

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Storry v Department of Justice and Attorney-General – Office of Fair Trading* [2020] QCAT 94

PARTIES: **VENETIA LOUISE STORRY**  
(applicant)

v

**DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL – OFFICE OF FAIR TRADING**  
(respondent)

APPLICATION NO/S: GAR009-19

MATTER TYPE: General administrative review matters

DELIVERED ON: 1 April 2020

HEARING DATE: 26 March 2020

HEARD AT: Brisbane

DECISION OF: Member Kanowski

ORDERS: **The decisions of Department of Justice and Attorney-General – Office of Fair Trading to make directions under section 42 of the *Agents Financial Administration Act 2014 (Qld)* on 4 September 2018, 12 October 2018, 8 November 2018 and 14 December 2018 are confirmed.**

CATCHWORDS: PROFESSIONS AND TRADES – AUCTIONEERS AND AGENTS – OFFENCES AND CONTRAVENTIONS – OTHER MATTERS – where regulator believed property agent had misapplied trust money – whether control of trust account should be removed from agent

*Agents Financial Administration Act 2014 (Qld)*, s 42  
*Property Occupations Act 2014 (Qld)*, s 102

*Prime Constructions (Qld) Pty Ltd v The Regulator under the Electrical Safety Act 2002* [2019] QCAT 389

APPEARANCES & REPRESENTATION:

Applicant: Self-represented

Respondent: F J Chen instructed by Crown Law

## REASONS FOR DECISION

### Introduction

- [1] Venetia Storry is a licensed real estate agent. She runs the business Anthony Storry Real Estate ('ASRE').
- [2] This proceeding is a review of four decisions made by Office of Fair Trading in late 2018 to issue directions in relation to the trust accounts of the business. These directions restricted the use of the trust accounts, such that they could be operated only by Office of Fair Trading or a receiver appointed by Office of Fair Trading. The directions were made under section 42 of the *Agents Financial Administration Act 2014 (Qld)* ('AFA Act').

### Background

- [3] The business was built up and run for decades by Ms Storry's father, Anthony Storry. He was a sole trader. There were many loyal clients. The business managed the rental of many residential and commercial properties on behalf of clients.
- [4] As at 2016, Mr Storry was in his eighties. He became ill. Ms Storry, who had assisted in the business for many years, stepped in to run the business. She then faced the demands of running the business while caring for her ailing father and taking him to medical appointments as his health declined. Running the business was not made easier by the fact that Mr Storry had not moved into the digital age. He used a card ledger system and relied on paper bank statements rather than online banking. Ms Storry attempted to digitise. However, she suffered a cyber-attack and had to revert to the paper-based system.
- [5] A real estate agent in Queensland is required to place clients' money in a trust account. The business used a Westpac account which I will refer to as the ASRE trust account. This trust account had been established by Mr Storry. Ms Storry says the 'balances for the trust had fallen behind'<sup>1</sup> because of her father's age and ill health, and the age of his bookkeeper.
- [6] In 2018 Ms Storry purchased the business. She set up a company, SRE Pty Ltd, to run the business. As allowed under the business transfer agreement she would continue to use the trading name Anthony Storry Real Estate. Ms Storry applied for a corporate real estate licence for SRE Pty Ltd. She set up a new trust account with Westpac, which I will refer to as the SRE Pty Ltd trust account. The plan was to transition clients and their tenants from the ASRE trust account to the SRE Pty Ltd trust account.
- [7] Mr Storry died on 31 August 2018. In due course Ms Storry arranged for burial of her father in Victoria, next to her late mother, on 29 September 2018.
- [8] Meanwhile, there were difficulties on the business front. On 31 July 2018, the auditor engaged by Ms Storry to audit the ASRE trust account for the 2017 calendar year, Dallas Beauchamp, had delivered his report to Ms Storry and, simultaneously, to Office of Fair Trading. The report identified a large number of errors in the trust account transactions. The errors included both underpayments and overpayments to clients. Mr Beauchamp observed that monthly reconciliations between the trust bank account and owners' ledgers had not been performed within the required five

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<sup>1</sup> Ms Storry's written submissions, 3.

business days at the end of each month, and this meant that problems had not been identified earlier. Mr Beauchamp observed that there were 23 transactions recorded on owners' cards for which he could not locate a receipt. On Mr Beauchamp's calculations, the trust account was overdrawn by \$28,868.37 (though the account still had a positive balance). The account had fallen into overdraft on 26 April 2017, and not returned into credit until 1 May 2017. Mr Beauchamp commented:<sup>2</sup>

Ms Storry has advised that she has ceased drawing commission on the Trust Account and that she undertakes to ensure that the entire overdrawing is repaid in full and all outstanding funds dispersed to owners.

- [9] This report triggered an investigation by Office of Fair Trading.
- [10] On Monday 3 September 2018, Ms Storry advised Office of Fair Trading that her father had died on Friday 31 August 2018.
- [11] On 4 September 2018 Office of Fair Trading issued a direction to Westpac under section 42 of the AFA Act that an amount must not be drawn from the ASRE trust account other than with the chief executive's written approval. The decision to issue this direction is the first decision under review in this proceeding.
- [12] On 10 September 2018 Office of Fair Trading wrote to Ms Storry advising that it was considering appointing a receiver of the ASRE trust property, and inviting her to show in writing why such an appointment should not be made.
- [13] On 20 September 2018, a meeting was held between Ms Storry, the Office of Fair Trading investigator Janey McGregor, and two other staff of Office of Fair Trading namely Stephen Browne and Kathreen O'Keefe.
- [14] Ms Storry sent in correspondence to Office of Fair Trading after that meeting. However, on 12 October 2018 Office of Fair Trading appointed a receiver, Julie Williams, over the trust property of Mr Storry including the ASRE trust account.
- [15] On 12 October 2018 Office of Fair Trading also withdrew the 4 September 2018 direction to Westpac.
- [16] On 12 October 2018 Office of Fair Trading also issued a direction to Westpac under section 42 of the AFA Act that the ASRE trust account may only be operated by Ms Williams. The decision to issue this direction is the second decision under review in this proceeding.
- [17] On 8 November 2018 Office of Fair Trading issued a direction to Westpac under section 42 of the AFA Act that an amount must not be drawn from the SRE Pty Ltd trust account other than with the chief executive's written approval. The decision to issue this direction is the third decision under review in this proceeding.
- [18] On 8 November 2018, Office of Fair Trading also wrote to Ms Storry advising that it was considering appointing a receiver of SRE Pty Ltd's trust property, and inviting her to show in writing why such an appointment should not be made.
- [19] On 14 December 2018 Office of Fair Trading appointed Ms Williams as receiver of the trust property of SRE Pty Ltd including the SRE Pty Ltd trust account.

