SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11557-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NICHOLAS JOHN HUBER Respondent

Before:

Mr S. Tinkler (in the chair)
Mr P. Lewis
Mr M. C. Baughan

Date of Hearing: 2 December 2016

Appearances

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

The Respondent appeared in person.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 In or around January and February 2015, by failing to carry out adequate enquiry in relation to Mr ZS and Mr JS, to include any or adequate enquiry into each person's identity, employment history and qualifications before allowing them into his firm, the Respondent breached either or both of:

1.1.1 Principle 6 of the SRA Principles 2011; and

1.1.2 Principle 8 of the SRA Principles 2011.

1.2 Between January and May 2015 inclusive, by recklessly permitting Mr ZS and/or Mr JS to open and run a branch office over which he had no supervision or control, the Respondent breached all or any of:

1.2.1 Principle 2 of the SRA Principles 2011;

1.2.2 Principle 6 of the SRA Principles 2011; and

1.2.3 Principle 8 of the SRA Principles 2011.

1.3 Between January and May 2015 inclusive, the Respondent failed to have in place systems to ensure he had sufficient supervision and control over Mr ZS and Mr JS to ensure compliance with the Money Laundering Regulations 2007 ("the Regulations"), as a result of which the Respondent recklessly facilitated a suspicious property transaction and therefore breached (or failed to achieve) any or all of:

1.3.1 Principle 1 of the SRA Principles 2011;

1.3.2 Principle 2 of the SRA Principles 2011;

1.3.3 Principle 6 of the SRA Principles 2011;

1.3.4 Principle 8 of the SRA Principles 2011;

1.3.5 Outcome 7.5 of the SRA Code of Conduct 2011; and

1.3.6 Outcome 7.8 of the SRA Code of Conduct 2011.

1.4 By failing to redeem and discharge the mortgage in favour of RBC Europe Ltd, in accordance with the undertaking given in the Replies to the Requisitions on Title dated 13 May 2015 ("the Undertaking") the Respondent breached all or any of:

1.4.1 Principle 6 of the SRA Principles 2011;

1.4.2 Principle 7 of the SRA Principles 2011; and

1.4.3 Outcome 11.2 of the SRA Code of Conduct 2011.

1.5 In his capacity as the Firm's Compliance Officer for Legal Practice ("COLP") the Respondent failed to ensure compliance with the Firm's statutory obligations in relation to carrying out reserved legal activities and the Money Laundering Regulations 2007, and further failed to report a material failure of those Rules to the SRA and therefore breached all or any of:

1.5.1 Rule 8.5(c)(i) of the SRA Authorisation Rules 2011;

1.5.2 Rule 8.5 (c)(iii) of the SRA Authorisation Rules 2011;

1.5.3 Principle 7 of the SRA Principles 2011.

The Respondent admitted all the allegations but did not admit the allegations of recklessness alleged in Allegations 1.2 and 1.3.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 21 September 2016 together with attached Rule 5 Statement and all exhibits
- Applicant's Statements of Costs dated 21 September 2016 and 18 November 2016
- Witness Statement of Sean Grehan (SRA Forensic Investigation Officer) dated 2 November 2016
- Letter dated 9 November 2016 from the SRA to the Respondent

Respondent:

- Answer to Rule 5 Statement dated 5 October 2016 together with attached exhibit
- Statement and Argument of the Respondent dated 10 November 2016 together with attached exhibits
- Letter dated 5 October 2016 from the Respondent to the SRA
- Letter dated 10 November 2016 from the Respondent to the SRA

Factual Background

3. The Respondent, born in August 1948, was admitted to the Roll of Solicitors on 1 December 1977. He did not hold a current practising certificate.

4. At all material times the Respondent was the Recognised Sole Practitioner of Nicholas Huber & Co, 23 Newport Street, Tiverton, Devon, EX16 6NL ("the Firm"), where he practised from 1987 until the Firm closed on 31 December 2015.

5. The Respondent was appointed as the Firm's Compliance Officer for Finance and Administration ("COFA") and Compliance Officer for Legal Practice ("COLP") on 14 November 2012.

6. The Respondent was seeking to sell his practice so that he could retire. In January 2015 he met Mr ZS, who advised that he had two old friends who were looking to join a firm. Mr ZS subsequently introduced the Respondent to Mr ZR and Mr MM and it was agreed that they would form a partnership.

7. The Firm was granted authorisation as a partnership on 15 May 2015, with the Respondent, Mr ZR and Mr MM as partners. However, the partnership never traded and closed shortly after authorisation was granted. Mr ZR and Mr MM were employed by the Respondent as fee earners at the Firm between 4 February and 12 July 2015.

8. The Respondent gave Mr ZS consent to set up a London office for the Firm, as well as to set up the Firm's website and email accounts, and employ a non-qualified fee earner, Mr JS, who was at the Firm from February until May 2015 inclusive.

9. The Firm purported to act for Mr RSF and Mrs TKF in the sale of 20 B Street, London ("the Property") for the sum of £2,600,000, with Messrs HD acting for the purchasers, Mr ASP and Mr JA ("the Transaction"). The Transaction was conducted through the Firm's London office, and both Mr ZS and Mr JS appear to have conduct of the matter (however the Firm was unable to locate the client matter file and the Firm had not maintained a client account ledger in respect of the matter).

