation with them and Company B was based in Birmingham and their nature of business related to financial management. All involved with Company B were based in the UK with good credentials e.g. Dr AH had a PhD and they had LinkedIn profiles. The Respondent trusted that Party B were bona fide consultants conducting business and had bank accounts in the reputable British banks, who must have carried out their own due diligence on their clients. There was no suggestion that Party B was fictitious.

68.20 In cross-examination the Respondent confirmed that he specialised in immigration work but said that he was neither surprised nor considered it unusual for him to have been approached to be involved in this transaction which had involved a potentially sophisticated international banking instrument worth $US80m when he had no such specialism in such transactions (this was his first) and that his clients approached him, rather than any other firm of solicitors, because they were confident that he would carry out the work properly.

68.21 He denied that the interests of his clients would have been better served by someone who had more direct experience and expertise in such matters and he said that his clients made a free choice to instruct him in this matter, after all, he had known TR for a long time. In the event, he handled the transaction successfully and there were no complaints.

68.22 The Respondent denied that he had failed to follow his firm's own AML policy or the MLR 2007 and that he had failed to carry out the checks set out under the policy to satisfy himself of the identity of his client or the source of the funds.

68.23 The AML policy had also set out the criteria to assess individual risk and whether the risk fell into the low; medium or high category of risk. Mr Bullock pointed out that under the policy a high risk involved a transaction worth more than £10,000. High risk also involved long distance contact with the client through e-mail and post; length of relationship with a client of less than a year and that the source of funds was from another jurisdiction.

68.24 In this case it was put to the Respondent that the transaction under contemplation was US$ 80m; that the Respondent had accepted instructions from the client by e-mail; that the relationship with WP had been for less than a year and that the Respondent had never met WP before the transaction and the Respondent could not be sure that the photograph of WP on the copy of the passport had in fact been WP. With respect to WP's passport, the copy was unclear and not notarised or certified as being a true copy. Further, that as Company A was based in Hong Kong the source of funds was from another jurisdiction: therefore high risk was engaged four times under the Respondent's own AML policy and that extreme caution should have been exercised by the Respondent in carrying out his due diligence.

68.25 The Respondent said in response that he exercised his own judgment and considered that in the circumstances which presented he did not see any risk. The Respondent did not accept the proposition put to him by Mr Bullock that the Respondent was obliged to have judged the risk strictly in accordance with the AML policy, and it could not be over-ridden by his own independent judgment to ensure the transaction went ahead irrespective of the obvious risks which the AML policy and MLR 2007 were created to stop i.e. to prevent criminals form having avenues opened for them to launder money from illicit sources.

68.26 The Respondent denied that he had adequately failed to verify the identity of his clients or identify the source of the funds in compliance AML policy and MLR 2007.

68.27 The Respondent denied that he never established with certainty who his 'client' actually was in the transaction as the question raised by Mr Bullock was whether the client had been TR; and/or WP and/or Company A? The client care letter dated 27 April 2016 was addressed to TR but there was nothing to suggest that TR was in fact the Respondent's client in this matter or that the Respondent had established TR's role within Company A.

68.28 The Respondent said that TR, who he trusted, had showed him the website for Company A and he himself had carried out a search of the internet to establish that Company A was a bona fide company. The Respondent accepted that he never saw a certificate of incorporation with respect to Company A and that he never printed out the result of his web searches to be placed on the file as evidence of due diligence. Further, he saw nothing from the Board of Company A authorising the transaction to take place however he had used his own judgment with respect to the level of the risk in proceeding with the transaction and had satisfied himself as to the identity of his client and the bona fides of WP and Company A.

68.29 The Respondent said that within his firm's own AML policy and under MLR 2007 he had sufficiently determined that there was little or no risk in the proposed transaction and he denied that he had not carried any searches into Company A.

The Tribunal's Findings

68.30 The Tribunal reminded itself with respect to all the allegations that the Applicant must prove its case beyond reasonable doubt; the Respondent simply had to raise a doubt, he was not bound to prove that he did not commit the alleged acts and that great care must be taken to avoid an assumption (without sufficient evidence) of any deliberate failure or act on the Respondent's part.

68.31 The Tribunal found as a fact between 27 April 2016 and June 2016 the Respondent had accepted instructions on an international transaction which involved accepting £122,160.87 into his firm's client account and subsequently paying out £112,000.00 of those funds to third parties.

68.32 The Tribunal found that the Respondent had had no previous experience in handling a trans-jurisdictional transaction of such magnitude or, indeed, any such transaction as the Respondent had accepted that this was the first time he had involved himself in such a matter.

68.33 The Tribunal found that the transaction was one to which the Respondent should have considered and applied the MLR 2007 and also the Respondent's own AML policy. Whilst the Respondent said he had been aware of the MLR 2007 and his firm's own AML policy he appeared to over-ride both on the basis of his own subjective judgment that the transaction presented little or no risk. The Tribunal was satisfied that the checks he made of TR; WP and Company A were not in accordance with the MLR 2007 and the firm's AML policy.