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<sup>2</sup> Exhibit 5, 7.

- [20] On 14 December 2018 Office of Fair Trading also withdrew the 12 October 2018 direction to Westpac.
- [21] On 14 December 2018 Office of Fair Trading also issued a direction to Westpac under section 42 of the AFA Act that the SRE Pty Ltd trust account may only be operated by Ms Williams. The decision to issue this direction is the fourth decision under review in this proceeding.
- [22] The direction to Westpac that only Ms Williams could operate the SRE Pty Ltd trust account was withdrawn on 21 May 2019, when the receivership ended. Control of the SRE Pty Ltd trust account was returned to Ms Storry. Office of Fair Trading says that the direction for the ASRE trust account ‘not to be operated by any person remains in place’.<sup>3</sup> This cannot be correct because the first direction about the ASRE trust account was withdrawn on 12 October 2018, and the effect of the second direction about that account was to vest control in Ms Williams. However, the matter is of no real consequence because Office of Fair Trading also advises that when the receivership ended, the remaining funds in the ASRE trust account were transferred to the Office of Fair Trading claim fund.

### **The proceeding in the Tribunal and proceedings in Court**

- [23] Ms Storry initially sought orders in the Supreme Court, by way of judicial review and associated proceedings. However, she discontinued those proceedings.
- [24] On 21 December 2018 Ms Storry filed an application to review in the Tribunal, seeking a review of various decisions of Office of Fair Trading. On 29 April 2019 the Tribunal directed that the review was to proceed as a review of the four decisions under section 42 of the AFA Act that have been identified above, and an extension of time was granted for Ms Storry to pursue review of the first three of those decisions. The Tribunal also directed that the review proceeding would not review the decisions to appoint the receiver. Those decisions were made under section 47 of the AFA Act. For reasons explained at the directions hearing on 29 April 2019, the Tribunal has jurisdiction to review decisions made under section 42, but not decisions made under section 47, of the AFA Act.
- [25] The matter proceeded to hearing on 26 March 2020. There were 22 exhibits, some of which comprised large collections of documents. Oral evidence was given by a client of the business, Mr Marcantonio Sermosi, and by the director, Ms Chris Comino, of another client, Kambos Pty Ltd. Oral evidence was also given by the Office of Fair Trading investigator, Ms McGregor.
- [26] Ms Storry and Ms Chen also made oral submissions, to supplement written submissions that they had earlier filed. Although I told Ms Storry at the end of the hearing that she was not at liberty to send in additional written submissions, she did email further submissions on 28 March 2020. She said that she had omitted a few points in her oral submissions because she had been distracted by a fire alarm near the end of those submissions. In the circumstances, and assuming Ms Storry also sent a copy of this email to Office of Fair Trading, I decided to take these additional submissions into account.

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<sup>3</sup> Office of Fair Trading’s written submissions, [17].

## Legislative framework

- [27] The real estate industry is regulated under Queensland legislation, including the AFA Act and the *Property Occupations Act 2014 (Qld)* ('Property Occupations Act') and Regulations made under those Acts.
- [28] 'Property agent' is defined as including a real estate agent.<sup>4</sup> A licensing system is set up for property agents under the Property Occupations Act. A property agent must not act as a property agent for a person to perform an activity unless the client has appointed the property agent using an approved form containing extensive information, such as details of fees and a statement that the client should seek legal advice before signing the appointment.<sup>5</sup>
- [29] The AFA Act requires the use of a trust account by a property agent.<sup>6</sup> It also contains detailed provisions about how trust accounts are to be operated. For example, an agent may withdraw an amount from the trust account to pay commission only if authorised.<sup>7</sup>
- [30] The AFA Act also vests regulatory powers in relation to trust accounts in the chief executive. In practice, these powers will usually be exercised by delegates within Office of Fair Trading. While I refer in these reasons to the decisions being made by Office of Fair Trading, that is simply a shorthand way of referring to decisions made by a delegate of the chief executive.
- [31] Ms Storry is an 'agent' for the purposes of the AFA Act, when one traces through the definitions of 'agent'<sup>8</sup>, 'licensee' and 'Agents Act'.<sup>9</sup> This is not in dispute.
- [32] Section 42 of the AFA Act says:

**42 Chief executive may give directions about agent's accounts in particular cases**

- (1) The chief executive may decide to give a direction under subsection (2) if the chief executive believes, on reasonable grounds—
- (a) any of the following persons has, or may have, stolen or misappropriated or misapplied trust money—
- (i) an agent;
  - (ii) the person in charge of an agent's business;
  - (iii) an employee of an agent; or
- (b) an agent has abandoned the agent's business.
- (2) The chief executive may direct, by signed writing—
- (a) if a claim has been made against the fund for the trust money—that all or part of the amount to the credit of a stated account be paid to the chief executive; or

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<sup>4</sup> Property Occupations Act, s 15.

<sup>5</sup> Ibid, s 102, s 104, s 109.

<sup>6</sup> AFA Act, s 15 – s 17.

<sup>7</sup> Ibid, s 22.

<sup>8</sup> Ibid, s 8.

<sup>9</sup> Ibid, Schedule 1.

(b) that an amount must not be drawn from a stated account other than with the chief executive's written approval; or

(c) that a stated account may be operated only under stated conditions.

...

- [33] There is no suggestion that Ms Storry stole or misappropriated trust money. There were many instances of overpayments to clients identified in Mr Beauchamp's report, consistent with mistakes being made rather than anything deliberate. So the question in this case is whether there were reasonable grounds to believe that Ms Storry misapplied, or may have misapplied, trust money.
- [34] 'Misapply' in my view would cover any incorrect application of trust money, including any innocent or mistaken application. 'Misapply' can be contrasted with another term used elsewhere in the AFA Act, 'defalcation', which is defined in a way that involves criminality namely 'the stealing, or embezzlement, omitting to account, misappropriation or misapplication of, or another act about, property punishable by imprisonment'.<sup>10</sup>
- [35] The power to issue a direction under section 42 is discretionary, as indicated by 'may'. No doubt in considering whether to exercise the discretion, Office of Fair Trading would have regard to section 6 of the AFA Act:

#### **6 Main object**

(1) The main object of this Act is to protect consumers from financial loss in dealings with agents regulated under an Agents Act.

