SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12616-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

WGS SOLICITORS First Respondent

JONATHAN RICHARD MAURICE GERBER Second Respondent

BRIDGET CATHERINE MILLER Third Respondent

Before:

Ms A Horne (in the chair)
Mr J Johnston
Mrs S Gordon

Date of Hearing: 9 – 10 December 2024

Appearances

Tom Broomfield, counsel, of QEB Hollis Whiteman, instructed by Capsticks LLP for the Applicant.

Paul Bennett, solicitor, instructed by WGS Solicitors for the First and Second Respondents.

Sian Darlington, solicitor for the Third Respondent.

JUDGMENT

Allegations

1. The allegations made against WGS Solicitors ("the Firm") by the Solicitors Regulation Authority Limited ("SRA") were that:

1.1. Between 3 May 2018 and 15 August 2020, it caused or allowed money to be received to and paid from the Firm's Client Account in circumstances other than in respect of an underlying legal transaction being undertaken by the Firm or in respect of the delivery by the Firm of normal regulated services.

And that in doing so, it breached or failed to comply with –

Insofar as the conduct took place before 25 November 2019:

1.1.1 Rule 14.5 of the SRA Accounts Rules 2011 ("the SAR 2011");
1.1.2 Principle 6 of the SRA Principles 2011 ("the 2011 Principles"); and
1.1.3 Principle 8 of the 2011 Principles;

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

1.1.4 Rule 3.3 of the SRA Accounts Rules 2019 ("the SAR 2019");
1.1.5 Principle 2 of the SRA Principles 2019 ("the 2019 Principles"); and/or
1.1.6. Paragraph 2.1(a) of the SRA Code of Conduct for Firms ("the Code for Firms").

1.2. Between 26 June 2017 and 17 March 2021, being the 'Relevant Person' with ultimate responsibility for compliance with the prevailing anti-money laundering regulations, and as exemplified in the client matters identified in Appendix 2 to this statement, it failed adequately or at all to:

1.2.1 apply customer due diligence measures ("CDD"), contrary to Regulations 27 and 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the 2017 MLR's");

1.2.2 apply enhanced customer due diligence measures ("EDD") and/or enhanced ongoing monitoring where indicated, contrary to Regulation 33 of the 2017 MLR's;

1.2.3 conduct ongoing monitoring of its business relationships with such entities, contrary to Regulation 28(11) of the 2017 MLR's;

1.2.4 conduct a risk assessment of the client and/or matter in accordance with Regulation 28(12) and 28(13) of the 2017 MLR's;

And that in doing so, it breached or failed to comply with:–

Insofar as the conduct took place before 25 November 2019:

1.2.1.1 Principle 6 of the 2011 Principles; and

1.2.1.2 Outcome 7.5 of the SRA Code of Conduct 2011;
1.2.1.3 Principle 8 of the 2011 Principles;

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

1.2.1.4 Principle 2 of the 2019 Principles; and/or
1.2.1.5 Paragraph 2.1 of the Code for Firms.

2. The allegations made by the SRA against Mr Gerber were that he:

2.1. Between 3 May 2018 and 15 August 2020, caused or allowed receipts to and payments from the Firm's Client Account in matters for Person A or entities connected to Person A, in circumstances other than in respect of an underlying legal transaction being undertaken by the Firm or in respect of the delivery by the Firm of normal regulated services.

And that in doing so, he breached or failed to comply with–

Insofar as the conduct took place before 25 November 2019:

2.1.1 Rule 14.5 of the SAR 2011;
2.1.2 Principle 2 of the 2011 Principles:
2.1.3 Principle 6 of the 2011 Principles; and
2.1.4 Principle 8 of the 2011 Principles;

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

2.1.5 Rule 3.3 of the SAR 2019;
2.1.6 Principle 2 of the 2019 Principles; and
2.1.7 Principle 5 of the 2019 Principles.

2.2. Between 3 May 2018 and 15 August 2020, being at all relevant times a member of the Firm and the partner with primary responsibility for its relationship with Person A1, in respect of matters connected to Person A1 he materially contributed to the Firm's anti-money laundering failures alleged at paragraph 1.2 above (or any of them).

And that, in doing so, he breached or failed to comply with:–

Insofar as the conduct took place before 25 November 2019:

2.2.1 Principle 6 of the 2011 Principles; and
2.2.2 Principle 8 of the 2011 Principles;

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

2.2.3 Principle 2 of the 2019 Principles; and
2.2.4 Paragraph 7.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019 ("the Code for solicitors").

3. The allegations made by the SRA against Ms Miller were that she:

3.1. Between 26 June 2017 and 1 November 2020, being a member of the Firm and, at all relevant times, the partner with primary responsibility for its relationship with Person B1, in respect of matters connected to Person B1 she materially contributed to the Firm's anti-money laundering failures alleged at paragraph 1.2 above (or any of them).

And that, in doing so, she breached or failed to comply with:–

Insofar as the conduct took place before 25 November 2019:

3.1.1 Principle 6 of the 2011 Principles; and
3.1.2 Principle 8 of the 2011 Principles;

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

3.1.3 Principle 2 of the 2019 Principles; and
3.1.4 Paragraph 7.1 of the Code for Solicitors.

Executive Summary

4. The First and Third Respondents were dealt with by way of Agreed Outcomes on the first day of the Substantive Hearing. The allegations faced by those Respondents are included in this Judgment for completeness. Mr Gerber admitted all of the allegations against him. The Tribunal found the allegations proved on the evidence and considered the admissions to have been properly made.