68.34 The Respondent had failed to establish the identity of WP or independently verify the existence of Company A and record this in his matter file. The Respondent therefore did not base his determination of the risk on any objective criteria but relied upon his supposed personal knowledge and trust in TR, who may have had his own vested interest in the transaction going ahead. The Respondent's attempt at due diligence to establish the identity of his client and the bona fides of Company A were insufficient to determine risk and there was evidence that the Respondent had even abrogated his responsibility to the banks and financial institutions which were allegedly involved in the transaction.

68.35 The Tribunal found that the Respondent had been aware of the MLR 2007 and his firm's own AML policy but that he had chosen to fail to comply with them, and, instead, had relied upon his own subjective and inexperienced judgment. In doing so he had failed to engage any critical analysis or ask the searching questions which had needed to be asked. The Respondent therefore permitted the risk of allowing the criminal activity which the MLR 2007 and AML policy were designed to prevent i.e. to make it more difficult for people to use regulated businesses for (potentially or actual) improper purposes.

68.36 In acting in that manner, the Respondent behaved in a way that would reduce trust in him and the provision of legal services and therefore breached Principle 6 of the Principles.

68.37 By not complying with the regulations as he should have done it followed that the Respondent had breached Principle 7 of the Principles and had failed to achieve Outcome 7.5 A solicitor must comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner. In this case if the Respondent was unable to apply required customer due diligence measures, he was required to withdraw from the transaction and it followed that the Respondent failed to have sufficient regard for his duties under the MLR 2007. Similarly, with respect to Outcome 7.5 the Respondent failed to comply with legislation applicable to his business, including anti- money laundering and data protection legislation.

68.38 The Respondent had ignored the MLR 2007 and his AML policy. The Respondent had not followed the relevant and required procedures set out within the firm to undertake proper due diligence on clients and sources of funds. The Respondent thereby failed to run his business or carry out role in the business effectively and in accordance with proper governance and sound financial and risk management and had breached Principle 8 of the Principles.

68.39 The Tribunal found that the Respondent had breached Principles 6, 7 and 8 of the Principles and that he had failed to achieve Outcome 7.5. Allegation 1.1 was proved to the requisite standard of proof, namely beyond reasonable doubt.

69. **Allegation 1.2: providing banking facilities through client account**

The Applicant's Case

69.1 It was said that with respect to Allegation 1.2 the Respondent's conduct had amounted to:

Breach of Principle 6 of the Principles

69.2 The Respondent agreed a retainer, in relation which he provided and recorded no underlying legal advice on relevant documentation or on the transaction - including expressly advising the client(s) to undertake all their own due diligence. The transaction was outside the Respondent's normal regulated activities, in an area of practice he had never worked in before and had no expertise in.

69.3 The Respondent undertook no substantive legal work on the ostensibly transaction, in effect simply following instructions to receive money (from an unidentified third party) and subsequently pay it out to various parties (also unidentified by the Respondent or any other professional), trading on the trust and status of his position as a solicitor, He was acting as an 'escrow only' agent in relation to the transaction.

69.4 The public does not expect solicitors to provide banking facilities - that is the job of a bank, with its own regulatory requirements - and, as client accounts are sacrosanct, solicitors should not use them for holding money unless it is necessary as part of their

legal work. The public does not expect client accounts to be at risk or used purely as a deposit account for non-legal use.

69.5 In allowing his client account to be used to receive and transfer significant funds without undertaking any substantive legal work on an underlying transaction, in return for a considerable fee for his practice ("a huge money one off"), the Respondent behaved in a way that would reduce trust in him and the provision of legal services and therefore breached Principle 6.

Breach of Rule 14.5 of the SRA Accounts Rules (SARs)

69.6 Rule 14.5 of SARs states that a solicitor must not provide banking facilities through a client account. Payments into and transfers or withdrawals from a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of the solicitor's normal regulated activities.

69.7 As the Respondent was not providing genuine, legal work on the transaction, beyond holding and transferring funds as instructed, he breached Rule 14.5 of the Accounts Rules which is also, to a large extent, a preventative provision, with solicitors trusted to operate their accounts in an appropriate way.

<u>The Respondent's Case</u>

69.8 The Respondent denied that he had merely provided a banking facility and that there was no underlying legal transaction. The Respondent said he had been engaged by his client to take instructions, review documents, explain the implications of the terms and conditions, liaise with all parties, advise the client by attending clients at telephone, face to face meetings (which were mostly verbal) at every stage of the transaction.

69.9 In cross-examination it was put to the Respondent by Mr Bullock that there was no evidence on the file or anywhere within the material that he had been anything other than a 'mere banker'. There had been no evidence of any underlying advice. The Respondent stated that it had been an oversight on his part not to record in the file all conversations and advice he had given, however, he had set out the advice in his client care letter dated 27 April 2016 in the following terms:

> "Our Advice
> We have discussed with you the issues involved in your matter and the options available to you. We have discussed what you are hoping to achieve in relation to the work that you would like us to do for you. We have set out below, a brief outline setting out what we will do and what we hope to achieve for you. We have also set out the next steps we intend to take to progress your matter, including where you will need to help us to achieve your goal. If there is anything in this document that you do not understand or do not agree with please contact us immediately so that we can discuss and agree any changes. We have advised you to do all the due diligence on your part by yourself. You should, therefore, conduct the background checks and details of the Company B with which you are going to enter into business relationship. We do not have any liability whatsoever, if you incurred any sort of loss, whatsoever."

