SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11751-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ROBERT MANNERING SEDGWICK Respondent

Before:

Mr A. N. Spooner (in the chair)
Ms A. Horne
Mr R. Slack

Date of Hearing: 14 February 2018

Appearances

Rory Mulchrone, barrister of Capsticks Solicitors LLP of 1 St George`s Road, London, SW19 4DR, for the Applicant.

The Respondent represented himself.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The Allegations against the Respondent, were that, while in practice as a solicitor and consultant at Buss Murton Law LLP ("the Firm"), and while instructed by all or any of the clients identified in Schedule 1 to the Rule 5 Statement, between approximately July 2011 and August 2015:

1.1 He involved himself and the Firm in one or more investment schemes and/or transactions which were dubious and therefore breached:

1.1.1 Insofar as such conduct took place on or before 5 October 2011, Rules 1.02 and/or 1.06 of the 2007 Code;

1.1.2 Insofar as such conduct took place on or after 6 October 2011, all or any of Principles 2, 6 and 8 of the SRA Principles 2011 ("the Principles") and/or Outcome 11.1 of the SRA Code of Conduct 2011 ("the 2011 Code"),

1.2 He caused or allowed the Firm's client account to be used improperly, namely as a banking facility, in the absence of (i) an underlying legal transaction and/or (ii) a service forming part of his normal regulated activities and therefore breached:

1.2.1 Insofar as such conduct took place on or before 5 October 2011, the principle in *Wood and Burdett (No. 8669/2002)* (referred to in Note (ix) to Rule 15 of the Solicitors Accounts Rules 1998) and/or Rule 1.06 of the Solicitors Code of Conduct 2007 ("the 2007 Code");

1.2.2 Insofar as such conduct took place on or after 6 October 2011, Rule 14.5 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules"), and Principles 6 and/or 8 of the Principles.

Documents

2. The Tribunal had before it the following documents:-

- Application and Rule 5 Statement with exhibits dated 17 November 2017
- Respondent's reply to the Rule 5 Statement dated 10 January 2018
- Statement of Agreed Facts and Outcome (as amended) dated 14 February 2018 (annexed to this Judgment)
- Respondent's mitigation statement dated 29 January 2018 (annexed to this Judgment)

Factual Background

3. The Respondent was admitted to Roll on 1 June 1973 and prior to the material time had been a managing partner of the Firm. At the time of the hearing he held a current practising certificate free from conditions.

Application for the matter to be resolved by way of Agreed Outcome

4. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome ("Agreed Outcome") annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

5. The Agreed Outcome had originally proposed that the Respondent be struck-off the Roll. The Tribunal had required the parties to attend by telephone to clarify a number of matters in order that the Tribunal could properly assess whether it was appropriate to approve the Agreed Outcome. The majority of the hearing took place in private as matters that were the subject of 'without prejudice' discussions were being discussed.

6. The Tribunal raised concerns about the apparent delay in dealing with matters. This arose in two ways.

7. Firstly, the Standard Directions had required any application for consideration for an Agreed Outcome to be made no later than 29 January 2018. This matter had been fixed for a substantive hearing due to commence on 26 February 2018 for three days, and this application had been made to the Tribunal on 7 February 2018. The Applicant had applied for an extension of the relevant Standard Direction on 26 January 2018, and this had been refused, though liberty to apply for consideration for an Agreed Outcome had been granted.

8. The Chair expressed concern that an increasing number of applications for consideration of Agreed Outcomes were being made very late in the day. This was disruptive to the Tribunal's timetable, as they had to be considered at very short notice while dealing with other cases. Mr Mulchrone apologised for the lateness, and recognised the concerns that were being expressed and indicated he would feed this back. He set out the circumstances and timescale of the discussions with the Respondent. Mr Mulchrone made no criticism of the Respondent, but told the Tribunal that it could take longer to resolve these matters where the Respondent was a litigant in person, as he was in this case.

9. Secondly the initial complaint had, on the face of the Rule 5 Statement, been made in July 2014. However the investigation had not been commenced until July 2016, with the Rule 5 Statement not being produced until November 2017. Mr Mulchrone told the Tribunal that there had been a lack of clarity as to whether the communication received in 2014 had been a complaint. He recognised the point raised by the Tribunal, and referred it to an email in the exhibit bundle which he submitted may assist.

10. The parties confirmed that the Respondent's date of admission was 1973, not 1963. Mr Mulchrone confirmed that the Respondent had an unblemished career of 44 years up to this point.

11. The Chair noted that the warning notice, published five days before the client care letter to Client 1 was sent out, had been issued by the Financial Services Authority and not the SRA. Mr Mulchrone submitted that there was nothing wrong with that. It was a publically available document and the Respondent had been under a duty to

carry out due diligence, which required having regard not only to what his own regulator had advised but other regulators too. There had also been previous decisions by the Tribunal which were known about in the profession at the material time.

