BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No:**

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

TIMOTHY CLARKE

Respondent

STATEMENT PURSUANT TO RULE 12 (2) OF THE SOLICITORS (DISCIPLINARY PROCEEDINGS RULES) 2019

I, **JAMES DANKS**, am a Solicitor and Partner at Blake Morgan LLP of Apex Plaza, Forbury Road, Reading, RG1 1AX.

I make this statement on behalf of the Applicant, the Solicitors Regulation Authority Limited ("**the SRA**").

The allegations

1. The allegations against the Respondent, Timothy Clarke, made by the SRA are that, while in practice as a Partner at Clarke Barnes Solicitors LLP ("Firm 1") and subsequently at the successor practise, Clarke & Co Limited ("Firm 2"), he:

   1.1 Between 21 October 2020 and 4 February 2021, caused or allowed:

1.1.1 bills to be raised totalling £44,270.10 on 18 client matters purporting to relate to costs incurred by Firm 1 in circumstances where he knew or ought to have known such costs were not properly due.

1.1.2 sums totalling £44,269.60 between 18 November 2020 to 4 February 2021 to be transferred from the client account of Firm 1 to its office account purporting to be in settlement of the bills in 1.1.1 above in circumstances where he knew or ought to have known the transfers were improper.

In doing so, he breached any or all of:

a. Paragraph 4.2 of SRA Code of Conduct for Solicitors RELs and RFLs ('**the Code for Solicitors**')
b. Principle 2 of the SRA Principles 2019 ('**the 2019 Principles**');
c. Principle 4 of the 2019 Principles;
d. Principle 5 of the 2019 Principles;
e. Rule 5.1 of the SRA Accounts Rules 2019 (**'the 2019 AR')**

The facts and matters relied upon in support of this allegation are set out in paragraphs 9 to 15 and 16 to 37 below.

1.2 Failed to replace a £32,354.15 cash shortage in the client account of Firm 1 promptly.

In doing so, he breached any or all of the following:

a. Rule 6.1 of the 2019 AR;
b. Paragraph 4.2 of the Code for Solicitors;
c. Principle 2 of the 2019 Principles.

The facts and matters relied upon in support of this allegation are set out in paragraphs 9 to 15 and 55 to 62 below.

1.3 Failed to ensure that client money was returned promptly to the clients of Firm 1, as soon as there was no longer any proper reason to hold those funds.

In doing so, he breached any or all of the following:

a. Rule 2.5 of the 2019 AR;

b. Principle 2 of the 2019 Principles;
c. Principle 7 of the 2019 Principles.

The facts and matters relied upon in support of this allegation are set out in paragraphs 9 to 15 and 68 to 72 below.

1.4 Failed to ensure that client money was paid promptly into a client account for Firm 2.

In doing so, he breached any or all of the following:

a. Rule 2.3 of the 2019 AR
b. Rule 9.2(a) of the SRA Code of Conduct for Firms 2019.

The facts and matters relied upon in support of this allegation are set out in paragraphs 79 to 83 below.

1.5 Failed to ensure that reconciliations took place at Firm 1 at least every five weeks.

In doing so, he breached Rule 8.3 of the 2019 AR.

The facts and matters relied upon in support of this allegation are set out in paragraphs 86 to 89 below.

1.6 Failed to disclose a Qualified Accountant's Report for Firm 1 for the accounting period 1 August 2019 to 31 July 2020 within six months of the period end date.

In doing so, he breached any or all of the following:

a. Rule 12.1 of the 2019 AR;
b. Principle 2 of the 2019 Principles;
c. Principle 4 of the 2019 Principles;
d. Principle 5 of the 2019 Principles.

The facts and matters relied upon in support of this allegation are set out in paragraphs 92 to 96 below.

Appendices and Documents

2. I attach to this Statement the following appendices:

   Appendix 1: Relevant Rules and Regulations

   Appendix 2: Anonymisation Schedule

3. I attach to this statement a bundle of documents, marked **JD1** to which I refer in this statement. Unless otherwise stated, the page references ("**JD1, X**") in this statement relate to documents contained in that bundle.

4. The bundle is divided into the following sections:

   Section A: Witness Statement of the Forensic Investigation Officers, plus Forensic Investigation Report and appendices

   Section B: Correspondence between the SRA and the respondent

   Section C: Notice Recommending Referral to the Tribunal & Decision

Professional Details

5. The Respondent, who was born on [redacted] 1967, was admitted to the Roll on 15 October 1992. He holds a current practising certificate.