69.10 The Respondent denied Mr Bullock's assertion that this had been generic advice and nothing which related to the specificity of the transaction. The Respondent said that he had done his job and overseen a successful transaction and had not passed the responsibility of carrying out due diligence to his client. The Respondent said that he had carried out the necessary due diligence.

The Tribunal's Findings

69.11 The Tribunal found the evidence that the Respondent had not given any meaningful advice to the client in relation to the transaction to be persuasive. Nothing which related to the advice was recorded on the matter file and nothing with respect to changes of instruction with respect to where and to whom the funds were to be paid. The Tribunal observed that the Respondent had given an undertaking that he would pay the funds to Company B but he had in fact released the funds to four separate individuals.

69.12 The Tribunal found that in agreeing a retainer, in relation to which he provided and recorded no underlying legal advice on relevant documentation, he had acted a banker. The public does not expect solicitors to provide banking facilities or expect client accounts to be at risk or used purely as a deposit account for non-legal use.

69.13 In allowing his client account to be used to receive and transfer significant funds without undertaking any substantive legal work on an underlying transaction, in return for a considerable fee for his practice, the Respondent behaved in a way that would reduce trust in him and the provision of legal services and he therefore breached Principle 6.

69.14 From this finding it followed that the Respondent had breached of Rule 14.5 of the SARs as the Respondent was not providing genuine, legal work on the transaction, beyond holding and transferring funds as instructed.

69.15 The Tribunal found that the Respondent had breached Principle 6 of the Principles and Rule 14.5 of the SARs. Allegation 1.2 was proved to the requisite standard of proof, namely beyond reasonable doubt.

70. **Allegation 1.3: facilitating a dubious transaction**

The Applicant's Case

71.1 It was said that with respect to Allegation 1.3 the Respondent's conduct had amounted to:

Breach of Principle 2 of the Principles

71.2 Principle 2 of the Principles states that a solicitor must act with integrity.

71.3 In Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession and that this involves more than mere honesty. The duty to act with integrity applies not only to what solicitors say but also what they do.

71.4 The Applicant did not allege that the transaction was dubious, only that it had the hallmarks of being so and that it only needed to demonstrate that the Respondent did not deal with the concerns a solicitor should have had about the transaction.

71.5 In this case the transaction bore the hallmarks of being dubious and this should have been obvious to the Respondent. It was a financial transaction involving $80m and on which there might normally be several expert legal advisers. Instead, one party stopped instructing solicitors to save money and another party instructed the Respondent, an immigration lawyer with a relatively low turnover. The confusing nature of the documents, poor drafting, inconsistencies and misspellings would have excited suspicion in any solicitor acting with integrity.

71.6 The Respondent had been aware of the relevant SRA warning notices, and he was aware of the circumstances of his instruction on the matter. Despite the various warning signs throughout the course of the transaction, including (but not limited to): his immigration practice being selected to be involved in an international financial matter, and being offered and paid a high fee (for his practice) for undertaking no substantive legal work; the receipt of substantial funding from an overseas non-party who had not been formally identified; and the supposedly operative documentation referring to completely different companies with no explanation regarding their link and involvement, he facilitated the transaction by following instructions without undertaking a proper and appropriate analysis of the risks or raising (and noting or recording) queries regarding matters at any stage.

71.7 A solicitor acting with integrity would not have allowed a transfer through his account of international funds from unidentified sources, without any adequate due diligence or proper clarification or enquiries (or the making of appropriate reports), on a transaction whose circumstances raised so many warnings. To do otherwise, as the Respondent did on this matter over the course of approximately 6 weeks, demonstrated a lack of rectitude and failed to meet the high professional standards expected of a solicitor.

Breach of Principle 3 of the Principles

71.8 A solicitor must not allow their independence to be compromised.

71.9 The Respondent, as an independent solicitor, should have been taken steps to satisfy himself about the nature and propriety of the transaction and those engaging him. At all stages he accepted the documentation, payments, information and instructions of those contacting him, without raising queries or concerns, although claiming to have knowledge of the SRA warning notices relevant to the circumstances. He also accepted a large fee, despite not undertaking any substantive legal work. He has stated that he operated "on good faith that they were good people". However, he should have been operating with sufficient and ordinary levels of independence, to ensure the transaction was properly scrutinised. In relation to this matter he failed to do so, in breach of Principle 3.

Breach of Principle 6 of the Principles

71.10 A solicitor, faced with potential instructions and circumstances similar to those facing the Respondent in this matter, would be trusted to proceed properly and with caution

reflecting the 'red flags' apparent in the circumstances and the proposed role of the solicitor in facilitating the transfer of funds from a third party in China to various parties in the UK. The number of red flags involved should have warned the Respondent that the transaction had the hallmarks of being dubious. The Respondent however proceeded without obtaining any appropriate identification, without obtaining and/or asking for details regarding the source of funds for the transaction, and without raising queries about the transaction or anomalies in the documentation generally. In acting in this way and facilitating the transaction, the Respondent acted in a way that would reduce trust placed in him and the role of legal services within society, in breach of Principle 6.

Breach of Principle 8 of the Principles

71.11 In facilitating the transaction in the manner that he did, in doing so breaching the firm's own policies and failing to raise the matter with his colleague and MLRO, the Respondent failed to carry out his role in the business in accordance with sound financial and risk management principles, in breach of Principle 8.

