SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12580-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

RICHARD HARBORD Respondent

Before:

Ms A Horne (in the chair)
Ms A E Banks
Ms E Keen

Date of Hearing: 12 September 2024

Appearances

Ms Louise Culleton, a Barrister of Capsticks Solicitors LLP,1 St George's Road, London SW19 4DR, for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent, Richard Harbord, made by the SRA are that, while in practice as a Partner at McGlinchey & Co ("**Firm 1**") and as a sole practitioner in Harbord & Co ("**Firm 2**"):

1.1. Between approximately July 2017 and December 2020, he used, or allowed the use of, Firm 1's client account as a banking facility in relation to the proceeds of sale of two properties for which he was the client and

1.1.1 insofar as the conduct took place before 25 November 2019, breached Rule 14.5 of the SRA Accounts Rules 2011 (the "**2011 Accounts Rules**") and/or Principles 6, 7 and 8 of the SRA Principles 2011 (the "**2011 Principles**");

1.1.2 insofar as the conduct took place on or after 25 November 2019, breached Rule 3.3 of the SRA Accounts Rules 2019 (the "**2019 Accounts Rules**") and/or Principle 2 of the SRA Principles 2019 (the "**2019 Principles**").

1.2. He failed to obtain and/or deliver Accountants' Reports in accordance with the requirement to do so within six months at the end of the accounting period for

1.2.1. any or all of the 2019, 2020, 2021, 2022 and 2023 accounting periods relating to Firm 1

1.2.2. any or all of the 2019, 2020, 2021, 2022 and 2023 accounting periods relating to Firm 2, and

1.2.2.1 insofar as the conduct took place before 25 November 2019, breached any or all of Rules 32A.1(a) and 32A.1(b) of the 2011 Accounts Rules and Principle 8 of the 2011 Principles and/or failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011 (the "**2011 Code**");

1.2.2.2 insofar as the conduct took place on or after 25 November 2019, breached Rules 12.1(a) and 12.1(b) of the 2019 Accounts Rules and/or Paragraph 4.2 of the Code of Conduct for Solicitors, RELs and RFLs (the "**2019 Code**").

1.3. Between 8 November 2022 and at least 31 August 2023, he failed to adequately cooperate with, and respond to, the SRA's enquiries and requests in respect of the provision of Accountants' Reports for Firm 1 and Firm 2 and other information sought and thereby breached any or all of the following:

1.3.1. Paragraphs 7.3, 7.4 and 7.10 of the 2019 Code

1.3.2. Principle 5 of the 2019 Principles.

1.4. By reason of the matters set out at 1.1 to 1.3 above or any of them in his capacity as the Firm's Compliance Officer for Finance and Administration (COFA), he failed to ensure

or take adequate steps to ensure compliance with the Firm's regulatory obligations under the 2011 Accounts Rules and/or the 2019 Accounts Rules and:

1.4.1. insofar as the conduct took place before 25 November 2019, his obligations under Rule 8.5(e)(i) of the SRA Authorisation Rules 2011 and/or Principle 7 of the SRA Principles 2011;

1.4.2. insofar as the conduct took place on or after 25 November 2019, his obligations under Paragraphs 7.2 of the 2019 Code and/or 9.2 of the SRA Code of Conduct for Firms.

2. The Parties have agreed on the facts relating to the above allegations in their Statement of Agreed Facts, dated 11 September 2024.

3. The Respondent has fully admitted all the above allegations, as was recorded in the Parties' Statement of Agreed Facts, dated 11 September 2024.

Executive Summary

4. The Parties concluded a Statement of Agreed Facts, in which the Respondent admitted all allegations against him. The Tribunal found that:

- in relation to Allegation 1.1, the Respondent had breached Rule 14.5 of the 2011 Accounts Rules 2011 and Principles 6, 7 and 8 of the SRA Principles 2011;

- in relation to Allegation 1.2, the Respondent had breached Rule 32A.1(a) of the 2011 Account Rules, and Principle 8 of the 2011 Principles, failed achieve Outcome 7.4 of the SRA Code of Conduct 2011 as well as breached Rule 12.1(a) of the 2019 Account Rules and Paragraph 4.2 of the 2019 Code of Conduct;

- in relation Allegation 1.3, the Respondent had breached Paragraphs 7.3, 7.4 and 7.10 of the Code of Conduct 2019 and Principle 5 of the 2019 Principles;

- in relation to Allegation 1.4, the Respondent had breached Rule 8.5(e)(i) of the SRA Authorization Rules 2011, Principle 7 of the SRA Principles 2011, Paragraphs 7.2 of the 2019 Code of Conduct and paragraph 9.2 of the SRA Code of Conduct for Firms; and

- the Respondent's admissions in respect of these breaches had been properly made.

5. However, the Tribunal was not satisfied on the balance of probabilities that the Respondent had breached Principle 6 of the 2011 Principles or Principle 2 of the 2019 Principles in relation to Allegation 1.1, or Rule 32A.1(b) of the 2011 Accounts Rules or Rule 12.1(b) of the 2019 Accounts Rules in relation to Allegation 1.2.

Sanction

6. The Tribunal ordered the Respondent to pay a fine of £8,500.00 as well as the costs of and incidental to this application and enquiry fixed in the sum of £40,000.00, but ordered that such costs order was not to be enforced without leave of the Tribunal.

Documents

7. The Tribunal considered all of the documents in the case which included but were not limited to:

- Rule 12 Statement, dated 19 March 2024 and Exhibit LIC1
- Respondent's Answer, dated 12 June 2024
- Witness Statement of Emmanuela Robinson, dated 15 March 2024 and Exhibits
- Witness Statement of Roberto Ferrari, dated 19 March 2024, and Exhibits
- Witness Statement of Frank John Harling, dated 24 July 2024
- Statement of Agreed Facts, dated 11 September 2024
- Applicant's Statements of Costs, dated 19 March 2024 and 3 September 2024
- The Respondent's Personal Financial Statement, dated 11 June 2024
- The Respondent's Bankruptcy Order dated 23 November 2023

Preliminary Matters

<u>The Applicant's Application to amend Allegation 1.3</u>

8. The Applicant applied for permission to amend Allegation 1.3. The period of time referred to in Allegation 1.3 in the Applicant's Rule 12 Statement was 8 November 2020 to 31 August 2023. However, the Applicant submitted that the correct period was from 8 December 2022 to 31 August 2023. The Applicant explained that the SRA's Forensic Investigation Officer ("FIO") had interviewed the Respondent on 8 December 2022 and therefore the relevant time period had started on 8 December 2022 and not on 8 November 2020, as was stated in the Rule 12 Statement.

