

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12398-2022

## BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

JAMES ALEXANDER HOWARD

Respondent

---

Before:

Mr A Ghosh (in the chair)

Mr J Abramson

Mr P Hurley

Date of Hearing: 27 February – 2 March 2023

---

## Appearances

Andrew Bullock, barrister of the Solicitors Regulation Authority Ltd for the Applicant.

The Respondent represented himself.

---

## JUDGMENT

---

## **Allegations**

1. The Allegations against Mr Howard were that while in practice as a Solicitor at Penningtons Manches Cooper LLP (“the Firm”):

1.1 on 21 March 2019 the Respondent contacted the Co-operative Bank (“the Bank”) by email and stated it had failed to follow his instructions to make a transfer of his funds in circumstances where he knew that statement to be false. By doing so, the Respondent breached Principle 2 and/or Principle 6 of the SRA Principles 2011 (“the Principles”).

### PROVED

1.2 The Respondent created or caused to be created a false letter dated 26 March 2019 purporting to be from the Bank stating that the sum of £189,472.36 was held in his bank account in circumstances where he knew that:

1.2.1 the Bank had not sent him a letter in these terms; and / or

1.2.2 he did not hold £189,472.36 in his bank account.

In doing so, the Respondent breached Principle 2 and/or Principle 6 of the Principles.

### PROVED

1.3 The Respondent created or caused to be created a false letter dated 12 September 2019 purporting to be from the Bank which stated that the Bank was in contact with the Financial Conduct Authority and that a transfer of his funds would be made within 14 days in circumstances where he knew this was not true. In doing so the Respondent breached Principle 2 and/or Principle 6 of the Principles.

### PROVED

1.4 The Respondent created or caused to be created a statement of account dated 11 September 2019 purportedly from the Bank showing a credit balance of £189,387.93 on an account held with the Bank when he knew that he did not hold these funds in any account he held with the Bank. In doing so, the Respondent breached Principle 2 and/or Principle 6 of the Principles.

### PROVED

1.5 Between 15 March 2019 and 22 November 2019 the Respondent created up to 16 misleading emails which purported to show correspondence with the Bank which had not taken place including:

- i. Respondent to Sadaf Khan sent on 15 March 2019 at 11:35
- ii. Sadaf Khan to the Respondent sent on 15 March 2019 at 12:57
- iii. Lisa Andronicou to the Respondent sent on 25 March 2019 at 14:59
- iv. Respondent to Complaints sent on 17 May 2019 at 16:36
- v. Gemma Plant to the Respondent sent on 7 November 2019 at 16:03
- vi. Respondent to Gemma Plant sent on 8 November 2019 at 07:33

- vii. Gemma Plant to the Respondent sent on 8 November 2019 at 10:36
- viii. Respondent to Gemma Plant sent on 8 November 2019 at 12:47
- ix. Gemma Plant to Respondent sent on 8 November 2019 at 13:47
- x. Respondent to Gemma Plant sent on 8 November 2019 at 14:35
- xi. Gemma Plant to the Respondent sent on 8 November 2019 at 16:23
- xii. Respondent to Gemma Plant sent on 8 November 2019 at 17:21
- xiii. Gemma Plant to the Respondent sent on 11 November 2019 at 09:07
- xiv. Gemma Plant to the Respondent sent on 11 November 2019 at 13:43
- xv. Respondent to Gemma Plant sent on 22 November 2019 at 15:22
- xvi. Gemma Plant to the Respondent sent on 22 November 2019 at 16:29

In doing so, the Respondent breached Principle 2 and/or Principle 6 of the Principles.

PROVED

- 1.6 Between 15 October 2019 and 7 November 2019 the Respondent created up to 6 false emails which purported to show correspondence with the Financial Ombudsman which had not taken place as follows:

- i. email from the Respondent to (amongst others) Sana Yakub sent on 15 October 2019 at 10:24
- ii. email from Sana Yakub to the Respondent sent on 22 October 2019 at 14:04
- iii. email from the Respondent to Sana Yakub sent on 25 October 2019 at 12:29
- iv. email from Sana Yakub to the Respondent sent on 25 October 2019 at 16:04
- v. email from the Respondent to Paula Moore sent on 7 November 2019 at 07:33
- vi. email from Paula Moore to the Respondent sent on 7 November 2019 at 14:23

In doing so, the Respondent breached Principle 2 and/or Principle 6 of the Principles.

PROVED

- 1.7 Between 8 May 2019 and 28 May 2019 the Respondent created up to four false emails which purported to show correspondence with the Financial Conduct Authority which had not taken place as follows:

- i. email Daniel Duncan to the Respondent sent on 8 May 2019 at 14:22;
- ii. two emails from Samantha Stewart to the Respondent sent on 17 May 2019 at 15:57 and 16:31;

- iii email from Scott Marshall to the Respondent sent on 28 May 2019 at 10:42.

In doing so, the Respondent breached Principle 2 and/or Principle 6 of the Principles.

### PROVED

2. In addition, Allegations 1.1 – 1.7 above were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the Allegations.

### **Executive Summary**

3. Mr Howard made a complaint to the Bank that it had failed to make a transfer of £189,000 which, he said, he had instructed it to do. It was found that he had never given such an instruction and did not have more than minimal balances in his accounts. Mr Howard did this in order to avoid having to tell a woman with whom he was, at the material time, in a relationship, Ms Archer, that he did not have the funds to complete a purchase of a property with her. In order to maintain this deception, Mr Howard pursued his complaint with the Bank and also involved the Financial Ombudsman, the Financial Conduct Authority and a journalist. He also fabricated letters and emails in furtherance of his bogus complaint.
4. Mr Howard admitted to an investigator from the Bank, Mr Cooney, that he had falsified documents, but denied doing so during the proceedings. Mr Cooney gave evidence, as did Ms Archer and the SRA's Forensic Investigations Officer, Ms Castro. Mr Howard chose not to give evidence himself.
5. The Tribunal found all matters proved on the balance of probabilities.

### **Sanction**

6. Mr Howard was [struck off the Roll](#) and ordered to pay £19,700 in costs.

### **Documents**

7. The Tribunal considered all of the documents in the case which were included in an agreed electronic hearing bundle.

### **Preliminary Matters**

#### Amendments to Rule 12 statement

8. Mr Bullock, on behalf of the SRA, applied to make minor amendments to the Rule 12 statement, mainly to correct typographical errors and to remove a reference to one document that could not be located in the exhibits. Mr Howard did not oppose the application.

9. The Tribunal was satisfied that there was no prejudice to Mr Howard by the proposed amendments and accordingly granted leave for the Rule 12 statement to be amended.

### **Factual Background**

10. Mr Howard was admitted to the Roll on 17 April 2000. He practised at the Firm from 14 July 2014 to 19 June 2020. At the time of the hearing he did not hold a Practising Certificate.
11. The matter came to the attention of the SRA on 6 December 2019 when David Cooney, Senior Investigator in the Major Operations department of the Co-Operative Bank plc (“the Bank”) alleged that Mr Howard had “forged Britannia letters that had been produced in furtherance of a complaint against the bank”.
12. On 15 March 2019 at 08:24 Mr Howard telephoned the Bank. He enquired as to the balance on his Select Access Cash Individual Savings Account, and was informed the balance was £11.76.
13. Mr Howard also held a Flexible Savings Account with a balance of £10.04; a Joint account with Mrs Howard with a balance of £31.02; and a First Saver account of which Mr Howard was the signatory and his daughter the beneficiary, with a balance of £1,444.91.
14. Mr Howard did not query the information he was provided with by the Bank in the course of that telephone conversation.
15. On 21 March 2019 at 09:48, Mr Howard sent an email to the Bank with the subject matter being his ISA number in the following terms:

“I instructed Britannia to make a payment on Wednesday of last week. I then found out the payment was made the next day only to find my money has still not arrived. The money is needed for a hoarse [sic] purchase that I am overdue completing on. I am now at risk of losing my dream house and more importantly am concerned where the money is. I have visited Branch, spoken to the police and spoken to several representatives of the co-op and still nothing. Can you please advise how this is being resolved, when I can expect my money and what I can do to speed this up.”
16. On 26 March 2019 the Bank wrote to Mr Howard at the address it held on file for him. This was Mr Howard’s matrimonial home he had shared with his wife and two children. The letter stated:

“...after reviewing your records I’m unable to evidence any request for a payment to be made from any of your accounts in the last 12 months. The only contact we have from you is a phone call on 15 March in which you requested information on the balances of your accounts.