The Respondent's Case

71.12 The Respondent denied the allegation. The transaction had not been dubious and he had at all times acted in good faith, in the best interest of his client, maintained his professional independence and relied upon his professional judgement under the circumstances.

71.13 The Respondent conceded that he should have reviewed the risk when Company B failed to instruct their own solicitors. However, he considered that the Applicant misunderstood the transaction. The payments were made in accordance with the Financial Services Agreement. Party A (the Respondent's client) verified the financial instrument following a method called SWIFT MT799 which is a digital message sent between two banks to prove the authenticity of financial instrument and the funds. The Respondent had no reason to consider that the financial instrument was anything other than genuine.

71.14 It was not a sign of dubiousness that at as the matter progressed there were further negotiations between the parties and the parties had been at liberty to renegotiate the fees: this was consistent with any commercial transaction and in the Respondent's opinion a lack of negotiation between the parties would have indicated that the transaction was dubious.

71.15 The Respondent denied that he had knowingly or wilfully received any funds from an unknown source. WP told the Respondent that he would send the Party B's fees, but eventually it was sent by his sister LW and the Respondent considered that this accorded with how business was transacted in China where family members were involved in the business. The Respondent accepted that he carried out no due diligence checks on LW.

71.16 The Respondent trusted his client and acted in good faith and he denied that he had accepted any instructions from any third party except from his clients.

71.17 The Respondent said that the FI Officer had not fully comprehended the nature of the financial instrument. It was issued by Deutsche Bank AG of Germany, one of the largest reputable banks in the world and the Respondent relied upon the Deutsche Bank's internal rigorous due diligence in this matter. At the material time the Respondent's understanding was that he was only instructed to advise on the Financial Services Agreement between Party A and Party B and not instructed in the financial instrument. Furthermore, he was instructed because Party B was based in the UK and that TR was personally known to him.

71.18 The Respondent disagreed with the proposition put to him in cross-examination by Mr Bullock that he should have been alerted to the dubious nature of the transaction by the Financial Services Agreement document which contained obvious mis-spellings e.g. 'Whereas' for whereas; 'duedlgence' for due diligence; 'Barcly's' for Barclays and 'pasport' for passport. Mr Bullock said that if the Respondent had read the document with care then the Respondent would have spotted the errors and been rightly concerned over its veracity in a transaction which involved many millions of dollars and much risk. It was also put to the Respondent that the document itself was nonsensical; it contained confusing and unnecessary clauses, made reference to entities where it was not clear what their involvement was in the matter and these too should have alerted him to its dubious nature.

71.19 The Respondent said that he recalled seeing a few spelling mistakes but that could happen in any document – there was no problem with the content of the document and it had served its purpose.

71.20 The Respondent said that although his predominant area of expertise was immigration he did hold a master's degree in International Law and World Economy and a Post Graduate Diploma in International Trade Law therefore, he had knowledge of the mechanics of an international transaction and he had been studying international development finance for some time.

71.21 The Respondent said that level of his fees had been commensurate with the complexity of the transaction and its underlying value and that he had had to work unsocial hours due to time difference between the parties.

71.22 The Respondent's partners at the firm were AT who was the COFA and SK who was the practice manager, they had full control over the client accounts, they used to check the accounts on a daily basis for reconciliation and they did not raise any issue on the international transaction or the conveyancing matter *(see allegation 1.4 below)* at the material time.

<u>The Tribunal's Findings</u>

71.23 The Tribunal found that the Financial Services Agreement had contained very basic spelling mistakes, errors and confusing clauses. These mistakes would have been obvious even on a cursory inspection and would have sounded alarm bells in a solicitor who had read the document. The fact that the Respondent had little or no practical knowledge of such transactions was a factor which would have necessitated that he take more time and care to check the accuracy of the documents and carry out due diligence: for example he took on face value that LW was in fact WP's sister when there was no

evidence to support this assumption. The Financial Services Agreement alone was enough for any solicitor to determine that the transaction had a high risk of being dubious and their continuing involvement was facilitating a transaction which bore the hallmarks of being dubious and this assessment would have been amplified by the other circumstances set out by the Applicant.

71.24 The Tribunal considered that the Respondent had lacked integrity and he did not deal with the concerns a solicitor should have had about the transaction. The Respondent had been aware of the relevant SRA warning notices, he facilitated the transaction by following instructions without undertaking a proper and appropriate analysis of the risks or raising (and noting or recording) queries regarding matters at any stage. A solicitor acting with integrity would not have allowed a transfer through his account of international funds from unidentified sources, without any adequate due diligence or proper clarification or enquires (or the making of appropriate reports), on a transaction whose circumstances raised so many warnings. To do otherwise, as the Respondent did on this matter demonstrated a lack of rectitude and failed to meet the high professional standards expected of a solicitor. The Respondent was in breach of Principle 2 of the Principles.

71.25 The Tribunal found that the Respondent had failed to take steps to satisfy himself about the nature and propriety of the transaction and those engaging him. The Tribunal was satisfied that the Respondent accepted the documentation, payments, information and instructions of those contacting him, without raising queries or concerns and he accepted a large fee, despite not undertaking any substantive legal work.