(2) The object is to be achieved mainly by—

(a) regulating the way agents establish, manage and audit trust accounts; and

(b) establishing a claim fund to compensate persons in particular circumstances for financial loss arising from dealings with agents; and

(c) promoting administrative efficiency for claims made against the claim fund.

- [36] In carrying out a review, the Tribunal must conduct a fresh hearing on the merits, and reach what it considers to be the correct and preferable decision.<sup>11</sup>
- [37] It might be thought that the correct and preferable decision now must be to set aside the section 42 directions on the basis that they can no longer serve any purpose. However, the better approach in my view, given the regulatory context, would be that adopted by the Tribunal in *Prime Constructions (Qld) Pty Ltd v The Regulator under the Electrical Safety Act 2002*.<sup>12</sup> That was a case involving the issuing of an electrical safety protection notice, which could be done when an inspector had formed a reasonable belief about a particular risk. The approach adopted by the Tribunal was that it should determine whether, if it was standing in the shoes of the inspector at the time immediately prior to the issue of the notice, the reasonable belief could exist based on the circumstances at that time. The review was therefore to be conducted on the basis of the circumstances that existed at the time, though the

<sup>10</sup> Ibid, s 41.

<sup>11</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20 ('QCAT Act').

<sup>12</sup> [2019] QCAT 389.

Tribunal's assessment was not limited to the information that the inspector considered. It could be informed by later or other additional evidence.

- [38] Of course it is important to emphasise that whether a reasonable belief could exist was not necessarily the end point of the Tribunal's task: if a reasonable belief could exist, there remained a discretion to be exercised about whether to issue the notice. Similarly, in the present case, there is a discretion to be exercised, one way or the other, after any finding that a belief on reasonable grounds could exist that there had or may have been a misapplication of trust money.

**The first decision under review: the section 42 direction made on 4 September 2018 about the ASRE trust account**

- [39] This was the direction to Westpac that no amount could be drawn from the trust account without the chief executive's written approval.
- [40] In support of this decision, Office of Fair Trading relies on a number of matters.

*First matter*

- [41] The first matter is that Mr Storry's real estate licence had expired on 20 April 2018. Ms Chen for Office of Fair Trading submits that after that point, the ASRE trust account should not have been operated. Ms Chen points to section 22 of the AFA Act, which permits drawings to be made by an 'agent' in particular circumstances. Ms Chen also points to section 136 of the AFA Act. It provides that a person must not operate on a trust account unless the person is an agent who is the holder of the account, or a person employed by the agent and authorised by the agent to operate on the trust account, or otherwise permitted under the AFA Act to operate on the agent's trust account.
- [42] Ms Storry told the Tribunal that she was a co-signatory to the ASRE trust account along with her father. It seems likely, though, from the account name (said in Mr Beauchamp's report to be John Anthony Storry T/As Anthony Storry Real Estate Trust Account) and the history generally, that Mr Storry was the only 'holder' of the account. However, this issue does not appear to be explicitly addressed in the evidence or submissions.
- [43] If Mr Storry alone was the holder of the account, then in the period before 20 April 2018, Ms Storry's transactions on the account would have been as a person authorised by her father. He remained an 'agent' only so long as he remained a licensee.<sup>13</sup> Nobody, including Ms Storry, should have operated the account after the expiry of Mr Storry's licence.
- [44] In relation to the period after her father's licence expired, Ms Storry says in effect that she operated the ASRE trust account as caretaker during the period of transition to the SRE Pty Ltd trust account. The transition, she says, took longer than anticipated, for various reasons. She says she saw the preparation of the audit of the ASRE trust account for 2017, delayed for reasons outside her control but completed in July 2018, as an integral step in winding it up.
- [45] There are references to Ms Storry holding power of attorney for her father, but that would not give her as attorney any authority – such as authority to operate the trust account – which her father himself lacked.

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<sup>13</sup> AFA Act, s 8.

[46] Accordingly, if indeed Mr Storry was the only ‘holder’ of the ASRE trust account, any operation of the account by Ms Storry after 20 April 2018 would involve a misapplication of trust money, whether or not Ms Storry realised it. However, because the evidence about the ‘holder’ of the account is not entirely clear, I do not place weight on this first matter.

*Second matter*

[47] The second matter relied on by Office of Fair Trading in its written submissions was that Mr Storry’s records and reports were kept manually in a card file ledger. However, in oral submissions, Ms Chen acknowledged that manual records are permissible under the legislative scheme. Ms Chen did add, however, that the manual records were in disarray. Support for that proposition can be found in Mr Beauchamp’s statement.<sup>14</sup> He describes collecting records for the audit from the business’s office in March 2018, and observing that the records were in no apparent order and that owner cards were not easily located by Ms Storry when he requested them. Ms Storry disputes this evidence, but I see no reason to disbelieve it. Ms Chen’s term ‘disarray’ may, however, be an overstatement. It is important to note that Mr Beauchamp did have the vast bulk, at least, of relevant records before him when he completed his audit.

[48] I should add that in accepting Mr Beauchamp’s description, I have not disregarded evidence that on 18 July 2018 Mr Beauchamp was the subject of a severe reprimand by the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand.<sup>15</sup> The reasons of the Disciplinary Tribunal, however, show that the reprimand resulted from issues of competence rather than honesty.

[49] While I accept that there was some element of disorganisation in the keeping of the manual records, as at March 2018 at least, this of itself does not indicate any misapplication of trust moneys. At the very highest, it might add to an overall impression that there may have been a misapplication as a result of records becoming lost.

*Third to fifth matters*

[50] The third to fifth matters relied on by Office of Fair Trading are more significant, as they derive from the contents of Mr Beauchamp’s audit report for 2017. In summary, the matters are that:

- (a) Mr Beauchamp identified in the report that cheques had been omitted in the closing bank reconciliation during the 2016 audit period such that there was a shortfall of \$7,430 that had not been reported to Office of Fair Trading;
- (b) during the 2017 audit period, \$88,820 had been drawn from the trust account as commission and let fees, but the agent was only entitled to \$67,381.99; and
- (c) as at 31 December 2017, the trust account had a shortfall of \$28,868.37.