12. The Chair asked Mr Mulchrone as to how he had applied the Guidance Note in Sanction in determining the appropriate sanction. Mr Mulchrone told the Tribunal that he had had regard to it, though he accepted he had not gone through it "page by page, line by line". The Respondent had been sent a link to the document in the course of discussions between the parties.

13. Mr Mulchrone confirmed, in response to a question from the Tribunal, that it was not the Applicant's case that the schemes were fraudulent, they were dubious in the sense of being objectively suspicious. He accepted that there was a degree of overlap in the Allegations.

14. The Tribunal asked the Respondent what his current position was. He explained that he was presently a Company Secretary and this did not require him to be on the Roll of solicitors. He had sent his statement of means to Mr Mulchrone and agreed to email the same to the Tribunal.

Findings of Fact and Law

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

16. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.

17. The Tribunal considered the Guidance Note on Sanction (December 2016). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal noted that dishonesty was not alleged, though it recognised that strike-offs were not reserved for dishonesty cases, and that lack of integrity was always a serious matter. There had been no underlying fraud alleged in this case, rather schemes that were objectively dubious. The Tribunal noted that the matter had been hanging over the Respondent's head for a significant period of time. The Respondent himself had a 44-year unblemished career behind him. The Tribunal had concerns that the approach to the Guidance Note on Sanction may not have been sufficiently detailed, reflected in the fact that the Agreed Outcome did not set out in detail how the proposed sanction had been arrived at.

18. The Tribunal concluded that there was insufficient information to satisfy it that the appropriate and proportionate sanction in all the circumstances was a strike-off. The Tribunal was therefore not minded to approve the Agreed Outcome.

19. The parties were informed of the Tribunal's decision and sought an indication of the nature of the sanction that the Tribunal felt would be appropriate. The Tribunal agreed to give such an indication, and indicated that on the information before it the appropriate sanction was one of suspension for 12 months with the imposition of

conditions on the Respondent, to take effect at the conclusion of the suspension and for an indefinite period. The parties requested a short period of time to take instructions and have further discussions in light of the indication. The Tribunal granted this request.

20. The parties subsequently re-submitted the Agreed Outcome with the proposed sanction varied as set out in the document annexed to this judgment.

21. The Tribunal was satisfied that this was the appropriate and proportionate sanction in all the circumstances, having regard to the need to protect the public and the reputation of the profession. It was necessary for the protection of the public to impose conditions and the Tribunal was satisfied those suggested were proportionate.

22. The Tribunal therefore approved the Agreed Outcome, as amended.

Costs

23. The Tribunal noted that the costs on issue had been £30,461.10. The proposed agreed figure was £18,000 inclusive of VAT. The Tribunal was concerned that, where a fixed fee had been claimed, as was the case here, being presented with global figures was not helpful. The Tribunal queried whether there had been a duplication of work by Capsticks and the SRA investigators.

24. Mr Mulchrone did not accept this, and told the Tribunal that the work done by Capsticks had included taking witness statements and drafting. To date 169 hours had been spent on this case.

25. The Tribunal considered the overall costs figure and noted the significant reduction from the date of issue. The Respondent's means had been taken into account. The investigation had been relatively complex and the Tribunal was satisfied that the figure of £18,000 was an appropriate and proportionate figure.

26. The Tribunal noted that payment terms of £1,500 per month had been agreed between the parties. The enforcement of any order for costs was a matter between the parties and so the Tribunal's order was confined to the liability for and quantum of costs.

27. **Statement of Full Order**

1. The Tribunal Ordered that the Respondent, ROBERT MANNERING SEDGWICK, solicitor, be suspended from practice as a solicitor for the period of 12 months to commence on the 14 February 2018 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,000.

2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall, for an indefinite period be subject to conditions imposed by the Tribunal as follows:

2.1 The Respondent may not:

2.1.1 Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

2.1.2 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;

2.1.3 Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

2.1.4 Hold client money;

2.1.5 Be a signatory on any client account;

2.1.6 Work as a solicitor other than in employment approved by the Solicitors Regulation Authority.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 22nd day of February 2018
On behalf of the Tribunal

A. N. Spooner
Chairman

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

In the matter of the Solicitors Act 1974 (as amended)

AND IN THE MATTER OF

SOLICITORS REGULATION AUTHORITY

Applicant

and

ROBERT MANNERING SEDGWICK

Respondent

RESPONDENT'S STATEMENT IN MITIGATION

I wish to state quite clearly that at no time whilst I was acting for these clients did I have the opinion that they were marketing a "dubious investment scheme". If I or any member of the firm was of that opinion we would have ceased to act immediately