6. The Respondent was, at the relevant time, the sole manager of Clarke Barnes Solicitors LLP ('Firm 1'), which ceased trading on 31 March 2021.

7. Clarke & Co Limited ('Firm 2') is the successor firm of Firm 1. The Respondent holds 50% of the shares of Firm 2.

8. From 17 November 2020, the Respondent was also Firm 2's Compliance Officer for Finance and Administration ('COFA'), and Compliance Officer for Legal Practice ('COLP').

The facts and matters relied upon in support of the allegations

Background

9. Following notice being given to Firm 2, a forensic investigation was commenced on 13 January 2022 by Joanna Wright, Forensic Investigation Officer ('FIO'). Following the investigation being commenced, the FIO requested a number of documents from the Respondent, including:

    - The 2020 Accountant's Report, and bank statements for Firms 1 and 2;
    - Client files and ledgers; and
    - Information relating to the replacement of the apparent cash shortages.

10. As part of the forensic investigation, the FIO attended on the Firm on 24 March 2022, and undertook a recorded interview with the Respondent. A transcript of the interview was produced by the SRA **[JD1, 24]**.

Bank Accounts

11. Firm 1 operated client and office bank accounts, which were controlled solely by the Respondent. At the extraction date, 30 November 2021, the balances in the accounts were £7.62 (office account) and £38,741,29 (client account) **[JD1, 10]**. The Respondent completed an account closure form for the client account of Firm 1 on 19 January 2022 **[JD1, 10]**.

12. In respect of Firm 2, a client account was not opened until February 2022. Payments from Firm 2's accounts could be authorised by the Respondent, and his business partner.

13. The investigation concluded with a FIR dated 19 May 2022 **[JD1, 5].**

14. From the information and documentation provided by the Respondent during the investigation, and the answers given by the Respondent to the FIO, issues also became apparent in respect of the Firms' accounts.

15. The issues in respect of the SRA Accounts Rules included:

15.1. Invoices being raised for purported costs due to Firm 1, when no costs were properly due

15.2. Failing to ensure that cash shortages were replaced promptly

15.3. Failing to ensure that client money was returned promptly to clients

15.4. Failing to ensure that client money was paid into client account;

15.5. Not ensuring that reconciliations took place at least every five weeks; and

15.6. Not disclosing a Qualified Accounts Report for Firm 1.

1.1 Allegation 1.1 – Between 21 October 2020 and 4 February 2021, caused or allowed:

1.1.1 bills to be raised totalling £44,270.10 on 18 client matters purporting to relate to costs incurred by Firm 1 in circumstances where he knew or ought to have known such costs were not properly due.

1.1.2 sums totalling £44,269.60 between 18 November 2020 to 4 February 2021 to be transferred from the client account of Firm 1 to its office account purporting to be in settlement of the bills in 1.1.1 above in circumstances where he knew or ought to have known the transfers were improper.

16. The SRA relies upon paragraphs 9 to 15 above.

17. The SRA also relies upon the FIR in its entirety, specifically paragraphs 35 to 76 **[JD1, 12].**

Background

18. As part of the FI, the Respondent provided to the FIO a Qualified Accountant's Report (QAR') for Firm 1 **[JD1, 69].**

19. Within the QAR, it was identified that the Respondent had incorrectly transferred client money from Firm 1's client account to office account **[JD1, 70].**

The FIO's Review

20. Following the provision of the QAR, the FIO reviewed the client ledgers for the 19 client matters **[JD1, 74],** and the bank accounts for Firm 1 **[JD1, 97 and 101]**.

21. From the review, the FIO identified that, in respect of the relevant client matters, £44,269.60 had been transferred from Firm 1's client account to office account between 18 November 2020 to 4 February 2021.

22. This total was comprised of 18 invoices raised by the Respondent, which purported to be for Firm 1's costs. The total of these invoices totalled £44,270.10 **[JD1, 110]**.

23. The FIO separately identified that £3500 had been paid to the incorrect recipient.

24. The monies that were held on Firm 1's client account related to claims made by Firm 1, on behalf of clients, in respect of housing disrepair claims.

25. The FIO did not identify any work that had been undertaken by Firm 1 to justify the purported costs, which formed the basis for the invoices.