[51] Before making the direction, Office of Fair Trading took into account an explanation provided by Ms Storry. This included that the paper-based nature of the business contributed to delays. The bookkeeper was behind, and so a standard cheque of \$6,000 for commission was taken out each month based on projected rather than

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<sup>14</sup> Exhibit 7, document 95.

<sup>15</sup> Ibid, document 30.

actual rents. However, the bookkeeper, who had served her father for many years, had since been 'let go'. Further, Ms Storry said she had stopped paying herself commission, so as to address the shortfall.

*Ms Storry's submissions*

- [52] Ms Storry's submissions to the Tribunal mainly focus on the later directions, but in her written material she has noted the timing of the first direction. She has pointed to the time that elapsed after Office of Fair Trading received the audit report on 31 July 2018 and when it issued the direction on 4 September 2018, with this delay suggestive that urgency was not required. Ms Storry has observed that Office of Fair Trading then acted with great speed after she notified it of her father's death. Ms Storry says that if she could have continued to forgo commissions, that would have redressed the shortfall. She also submits that the matter alleged in paragraph 50(a) above does not involve any impropriety, as Mr Beauchamp made the observation on the basis of the documents she supplied to him for the 2017 audit.
- [53] In her general submissions, Ms Storry acknowledges the regulatory function of Office of Fair Trading, and that there will be times when it will be proper for it to exercise its power under section 42 of the AFA Act. Ms Storry submits in effect, however, that the role of Office of Fair Trading is to act for the public benefit, taking into account the interests of owners, tenants and agents. The effects of restricting the use of a trust account can be very detrimental overall, she points out: slowing end-of-month payments to owners who may not then be able to meet mortgage or other necessary commitments; holding up repairs needed by tenants; and potentially ruining the livelihood of the agent because some owners at least will lose confidence in the agent. Further the agent will incur substantial costs if, along with a section 42 direction, Office of Fair Trading appoints a receiver, as the agent ultimately must pay the receiver's fees.
- [54] So, Ms Storry submits, the discretion in section 42 of the AFA Act must be carefully and wisely exercised. Ms Storry submits that hasty action in the case of a well-established family business such as hers is not the correct and preferable course. Mr Beauchamp had audited the trust account for the 2016 calendar year without identifying concerns. She had been through an extremely trying time while her father was ill, and she should have been afforded the time needed to iron out the problems that had arisen in the maintenance of the trust account.
- [55] Ms Storry says she was surprised to read Mr Beauchamp's report, as she had arranged for another bookkeeper to check over the accounts before they were collected by Mr Beauchamp for the audit. Ms Storry also submits that she was always up-front with Office of Fair Trading. One example, of many, is that she notified Office of Fair Trading on 2 May 2017 of the recent overdraft in the trust account. A second example is that she notified Office of Fair Trading on 6 June 2018 of the transitional steps that were being taken in the business as a result of her father's retirement.
- [56] Ms Storry also submits that there are many errors in Mr Beauchamp's report for 2017. Ms Storry says that the receiver, Ms Williams, later calculated the shortfall to be some \$23,000 to \$25,000, rather than the figure of more than \$28,000 calculated by Mr Beauchamp.

*Tribunal's analysis*

- [57] There is no report from another auditor in response to Mr Beauchamp's report, and I have no reason to doubt the substance of it, even if there are errors in detail. Again, I have taken into account the disciplinary findings against Mr Beauchamp which I have mentioned, but I note that the conduct in the disciplinary case related to an unfamiliar task that Mr Beauchamp had taken on, rather than to his general competence. The Disciplinary Tribunal described the conduct as involving 'a one-off issue of competence motivated by a desire to assist a client who was experiencing significant duress and stress as a result of fraud'.<sup>16</sup>
- [58] In light of Mr Beauchamp's report, and the explanation given by Ms Storry to Office of Fair Trading, I am satisfied that as at 4 September 2018 there was a basis for a belief on reasonable grounds that Ms Storry had or may have misapplied trust money during 2017. It can be inferred that taking a constant rate of commission without performing a monthly calculation may well involve some degree of unauthorised drawing from the trust account. This is because typically the proper amount of monthly commission will depend on the amount of rent, and the amount of rent is likely to fluctuate to some extent as tenants come and go. Underpaying a client will involve a breach of the fiduciary duty of an agent to pay an amount owing to the agent's principal. Overpaying a client involves the withdrawal of an amount in excess of the authorised amount. I hold a belief, which I consider reasonable, that Ms Storry misapplied, or may have misapplied, trust money.
- [59] Of course, this does not involve, or need to involve, any finding of dishonesty.
- [60] The question that then arises whether the correct and preferable decision was to issue the direction which removed Ms Storry's ability to operate the trust account. As Ms Storry submits, the discretion is one to be exercised carefully, because of the potential ramifications for a range of people. No doubt it is appropriate to take into account the interests of the agent, as well as the interests of the owners and tenants. However, I note that the discretion is not one performed under the Property Occupations Act, where the balancing of the need to regulate for the protection of consumers and the need to promote freedom of enterprise is expressly articulated in the objects provision.<sup>17</sup> Under the AFA Act, the objects provision (quoted in paragraph 35 above) focusses squarely on the protection of consumers from financial loss in dealings with agents.
- [61] Having regard to the seriousness of the matters raised in the 2017 audit report, I consider that the correct and preferable exercise of the discretion in order to promote the main object of the AFA Act was, and remains, to issue the direction that was issued on 4 September 2018.

**The second decision under review: the section 42 direction made on 12 October 2018 about the ASRE trust account**

- [62] This was the direction to Westpac that only Ms Williams, who was simultaneously appointed receiver, could operate the ASRE trust account.
- [63] In addition to the matters relied on in relation to the first direction, Office of Fair Trading submits as follows, in summary, in support of the second direction. At the

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<sup>16</sup> Ibid, p 7 of 11.

<sup>17</sup> Property Occupations Act, s 12(1).

meeting on 20 September 2018, Office of Fair Trading staff explained to Ms Storry the need for her to provide a reconciled trust account by 2 October 2018. That was the due date for her submissions on why a receiver should not be appointed. On 2 October 2018, Ms Storry emailed Office of Fair Trading. She attached an email from Mr Beauchamp which itself attached a 'reconciliation and card files' table. The table set out the position as at 30 September 2018, for each client and for the trust account overall. The entries included:

- (a) Storry overdrawn: \$23,225.73;
- (b) total funds required to satisfy current liabilities: \$72,881.01;
- (c) current bank balance: \$44,632.56; and
- (d) funds to be contributed: \$28,248.45.