I would make the following points in support

1. I was not aware of the warnings issued by the Financial Services Authority as to Carbon Credit Scheme
2. I carried out as much research as I was able into the bona fides of the clients and I did not, in the references and searches, on the internet discover anything which led me to consider that they may be dishonest or bogus
3. I asked those assisting in the work to carry out their own searches and report back any issues.
4. I fully involved the partners of the firm at that time and sought their specific approval of the firm's involvement in this work and without their approval I would not have continued to act
5. I received a bank reference for [Client 1] which raised no issues as to their probity
6. Some of the investments in the Carbon Energy trades were made by trustees of SIPPs who were firms regulated by the FSA and they raised no concerns as to the validity of the investments
7. When researching the ownership of [Company I] it appeared that it was a subsidiary of regulated business in the Channel Islands

Having carried out my due diligence I did not uncover anything that could reasonably lead me to suspect that the clients were marketing a dubious investment scheme and in the absence of such evidence I felt that I had no reason to refuse to act for them.

Dated 29th January 2018

Robert Sedgwick

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL Case No: 11751-2017

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

B E T W E E N:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ROBERT MANNERING SEDGWICK
(SRA ID: 100849)

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By a Statement made by Mark Whiting on behalf of the Solicitors Regulation Authority, pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007, dated 17 November 2017 ("the Rule 5 Statement"), the Applicant brought proceedings before the Tribunal making allegations of misconduct against the Respondent. The matter has been listed for a substantive hearing before the Tribunal on 26 to 28 February 2018.

2. The Respondent is prepared to make admissions to all of the allegations set out in the Rule 5 Statement, and to accept the factual basis of the admitted allegations as set out in this document. The Respondent also agrees to be suspended for a period of 12 months and, upon the expiry of that period, to be subject to conditions imposed by the Tribunal as set out in paragraph 53 below.

3. The Applicant has considered the admissions made and has considered whether those admissions, and the outcome proposed in this document, meet the public interest having regard to the gravity of the matters alleged.

4. The Applicant is satisfied that the admissions and outcome satisfy the public interest.

Admissions

5. The Respondent admits that, while in practice as a solicitor and consultant at Buss Murton Law LLP (SRA ID: 513079) ("the Firm"), and while instructed by all or any of the clients identified in Schedule 1 to the Rule 5 Statement, between approximately July 2011 and August 2015:

1.1 He involved himself and the Firm in one or more investment schemes and/or transactions which were dubious and therefore breached:

1.1.1 Insofar as such conduct took place on or before 5 October 2011, Rules 1.02 and/or 1.06 of the 2007 Code;

1.1.2 Insofar as such conduct took place on or after 6 October 2011, all or any of Principles 2, 6 and 8 of the SRA Principles 2011 ("the Principles") and/or Outcome 11.1 of the SRA Code of Conduct 2011 ("the 2011 Code"),

1.2 He caused or allowed the Firm's client account to be used improperly, namely as a banking facility, in the absence of (i) an underlying legal transaction and/or (ii) a service forming part of his normal regulated activities and therefore breached:

1.2.1 Insofar as such conduct took place on or before 5 October 2011, the principle in Wood and Burdett (No. 8669/2002) (referred to in Note (ix) to Rule 15 of the Solicitors Accounts Rules 1998) and/or Rule 1.06 of the Solicitors Code of Conduct 2007 ("the 2007 Code");

1.2.2 Insofar as such conduct took place on or after 6 October 2011, Rule 14.5 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules"), and Principles 6 and/or 8 of the Principles.

Agreed Facts

The complaint

6. The conduct in this matter came to the attention of the SRA in or around July 2014, when the SRA received a complaint from Person A.[1] The complaint concerned the Firm's involvement in facilitating the purchase of 'carbon credits' (discussed below) from Client 1.[2] The Respondent had conduct of this matter.

[1] All anonymised, non-client individuals or companies referred to in this document are identified in Schedule 2 to the Rule 5 Statement

[2] All anonymised clients referred to in this document are identified in Schedule 1 to the Rule 5 Statement

7. During 2011 and 2012, Person A invested around £80,000.00 (effectively his entire pension) with Client 1 in a project called *"April Salumei"*. April Salumei was or purported to be an official rainforest conservation project in Papua New Guinea, which had allegedly been certified to offset (i.e. neutralise) 23m tonnes of carbon emissions over 38 years.

8. Person A paid his investment monies to the Firm which then passed them to Client 1. The Firm's involvement, as regulated solicitors, caused or reassured him to believe this was a legitimate investment scheme, but for which he would not have invested. Person A received certificates confirming his investment, which were deposited with a registry in the Cayman Islands. However, when Person A eventually wished to sell his investment, he found himself unable to contact anybody at Client 1 and the Firm did not respond to him.