9. The Respondent had been put on advance notice that a minor adjustment was to be made to the Allegations. The Respondent agreed to the amendment.

10. The Tribunal granted the requested amendment to Allegation 1.3, noting that the amendment shortened the relevant time period in the Respondent's favour.

The Parties' Joint Application for the Approval of the Statement of Agreed Facts

11. The Parties had concluded and signed an Agreed Statement of Facts on 11 September 2024, a day before the Substantive Hearing. The Parties requested that the Tribunal approved the Parties' Statement of Agreed Facts. The Respondent had admitted all the allegations against him already in his response, dated 12 June 2024, but those earlier admissions were subject to certain qualifications and mitigation. The Statement of Agreed Facts clarified that the Respondent admitted all of the allegations fully on all bases.

12. The Tribunal noted first noted that the Statement of Agreed Facts contained information about previous disciplinary matters against the Respondent, which would not normally be brought to the attention of the Tribunal before the Tribunal's findings on facts and law.

13. The Applicant submitted that it was appropriate to bring the previous disciplinary matters against the Respondent to the Tribunal's attention in the Statement of Agreed Facts because the Respondent had made full admissions. The Applicant further explained that the previous disciplinary matters were included in the Statement of Agreed Facts to ensure that they were taken into consideration when the Tribunal determined the appropriate sanction and fixed the costs of and incidental to the application and enquiry.

14. The Tribunal further noted that it was very unhelpful to provide the Statement of Agreed Facts to the Tribunal at the last minute, merely a day before the start of the Substantive Hearing. Given that the Respondent had admitted the allegations already in his response, albeit with certain qualifications, the Statement of Agreed Facts could have and should have been sent to the Respondent and finalised months ago, in accordance with the standard directions.

15. Having heard both Parties in the Substantive Hearing and having carefully considered the Parties' Statement of Agreed Facts, the Tribunal found on the balance of probabilities that the Respondent's admissions as to the facts of the case were properly made, for the reasons set out below. As regards the Respondent's admission of the alleged breaches of the various SRA Principles, the Account Rules and the Code of Conduct, the Tribunal separately considered whether each admission was properly made, as is described further below.

Factual Background

16. The Respondent and the Applicant have in their joint Statement of Agreed Facts, dated 11 September 2024, agreed on the following facts.

Professional Facts

17. The Respondent is a solicitor having been admitted to the Roll on 2 January 2002. He was the owner of Firm 2 (Harbord & Co, a Recognised Sole Practice) since 1 December 2007, and a partner at Firm 1 (McGlinchey & Co) since 1 March 2016. The Respondent had been the Accountants Reports Contact Person since 1 December 2007, the Compliance Officer for Legal Practice ("COLP") since

28 February 2013 and the COFA since 18 November 2019 at Firm 2. The Respondent had also been the Accountants Reports Contact Person since 1 March 2016, the COLP since 24 January 2018 and the COFA since 18 November 2019 at Firm 1.

18. The Respondent's 2023/24 Practising Certificate was suspended on 1 November 2023 as the SRA was notified that he had been made bankrupt. The Respondent was granted a practising certificate for the practice year 2023/2024 on 1 July 2024 subject to the following conditions:

    1) Mr Harbord may not act as a manager or owner of an authorised body.

    2) Mr Harbord may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body.

    3) Mr Harbord does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account.

    4) An exception to condition 3 is granted to allow Mr Harbord to facilitate the smooth transfer of accounts to the new entity taking over Harbord & Co and McGlinchey & Co.

    5) Mr Harbord may not practise on his own account under regulation 10.2(a) or (b) of the SRA Authorisation of Individuals Regulations

19. The bankruptcy order is due expire in November 2024.

<u>The facts and matters relied upon in support of the allegations</u>

<u>Background</u>

20. The conduct in this matter came to the attention of the SRA when a Forensic Investigation into Firm 1 was undertaken by Mr Roberto Ferrari, FIO, with a Forensic Investigation Report ("FIR") produced on 3 February 2021. An investigation was also conducted by the FIO in relation to Firm 2. Whilst this investigation was closed and did not result in a separate FIR, it was noted during that investigation that an Accountant's report was outstanding.

21. In summary, the FIR concluded that the Respondent caused or allowed the client account of Firm 1 to be used as a banking facility when the Firm acted in two conveyancing transactions of which the Respondent was the client. The sale proceeds from those two matters were retained in the client account after the substantive completion of the matter, and then used on the Respondent's instructions for payments for various matters, not linked to the underlying transaction.

22. Furthermore, Accountants' Reports for Firm 1 for the financial years ending 2019 and 2020 had not been completed, and remained outstanding at the date of the Forensic Investigation and submission of the FIR. The Accountants' Reports for the years 2020, 2021, 2022 and 2023 for Firm 1 still remained outstanding at the date of the Rule 12

Statement. In respect of Firm 2, the Accountants' Reports for the years 2022 and 2023 also remained outstanding at the date of the Rule 12 statement.

23. The Respondent's responses to, and engagement with the SRA, including in respect of a Production Notice, were not satisfactory and substantive responses were not received in a timely manner or at all.

Admission of Allegation 1.1 – Use of client account as banking facility

24. Firm 1 acted in respect of two conveyancing transactions in which the Respondent was the Firm's client. It is noted that the FIR states in error that the Respondent acted in the transactions. In fact, he did not have conduct of those matters at Firm 1.