[64] In her email, Ms Storry said, in summary, that she was addressing the issues: she would be preparing statements for each owner to double check the auditor's work; she would thoroughly go through the records for each owner for 2017 and send Office of Fair Trading the findings; she had not intentionally reallocated funds; she had done her best under very difficult circumstances with a very ill father and a bookkeeper who was 'not up to speed'<sup>18</sup> with trust account practices; she was subscribing to Property Tree (property management software); all owners would be paid out in full; and she requested that the trust account be unfrozen and a receiver not be appointed so that she could continue these steps.

[65] Ms Storry followed up with a 9 October 2018 email to Office of Fair Trading indicating, amongst other things, that she was working as fast as she could on the matter and that she had completed the statement for one of the owners up to July 2018. She requested the names of the owners that she owed money to, so that she could focus on them individually to save time.

[66] As at 10 October 2018, the Office of Fair Trading investigator did not consider that Ms Storry had provided a satisfactory explanation for the shortfall or any indication of how or when she could reimburse the trust account. The investigator saw the 9 October 2018 email as indicative of inability by Ms Storry to reconcile the trust account and pay creditors. The investigator recommended to the decision-maker that a receiver be appointed, and that a section 42 direction be issued to allow access to the trust account by the receiver only.

[67] It is apparent from the Office of Fair Trading's submissions to the Tribunal that it stands by that position.

[68] Ms Storry, in addition to the matters relied on in relation to the first direction, submits as follows, in summary. Office of Fair Trading visited her premises on 10 September 2018. She submits that they should have brought a staff member with accounting qualifications, so that Office of Fair Trading would have gained a 'stronger grasp on what may be behind the issues'.<sup>19</sup> The 20 September 2018 meeting included Ms O'Keefe, the manager of trust accounts, who has accounting qualifications. Ms O'Keefe and the other Office of Fair Trading staff indicated that they understood the very difficult situation she had been in. She explained her commitment to address the issues, and described the steps she was taking. She

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<sup>18</sup> Exhibit 5, 31.

<sup>19</sup> Ms Storry's written submissions, 4.

pointed out various problems with Mr Beauchamp's report. The staff expressed keenness to work cooperatively with her. For example, Ms O'Keefe expressed willingness to go through any CSV files line by line. Ms O'Keefe said that if reconciliation could be achieved 'we can release'; and 'we'll try our damndest to get no receiver'.<sup>20</sup>

- [69] Ms Storry emphasises that addressing these issues would take time. She was running a business. She could set aside an afternoon to work on reconciliations, but a client or a tenant might come into the office with a problem and she would need to attend to that, for example.
- [70] Ms Storry also points to what she says were errors and omissions in Ms McGregor's recommendation of 10 October 2018, such as about the date on which the SRE Pty Ltd trust account had been opened.
- [71] Ms Storry submits that Office of Fair Trading should have let her continue to reconcile the amounts in order to make the necessary disbursements from the trust account to clients. Office of Fair Trading should have allowed her to work with Ms O'Keefe through the balances for the ASRE trust account 'to address any errors and then close the account down'.<sup>21</sup> Meanwhile, Ms Storry submits, ongoing transactions could occur through the SRE Pty Ltd trust account.
- [72] It appears to me that there may have been a misunderstanding about what was expected of Ms Storry by 2 October 2018. At the 20 September 2018 meeting, the Office of Fair Trading staff repeatedly talked about the need for a reconciliation. I think they saw this expression as encompassing the remedying of any shortfall, though this may not have been apparent to Ms Storry. However, at one point Ms O'Keefe did explicitly convey the expectation that Ms Storry remedy any shortfall. Ms Storry had mentioned having \$40,000 of her own money in the bank that she could use, in effect, to top up the trust account if required. Ms O'Keefe then said: 'So when you do your reconciliation you'll find out exactly how much is ... short ... Then you top up the trust account so that it's at the level that it needs to be ...'.<sup>22</sup>
- [73] Ms Storry, on the other hand, appears as to have proceeded on the basis that she could first carry out her own checks of any discrepancies. Further, if she demonstrated to Office of Fair Trading that she was conscientiously addressing the matters, Office of Fair Trading would be accommodating.
- [74] As at 12 October 2018, the circumstances earlier identified still existed for a belief on reasonable grounds under section 42 of the AFA Act, and which I also hold, that Ms Storry had or may have misapplied trust money, though of course there could have been no misapplication from 4 September 2018 because the trust account had not been in Ms Storry's control.
- [75] The next question is whether the correct and preferable decision would be to make a further direction. While no doubt it is desirable for a regulator to take a constructive approach with all stakeholders wherever possible, in my view the foremost consideration must be the protection of consumers from financial loss. The auditor engaged by Ms Storry herself, Mr Beauchamp, had identified a substantial remaining shortfall. Ms Storry says that as at 9 October 2018 she had given 'all

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<sup>20</sup> Exhibit 3, JM-2, 46.

<sup>21</sup> Ms Storry's written submissions, 7.

<sup>22</sup> Exhibit 3, JM-2, 42.

indications that I was about to remedy the shortfall'.<sup>23</sup> However, a substantial shortfall remained. Had Ms Storry paid the shortfall identified by Mr Beauchamp, even though she questioned its accuracy, there would be a stronger basis for concluding that the financial interests of consumers could be adequately protected without decisive intervention.

- [76] The problems with the trust account had arisen through an unfortunate series of events, and Ms Storry was earnest in endeavouring to address the problems, but from the consumer perspective such a situation with a trust account is quite unacceptable. Accordingly, the most appropriate exercise of the discretion as at 12 October 2018 was, and still remains, to issue the direction under section 42 of the AFA Act that was issued by Office of Fair Trading.
- [77] Further, at the same time, Office of Fair Trading appointed a receiver over the ASRE trust property including the trust account. The most convenient course was for an accompanying direction to be made that would easily enable the receiver, Ms Williams, and nobody else to operate the account. Ms Storry, I am sure, would not have attempted to operate the account once the receiver was appointed, but nonetheless a prudent routine direction for Office of Fair Trading to make when appointing a receiver would be one such as the one made on 12 October 2018. This is an additional reason why the correct and preferable decision was the one made by Office of Fair Trading to make the direction to Westpac.

