SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11592-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

DAVID GOLDBERG, — First Respondent
WHITE & CASE LLP — Second Respondent

Before:

Miss N. Lucking (in the chair)
Mr T. Smith
Mrs L. McMahon-Hathway

Date of Hearing: 18 July 2017

Appearances

The matter was dealt with on the papers so there were no appearances

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JUDGMENT

Allegations

1. The allegations made in a Rule 5 Statement dated 22 December 2016 on behalf of the Solicitors Regulation Authority ("SRA") against the First Respondent David Goldberg, solicitor and the Second Respondent White & Case LLP, recognised body as amended and set out in a Statement of Agreed Facts and Outcome were as follows:

1.1 It is alleged against, and admitted by, the First Respondent that he:

1.1.1 Accepted instructions from, and undertook work on behalf of, clients without causing adequate steps to be taken to ensure that no conflicts of interest between clients, or significant risk of conflicts of interests, arose; and

1.1.2 Accepted instructions from, and undertook work on behalf of, clients without causing adequate steps to be taken to ensure the confidentiality of clients' information.

2. It is alleged against, and admitted by, the Second Respondent that it:

2.1.1 Allowed instructions to be accepted from, and work to be undertaken on behalf of, clients without causing adequate steps to be taken to ensure that no conflicts of interest between clients, or significant risk of conflicts of interests, arose; and

2.1.2 Allowed instructions to be accepted from, and work to be undertaken on behalf of, clients without causing adequate steps to be taken to ensure the confidentiality of clients' information.

However, for the avoidance of doubt the Applicant did not allege that the First Respondent or the Second Respondent acted dishonestly. Further, the Applicant, having considered the evidence submitted by and on behalf of the First Respondent and the Second Respondent, did not pursue allegations of lack of integrity against either the First Respondent or the Second Respondent.

Documents

3. The Tribunal reviewed the documents presented including:

Applicant

- Rule 5 Statement dated 22 December 2016 without exhibit
- Reply to the First Respondent's defence dated 4 April 2017
- Applicant's statement of costs to issue as at 23 December 2016
- Statement of Agreed Facts and Outcome

First Respondent

- The First Respondent's Answer to the Applicant's Rule 5 Statement dated 15 February 2017 with Appendix and Index of Documents

- Witness statement of the First Respondent dated 30 May 2017 without exhibit

Second Respondent

- The Second Respondent's Answer to the Applicant's Rule 5 Statement dated 10 March 2017 with exhibit

Factual Background (mainly derived from the Statement of Agreed Facts and Outcome)

4. The First Respondent was admitted to the Roll of Solicitors in 2005. He had been a member of the firm since 2009. He was a solicitor-advocate who specialised in international commercial and investment arbitration. He divided his time between the London and Moscow offices of the Second Respondent.

5. The Second Respondent was a Limited Liability Partnership registered in England and a recognised body with a registered office in London, with affiliated offices across North America, South America, Europe, Asia, Africa and the Middle East.

6. The allegations arose out of a Forensic Investigation which commenced in 2014 following notification from the Second Respondent. The substantive hearing of the application was listed over five days on the first available dates after 14 August 2017

7. The following facts were agreed between the parties:

8. In 2010, the Second Respondent, through the First Respondent, advised Client A on high value financial claims against two individuals ("the A Matter"). The First Respondent carried out a conflict check. The matter was recorded on the Second Respondent's conflict system.

9. Files were opened in the A Matter in 2010 and 2012, initially on behalf of a corporate client and then in the name of an individual client.

10. The A Matter came to include claims against "Persons C and D" involving global assets indirectly beneficially owned by Persons C and D, including various companies in the US of which Persons C and D were the indirect ultimate majority beneficial owners and which were, as of June 2011, clients of the Second Respondent in a corporate matter being handled in the Second Respondent's New York office ("the B Matter").

11. The First Respondent and the Second Respondent acted for the clients in the A Matter from around September 2010 until 2014. The A Matter was conducted primarily from the Second Respondent's London and Moscow offices under the supervision of the First Respondent.