25. In summary, the sale of Property 1 (as defined within the Rule 12 Statement) completed on 14 July 2017, and the sale of Property 2 (as defined within the Rule 12 Statement) completed on 18 October 2019. In both matters, the balance of the sale proceeds were retained in Firm 1's client account after the completion of the matter, and not transferred promptly to the Respondent (as the client) as they should have been. The proceeds were then paid out from the client account on the Respondent's instructions, in the following sums: -

    (a) £386,641.33 to the Respondent personally or for personal payments at his direction;

    (b) £315,969.97 by way of loans to Firm 1 and Firm 2.

26. In relation to the funds arising from the sale of Property 1, these remained in the client account from 14 July 2017 until 5 March 2020. As far as Property 2 is concerned, the funds arising from that transaction remained in the client account from 18 October 2019 until 11 December 2020.

27. During an interview with the FIO on 8 December 2020, the Respondent accepted that he allowed the Firm's client bank account to be used as a banking facility in breach of Rule 14.5 of the 2011 Accounts Rules and Rule 3.3 of the 2019 Accounts Rules.

28. The FIR provides the detail surrounding the sale of each property, the retention of the proceeds of sale in the Firm's client account, and the use of funds from that account by, or on behalf of, the Respondent, as follows: -

Property 1

29. The property was held in the joint names of the Respondent and his ex-wife, and was to be sold in accordance with a Financial Remedy Order ("FRO") dated 12 September 2016 which directed that the property be transferred into the Respondent's sole name, together with a number of other provisions.

30. The proceeds of sale were to be applied as follows: -

    (a) To discharge the mortgage as of the date of the Order secured in favour of Lloyds Bank;

(b) Payment of the solicitors' reasonable conveyancing costs and disbursements in connection with the sale;

(c) Payment of the charges of the estate agents;

(d) Payment of the lump sum ordered to the ex-wife; and

(e) The balance to be paid to the Respondent.

31. On 4 July 2017, bridging finance of £600,000.00 was obtained by the Respondent, and was used to discharge the existing mortgage of £450,447.46 and pay a lump sum to his ex-wife in the amount of £144,900.00 under the terms of the FRO. The property was then transferred into the Respondent's sole name.

32. On 11 July 2017, the Respondent exchanged contracts for the sale of the property at a stated price of £1,160,000 less a £380.00 allowance. Completion was set for 14 July 2017. A deposit of £116,000.00 was received from the purchaser's solicitors on exchange of contracts, and the balance of the completion monies of £1,043,620.00 was received on 13 July 2017. The bridging finance of £617,238.71 and costs and disbursements relating to the sale of £17,194.86 were then discharged and, following this, there remained a balance of £451,445.80 on the client ledger.

33. This balance remained in the Firm's client account, and 68 payments were taken from it, which had no connection to the underlying legal transaction, between 14 July 2017 and 5 March 2020, at which time there remained £521.08 on the client ledger. The client account was thus, in effect, used as a banking facility for, and by, the Respondent.

34. The FIR and the underlying evidence attached to the FIR indicate that the payments from the Firm's client account were to: -

(a) The Respondent personally;

(b) Recipients in Spain in connection with the Respondent's property located there;

(c) Other personal payments made on behalf of the Respondent; and

(d) Loans to Firm 1 and to Firm 2.

35. A schedule produced by the Respondent records who requested the payments, and who authorised the payments in relation to each of the transfers on this matter, and the FIO's review of that schedule in conjunction with the client ledger indicated the following: -

Payments	**Number**		**Amount**
To RH personally	24		£153,116.71
On RH's behalf	7		£83,194.91
Harbord & Co loans	29		£190,734.03
McGlinchey & Co Loans	8		£46,498.19
			£473,543.84

36. Examples of the payments made from the client bank account from the funds held include:

(a) On 19 January 2018, the client ledger records a payment of £8,457.95 for which the narrative was "to client". The records on file show that this transfer was actually made up of four separate payments (£5,520.00, £2,400.00, £456.75 and £81.20) to a firm of architects and a firm of planning consultants that were acting for the Respondent on an application to obtain planning permission for the Firm's former offices at Property 2. There are also numerous other payments recorded as "to client" or to "RH".

(b) On 14 March 2018, a payment of £30,289.00 is recorded with the ledger narrative stating "Purchase of vehicle"; and

(c) On 17 May 2018, a payment to Savills Estate Agents of £32,539.50, and on 10 January 2019 a payment of £39,500.00 to Saunders Lettings, both of which related to rent for separate properties (other than properties 1 or 2) rented by the Respondent.

(d) On various dates, loans to Firm 1 and to Firm 2 are recorded;

(e) On 17 July 2019, £2,226.00 was paid to "Nautilus Yachting".

Property 2

37. Property 2 was the former office premises for both Firms 1 and 2 at 100 East Street. The title to Property 2 was registered in the Respondent's sole name, and was subject to a charge to NatWest plc.

38. The Respondent advised at interview that there were two loans and an overdraft with NatWest that were to be redeemed utilising the sale proceeds. Contracts were exchanged on 1 July 2019, at a sale price of £765,000.00, with completion set for 14 September 2019. By a supplemental agreement dated 11 September 2019, the terms of the agreement were varied, including extending the completion date.

39. Completion took place on 18 October 2019. The balance of the sale proceeds £689,786.49 were received from the purchaser's solicitors on that day.

40. On 18 October 2019, the sum of £298,208.58 was transferred to NatWest to discharge the outstanding loans and overdraft. A total of £18,660.00 was later transferred for the Firm's costs (£300.00 "Bill: 300.00" on 25 October 2019) and disbursements incurred relating to the sale (£18,360.00 "Agents Commission" on 22 November 2019), leaving a balance on the client account of £347,122.49 as at 2 December 2019.