9. Person A felt that the carbon credits he had purchased were now useless and has summarised his complaint in this way: *"I worked hard for my pension and feel that it has been stolen from me. If it wasn't for [the Firm] being involved in the process which gives it credibility I would never have invested with [Client 1]."*

Forensic Investigation

10. On 18 July 2016, the SRA commissioned and commenced a Forensic Investigation. As part of this investigation, the Respondent was interviewed by the Forensic Investigation Officer ("the FIO") on 11 October 2016. On 23 December 2016, a report was produced ("the FI Report"). This found that the Firm's *"books of account were not in compliance with the SRA Accounts Rules 2011"* and particularly Rule 14.5, for the reasons stated in paragraphs 11 to 67 of the FI report.

Carbon credits

11. Carbon emissions trading arises from attempts at global management of carbon dioxide emissions into the atmosphere, in connection with efforts to reduce global warming. Following the Kyoto Protocol in 1997, some 38 countries were required to limit their domestic carbon emissions and were issued with a certain number of permits (or credits) each based on their historical emissions with a reducing cap. 'Carbon emissions' are the amount of 'carbon dioxide equivalent' (tCO2e) emitted into the atmosphere (so called 'greenhouse gases'). A single 'carbon credit' represents the volume of oxygen required to offset the equivalent of one tonne of tCO2e emitted into the atmosphere. Carbon emissions and carbon credits were thus developed as a means of monitoring and controlling the amount of carbon emissions

by businesses all over the world. Businesses were able to purchase carbon credits as a means of offsetting their carbon emissions to make them more 'green'.

12. The European Union maintains a strictly monitored carbon emissions register in line with its requirements under the Kyoto Protocol. Under the Protocol, countries are allowed a quota of carbon emissions. This quota would then be distributed amongst its businesses, and businesses which emitted more than their allocated quota would be penalised. This is controlled by way of the internal trade of emissions and credits between businesses (i.e. those who emit less than their quota will sell their excess quota to businesses who emit more than their quota). The European Commission maintains a register (the Union registry) of serial numbers allocated to emissions and credits, thus preventing fraudulent duplication of serial numbers. Businesses must apply to the Union registry to gain access to the register. It is not publicly available.

13. Outside the EU, a further trade developed based on the idea behind the Kyoto Protocol. Large-scale eco-projects have developed in places such as India, China, USA (i.e. wind farms and hydro waste projects). These projects work to produce calculated volumes of oxygen. Oxygen production is then calculated per tonne emitted and recorded as carbon credits (sometimes referred to as "units" or "carbon credit tonnes"). Any business (in any country) may then purchase these credits as a means of offsetting their own carbon emissions. These credits do not count towards any emissions quota within the EU. Instead, this market operates as a voluntary way for businesses to reduce their own carbon footprint.

14. A trade developed around voluntary carbon credits in which businesses can buy and sell credits purchased from green projects. In order to facilitate this, a number of registries were created to assign serial numbers to credits and track the ownership of credits. There is no single, independent registry which oversees the global trade of carbon credits.

Dubious schemes – warnings issued

15. It is well established that a solicitor should not act as an *"escrow agent"* and therefore any client requesting this service but not seeking any legal advice or services ought to be regarded with extreme suspicion. In *Wilson-Smith (SDT 8772/2003)* the Tribunal stated:

Whilst it is probably widely and well known the Tribunal feels it important to reiterate conclusions which it has made on earlier occasions, namely that a solicitor should not permit his client account to be used where there is no underlying transaction save in circumstances where he is absolutely satisfied that he is holding money on behalf of a client for a proper purpose and is disbursing it for a proper purpose. A solicitor should have no role to play in the collection and disbursement of monies in a

situation where he is not receiving fees for the benefit of his advice. It is not for a client to explain the nature of a transaction to a solicitor but rather the solicitor's role is to explain the nature of a transaction to the client. It can be described as nothing other than crass stupidity to accept a role as, for example, an "escrow agent" when the solicitor cannot know what that means as, indeed, that expression has no meaning in English law. It is, in any event, serious professional misconduct for a solicitor to accept instructions to undertake work in connection with which he has no knowledge, expertise or experience and where the only reason for his involvement is to add a "cloak of respectability" and thereby induce the victims of fraud to take part.

16. In or around April 2009, the SRA issued a warning notice entitled *"Fraudulent financial arrangements"* ("the 2009 Warning Notice"), which warned the profession including as follows:

Avoid dubious financial arrangements

You must ensure that you do not become involved in dubious financial arrangements or investment schemes. Failure to observe our warnings could lead to disciplinary action, criminal prosecution or both.