Sanction

5. Mr Gerber was fined £20,000 and ordered to pay costs of £10,000. The Tribunal's reasoning on sanction can be accessed here:

- Sanction

Documents

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

- Rule 12 Statement and Exhibit MR1 dated 31 May 2024
- First Respondent's Answer dated 4 September 2024
- Second Respondent's Answer dated 4 September 2024
- Third Respondent's Answer dated 4 September 2024
- Applicant's Reply to the Respondents' Answers dated 18 September 2024
- Agreed Outcomes for the First and Third Respondents dated 9 December 2024
- Statement of Agreed Facts and Admissions as regards the Second Respondent dated 9 December 2024

Factual Background

7. The Firm was a legal partnership and a recognised body authorised for all legal services. As at the date of the Rule 12 Statement, based on the Applicant's records, it had 11 regulated people in the organisation and had begun trading as a partnership in April 2001. The Firm practised in the following areas: Probate and Estate Administration; Employment; Property - Residential; Landlord and Tenant (Commercial and Domestic); Litigation - Other; Family/Matrimonial; Property - Commercial; Wills, Trusts and Inheritance Tax Planning.

8. Mr Gerber was admitted as a solicitor in September 1991. He held a current unconditional Practising Certificate. At material times he had been one of three equity partners at the Firm and was now one of two equity partners at the Firm. At all material times he was the solicitor and partner primarily responsible for the Firm's dealings with, and instruction by, Person A1.

9. Between 17 March 2021 and 6 December 2021, the Firm submitted three reports to the SRA concerning Person A1 and Person B1, who had been clients of the Firm:

   - 17 March 2021 - Report produced by Ince Gordon Dadds LLP;
   - 23 September 2021 - Report produced by Pinsent Masons LLP; and
   - 6 December 2021 - Report produced by Pinsent Masons LLP.

10. The reports identified concerns that the Firm had breached the 2017 MLR's and the SAR 2019 on matters connected with Person A1 and Person B1.

11. Following the Firm's reports, the SRA commissioned its own forensic investigation. This commenced on 13 September 2022, and ultimately resulted in the Forensic Investigation Report dated 12 December 2022 ("the FI Report"), together with supporting appendices.

Witnesses

12. None

Findings of Fact and Law

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

Integrity

14. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

"Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... [Professionals] are required to live up to their own professional standards ... Integrity connotes adherence to the ethical standards of one's own profession".

15. **Allegation 2.1 - Between 3 May 2018 and 15 August 2020, caused or allowed receipts to and payments from the Firm's Client Account in matters for Person A or entities connected to Person A, in circumstances other than in respect of an underlying legal transaction being undertaken by the Firm or in respect of the delivery by the Firm of normal regulated services. And that in doing so, he breached or failed to comply with, insofar as the conduct took place before 25 November 2019: (2.1.1) Rule 14.5 of the SAR 2011; (2.1.2) Principle 2 of the 2011 Principles: (2.1.3) Principle 6 of the 2011 Principles; and (2.1.4) Principle 8 of the 2011 Principles. Insofar as the conduct took place on or after 25 November 2019: (2.1.5) Rule 3.3 of the SAR 2019; (2.1.6) Principle 2 of the 2019 Principles; and (2.1.7) Principle 5 of the 2019 Principles.**

Allegation 2.2 - Between 3 May 2018 and 15 August 2020, being at all relevant times a member of the Firm and the partner with primary responsibility for its relationship with Person A1, in respect of matters connected to Person A1 he materially contributed to the Firm's anti-money laundering failures alleged at paragraph 1.2 above (or any of them). And that, in doing so, he breached or failed to comply with, insofar as the conduct took place before 25 November 2019: (2.2.1) Principle 6 of the 2011 Principles; and (2.2.2) Principle 8 of the 2011 Principles. Insofar as the conduct took place on or after 25 November 2019: (2.2.3) Principle 2 of the 2019 Principles; and (2.2.4) Paragraph 7.1 of the Code for Solicitors.

Agreed Facts

15.1 Person A1 was a client of the Firm. He was a high-net-worth individual who was president of a commodities Company which included business in the oil and energy industry, operating globally including in Russia and Eurasia. Person A1 worked in Russia and Eurasia, held or previously held Israeli and Canadian passports, used offshore companies, and some of the funds provided to the Firm came from outside of the UK. The Firm and/or its officers state that they knew that Person A1 had a home in London because Mr Gerber met Person A1 at his London home and understood that Person A1 also had a home in Jerusalem (as evidenced by the file).

15.2 Following a request on behalf of Person A1, the Firm allowed its client account to be used to facilitate purchases of high value art for anonymity of the client and a connected holding company registered in the Seychelles, with funds sent to the Firm from Person A1's personal bank account and a bank account in the name of a Marshall Islands Company of which Person A1 was the ultimate beneficial owner. Mr Gerber prepared invoices issued by the Firm which outlined each step taken. These invoices which totalled £2,256.34 (including disbursements of £126.34) were subsequently cancelled and refunded by the Firm on 20 October 2020 and 30 March 2021.

Allegation 2.1: provision of banking facility

Person A1

15.3 The Firm was initially instructed by Person A1 in 2010 to provide matrimonial advice. The Firm subsequently acted for Person A1 in various property transactions:

- Purchase of a property in Road A for £3,250,000.00 in April 2011;
- Sale of a property in Road A for £3,880,000.00 in June 2011;
- Purchase of a property in Road L for £2,900,000.00 in July 2011;
- Purchase of a property in Road S for £4,390,000.00 in July 2014; and
- Purchase of House L for £1,175,000.00 in December 2015.

15.4 Between May 2018 and August 2020, Person A1 instructed the Firm, through Mr Gerber, to facilitate the purchase of artwork (matter K3311).