12. In 2011, prior to the inception of the B Matter, a conflict check was undertaken, for the purposes of that instruction (the B Matter). That check identified clients in the A Matter. In communications between Partners in the Second Respondent including the First Respondent, it was said that no conflict of interest would arise in respect of the A Matter as a result of accepting instructions on the B Matter. That was on the

First Respondent's understanding that the dispute in the A Matter had settled, albeit this proved to be incorrect.

13. During the course of the B Matter, between 2011 and 2013, the Second Respondent came into possession of confidential information concerning the clients in the B Matter and related entities which was relevant, or potentially relevant, to the A Matter. This information included the identity and extent of the assets of the clients in the B Matter and related entities. The Applicant did not allege that the First Respondent was aware of what, if any, information had been received by the Second Respondent in the context of the B Matter or when any such information was received.

14. In May 2012, while the B Matter was ongoing, further instructions were received by the First Respondent in respect of the A Matter, in respect of ongoing disputes with Persons C and D. On receipt of such instructions, no further conflict check was undertaken. During the course of the A Matter, companies of which Persons C and D were the indirect ultimate majority beneficial owners were identified that were also client entities under the B Matter.

15. In November 2012, a conflict check was carried out on the A Matter, by or on the instruction of the First Respondent. The Second Respondent's involvement in the B Matter was noted in the product of this check. The First Respondent immediately raised the potential issue within the Second Respondent.

16. In November 2012, a decision was taken by the General Counsel of the Second Respondent, in the Second Respondent's New York office, after discussion with partners involved in the A and B Matters including the First Respondent, to the effect that no conflict of interest arose between the A Matter and the B Matter and that the Second Respondent could continue to act in both matters. The decision was made, in part, in reliance on advance waivers provided by each client.

17. In the discussions concerning the identified risk of conflict:

- The First Respondent noted the financial and strategic importance of the A Matter to the Second Respondent;
- The First Respondent acknowledged that if the client on the B Matter knew of the A Matter they would not agree to the Second Respondent acting on both matters; and
- Confidential information concerning the A Matter was disclosed by the First Respondent to a partner working on the B Matter in the context of discussing and trying to resolve the potential conflict of interest.

18. The First Respondent and the Second Respondent did not in 2012 take adequate steps to protect the confidentiality of information and documents provided by the clients in the A Matter or the clients in the B Matter. No consent was sought or obtained from the clients in the A Matter or the clients in the B Matter for the Second Respondent to continue to act.

19. In 2013, the A Matter team, led by the First Respondent, prepared to issue proceedings in the High Court against Persons C and D. The Second Respondent's New York-based General Counsel concluded that the Second Respondent could not withdraw from the B Matter under New York Bar rules, and decided to impose "ethical screens" to prevent disclosures of confidential information between the teams handling the A Matter and B Matter.

20. High Court proceedings were served on Persons C and D in March 2013.

21. In March 2013, the Second Respondent re-visited the issue of whether a conflict of interest arose affecting its ability to act in the A Matter, and concluded that it did not.

22. In May 2013, the A Matter team, acting under the supervision of the First Respondent, instructed another law firm in the United States of America to bring the Discovery Application against several entities including clients in the B Matter. Lawyers on the A Matter team, acting under the supervision of the First Respondent, continued to work in conjunction with the other law firm. It was known to Persons C and D that the Second Respondent was acting in relation to the A Matter, the Second Respondent being on the record in the High Court proceedings. The instructions from the Second Respondent to the other law firm included a list of entities and individuals to be checked for conflict purposes, including client entities in the B Matter. Whilst the Applicant did not allege that the First Respondent knew this, the First Respondent had overall responsibility as matter partner for the preparation of those instructions.

23. The information sought in the application included information which was confidential but which was already held by the team handling the B Matter.

24. In August 2013, the A Matter team, acting under the supervision of the First Respondent, caused a request for arbitration to be brought by the individual client on the A Matter and served on Persons C and D.

25. Throughout the course of the B Matter it was known to the Second Respondent and, from the point at which he became aware of the B Matter, the First Respondent, that Persons C and D were the indirect ultimate majority beneficial owners of many of the entities involved in the B Matter, including the new holding company formed during the course of the B Matter. The A Matter team's instructions to the other firm involved in the Discovery Application referred to the ownership structure of companies which were clients under the B Matter.