41. From the balance held the following transfers were made from Firm 1's client account between 21 October 2019 and 11 June 2020, all of which were unconnected to the underlying legal transaction. The schedule prepared by the Respondent setting out the transfers made, and the FIO's review of that schedule in conjunction with the client ledger indicated the following: -

Payments	**Number**		**Amount**
To RH personally	6		£83,000.00
Harbord & Co loans	8		£57,460.00
McGlinchey & Co Loans	2		£21,277.75
On RH's behalf	9		£67,329.71
			£229,067.46

42. Examples of the payments made from the client bank account include:

    (a) On 4 November 2019, a payment of £37,592.31 was made to Saunders Lettings Limited. The debit slip narrative indicates that this payment is in respect of a 12-month rental for a property;

    (b) Six payments totalling £18,800.77 between 14 November 2019 and 11 June 2020 were recorded as having been made to individuals in Spain;

    (c) On 4 December 2019, transfers to McGlinchey & Co of £11,982.78 and £9,294.97 are recorded as being for the firm's PAYE and VAT liabilities, respectively; and

    (d) On 21 February 2020, the client ledger records a payment of £10,586.00, the narrative being "Car Payment – Mercedes". The debit slip records that this payment is for "RH – Car".

43. At the extraction date for the investigation, 31 March 2020, there remained a client ledger balance of £200,425.20 on the Property 2 matter. This being over five months after the effective completion of this conveyancing transaction.

Respondent's account in interview with the FIO

44. The Respondent was interviewed by the FIO on 8 December 2020 via Teams (audio only in respect of the Respondent's attendance). At interview the Respondent confirmed that, after the completion of the sale, the funds due to him were held in the client account and that, "*I made payments from them, sometimes lending to one company or the other, for the purposes of the business and sometimes I paid myself from those proceeds but all of the proceeds there were effectively my money*".

45. For example, the Respondent confirmed that transfers made to individuals in Spain had been made at his request, and were in connection with his property in Spain. Further, that the payment to Mercedes was in relation to a personal car purchase. He confirmed that he had requested all the transfers set out in the schedules contained in appendices to the Parties' Joint Agreed Statement of Facts.

46. The Respondent confirmed that all the transfers from the money from the two property sales which took place after September 2017 (apart from the sale costs and disbursements) were unconnected to the underlying transaction. He stated that, whilst at the time he did not believe that he was doing anything wrong, he accepted that the transfers were in breach of the relevant parts of the 2011 and 2019 SRA Accounts Rules. He accepted that he would have done things differently if the money was from a client (other than himself) and would not allow similar transactions in such circumstances. He had discussed the issue of leaving his monies on the client account with the Firm's

accountant (Mr Mark Moggeridge) and another partner (Mr Masood Khan), whose views were that it was the Respondent's money and so was not an issue, but the Respondent accepted, in hindsight, that this was "*not the best decision*" and said that "*the buck stops with me*", even if there had been no loss to the client account or any third party. He accepted that the better situation would have been for all the money to be transferred into another account, even the office account, rather than being retained in the Firm's client account.

Breaches of the Accounts Rules and Principles in respect of Allegation 1.1

47. The Applicant asserted and the Respondent accepted that by using the Firm's client account as set out above, the Respondent was in breach of Rule 14.5 of the 2011 Accounts Rules and Rule 3.3 of the 2019 Accounts Rules for the respective periods. Although the money in the client account was the Respondent's own, by retaining that money in the client account and making payments which were not linked to the underlying transaction, he used the Firm's client account, or caused it to be used, as a banking facility for his own purposes and convenience. This is objectionable in itself, as set out by the relevant authorities and Warning Notice.

48. This conduct was not behaving in a way that upholds or maintains public trust and confidence in solicitors and in the provision of legal services, contrary to Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles. The use of a Firm's client account as a private banking facility, for what would seem to be no other reason than speed or convenience, would wholly damage the trust and confidence of the public.

49. There are, as set out above, strong and well-known reasons why solicitors are not permitted to use the firm's client account as a banking facility, and the Warning Notices issued by the SRA serve to further highlight the inherent and recognised risks in solicitors using client accounts as a banking facility, including the simple erosion of the regulatory distinction between financial and legal services.

50. The Applicant asserted that the public are entitled to expect that a solicitor would act in compliance with long established principles as to the use of a client account. The public would not expect a solicitor to make exceptions, even in respect of his/her own money; such money being retained in, and being used from, the Firm's client account, apparently simply for ease and convenient access, and due to not having transferred it out of the client account and into his own account promptly. Such conduct was, it was asserted, thus not behaving in a way that would uphold or maintain public trust in solicitors and in the provision of legal services.

51. In failing to comply with his regulatory obligations underpinning the proper use of a client account, the Respondent had breached Principle 7 of the 2011 Principles. Further, in failing to comply with the requirements not to allow a client account to be used as a banking facility, the Respondent had failed to act in accordance with proper governance and sound financial and risk management principles. On that basis, a breach of Principle 8 is alleged. The public rightly expect and trust solicitors to understand and comply with their regulatory obligations.

Admission of Allegation 1.2 – Failure to obtain/deliver Accountants' Reports

Accountants' Reports for McGlinchey & Co ("Firm 1")

52. The FIR records that during the initial call with the Respondent on 4 May 2020, he confirmed that the Accountants' Report for the accounting period of 1 May 2018 to 30 April 2019, which had been due to be completed by 31 October 2019 (and would thus fall under the 2011 Accounts Rules) had not yet been obtained.

53. The Respondent stated that the reason for the delay in obtaining the Accountants' Report was due to illness in 2019 and the recent move of office premises. The plan had been for the reporting accountant to complete the reports in February/March 2020, but that had been disrupted by the Covid-19 pandemic and the lockdown. The Respondent had also had to self-isolate due to his medical condition.

54. In an email dated 13 July 2020, the Respondent stated that the reporting accountant was booked to attend in the week commencing 27 July 2020 to complete the report for the period ending 30 April 2019, and was also booked at the end of August 2020 to complete the report for the period ending 30 April 2020.

55. In an email on 6 September 2020, the Respondent indicated that the reporting accountant was waiting on the return of a number of files from the Firm's off-site archive.

Interview with the Respondent

56. In interview with the FIO on 8 December 2020, the Respondent was asked about the outstanding Accountants' Reports. He confirmed that the report for the year ending 30 April 2019, which had been due to be completed by 31 October 2019, had not yet been completed (and was therefore at that time over 12 months late).