15.5 On 3 May 2018, Person A2, Person A1's personal assistant, emailed Mr Gerber stating:

> *"Jonathan hi. We have set up a company and [Person A1] wants to buy some art using this company. He would prefer to keep his dealings private and was wondering if he could arrange purchase via you just like we would do for a house for example?"*

Mr Gerber replied to this email on 4 May 2018 stating:

> *"Hi-Id need more details about this from a money laundering perspective. Is it an offshore company? But in principle, happy to help"*

Person A2 replied to Mr Gerber the same day:

> *"Jonathan hi. Thanks for reverting. I have established a Seychelles company as an spv specifically for holding art as [Person A1] wants to start a collection. We will then most likely fold the spv into his family trust once that is officially established. [Person A1] just wants to try and keep the process as private as possible."*

15.6 In subsequent emails between Mr Gerber and Person A2, Mr Gerber agreed that the Firm could assist with the transfer as regards confidentiality. On 10 May 2018, Person A2 emailed Mr Gerber stating:

> *"... We have decided to proceed with the art purchase and again [Person A1] would prefer confidentiality where possible regarding the art collection. We have established an SPV to hold the art and would be grateful if you could pay for the first acquisition on our behalf. The sum is USD1m and I can send you over the details and the funds when you are back."*

15.7 The client ledger demonstrated a payment of $1,000,000.00 was made on 22 May 2018 with the reference "ART PURCHASE FM [PERSON A1] [Company 1] ART PURCHASE TO [ART GALLERY A]".

15.8 The Firm and Mr Gerber went on to assist Person A1 in respect of a further seven art purchases and stated in interview: *"I think in the back of my mind I thought that maybe because he was an existing client, that there was a bit of leeway perhaps which was clearly in hindsight not the case."* In respect of all of the purchases, the Firm received the following amounts from Person A1 or his company, Company 2, into its client account:

Date	**Amount($)**	**Amount(€)**	**Name on Account**
22/05/2018	1,000,000.00		Person A1
04/06/2018		2,950,000.00	Person A1
24/07/2018	735,000.00		Person A1
05/09/2018	29,000.00		Person A1
20/03/2019	2,200,000.00		Person A1
22/03/2019		1,850,000.00	Person A1
10/07/2019		30,000.00	Person A1
26/11/2019		146,000.00	Person A1
12/03/2020	4,150,000.00		Person A1
30/06/2020		35,000.00	Company 2
04/08/2020	2,515,000.00		Company 2
Total	**10,629,000.00**	**5,011,000.00**	

15.9 The following payments were made from the client account in respect of art purchases:

Date	**Amount($)**	**Amount(€)**	**Gallery**	**Invoice**
22/05/2018	1,000,000.00		Art Gallery A	01/05/2018
04/06/2018		2,950,000.00	Art Gallery B	30/05/2018
25/07/2018	735,000.00		Art Gallery A	12/07/2018
21/03/2019	2,200,000.00		Art Gallery B	18/03/2019
26/03/2019		1,850,000.00	Art Gallery B	18/03/2019
28/11/2019		145,900.00	Art Gallery B	20/11/2019
18/03/2020	4,150,000.00		Art Gallery A	29/02/2020
12/08/2020	2,500,000.00		Art Gallery A	22/07/2020
Total	**10,585,000.00**	**4,945,900.00**		

15.10 Following the receipt of $2,200,000.00 on 21 March 2019, Mr Gerber emailed Person A2 stating:

> *"Ok 2.2m US received. Just remind me why you are paying this through my firm and not direct"*

Person A2 responded stating:

> *"[Person A1] is putting together collection but he wants in (sic) completely private including our bank. We have done few times before. Nothing more than this. Can you do today as I am under pressure we can lose painting."*

15.11 The Firm also made the following payments from the client account relating to the associated costs of the above artwork purchases, e.g. for shipping, storage and insurance:

Date	**Amount($)**	**Amount(€)**	**Gallery**	**Invoice**
12/09/2018	27,901.17		II	22/05/2018 16/07/2018 04/09/2018
12/07/2019		29,624.43	AP	21/06/2019
10/07/2020		13,614.15	MT	15/06/2020
10/07/2020		18,755.00	AP	25/06/2020
13/08/2020	13,330.52		MT	23/07/2020
Total	**41,231.69**	**61,993.58**		

15.12 All of the transactions in the Firm's US dollar account in the period 1 January 2018 to 1 March 2021 related to the art purchases or transactions relating to interest earned.

15.13 All of the transactions in the Firm's Euro account in the period 29 October 2016 to 11 May 2021 related to the art purchases or interest on money held (save for one payment seemingly received and then made on another matter between 3 and 7 September 2018).

15.14 The payment request forms for the transactions outlined above were unsigned and did not record who requested or authorised the payments. In response to being asked to provide this information by the Forensic Investigation Officer ("FIO"), the Firm stated through its then representatives:

> *"We understand that the Firm's operating procedure is for the fee earner to request the CHAPS transfer forms for payments from the office and client accounts and the completed CHAPS transfer forms are then reviewed and inputted within the Finance Team by [SS]before being authorised with the third level of approval by one of the Firm's equity partners. For this period in question in relation to the Person A1 transfers the three equity partners were Jonathan Gerber, Jerome Shapiro and [SWP]. As the fee earner, Mr Gerber would arrange for the CHAPS transfer forms to be completed and we are instructed that the completed CHAPS transfer forms would then be passed to Mr Seagrave for further review and inputting before being authorised by either Mr Shapiro or SWP or Mr Gerber in their capacity as equity partner."*

15.15 On 28 October 2020, Person A2 emailed Mr Gerber asking if the Firm could assist with the purchase of a further painting. On 3 November 2020, Mr Gerber replied stating:

> *"Hi-lM (sic) afraid as a firm we are not allowed to be used simply as a bank to pay invoices for clients. I really should not have done this before. Apologies."*

Person A2 responded the same day indicating:

> *"for the record Jonathan we did not want to use you as a bank as we have many banks we simply wanted to keep the collection as private as we could - this was the reason but your position is noted and understood and apologies if I put you in a position but the intention was purely to maintain confidentiality."*

15.16 Between 15 October 2018 and 15 September 2020 the Firm issued invoices to Person A's holding company headed *"Purchases of Art"* or *"Further Purchases of Art"*, with narratives in summary of *"Receiving purchase monies from you and remitting to sellers"* or similar such as *"Receiving purchase monies and monies for storage and insurance from you; attendance on telephone with Gallery and storage company; remitting funds to Gallery and storage company"*. On 20 October 2020 and 30 March 2021 the Firm subsequently issued credit notes to negate the Firm's invoices. There was no financial benefit retained therefore to the Firm or Mr Gerber.

15.17 When asked by "the Bank" and; the Firm's client account provider, to provide details of payments received from Person A1 together with the rationale for a UK solicitor being required for certain transactions, Mr Gerber replied by email on 26 November 2020 stating:

> *"...In 2018 he [Person A1] started to put together a substantial private art works collection. He established a stand-alone company [Company 1] for the purpose of holding this collection. He had a strong desire to keep the details of the art collection private hence why he used a nominee company for the art purchases. He did not want his bank to have all the exact details of the art works purchased. The Galleries were aware that Person A was purchasing the art works for his personal collection."*

Allegation 2.2 - Second Respondent materially contributing to the Firm's AML failures

15.18 The Firm's AML Policy was set out in its Office Manual. That document summarised the key requirements of the AML regulations, but for *'detailed guidance'* fee earners were directed to a link to the Law Society Anti-Money Laundering Practice Note dated October 2013.

15.19 In response to the SRA's question regarding when the Firm's AML policy was first drafted, the Firm's legal representatives stated *"June 2017"*. Despite this answer, no document had been provided to corroborate a written policy being in place in June 2017.

15.20 On 28 October 2022, the Firm provided a PDF document titled *"2018"* which contained a selection of policies relating to AML and other compliance matters. These documents appeared to be template documents from the Law Society that had not been tailored to

the Firm. Mr SWP, then a partner in the Firm, explained in his interview with the SRA that he had purchased a version of the Law Society Anti-Money Laundering Toolkit published in 2018, which he used to create the Firm's AML and related policies.

15.21 A PDF document titled *"2019"* was also provided to the SRA on 28 October 2022. This document contained two undated, typed notes, one summarising the policies and the other titled *"ADVICE FROM SRA AND LAW SOC and my thoughts"*.

15.22 On 3 January 2020, SWP wrote a memo to the Firm's staff in the following terms:

> *"I will in the next few days be circulating a Memorandum and a ring binder with up to date anti money laundering (AML) documents. The SRA emphasise the importance of this and we are all aware of this in any event. I am going to ask each of you to deal with those with whom you work most closely to make sure that you and your immediate colleagues are familiar with all the AML documents and deal with them accordingly. The ring binder will contain a Memorandum and notes on our updated AML procedure with a copy of all the documents which we should use in every case and risk assessments for every file. This is not optional. The SRA require it and I have, as COLP, been asked to sign a Declaration which I must deliver to the SRA before January 20th confirming that we as a firm and all of you colleagues in particular are dealing with all of our AML obligations in accordance with the SRA regulations. I am sorry to burden you with further administrative matters. I wish it were not the case but unfortunately we have no choice but to meet these demands"*

15.23 Mr Gerber was a Partner. The roles of Money Laundering Reporting Officer (MLRO) and Compliance Officer for Legal Practice (COLP) were held by a former Partner who was at all material times the Senior Partner of the Firm.

15.24 Mr Gerber received *"CQS AML and Risk Training"* in April 2019. Extracts from that demonstrated that the training modules highlighted the following as money laundering 'red flags':

- Purchases of very high value properties by overseas companies and trusts;
- Purchases involving money from high-risk countries; and
- Purchase transactions that do not fit with the lifestyle/wealth of the client.

The training also outlined that in order to prevent money laundering you must:

- Carry out proper customer due diligence on clients;
- Verify a client's identity and check the source of funds;
- Check the circumstances of the proposed transaction;
- Be aware of the warning signs for money laundering risks; and
- Be very careful to avoid the client account being exploited.

15.25 Following the events noted in the matter exemplified herein, and notification from its then bank of the closure of its accounts, the Firm introduced new AML procedures and policies in 2021, including instructing external third parties to advise on the same and provide training.

Person A1

15.26 The Firm held the following due diligence documents relating to Person A1:

- Canadian passport (expiry date 10 December 2014);
- Israeli passport (expiry date 18 March 2025);
- Utility bills for a property in Jerusalem dated 27 December 2019 and 26 June 2020 with an English translation certified by a law firm in Tel Aviv; and
- A World-Check One report dated 11 March 2021 showing there were no exact matches to Person A1.

15.27 The Firm provided a table stating when the above documents were obtained from Person A1. Based on the table, the Firm did not hold a copy of a valid identity document for Person A1 between the expiry of his Canadian passport on 10 December 2014 and obtaining his Israeli passport on 19 December 2018. The only address verification provided by the Firm for Person A1 was obtained on 26 November 2020 (after the artwork purchases were completed). This was requested by Mr Gerber on 25 November 2020 as that was the date of the first transaction queried by "the Bank".