26. In October 2013, a representative of one of the clients under the B Matter wrote to the Second Respondent expressing concern about the protection of confidential information in the light of the Second Respondent's instruction on the A Matter and requesting details of the information barriers erected by the Second Respondent. A request was made that the Second Respondent cease to act in the A Matter.

27. The Second Respondent responded to the client under the B Matter stating that the Second Respondent was confident that no conflict of interest arose. The First Respondent was involved in the preparation of that response, together with others including the Second Respondent's General Counsel. The Second Respondent

later provided a further response to the client in the B Matter stating that the concerns expressed were "frivolous".

28. An application for injunctive relief was issued by various clients in the B Matter against the Second Respondent seeking an injunction prohibiting the Second Respondent acting in the A Matter. Following an investigation, the Second Respondent concluded that no confidential information under the B Matter had been disclosed, and that there was no real risk of such disclosure or misuse of confidential information.

29. In 2014, an injunction was granted restraining the Second Respondent from continuing to act in the High Court proceedings on the A Matter.

Witnesses

30. There were no witnesses.

Application for Proceedings to be resolved by way of Agreed Outcome

31. The parties invited the Tribunal to deal with the allegations against the First Respondent and the Second Respondent in accordance with a Statement of Agreed Facts and Outcome submitted to the Tribunal.

32. The parties submitted that in the light of the admissions set out below, the proposed outcome represented a proportionate resolution of the matter consistent with the Tribunal's Guidance Note on Sanctions 5th Edition.

Findings of Fact and Law

33. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the First 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.

34. **Allegation 1.1 - It is alleged against, and admitted by, the First Respondent that he:**

1.1.1 Accepted instructions from, and undertook work on behalf of, clients without causing adequate steps to be taken to ensure that no conflicts of interest between clients, or significant risk of conflicts of interests, arose; and

1.1.2 Accepted instructions from, and undertook work on behalf of, clients without causing adequate steps to be taken to ensure the confidentiality of clients' information.

Allegation 2.1 - It is alleged against, and admitted by, the Second Respondent that it:

2.1.1 Allowed instructions to be accepted from, and work to be undertaken on behalf of, clients without causing adequate steps to be taken to ensure that no conflicts of interest between clients, or significant risk of conflicts of interests, arose; and

2.1.2 Allowed instructions to be accepted from, and work to be undertaken on behalf of, clients without causing adequate steps to be taken to ensure the confidentiality of clients' information.

Admissions by the First Respondent

34.1 In or about May 2012 and thereafter, the First Respondent accepted instructions to undertake further work for clients in a matter on which he had previously acted (the A Matter, as defined above), having forgotten that in April 2011 he had allowed Partner E to accept instructions in a matter (the B Matter, as defined above) involving clients whose indirect ultimate majority beneficial owners were potentially adverse to the clients in the A Matter. In doing so, the First Respondent:

- Proceeded to act for the clients in the A Matter in circumstances where there was a significant risk of a conflict with the interests of the clients in the B Matter. The First Respondent thereby breached O(3.5) of the SRA Code of Conduct 2011 and Principle 6 of the SRA Principles 2011;

- Did not take or cause to be taken adequate steps to ensure the protection of the confidentiality of information provided to the Second Respondent by, or acquired during the course of acting for, the clients in the A Matter or the clients in the B Matter. In failing to do so, the First Respondent breached O(4.4) of the SRA Code of Conduct 2011 and Principles 4 and 6 of the Principles 2011.

34.2 In November 2012, the First Respondent determined that the indirect ultimate majority beneficial owners of the clients in the B Matter were the potential counterparties to contentious proceedings to be brought on behalf of one of the clients in the A Matter. The First Respondent notified the Second Respondent of the issue and, following discussions involving the Second Respondent's General Counsel, was informed that he could continue to act on the A Matter. No ethical screens were implemented at this time. The First Respondent did not request that the Second Respondent put ethical screens in place and, relying on the Second Respondent's decision, continued to act for the clients in the A Matter. In doing so, the First Respondent:

- Continued to act for the clients in the A Matter in circumstances in which there was a significant risk of a conflict between the interests of the clients in the A Matter and the clients in the B Matter, and in doing so breached O(3.5) of the SRA Code of Conduct 2011 and Principle 6 of the SRA Principles 2011;

- Did not take or cause to be taken adequate steps to ensure the protection of the confidentiality of information provided to the Second Respondent by, or acquired during the course of acting for, the clients in the B Matter or the clients in the A Matter, and in doing so breached O(4.4) of the SRA Code of Conduct 2011 and Principles 4 and 6 of the SRA Principles 2011;

34.3 On or about 14 November 2012 and again on or about 1 March 2013, in the course of discussions initiated by the Second Respondent's General Counsel, which had been arranged to consider the possibility of a conflict of interest as a result of the Second Respondent acting on both the A Matter and the B Matter, the First Respondent provided confidential information concerning the work being undertaken on behalf of a client in the A Matter to a Partner in the Second Respondent involved in acting for the clients in the B Matter, and in doing so breached O(4.1) of the SRA Code of Conduct 2011 and Principles 4 and 6 of the SRA Principles 2011.

34.4 Between March 2013 and August 2013, while the Second Respondent was acting on behalf of the clients in the B Matter, the First Respondent on behalf of a client in the A Matter:

- Caused the commencement of arbitration proceedings and proceedings in the High Court against two persons C and D who the First Respondent knew were connected to the clients in the B Matter; and

- Was involved in work in relation to a discovery application against the clients in the B Matter in support of the arbitration ("the Discovery Application"). The First Respondent did not make sufficient enquiries to determine whether or not the respondents to the Discovery Application were clients of the Second Respondent or connected to clients of the Second Respondent, and so:

    - Failed to cause adequate steps to be taken to ensure that no conflict existed between the interests of the clients in the A Matter and the interests of the clients in the B Matter, and in doing so breached O(3.5) of the SRA Code of Conduct 2011 and Principle 6 of the SRA Principles 2011; and/or

    - Failed to take adequate steps to protect the confidentiality of the information of the clients in the B Matter, and in doing so breached O(4.4) of the SRA Code of Conduct 2011 and Principles 4 and 6 of the SRA Principles 2011.

34.5 Although in relation to the matters referred to in paragraphs 34.2 to 34.4 above the First Respondent acted in reliance on the decision taken by the Second Respondent (and in particular its General Counsel) as to (i) whether in the circumstances the First Respondent could continue to act in the A Matter and (ii) what if any steps should be taken to protect the confidential information of the clients in the A and B Matters, the First Respondent acknowledges that he bears personal responsibility for compliance with his professional obligations. Further, in relation to the matters referred to in paragraph 34.4 above the First Respondent admits that he had overall responsibility as matter partner for the preparation of instructions to another law firm to make the Discovery Application and that, in that context, in not making inquiry into whether the respondents to the Discovery Application included the B Matter clients (and only in that respect), he acted recklessly.

Admissions by the Second Respondent

34.6 In or about November 2012, March 2013 and August 2013 the Second Respondent allowed continuing work to be carried out for clients without causing adequate steps to be taken to ensure that no conflict or significant risk of conflict existed between the interests of clients, and in doing so breached O(3.5) of the SRA Code of Conduct 2011 and Principle 6 of the SRA Principles 2011 including:

- The commencement by the Second Respondent of proceedings in the High Court and arbitration proceedings against persons known to be connected to existing clients on a related matter; and

- The involvement of staff of the Second Respondent in work on the Discovery Application.

34.7 In or about November 2012 allowed instructions to be accepted to undertake further work for clients without causing adequate steps to be taken to ensure the confidentiality of information provided to the Second Respondent by clients was protected, and in doing so breached O(4.4) of the SRA Code of Conduct 2011 and Principle 6 of the SRA Principles 2011; and

34.8 By reason of the specific acts set out at paragraphs 34.6 - 34.7 above the Second Respondent acted recklessly.

34.9 The Tribunal had regard to the evidence before it and to the admissions made by the First Respondent and the Second Respondent. It accepted the amendment of the allegations as agreed between the parties. The Tribunal found both aspects of each of allegations 1.1 against the First Respondent and 2.1 against the Second Respondent proved on the evidence to the required standard; indeed they were admitted.