Schemes are formulated by fraudsters to prey upon the wealthy, greedy or vulnerable. They often sound "too good to be true" and almost always are.

- *The promise of unrealistically high returns…*
- *Confusing and complex transactions…*
- *Vague reference to humanitarian or charitable aims…*
- *Use of faxed or easily forged documents often from offshore companies or from financial institutions abroad.*

Why involve you?

The fraudster wants to be associated with the legitimacy and respectability which, as a person or firm regulated by the SRA, you provide by

- *endorsing the arrangements by acting as the fraudster's legal adviser or banker,*
- *providing correspondence to the fraudster's company or third parties,*
- *"securing" the transaction with an undertaking from you,*
- *opening bank accounts, awaiting receipt of funds or using your client account,*
- *referring to your insurance or to the Compensation Fund.*

If you do not understand the documents or a transaction in which you are involved, you must ask questions to satisfy yourself that it is proper for you to act. Why have you been approached? Do you have any expertise in this area of law? If you are not wholly satisfied as to the propriety of the transaction, you must refuse to act.

17. On or before 1 August 2011, the Financial Services Authority ("FSA") issued a warning notice entitled *"Carbon credit trading schemes"* under the heading *"Investment Scams"*. This was published online at least five days before the client care letter was sent to Client 1 and stated, among other matters:

There are two categories of carbon credits: voluntary emission reductions (VERs) and certified emission reductions (CERs).

VERs involve the offset or reduction of carbon in any way, such as through a forestry scheme or solar panel project. This type of carbon credit is increasingly being promoted to UK investors.

Governments and large corporate entities typically trade in CERs certificates and these are highly unlikely to be offered in small volumes to consumers... While not all carbon credit trading schemes are a scam, it is often not made clear to investors that trading on Over-The-Counter (OTC) markets requires experience and skill.

18. A further warning was published by the FSA on or before 16 August 2012, entitled *"Carbon credit trading"* again under the heading of *"Investment Scams"*, including as follows:

We continue to receive many reports from people who have been approached by firms promoting carbon credits in the UK. Find out why you should be wary about investing in the carbon credit market.

Carbon credits can be sold and traded legitimately and there are many reputable firms operating in the sector.

However, we are concerned that an increasing number of firms are using dubious, high-pressure sales tactics and targeting vulnerable consumers.

23. In respect of the admitted allegation 1.1 above, it is agreed that Clients 1 to 3 were operating investment schemes and that Client 4 was engaged in one or more international transactions. It is further agreed that the schemes and/or transactions were dubious.

Allegation 1.1

Client 1

24. In relation to Client 1, between 8 September 2011 and 11 July 2013 the Firm received £850,400.65 from 26 individual investors. One of these was Person A.

25. The Respondent was approached by Client 1 in or around July 2011. An email dated 12 July 2011 from Person C to the Respondent asked the Respondent to act as an escrow agent. The 11 July 2011 email also envisaged that up to *"£1million per*

calendar month" would be passing through the Firm's client account. Further, the *"Suggested sales process"* advanced by Client 1 (and sent to the Respondent on 15 July 2011) was both complex and, in its own words *"sounds complicated"*.

26. The sales process detailed that there were four parties in the chain, the buyer, Client 1, Company I and Registry K - who is described as *"the registry who will settle with the foundation that is the ultimate owner"*. Under the process:

Buyer agrees deal with [Client 1] and fills in Registry Purchase Application Form (RPAF) which has no pricing details, this is then scanned and sent to [Client 1] lawyer and [Company I]. Buyer also signs [Client 1] PAF which has retail price on and [Client 1] as sellers. Money goes into [Client 1] escrow to be settled against buyers holding showing on registry. [Client 1] lawyer confirms AML completed to [Company I] and registry (records to be maintained so registry audit could inspect if required).

There is a weekly (can be daily or whatever is needed) deal with [Client 1] buying from [Company I]. This would be for all buyers that have confirmed AML and RPAF. [Client 1] would fill in the bulk trade form (BTF) for the total amount of units plus names, e-mail and quantity for each buyer. This is sent to [Company I] and their escrow lawyer.

[Company I] do exactly the same with the registry using another BTF with [Company I] as the buyers settling to the individuals. [Company I] confirm the figures match up with RPAF and that AML confo has been sent by [Client 1] lawyer then present registry with full package. [Registry K] e-mails account login details to each buyer and confirms completion to [Company I] escrow.

I expect lawyers can word something to allow [Client 1] escrow to release funds to [Company I] escrow against delivery - see what your guy thinks. Either way needs to be confirmation of funds before registry makes the entries.