71.26 The Tribunal was satisfied to the requisite standard that the Respondent did not operate with sufficient and ordinary levels of independence, to ensure the transaction was properly scrutinised. In relation to this matter he failed to maintain his independence and breached of Principle 3 of the Principles.

71.27 The Tribunal considered that by continuing to act in the face of obvious and glaring risks he had failed to maintain the trust the public placed in him and in the provision of legal services and thereby breached Principle 6 of the Principles. A solicitor, faced with potential instructions and circumstances similar to those facing the Respondent in this matter, would be trusted to proceed properly and with caution reflecting the ‘red flags’ apparent in the circumstances and the proposed role of the solicitor in facilitating the transfer of funds from a third party in China to various parties in the UK. The number of red flags involved should have warned the Respondent that the transaction had the hallmarks of being dubious.

71.28 In facilitating the transaction in the manner that he did, and in breaching his firm’s own policies the Respondent failed to carry out his role in the business in accordance with sound financial and risk management principles, in breach of Principle 8 of the Principles.

71.29 The Tribunal found that the Respondent had breached Principles 2, 3, 6 and 8 of the Principles. Allegation 1.3 was proved to the requisite standard of proof, namely beyond reasonable doubt.

72. **Allegation 1.4: The Conveyancing matter**

The Applicant's Case

72.1 The Respondent, through the firm, acted for Mr S in the sale of a property in London E14 (the property). The firm received proceeds of sale of £258,358.50 on 31 March 2016, redeeming a mortgage of £184,782.61 and Council Tax arrears of £4,674.44 on 31 March and 1 April 2016. Of the remaining £68,871.45, rather than pay the full relevant balance (less costs) to Mr S, the Respondent paid £38,000 to Mr S and a balance of £30,007.45 to a company ("Company I").

72.2. During interview, in summary the Respondent stated that:

- Mr S had instructed him that he was in financial difficulties so had decided to sell his property, but that another company was helping him manage the property until it was sold and Mr S would provide an invoice/documents when the time came.

- Mr S did not tell him anything about the company or provide any documents until the time came to request a payment, but his understanding was that Company I was owned by Mr H who was a friend of Mr S, and Mr H had given financial support to Mr S to help sell the property, including loans of £7,500.

- He had told Mr S that "I cannot pay the money to others. . .but. . If I have to pay anything, I will need an invoice", to which Mr S agreed.

72.3 He also confirmed knowledge of the SRA warning notice of 18 December 2014 regarding "improper use of a client account as a banking facility" which also included the warning that: "... You should only hold funds where necessary for the purpose of carrying out your client's instructions in connection with an underlying legal transaction... You should always ask why the client cannot make the payment him or herself. The client's convenience is not the paramount concern."

72.4 An invoice dated 4 April 2016 was on the file from Company I to Mr S (but stating it was to be "payable by Hamlet Solicitors LLP"). This was for a total of £30,007.45 comprising various amounts, including £6,625.00 "sales commission"; £7,500 of "Allowances made"; £9,413.00 on decorating/carpet fees, and various other amounts for fees, repairs and bills.

72.5 There was a handwritten attendance note of 4 April 2016 which stated that "Client came with the invoice to receive the check for him and his agent. He provided me an invoice. I requested him to give me writing. He said he will come next day and ask me to make the check ready today as he will not be able to wait next day". The payments to Mr S (£38,000) and to Company I (£30,007.45) were made by cheque, with both (undated) requisition forms being signed by the Respondent A letter dated 5 April 2016 was on the file signed by Mr S. It gave instructions to the Respondent to pay him £38,000 and to pay Company I the "rest of the balance….for its management and services as the selling agent of the property"

72.6 No figure was provided (although this was the day after the invoice and cheques were drawn up). The Respondent gave Mr S both cheques, i.e. one to himself and one to Company A.

72.7 The Respondent stated in interview that he looked on the internet and saw that Company I was a local company but the client matter file did not contain any other documents which evidenced this, or which explained or evidenced the nature of any services that Company I had provided to Mr S.

72.8 The client matter file showed that Emoov, an online estate agent, had been instructed as the property selling agent. Their fee of £1,194.00 was included in the invoice of Company I (in addition to Company I's own stated sales commission of £6,625.00). During the SRA's investigation, the Respondent provided the FI Officer with a selection of bank statements he had obtained from Company I, together with a copy of Emoov's invoice for £1,194.00 (addressed to Company I).

72.9 These documents demonstrated that Company I received the money from the firm, but with a narrative of "Deposit re 13 Mile End and Bow" rather than in settlement of an invoice, and made some payments to or on behalf of Mr S (including the payment to Emoov on 12 April 2016).

72.10 On 4 December 2017, the Respondent stated to the FI Officer that, in hindsight, he should have told the client to make the payment directly to Company | himself - rather than through the firm's bank account. The Respondent stated in interview that the reason he didn't pay the entire sale proceeds to Mr S, and allow him to sort out his own finances, was because "I know him for a long time..I did it on good faith.. .as I received the invoice then I was convinced that yes, I can do so...[and Mr S] did not want to delay to pay [Company I"].

72.11 It was said that with respect to Allegation 1.4 the Respondent's conduct had amounted to:

Breach of Principle 6 of the Principles

72.12 The Respondent's actions, in simply following instructions to make a large payment of funds to a particular third party, would be likely to reduce trust placed by the public in the Respondent and/or the provision of legal services in breach of Principle 6.