57. He stated that all of the files were held by a company remotely and there were issues over the amount of fees that were due to that company, who therefore delayed returning the files, and described how the files were ultimately returned and held in the Firm's own storage. The Respondent stated that he had been working on them himself to put them in order so that they could be provided to the accountants who would be imminently letting him know when they could come to complete the task. He stated that the accountants were aware of the urgency and that the reports would be provided to the SRA as quickly as possible. The Respondent also described disruption caused by the Covid pandemic, ill-health and an office move necessitated by the Respondent's illness, and his consequent vulnerability during the Covid pandemic, as being the combination of things which had led to the reporting accountants not being instructed in a timely way.

58. The Respondent indicated that he could provide internal management accounts for the last quarter(s). These were not subsequently provided.

59. He confirmed that he had been the COLP of Firm 1 since January 2018, although, in effect, he had been in that role since July 2017 on the departure of the previous COLP.

Further, he confirmed he had also been the COFA formally since November 2019 but, in effect, since February 2019.

Post-interview and FIR

60. During a telephone call with the FIO on 24 November 2020, prior to the interview with the FIO, the Respondent stated that the archived files had only recently been received from the storage company; the delay being due to a dispute with the storage company as to the applicable fees.

61. As at the date of the FIR (3 February 2021), the Accountants' Reports for Firm 1 for the year ending 30 April 2019 (which would have been due by 30 October 2019) and 30 April 2020 (which would have been due by 30 October 2020) had not been received and the Respondent was thus not in compliance with the 2011 or 2019 Accounts Rules as set out above, for the 2019 and 2020 Accountants' Reports respectively.

62. As well as the FIO, two Investigation Officers of the SRA were in regular contact with the Respondent from 4 February 2021 onwards, requesting updates on the delivery of the outstanding reports. As with the FIO, the Respondent provided assurances to both investigators that the work was in hand and that the Accountants' Reports would be provided.

63. In an email of 6 January 2022, the reporting accountants advised the Respondent that they required payment upfront for preparing the outstanding reports, and informed the Respondent that the costs would be £7,200 including VAT for Firm 1 (for two accounting years), and £6,000 including VAT for Firm 2 (again for two accounting years).

64. In an email of 27 February 2023, over a year later, the accountant informed the SRA that Ms Frost, the other partner at Firm 1, had emailed him the week before to confirm again the amounts required upfront to enable the accountants to undertake work on the 2021 and 2022 reports for Firm 1. In the same email the accountant confirmed that the 2020, 2021 and 2022 reports for Firm 1 all remained outstanding with no work started, due to fees being required upfront which were yet to be paid.

65. Repeated requests from the SRA for updates and the provision of the Accountants' Reports either went unanswered, or the Respondent was slow to respond to communications, with no substantive action or resolution being forthcoming.

66. In a Production Notice dated 1 March 2023 (addressed further below), the SRA requested that the Respondent provide the reason for failing to pay the necessary fees to the reporting accountants to enable work to be commenced on the outstanding reports. The Respondent failed to respond to the Production Notice within the deadline, or indeed an extended deadline set.

67. On 17 April 2023, the accountants informed the SRA that they had received a payment which would enable them to commence work on the Accountants' Report for the year ending 2021 for Firm 2.

68. In an email of 22 March 2023, the Respondent assured the SRA that he would fully co-operate with the accountants to have the reports prepared and delivered to the SRA.

69. However, in a subsequent email of 20 July 2023, the accountants informed the SRA that they had not been instructed to prepare any accounts for Firm 1, and that no payment had yet been made to them in this regard. The accountants indicated that they had been scheduled for the work to take place to prepare Firm 2's 2021 Report in the week commencing 8 May 2023, but that the Respondent and his team had said that they were extremely busy that week and so the accountant could only visit for one day, requiring a further day to finalise matters, which had not yet been arranged at the time of the Notice.

70. The Accountants' Report for the year ending 2019 for Firm 1 was only completed on 1 September 2021; the 2020, 2021, 2022 and 2023 reports remained outstanding as at the time of the Rule 12 Statement.

Accountants' Reports for Harbord & Co ("Firm 2")

71. As far as the Accountants' Reports for Firm 2 are concerned, the 2019 Accountants' Report for Firm 2 was only obtained on 4 January 2022 and submitted on the same date; the Reports for 2020 and 2021 remained outstanding at the time of the Notice. The 2022 and 2023 Reports remained outstanding as at the date of the Rule 12 Statement.

Breaches of Accounts Rules and Principles in respect of Allegation 1.2

72. The Applicant asserted, and the Respondent accepted that to fail to obtain and submit Accountants' Reports for the years set out above, and within the expected time period following the end of the relevant accounting periods, was obviously in breach of the 2011 and 2019 Accounts Rules as set out above.

73. It was also in breach of Principle 8 of the 2011 Principles, as the Respondent's failure to obtain and submit such reports was not running his business or carrying out his role within the business effectively and in accordance with proper governance and sound financial and risk management principles. The purpose of obtaining Accountants' Reports (and delivering them to the SRA if qualified) is to act as a safeguard, which should form an inherent part of a firm's systems to ensure proper governance and sound financial and risk management, for monitoring risks to money and assets entrusted to the solicitor by clients and others. The Respondent's conduct in this regard was a failure to achieve Outcome 7.4 because the obligation to obtain reports was a component of, or a mechanism for, the control and monitoring of risks to client money.

74. As far as the 2019 accounting period is concerned, the Respondent's failure in this regard contravened Paragraph 4.2 of the 2019 Code. The obtaining of Accountants' Reports is a safeguard to monitor and protect client money and, in failing to obtain them, he thus failed to safeguard money entrusted to him by clients and others.

75. In relation to breaches of these Principles, or the failure to adhere to the Code, it is of note that the Accountants' Reports ultimately obtained and submitted for Firm 1, for the year-end 2019 (submitted in September 2021) and for Firm 2 for the year-end 2020 (submitted in March 2023) were qualified and listed several breaches of the SRA

Accounts Rules, including general weakness in the Firms' procedures and controls over both client and office monies, and reported a limitation in scope over some aspects of the audit work due to information not being available, amongst other concerns.