Buyer sends money to be held in escrow against entry of buyers interest on registry, escrow 1 sends money to escrow 2 against entry of buyers interest on registry, [Registry K] confirms deals and cash flows!

27. Person B told Patient A that when he came to sell his carbon credits he would *"would receive an 11 per cent return on the full value that I had purchased the carbon credits for"*. As he was requested to by Person B, Person A completed and sent to the Firm Purchase Application Forms and Escrow Account Agreement documentation that he received from Person B . The risk warning signed by Person A included the following warning *"You are advised to obtain independent advice before entering into a contract to purchase Carbon credits"*. The Escrow Agreement, prepared by the Respondent but sent to Person A by Person B, included the following wording *"I/We acknowledge that we have not been advised by you in any way in respect of our decision to purchase the CBUs...I/We are not relying on you to establish... proper title to the CBUs or that the CBUs have any value and I/We acknowledge that your*

role is simply to hold the money until you are notified by [Registry K] that my/our purchase of the CBUs is registered with them".

28. An email from Person C to the Respondent dated 29 September 2011 details how the funds received from an investor would be split with only 2.50 Euros of the unit purchase price (8 Euros) being paid to [Registry K] with Client 1 and Company I being paid 4.50 Euros and 1 Euro respectively.

29. It is agreed that the investment scheme being operated by Client 1 was objectively dubious for the following reasons:

    29.1. The complex and confusing transactions, how the funds were to be distributed amongst the various parties involved in the transactions, and indeed the vaguely charitable or humanitarian aims of the scheme (carbon credit trading);

    29.2. The Respondent was being asked to act as an escrow agent but not to provide any real legal services. Client 1 was instructing the Respondent to carry out work which was not part of the accepted professional services provided by solicitors but, on the contrary, was of a purely administrative nature and could easily have been carried out without the involvement of solicitors;

    29.3. Client 1 had *"rung two or three firms... he couldn't get anyone to talk to him"*;

    29.4. Client 1 was willing to pay significant fees for this work, which involved doing very little by the Respondent (*"The Firm billed [Client 1] a total sum of £41,769.10"*);

    29.5. The due diligence carried out at the time (as confirmed by the Firm), revealed that Client 1 was newly incorporated, had no significant trading (or filing) history, and its sole director and shareholder (Person C) held a single share worth only £1;

    29.6. Not only was there no legitimate need for the involvement of solicitors generally, there was, in particular, no obvious reason to instruct the Respondent, who, in his own words, was "*not terribly aware of precisely the market in carbon credits*", which were outside his "normal knowledge" and in which he had no relevant expertise or experience;

    29.7. The Respondent had no evidence as to Person C's knowledge or experience of the carbon credits market or his commercial knowledge and experience more generally;

    29.8. There was no established or properly regulated retail consumer market for trading in carbon credits, which at that time were mainly traded between governments and international organisations or companies.

30. In addition, the warning notice issued by the FSA in August 2011 entitled *"Carbon credit trading schemes"* was publically available at the time the Respondent was

carrying out his due diligence and was directly applicable to the scheme in which he was being asked to act. While it did not of itself mean that the scheme was dubious, it clearly indicated that this was a market which was vulnerable to fraud.

Client 2

31. The FSA's further warning notice from August 2012, couched in stronger terms than the 2011 warning notice, was publically available on or before 15 October 2012, when the Respondent was introduced to Client 2 by Company I. Company I was an offshore company registered in the British Virgin Islands and is mentioned in Client 1's *"Suggested sales process"* document.

32. In relation to Client 2, between 26 October 2012 and 23 January 2013, five investors deposited £18,125.00 into the Firm's client account. One of these was Person H.

33. The Client 2 process was similar to that in place for Client 1 and involved Person H receiving documentation from Client 2, completing this and sending it to the Firm as requested by Client 2. The completed documentation included a risk warning and an Escrow Agreement with the Firm addressed to the Respondent. The Escrow Agreement contained similar wording to that set out above.

34. An email from the Respondent to Person D dated 15 October 2012 states:

It was very good to meet you today and discuss our proposed involvement as your escrow agents in Carbon Credit trades... Our involvement is simply to act as Escrow Agents, holding the buyer's money until [Registry K] registers the buyer as the holder of the relevant Carbon Benefit Units. At that stage we release the money to [the offshore registry] and yourselves and [Person J's] company.

35. The following day, 16 October 2012, the Respondent sent Person D a client care letter which stated, under the heading *"The Scope of our work will cover"*:

We will advise you on legal matters arising in the operation of your business that you refer to us from time to time.