Breach of Rule 14.5 of the SRA Accounts Rules

72.13. The Respondent's legal work on the conveyancing transaction had concluded upon the sale, receipt of funds and discharge of Mr S's mortgage. The remaining funds, less costs and, potentially, EMoov fee if being paid by the solicitor, should have been returned to Mr S as they were no longer required to be held for a legal transaction on which the Respondent was instructed.

72.14 At no stage prior to completion had the Respondent been engaged by Mr S on a legal transaction or contractual arrangement specifically between Mr S and Company I (e.g. negotiating contracts with or instructing Company I or builders/decorators stated to be

owed money by Mr S). He had also not been provided with any written details of the stated underlying arrangements or debts.

72.15 Accordingly, when providing a cheque payable to Company I, the Respondent was paying from his client account a purported debt owed to Mr S for building works, general living expenses and other matters on which he had not been instructed to act as a legal adviser (with the receipt of the money being recorded on Company I's bank statement as a deposit for another property). Save for a short delay in transferring funds, which could have been overcome at limited cost by using a telegraphic transfer to his client, no reason was provided for why the client could not (or did not want to) personally receive the funds.

72.16 Mr S was understood by the Respondent to be in financial hardship, and struggling to maintain his mortgage. Under the circumstances, it was not the proper role of the Respondent to divert money due to Mr S to a third party account, rather than return all the funds to Mr S's account to be properly distributed or accounted for by him.

72.17 The client's convenience is not the paramount concern and, under the circumstances, the Respondent was allowing Mr S to use his client account as a bank account in relation to settling certain, particular debts and/or providing funds to Company I for other purposes, in.

72.18 The use of a solicitor's client account to hold money and then pay third parties for bills or invoices, for matters not directly related to the underlying legal work, is objectionable in itself as it is not a proper part of the solicitor's practice to operate or provide such a facility.

72.19 Such actions also carry risks, such as involvement in, amongst other matters, the potential evasion of insolvency or other formal financial processes. The public places trust in solicitors to provide legal services in a manner that protects and uses client funds in a proper and appropriate manner.

<u>The Respondent's Case</u>

72.20 The Respondent said that he had acted in his client's best interests the funds were held in the client account in accordance with the client's instructions in connection with the sale of his property (the underlying transaction).

72.21 The Respondent's client provided an invoice for costs and expenses incurred by the property management company (Company I) and the Respondent understood at the material time that they maintained the property, carried out repairs and refurbishment works, advertised the property on the online selling agent www.emoov.co.uk arranging viewings, paid them fees, bought furniture and also his client received advance payment in the form of allowances from the management company in relation to the property

72.22 The Respondent's client could not sell the property due to its poor condition. The management company agreed to invest money into the property and bear all costs and expenses, market the property, arrange viewing with their fees payable on completion from the proceeds of the sale. It was clear that the Respondent was instructed to pay all

related expenses and costs upon completion from the proceeds of the sale of the property.

72.23 The Respondent submitted that if Council Tax arrears payments were acceptable by the Applicant, then paying the management company for their property related costs and expenses should also be acceptable. The money paid out to the property management company formed part of the same underlying transaction and was not a distinct or separate transaction and the Applicant's assertion of misconduct was speculative.

72.24 The Respondent's client did not suffer any loss, nor was there any complaint against him. The reason the Respondent gave the cheque to Company I's was because his client told him that they would only accept money from the solicitors and at the material time he did not have any reason to believe that Mr S would be insolvent after paying all the expenses, Council Tax and other costs.

72.25 Contrary to the allegations, the Respondent said that he maintained his professional independence as he had refused to pay the amount without Company I's invoice and further written instructions from his client.

72.26 The Respondent carried out checks at Companies House regarding the management company but acknowledged that it was an oversight that he did not keep a record of this search on file.

72.27 The Respondent had no reason to suspect any wrong doing and he followed his client's express instructions, carried out the necessary due diligence and successfully completed the transaction.

72.28 The Respondent made the point which he applied to all the allegations brought against him by the Applicant that the firm was investigated by the SRA the other two partners AT and SK were interviewed and no proceedings were brought against them even though they had been, jointly and severally responsible to comply with Principles and Code of Conduct.

72.29 The investigation officer did not ask any questions to the practice manager SK who was also a partner of the firm at the time. The practice manager had full control over the client accounts and was responsible for checks. The COFA was responsible for reconciliation of any transactions in the client account and all three partners were collectively responsible for the AML checks and proper due diligence.

72.30 The COFA was under an obligation for all financial transactions of the firm and had he discharged his duty properly any potential breach of the Code of Conduct could have been prevented.

<u>The Tribunal's Findings</u>

72.31 The Respondent accepted that he had made the payment to Company I and that he had done so on the instructions of his client. However, the Tribunal determined as a fact that this payment had not been related to the conveyancing matter and therefore was not carried out by the Respondent with respect any underlying legal work.