We also don’t have evidence of any contact by telephone, post or in branch to chase up a transfer. The only contact we’ve received is via email and through social media from a third party.

Because we don't have any evidence of a request to make a transfer I'm unable to uphold your complaint."

17. The letter was sent using the Royal Mail "Signed For" service. The letter was signed for on 27 March 2019 at 11:13.
18. On 28 March 2019 at 09:14 Mr Howard called the Bank and asked how he could withdraw monies from his ISA and transfer them to another account held in his name with Barclays. Having been informed that he could make the transfer over the phone, Mr Howard stated that he would "go and grab the details and I'll give you a call back later".
19. On 29 March 2019 at 12:19 Mr Howard called the Bank. He stated that his "ex-partner" kept ringing the Bank about his ISA and "information is being divulged about my account and about a payment instruction being set up or not being set up". Mr Howard requested the Bank to speak only to him. When asked what information his ex-partner was seeking, he replied, "...she's asking whether a transfer's (sic) being set up and to send money across. Now, I have – she – basically it's money that I had in there previously and I moved, and it's actually in another account."
20. Mr Howard was informed that his ex-wife had tried to call the Bank earlier that day and had provided the Respondent's mobile phone number for the Bank to call him concerning a CHAPS payment. The Bank asked Mr Howard whether he had tried to arrange a CHAPS payment, to which he replied, "No, I haven't." The Bank asked Mr Howard if he thought there was an attempt to defraud him, to which he answered, "No, not at all. I mean obviously there's negligible amounts in those accounts anyway."
21. On 8 July 2019 at 10:54 Ms Archer and Mr Howard called the Bank together and spoke with Simon Thaw. Mr Howard explained that he was calling about money transferred into his ISA from his Barclays account "...about a year and a half ago, a couple of years ago." He said the amount was "About 188, and then I haven't paid any attention to the account since then, and then I trans – put in a request to transfer money in December/January time, and then that money didn't materialise, and then I chased it up and I got no response, and then since then I've been chasing the money, erm, to, one, find out where it is, and two, when I can receive it".
22. On 9 July 2019 the Bank sent a statement to Mr Howard confirming his ISA balance was £11.85.
23. On 15 July 2019 at 16:21 Mr Howard called the Bank and again spoke with Simon Thaw. Mr Thaw confirmed that a response to Mr Howard's complaint had been sent to him by post. As Mr Howard said he had not received that letter, it was agreed that a further copy of the letter dated 26 March 2019 would be posted to him at the same address. This was duly done.
24. On 26 September 2019 at 14:57 Mr Howard emailed Mr Thaw referring to a letter sent by the Bank on 12 September 2019 and stating he expected to receive his monies that day. Mr Howard alleged that over two weeks had passed since he had driven to the Bank's head office to meet with a Robert Bailey and that "I drove to your head office again yesterday seeing as monies had failed to arrive and was given no explanation

other than confirmation monies would arrive any day”. At 15:37 the same day, Robert Bailey confirmed in an email to Mr Thaw that he had not met with Mr Howard at the Bank’s head office, contrary to what Mr Howard had asserted.

25. The matter was allocated to Mr Cooney in the Major Investigations department at the Bank on 28 November 2019. During the course of Mr Cooney’s investigation, he discovered a series of Twitter messages exchanged on 10 October 2019 between the Bank and Ms Archer.
26. Attached to one of Ms Archer’s messages sent at 11:20 was a letter purportedly sent by the Bank to Mr Howard on 26 March 2019. An examination of this letter revealed that it was identical to the genuine letter the Bank had sent to Mr Howard on the same date, save that:
  - the address details had been altered to show that the letter was addressed to Mr Howard at his mother’s house, not his matrimonial home.
  - three new paragraphs had been inserted as follows:

“I have reviewed your records and can see the amount you requested, £189,000, to be transferred was more than in the money in your account, £189,472.36. You should have been contacted to query the amount. We then placed the money in a suspense account pending your authority to amend the outgoing payment. The monies were then unfortunately misallocated internally [sic] to another account.

We are working on correcting this as a matter of urgency. I am afraid I am unable to provide you with a definite timeframe as to when all will be resolved but it should be any time now. I can assure you though that your money is not lost nor has there been a fraud. We will also compensate you for any loss you suffer because of this error on our part.

I also apologise for the misinformation you may have been given about the reasons for the non-payment from our side. We have not been able to immediately identify the reason for the error. I can assure you we are investigating this thoroughly.”

27. Mr Cooney suspected that the genuine response letter dated 26 March 2019 had been altered before being returned to the bank in furtherance of the complaint. He confirmed that there never was £189,000 in Mr Howard’s ISA or any other accounts he held with the Bank and no request to transfer any amount was ever received from him.
28. During the course of his investigation, Mr Cooney reviewed an email sent to the Bank on 28 November 2019 at 11:38 by Katie Morley, a ‘Consumer Champion’ and journalist at The Daily & Sunday Telegraph. Ms Morley had been approached by Mr Howard by email on 25 September 2019 at 21:42, asking her to assist with his complaint against the Bank. She was subsequently approached by Ms Archer on 28 November 2019 at 08:57. Attached to Ms Morley’s email were two letters purportedly sent by the Bank to Mr Howard – one being the altered letter dated 26 March 2019, and the other being a purported letter dated 12 September 2019.

29. The purported letter dated 12 September 2019 was addressed to Mr Howard at his mother's address and stated:

“We write further to our meeting yesterday. We are unable at this stage to discuss with you in any detail the reasons why we have been unable to carry out your bank transfer. We explained that our investigations are ongoing. We are in contact with the Financial Conduct Authority about your account and complaint.

We confirm that your money is not lost, stolen etc. We enclose a statement of your account. You explained you urgently need the money for a house purchase. We are unable to immediately to [sic] transfer the money to you. We can confirm that we are authorised to confirm the transfer will be made to you within 14 days of this letter.”

30. Mr Cooney stated that the Bank was not in contact with the FCA concerning Mr Howard's complaint and had not sent any letters to the address to which the letter was addressed. Accordingly, this letter was “totally fictitious”.

#### The 2 December 2019 telephone conversation

31. On 2 December 2019 at 10:15 Mr Cooney received a telephone call from Mr Howard. Mr Cooney made a contemporaneous handwritten note of the conversation. In that conversation Mr Howard told Mr Cooney that he and Ms Archer were seeking to pool their resources to buy a property together. He did not know how much money he had. He owned a property (the matrimonial home) and lived between there and Ms Archer's flat. He subsequently clarified that he lived at the flat he rented with Ms Archer full-time but had access to the matrimonial home.
32. When questioned about his complaint, Mr Howard had confirmed “there was no large sum to transfer”. He said he had £10 or £11 in one account and £100 in another. Mr Howard was asked if the matter should be reported to the police and replied that he thought this was “unnecessary”.

#### The 3 December 2019 telephone conversation

33. On 3 December 2019 Mr Cooney received another telephone call from Mr Howard and again made a contemporaneous handwritten note of the conversation.
34. Mr Cooney asked Mr Howard to provide a truthful account. Initially Mr Howard said that he had told Ms Archer he had funds with the Bank and was waiting for his money to come through. He thought he held funds with the Bank and had asked for them to be transferred, although he could not remember whether the request was verbal or in writing. When challenged by Mr Cooney, Mr Howard stated that he had actually been waiting for the funds from his divorce but that “would not be quick” so he was “trying to buy himself some time”. He apologised for the trouble he had caused the Bank and remarked that he did not want to let Ms Archer down.