The total failure to obtain and submit Accountants Reports in a timely way, in accordance with the Regulations, across so many years, shows that the Respondent was not running his business effectively or in accordance with proper governance and sound financial and risk management principles.

Admission of Allegation 1.3 – Failure to adequately cooperate with, and respond to, the SRA

76. Following the FIR, the SRA's IO made contact with the Respondent in order to follow up on the position with regard to the outstanding Accountants' Reports.

77. The Chronology contained in Exhibit LIC1, attached to the Applicant's Rule 12 Statement, indicates numerous failures by the Respondent to respond to the SRA in a timely way, or to provide either the information requested of him, or indeed the information he indicated would be produced.

78. By way of example, the initial request for an update in respect of the outstanding Accountants' Reports, on 4 February 2021, was not responded to at all for over a month until 12 March 2021, and was next only responded to (not substantively) on 20 April 2021, with an update then being provided subsequently on 28 May 2021. While the Respondent indicated on 28 May 2021 that he would provide a copy of the letter he was drafting to send to the auditors/accountants in response to their queries, no further response from the Respondent was received, despite numerous chasers, until 6 October 2021. On that date, the Respondent said that he had been unwell and busy with work, and that the accounts had been due to be done in September but had to be moved to October because of the volume of conveyancing work being undertaken within the Firm. However, the Respondent still failed to provide to the SRA any letter that he had sent to the accountants, despite having said that he would produce this in May 2021.

79. Following further unanswered correspondence, the Respondent provided the 2019 Accounts' Report to the SRA on 4 January 2022, and indicated that the accountants were booked to conclude the accounts for the subsequent two years during the week commencing 17 January 2022, and that he would revert to the SRA once the process had started.

80. Once again, the Respondent did not respond to the SRA, despite further communications from the IO to him, until 26 April 2022 when he indicated that the accountant's enquiries were completed for Firm 2, and that their work on Firm 1's accounts were due to start the following week.

81. In respect of the next communication from the SRA in June 2022, there was a response from the Respondent indicating that he was unwell with Covid, but that he hoped to be back at work the following week and would respond fully then.

82. However, nothing was heard from the Respondent until 21 January 2023 when he confirmed that he noted the deadline for a response of 2 February 2023.

83. On 7 February 2023, the Respondent indicated that he and Firm 1 had been liaising with the accountants and responding to their queries since June 2022 and that the accountants hoped to conclude the audit that week, following which he would revert to the SRA and liaise with the accountant to resolve all of the other audits for both firms.

84. On 1 March 2023, nothing further having been heard from the Respondent, a Production Notice was sent to him requesting evidence that payment had been made to enable the work on the Accountants' Reports to start or, if it had not yet been made, the reason for that and when it would paid, as well as a copy of the ledger for the sale of Property 2.

85. This was in the context that the IO had been informed by the accountants that the 2020, 2021 and 2022 reports all remained outstanding (contrary to what the Respondent had told the SRA on 26 April 2022) with no work having started on them due to the fees, which were required upfront, not having been paid.

86. On 3 March 2023, the accountant submitted the report for the period ending 31 March 2020 for Firm 2. The Respondent did not respond to the Production Notice within the period indicated, and was sent a reminder on 22 March 2023 (the deadline to respond having been 15 March 2023).

87. On 22 March 2023, the Respondent responded to the IO to say that he had been out of the office working in Barbados and Spain for clients, and that the overdue accounts were due to be sent to the accountant by 31 March 2023 which would enable them to prepare all of the outstanding Reports. He indicated that he would be paying the accountants by 31 March 2023 to enable them to prepare the outstanding Accountants Reports.

88. On 24 March 2023, the Respondent provided to the SRA a copy of the up-to date ledger for the sale of Property 2.

89. In an email of 17 April 2023, the accountants informed the SRA that they had received on 12 April 2023 payment and instructions from the Respondent to commence work on the Accountant's Report for Firm 2 for the year ending 2021.

90. However, in an email of 20 July 2023, the accountants informed the SRA that they had not received any instructions or funds to prepare the outstanding reports for Firm 1.

91. The position as to the Accountants' Reports which were ultimately submitted, and those which remained outstanding at the time of the Rule 12 Statement, is set out above at paragraph 10, and confirmed by the FIO in his witness statement dated 19 March 2024. The position was that for Firm 1, the 2020, 2021, 2022 and 2023 reports all remained outstanding and for Firm 2, the 2022 and 2023 reports remained outstanding. The fact that these reports remained outstanding indicates that the Respondent's repeated assurances to the SRA that all was in hand and that the reports would be provided, were without any substance or merit.

92. It was the position as at the date of the Agreed Statement of Facts that, for Firm 1, all of the outstanding Accountants' Reports (2020, 2021, 2022 and 2023) remained outstanding, and for Firm 2 all of the outstanding Reports (2022 and 2023) remained outstanding.

Breaches of Principles in respect of Allegation 1.3

93. As a result of the above, the Respondent failed to act in accordance with Paragraphs 7.3, 7.4 or 7.10 of the Code:

    94.1 he had not cooperated with the SRA, adequately or at all, in respect of (i) obtaining and providing Accountants' Reports which are required under the Accounts Rules, and (ii) in respect of the SRA's investigation into why he was not able to provide the Accountants' Reports as required of him (whilst some reports were obtained and provided, they were very late, and the others have simply not been prepared at all).

    94.2 he had failed to respond promptly to the SRA, to provide full and accurate explanations or to provide the information and documents requested of him by the SRA including in respect of a Production Notice.

    94.3 he had failed to act promptly to take the remedial action requested by the SRA.

94. In *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession; that 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. The case also referred to an example of a solicitor conducting negotiations, or a barrister making submissions, who will take particular care not to mislead, and that such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.

95. By his persistent failure to adequately cooperate with the SRA, and to take the remedial action requested by the SRA over a number of years, he being aware of the necessary requirements in any event (having submitted the 2018 Accountant's Report, and the issue also having been addressed by the FIO during the FI) the Respondent had failed to act with integrity.