Previous Disciplinary Matters

35. There were none against either the First Respondent or the Second Respondent.

Mitigation

36. The following points are advanced by way of mitigation on behalf of the First Respondent and the Second Respondent respectively, but their inclusion in the Statement of Agreed Facts and Outcome document did not amount to adoption or endorsement of such points by the Applicant.

The First Respondent

37. While the Second Respondent came into possession of confidential information concerning the clients in the B Matter and related entities which was relevant, or potentially relevant, to the A Matter, the First Respondent was not aware of what, if any, information had been received by the Second Respondent in the context of the B Matter, or when any such information was received.

38. Although research was conducted from March 2012 into the assets of Persons C and D which at some stage identified the clients in the B Matter, at no point in time were the clients in the B Matter considered by the First Respondent to be potential adverse parties in the A Matter.

39. Immediately upon identifying the issue of a potential conflict of interest in November 2012, the First Respondent informed the Second Respondent's General Counsel and thereafter acted in accordance with and in reliance on decisions made by the Second Respondent's General Counsel.

40. The references made by the First Respondent in November 2012 to the financial and strategic importance of the A Matter to the Second Respondent and the likelihood or otherwise of the B Matter clients consenting to the Second Respondent continuing to act were intended to be considered by the Second Respondent with reference to a potential business conflict, as distinct from a professional conflict and were not intended to encourage or persuade the Second Respondent to continue to act if it was determined that there was a professional conflict or not to seek the consent of the B Matter clients if that was what the applicable ethical rules required.

41. The disclosure of confidential information to Partner E by the First Respondent in November 2012 and March 2013 occurred in the context of discussions initiated by the Second Respondent's General Counsel for the purpose of exploring whether there was a conflict of interest which would prevent the Second Respondent from acting on both the A Matter and the B Matter. Moreover, the disclosure by the First Respondent on both occasions was limited in scope and was made in a confidential setting and on the understanding that it would be kept confidential by all involved, including by Partner E.

42. At the time when the First Respondent was involved in work in relation to the Discovery Application he was not aware that the respondents to the application were clients in the B Matter or connected to clients in the B Matter. Further, the First Respondent had no knowledge as to whether the information sought was held by the team handling the B Matter.

43. Further, as explained above, the First Respondent was acting in reliance on decisions made by the Second Respondent with the input of the Second Respondent's General Counsel.

44. At all material times the First Respondent's knowledge of the Second Respondent's retainer in relation the B Matter was very limited, and the First Respondent could not properly have taken steps to obtain further information regarding that retainer consistently with his ethical obligations. All the First Respondent knew about the substance of the B Matter retainer was that it concerned a corporate transaction involving entities of which Persons C and D were the indirect ultimate majority beneficial owners.

45. The Second Respondent carried out an extensive investigation into the risk that confidential information on the B Matter might have been inadvertently disclosed to or accessed by someone working on the A Matter. This investigation included a careful analysis of all electronic and paper files, and interviews with over 100

individuals who were recorded on the Second Respondent's systems as having done work on the A Matter and who were still at the Second Respondent or who had left the Second Respondent but could still be contacted. All interviewed individuals confirmed that:

- They had not discussed any aspect of the A Matter with any member of the B Matter team;
- They had not accessed any documents or information provided to or created by the Second Respondent during its representation of the B Matter clients; and
- They were unaware of the nature of the B Matter.

46. Save as referred to in paragraph 34.3 above, the investigation uncovered no evidence that confidential information relating to the B Matter was communicated to the A Matter team or vice versa.

47. The Second Respondent was represented on the injunction proceedings by highly-respected leading counsel and junior counsel. It is to be inferred that they considered the position taken by the Second Respondent in the injunction proceedings to be at least properly arguable.

48. The First Respondent has been a solicitor for over twelve years, and has acted for many high profile clients and in many high profile disputes. No prior complaints have been made concerning the First Respondent's professional conduct and he has never before been subject to any disciplinary proceeding before the Tribunal.

49. The First Respondent accepts full responsibility for his breaches of the relevant SRA Rules in the terms described above, and apologises unreservedly for them.