35. Mr Howard explained to Mr Cooney that he had received a letter from the Bank and had “engineered it”. When asked exactly what he meant by this, Mr Howard stated he had “changed a sample”. Mr Cooney accused him of producing “several false documents purporting to be from the bank stating that he had £189k with us”. Mr Howard “accepted he had done so”.
36. Mr Cooney told Mr Howard that he would be reporting the matter to the police and the SRA.
37. Mr Howard did not accept Mr Cooney’s account of these conversations.
38. Mr Cooney provided a further witness statement in respect of the documents that formed the basis of Allegation 1.5. He confirmed that these documents were not found in the bank’s system and had been falsified.
39. Mr Cooney further confirmed that Mr Howard never held £189,387.93 in any of his accounts held with the Bank. The address on the Bank statement was not the current address the Bank held on file for Mr Howard and so the Bank would not have sent any statements to that address.

#### The Financial Ombudsman

40. Amanda Crozier, solicitor and Legal Counsel at the Financial Ombudsman had provided a Witness Statement stating that, she had located a complaint made by Mr Howard on 5 June 2019. On 26 June 2019 the Financial Ombudsman sent him a complaint form to complete and return, followed by a reminder letter to him on 27 August 2019. This was not received and the matter was therefore closed.
41. Ms Crozier had confirmed that there was no record of any of the emails that formed the basis of Allegation 1.6.

#### The FCA

42. Daniel Duncan, a caseworker at the FCA, had provided a Witness Statement in which he confirmed that Mr Howard had emailed the Bank on 26 March 2019 and copied in the FCA’s Customer Contact Centre. The email account used by the Respondent was his work email address of james.howard@penningtons.co.uk. Mr Duncan replied on 28 March 2019 at 12:22 thanking the Respondent for copying the FCA into this email, noting that the Respondent had not raised any specific questions with the FCA and providing a link to the FCA’s complaints process.
43. Mr Duncan considered the emails purportedly exchanged between Mr Howard and the FCA that were the subject of Allegation 1.7. Mr Duncan carried out a search on the FCA’s system and was unable to locate them. The dates that Mr Howard had purported to email the FCA according to the FCA’s system, differed to the dates of the emails produced.

Action taken by the Firm

44. On 6 December 2019 Mr Howard spoke with Charlotte Duran, Deputy COLP at the Firm, who made a contemporaneous note of their discussion and the account provided by Mr Howard.
45. The note recorded that Mr Howard stated that he intended to buy a property with his new partner, but that was proving difficult as he had an existing mortgage with his wife. Mr Howard held an account with the Bank and at the time he was looking to secure a mortgage, he believed it held approximately £100. Mr Howard had contacted the Bank to request confirmation of his account balance, did not receive a response and so made a complaint. Mr Howard recalled receiving a letter from the Bank acknowledging his complaint and to say they were looking into the matter. He called on a sporadic basis for an update but then would forget about the matter. Mr Howard had received a telephone call from the Bank stating they held two “fake” letters which alleged that, after having looked into Mr Howard’s complaint, they could confirm that £180,000 was held in his account. The Bank had called Mr Howard to inform him that the matter would be reported to the SRA as the Bank believed Mr Howard “had a part in faking or tampering with these letters”.
46. Mr Howard had stated to the firm that “he has no idea what letters they [the Bank] are referring to. He has not seen the letters with references to £180k and confirms that, of course, the account has nothing like that in it.”
47. On 17 February 2020 the SRA informed the Firm of its investigation into Mr Howard’s conduct.
48. The Firm commenced its own investigation and on 18 February 2020 Ms Duran spoke with Mr Howard. During this conversation Mr Howard stated he did “not recall ever seeing this [the purported letter dated 12 September 2019 which he identified as ‘Letter 2’] before”. Further, that “his brother had confessed to faking the letter about three weeks ago”.
49. On 27 February 2020 an investigatory meeting took place at which Mr Howard explained to the Firm that he was looking to “retrieve the money” from the Bank but was “being fobbed off” between January – November 2019, with the Bank “saying there had been no instruction to transfer money and they were saying no money had been received into the account”. This was despite Mr Howard’s family having allegedly told him that they had transferred money to his Bank account, according to Mr Howard.
50. When the investigating partner at the Firm observed that Mr Howard had insufficient funds in his account, the Respondent agreed and commented “I was waiting for money from another source and was led to believe it was there, in the Britannia account”.
51. When asked about the two letters purportedly sent from the Bank, Mr Howard indicated that his brother had admitted to “tampering with the letter, only one of them”. Mr Howard stated the Bank had accused him of forging the letters and “I said I did do it to protect my partner and family” and that he “took the heat”. He also stated that he had “inadvertently misled” Ms Archer.

52. On 21 April 2020, a disciplinary meeting with the firm took place during which Mr Howard stated that his brother had admitted that he had “produced two letters”.
53. On 22 April 2020 Mr Howard provided the Firm with a handwritten letter purportedly signed by his brother, Richard Edward Howard, dated 21 April 2020 stating:

“I, Richard Edward Howard of [mother’s address] confirm that I produced falsified letters from Britannia Building Society. This was without the knowledge of my brother James Alexander Howard. I confirm that I believe the contents of this my statement to be true.”

54. On 23 April 2020 a Disciplinary Outcome Meeting took place, at which the decision was taken to issue Mr Howard with a final warning. Mr Howard left the Firm on 19 June 2020.

### The SRA Investigation

55. On 19 February 2020 Mr Howard emailed the SRA. He stated that he and Ms Archer intended to pool their resources to buy a property together but that his money was “tied up in the matrimonial home. So I discussed borrowing from my family in the interim. The money was being lent to me by my mother and sister collectively”. The money would be repaid when funds became available from the matrimonial home.
56. Mr Howard told the SRA that he had provided his bank details to his family and he was told in “early 2019” that £189,000 had been transferred to his Bank account. Mr Howard said that when he had spoken to the Bank, he recalled being told that they had not received a transfer request, but not that there were insufficient funds in the account to make the payment.
57. Mr Howard told the SRA that he received the fraudulent letter dated 26 March 2019 which confirmed the monies were in his account and believed this to have been genuine. He could not recall receiving the letter dated 12 September 2019 purportedly from the Bank.
58. Mr Howard told the SRA that his family had confessed that they had never transferred £189,000 to his Bank account. When the Bank had accused him of fabricating the letters he had not “outright” denied this as he was in an open plan office and he was concerned for his family and partner.
59. On 28 May 2020 Mr Howard had provided the SRA with a copy of the handwritten letter dated 21 April 2020 purportedly signed by Richard Howard, admitting to falsifying the two letters from the Bank.
60. On 5 October 2020 at 18:22 an email was purportedly sent by Richard Howard to the Investigating Officer at the SRA stating he “did create the falsified letters from Britannia Building Society to my brother James”. Richard Howard purportedly explained that his mother and sister “were going back on lending” Mr (James) Howard the money and he thought if James Howard “believed the money was coming then that would give my mom and sister time to change their mind or tell him”.

## Witnesses

61. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:

62. Charlotte Archer

62.1 Ms Archer confirmed that her witness statement was true to the best of her knowledge and belief.

62.2 In cross-examination, Ms Archer accepted that she had not seen Mr Howard create or send any of the emails or documents that the SRA alleged he did, but she told the Tribunal that they had spoken about them when they were sent.

62.3 Mr Howard put to Ms Archer that when Katie Morley (from the Telegraph) was involved, she (Ms Morley) had said she would need to see the falsified letters and that Mr Howard had given permission for them to be sent to her. Ms Archer accepted this.

62.4 Mr Howard put to Ms Archer that he had always “paid my way” financially. Ms Archer told the Tribunal that her life had been “irreparably damaged” because of his actions.

62.5 Ms Archer did not accept that Mr Howard worked from home during the day. She could not recall if he worked at home in the evenings but he did have a computer.