10. The sale of the Property completed on 1 May 2015, when the Firm received £2,569,783.50 from Messrs HD. Messrs HD subsequently raised concerns with the Respondent regarding, amongst other issues, the Firm's failure to redeem and discharge the mortgage over the Property.

11. As a result of concerns raised by Messrs HD, the Supervision Department of the SRA commissioned an investigation into the Firm because of concerns of property fraud.

12. On 18 June 2015 a duly authorised officer of the SRA ("the FIO") commenced an inspection of the books of accounts and other documents of the Firm at the Firm's offices at 23 Newport Street, Tiverton, Devon, EX16 6NL ("the Inspection"). The Inspection culminated in a Forensic Investigation Report dated 8 July 2015 ("the FI Report"). The Firm closed on 31 December 2015.

Allegation 1.1

13. The Respondent advised the FIO on 18 June 2015 that he had been trying to sell his practice for a number of years in order to retire, and had registered with a company which specialised in selling/merging solicitors' practices.

14. On 16 January 2015 the Respondent was introduced to Mr ZS, who he understood to be a non-practising solicitor looking to purchase a solicitor's practice in Devon. Mr ZS informed the Respondent that he had two old friends who were looking to join a firm. Mr ZS subsequently introduced the Respondent to Mr ZR and Mr MM and it was agreed that they would form a partnership. It was further agreed that the Respondent would retire after six months, and Messrs ZR, MM and ZS would form an alternative business structure in the name of KL LLP.

15. Despite being granted authorisation as a partnership by the SRA on 15 May 2015 the partnership never traded, and the Respondent remained the Recognised Sole Practitioner of the Firm, employing Mr ZR and Mr MM as fee earners from 4 February to 12 July 2015 inclusive.

16. In February 2015 Mr ZS persuaded the Respondent to employ Mr JS and provided the Respondent with a copy of Mr JS's CV and a background report. However, the CV and background report for Mr JS appeared to be generic and the Respondent had nothing to prove that it related to the individual he had been introduced to.

17. Mr ZR and Mr MM were also able to provide the FIO with a copy of a passport and CV for Mr ZS. Although the Respondent believed Mr ZS was a non-practising solicitor, his CV did not include any reference to him being a solicitor, non-practising or otherwise. The Respondent allowed Mr ZS and Mr JS into his Firm, working at a branch office in London, while he remained at the Firm's head office in Devon, without taking any steps to check their identity, employment history or qualifications.

Allegation 1.2

18. The Respondent gave Mr ZS consent to set up London branches for the Firm, with Mr ZR and Mr MM to operate from one branch, and Mr ZS to operate from the other. Mr ZS also set up the Firm's website and email accounts, and employed a non-qualified fee earner, Mr JS, who was at the Firm from February until the end of May 2015.

19. In a meeting with the Respondent, Mr ZR and Mr MM on 15 June 2015 the FIO was advised that :

> "Since 29 May 2015 [the Respondent, Mr ZR and Mr MM] have been unable to contact [Mr ZS or Mr JS]. The Firm have been unable to locate any client matter files conducted by Mr [JS] or Mr [ZS].
>
> ...the Firm had only received monies and made payments in respect of one matter under the conduct of [Mr JS] and/or [Mr ZS], the sale of [the Property].
>
> …during the period [Mr JS] and [Mr ZS[were at the Firm they were not remunerated".

20. The Respondent had no knowledge, supervision or control over the London branches, as he attempted to seek clarification from Mr ZS of basic details regarding his and Mr JS's employment. In particular, in his email to Mr ZS dated 29 May 2015, the Respondent asked:

> "1. Who represents the client; you and [Mr JS] or Huber & Co. In the [F] case it seems to have been you and [Mr JS] but neither of you are members of Huber & Co but you have held yourselves out to be.
>
> 2. [Mr JS] - who is he? He's on Huber & Co notepaper but he is not my employee or the lads. I presume you employ him or your company does. What's he doing on the notepaper?
>
> 3. Whose offices are the Cobalt Building - Huber & Co or KC. Who should have access to them?
>
> .....
>
> 5. Funding arrangements: I do not know what they are between you and the lads but I think the three of you need to make sure that they are SRA compliant. There is no ABS in place at present.
>
> 6. You tell me I will see one of my partners a week at Tiverton, I cannot see that will be enough in the context of me as retiring partner. You say you will be in Tiverton most days. How? What is your status - my employee as a non-practising solicitor? Or am I supposed to share my office with [KC] and if so, what are the ramifications - I don't know, I've never had to know so far".

21. During his interview with the FIO on 18 June 2015, the Respondent confirmed that he had not supervised Mr ZS and Mr JS. He also admitted that he had not reviewed any of Mr ZS's or Mr JS's incoming or outgoing post or email correspondence nor had he reviewed client files.

22. Furthermore the Respondent also stated that he:

> "…did not have access to the firm's website as it had been set up by [Mr ZS] who had also set up the email addresses in the firm's name in respect of the London offices."

Allegation 1.3

23. In accordance with Regulations 5 and 7 of the Money Laundering Regulations 2007 ("the Regulations"), the Respondent was obliged to verify the identity of the purported clients, Mr RSF and Mrs TKF, on the basis of documents, data or information obtained from a reliable and independent source before receiving a payment into the Firm's client account in respect of sale proceeds arising from the apparent sale of their Property. He failed to do so.