50. The First Respondent emphasises that he has never been and would never be persuaded to put commercial considerations ahead of ethical ones, including in relation to the matters which are the subject of this Agreed Outcome.

The Second Respondent

51. The matters arising in the High Court judgment brought to light some issues in the Second Respondent's conflicts clearance procedures, which the Second Respondent addressed prior to the judgment and further in response to it.

52. For example, when the question of a possible conflict arose in November 2012, the meeting arranged in order to investigate it involved discussion with the partners with conduct of the A and B Matters together. The same approach to investigating possible conflicts was adopted in March 2013. This practice created a risk that confidential information would be divulged in the course of those meetings; further, the restricted nature of those discussions also meant that an in-depth understanding of the scope of the two matters was not obtained before the decision was made that there was insufficient overlap between the two matters.

53. The Second Respondent has taken steps to prevent the inadvertent sharing of confidential information between partners as part of the conflicts clearance process. Also, in response to this matter, the Second Respondent introduced systems process adjustments which automate the closure of a matter in the Conflicts and New Business Department ("CNB") and time entry systems upon 90 days of inactivity. "Re-activation" of any auto-closed matter requires a conflict search to be run and is subject to the full conflict clearance process. This is to prevent a matter that has been inactive for a long period coming back to life without a conflict search being undertaken.

54. The above steps formed part of a comprehensive review of the Second Respondent's process of dealing with unresolved conflicts, following which the Second Respondent introduced a number of changes, including:

- The Second Respondent's General Counsel function was re-structured with effect from 1 January 2014 with the replacement of the then General Counsel with two co-General Counsels ("co-GCs"), one based in London and one based in New York, who are senior-level partners, and who are supported by four Assistant or Deputy General Counsels located in London, New York and Hong Kong. These changes provide additional resources for the General Counsel function as well as separate expertise dealing with UK and US regulatory and conflicts issues.

- The co-GCs implemented a fundamental re-structuring of the Second Respondent's CNB department, moving it to become a department within the overall GC function and introduced a more formalised structure in which clear lines of reporting and responsibility were established, maintained and supported.

- The co-GCs have established specific guidelines in relation to when the New Business Acceptance Committee, which is an oversight committee established in 2012, must be consulted to ensure that decisions on matters of new and ongoing business are not taken in a vacuum or on an ad-hoc basis without full and proper consideration.

55. In addition to the steps taken by the Second Respondent to ensure that the errors giving rise to these proceedings are not repeated, the Second Respondent not only self-reported but has fully cooperated with the Applicant in the course of its investigation from the start. The Second Respondent has made admissions in these proceedings where appropriate at the first available opportunity.

56. The Second Respondent's conduct in these proceedings to date therefore demonstrates genuine insight into its errors as well as the circumstances which gave rise to them.

57. The Second Respondent has never before been subject to any disciplinary proceeding before the Tribunal.

Sanction

58. The Tribunal had regard to its Guidance Note on Sanctions 5th Edition, to the admissions of the First Respondent and of the Second Respondent, to the Applicant's

submission that it was satisfied that the admissions and proposed outcome satisfied the public interest having regard to the gravity of the matters alleged; and to the submissions of the parties about the proportionality of the proposed outcome. The First Respondent agreed to pay a fine of £50,000; and to pay costs to the Applicant of £12,500. The Second Respondent agreed to pay a fine of £250,000; and to pay costs to the Applicant in the sum of £25,000. The Statement of Agreed Facts and Outcome also included a submission that the Second Respondent was a large and successful international law firm generating substantial revenues in London. The amount of the fines proposed should be considered in that context. The Tribunal had regard to the fact that in considering an agreed outcome it must exercise its discretion as to whether it considered in all the circumstances that the proposed agreed sanction met its own sanctions guidance and was an appropriate one to make and whether the agreed sanction was unfair to any other Respondent not a party to the agreement. In this case no other Respondent was involved.