63. David Cooney

63.1 Mr Cooney confirmed that his witness statements were true to the best of his knowledge and belief.

63.2 Mr Cooney read out his handwritten notes of his telephone calls with Mr Howard on 2 December 2019 and 3 December 2019. Mr Cooney told the Tribunal that he would have made some initial rough notes during the call and then, immediately the call ended, would have created a more thorough and detailed document from his memory of the conversations.

63.3 Mr Bullock asked Mr Cooney how he knew that Mr Howard was a solicitor. Mr Cooney stated that it was written in the ‘occupation’ field on his account. He said that several colleagues had been dealing with matter for some months and so he was aware that Mr Howard was a solicitor.

63.4 In cross-examination, Mr Howard asked Mr Cooney if any notes existed of a third telephone conversation that had taken place between them. Mr Cooney stated that in lead up to these proceedings he had been asked if there had been a third conversation. Mr Cooney had no record of a third conversation but conceded that he could not say for certain whether or not one took place. As to why there were no notes, Mr Cooney stated

that if nothing of consequence was discussed, then there would probably be no notes taken. Mr Cooney stated that his desk telephone did not have the facility to record calls.

- 63.5 Mr Cooney told the Tribunal that he had become aware of this matter on 28 November 2020. He had no involvement before then.
- 63.6 Mr Howard took Mr Cooney to a Royal Mail tracking document, showing delivery of an item on 27 March 2019 at 11.13am. Mr Cooney accepted that this document did not show an address. He noted that it had been signed for in the name "Hiward". Mr Cooney could not comment on the suggestion that the signature did not resemble Mr Howard's name.
- 63.7 Mr Howard put to Mr Cooney that the Bank had spoken to Ms Archer about Mr Howard's banking matters. Mr Cooney told the Tribunal that the Bank had been "forced into a position" to have conversations with Ms Archer as it was being "bombarded by social media, emails and journalists".
- 63.8 Mr Howard put to Mr Cooney that he had no recollection of saying that he had "engineered" the letter from the Bank and suggested that it was unusual language to use. Mr Cooney agreed it was an unusual word but told the Tribunal that he was "100%" certain that Mr Howard had used it. Mr Cooney told the Tribunal that he interpreted the use of the phrase as "softer" than saying "I forged the document".
- 63.9 Mr Howard put to Mr Cooney that the third telephone conversation took place on 6 December 2019 and that Mr Cooney had told him "if you could travel up here then you and I can sit in a room and have it out". Mr Cooney told the Tribunal that he did not deny a third telephone call took place.
- 63.10 Mr Howard asked Mr Cooney if he accepted that using such language would be considered threatening, intimidating and would possibly warrant Police involvement. Mr Cooney did not agree.
- 63.11 Mr Howard put to Mr Cooney that there were inconsistencies between his initial written notes and his final version and suggested that he had missed out pieces of information. Mr Cooney told the Tribunal that he took exception to the suggestion that he was misrepresenting what Mr Howard had said. He told the Tribunal that he was making those notes while having a conversation and was trying to process a lot of information. There was "no way" he would have written something down if it had not been said by Mr Howard. Mr Cooney told the Tribunal that the first set of notes were "written at speed" and the second set "embellished while events were still fresh in my mind". Mr Cooney stated that his notes were accurate and that the second document was a better record of what had been discussed than the first.
- 63.12 In re-examination, Mr Cooney was asked in what sense he had used the word "embellished". He stated that he meant 'added to' but did not mean that he was "making things up". He was adding and including things that were in his memory that had not necessarily been written down on the page initially.

- 63.13 Mr Howard asked Mr Cooney if there was any way the bank would transfer £189,000 without that money being in the bank account. Mr Cooney confirmed that there was not.
64. Kim Castro (FI Officer)
- 64.1 Ms Castro is a Forensic Investigations Officer with the SRA. She confirmed that her witness statement was true to the best of her knowledge and belief.
- 64.2 Mr Howard asked Ms Castro about the third conversation that he said he had held with Mr Cooney. Ms Castro did not recall Mr Howard telling her about this, but did not deny he had done so. Ms Castro recalled asking Mr Cooney for further evidence but could not recall if it covered the topic of a third telephone conversation. Had Mr Howard raised a concern about the content of such a conversation, Ms Castro would have followed it up. However she had been away from work for a period of time, during which time the case was handled by colleagues.

### **Findings of Fact and Law**

65. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the civil standard. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Mr Howard's rights to a fair trial and respect for his private and family life under, respectively, Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

### Article 8 Submissions

66. The Tribunal invited submissions on the extent to which Article 8, having regard to Beckwith v Solicitors Regulation Authority [2020] EWHC 3231 (Admin), was engaged in respect of conduct that, if proved, may have taken place wholly or mainly in Mr Howard's private life. The Tribunal also invited submissions on Farquharson v Bar Standards Board [2022] EWHC 1128 (Admin) on a similar point.
67. The submissions are summarised below. The Tribunal considered these submissions and reached its decision once it had made findings of fact.

### Applicant's Submissions

68. Mr Bullock referred the Tribunal to Beckwith at [33]:

“The standards that give substance to the obligation to act with integrity must themselves be drawn from some legitimate source - they must stem from legitimate construction of the rules made in exercise of the section 31 power. To the extent that the obligation to act with integrity includes a requirement not to act dishonestly, the judgment in *Wingate* is authority for the proposition that properly interpreted, the Handbook imports the well-known legal definition of what is dishonest. So far as the requirement to act with integrity extends further, we accept and agree with the point made in *Wingate* that the Tribunal is a body well-equipped to act in the manner of a professional jury to identify what of

integrity. Yet when performing this task, the Tribunal cannot have carte blanche to decide what, for the purposes of the Handbook, the requirement to act with integrity means. The requirement to act with integrity must comprise identifiable standards. There is no free-standing legal notion of integrity in the manner of the received standard of dishonesty; no off-the-shelf standard that can be readily known by the profession and predictably applied by the Tribunal. In these circumstances, the standard of conduct required by the obligation to act with integrity must be drawn from and informed by appropriate construction of the contents of the Handbook, because that is the legally recognised source for regulation of the profession.”

69. Mr Bullock submitted that there was a distinction between dishonest conduct, well recognised as amounting to a lack of integrity, and non-dishonest conduct where one needed to refer to the SRA Code of Conduct for Solicitors. Mr Bullock submitted that in this case, the Tribunal would struggle to arrive at a scenario where it found the Allegations proved, but that Mr Howard was not dishonest. The falsification of documents was clearly and obviously a dishonest act.

70. The Chair noted that Beckwith was concerned with boundaries between a solicitor’s private life and their professional life and referred Mr Bullock to [54]:

“There can be no hard and fast rule either that regulation under the Handbook may never be directed to the regulated person’s private life, or that any/every aspect of her private life is liable to scrutiny. But Principle 2 or Principle 6 may reach into private life only when conduct that is part of a person’s private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession (Principle 6). Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook. In this way, the required fair balance is properly struck between the right to respect to private life and the public interest in the regulation of the solicitor’s profession. Regulators will do well to recognise that it is all too easy to be dogmatic without knowing it; popular outcry is not proof that a particular set of events gives rise to any matter falling within a regulator’s remit.”

71. Mr Bullock submitted that the point he was addressing is a prior issue that arose in Beckwith, which was the extent to which findings of misconduct need to be tethered in the Code of Conduct or other relevant legislation. Mr Bullock submitted further that, on his reading of Farquharson, dishonesty was well understood to amount to professional misconduct.

72. In relation to Farquharson, Mr Bullock referred to [180]:

“In the circumstances I conclude that the finding that Charges 2 and 3 were made out was necessary and proportionate given the seriousness of the conduct involved and the importance of making clear to the Appellant, to others in the profession and to the public at large that behaviour of this kind is not acceptable by a barrister. In so concluding, I do not accept Mr Ruffell’s additional proposition that the Appellant was relying on the fact that A and Z were members of the Bar to give an enhanced credibility to the story he was telling

his partner; there is no evidence of this and on the face of it, he asked them to lie because they were the people he was with during the relevant evening.”