24. It subsequently transpired that the purported clients of the Firm, Mr RSF and Mrs TKF, were not the genuine owners of the Property, and that the Transaction itself was dubious. The Respondent had no formal procedures in place to ensure compliance with the Regulations and he had no measures in place for the supervision of Mr ZS and Mr JS.

25. Regulation 21 of the Regulations provided that:

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

The Respondent failed to ensure that Mr ZS and/or Mr JS undertook any such training.

26. In assessing the risk whether the payment received on behalf of the Firm's purported clients, Mr RSF and Mrs TKF, was being made in furtherance of money-laundering, and considering the appropriate steps which he ought to take to obtain information upon the purpose of the payments which he was being asked to make in respect of the sale proceeds following the sale of the Property, the Respondent should have had regard to the "red flag" indicators identified by the Financial Action Task Force in its report "Money Laundering and Terrorist Financing Vulnerabilities Legal Professionals" (that report being cited as source material in the guidance promulgated upon the topic by both the Law Society and the SRA).

27. Those "red flags" included the following :

> "Red Flag 7 - The client is using foreign accounts without good reason.
>
> Red Flag 42 - Requests for payments to third parties without substantiating the reason or corresponding transaction".

28. In an email 15 May 2015 Mr JS asked the Respondent to pay the sum of £2,562,500 into an account in the name of BFM. The Respondent made a payment from the Firm's client account to RBC Europe Ltd in the sum of £7,900 and a further payment of £2,550,500 to BFM (and not the sum of £2,562,500 as requested by Mr JS). These sums were returned to the Firm's client account on 15 and 18 May 2015 respectively.

29. In an email dated 19 May 2015, after these payments had been returned, Mr JS asked the Respondent to pay the sum of £2,550,500 into Yalova Carsi branch of the Turkish Bank Garanti Bankasi for the benefit of YO. The Respondent duly made the payment on 19 May 2015. This payment (less an admin fee) was returned from the bank to the Firm's client account on 21 May 2015.

30. In a further email dated 26 May 2015, after significant monies had been previously returned by two separate banks, Mr ZS asked the Respondent to pay the sum of £2,340,000 into an account in the name of BM Ltd, together with payments of £150,000 and £60,000 to N Ltd and ID Trading as S Estates respectively.

31. On 27 May 2015, Mr ZS emailed the Respondent a copy of a letter purportedly from Mr RSF, asking that sale proceeds be distributed as follows: £2,340,000 to BM Ltd, £150,000 to N Ltd and £60,000 to ID Trading as S Estates, the latter two amounts being in respect of estate agents fees. These payments were made by the Respondent on 27 May 2015 and were not returned.

32. By virtue of Regulation 8, the Respondent was also required to conduct ongoing monitoring of the business relationship, including scrutiny of transactions undertaken. This remained the position irrespective of whether such receipt was otherwise permissible as a matter of professional conduct.

33. None of the payments made by the Respondent were made into an account in the name of the Firm's clients, Mr RSF and Mrs TKF. No explanation was sought by the Respondent as to why the monies had been returned by the first three banks, nor why the amounts, description and account details were changing each time.

34. The Respondent advised the FIO on 18 June 2015 that he had not undertaken any due diligence at the time in relation to the third parties to whom he sent the monies from the firm's client bank account or requested to see such due diligence. He accepted with hindsight, that not paying the sale proceeds to a bank account in the name of [Mr RSF and Mrs TKF] was incorrect and that the scam could have stopped if he had demanded to only pay the sale proceeds into a bank account in the name of the firm's purported clients.

35. The Respondent further advised the FIO that the fact that he had distributed the sale proceeds to a number of different bank accounts and that some of these payments he had made had been rejected by the recipient bank did not make him believe that this was a suspicious transaction at the time.

Allegation 1.4

36. During the course of the Transaction, Requisitions on Title were sent to the Firm by Messrs HD. In the Firm's Replies to the Requisitions on Title dated 13 May 2015 the Respondent confirmed that he would:

> "..immediately pay to all mortgagees the moneys required to discharge all mortgages affecting the Property".

37. Notwithstanding this, the Respondent did not redeem or discharge the mortgage in favour of RBC Europe Ltd over the Property within a reasonable period of time, or at all. The Respondent confirmed that only he gave undertakings for the firm. He was therefore responsible for ensuring that the Undertaking given was complied with.

Allegation 1.5

38. On 29 May 2015 the Respondent sent an email to Mr ZS asking a number of questions about the Transaction when referring to:

> "..the debacle of the [F] case".

39. The Respondent stated:

> "We cannot have another [F] type case. I have not seen the file and I'm not sure I want to but it's clearly not SRA compliant".

40. On 5 June 2015 Messrs HD sent a letter to the Firm confirming that funds of £2,569,783.50 had been remitted to the Firm on the basis of the Undertaking. In breach of that Undertaking the Firm had not redeemed and discharged the mortgage affecting the Property. Messrs HD also stated that they had been informed by Messrs BDB, solicitors acting on behalf of the genuine Mr RSF and Mrs TKF, the genuine owners of the Property, that their clients had no knowledge of the Transaction.

41. The Respondent reported the matter to the Police, the Firm's professional indemnity insurers and to the Firm's relationship manager at Lloyds Bank Plc. He failed to report the matter to the SRA even though he had realised, at the latest by 5 June 2015, that the Transaction had been a suspicious property transaction with significant sums of money passing through the Firm's client account.