72.32 The Tribunal found that in doing so the Respondent had breached Principle 6 of the Principles on the basis that the use of a solicitor's client account to hold money and then pay third parties for bills or invoices, for matters not directly related to the underlying legal work, is not a proper part of the solicitor's practice and to operate or provide such a facility would reduce the trust the public placed in the Respondent and in the provision of legal services. Such actions carry risks, such as the potential evasion of insolvency or other formal financial processes. It was no explanation to say that he was simply following the instructions of his client.

72.33 The Tribunal was satisfied that the Respondent had been providing a banking facility and that there had been a breach of Rule 14.5 SARs. The Respondent's legal work on the conveyancing transaction had concluded upon the sale, receipt of funds and discharge of Mr S's mortgage. The remaining funds, less costs and potentially the actual EMoov estate agent's fee should have been returned to Mr S as they were no longer required to be held for a legal transaction on which the Respondent was instructed.

72.34 The Tribunal found that the Respondent had breached Principle 6 and Rule 14.5 SARs. Allegation 1.3 was proved to the requisite standard of proof, namely beyond reasonable doubt.

Previous Disciplinary Matters

73. None.

Mitigation

74. The Respondent had successfully served over 1000 clients since he was enrolled as a solicitor and he had an unblemished disciplinary record over the last 10 years: there had not been a single complaint against him. He had fully cooperated with the Applicant and provided it with unrestricted access to all files and records. The Applicant had not cast any doubt on his honesty or sincerity. No one in this case had suffered any loss and no harm to any individual or client had been caused.

75. The Respondent had ceased to accept any conveyancing or international transaction instructions. The Respondent had undertaken further training in Accounts Rules, AML Regulations, and competency skills under the new SRA Rules which came into effect on 25 November 2019. The Respondent submitted that at the material time he had been was under enormous personal stress due to prolonged illness and work pressure and any unintentional breach, which may have happened due to oversight and poor judgment, was completely out of character for him.

76. The firm's accounts were up to date and in full compliance with the relevant Accounts Rules. The Respondent submitted that if anyone had taken advantage of his good faith then he should be given the benefit of the doubt and a chance to reflect, learn lessons and make sure it did not happen again.

77. The Respondent had no other source of income, he had a family with two teenage children and no savings.

Sanction

78. The Tribunal first had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

79. The Tribunal referred to its Guidance Note on Sanctions (7th Edition) when considering sanction. The Tribunal was mindful of the three stages it should follow when approaching sanction, namely the seriousness of the misconduct, the purpose for which sanctions are imposed by the Tribunal, and the sanction which appropriately fulfils that purpose in light of the seriousness of the misconduct.

80. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

81. In assessing culpability, the Tribunal found that the motivation for the Respondent was a financial one. The Respondent had expected a large fee for his involvement in the international transaction matter and it was this which had caused him to pursue a path fraught with risk and one in which he had wilfully ignored the AML Regulations 2007 and his firm's own AML policy.

82. The Respondent had tried to justify the circumvention of rules designed to provide an objective basis for establishing the risk of assisting in money laundering and facilitating a transaction which bore the hallmarks of dubiousness by saying that he had applied his own, subjective, judgment to the circumstances as he saw them and the trust he placed in others. Judgment based upon hope and good wishes, in this context, was unacceptable and an abrogation of his responsibility as a solicitor.

83. The Respondent had not carried out adequate due diligence to establish the identity of those with whom he was dealing and, save for TR, he had never met. Further, the Respondent had failed to keep a record on the file of those searches he had carried out.

84. It appeared to the Tribunal that the Respondent had never stopped to consider that the parties had had hidden and vested interests and had chosen him, a solicitor with no practical experience in international transactions of high value, as their puppet, and someone who would not ask the searching and probing questions which were required in these circumstances. In essence, he had surrendered his independence and he carried out whatever his client told him to do – the payment to the management company, in the conveyancing matter was such an example.

85. The Respondent's actions were not spontaneous: quite the reverse. The Respondent pursued a conscious course of action blind to his own lack of expertise in such matters and whilst he had not breached the trust of an individual he had breached the general trust the public placed in a solicitor. The public would be appalled by the lack of critical analysis the Respondent displayed.

86. The Tribunal considered that the Respondent had had direct control and responsibility for the circumstances giving rise to the misconduct. The Respondent had had a choice as to whether or not accept the instructions and if he had stopped to weigh up the risks he could have averted the misconduct which had been alleged and found to have occurred in his case.

87. Whilst the Respondent was an experienced solicitor in immigration matters and general litigation he had no practical experience or expertise in high value international transactions. A solicitor should be aware of their limitations and proceed with extreme caution in matters outside their normal range of work and the Respondent did not so in this case. The Financial Services Agreement had been riven with obvious spelling mistakes, nonsensical clauses and references to entities who appeared to have no logical involvement with the matter. Any solicitor of any level of experience would have determined that such a document was suspicious and a signifier of a potentially dubious transaction, and, having made that determination, ceased to act.

88. The Respondent had not misled the Regulator.

89. Overall, the Tribunal assessed the Respondent's culpability as high taking into account all the factors it had considered.

90. The Tribunal next considered the issue of harm. Whilst there was no evidence of direct harm the potential for harm had been very high. The international transaction had involved many millions of dollars and it had been conducted by a solicitor in circumstances where the Respondent had fundamentally misunderstood his role i.e. his duty to scrutinise and critically examine what he was being asked to do and to apply the anti-money laundering regulations and his firm's AML policy to his inform his own judgment. A solicitor is not permitted to override the law in favour of his client's instructions or explain his behaviour, as the Respondent had done, by saying that no harm was done because the transaction had been successful and no one had complained.