15.28 The Firm held the following due diligence documents relating to Company 2 (the company which provided part of the money used to purchase the artworks):

- Certificate of Incorporation from the Marshall Islands dated 3 April 2014;
- Declaration signed by a Mr FP on 3 April 2014 to the effect that he was holding the shares in Company 2 as a nominee for the benefit of Person A1; and
- Certificate of Incumbency dated 19 May 2014 which stated that the company was in good standing and the sole shareholder was Mr FP.

15.29 The table provided by the Firm outlined that the above documents were not obtained until August 2020, i.e. after the artwork purchases were completed.

15.30 The Firm held the following due diligence documents relating to Company 1 (the company which was incorporated to hold the artwork):

- Certificate of Incorporation from the Seychelles dated 2 October 2017;
- Memorandum and Articles of Association;
- Share Certificates;
- Certificate of Incumbency dated 27 April 2018 which stated that the shares in the company were held half by WSL and half by BVL;
- Two declarations of trust, one each from WSL and BVL, both dated 27 April 2018, signed by the directors of those companies stating that the shares in Company 1 were held upon trust for Person A1;
- An Ultimate Beneficial Owner Declaration form dated 9 October 2020, i.e. after the transactions, signed by a director of WSL stating that Person A1 was the

ultimate beneficial owner of Company 1 (referring to the address in Jerusalem for which the Firm obtained utility bills);

- Articles of Incorporation, Certificate of Incumbency and Certificate of Good Standing for corporate shareholder WSL; and

- Articles of Incorporation, Certificate of Incumbency and Certificate of Good Standing for corporate shareholder BVL.

15.31 On 23 September 2022, the Firm confirmed that the above documents constituted all of the Know Your Client (KYC) and due diligence documents held in respect of Person A1 and his companies.

15.32 On 28 September 2022, the FIO requested any documents obtained by the Firm to verify the source of funds on Person A1's transactions together with any written records of his source of wealth or funds. No information or documentation was provided in response to this request.

15.33 On 14 October 2022, the Firm's legal representatives confirmed that no matter risk assessments had been recorded in relation to Person A1's matters after the introduction of the MLRs 2017 until the exercise to improve the Firm's AML PCPs undertaken in 2021. The art transactions had concluded in 2018 - 2020, with no matter risk assessment undertaken and recorded.

15.34 In interview with the FIO on 31 October 2022, Mr Gerber confirmed that:

- he should not have allowed the client account to be used for the artwork transactions, and then went on to state *"I thought it was maybe a slightly grey area because he was an existing client and there were previous transactions. I thought it was more grey than - but clearly, you know, from 2021 it was a completely, you know, there was no underlying transaction ... but I knew that I, I shouldn't have acted on it, on the art, which is a completely separate thing from the property."*

- he was aware of the risks of money laundering in May 2018 (when first agreeing this) *"Q: And you were aware of those risks back in May 2018 when this matter first started? A: May 2018 with [client name]? Q: Yes. A: … I was aware but I wasn't concerned about the risk with him about the reasons why he was doing it."*;

- he realised prior to terminating the client's instructions in relation to the artwork that what he should have done was to say that, because there is no underlying transaction, he could not act for the client: *"What I clearly should, should have done is said, because there's no underlying transaction, I cannot act for you."*;

- he agreed to do so because Person A was an existing client of his and had instructed him on a number of property transactions: *"And the only mitigation I can say is, and it was a mistake, that he was an existing client of mine who'd you know, given me a number of property you know, instructed me on a number of property transactions. It was unusual but, stupidly I wanted to help the client";*

- he had a *"broad knowledge"* of the fact that he should not act where there was no specific underlying transaction: *"But I would have had a, certainly a broad knowledge of, you know, where, where there's no specific underlying transaction. But I, I think in the back of my mind I thought that maybe because he was an existing client, that there was a bit of leeway perhaps which was clearly in hindsight not the case."*;

- *"I as I say I knew it was a grey area. I don't think I knew it was an absolute breach, but I knew it was a grey area, and come November 20, I just you know, there was too many, it was a lot of money, and I was you know, it was just not right, and I just wanted to cut it. And I would have looked up the regulations at that time and it would have been black and white, that is for sure because that's quite a strong email."*

- Mr Gerber stated it was it was *"a bit of a grey area"* he did not look at or seek any guidance, as he should have done: *"... it kind of corroborates what I was saying to you before about grey area, should I or should I not be doing this ..."*;

- when refusing to continue payments Mr Gerber was *"... probably a bit nervous you know okay, I've probably lost this client, but you know, there's an element of that sadly when I, you know, first took it on in May '18 of course in hindsight I should have said no"*. He was also *"a bit probably a bit nervous"* that he would lose the client, if he did not agree to allow the client account to be used from May 2018, so he agreed to *"one or two payments"*; and

  > *"I think in the back of my mind I thought that maybe because he was an existing client, that there was a bit of leeway perhaps which was clearly in hindsight not the case"*.

The Second Respondent's Case

15.35 Mr Gerber admitted the allegations.

15.36 Mr Bennett submitted that the misconduct did not rest solely with Mr Gerber; the Firm bore responsibility given its systemic failings as regards money laundering and Rule 14.5. Mr Gerber's client base was varied and included high net worth individuals as well as regular residential conveyancing clients.

15.37 Person A1 worked internationally and maintained a London residence. Mr Gerber knew him both as a client and socially, having been introduced by a mutual friend. The work undertaken for Person A1 by Mr Gerber was "a light touch" and did not form a significant part of Mr Gerber's caseload. The invoices charged were nominal.

15.38 The Applicant, it was submitted, had highlighted that the most serious allegation Mr Gerber faced was that his conduct had lacked integrity. Mr Bennett submitted that Mr Gerber's actions, post his misconduct, demonstrated his integrity thereafter.