42. The Respondent wrote to the SRA on 8 October 2015 in response to the SRA's investigation and stated the FI Report:

> "… relates to a one-off breach of SR Rules. That no client was involved, no client monies were involved and that no client suffered any loss. The loss suffered by the duped purchasers, Messrs [P and A] has been made in full. There is at present some argument going on concerning the level of interest that may be payable to these gentleman (sic) and also the extent of their solicitors, [HD]'s costs.
>
> That I was an innocent accomplice in this fraud which was completely out of my character and comprehension and doubtless you will appreciate will never be repeated".

43. In a further letter to the SRA dated 12 October 2015, the Respondent stated:

> "I accept that, with hindsight, I should have carried out more robust enquiry as to the bona fides of [Mr ZS] and [Mr JS]. However I deny the allegation 'any'."

44. The Respondent denied that his failure to carry out adequate enquiry or his failure to supervise Mr ZS and Mr JS constituted a breach of Principle 6, maintaining:

> "….the public has been quite uninvolved in this matter; their trust has not be (sic) lessened ……
>
> …which members of the public have lost trust in me. There is no evidence of that produced in the FI Report……
>
> …no client money was involved".

45. The Respondent also stated:

> "I have always acted in the best interests of my client. [Mr F] was not a client. No other "client" was involved in the scam or has suffered loss….

> Firstly, I think it is quite apparent from the [FI Report] that I had no knowledge at the time that the 20 [B] Street transaction was a suspicious property transaction. Secondly, I deny recklessness. The test for recklessness in connection with a transaction involved is to be aware of the risks but to proceed with a course of action notwithstanding knowledge of those risks. In other words "knowledge" and "recklessness" go hand in hand and were not present at the time".

46. The Respondent admitted failing to comply with the Undertaking to redeem the mortgage in favour of RBC Europe Ltd, stating :

> "This of course I have to admit. At the time, I was unaware that the RBC Europe Ltd mortgage had not redeemed. I accept that the monies bounced back almost immediately but there was a time delay in my realising that that had happened. Statements are issued by my bank on a weekly basis and by the time that was received, I was then aware that a fraud had been undertaken. I would also say here, whilst not wishing to absolve myself of the accusation that a duty is imposed upon the purchasers (sic) solicitors, where a foreign mortgage is concerned to be proactive in the discharge of that mortgage. I would suggest therefore that [Messrs HD] should have requested a redemption statement from the firm which of course in the circumstances [Mr ZS] and [Mr JS] or indeed myself could not produce which would then have raised suspicions as to the bona fides of the transaction".

Witnesses

47. The following witnesses gave evidence:

- The Respondent, Nicholas John Huber

Findings of Fact and Law

48. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. 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.

49. **Allegation 1.1: In or around January and February 2015, by failing to carry out adequate enquiry in relation to Mr ZS and Mr JS, to include any or adequate enquiry into each person's identity, employment history and qualifications before allowing them into his firm, the Respondent breached either or both of:**

1.1.1 Principle 6 of the SRA Principles 2011; and

1.1.2 Principle 8 of the SRA Principles 2011.

49.1 The Respondent admitted Allegation 1.1. The Tribunal, having considered the documents provided and the Respondent's admissions, found Allegation 1.1 proved.

50. **Allegation 1.2: Between January and May 2015 inclusive, by recklessly permitting Mr ZS and/or Mr JS to open and run a branch office over which he had no supervision or control, the Respondent breached all or any of:**

1.2.1 Principle 2 of the SRA Principles 2011;

1.2.2 Principle 6 of the SRA Principles 2011; and

1.2.3 Principle 8 of the SRA Principles 2011.

50.1 The Respondent admitted Allegation 1.2 but did not admit the allegation of recklessness.

50.2 Mr Bullock, on behalf of the Applicant, referred the Tribunal to the case of Alastair Brett v Solicitors Regulation Authority [2014] EWHC 2974 (Admin) when assessing the issue of recklessness. Mr Justice Wilkie had stated as follows:

> "78. I remind myself that the word "recklessly", in criminal statutes, is now settled as being satisfied:
>
> > "with respect to (i) a circumstance when he is aware of a risk that it exists or will exist and (ii) a result when he is aware that a risk will occur and it is, in the circumstances known to him, unreasonable for him to take the risk" (see R v G [2004] 1AC 1034 Archbold para 11-15.)
>
> I adopt that as the working definition of recklessness for the purposes of this appeal."

50.3 Mr Bullock submitted that in relation to Allegation 1.2, the risk of employees of a solicitor's firm committing acts of impropriety if supervision was not put in place should have been obvious, and certainly to a senior solicitor like the Respondent. Mr Bullock submitted it was unreasonable for the Respondent to have made absolutely no arrangements for the supervision of Mr JS and Mr ZS. They were geographically distant from him and it was therefore difficult for the Respondent to find out in Tiverton what problems were occurring in London. Mr JS and Mr ZS were strangers to the Respondent, he knew nothing about them, their moral character, their probity, or their knowledge of the rules and principles applying to a solicitor's practice that all employees must comply with. Mr Bullock submitted the Respondent had acted recklessly allowing them to run a branch office over which he had no supervision or control.