73. Mr Bullock submitted that on a proper analysis, this case plainly fell within proper remit of the regulator for two reasons. Firstly, there was a nexus to practice insofar as Mr Howard had sent emails from his professional email address and had confirmed in conversations with the Bank that he was a solicitor. Secondly, even if one accepted the proposition that a dishonest ‘white lie’ would be outside a regulator’s remit, this was not such a case. Mr Bullock described this case as “wholesale dishonesty involving fabrication of multiple documents” and the creation of a false narrative with a view to deceiving Ms Archer and potentially the Bank. The fact the case involves falsification was particularly significant because the integrity of documents coming out of a solicitor’s office was a paramount consideration to those dealing with them. Mr Bullock submitted that it is at the heart of a solicitor’s professional responsibilities that documents produced are truthful and accurate. Thirdly, the excessive falsification of documents calls into question the trustworthiness of the solicitor.
74. Mr Bullock submitted that the system “does not work” if a member of the public could not trust that any document they have been given by a solicitor was not what it purported to be. Mr Bullock submitted that even if the Tribunal was against him about the link to practice, this was clearly a case where it was proportionate for the regulator to reach into Mr Howard’s private life. He submitted that it would be “astonishing” if the Tribunal found that there was no connection to practice because the attempt to deceive related to his partner.
75. Mr Bullock further submitted that in Farquharson the Court took account of the impact on the victim. In this case the Tribunal had evidence from Mr Cooney, and Ms Archer of the impact on them of Mr Howard’s actions.
76. In response to a query from the Chair, Mr Bullock submitted that the fact that the public at large were unaware of what had taken place was “neither here nor there”. It was not uncommon for solicitors to face allegations that related to client business affairs and which were not, therefore, in the wider public arena.

#### Respondent’s Submissions

77. Mr Howard addressed this point briefly in his closing submissions. Mr Howard invited the Tribunal to consider Beckwith, on the basis that the Allegations related entirely to matters outside his professional practice. The alleged conduct did not touch any part of practice of the profession. Mr Howard submitted that he had the right to a private life under Article 8 of the ECHR and that there was no impact on the public. There was nothing he had done in his capacity as a solicitor that had any adverse effect on the public.
78. **Allegation 1.1**

#### Applicant’s Submissions

- 78.1 Mr Bullock referred the Tribunal to Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366 and submitted that Mr Howard had lacked integrity.



- 78.2 Mr Howard, despite knowing the balance of the funds in his ISA account at the Bank, had complained to the Bank that it had failed to make a transfer of monies that he had requested to enable him to proceed with the purchase of a house. Mr Bullock reminded the Tribunal that, on 28 March 2019, Mr Howard had asked how he could withdraw monies from his ISA account. When he had been advised that he could do so over the phone he had said he would call back once he had his account details to hand. Mr Bullock submitted that the fact he was making enquiries as to how a transfer could be made was inconsistent with his complaint.
- 78.3 Mr Bullock submitted that by making the complaint, Mr Howard provided information to the Bank which he knew was not true. A solicitor acting with integrity would not have misled a bank, causing it to spend time and resources investigating a false report.
- 78.4 Mr Bullock further submitted that Mr Howard had breached Principle 6 in that confidence in Mr Howard and in the profession would be undermined by this type of conduct.
- 78.5 Mr Bullock further submitted that Mr Howard's conduct was dishonest, applying the test in Ivey v Genting Casinos [2017] UKSC 67. At the time Mr Howard made his complaint to the Bank, he knew that he did not hold and had never held £189,000 with the Bank and that the actual sum held was approximately £11. This was confirmed to him by the Bank over the telephone, in writing and by way of bank statements. Mr Howard also knew that he had not made a request to transfer funds from his ISA account or any other account with the Bank, either verbally, in writing or in person. His complaint to the Bank was based upon a set of facts which he knew to be untrue. Mr Bullock told the Tribunal that the SRA were not suggesting that Mr Howard was corrupt, but that he was weak and took the easy path in difficult situations.

#### Respondent's Submissions

- 78.6 Mr Howard elected not to give evidence and he presented his case by way of closing submissions. Mr Howard had served a written Answer to the Allegations. In that Answer he had denied all the Allegations. In the course of the hearing, he confirmed that he did not dispute that the letters and bank statements alleged by the SRA to be falsified were indeed falsified, but he denied that he was responsible for their creation. Mr Howard did not dispute that he was the person on the audio recordings of the telephone calls, relied on by the SRA. Mr Howard submitted that he was hampered by lack of access to the email accounts and so was unable to offer a detailed explanation of those, but he was clear that he denied falsifying any emails. In summary, Mr Howard denied all the Allegations against him in their entirety.
- 78.7 Mr Howard's closing oral submissions are set out in this part of the Judgment in relation to all Allegations, owing to the fact that he did not (and was not required to) split his submissions into distinct headings. His closing submissions set out a narrative that is best understood by a single summary rather than by artificially separating elements of it.

- 78.8 Mr Howard told the Tribunal that in response to the allegation that he knew he did not have the monies because he had previously ascertained the balances, his belief was based on what he had been told by his family. Mr Howard submitted that he genuinely believed the money was in the account at the material time.
- 78.9 Mr Howard said that he had previously asked for monies to be transferred out of the account and the Bank had insisted on written requests, hence the handwritten letter sent to them on this occasion.
- 78.10 Mr Howard told the Tribunal that Mr Cooney had asked him whom he thought had access to his accounts. Mr Howard had referred to his brother and to Ms Archer, something confirmed by Mr Cooney in his evidence. Mr Howard stated that he had discussed the investigation with his brother and his brother had informed him that he, his brother, had falsified the letters. Mr Howard claimed that he had not asked his brother to do that.
- 78.11 Mr Howard denied that the account he provided to his firm on 6 December 2019 was inconsistent. He said that he had been self-reporting and that he had had the third conversation with Mr Cooney earlier that morning, when threats were made by Mr Cooney. Mr Howard had also been contacted by the Telegraph, which, he submitted, could only have come about as a result of the Bank tipping them off. By the time he spoke to his firm at around 6pm he was upset and distressed. Mr Howard told the Tribunal that he challenged the manner in which, in some respects, comments made by Ms Duran were recorded, as they were inaccurate. By way of example, he had never referred to Ms Archer as ‘Sarah’.
- 78.12 In respect of Mr Cooney’s evidence, Mr Howard submitted that there were “clearly discrepancies” between his shorthand notes and his subsequent fuller accounts. Mr Howard noted that Mr Cooney had used words such as ‘create’ and ‘embellish’ – which he submitted were not too different to the word ‘engineer’. Mr Howard submitted that Mr Cooney had told him that he had been investigating since March 2019, but had said in his evidence that it was November. Mr Cooney had not disclosed the third conversation on 6 December 2019. Mr Howard also noted that Mr Cooney had conceded that there had been no financial loss to the Bank.
- 78.13 Mr Howard stated that he genuinely believed the money was in the account. He denied fabricating any documents. If he had misled Ms Archer, he had done so inadvertently. There was no danger of money being released by the bank in error.
- 78.14 Mr Howard submitted that he had been hampered in relation to the emails as he did not have access to the two email accounts said to have been used by him. He told the Tribunal that his iPad remained at the flat he had previously shared with Ms Archer.
- 78.15 Mr Howard told the Tribunal that he had been unable to call character witness because his line partner retired not long after Mr Howard had left the firm and he had no means of contacting him. He did not wish to call his mother, who was unwell, or his brother, who had personal issues that could be exacerbated by attending a hearing.
- 78.16 Specifically in relation to Allegation 1.1, in his Answer, Mr Howard had stated as follows:

- “1.1.1 Britannia branches do not exist anymore since being acquired by the Co-Op. There were no Co-Op branches accessible to me during working hours. I was told on telephone enquiry that requests for the transfer of funds from a Britannia account must be in writing. I therefore sent in a handwritten request because I did not have access to a printer for personal use. No reasonable person when writing a handwritten letter retains a copy.
- 1.1.2 I have said previously my family was adamant the money had been sent to my account. I had no reason to believe otherwise and clearly being a significant sum I needed to know the money had arrived safely. I disagree with the assertion I must have known there were insufficient funds in my account at any time when making any enquiry of the Co-Op about the money.
- 1.1.3 I did not knowingly provide the Co-Op with false information. I genuinely believed the money was transferred at the time of any enquiry of the Co-Op. The SRA has not provided any proof to the contrary. It is perfectly reasonable of me to ensure safe delivery of the money given the sum involved and the risk of the same being intercepted.
- 1.1.4 I refute the fact that Principles 2 and 6 of the SRA Principles 2011 have been breached by me.”