15.39 Mr Gerber, it was submitted, had fully accepted his misconduct; the context of that misconduct was an important factor for the Tribunal to consider when reaching its factual findings.

The Tribunal's Findings

15.40 The Tribunal found allegations 2.1 and 2.2 proved on the facts and the evidence. The Tribunal determined that Mr Gerber's admissions were properly made.

Previous Disciplinary Matters

16. None

Mitigation

17. Mr Bennet submitted that the allegations against Mr Gerber arose following the submission of a self-report by the Firm which was commissioned and led by Mr Gerber. Mr Gerber had made admissions from the outset.

18. Mr Gerber, it was submitted, relied on the *"grey area perception"* he had in relation to the operation of Rule 14.5, until he expressly knew that operating a banking facility was prohibited and declined to continue to do so.

19. Mr Bennett submitted that the amount of fees invoiced initially in this matter was a modest £2,256.34, all of which was refunded once the banking facility issue was understood by Mr Gerber. Mr Gerber prepared invoices issued by the Firm which outlined each step taken openly, and he thus made no effort to conceal the assistance given to the client. No financial gain was obtained, quite the contrary.

20. In particular the Tribunal was referred to paragraphs 5 and 6 of the Answer on page B5 of the bundle, which demonstrates that Mr Gerber's understanding of the SRA Prohibition on Banking Facility, and the admitted lack of integrity, was placed into context that his knowledge evolved throughout the life of the allegations.

21. In his interview, Mr Gerber stated:

> "***It was what I've said that I, I thought it was as a grey area, and you know, ignorance is no defence****, but I'm just telling you the, the facts. I thought it was a grey area and that this was an established client of mine, albeit [redacted] was a new entity, But, you know, I knew him, and that's why. I did not think at the time, this is totally illegal and* ***in breach of the SRA rules, and it you know I thought it was a grey area***
>
> ...
>
> *I thought at the time, you know, as I've said,* ***that it was more of a grey area, that he was an existing client and that I understood what the transaction you know in terms of I wasn't concerned about criminal proceeds, laundering money*** *and I can see in hindsight why you may come to that, not conclusion but thought, I'm not denying that but that's my reason*." [**emphasis added**]

22. Mr Gerber went on to decline to undertake further transactions once his knowledge of the Solicitors Accounts Rules evolved as evidenced by his 3 November 2020 email.

23. Mr Bennett submitted that the appropriate sanction in cases of this nature was ordinarily a financial penalty. It was accepted that, whilst there was no allegation of money laundering, illegality, or financial loss to any party, there was undoubtedly a money laundering risk due to the failure of the Firm's Policies, Controls and Procedures (PCP); and the absence of an effective Firm-Wide Risk Assessment (FWRA).

24. The Tribunal was invited to note that at all material times during the currency of the allegations and the admissions made, Mr Gerber was neither the firm's Money Laundering Reporting Officer (MLRO) or the firm's Compliance Officer for Legal Practice (COLP). Mr Gerber was the fee earner responsible for one of the two clients that brought the proceedings before the Tribunal. The isolated nature of the misconduct was therefore limited to one client.

25. Mr Bennett submitted that in the context of a banking facility 10 years on from the first SRA Warning Notice (18 December 2014), the profession was still developing its understanding of the rules. The critical wording changes of Rule 14.5 in the Solicitors Accounts Rules 2011 and Rule 3.3. of the 2019 Rules, were, he submitted, still catching out the profession Additionally, the 1 March 2023 Warning Notice differed from the earlier 2018 and 2014 versions in critical ways. Educational failure of the profession by the SRA permeated the disciplinary cases, as did the absence of definitions of a "bank" and "banking facility". The application of the rule in hindsight undermined the SRA's public interest obligation.

26. In this particular case, the failures of the Anti-Money Laundering PCP's and the Provision of a banking facility stemmed from misunderstandings. The Firm (and in turn Mr Gerber) thought wrongly, through its then MLRO and COLP, that it was complying with the 2017 MLRs, but the practical application and discharge of the 2017 regime had been misunderstood.

27. The fact that this was a grey area in terms of the banking facility element in the mind of Mr Gerber should be taken into account when considering the lack of integrity issue. Whilst it was accepted that Mr Gerber should have checked when thinking this, it was clear both from the interview and from the Answer that this was an evolving piece of knowledge on his part.

28. The Tribunal, it was submitted, had imposed an appropriate financial sanction for the Firm, with the duality of role for Mr Gerber both as an individual Respondent and also as one of two Equity Partners of the Firm. The Tribunal would also recognise Mr Gerber's knowledge had evolved and he led the firm to self-report his earlier oversights.

29. Mr Gerber's extensive contribution to both the Firm and his own self-reporting of these matters, was noted in the Authorised Decision Maker's decision to refer these matters to the Tribunal. The ADM stated:

> *"As referenced above, Mr Gerber and the firm have demonstrated a significant amount of mitigation and post-breach work following the self-report and the SRA's investigation in its representations. I would fully expect the tribunal to take this into account, and the SRA as a party to the proceedings to acknowledge this. The representations are right to highlight the depth the*

> *mitigation and the cooperation goes (sic) following the self-reports and whilst that will significantly factor in any final determination on sanction it does not in my view alter the recommendation of a referral to the Tribunal for the reasons set out in this decision so far which illustrates the seriousness of the underlying conduct."*

30. Mr Bennett submitted that Mr Gerber had always argued that this was a matter where, due to the duality of Mr Gerber's status as an Equity Party in the Firm, there was a significant overlap. As the SRA's own ADM noted in the referral decision:

> *Mr Gerber's representations disagree with the recommendation to refer the conduct to Tribunal and suggest it can be dealt with using the SRA's internal powers.* ***It is my view that, applying the SRA's Enforcement Strategy, a Financial Penalty is the appropriate sanction***. [**emphasis added**]

31. Mr Bennett submitted that, notwithstanding the seriousness, inevitably the right outcome was for there to be either no order against Mr Gerber, or a reprimand, or at worst a financial penalty/fine. The ADM's view on financial penalty was on record, but the duality of Mr Gerber as an equity partner and a Respondent personally, mitigated the financial penalty ensuring it was modest, or reduced to something short of a financial penalty.