50.4 Mr Bullock submitted that the test to be applied required an awareness of the existence of a risk. He submitted that if the problem had been identified in the first place, then the Respondent was on notice that the risk existed. Mr Bullock submitted the moment one is asking oneself questions, then one has already identified there is a problem. Mr Bullock submitted the Respondent had been on notice of the risk and must have been aware of the risks associated with a failure to properly supervise employees which could lead to facilitating money laundering transactions. Mr Bullock submitted the Respondent had been aware of the facts giving rise to the risk.

50.5 The Tribunal also heard evidence from the Respondent who maintained he had not been aware of any risk. In his witness statement dated 10 November 2016, the Respondent stated it had never once occurred to him that Mr ZS could be a fraudster. The Respondent had thought Mr ZS's intentions were honourable and indeed he had liked him from the very beginning. The office at Cobalt House in London was intended to be the branch office for Mr ZR and Mr MM who were to become the Respondent's partners. Mr ZS had his own premises in Canary Wharf. The Respondent stated that it was only much later that he became aware that Mr ZR and Mr MM were not based at Cobalt House but only attended there to collect mail. He had not realised that Mr ZR and Mr MM were based full time at Leman Street in London.

50.6 On cross-examination the Respondent accepted he had 33 years of experience at the time of the events. He stated he thought Mr ZR and Mr MM who were in London were exercising some supervision. The Respondent confirmed he had been introduced to Mr ZS through a consultancy company and he had got to know him well. Indeed, the Respondent stated he liked him more and more over time and found nothing in his conduct to raise alarm bells.

50.7 In relation to Mr JS, the Respondent stated he had in fact met him on two occasions and stated that his email to Mr ZS of 29 May 2015 enquiring about the identity of JS was poorly constructed as it had been "dashed off". It should have said "What is he?" referring to Mr JS's qualifications, rather than "Who is he?" The Respondent stated that although Mr JS was an employee, Mr JS had not been remunerated by the Respondent. After the partnership with Mr ZR and Mr MM had been approved by the SRA, the Respondent had been persuaded by Mr ZS to put Mr JS's name on the notepaper as he knew the clients well. By this time the Respondent had come to trust Mr ZS completely, particularly as the SRA authorisation for the partnership was well underway.

50.8 Whilst the Respondent accepted he had been negligent and failed to properly supervise, he stated that he had been in a complacent happy mode having concluded the sale of his practice and fully expecting to wind down from the practice by the New Year. The Respondent maintained he was not aware that he had created an obvious risk. He worked in Tiverton where everyone knew each other and the conveyancing was "bog standard". The Respondent accepted he should have realised but stated he didn't. He had not experienced anything like this before.

50.9 The Respondent stated he had checked the passports for Mr ZR and Mr MM which confirmed they were permitted to reside in the UK. He had also seen their practising certificates. He had not checked the same documents for Mr ZS or Mr JS. He had thought Mr ZS was paying Mr ZR and Mr MM who would eventually join him as partners, indeed the relevant application had already been lodged with the SRA by this stage.

50.10 Whilst the Respondent had accepted on cross-examination that there were consequences arising from allowing someone to run a branch office without supervision, he had not been aware that he had created such a risk by operating a London office over which he had exercised no supervision. The Respondent accepted he had acted negligently but submitted that did not make him reckless. He had held

the misplaced belief that Mr ZR and Mr MM had been supervising Mr JS to some extent and keeping an eye on him.

50.11 The Tribunal carefully considered whether the Respondent had been aware of the risk of permitting Mr ZS and/or Mr JS to operate a branch office over which he had no supervision and whether he had taken those risks, knowing it was unreasonable for him to do so.

50.12 The Tribunal, having heard evidence from the Respondent found him to be a genuine, credible albeit foolish witness and accepted his evidence that the risk had not occurred to him at all. He had been introduced to Mr ZS through a well-known, reputable merger/takeover company and he had trusted Mr ZS without question. He had also assumed some level of supervision was being carried out by Mr ZR and Mr MM who were soon to become his partners and take over his practice. He had properly carried out checks on Mr ZR and Mr MM to confirm their identity and ability to practice as solicitors. The Respondent had been extremely naïve and gullible, and had blindly trusted both Mr ZS and Mr JS, but the Tribunal could not conclude he had been aware of, or had even given any thought to the risk of them running a branch office without proper supervision from him. The Tribunal therefore did not consider that the Applicant had proved that the Respondent had been aware of the risk, and thus had not proved that he had acted recklessly in relation to Allegation 1.2.

50.13 Whilst the Respondent had admitted the rest of Allegation 1.2 and a breach of Principles 2, 6 and 8 of the SRA Principles 2011, the Tribunal found that although he had breached Principles 6 and 8 in that he had behaved in a way that did not maintain the trust the public placed in him or in the provision of legal services and that he had not run his business effectively and in accordance with sound financial and risk management principles, the Tribunal was not satisfied that he had breached Principle 2 and acted with a lack of integrity, particularly bearing in mind its findings of fact as regards his awareness of risk.

50.14 The Tribunal had not heard any submissions from the Applicant in relation to the facts relied upon which indicated the Respondent's moral soundness had been undermined. However, the issue of integrity was addressed at paragraphs 33 and 34 of the Rule 5 Statement where it was submitted that the public would trust a solicitor of integrity to be astute to the risk of allowing unknown and/or known admitted individuals into his firm, and would therefore expect him to undertake thorough and conclusive checks to ensure they were who they claimed to be, before allowing them to manage a branch office of his firm in a different part of the country without any form of supervision or control. Paragraph 33 also referred to the Respondent allowing Mr ZS to set up a website for the Firm to which the Respondent had no access.