**The third decision under review: the section 42 direction made on 8 November 2018 about the SRE Pty Ltd trust account**

- [78] This was the direction to Westpac that no amount could be drawn from the trust account without the chief executive's written approval.
- [79] In support of this decision, Office of Fair Trading in its written submissions has recited matters mentioned in Ms McGregor's memorandum dated 8 November 2018, and it has also advanced additional matters.

*First matter*

- [80] The first matter put by Office of Fair Trading is that the former licensee, Mr Storry, was deceased.
- [81] This is uncontentious but of no direct relevance.

*Second matter*

- [82] The second matter put by Office of Fair Trading is that Mr Beauchamp's report had identified that the ASRE trust account had not been properly kept in accordance with the AFA Act and a receiver was required to be appointed.
- [83] This background has already been discussed, although of course the Tribunal has not addressed the question of whether the appointment of a receiver was required.

*Third matter*

- [84] The third matter put by Office of Fair Trading is that Ms Storry obstructed the receiver by 'denying the receiver from accessing records as required'.<sup>24</sup>

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<sup>23</sup> Ms Storry's written submissions, 8.

<sup>24</sup> Office of Fair Trading's written submissions, [13(c)].

- [85] No supporting evidence from the receiver has been provided by Office of Fair Trading for this assertion. Ms Storry denies obstruction. In these circumstances, I do not place any weight on the unsupported assertion.

*Fourth matter*

- [86] The fourth matter put by Office of Fair Trading is that Ms Storry ‘continually blamed others for issues with her trust account management systems, including, her bookkeeper, auditor, bank, the receiver, OFT Inspectors and the delegate of the chief executive’.<sup>25</sup>
- [87] As has been discussed, Ms Storry pointed to problems with the bookkeeper and the auditor, but I have not seen supporting evidence for the assertions that she blamed others. Accordingly, this assertion does not advance matters in my view.

*Fifth matter*

- [88] The fifth matter put by Office of Fair Trading is that SRE Pty Ltd collected rent without a relevant appointment as required by the Property Occupations Act; that rent was paid into the SRE Pty Ltd trust account; and such payments were not permitted to be deposited into the trust account pursuant to section 18 of the AFA Act.
- [89] As has been mentioned in paragraph 28 above, a property agent must not act as a property agent for a person to perform an activity unless the property agent has been appointed by way of an approved form. The approved form is Form 6. Ms Storry has produced various Form 6s that she obtained for SRE Pty Ltd from clients in November 2018. It is undisputed, however, that at some point in 2018 Ms Storry’s business collected rent into the SRE Pty Ltd trust account from some tenants (three, it appears) of Kambos Pty Ltd, without Kambos Pty Ltd having at any point signed an appointment of SRE Pty Ltd as property agent.
- [90] So far as the background is concerned, it is also undisputed that the relationship between ASRE and Kambos Pty Ltd had begun many years earlier, when Mr Storry ran ASRE, and Kambos Pty Ltd was run by the father of its current director, Ms Chris Comino. For many years ASRE managed several properties belonging to Kambos Pty Ltd, with a signed agreement covering some properties and a verbal approval covering the others. Ms Storry says that when Ms Comino’s father died, Ms Comino indicated she wanted nothing to change with the properties. Then in due course, according to Ms Storry, Ms Comino:<sup>26</sup>

...had been told that a new trust account was being opened due to my father’s retirement and seemed to understand when told, this only became an issue as I was prepared to walk away from [managing] her 9 properties on principle.

- [91] Ms Storry says that a new commercial tenant of Kambos Pty Ltd paid rent to SRE Pty Ltd under a lease signed after a business transfer in July 2018.
- [92] Ms Storry says that she notified Ms Comino in late July 2018 that her firm would no longer act as agent for Kambos Pty Ltd.

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<sup>25</sup> Ibid, [13(d)].

<sup>26</sup> Ms Storry’s written submissions in response, 2.

- [93] Ms Storry says that the lawyers who acted in the ASRE business transfer did not tell her that she ‘had to reassign the authorities straight away’.<sup>27</sup> She notes that the business continued to trade under the same name. Ms Storry also says that a factor that contributed to delay in obtaining a Form 6 from Kambos Pty Ltd, in addition to all the other demands on her time, was that she was awaiting approval of the corporate licence for SRE Pty Ltd.
- [94] Ms Comino said in a statement to Office of Fair Trading in March 2019 that she does not recall ever being informed by Ms Storry of a new trust account. She said she became aware of a different trust account through a tenant. Ms Comino maintained this in oral evidence to the Tribunal. She gave evidence under compulsion, in response to a notice to attend that had been issued at the request of Ms Storry. It was apparent that Ms Comino feels a level of hostility toward Ms Storry. Her answers were often combative and sometimes unforthcoming. Her testimony did not give a clear picture of the surrounding circumstances.
- [95] It may well be that Ms Comino first saw the account number for the SRE Pty Ltd trust account when a tenant showed it to her, but I do find credible Ms Storry’s evidence that she had informed Ms Comino that she was setting up a new trust account for the real estate business. The two women had known each other for a long time, initially through their fathers. It is apparent even from Ms Comino’s statement that they had frequent discussions about the Kambos Pty Ltd properties. Further, until the end of August 2018, ASRE leased a Kambos Pty Ltd property as its business premises. It seems probable in these circumstances that Ms Storry would have told Ms Comino about her transitional plans for the business, including the setting up of a new trust account.
- [96] Nonetheless, as Office of Fair Trading submits, it was not lawful for SRE Pty Ltd to collect rent for Kambos Pty Ltd without a signed appointment in the approved form. This is so even though Ms Storry may not have initially understood her legal obligations, or may not have seen the paperwork as a priority because of the long-standing relationship, or even if Ms Storry had been too overwhelmed with other demands to obtain the form.
- [97] Section 18 of the AFA Act provides that an agent must not pay to a trust account an amount other than an amount under sections 16 or 17 of that Act. Those provisions, by virtue of section 15, apply to an amount received by an agent for a transaction or with a written direction for its use. Office of Fair Trading submits that the receipt of rent into the SRE Pty Ltd trust account in the absence of a proper appointment was in breach of section 18 of the AFA Act. I accept this submission, because sections 15 to 17 must be intended to apply to amounts lawfully received by an agent.
- [98] ‘Trust money’ is defined in the AFA Act as including ‘an amount that was, or ought, under this Act, to have been, deposited in a trust account by an agent’.<sup>28</sup> The rent in question would properly be described as trust money in the sense that it was received by SRE Pty Ltd as a putative agent, and fiduciary obligations would attach for SRE Pty Ltd to deal with the money lawfully for Kambos Pty Ltd’s benefit (such as by paying it into an authorised trust account or, in the absence of such an account, direct to Kambos Pty Ltd). Payment into the SRE Pty Ltd trust account constituted a misapplication of trust money.