32. The other options open to the Tribunal ought not to feature in a case where Mr Gerber led the extensive mitigation and post-breach work, including in a two-partner firm expending hundreds of thousands of pounds worth of resources to make the firm's systems robust. The fact that this was successful was demonstrated by a subsequent clear SRA AML Audit in April 2022.

33. The firm's historical problems have been cured by the efforts and the financial contributions of Mr Gerber. The Firm had spent approximately £300,000.00 to ensure that the Firm would be compliant with the Rules.

34. In assessing seriousness the Tribunal, it was submitted, would have regard to its Guidance Note on Sanction. The level of culpability for the AML failures was less than that of the banking facility breaches. Those breaches, it was submitted, and as detailed above, were a grey area for Mr Gerber before he declined to continue that conduct as his awareness of the SRA Accounts Rules in relation to the provision of a banking facility evolved. That grey area was reflective of the difficulties the profession has had with the Guidance first issued by the SRA on 18 December 2014, and which has evolved subsequently in an inconsistent manner. Things that are prohibited under the current iteration dated 01 March 2023, were not in the Regulator's mind back in 2014. This evolution, it was submitted, should inevitably reduce the overall sanction.

35. A misjudgement of the Rules was not something which ordinarily would significantly damage public confidence, or the reputation of the legal profession, and indeed other recent Banking Facility cases demonstrated this to be the case.

36. Mr Bennett referred the Tribunal to previous decisions detailed below.

37. In SRA v Lanford and Howard Kennedy LLP (11686-2017), Mr Langford had acted for a very rich client and used the Firm's client account to make payments in breach of the banking facility rule. Despite being told to stop doing so, he continued to make payments in breach of the rule. The Tribunal ordered Mr Langford to pay a fine in the sum of £15,000. Mr Langford admitted that his conduct had lacked integrity. In its Judgment, the Tribunal stated:

> *"The Tribunal found that the Firm's motivation for his misconduct was his desire to keep Mr A happy, by continuing to provide him with services that were in breach of the [solicitors] accounts rules. After the email of April 2012, he chose to deliberately and knowingly disregard the instructions received to cease making payments, and to that extent, his misconduct was planned. He was a senior solicitor who was very experienced and trusted. He was in direct control of his conduct …"*

38. The Tribunal considered that the misconduct in that case: "*… was not so serious that it required his removal from practice for a definite or indefinite period. Accordingly, the proportionate sanction in this matter was a financial penalty."*

39. Such conduct, it was submitted, was plainly more serious than the misconduct committed by Mr Gerber.

40. Mr Bennett referred the Tribunal to the SRA decision (08 December 2024) in relation to Onside Law LLP. That firm was fined £36,517 for the passing of funds to clients and a non-client on a multimillion-pound basis. £600 of costs were imposed. There was no additional order against the firm. In the linked decision of Simon Thorp, the Compliance Officer for Finance and Administration (COFA) at Onside Law LLP, a rebuke was issued because he, as the fee earner and Compliance Officer of the firm, had facilitated the provision of a banking facility in breach of the SRA Accounts Rule 3.3. A Costs Order of £600 was also imposed.

41. These cases neatly highlighted the current SRA Internal Sanctions approach when they seek to cut the Tribunal out of matters. It is inconceivable that they could treat an Alternative Business Structure in this way and then seek to treat another party before the Tribunal in a more onerous manner. Whether or not the SRA deem their £25,000 fining powers inadequate should not really determine the issue.

42. Mr Bennett referred the Tribunal to its decision in *SRA v Bhailok, Fielding and Bhailok Fielding LLP* (12548-2024) in which the Tribunal imposed a fine of £12,000 on a joint and several basis. Mr Bhailok, it was submitted, was not subject to a separate sanction in recognition of the duality of his role as an owner of the firm and a Respondent in his own right.

43. With regard to the admitted breach of acting with a lack of integrity, Mr Bennett referred the Tribunal to its decision in *SRA v Lois Bayliss* (12496-2024) where the Tribunal imposed a financial penalty of £2,500. Mr Bennett submitted that in light of the perception of a grey area by Mr Gerber in relation to the Rules, Mr Gerber's sanction should, in light of the duality with his firm, be less than that of Ms Bayliss because it affected the public interest in a lesser way and stemmed from a recklessness towards the perceived "grey area".

44. Mr Bennett noted that in two internal decisions of the SRA where there had been AML failings, including the failure to conduct firm wide risk assessments, fines of £22,000 in one case, and £3,711 in the other were imposed, where those failings had taken place over 6 years and 7 years respectively.

45. In terms of seriousness, the 2017 MLRs, the banking facility and the lapse of integrity are each clearly something which has been robustly addressed by the submission of three detailed self-reports through external legal advisers, and the hundreds of thousands of pounds spent on remedying the defects, the transparency arising from these steps driven by Mr Gerber as he sought to make amends for his historical error, and the subsequent clear 2022 SRA AML Audit, and of course the integrity displayed in achieving each of the steps which was led by Mr Gerber.