50.15 Paragraph 34 alleged that by allowing Mr ZS and/or Mr JS to open and run a branch office of the Firm in London over which he had absolutely no control or supervision, while he remained in Devon, the Respondent had failed to act with integrity.

50.16 As the Tribunal had found that the Respondent had not considered the risk at all of permitting Mr ZS and/or Mr JS to open and run a branch office without supervision, it was clear that he had not given any thought to how he was acting. This had been an operational matter, where he had thought Mr ZS and Mr JS were being supervised albeit to a limited extent by Mr ZR and Mr MM. The Tribunal was satisfied that the

Respondent could not have acted with a lack of moral soundness in such circumstances particularly when he had not put his mind to those circumstances at all. The Tribunal was not satisfied the Applicant had proved to the requisite standard that the Respondent had breached Principle 2 of the SRA Principles 2011 in relation to Allegation 1.2.

50.17 The Tribunal therefore found Allegation 1.2 proved in so far as the Respondent had breached Principles 6 and 8 of the SRA Principles 2011 but did not find he had breached Principle 2 or that he had acted recklessly.

51. **Allegation 1.3: Between January and May 2015 inclusive, the Respondent failed to have in place systems to ensure he had sufficient supervision and control over Mr ZS and Mr JS to ensure compliance with the Money Laundering Regulations 2007 ("the Regulations"), as a result of which the Respondent recklessly facilitated a suspicious property transaction and therefore breached (or failed to achieve) any or all of:**

1.3.1 Principle 1 of the SRA Principles 2011;

1.3.2 Principle 2 of the SRA Principles 2011;

1.3.3 Principle 6 of the SRA Principles 2011;

1.3.4 Principle 8 of the SRA Principles 2011;

1.3.5 Outcome 7.5 of the SRA Code of Conduct 2011; and

1.3.6 Outcome 7.8 of the SRA Code of Conduct 2011.

51.1 The Respondent admitted Allegation 1.3 but again did not admit the allegation of recklessness.

51.2 In relation to Allegation 1.3, Mr Bullock submitted the risk of solicitors finding themselves caught up in money-laundering arrangements or improper property transactions was well known within the profession. There was a great deal of advice available on these issues from both the SRA and the Law Society and therefore the potential risk of a transaction being fraudulent or involving money laundering regulations should be one that any solicitor is alert to.

51.3 Mr Bullock further submitted the Firm's purported clients were geographically distant, the Respondent did not know them, he had not seen their file and it was therefore unreasonable that he did not carry out any due diligence. He had made three separate sets of transfers of the same client funds on the instructions of Mr JS and Mr ZS. The first set of payments of £7,900 and £2,550,500 which were made to two separate recipients on 15 May 2015, were both returned to the Firm's client account on 15 and 18 May 2015 respectively. At this point Mr Bullock submitted the Respondent should have been in no doubt that there was a breach of the Money Laundering Regulations. However, notwithstanding the return of the funds and a change in the instructions in that the identity of the payee had changed and the fact that one bank had refused to deal with the funds, on 19 May 2015 the Respondent

tried to make a second payment of £2,550,000 to a completely different recipient and bank in Turkey. Mr Bullock submitted it had been unreasonable for the Respondent to proceed further on 19 May 2015 without making further enquiries and exercising due diligence where there were clear indicators that the transaction was suspicious.

51.4 Mr Bullock submitted that after the funds were returned yet again on 21 May 2015, and the Respondent then received further emails on 26 and 27 May 2015 from Mr ZS requesting the sums of £2,340,000, £150,000 and £60,000 be paid to yet three other different recipients, it was without a doubt reckless for the Respondent to proceed knowing the funds had been returned twice and the payees changed yet again.

51.5 Given the circumstances of these transactions, Mr Bullock submitted the Tribunal could be satisfied that the Respondent must have been aware that he might have been facilitating money laundering transactions. Indeed Mr Bullock submitted it was incredible that the Respondent could not have been aware of the problems of acting as he did. Mr Bullock submitted the Respondent had been aware of the facts giving rise to the risk.

51.6 In his evidence the Respondent stated that the risk had never entered his head and at no point prior to the telephone call from Messrs HD who acted for the purchaser on 3 June 2015 and their letter sent on the same day, had he been aware that a fraud had been perpetrated or that his actions were risky. Whilst he accepted this may seem ridiculous and even incredible, and that he had acted like an "idiot", this was the truth.

51.7 The Respondent stated that by 29 May 2015 it had dawned on him that the Transaction had been a real mess and that it could not happen again. By that stage he had realised that the money going out, coming back and then going out again was a sort of warning and that something was wrong. Between 26 May 2015 when the funds were sent and 29 May 2015 when he had written the email to Mr ZS, the Respondent said it was dawning on him that the procedure was wrong. Prior to this the Respondent had simply accepted the instructions sent to him were from the client via Mr JS.