91. In such circumstances there had been great potential for harm to the reputation of the profession. The Respondent's conduct was a significant departure from the complete integrity, probity and trustworthiness expected of a solicitor and the extent of the harm was reasonably and entirely foreseeable by the Respondent.

92. The Tribunal assessed the harm caused as very high.

93. The Tribunal then considered aggravating factors. The Tribunal noted that whilst the Respondent's failure to follow the rules and his poor decisions had been in issue, the Respondent's honesty had never been in question. Dishonesty had not been alleged by the Applicant there had been no criminal findings made against him.

94. The Respondent's actions had been deliberate and calculated, in the pursuit of personal gain and in breach of his obligation to protect the public.

95. The Tribunal considered there were very few mitigating factors but noted that the Respondent had no previous disciplinary findings recorded against him and that he had had a hitherto unblemished career.

96. However, there was no evidence of any genuine insight and no open or frank admissions. The Respondent told the Tribunal that if circumstances presented again he would take the same course of action.

97. The Tribunal also considered that there was no evidence that the Respondent's misconduct was the result of deception by a third party.

98. In all the circumstances of this case the Tribunal considered the seriousness of the misconduct to be high: this was inevitable given the Tribunal's findings of lacked integrity and the Respondent's failure to uphold public trust in the provision of legal services.

99. Before finalising sanction the Tribunal considered the Respondent's personal mitigation. The Tribunal considered the Respondent's unblemished record but did not have presented to it any testimonials or references which could have provided more insight on the Respondent's character. Whilst the Respondent stated that he suffered from a certain medical condition there was no evidence that this had played a part in the misconduct or clouded his judgment. There was little or no evidence that the Respondent had any actual insight on his conduct.

100. The Tribunal considered that given the serious nature of the Respondent's misconduct, sanctions of No Order or a Reprimand or a financial penalty were inappropriate and insufficient and the public would expect a serious sanction to be imposed and the Tribunal gave very careful consideration to all the circumstances in the case which at its core had been a circumvention of money laundering regulations designed to protect the public.

101. However, having given very careful consideration to the issue the Tribunal concluded that neither the protection of the public nor the protection of the reputation of the legal profession justified the Respondent from being prevented from practising forever by striking him off the Roll. However, having made findings of lack of integrity with respect to facilitating a dubious transaction the reputation of the profession demanded an indefinite suspension.

102. The Tribunal considered that an indefinite suspension was, in the circumstances of this case, a fair and proportionate sanction and one which allow the Respondent a period of reflection and insight on his conduct and time to respond to further training so that he would no longer represent a material risk of harm to the public or to the reputation of the profession.

Costs

103. Mr Bullock submitted that as the Applicant had proved its case to the required standard it was entitled to its proper costs. The quantum of costs claimed by the Applicant in its statement for costs dated 30 August 2020 was in the sum of £34,478.65 inclusive of VAT.

104. However, following a review of the costs incurred the Applicant had revised this figure downwards on the basis that the amount of time claimed by Mr Dagadu for the

investigation was more than an FI officer of greater experience would have claimed and the costs of the investigation would be capped at £10,000.00.

105. Further, disbursements incurred on hotel expenses for attending the part heard hearing on 7 and 8 September 2020 was lower than expected.

106. Mr Bullock now asked for costs in the sum of £26,192.25 and this was a reasonable and proportionate sum given this had been a case involving some complexity (the international transaction); it was heavily contested hearing which had lasted 4 days in which there were also preliminary applications which were resisted by the Applicant.

107. The Respondent stated that the Applicant had no right to ask for costs as it had presented a case which had been predicated on a misunderstanding of the work he had carried out and with evidence which had been flawed, for example, he had had to spend time correcting the transcript of interview which had contained many errors.

108. The Tribunal summarily assessed costs to consider whether they were reasonable and proportionate in all the circumstances of this case. The Tribunal had heard the case and it was appropriate for the Tribunal to determine the liability for costs and the quantum of any costs it ordered to be paid.

109. The Tribunal considered that the case had been well presented and properly brought by the Applicant and it noted the concession the Applicant had made with respect to its costs and considered the reduction of costs was pragmatic and reasonable.

110. The Tribunal considered that it was appropriate for the Applicant to recover its costs with a further reduction for the minor mistakes in the transcript which had required the Respondent's corrections.

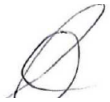
111. Therefore, taking into account all the material circumstances, it was reasonable and proportionate for the Respondent to pay the costs of and incidental to this application and enquiry in the sum of £ 26,000.00.

112. The Tribunal noted that the Respondent had lodged a claim for costs in the sum £90,725.00 plus VAT. This application was refused. The case had been properly and reasonably brought by the Applicant and there was nothing in the Applicant's conduct which would justify an order for the Respondent's costs.

Statement of Full Order

113. The Tribunal Ordered that the Respondent, BIPLAB KUMAR PODDAR solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 8th day of September 2020 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £26,000.00.

Dated this 20th day of October 2020
On behalf of the Tribunal



B. Forde
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
20 OCT 2020