The First Respondent

59. The Tribunal assessed the seriousness of the conduct admitted by the First Respondent. In terms of culpability, the Tribunal noted that the Applicant did not challenge his integrity. When the issue of a potential conflict arose in May 2012 when the A matter revived, the First Respondent forgot that in April 2011 he had not objected to Partner E accepting instructions in the B matter involving clients whose indirect ultimate majority beneficial owners were potentially adverse to the clients in the A Matter in the belief that the matter in which he had acted had been settled. The Tribunal noted that when he received the April 2011 email over a holiday weekend the First Respondent replied based on his own recollection. Preparatory work was undertaken from May to November 2012 and then a conflict search was carried out in order that a new file could be opened. No conflict search was carried out in May 2012. As soon as the First Respondent realised as a result of the November 2012 search that there was a problem he did something about it, following the Second Respondent's then procedures and he acted in accordance with the advice he received through the internal process. The First Respondent also admitted failure to take adequate steps to protect confidentiality. The First Respondent was candid about his actions during the internal process; saying amongst other things "It is completely my mistake..." The Tribunal considered that the First Respondent's actions were not planned. There was no breach of trust. However he had direct control of and responsibility for the circumstances giving rise to the problem. He should not have allowed the period May to November 2012 to elapse without a conflict check being carried out. If he had carried out the conflict check in May it would almost certainly have reminded him of the exchange with Partner E in New York in April 2011. In this sort of work an individual solicitor needed to be particularly alert to conflict of interest. He was experienced in international matters with complex client relationships but at the material time he had not been a partner for very long. The Tribunal determined that the First Respondent's actions caused harm to the reputation of the profession in an area of international business and that harm was reasonably foreseeable. There was no harm to the client who had to go elsewhere as the Second Respondent provided a rebate in costs and the Second Respondent and the client parted on amicable terms. In terms of mitigation, the First Respondent had an unblemished career to date. There was self-reporting when the High Court ordered the Second Respondent to cease acting and the First Respondent's earlier internal

communications reflected frankness about what had occurred; he showed some insight into where he had gone wrong. The Tribunal determined that this was conduct which could not be addressed by no order or a reprimand but did not go beyond a financial penalty. It agreed that the conduct in question fell at the high end of Level 4 of its Indicative Fine Band because of the potential harm to the international reputation of the legal profession and that the proposed fine of £50,000 was a reasonable and proportionate penalty.

The Second Respondent

60. The Tribunal assessed the seriousness of the Second Respondent's conduct. It was a sizeable international law firm operated in a very complex area of work. It had complete control of its procedures and vast experience of the complexities of the world in which it operated and its clients and staff were dependent on it having robust procedures in place to handle potential or real conflict-of-interest. The public would expect it; this was a matter of professional organisation and efficiency. Such procedures were essential to the protection of clients and to enable clients to have confidence in the firm and to be completely open with their legal advisers. The Tribunal considered that the impact of the harm arising out of the Second Respondent's conduct on the reputation of and trust placed in the profession internationally was considerably greater than that of one individual. The firm had ample resources to protect its clients and to prevent the occurrence of issues such as had arisen in this case. In terms of mitigation, The Second Respondent had not acted deliberately. It had not previously appeared at the Tribunal and had shown insight into the issues and thoroughly revised its conflict procedures. There had been self reporting. The Tribunal considered that the Second Respondent's conduct was significantly serious and agreed that it came within Level 5 of its Indicative Fine Bands. The Tribunal considered that in all the circumstances the proposed fine of £250,000 was reasonable and proportionate.

Costs

61. The parties had agreed that the First Respondent would pay a contribution to the Applicant's costs fixed in the sum of £12,500.00 and that the Second Respondent would pay a contribution fixed in the sum of £25,000.00. The Tribunal considered the Applicant's statement of costs and was satisfied that the costs incurred were reasonable and proportionate and therefore ordered costs in the agreed sums.

Statement of Full Orders

62. The First Respondent

The Tribunal Ordered that the First Respondent, David Goldberg, solicitor, do pay a fine of £50,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay a contribution to the costs of and incidental to this application in the agreed sum of £12,500.00.

63. The Second Respondent

The Tribunal Ordered that the Second Respondent, White & Case LLP, recognised body, do pay a fine of £250,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that it do pay a contribution to the costs of and incidental to this application in the agreed sum of £25,000.00.

Dated this 4th day of August 2017
On behalf of the Tribunal

Nicola Lucking

N. Lucking
Chairman