51.8 The Tribunal had already accepted the Respondent's evidence that he had not given any thought to the risks involved at all and that it had not occurred to him at all, prior to 29 May 2015 that he may have facilitated a suspicious property transaction. The Tribunal accepted the Respondent's evidence that although nothing specific had changed between the emails of 15 May 2015 and his email to Mr ZS of 29 May 2015, there had been a slow and "dawning" realisation on his own part of what had actually happened. This is what had caused him to write his email to Mr ZS on 29 May 2015 when he had first raised questions about the Transaction. The Respondent had acted grossly negligently by failing to have in place systems to ensure compliance with the Money Laundering Regulations, but the Tribunal was not satisfied that the Respondent had actually been aware of the existence of a risk at the time that the funds were transferred on 15 May 2015, 19 May 2015 and 27 May 2015. The Tribunal found that the Applicant had not proved that the Respondent had acted recklessly.

51.9 However, the Tribunal was satisfied the Respondent had acted in breach of Principles 1, 6 and 8 of the SRA Principles 2011 and had failed to achieve Outcomes 7.5 and 7.8 of the SRA Code of Conduct 2011. His actions were such that he had failed to uphold the rule of law and the proper administration of justice, he had acted in a manner that undermined the trust the public placed in him and in the provision of legal services, and he had failed to run his business effectively and in accordance with sound financial and risk management principles. The Respondent had also failed to comply with legislation applicable to his business. In addition, he had failed to have a system in place for supervising client matters and regularly checking the quality of work by suitably competent and experienced people.

51.10 In relation to the breach of Principle 2 and acting with a lack of integrity the Tribunal found that the Respondent had displayed a very cavalier attitude towards the Money Laundering Regulations which had placed a member of the public's funds at risk and had caused them to suffer serious and significant loss for a short time. This did undermine the Respondent's moral soundness and did amount to him acting with a lack of integrity.

51.11 The Tribunal found Allegation 1.3 proved but did not find the Respondent had acted recklessly.

52. **Allegation 1.4: By failing to redeem and discharge the mortgage in favour of RBC Europe Ltd, in accordance with the undertaking given in the Replies to the Requisitions on Title dated 13 May 2015 ("the Undertaking") the Respondent breached all or any of:**

1.4.1 Principle 6 of the SRA Principles 2011;

1.4.2 Principle 7 of the SRA Principles 2011; and

1.4.3 Outcome 11.2 of the SRA Code of Conduct 2011.

Allegation 1.5: In his capacity as the Firm's Compliance Officer for Legal Practice ("COLP") the Respondent failed to ensure compliance with the Firm's statutory obligations in relation to carrying out reserved legal activities and the Money Laundering Regulations 2007, and further failed to report a material failure of those Rules to the SRA and therefore breached all or any of:

1.5.1 Rule 8.5(c)(i) of the SRA Authorisation Rules 2011;

1.5.2 Rule 8.5 (c)(iii) of the SRA Authorisation Rules 2011;

1.5.3 Principle 7 of the SRA Principles 2011.

52.1 The Respondent admitted both Allegations 1.4 and 1.5. The Tribunal, having considered the documents, found Allegations 1.4 and 1.5 proved both on the Respondent's admissions and also on the documents provided.

Previous Disciplinary Matters

53. None.

Mitigation

54. The Respondent referred the Tribunal to his mitigation which was set out in his letter dated 10 October 2015 to the SRA. Mr ZS had been introduced to him by a reputable company which specialised in arranging mergers and takeovers and the Respondent stated it appeared that both that company and the Respondent had been "taken in" by Mr ZS.

55. The Respondent stated his practice had been on the market for four years but despite receiving a few enquiries nothing came to fruition. He had resolved to start winding down his practice with a view to ceasing the business at the end of September 2015 and therefore when he had met Mr ZS who was keen to proceed and offered to purchase the practice on reasonable terms, he had been extremely pleased. He had liked Mr ZS from the beginning and had found him to be a modest person. The Respondent had asked Mr ZS why he was interested in purchasing a practice in Devon to which he had been told that Mr ZS sought a better quality of life which would be offered by moving to Devon rather than staying in London. The Respondent stated he had also been given the impression that Mr ZR and Mr MM would be happy to leave London and intended to move to Devon when he left the firm.

56. The Respondent confirmed that all monies had been returned to the purchaser's solicitors together with costs and interest. Of the total sum involved, almost 92% was recovered and returned to the purchaser's solicitors whilst the rest including costs and interest was paid by the Respondent's insurers. He stated he had not wilfully nor intentionally failed to inform the regulator. His immediate reaction had been to report the matter to the police and also his bank manager to put an embargo on the three accounts to which he had sent the sale proceeds. It was only a few days later that the Respondent received notification of an investigation from the SRA, which had been prompted by a report to them from the purchaser's solicitors.

57. As a result of the fraud the Respondent had been unable to sell his practice. He stated that since 3 June 2015, he had lived in a nightmare until it was clear that a substantial amount of money had been recovered and repaid to the purchaser's solicitors. Fortunately the Respondent's bank manager had been able to stop the transfer in time before the monies were lost. The Respondent stated he had diligently assisted with the recovery of funds.

58. The Respondent also referred the Tribunal to his letter to the SRA dated 12 October 2015 in which he accepted he had made errors. This had been a one-off incident where he had been an innocent victim of a fraud. This occurred after 33 years of unblemished practise as a solicitor on his own account and holding client funds. He also stated that until this one occasion, his professional indemnity insurance record had been good, although he had since been unable to secure insurance for the forthcoming year and had no option but to close his practice. He

had done so in an orderly manner by purchasing extended insurance cover and thereafter making provision for run-off cover.