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<sup>27</sup> Ms Storry’ written submissions, 7.

<sup>28</sup> AFA Act, Schedule 1.

[99] Accordingly, I find that Ms Storry as controller of SRE Pty Ltd, in collecting rent from some clients of Kambos Pty Ltd, albeit for a short period, misapplied trust moneys.

[100] It seems probable that there were instances of SRE Pty Ltd similarly collecting rent for other clients without appointments made by those clients to SRE Pty Ltd as distinct from Mr Storry. I note that the Form 6s for SRE Pty Ltd that are in evidence were signed on various dates in November 2018, and Ms Storry has said in her submissions:<sup>29</sup>

Once the receiver was appointed, I alerted the clients and told them it was possible for them to keep receiving rental income through my new [corporation's] account. All clients were happy with this arrangement.

[101] Further:<sup>30</sup>

I had verbal agreements to have the tenants pay to SRE.

[102] Without detailed evidence about such payments, I am not in a position to make firm findings. However, there are reasonable grounds to believe that Ms Storry as controller of SRE Pty Ltd may have misapplied trust money held on behalf of those other clients by receiving rents prior to proper appointment.

[103] In further explaining the delay in obtaining Form 6s, Ms Storry points to having started Court proceedings challenging the appointment of the receiver to the ASRE trust account, which she was hoping would be resolved in her favour. She also points to relocating the business premises, arranging for the burial of her father, and dealing with a client's sale of a house. She says she had engaged an accountant 'to try and unravel [Mr Beauchamp's] report'.<sup>31</sup> Ms Storry also says that clients were relieved to have funds released from the control of the receiver.

[104] I accept that there was a particular background, and that there were many demands on Ms Storry's time and attention, but it cannot be ignored that having a proper appointment before performing an activity for a client is a legal requirement. Indeed, failure to have one constitutes an offence.<sup>32</sup>

*Sixth matter*

[105] The sixth matter put by Office of Fair Trading is that Ms Storry had advised tenants to make payments which should have been made to the ASRE trust account to the SRE Pty Ltd trust account.

[106] This has been considered in discussing the fifth matter.

*Seventh matter*

[107] The seventh matter put by Office of Fair Trading, in its written submissions, is that property owners did not receive monthly accounts since July 2018 and believed they were entitled to trust account disbursements but did not receive them.

[108] This appears to relate to Kambos Pty Ltd not receiving account statements for certain properties. The last of the relevant payments were paid by Ms Storry's

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<sup>29</sup> Ms Storry's written submissions, 8.

<sup>30</sup> Ms Storry's written submissions in response, 2.

<sup>31</sup> Ms Storry's written submissions, 8.

<sup>32</sup> Property Occupations Act, s 102(1).

business to Kambos Pty Ltd on 1 August 2018. In her oral evidence, Ms Comino said that she thinks she did ‘eventually’ receive the statements. She thought it may have been in late August or early September 2018, but added that this was a guess.

[109] Ms Chen acknowledged in her oral submissions that Ms Comino’s evidence was potentially consistent with account statements being provided within the 42 days required by section 23 of the AFA Act.

[110] Accordingly, this seventh matter has not been substantiated.

*Eighth matter*

[111] The eighth matter put by Office of Fair Trading is that cheques issued from the SRE Pty Ltd trust account were dishonoured, and these cheques were not permitted to be drawn from the SRE Pty Ltd trust account pursuant to section 22 of the AFA Act.

[112] This appears to relate to a cheque for \$9,151.90, so I am not sure why Office of Fair Trading speaks of ‘cheques’ (plural).

[113] Only the following details, apart from the cheque numbers and the fact that the transactions relate to the client Marcantonio Sermosi, have been provided by Office of Fair Trading. The cheque in question was issued on 29 May 2018 but dishonoured. On 30 May 2018 \$9,151.90 was transferred from the ASRE trust account to the SRE Pty Ltd trust account. On 5 June 2018 a further cheque for \$9,150.90 was issued from the SRE Pty Ltd trust account. Ms McGregor said in her memorandum of 8 November 2018 that the payments were ‘reasonably suspected of being unauthorised payments made contrary to section 22 of AFAA or at the very least they are examples of the misapplication of trust money’.<sup>33</sup>

[114] Section 22 of the AFA Act permits only ‘authorised’ drawings from a trust account.

[115] I gather from other information that the cheque was for plumbing work carried out for properties owned by Mr Sermosi. Ms Storry submits that ‘the matter of the plumber’s cheque for \$9,151.90 was a bank error’ and ‘it was rectified almost immediately’.<sup>34</sup> Ms Storry referred me to the transcript of a proceeding in the Supreme Court where Justice Flanagan referred to an ‘admitted bank error’ in relation to this cheque’.<sup>35</sup> His Honour referred to a letter from Westpac which said that the bank had incorrectly deposited a cheque for \$9,150.90 to the ASRE trust account on 4 May 2019, instead of the SRE Pty Ltd trust account as instructed, with this error being corrected by a transfer from the former account to the latter on 30 May 2019. It also appears from the transcript that there was evidence that there was at the time an appointment of SRE Pty Ltd to act for Mr Sermosi, by way of assignment.

[116] This information appears to be inconsistent with a misapplication of trust money, and so I am not satisfied that the eighth matter is substantiated.

*Ninth matter*

[117] The ninth matter put by Office of Fair Trading is that money was transferred from the ASRE trust account to the SRE Pty Ltd trust account, in breach of section 18 of the AFA Act, to enable a cheque to be presented.

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<sup>33</sup> Exhibit 5, 41.

<sup>34</sup> Ms Storry’s written submissions, 10.

<sup>35</sup> Exhibit 12, 7.

[118] This allegation appears to relate to the sum of \$9,151.90 discussed in relation to the eight matter. It has not been satisfactorily explained how this could amount to a misapplication.