The Respondent's Interview with the FIO

26. At the interview with the FIO, the Respondent accepted that he had caused the transfer of money from Firm 1's client account to its office account, for a purpose different to that for which it was being held **[JD1, 55]**.

27. The Respondent also accepted the following pertinent facts to the FIO:

    27.1. None of the invoices had been sent to the clients;
    27.2. In respect of 17 of the client matters, the clients had already been billed for Firm 1's costs and that these costs had been paid in full;
    27.3. Prior to the invoices being raised, between 1 October 2020 and 1 January 2021, the Respondent had cancelled 19 unpresented client account cheques on these matters (18 of which were in favour of the relevant client);
    27.4. 16 of these cheques were cancelled in November and December 2020;

27.5. Prior to raising the invoices, he had not checked the client ledgers nor the client files to determine whether any of the invoices were appropriate to be raised.

28. By way of explanation, the Respondent told the FIO that the invoices were a mechanism to allow Firm 1's client account, which cost the firm to utilise a monthly fee of around £1,000, to be closed:

"When I did the bills, I thought it was unbilled money, yes, and to close the account down that's what I did…

Because what, because what I was trying to do at this point in time was close the client account down because I didn't, mad as it now sounds and seems and is, because I didn't want to pay the £1000 a month. I didn't need client account, yes, and so I direct myself get a list of all the balances in the client account and bill them to be able to shut down, not the account, but shut it down as a client I no longer needed. My attitude was, wrongly as it now transpires that money's been in there for yonks, it's the firm's money I want to not have a client account anymore so to cease this client account I just bill it all and out it into office, and that's what I did".

Client Examples

29. In respect of Client A **[JD1, 15 and 131]**, a cheque for £16,005.00 was raised on 1 January 2021, for Client A's benefit, with a narrative stating 'Paid to Client' **[JD1, 75]**.

30. The cheque was cancelled the same day, and an invoice raised, including VAT, for the same amount. The basis for the invoice, as stated, was 'Our Fee', and as a result of the transfer from client account, caused a shortage for that quantum **[JD1, 16 and 134]**.

31. At interview, the Respondent confirmed that the invoice had not been sent to Client A **[JD1, 38]**.

32. With regard to Client B **[JD1, 16]**, the Respondent acted for the client in respect of a housing disrepair claim against Milton Keynes Council.

33. On 13 June 2019, the Respondent accepted the council's offer of £1,000 in damages. This was paid into Firm 1's client account on 15 August 2019, and the client informed of the same on 2 September 2019.

34. A cheque for £500 was raised, for the client, on 2 September 2019 **[JD1, 135]**. This represented the client's balance of the damages due to her, and £500 was transferred to Firm 1's office account. For clarity, the Applicant takes no issue with this transfer.

35. On 1 November 2020, the Respondent cancelled the cheque to the client, which had not been cashed by the client due to it not having been sent to her. A balance of £500 therefore remained on client account.

36. On 18 November 2020, the Respondent transferred £500 from client to office account, to settle a further invoice raised on the matter **[JD1, 76]**.

37. At the interview, the Respondent confirmed the following facts to the FIO:

    37.1. He did not review Client B's file before raising the second invoice;
    37.2. When he raised the second invoice, the Respondent was not aware Firm 1 had already billed the client for the appropriate fee;
    37.3. He assumed the monies remained on client account due to someone forgetting to raise an invoice for the firm's work; and
    37.4. Any breach of the rules was due to his stupidity rather than dishonesty.

Representations made by the Respondent in relation to allegation 1.1

38. In addition to the Respondent's explanation at paragraph 37 above, by email of 6 June 2023, whilst he accepted the underlying facts relating to the transfers of monies, he did not accept dishonesty.

Breaches of the Codes and Principles in relation to allegation 1.1

Rule 5.1 of the 2019 AR, Principle 2 of the 2019 Principles, and Paragraph 4.2 of the Code for Solicitors

39. The monies held by Firm 1 on client account were funds properly due to the respective clients, following claims being made on their behalf.

40. This position is corroborated by the cheques that were initially raised for their favour, for the funds to be remitted to them. The balances on client account should therefore have been maintained, and safeguarded, by Firm 1.

41. The Respondent, instead, arranged for invoices to be raised for the exact amounts held on client account, to allow the funds to be transferred to office account.

42. Rule 5.1 states that client money can only be withdrawn from client in three circumstances, being the purpose for which it was held, following receipt of instructions from the client (or third party for whom it is held) or following authorisation from the SRA.