36. It is agreed that the investment scheme being operated by Client 2 was objectively dubious for the following reasons:

    36.1. The complex and confusing transactions, how the funds were to be distributed amongst the various parties involved in the transactions, and indeed the vaguely charitable or humanitarian aims of the scheme (carbon credit trading);

    36.2. The Respondent was being asked to act as an escrow agent but not to provide any real legal services. Client 2 was instructing the Respondent to carry out work which was not part of the accepted professional services provided by solicitors but, on the contrary, was of a purely administrative

nature and could easily have been carried out without the involvement of solicitors;

36.3. Client 2 was willing to pay significant fees for this work, which involved doing very little by the Respondent (the Firm has confirmed total bills raised by the Firm amounted to £3,114.00 including VAT);

36.4. Client 2 was relatively newly incorporated, had no significant trading (or filing) history, and its sole director and shareholder (Person D) held a single share worth only £1 (the Firm confirmed the due diligence on the file, which does not include a company search);

36.5. Not only was there no legitimate need for the involvement of solicitors generally, there was, in particular, no obvious reason to instruct the Respondent, who, in his own words in interview, was *"not terribly aware of precisely the market in carbon credits"*, which was outside his *"normal knowledge"* and in which he had no relevant expertise or experience;

36.6. The Respondent had no evidence as to Person D's knowledge or experience of the carbon credits market or her commercial knowledge and experience more generally;

36.7. There was still no established or properly regulated retail consumer market for trading in carbon credits, which at that time were still mainly traded between governments and international organisations or companies.

Client 3

37. In relation to Client 3, between February and May 2013, 20 investors deposited £66,672.26 into the Firm's client account. One of these was Person L.

38. The Respondent was introduced to Client 3 by Person C. An email from Person C to the Respondent dated 13 February 2013 states:

This is the diamond company I have interests with ... Basically, I have a need to use a [sic] escrow account being managed and serviced by a supporting agent, which I am hopeful will end up being Buss Murton.

39. On 19 February 2013, the Respondent asked Person C to *"describe the way in which the transaction will happen and let me know who we will be paying out of the proceeds of sale"*.

40. On 4 March 2013, the Respondent emailed Person E of Client 3 including as follows:

... I was concerned to read in your literature that you were referring to our involvement: "This ensures a completely secure investment environment"... I am not happy to have our involvement referred to as ensuring a completely secure

investment environment. We stress in the escrow letter that we are not involved [in the] investment, our sole function is to hold the cash until there is documentary evidence that they are entitled to the diamond.

I am very concerned about the way this is being operated and think that we ought to meet again before any transaction[s] are progressed.

41. Person E responded on the same date including, on this point, as follows:

We are only merely describing the way in which money is handled with the purchased investment, not the physical asset/investment itself. If you feel uncomfortable with this statement or any wording of our association with you in our literature we send to the prospective clients, please advise and we will remove it with immediate effect.

42. The Respondent's client care letter was sent to Person C on 6 March 2013 and, again, included the following text:

We will advise you on legal matters arising in the operation of your business that you refer to us from time to time.

43. The documentation to be issued by Client 3 and returned by the investor to the Firm was sent to the Respondent by a letter dated 17 April 2013. The documentation included a Certificate of Acquisition and an Escrow Agreement with the Firm addressed to the Respondent. The documentation completed and sent to the Firm by Person L includes a signed Escrow Agreement with similar wording to that set out above.

44. It is agreed that the investment scheme being operated by Client 3 was objectively dubious for the following reasons:

    44.1. The Respondent was being asked to act as an escrow agent but not to provide any real legal services. Client 3 was asking the Respondent to carry out work which was not part of the accepted professional services provided by solicitors but, on the contrary, was of a purely administrative nature and could easily have been carried out without the involvement of solicitors;

    44.2. The very fact that the Respondent was having to ask his client to explain the nature of the transaction to him was precisely the scenario warned against by the Tribunal in *Wilson-Smith*;

    44.3. The Respondent had serious concerns about the (inappropriate) way in which the Firm's involvement was being 'marketed' to investors, without its consent and he proceeded to accept and execute instructions despite having received no evidence that the offending text was ever removed from Client 3's literature;

    44.4. How the funds were to be distributed amongst the various parties;

44.5. Client 3 was willing to pay significant fees for this work, which involved doing very little by the Respondent (the Firm has confirmed that the total bills raised by the Firm amounted to £6,744.00 including VAT);

44.6. Client 3 was relatively newly incorporated, had no significant trading (or filing) history, and its sole director and shareholder (Person E), was only 25 years old at the date of the retainer and held shares worth not more than £100.00 (the Firm confirmed the due diligence on the file, which included a company search);

44.7. Not only was there no legitimate need for the involvement of solicitors generally, there was, in particular, no obvious reason to instruct the Respondent because Client 3's purported business, trading diamonds, was, in the Respondent's own words to the FIO, *"something we knew nothing about"*. When asked what knowledge he had about buying and selling diamonds the Respondent replied *"none"*;

44.8. The Respondent had no evidence as to Person E's knowledge or experience of the diamonds market or his commercial knowledge and experience more generally.