*Tenth matter*

[119] The tenth matter put by Office of Fair Trading is that ‘there were clients who believed that they were underpaid from the trust accounts’.<sup>36</sup>

[120] This is put very broadly. In the absence of evidence showing that such beliefs were well-founded and related to additional alleged underpayments and not merely delay in payments because of Office of Fair Trading intervention, I regard this matter as adding nothing to what was indicated by Mr Beauchamp’s information about the ASRE trust account.

*Ms Storry’s submissions*

[121] I have indicated Ms Storry’s responses to particular matters above. More broadly, she maintains that problems with the ASRE trust account had arisen for particular extenuating reasons, and that there were no problems of substance in her operation of the SRE Pty Ltd trust account such as to warrant regulatory intervention. The effect of such intervention, Ms Storry submits, was the withholding of clients’ money for extensive periods and ‘closing down an established business whose errors belonged to time issues at the most difficult period – the illness and death of the father and principal agent’.<sup>37</sup> Ms Storry further submits that control of the SRE Pty Ltd trust account was in due course returned to her ‘with the only issue being that I had not banked \$1240 into SRE which really belonged to ASRE ...’.<sup>38</sup>

*Tribunal’s analysis*

[122] In my view, circumstances existed as at 8 November 2018 for a belief on reasonable grounds that Ms Storry had or may have misapplied trust money in the SRE Pty Ltd trust account. Ms Storry had allowed the collection of rent from Kambos Pty Ltd without the required written authority, and she may have done likewise in respect of numerous other clients.

[123] Additionally, there had been misapplications or possible misapplications in relation to the ASRE trust account as described earlier. I should add that, in my view, a direction can be made under section 42(2) of the AFA Act even though the belief under section 42(1) relates partly or wholly to another trust account.

[124] While I am not satisfied that all of the adverse matters advanced by Office of Fair Trading have been substantiated, I consider that the principal ones that have been are significant: particularly the problems in the operation of the ASRE trust account in 2017, the failure to address the shortfall in that account by September 2018, and the use of the SRE Pty Ltd trust account to receive deposits without proper authorisation.

[125] I hold a belief, which I consider reasonable, that Ms Storry had, or may have, misapplied trust money.

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<sup>36</sup> Office of Fair Trading’s written submissions, 8.

<sup>37</sup> Ms Storry’s written submissions, 10.

<sup>38</sup> *Ibid*, 11.

[126] The interests of consumers in being protected from the risk of ongoing breaches outweighed the interests of Ms Storry in having further time to demonstrate that she could operate the trust account in conformity with all legal requirements. In all of the circumstances, I consider that the appropriate exercise of the discretion in section 42(2) of the AFA Act was, and remains, to make the direction made on 8 November 2018, effectively removing Ms Storry's control of the SRE Pty Ltd trust account.

**The fourth decision under review: the section 42 direction made on 14 December 2018 about the SRE Pty Ltd trust account**

[127] This was the direction to Westpac to the effect that only the receiver, Ms Williams, could operate the trust account. Ms Williams was simultaneously appointed receiver of SRE Pty Ltd's trust property.

[128] In support of the decision to issue the direction to Westpac, Office of Fair Trading relies on many of the matters previously canvassed. Office of Fair Trading also makes reference to additional matters which include:

- (a) while Ms Storry had obtained from some clients appointments to act, or produced assignable appointments to act, it appeared that 'at least one vulnerable elderly property owner, Mr Sermosi, had little understanding of what he had signed' and felt like he had been 'taken for a ride' by Ms Storry;<sup>39</sup>
- (b) the receiver said in her draft report that Mr Sermosi had been underpaid a total of more than \$16,000, including \$4,000 from the SRE Pty Ltd trust account;
- (c) other accounting requirements were not met; and
- (d) owners' accounts were carried over 'without resolution'<sup>40</sup> from the ASRE trust account to the SRE Pty Ltd trust account.

[129] However, Office of Fair Trading has not provided supporting evidence for these submissions apart from Ms McGregor's summary in her memorandum dated 13 December 2018. I therefore do not consider that I can properly place weight on them.

[130] I should add that Mr Sermosi gave oral evidence to the Tribunal, but his testimony did not serve to confirm the suggestion that he had been 'taken for a ride'. Mr Sermosi did say he was not sure what the agreement was that he signed with Ms Storry after her father had died, but in my view this could simply mean that he does not now clearly remember. In any event, he went on to say that he thought it was in the same format as the one he had previously signed, also without a lawyer present, with Mr Storry.

[131] Ms Storry submits that the correct and preferable decision is not to issue a direction, taking into account all of the matters she has raised.

[132] In my view, there had been two changes of significance since 8 November 2018. First, Ms Storry had arranged for clients to sign Form 6s. That was a step in the right direction. Second, but tending the other way, Ms Williams was appointed receiver of SRE Pty Ltd's trust property including its trust account.

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<sup>39</sup> Office of Fair Trading's written submissions, [15(c)].

<sup>40</sup> Ibid, [15(j)].

- [133] As at 14 December 2018, the same circumstances existed as had existed on 8 November 2018 for a belief on reasonable grounds that there had or may have been misapplications. I hold the belief that there had or may have been such misapplications. So far as the discretion under section 42 of the AFA Act is concerned, many of the considerations remained unaltered. While the obtaining of Form 6s reduced the arguments in favour of intervention, the practical consideration that a receiver was appointed meant that it would be pointless to leave Ms Storry with the ability to operate the trust account.
- [134] On balance, I consider that the correct and preferable decision on 14 December 2018 was, and remains, the one made by Office of Fair Trading to issue the direction to Westpac.

#### **Request to transfer part of the proceeding to a Court**

- [135] As has been noted, the Tribunal does not have jurisdiction to review the decisions to appoint the receiver. Ms Storry in her written submissions requested that the Tribunal use its power under section 52(2) of the QCAT Act to transfer the matter of the appointment of the receiver to a Court for judicial review.
- [136] I do not consider it would be appropriate to do so. Ms Storry brought a judicial review proceeding in the Supreme Court before she started the review in the Tribunal. She discontinued the Court proceeding. Whether a further such proceeding could now be pursued is unclear. Any such proceeding would now be well out of time, and in any event of no obvious practical utility given that the receiver has finished her role. I therefore do not propose to make such a transfer.

#### **Conclusion**

- [137] As explained in these reasons, the correct and preferable decisions were, and still are, to make the directions that were made under section 42 of the AFA Act, notwithstanding the real difficulties that Ms Storry had experienced and her efforts to correct the problems. Accordingly, the reviewable decisions are confirmed.