97. From the correspondence and communications from the SRA it would have been clear to the Respondent what the SRA, as his regulator, was seeking and the steps required to address the concerns raised and requests made. The lengthy gaps in communication and responses from the Respondent, despite the SRA seeking to follow up with him; the failure to provide the information requested when he did respond; and ultimately the ongoing failures in respect of production of the outstanding Accountant Reports, when the Respondent was clearly capable of undertaking work, and being very busy in his practice as a solicitor, is not indicative of the higher standards expected of a solicitor or of being scrupulous in his dealings with his regulator.

98. As COLP and COFA, the Respondent arguably had heightened responsibilities in respect of financial management and oversight of both Firms as well as cooperation and

engagement with his regulator. This is addressed further below in respect of Allegation 1.4, however it is also relevant to the issue of integrity, as his failure to adequately respond to the SRA, or to address what was being asked of him over such a long period of time, in circumstances where he was clearly working and able to conduct his business (around periods of illness as indicated), was not acting in accordance with the higher standards expected of him, particularly when given ample opportunity to remedy the situation. Nor was it acting scrupulously in respect of the financial and management oversight of the two Firms in which he was a partner, and indeed the COLP and COFA.

Admission of Allegation 1.4 – the Respondent's role as COFA

99. For all the reasons set out in respect of the Admissions of Allegations 1.1 – 1.3 above, the Respondent failed to fulfil his role and responsibilities as COFA, in that he failed to ensure, or take adequate steps to ensure, compliance with the Firm's regulatory obligations under the 2011 Accounts Rules and/or the 2019 Accounts Rules.

100. Consequently, insofar as the conduct took place before 25 November 2019, he did not act in compliance with his obligations under Rule 8.5(e)(i) of the SRA Authorisation Rules 2011 and/or Principle 7 of the SRA Principles 2011. Insofar as the conduct took place on or after 25 November 2019, he did not fulfil his obligations under Paragraphs 7.2 of the 2019 Code and/or 9.2 of the SRA Code of Conduct for Firms.

101. All of the conduct set out above demonstrates a wholehearted failure in respect of financial controls, systems and complying with basic, and yet fundamental, obligations in respect of sound accounting and financial management. The Respondent, as COFA, had a heightened responsibility to ensure such compliance, and yet he did not do so.

Witnesses

102. No witnesses were heard in the Substantive Hearing as the facts were agreed between the Respondent and the Applicant and the Respondent admitted all of the allegations.

Findings of Fact and Law

103. The Applicant was required to prove the allegations on the balance of probabilities. 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 Respondent's right to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

104. Allegation 1.1 - Between approximately July 2017 and December 2020, he used, or allowed the use of, Firm 1's client account as a banking facility in relation to the proceeds of sale of two properties for which he was the client and

1.1.1. insofar as the conduct took place before 25 November 2019, breached Rule 14.5 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules") and/or Principles 6, 7 and 8 of the SRA Principles 2011 ("the 2011 Principles");

1.1.2. insofar as the conduct took place on or after 25 November 2019, breached Rule 3.3 of the SRA Accounts Rules 2019 ("the 2019 Accounts Rules") and/or Principle 2 of the SRA Principles 2019 ("the 2019 Principles").

The Parties' Agreement on the Facts and the Respondent's admission of breaches of Accounts Rules and Principles in respect of Allegation 1.1.

104.1 As described further above, in the Parties Statement of Agreed Facts, dated 11 September 2024, the Parties have agreed on the facts relating to Allegation 1.1 and the Respondent has admitted that by using the client accounts of Firm 1 and Firm 2 as his private banking facility, he breached Principles 6, 7 and 8 of the SRA Principles 2011 and Rule 14.5 of the 2011 Accounts Rules in relation to Allegation 1.1.1 and Principle 2 of the SRA Principles 2019 and Rule 3.3. of the 2019 Accounts Rules in respect of Allegation 1.1.2.

Tribunal's Findings – Allegation 1.1

The alleged use of the client account as a banking facility (Rule 14.5 of the 2011 Accounts Rules and Rule 3.3 of the 2019 Accounts Rules)

104.2 Rule 14.5 of the SRA 2011 Accounts Rules and Rule 3.3 of the SRA 2019 Accounts Rules prohibit the use of a client account to provide banking facilities to clients or third parties, and require payments into and transfers or withdrawals from a client account to be in respect of the solicitor's delivery of regulated services. The Tribunal noted that these rules applied even if the money that the Respondent had retained in the client accounts of Firm 1 and Firm 2, respectively, was his own money, and the Respondent himself had been the client of Firm 1 and Firm 2.

104.3 The Tribunal was satisfied on the balance of probabilities that the Respondent's admissions of breaches of Rule 14.5 of the 2011 Accounts Rules and Rule 3.3 of the 2019 Accounts Rules had been properly made. The Respondent had admitted that he had chosen to retain money due to him in the client account, and made payments out from the client account which were not linked to any underlying transaction or the provision of legal services.

104.4 This constituted the use of the client account as a banking facility, which was prohibited by Rule 14.5 of the 2011 Accounts Rules with respect to conduct before 25 November 2019, and Rule 3.3 of the 2019 Accounts Rules with respect to conduct on or after 25 November 2019. The retention of the Respondent's monies in the client accounts, and the payments out of those accounts for purposes unconnected with the underlying transaction spanned the periods covered by both the 2011 and 2019 Accounts Rules. Accordingly, the Tribunal found that the Respondent had breached Rule 14.5 of the 2011 Accounts Rules and Rule 3.3 of the 2019 Accounts Rules for the respective periods.

The alleged failure to maintain public trust and confidence (Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles)

104.5 The test for determining whether a solicitor has behaved in a way that maintains the trust the public places in a solicitor in question and the provision of legal services applied by the Tribunal was the one set out in *Wingate and Evans v SRA and SRA v Malins* [2018] EWCA Civ 366, as per Jackson LJ:

> *"Principle 6 is directed to preserving the reputation of, and public confidence in, the legal profession. It is possible to think of many forms of conduct which*

would undermine public confidence in the legal profession. Manifest incompetence is one example. A solicitor acting carelessly, but with integrity, will breach Principle 6 if his careless conduct goes beyond mere professional negligence and constitutes "manifest incompetence"; see Iqbal and Libby.