Sanction

59. The Tribunal had considered carefully the Respondent's submissions and statement. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

60. The Respondent's conduct had not been deliberate or calculated. It had been repeated in that he had transferred money three times, but each transfer related to the same transaction over a short period of time. The Respondent ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession. He ought to have known that he should have properly supervised Mr ZS and Mr JS at the London office, that he should have ensured compliance with the Money Laundering Regulations and that he should have taken steps to ensure the Undertaking he had personally given to redeem and discharge the mortgage had been complied with. His conduct had caused great harm to the profession. These were all aggravating factors.

61. The Tribunal accepted the Respondent had been deceived by third parties (Mr ZS and Mr JS) and indeed, it appeared he was not the only person to be deceived in the chain of events. The company who specialised in arranging mergers and takeovers of solicitors' practices were also deceived by Mr ZS, as well as the purchasers and their solicitors. The Respondent did assist with recovering the funds by taking prompt action although there was also an element of sheer luck that the bank managed to stop the money from reaching its fraudulent destination. The purchasers and their solicitors did not therefore sustain losses. The Respondent had a previously long unblemished career, he had made open and frank admissions. He had shown insight, particularly in the witness box where the Tribunal found him to be a very credible and genuine witness. He had also closed his practice in an orderly manner. These were all mitigating factors.

62. This was a case where the Respondent had failed to supervise his staff and he had not carried out proper checks on individuals who were allowed to carry out transactions which resulted in fraud. The Respondent's supervision had been totally inadequate and this allowed criminals to commit fraud from his office. This was all grossly negligent. In relation to the specific property transaction, it was blatantly obvious from the emails provided that the beneficiaries of funds were companies who had no connection to the clients and yet the Respondent did not carry out any checks on those companies and took no steps to properly verify the instructions were actually coming from his purported clients. The Tribunal did take into account that before the final transfer was made, the Respondent was shown a letter purporting to be from the client, but nevertheless, there were several occasions when the Respondent authorised transfers when he should not have done so without making further proper enquiry and carrying out due diligence.

63. Taking into account how directly related to criminal activity this was and how grossly negligent and cavalier the Respondent had behaved the Tribunal had found he acted with a lack of integrity. However, the Respondent had been a victim of fraud

committed by others and it was clear he was not the only one who was duped. The Respondent did not benefit personally in any way, indeed the attempted fraud cost him financially and in personal terms and was probably a very unfortunate end to his career. As the Respondent himself stated, he was naive and had behaved like an idiot.

64. The Tribunal was of the view that a Reprimand and a fine were not sufficient sanctions in this case as the conduct was far too serious. The Respondent's own complacency had allowed the fraud to come about. Whilst the Respondent did not have a practising certificate at the moment and had closed his practice, the Tribunal was mindful of the need to protect the public and also to send a message to the public to reinforce the trust that they should be able to place in their solicitors when undertaking important transactions and rightly expecting them to look after client funds. The Tribunal did not consider a Restriction Order alone would be sufficient to mark the seriousness of the conduct in this case. Nor would it sufficiently protect the public and maintain the reputation of the profession.

65. The Tribunal was of the view that the appropriate sanction in this case was a suspension of 18 months. This would ensure both the public and the reputation of the legal profession were protected from future harm from the Respondent and public confidence would also be maintained. Whilst the misconduct was very serious, the Tribunal did not consider it so serious as to require the Respondent to be removed from the Roll. However, the Tribunal was of the view that at the end of the 18 months suspension, the Respondent should be subject to a Restriction Order on the following terms:

> "The Respondent may not:
>
> (i) Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;
>
> (ii) Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;
>
> (iii) Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;
>
> (iv) Hold client money;
>
> (v) Be a signatory on any client account."

The Tribunal therefore imposed a suspension of 18 months followed by a Restriction Order as indicated above.

Costs

66. Mr Bullock requested an Order for the Applicant's costs in the total sum of £8,093.41 and referred the Tribunal to his Schedule of Costs.

67. The Respondent submitted the costs claimed were extremely high. He did not argue with the costs of the forensic investigation. He did not understand what the time of 15 hours described as "Supervision Costs" related to and considered the amount claimed for hotel accommodation was too high. The Respondent advised the Tribunal of his own income and confirmed he had some savings but not substantial.

68. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was broadly reasonable, although the amount of time claimed for the SRA Supervision costs was a little high. The Tribunal did not allow the costs of the hotel accommodation as it took the view that it was not necessary for the SRA's advocate to incur these costs by travelling to the hearing the previous day when the hearing was due to commence at 10am. Whilst the Tribunal had not found the allegations of recklessness proved, these were properly brought and required careful consideration by the Tribunal having heard all the evidence. Taking into account the deductions indicated, the Tribunal assessed the Applicant's costs in the total sum of £7,500 and Ordered the Respondent to pay this amount.

69. The Respondent had indicated he had some savings and therefore the Tribunal did not consider it necessary to place any restriction on the enforcement of the costs order.

Statement of Full Order

70. The Tribunal Ordered that the Respondent, NICHOLAS JOHN HUBER, solicitor, be suspended from practice as a solicitor for the period of 18 months to commence on the 2nd December 2016 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,500.00.

71. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions imposed by the Tribunal as follows:

The Respondent may not:

- Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;
- Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;
- Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;
- Hold client money;
- Be a signatory on any client account.

There be liberty to either party to apply to the Tribunal to vary the conditions set out above.

Dated this 17th day of January 2017
On behalf of the Tribunal

S. Tinkler
Chairman