43. In these circumstances of the Respondent's conduct, by transferring funds from client to office account to allow Firm 1's client account to be closed, is not conduct that was authorised by the 2019 AR, nor conduct that aligns with money being safeguarded for clients as per Paragraph 4.2 of the Code for Solicitors.

44. Solicitors perform an essential service to the public, and the appropriate maintenance and management of client funds is an essential role in performing this. Conduct that does not follow the necessary rules and regulations, will detrimentally impact the public's trust in the profession, and breach Principle 2 of the 2019 Principles.

Principle 5 of the 2019 Principles

45. In *Wingate v SRA* [2018] EWCA Civ 366, the Court of Appeal held that integrity connotes adherence to the ethical standards of one's profession. Lord Justice Jackson held:

"Integrity is a broader concept than honesty. In professional codes of conduct the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members".

46. In this matter, for a number of clients who were entitled to receive additional monies arising from their claims, the Respondent facilitated the mechanism to allow for these monies to be transferred to the office account. At this time, the Respondent was the sole manager for Firm 1.

47. The Respondent made no attempts to determine whether Firm 1 was entitled to the money, and instead arranged for individual invoices to be raised for the amounts of funds on client account, in order to close the client account down.

48. The Respondent was in a position of trust and responsibility as a solicitor. A solicitor acting with integrity would have made efforts to determine what the money was held for, for whose benefit and whether there were any costs that could properly be charged for (over and above any costs previously claimed for). By his own admission, the Respondent did not do any such checks.

49. Such conduct as stated in the four paragraphs above is clearly not conduct of integrity, nor appropriate conduct for a solicitor.

Principle 4 of the 2019 Principles

50. The SRA relies upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67:

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary

decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

51. Between 21 October 2020 and 4 February 2021, the Respondent knew or believed the following facts:

    51.1. That the work undertaken by Firm 1 for the relevant clients was claims for financial redress in respect of housing disrepair claims;
    51.2. Monies on client account, when the claims were being undertaken on a CFA basis, could have been funds due to clients;
    51.3. A number of cheques, in favour of the clients, had been cancelled and therefore the funds returned to client account;
    51.4. That he had made no checks to determine if Firm 1 had previously raised an invoice for costs or if any costs were due to Firm 1;
    51.5. The amount of the invoices mirrored the amount held on the respective client accounts; and
    51.6. The invoices, purporting to reflect work undertaken for the clients, were not sent to the clients.

52. Given this state of knowledge and belief, the Respondent acted dishonestly by the standards of ordinary decent people. Ordinary decent people would consider it dishonest for a solicitor to not make any attempt to determine the basis of the funds being held on client account, especially in circumstances where a number of uncashed cheques to the clients had been cancelled.

53. An honest solicitor, who considered the invoices had been raised for a proper reason, would have sent the invoices to the clients.

54. By doing so, the Respondent failed to act with honesty and therefore breached Principle 4 of the SRA Principles

Allegation 1.2 – Failed to replace a £32,354.15 cash shortage in the client account of Firm 1 promptly.

55. The SRA relies upon paragraphs 9 to 15 above, and on paragraphs 34 to 92 of the FIR [**JD1, 11**]. By amplification, the SRA highlights the following pertinent facts.

Background

56. The Qualified Accountant's Report identified that Firm 1 had incorrectly transferred client monies to its office account. Including a transfer to an incorrect recipient of £3,500, these transfers totalled £47,770.10, and the Respondent was notified of this by receipt of the email from the accountant on 13 July 2021 **[JD1, 174].**

57. The FIO noted that, whilst the Respondent had made some payments to rectify the cash shortages, at the extraction date of 30 November 2021, there remained a deficit of £28,854.15 in respect of the incorrect client to office account transfers.

58. In addition to these transfers, Firm 1 acted for Client C in respect of a housing disrepair claims against Hyde Housing Association Limited ('Hyde').

59. Hyde agreed to pay Firm 1's costs of £3500 but, in error, paid the costs twice with the second payment being received in August 2019. Firm 1 therefore raised a cheque for £3500, which was subsequently cancelled on 1 October 2020, causing a credit balance on client account for that amount.

60. Firm 1 then raised a cheque for £3500 erroneously in favour of Client C, which led to a shortage on client account for the same amount. This amount was not repaid until March 2022.

61. As detailed at paragraphs 85 to 92 of the FIR **[JD1, 20]** the FIO also identified that, for Firm 2, £3,400 of client money was incorrectly held in office account.