46. The impact of the proceedings on Mr Gerber's health had been significant. He had, hitherto, an unblemished career of 33 years. He had self-reported and, once the issues with the Firm had become clear, Mr Gerber had led the reformation of the Firm to ensure that it was compliant. The Firm had spent a significant amount of money to ensure its future compliance,

Sanction

47. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

48. The Tribunal did not accept Mr Bennett's submission that there was confusion in the profession in 2018 as regards the application of the banking facility rule. There had been a number of reported cases and SRA guidance as to how the rule applied. Given the facts of this matter, the Tribunal had found that this was a clear case of providing a banking facility in breach of the Accounts Rules. As Mr Gerber stated in his interview, had he looked up the regulations at the time the impugned transactions commenced it would have been *"black and white"*.

49. Mr Bennett had referred the Tribunal to a number of authorities and internal decisions of the SRA. In particular, it was submitted that in the internal SRA decision in the related cases of Mr Thorp and Online Law LLP, Mr Thorp was given a rebuke in relation to his failings as regards the banking facility rules. The Tribunal distinguished this matter from the Thorp and Online Law matters, as in those cases there were no allegations of breaching the MLRs.

50. As regards the Tribunal's decision in Bhailok, the Tribunal noted that the misconduct of the individual Respondents in that matter had not included their acting with a lack of integrity. Accordingly, the Tribunal also distinguished that matter.

51. The Tribunal did not accept that Mr Gerber considered that, as Person A1 was an existing client, there was some "leeway" as regards the application of the Accounts Rules to his proposed transactions.

52. The Tribunal determined that Mr Gerber's motivation for his misconduct was to ensure that he retained the client. As his email of 4 May 2018 evidenced, Mr Gerber was aware that he needed to check the AML position, but he either failed to make any, or any adequate, enquiries as to the position, so that the client's instruction to enable to purchase of art "anonymously" could proceed. In March 2019, Mr Gerber queried with the client why the Firm was making a payment for the purchase of art, rather than the client making the payment directly. Notwithstanding that query coming to his mind, Mr Gerber again failed to make any, or any adequate, enquiries in order to establish the impropriety of the transactions, and thereafter facilitated five further purchases of high value art by Person A1 to be conducted improperly through the client account between March 2019 and August 2020.

53. Mr Gerber had direct control and responsibility for the circumstances giving rise to the misconduct. He was the lead solicitor on this matter, and was the person dealing with the payments. Whilst the Firm had admitted its systemic failings, Mr Gerber was one of three equity partners at the time, and was thus responsible for ensuring that there were no systemic failings. He was an extremely experienced solicitor at the time of his misconduct. In conducting himself as he had, Mr Gerber (as admitted) had caused damage to the reputation of the profession.

54. Mr Gerber's conduct was repeated over a significant period of time in circumstances where he failed to make proper enquiries as to his regulatory obligations, notwithstanding his awareness that he should make such enquiries. The Tribunal determined that Mr Gerber ought reasonably to have known or discovered that the conduct complained of was in breach of his professional obligations.

55. The Tribunal noted that there was no loss suffered by any client. Further, Mr Gerber had self-reported, and had taken significant steps to ensure that the Firm and its staff would in future comply with their regulatory obligations. He had made open and frank admissions, and had demonstrated genuine insight into his misconduct.

56. The Tribunal determined that sanctions such as No Order or a Reprimand were disproportionate to the seriousness of Mr Gerber's misconduct. The Tribunal did not consider that his misconduct was so serious that there should be any interference with his right to practise. Accordingly, the Tribunal determined that a financial penalty was appropriate. The Tribunal assessed Mr Gerber's misconduct as falling within its Indicative Fine Band Level 4, as it assessed his misconduct as very serious. The Tribunal determined that a fine in the sum of £20,000 was proportionate and reflective of the seriousness of his wrongdoing, and thus ordered that he pay a financial penalty in that amount.

Costs

57. Mr Broomfield applied for costs in an unspecified amount. It was submitted that the Tribunal, when considering costs, would have regard to the costs orders made against the First Respondent (in the sum of £18,000) and the Third Respondent (in the sum of £6,500). It was noted that the hearing had taken significantly less time than had been estimated.

58. As regards Mr Gerber's ability to pay, his income and his interest in a number of properties meant that the Applicant did not accept that Mr Gerber was unable to pay any costs ordered. Mr Broomfield submitted that there was some overlap in terms of Mr Gerber being responsible for the Firm's costs as well as his individual liability as a Respondent. Such a position, it was submitted, should not prevent the Tribunal from making a costs order against Mr Gerber.

59. Mr Bennett submitted that Mr Broomfield had put the case very fairly over both days, and thus there would be no application for costs against the SRA. Following the approval of the Agreed Outcomes for the First and Third Respondents, the SRA had already been awarded substantial costs. The issues had been narrowed in advance of the hearing and the matter should have been dealt with in a more proportionate way in the run up to the hearing. In the circumstances, the Tribunal might consider it appropriate to make no order for costs, or a very small costs order.

60. The Tribunal noted that the costs schedule had estimated costs at £85,814.80 on the basis of a hearing listed for 5 days. Mr Broomfield had not suggested that Mr Gerber should be liable for the entirety of the amount that remained after the appropriate reduction for the shortened hearing time, and the amounts ordered in relation to the First and Third Respondents. The Tribunal considered the relative culpability of each Respondent and determined that Mr Gerber was more culpable than the Third Respondent, but less culpable than the Firm. Accordingly, the Tribunal determined that costs in the sum of £10,000 were reasonable and proportionate.

Statement of Full Order

61. The Tribunal ORDERED that the Respondent, JONATHAN RICHARD MAURICE GERBER, solicitor, do pay a fine of £20,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

Dated this 17th day of January 2025
On behalf of the Tribunal

A Horne

A Horne
Chair