Client 4

45. In relation to Client 4, it is agreed that Person C forwarded an email from Person M to the Respondent on 11 August 2011. Person M's email indicated that she was a seller of wine from New Zealand and asked Person C *"to make the first payment to your solicitor, and instruct your solicitors to undertake to [S...] and Co...that once they have the funds from you they undertake to pay to [S...] and Co Trust Account, we should be able to arrange to get the wines released"*.

46. Between 18 August 2011 and 19 December 2011 the Firm received £121,551.00 into its client bank account which was subsequently sent to [S...] and Co.

47. The Respondent's retainer with Client 4 commenced on 11 August 2011, when he sent a client care letter to Person C. This document did not identify what the Firm was going to do for Client 4 but was headed *"Escrow Account re Wine Purchases"* indicating that the Respondent intended to act, again, as an escrow agent.

48. It is agreed that the transactions being handled on behalf of Client 4 were objectively dubious for the following reasons:

48.1. The Respondent was being asked to act as an escrow agent but not to provide any real legal services. Client 4 was instructing the Respondent to carry out work which was not part of the accepted professional services provided by solicitors but, on the contrary, was of a purely administrative

nature and could easily have been carried out without the involvement of solicitors;

48.2. Client 4 was willing to pay significant fees for this work, which involved doing very little by the Respondent, beyond sending the money (he gave no undertakings and the Firm has confirmed that the total bills raised by the Firm amounted to £1,757.00 including VAT);

48.3. Client 4 was relatively newly incorporated, had no significant trading (or filing) history and, according to the information available to the Respondent at the time, no more than £100.00 available to it in share capital (the Firm confirmed the due diligence on the file, which included a company search);

48.4. Not only was there no legitimate need for the involvement of solicitors generally, there was, in particular, no obvious reason to instruct the Respondent, who had no or no significant knowledge, expertise or experience in the business of trading fine wines;

48.5. The Respondent had no evidence as to Person C's and/or Person B's knowledge or experience of the fine wines market or their commercial knowledge and experience more generally.

Allegation 1.2

49. In respect of Allegation 1.2 above, is further agreed that:

49.1. the Respondent provided an escrow account service to all or any of the four companies identified in Schedule 1 to the Rule 5 Statement;

49.2. the transfers (totalling £1,056,748.91) on client account relating to these companies were not directly connected to an underlying legal transaction or to a service forming part of the Respondent's normal regulated activities;

49.3. in respect of Client 1, the Firm received £850,400.65 from 26 individual investors;

49.4. in respect of Client 2, between 26 October 2012 and 23 January 2013 five investors deposited £18,125.00 into the Firm's client account;

49.5. in respect of Client 3, between February and May 2013, 20 investors deposited £66,672.26 into the Firm's client account;

49.6. in respect of Client 4, the Firm received £121,551.00 into its client bank account.

Mitigation

50. The following points are advanced by way of mitigation on behalf of the Respondent, but their inclusion in or annexure to this document does not amount to adoption or endorsement of such points by the SRA:

50.1. The Respondent relies upon the attached mitigation statement.

Agreed Outcomes

51. Applying the Tribunal's "Guidance Note on Sanction" dated December 2016, the Respondent's admitted actions set out in Allegation 1.1, amount to a departure from the "complete integrity, probity and trustworthiness" expected of a solicitor. The seriousness of the misconduct is such that the protection of the reputation of the legal profession requires no lesser sanction than a suspension order.

52. The Respondent agrees to be suspended from the Roll of Solicitors for a period of 12 months.

53. The Respondent further agrees that upon the expiry of the fixed term of suspension referred to above, the Respondent shall, for an indefinite period be subject to conditions imposed by the Tribunal as follows:

53.1. The Respondent may not:

53.1.1. Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

53.1.2. 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;

53.1.3. Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

53.1.4. Hold client money;

53.1.5. Be a signatory on any client account;

53.1.6. Work as a solicitor other than in employment approved by the Solicitors Regulation Authority.

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

54. The Respondent further agrees to pay costs to the Applicant in the sum of £18,000.00 (inclusive of VAT) in monthly instalments of £1,500.00, such instalments to commence within 28 days of the approval of this Agreed Outcome.

Signed:

R MULCHRONE .....

Rory Thomas Mulchrone

Solicitors Regulation Authority

R M SEDGWICK .....

Robert Mannering Sedgwick

Respondent

Date: 14 February 2018