The Forensic Investigation

62. At the interview with the FIO, whilst partial rectification had taken place, the Respondent accepted that he had not rectified the cash shortage of £32,354.15 promptly **[JD1, 49]**.

Representations made by the Respondent in relation to allegation 1.2

63. The Respondent's position is detailed in the paragraph above.

Breaches of the Codes and Principles in relation to allegation 1.2

Principle 2 of the 2019 Principles, Paragraph 4.2 of the Code for Solicitors and Rule 6.1 of the 2019 AR.

64. By the Respondent's receipt of the QAR and subsequent partial rectification of the cash shortage, caused by a lack of appropriate safeguarding in place, he was aware that the cash shortage was present, and that it was his responsibility to rectify the situation. Rule 6.1 of the 2019 AR requires this a breach of the rules to be corrected promptly, or immediately in the event that the breach relates to monies improperly withdrawn from client account.

65. Nevertheless, some months after the Respondent was aware of the cash shortage, and had taken some remedial action, a cash remained present. Such action, or lack of action, cannot be seen as attempting to correct a breach of the rules promptly, nor immediately, and breaches Rule 6.1 of the 2019 AR

66. As a consequence of the Respondent's actions, which put client funds in jeopardy, and did not therefore safeguard them, Paragraph 4.2 of the Code of Conduct, is also breached.

67. Client money, and the willingness that the public must have to trust a solicitor and the profession with their funds, will be impacted negatively in a situation where a solicitor is aware of a cash shortage, but does not rectify the matter immediately or promptly. Such action will be seen as a breach of Principle 2 of the 2019 Principles.

Allegation 1.3: Failed to ensure that client money was returned promptly to the clients of Firm 1, as soon as there was no longer any proper reason to hold those funds.

68. The SRA relies on paragraphs 9 to 38 above, and paragraphs 35 to 71 of the FIR are relied upon in their entirety.

69. In respect of the client matters at Firm 1 for which the Respondent cancelled the unpresented cheques for the balance of funds remaining on their client accounts, the Respondent did not make appropriate efforts to ensure the clients' funds were returned to them.

70. 12 of the cheques had been unpresented for over 12 months when they were cancelled. When the Respondent arranged for the cheques to be cancelled, causing the funds to returned to client account, prior to the Forensic Investigation, there is no evidence that the Respondent made any attempts to contact the clients to ensure their funds could be returned.

Representations made by the Respondent in relation to allegation 1.3

71. During the interview with the FIO, the Respondent stated that he considered the monies on client account as money that belonged to Firm 1 due to the historic nature of some of the receipts.

72. The SRA does not accept this explanation for the following reasons:

    72.1. Cheques, in favour of clients, were cancelled on a number of matters;
    72.2. It should have been apparent that monies, which were credited to client account as a result of the cheque cancellations, were due to clients;
    72.3. The sums were not de minimis;
    72.4. The Respondent accepts making no checks on the matters to determine who was due the monies.

Breaches in relation to allegation 1.3

Rule 2.5 of the 2019 AR, and Principles 2 and 7 of the 2019 Principles

73. The monies held on client account arose from claims made by clients, and settlements of the same.

74. Even in a situation where the Respondent was not the fee-earner on a particular matter, he arranged for cheques to the clients to be cancelled and made no checks to determine the clients' up to date contact details so that the cheques could be reissued.

75. The matters had concluded, and there was no legitimate reason for the funds to be retained on client account and should have been remitted to the clients or efforts made to have these returned.

76. The Respondent did not make any such attempts prior to the Forensic Investigation commencing. Such conduct is not reflective of the Respondent ensuring that monies are returned promptly to a client, in breach of Rule 2.5 of the 2019 AR.

77. Such conduct, which deprives a client of the best chance to receive funds due to them, is clearly not in their best interests, and breaches Principle 7 of the 2019 Principles.

78. Conduct that impacts on the sacrosanctity of the client account, and the safeguards involved in ensuring that client monies are held securely, is conduct would also

detract from the public's trust in the profession and breaches Principle 2 of the 2019 Principles.