### The Tribunal’s Findings

78.17 The Tribunal considered the email of 21 March 2019. In that email, after referring to an email of 15 March 2019, Mr Howard had written:

“I instructed Britannia to make a payment on Wednesday of last week.”

78.18 The Tribunal found that there was no evidence that any such instruction had ever been made. Mr Cooney’s evidence was that no such transfer request had been made. The balance of Mr Howard’s account was £11.85 – nowhere near the sum suggested of £189,000. His other accounts also held small sums. This was consistent with no such transfer instruction having been made, as it was inherently unlikely that someone would seek to transfer nearly £200,000 from an account that had a minimal balance. The genuine letter from the Bank dated 26 March 2019 also reflected the fact that there was no record of Mr Howard having given such an instruction as follows:

“I’m really sorry for any inconvenience you’ve been caused. However, after reviewing your records I’m unable to evidence any request for a payment to be made from any of your accounts in the last 12 months. The only contact we have from you is a phone call on 15 March in which you requested information on the balances of your accounts. We also don’t have evidence of any contact by telephone, post or in branch to chase up a transfer. The only contact we’ve received is via email and through social media from a third party.”

78.19 Further, there was persuasive evidence that Mr Howard was aware of the balance of his account in the form of the telephone call he had made to the bank on 15 March 2019 at 8.24am. During that telephone call Mr Howard had made no reference to having requested a transfer of funds, nor had he expressed any surprise at the balances of his accounts, as might be expected from someone who genuinely believed he had £189,000 in them.

78.20 Mr Howard had not challenged the veracity of the recording or the transcript of that call. This evidence was inconsistent with Mr Howard's case that he believed the money was in the account at the time he sent the email on 21 March 2019 or at the time he claimed to have given the transfer instruction. The Tribunal noted that the evidence produced by the SRA came from a review of contemporaneous documentary records held by the Bank.

78.21 The Tribunal noted that Mr Howard had argued that he believed his family had transferred the money into the account and that this was the basis for his genuine belief that the funds were there. The Tribunal rejected Mr Howard's case on this point. There was no evidence of a transfer of funds from Mr Howard's family and no evidence that such a transfer had been attempted or even contemplated. Mr Howard had not called any family member to give evidence. Mr Howard himself had not given evidence before the Tribunal. That was entirely his right. However Rule 33 of the SDPR 2019 stated as follows:

“Adverse inferences

33. Where a respondent fails to—

(a) send or serve an Answer in accordance with a direction under rule 20(2)(b);  
or

(b) give evidence at a substantive hearing or submit themselves to cross-examination;

and regardless of the service by the respondent of a witness statement in the proceedings, the Tribunal is entitled to take into account the position that the respondent has chosen to adopt and to draw such adverse inferences from the respondent's failure as the Tribunal considers appropriate.”

78.22 The Tribunal was entitled to, and did, draw an adverse inference from the fact that Mr Howard had chosen not to give evidence on oath and have his account tested in cross-examination.

78.23 Even if Mr Howard had believed that his family had transferred the money to his account, that belief would have been extinguished by the telephone call on 15 March 2019 in which he was informed of the balances in his accounts.

78.24 The Tribunal was satisfied on the balance of probabilities that Mr Howard had sent the email on 21 March 2019 stating the Bank had failed to follow his instructions, in the full knowledge that he had not given any such instruction. The contents of the

21 March 2019 email were therefore false and the Tribunal found that Mr Howard knew them to be false at the time he sent it.

78.25 The Tribunal therefore found the factual basis of Allegation 1.1 proved.

### Principle 2

78.26 In considering the question of integrity, the Tribunal applied the test set out in Wingate. At [100] Jackson LJ had stated:

“Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse”.

78.27 The Tribunal found that Mr Howard had clearly lacked integrity. A solicitor of integrity would not send an email to the Bank stating that his instructions had not been followed when he was fully aware that he had never given such an instruction in the first place.

78.28 The Tribunal considered Article 8 of the ECHR and the matters raised in Beckwith. The Tribunal accepted that the conduct was undertaken in relation to matters that essentially pertained to Mr Howard’s private life. However, Mr Howard’s conduct in knowingly sending an email to the Bank that contained false statements was egregious and for that reason the Tribunal considered that it was proper for such misconduct to be investigated by the regulator. The Tribunal also noted that the Bank was aware that Mr Howard was a solicitor from its records. While Mr Howard did not send that email in his capacity as a solicitor, he could still be identified as a member of the profession.

### Principle 6

78.29 It was obvious that the trust the public placed in Mr Howard and the provision of legal services was undermined in the circumstances set out above.

### Dishonesty

78.30 The test for considering the question of dishonesty was that set out in Ivey at [74] as follows:

“the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ..... 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 knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder 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.”

78.31 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- firstly, the Tribunal established the actual state of Mr Howard’s knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;
- secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

78.32 The Tribunal’s findings as to Mr Howard’s state of knowledge are set out above. The Tribunal was satisfied on the balance of probabilities that knowingly sending an email containing false statements to a bank would be considered dishonest by the standards of ordinary, decent people.

78.33 The Tribunal found Allegation 1.1 proved in full.

## 79. **Allegation 1.2**

### Applicant’s Submissions

79.1 Mr Bullock submitted that creating and sending or causing to create and send a misleading letter amounted to a lack of integrity and that Mr Howard had therefore breached Principle 2. He had also breached Principle 6 on the basis that a solicitor should be trusted not to create, or cause to create, documents which are misleading, with the intention to mislead.

79.2 Mr Bullock further submitted that Mr Howard had acted dishonestly on the basis that falsification of a document was an inherently dishonest act. In this case it had been done with the principal intention to deceive Ms Archer. Mr Bullock relied on the evidence of Mr Cooney in respect of Mr Howard’s admission as to the “engineering” of the letter and other documents.

### Respondent’s Submissions

79.3 In his Answer, Mr Howard stated the following:

“1.2.1 I can only deduce that what I now know to be the falsified Co-Op letter of 26 March 2019 was delivered to my family’s home. The Co-Op states that the genuine letter was signed for. The delivery receipt neither specifies to which address the letter was delivered to nor who signed for the same. I have queried this before with the SRA but have not received a response. I did not receive the Co-Op’s genuine letter.

1.2.2 The family properties are close in distance. My mother provided wrap around care for my children at the property they live in and my brother

did odd jobs there too. It is perfectly reasonable for post to pass between the two properties. My brother even on occasion delivered post for me at the property shared with Charlotte Archer. Any number of parties therefore had the opportunity and access to falsify the letter.

- 1.2.3 I have not made any claim that my brother falsified any letter. My brother simply admitted to falsifying a letter and I conveyed that to both my employer at the time and the SRA. I believed the falsified letter to be genuine and did not deliberately mislead any party. I did not falsify the Co-Op letter dated 26 March 2019.
- 1.2.4 I refute the fact that Principles 2 and 6 of the SRA Principles 2011 have been breached by me.”