Allegation 1.4: Failed to ensure that client money was paid promptly into a client account for Firm 2

79. Paragraphs 20 to 27, and 77 to 92 of the FIR is adopted in its entirety **[JD1, 9 and 18]**.

80. In summary, the FIO identified that Firm 2 received £42,800 into its office account in November 2021. This sum was in respect of housing disrepair claims and was a mixture of both firm and client monies **[JD1, 18]**

81. Firm 2 did not open a client account until February 2022.

Representations made by the Respondent in relation to allegation 1.4

82. During the interview with the FIR, the Respondent accepted that Firm 2 should have operated a client account prior to February 2022.

83. In the Respondent's email of 6 June 2023, he accepts that a client account should have been opened but this 'error' was due to his *"…misunderstanding of the rules and limited circumstances in which a client account was not required."*

Breaches of the 2019 AR in relation to allegation 1.4

Rule 2.3 2019 AR, and Paragraph 9.2(a) of the SRA Code of Conduct for Firms

84. The Respondent, the COLP and COFA of Firm 2, did not open a client account when necessary. Instead, client funds were held in office account.

85. In such a situation, Rule 2.3 of the 2019 AR is breached and, as the Respondent was the COFA of Firm 2, consequently also breaches Paragraph 9.2(a) of the SRA Code of Conduct for Firms as he should have ensured Firm 2 complied with the 2019 AR.

Allegation 1.5: Failed to ensure that reconciliations took place at Firm 1 at least every five weeks.

86. Paragraphs 93 to 95 of the FIR are adopted in their entirety **[JD1, 21]**.

87. In summary, during an attendance on Firm 2 on 24 February 2022, the FIO noted that the last client account reconciliation for Firm 1 was undertaken on 28 February 2021 **[JD1, 155]**.

88. Between the reconciliation date, and the extraction date, the FIO identified that 144 transactions had been made through Firm 1's client account **[JD1, 172]**.

Representations made by the Respondent in relation to allegation 1.5

89. During the interview with the FIR, the Respondent stated that he viewed the client account as being *"…the agent of Clarke & Co".* **[JD1, 27].**

Breaches of the Solicitors Accounts Rules in relation to allegation 1.5

Rule 8.3 of the 2019 AR

90. No client account reconciliation took place at Firm 1 from 1 March 2021, until at least 24 February 2022. In that period, 144 transactions took place.

91. Consequently, the Respondent, as sole principal at Firm 1, breached Rule 8.3 as he should have ensured that client account reconciliations tool place at least every five weeks.

Allegation 1.6: Failed to disclose a Qualified Accountant's Report for Firm 1 for the accounting period 1 August 2019 to 31 July 2020 within six months of the period end date.

92. Paragraphs 102 to 107 of the FIR are adopted in their entirety.

93. In summary, for the accounting period of 1 August 2019 to 31 July 2020, a Qualified Accounting Report was prepared.

94. The Respondent was made aware of the qualifications in the report, and that as a result it needed to be submitted to the SRA, by virtue of an email from the accountant to the Respondent, dated 13 July 2021 **[JD1, 174]**.

Representations made by the Respondent in relation to allegation 1.6

95. At the interview with the FIO, the Respondent accepted that the QAR was accurate. He stated that he had unsuccessfully attempted to submit the report electronically, but that he had made no other efforts to send it to the SRA.

96. The Respondent did also accept that he should have made alternative efforts to ensure the SRA received the QAR.

Breaches in relation to allegation 1.6

Rule 12.1 of the 2019 AR

97. Rule 12.1 of the 2019 AR puts an absolute obligation on a solicitor to ensure that, if a QAR is received by them in respect of their firm's accounts, it must be delivered to the SRA within six months of the end of the accounting period.

98. The Respondent did not ensure that the SRA received the QAR, and therefore breached Rule 12.1.

Principles 2 and 5 of the 2019 Principles

99. The SRA relies on the test in *Wingate v SRA* [2018] EWCA Civ 366, as set out in paragraph 44.

100. The QAR, which clearly demonstrates that the accountant's report was qualified and therefore needed to be sent to, and received by, the SRA. In addition, the email from the accountant to the Respondent, which had the QAR attached, also clearly stated this.

101. Despite the clear indication that the QAR had to be received by the SRA, the Respondent did not make any, or sufficient attempts to ensure it was received. Such an act, or lack of an act, is not indicative of a solicitor acting with integrity and not performing the necessary obligations will impact on the public's trust.

Principle 4 of the 2019 Principles

102. The SRA relies upon the test in *Ivey v Genting Casinos* [2017] UKSC 67, as set out in paragraph 49 above.

103. When the Respondent received the QAR, he knew or believed:

103.1. The accountant's report was qualified;
103.2. The reasons for the qualifications related to concerns regarding client monies;
103.3. The email, from the accountant that attached the QAR, stated that the QAR had to be received by the SRA;
103.4. The QAR itself stated that, due to the qualification, it must be sent to, and received by the SRA.

104. Despite the clear warnings given to the Respondent, by both the QAR and the accountant, he did not make any, or appropriate efforts to inform his regulator that the accountant's report was qualified.

105. Ordinary decent people would consider it dishonest for a solicitor to not ensure that their regulator had successfully received such an important document, and thereby avoiding additional scrutiny.

106. An honest solicitor would have ensured that the SRA received the QAR.

The SRA's investigation

107. The SRA has taken the following steps to investigate the allegations which it makes against the Respondent.

108. On 23 May 2023, the SRA emailed the Respondent, and provided him with a copy of the FIR and was asked to provide any comment.

109. The Respondent replied by email of 6 June 2023 **[JD1, 177].** and stated:

"To be honest, there is likely little I can find to comment on in the report as, so far as I can see (and I have not taken my own forensic advice), it appears to be factually accurate. Obviously, it would appear that I misjudged the situation I found myself in after the abrupt departure of Mr Barnes (taking along with him the former firm's clients) and made the wrong call regarding what seemed to

me, to be diverse historic balances that I needed to dispose of in order to close the firm".

110. The Respondent denied his actions were dishonest. In mitigation, he stated that the concerns arose during the Covid pandemic, when the Respondent was under significant pressure.

111. An email to the Respondent, attaching the Notice of its intention to refer his conduct to the tribunal ('the Notice'), was sent to him on 2 February 2024 **[JD1, 180]**. A deadline of 16 February 2024 was given for any representations to be provided.

112. Despite extensions of time being grated, no representations were received from the Respondent.

113. On 28 April 2024, an Authorised Decision Maker at the SRA decided to refer the conduct of the Respondent to the Tribunal **[JD1, 207]**.

I believe that the facts and matters stated in this statement are true.



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James Danks

Dated this 1 August 2024

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No:**

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

TIMOTHY CLARKE

Respondent

APPENDIX 1 TO STATEMENT PURSUANT TO RULE 12 (2) SOLICITORS (DISCIPLINARY PROCEEDINGS RULES) 2019

Relevant Rules and Regulations

Code of Conduct for Solicitors, RELs and RFLs

Paragraph 4.2	You safeguard money and assets entrusted to you by clients and others.

SRA Principles 2019

Principle 2	You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
Principle 4	You act with honesty.
Principle 5	You act with integrity.
Principle 7	You act in the best interests of each client.

SRA Accounts Rules 2019

Rule 2.3	You ensure that client money is paid promptly into a client account unless: (a) in relation to money falling within 2.1(c), to do so would conflict with your obligations under rules or regulations relating to your specified office or appointment; (b) the client money represents payments received from the Legal Aid Agency for your costs; or (c) you agree in the individual circumstances an alternative arrangement in writing with the client, or the third party, for whom the money is held.
Rule 2.5	You ensure that client money is returned promptly to the client, or the third party for whom the money is held, as soon as there is no longer any proper reason to hold those funds.
Rule 5.1	You only withdraw client money from a client account: (a) for the purpose for which it is being held; (b) following receipt of instructions from the client, or the third party for whom the money is held; or on the SRA's prior written authorisation or in prescribed circumstances.
Rule 6.1	You correct any breaches of these rules promptly upon discovery. Any money improperly withheld or withdrawn from a client account must be immediately paid into the account or replaced as appropriate.
Rule 8.3	You complete at least every five weeks, for all client accounts held or operated by you, a reconciliation of the bank or building society statement balance with the cash book and the client ledger total.
Rule 12.1	If you have, at any time during an accounting period, held or received client money, or operated a joint account or a client's own account as signatory, you must: (a) obtain an accountant's report for that accounting period within six months of the end of the period; and (b) deliver it to the SRA within six months of the end of the accounting period if the accountant's report is qualified to show a failure to comply with these rules, such that money belonging to clients or third parties is, or has been, or is likely to be placed, at risk.

SRA Code of Conduct for Firms 2019

Rule 9.2(a)	If you are a COFA you must take all reasonable steps to: (a) ensure that your firm and its managers and employees comply with any obligations imposed upon them under the SRA Accounts Rules.