### The Tribunal’s Findings

- 79.4 The Tribunal noted that Mr Howard did not deny that the letter of 26 March 2019, which purported to uphold his complaint, was false. The Tribunal had also had sight of the genuine letter issued on that date. This reflected the reality of the matter, which was that no instruction had been given by Mr Howard to transfer monies.
- 79.5 The question for the Tribunal was therefore whether the SRA had proved, on the civil standard, that Mr Howard had perpetrated a falsification. The Tribunal took account of the evidence of Mr Cooney, which was based on his contemporaneous handwritten notes of his telephone conversations with Mr Howard.
- 79.6 In his witness statement, Mr Cooney had stated:
- “60. He [Mr Howard] then said that he had received a letter from the bank and that he had ‘engineered it’, I asked him to explain exactly what he meant by ‘engineered’, he said he had ‘changed a sample’,
61. I put it to him that he had produced several fraudulent documents purporting to be from the bank, stating that he had £189,000.00 with us which in due course would be returned to him, he accepted that he had done so.”
- 79.7 In cross-examination, Mr Cooney had maintained that he was “100%” certain that Mr Howard had made these admissions.
- 79.8 In his draft email to himself dated 14 February 2020, Mr Howard wrote that he ought to have denied the allegation outright but had wanted to check on Ms Archer and so wanted to end the call as soon as possible. In his letter to the SRA of 19 February 2020, Mr Howard repeated this and also said that he had begun to suspect his brother as he was the only one he had spoken to about the situation in detail. In neither document did Mr Howard state that he had denied the suggestion of forgery made by Mr Cooney in the telephone call, indeed he appeared to accept that he had not challenged it for the reasons given.

- 79.9 Mr Howard had also produced the email and handwritten note purporting to come from his brother, admitting to falsifying letters from the Bank. The Tribunal noted that there was little detail contained in either document and Mr Howard had not called his brother to give evidence of his role in the matter.
- 79.10 The Tribunal accepted the evidence of Mr Cooney and found him to be a credible witness. The Tribunal was satisfied on the balance of probabilities that Mr Howard had confessed to falsifying documents. His reason for falsifying them, as given to Mr Cooney, was to “buy time” in relation to Ms Archer. The Tribunal therefore preferred the evidence of Mr Cooney, which had been tested in cross-examination and was based on contemporaneous notes, over the untested submissions of Mr Howard. Mr Howard’s account was not corroborated by any credible evidence and his speculative explanation as to how the documents may have been forged was incredible. By contrast, falsifying the letter of 26 March 2019 would have been a necessary step in Mr Howard perpetuating the deception that had begun with the email of 21 March 2019, namely the false narrative being presented to Ms Archer that the reason monies were not available for the house purchase was due to the Bank being at fault. The Tribunal was therefore satisfied that Mr Howard had confessed to Mr Cooney because he had indeed falsified the letter of 26 March 2019. There was no evidence that anyone else had done so and no reason for anyone else to do so.
- 79.11 The Tribunal therefore found the factual basis of Allegation 1.2 proved on the balance of probabilities.

#### Principles 2 and 6

- 79.12 The Tribunal had no hesitation in concluding that in falsifying a letter, Mr Howard had lacked integrity and had undermined the trust the public placed in Mr Howard and in the provision of legal services. The Tribunal therefore found the breaches of Principles 2 and 6 proved.
- 79.13 In relation to Article 8, the Tribunal noted that in the course of the conversations, Mr Cooney had referred to Mr Howard being a solicitor. In any event, the act of falsifying a letter was so serious as to merit the involvement of the regulator in Mr Howard’s private life.

#### Dishonesty

- 79.14 It was evidently the case that Mr Howard knew he was falsifying a document and was doing so in order to create a false impression. This would clearly be considered dishonest by the standards of ordinary decent people and the Tribunal found the allegation of dishonesty proved on the balance of probabilities.
- 79.15 The Tribunal found Allegation 1.2 proved in full.



## 80. Allegation 1.3

### Applicant's Submissions

80.1 Mr Bullock's submissions in respect of Allegation 1.3 were made on the same basis as those in respect of Allegations 1.2.

### Respondent's Submissions

80.2 In his Answer, Mr Howard stated as follows:

“1.3.1 Any communications Charlotte Archer had with the Co-Op were either with my knowledge or authority. It therefore does not logically follow that I would have agreed to her producing the letter to the Co-Op if I knew the same to be false.

1.3.2 I do not recall how the 12 September 2019 letter was received but can only deduce it was by post. I did not falsify the letter.

1.3.3 I refute the fact that Principles 2 and 6 of the SRA Principles 2011 have been breached by me.”

### The Tribunal's Findings

80.3 The Tribunal again relied on the evidence of Mr Cooney in respect of Mr Howard's admission to him that he had fabricated documents in furtherance of his complaint against the Bank, which was in itself made on a false basis. The Tribunal rejected Mr Howard's case for the same reasons as previously set out. The fabrication of this letter from the Bank was consistent with Mr Howard seeking to deceive Ms Archer on the matter of the £189,000. The Tribunal was satisfied on the balance of probabilities that Mr Howard had fabricated the letter of 12 September 2019.

80.4 The Tribunal was again satisfied that this fabrication was breach of Principles 2 and 6 and was dishonest, on the same basis as it had found in relation to Allegation 1.2.

80.5 The Tribunal found the breach of Allegation 1.3 proved in full on the balance of probabilities.

80.6 The same Article 8 considerations applied in respect of this Allegation as Allegations 1.1 and 1.2.

## 81. Allegation 1.4

### Applicant's Submissions

81.1 Mr Bullock's submissions in respect of Allegation 1.4 were made on the same basis as those in respect of Allegations 1.2.

Respondent's Submissions

81.2 In his Answer, Mr Howard stated as follows:

- “1.4.1 I never received let alone have seen any Statement of Account from the Co-Op dated 11 September 2019, Neither the SRA nor the Co-Op has provided proof that I received the Statement. I furthermore have not falsified any such Statement.
- 1.4.2 I believed the money was in my account so how can my integrity be called into question. I did not know there was insufficient money in my account at the time I was told the transfer had been made.
- 1.4.3 I refute the fact that Principles 2 and 6 of the SRA Principles 2011 have been breached by me.”

The Tribunal's Findings

81.3 The Tribunal again relied on the evidence of Mr Cooney and the adverse inference in respect of Mr Howard's account. It was not disputed that the bank statement was a falsification – which it clearly was as Mr Howard never had that money in his account. There was no plausible explanation for the creation of this false bank statement other than Mr Howard having done so. This was consistent with the false narrative that the Tribunal had found in relation to Allegations 1.1-1.3. The Tribunal found this Allegation proved on the balance of probabilities together with the breaches of Principles 2 and 6 and the allegation of dishonesty. The same Article 8 considerations applied in respect of this Allegation as Allegations 1.1-1.3.

82. **Allegation 1.5**Applicant's Submissions

82.1 Mr Bullock's submissions in respect of Allegation 1.5 were made on the same basis as those in respect of Allegations 1.2.

Respondent's Submissions

82.2 In his Answer, Mr Howard stated as follows:

- “1.5.1 I did not have any telephone conversation with a Sadaf Khan. I further did not send any such email to that person or indeed to a Lisa Andronicou.
- 1.5.2 I did not falsify any emails from and to the Co-Op. There is no evidence that any such emails were physically sent by me.
- 1.5.3 I note that the email address purporting to be my then work is account is “.co.uk” when the email address was “.com”.

1.5.4 I refute the fact that Principles 2 and 6 of the SRA Principles 2011 have been breached by me.”

### The Tribunal’s Findings

- 82.3 The Tribunal noted that the emails were sent from email accounts connected to Mr Howard, including his work email account. These emails were consistent with his ongoing attempts to deceive Ms Archer as to the true state of his finances in relation to the £189,000. It was not disputed that the emails were false. The Tribunal found that there was nobody other than Mr Howard who could have sent them. He was the only person who had the motivation to do so and had the opportunity to send from those email accounts. Even if someone else had access to those email accounts, it would make no sense for anyone else to do so.
- 82.4 The Tribunal found the factual basis of Allegation 1.5 proved on the balance of probabilities.
- 82.5 The Tribunal found, for the same reasons as were relevant to the other documents, that creating misleading emails amounted to a lack of integrity and thus a breach of Principle 2 and undermined trust in Mr Howard and the profession, in breach of Principle 6.

### Dishonesty

- 82.6 Mr Howard’s state of knowledge has been discussed above. Mr Howard was aware that he did not have the funds and that he had falsified documents to attempt to prove otherwise. He was aware that the emails he was sending were therefore false. The Tribunal was satisfied on the balance of probabilities that this would be considered dishonest by the standards of ordinary decent people.
- 82.7 In relation to Article 8, in addition to the findings already set out above, the emails were an important element in Mr Howard’s widespread plan of deception involving multiple organisations (as dealt with below) over a period of almost a year. These were sustained and carefully planned acts of dishonesty, which clearly fell within the regulator’s remit, notwithstanding that the ultimate target of the deception was his partner.
- 82.8 The Tribunal found Allegation 1.5 proved in full on the balance of probabilities.

### **83. Allegation 1.6**

#### Applicant’s Submissions

- 83.1 Mr Bullock’s submissions in respect of Allegation 1.6 were made on the same basis as those in respect of Allegations 1.2.

#### Respondent’s Submissions

- 83.2 In his Answer, Mr Howard stated as follows:

- “1.6.1 The Financial Ombudsman was initially contacted because Charlotte Archer and I were concerned my money was lost by the Co-Op. I do not specifically recall a complaint form to complete but the complaint was not pursued further at the time because I wanted further assurances from my family that the money had been sent to me.
- 1.6.2 The email from my then work account clearly states that I do not have access to my personal email accounts. Yet the emails I am purported to have falsified all come from a personal account. I did not send any falsified emails. They are not even written in language I would use. The email sent from my work account was at the request of Charlotte Archer.
- 1.6.3 I asked the FO to only deal with me. A perfectly reasonable request in the circumstances, I was concerned by the increasingly aggressive way in which Charlotte Archer wanted to pursue the Co-Op.
- 1.6.4 I refute the fact that Principles 2 and 6 of the SRA Principles 2011 have been breached.”

### The Tribunal’s Findings

83.3 The Tribunal found this Allegation proved in full on the balance of probabilities, including the allegation of dishonesty, on the same basis as Allegation 1.5. There was no material evidential difference save for the organisation was the Financial Ombudsman.

### 84. **Allegation 1.7**

#### Applicant’s Submissions

84.1 Mr Bullock’s submissions in respect of Allegation 1.7 were made on the same basis as those in respect of Allegations 1.2.

#### Respondent’s Submissions

84.2 In his Answer, Mr Howard stated as follows:

- “1.7.1 I did not falsify the forwarded Daniel Duncan email dated 8 and Samantha Stewart email dated 18 May 2019. My then email work account was “.com”.
- 1.7.2 The assertion I must be the author of falsified emails simply because I forwarded the same does not follow. Any emails that I did forward were on the basis that I believed them to be genuine.
- 1.7.3 I did not contact the FCA to obtain names to fabricate emails. How can that be so if most of the individuals do not exist.
- 1.7.4 I refute the fact that Principles 2 and 6 of the SRA Principles 2011 have been breached by me.”

### The Tribunal's Findings

84.3 The Tribunal found this Allegation proved in full on the balance of probabilities, including the allegation of dishonesty, on the same basis as Allegation 1.5. There was no material evidential difference save for the organisation was the Financial Conduct Authority.

### **Previous Disciplinary Matters**

85. There were no previous disciplinary matters recorded at the Tribunal.

### **Mitigation**

86. Mr Howard told the Tribunal that he maintained his position. After being given some time to prepare his mitigation, Mr Howard reminded the Tribunal that he had no previous findings recorded against him. He told the Tribunal that he had an exemplary record of employment since he had qualified. Mr Howard stated that none of the Allegations were in any form related to his professional capacity and he had not benefitted. There was no proven adverse effect on any other party, certainly not financially. Mr Howard told the Tribunal that he had fully co-operated with the SRA and answered all questions when required.

### **Sanction**

87. The Tribunal had regard to the Guidance Note on Sanctions (10<sup>th</sup> Edition). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

88. In assessing culpability, the Tribunal concluded that Mr Howard was entirely culpable for his actions. Mr Howard's motivation had not been financial gain for himself, but it had been to deceive Ms Archer about his financial position. In perpetuating this deceit he had also sought to deceive the Bank, the FCA, his firm and the Financial Ombudsman.

89. The harm caused to Ms Archer had been plain from her evidence before the Tribunal. She had clearly found it distressing to give evidence, and the Tribunal had no doubt that she had been harmed financially and emotionally by Mr Howard's deception.

90. There was significant harm caused to the reputation of the profession in circumstances where a solicitor created an entirely false narrative, involving the falsification and fabrication of numerous documents and sending them to multiple organisations over several months. Mr Howard's actions had caused significant inconvenience to the Bank, the FCA, the Ombudsman and the Telegraph. Mr Howard had attempted to damage the reputation of the Bank by involving the other three organisations.

91. The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

“34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”

92. The misconduct had been deliberate, calculated and repeated and taken place over an extended period of time. There had been significant concealment of the initial wrongdoing by compounding it with further wrongdoing. Mr Howard, when confronted with the evidence, had sought to blame others. He had implied that Ms Archer may have been responsible, whom he also accused of trapping him in the relationship, and had also blamed his brother. Mr Howard had demonstrated no insight into his actions. The Tribunal noted that he had no previous disciplinary matters recorded against him.
93. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off and the Tribunal had regard to Sharma. The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as “a small residual category where striking off will be a disproportionate sentence in all the circumstances ...”.
94. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:
- “First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty.”
95. Mr Howard had been offered the opportunity of time to prepare his submissions in mitigation with specific reference to exceptional circumstances. He had not addressed that point in his submissions and did not advance exceptional circumstances. The Tribunal found no such circumstances and therefore the only appropriate sanction was to strike Mr Howard off the roll. The protection of the public and of the reputation of the profession demanded nothing less.

## Costs

### Applicant’s Submissions

96. Mr Bullock made a claim for costs, that he had reduced to £19,757.70. that took into account the fact that the original claim was based on 8 hours a day when in fact the Tribunal had sat for 6 hours. The matter had been heard remotely and so the travel costs could be removed. The hearing had also taken four days not five.
97. Mr Bullock noted that Mr Howard had substantial equity in his matrimonial home and it should be open to the SRA to seek to recover the costs rather than allowing it to fall on the profession.

### Respondent's Submissions

98. Mr Howard submitted that this was a straightforward investigation and that a disproportionate amount of time had been spent on it. It was now almost four years from the start of the investigation. This had included 18 months lost due to a change in personnel and Mr Howard described this as a “huge aggravating factor in terms of costs claimed” and had led to a high degree of duplication. Mr Howard told the Tribunal that he had suffered financially given the nature of the Allegations and had been unable to work. He relied on borrowing money from his family at present. The Chair enquired about his matrimonial home and Mr Howard explained that it was jointly owned and was a family home to his children.

### The Tribunal's Decision

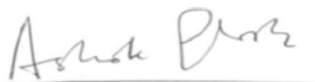
99. The Tribunal was satisfied that there ought to be a costs order in favour of the SRA. The costs claimed were reasonable and proportionate. The Tribunal made a small reduction to £19,700 to allow for the fact that the hearing would conclude by 2pm on the final day.
100. The Tribunal considered whether to make a further reduction on the basis of Mr Howard's means. In doing so it had regard to Barnes v Solicitors Regulation Authority [2022] EWHC 677 (Admin) and the importance of making a “reasonable assessment of the current and future circumstances” in relation to his ability to pay. The Tribunal noted that Mr Howard had, in his statement of means, offered to pay instalments of £100 per month. He also had equity in his house that could be used to obtain finance. The Tribunal was satisfied that there was a realistic prospect that he could pay the costs in a reasonable timeframe. The Tribunal therefore made no further reduction and did not delay the enforcement of costs.

### **Statement of Full Order**

101. The Tribunal ORDERS that the Respondent, James Alexander Howard, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £19,700.00.

Dated this 17<sup>th</sup> day of May 2023

On behalf of the Tribunal



A Ghosh  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**17 MAY 2023**