In applying Principle 6 it is important not to characterise run of the mill professional negligence as manifest incompetence. All professional people are human and will from time to time make slips which a court would characterise as negligent. Fortunately, no loss results from most such slips. But acts of manifest incompetence engaging the Principles of professional conduct are of a different order."

104.6 The Tribunal was not satisfied that it had been proved on the balance of probabilities that by using the client accounts of Firm 1 and Firm 2, respectively, as a private banking facility in breach of Rule 14.5 of the 2011 Accounts Rules and Rule 3.3 of the 2019 Accounts Rules, the Respondent had in the circumstances of the case acted in a manner that amounted to manifest incompetence. The Tribunal considered that the breach was a technical breach because retaining the monies in the Firm's client account did not pose any risk of money laundering (the principal evil which the Rules are designed to avoid), because those monies belonged to the Respondent personally, and not to a third party. The Tribunal further considered that the Respondent had been careless (but not more) in failing to appreciate that his conduct amounted to a breach of the SRA Accounts Rules, and noted that the Respondent now accepts that he should have researched the matter further (beyond speaking to the Firm's accountant and a fellow partner) and ascertained that he was not allowed to retain his own money in the client account.

104.7 Applying the test set out in *Wingate and Evans v SRA and SRA v Malins*, the Tribunal found on the balance of probabilities that the Respondent had not by his admitted conduct failed to maintain the public trust and confidence in the provision of legal services and, thus, found that the Respondent's admissions of breaches of Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles were not properly made. The public's confidence in the profession would not be diminished by a solicitor failing, in technical breach of the Rules, to transfer his own monies promptly out of his Firm's client account, and into office (or another) account, with the consequence that the client account had more money in it than it should have done. Such conduct had not put other client's funds at risk. Nor was the Respondent running the risk that the Firm's accounts might be being used to launder funds for an external client. Nor was there any risk of anyone (other than the Respondent – himself a partner in both Firms 1 and 2) having their understanding of the distinction between the provision of legal and financial services eroded.

Alleged failure to comply with legal and regulatory obligations (Principle 7 of the 2011 Principles)

104.8 Principle 7 of the 2011 Principles requires solicitors to comply with their legal and regulatory obligations and deal with regulators and ombudsmen in an open, timely and co-operative manner. The Tribunal was satisfied on the balance of probabilities that, by using the client accounts of Firm 1 and Firm 2 respectively as his private banking facility the Respondent failed to comply with the SRA Accounts Rules (a regulatory

obligation) and thus, also breached Principle 7 of the SRA Principles 2011. Accordingly, the Respondent's admission in this regard had been properly made.

Alleged failure to act in accordance with proper governance (Principle 8 of the SRA Principles 2011)

104.9 Principle 8 of the SRA Principles 2011 requires solicitors to run their business or carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles. The Tribunal was satisfied on the balance of probabilities that by allowing the client accounts to be used as a banking facility (albeit for himself), the Respondent had failed to act in accordance with proper governance and sound financial and risk management principles.

104.10 Accordingly, the Tribunal found that the Respondent had breached Principle 8 of the SRA Principles 2011 and that his admission in that regard was properly made.

105. Allegation 1.2 - The Respondent failed to obtain and/or deliver Accountants' Reports in accordance with the requirement to do so within six months at the end of the accounting period for

1.2.1. any or all of the 2019, 2020, 2021, 2022 and 2023 accounting periods relating to Firm 1

1.2.2. any or all of the 2019, 2020, 2021, 2022 and 2023 accounting periods relating to Firm 2, and

1.2.2.1. insofar as the conduct took place before 25 November 2019, breached any or all of Rules 32A.1(a) and 32A.1(b) of the 2011 Accounts Rules and Principle 8 of the 2011 Principles and/or failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011 ("the 2011 Code");

1.2.2.2. insofar as the conduct took place on or after 25 November 2019, breached Rules 12.1(a) and 12.1(b) of the 2019 Accounts Rules and/or Paragraph 4.2 of the Code of Conduct for Solicitors, RELs and RFLs ("the 2019 Code").

<u>The Parties' Agreement on the Facts and the Respondent's admission of breaches of Accounts Rules and Principles in respect of Allegation 1.2</u>

105.1 As described further above, in the Parties Statement of Agreed Facts, dated 11 September 2024, the Parties agreed on the facts relating to Allegation 1.2, and the Respondent had admitted that by failing to obtain and/or deliver Accountants' Reports in accordance with the requirement to do so within six months at the end of the relevant accounting period for any or all of the 2019, 2020, 2021, 2022 and 2023 accounting periods relating to Firm 1 and Firm 2, respectively, the Respondent breached Rule 32A.1(a) and 32A.1(b) of the 2011 Accounts Rules and Principle 8 of the 2011 Principles and/or failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011 ("the 2011 Code") in relation to Allegation 1.2.2.1 and Rules 12.1(a) and 12.1(b) of the 2019 Accounts Rules and Paragraph 4.2 of the Code of Conduct for Solicitors, RELs and RFLs ("the 2019 Code") in relation to Allegation 1.2.2.2.

Tribunal's Findings – Allegation 1.2

Alleged Failure to obtain/deliver Accountants' Reports in accordance with 32A.1(a) and 32A.1(b) of the 2011 Accounts Rules and as Rules 12.1(a) and 12.1(b) of the 2019 Accounts Rules

105.2 Rule 32A.1(a) of the 2011 Accounts Rules and Rule 12.1(a) the 2019 Accounts Rules respectively require a solicitor that has at any time during an accounting period, held or received client money, or operated client's account as signatory, to obtain an accountant's report for that accounting period within six months of the end of the accounting period.

105.3 If the accountant's report is qualified, Rule 32A.1(b) of the 2011 Accounts Rules and Rule 12.1(b) the 2019 Accounts Rules, respectively, require a solicitor to deliver the accountant's report to the SRA within six months of the end of the accounting period.

105.4 The Tribunal was satisfied on the balance of probabilities that the Respondent had breached Rule 32A.1(a) of the 2011 Accounts Rules and Rule 12.1(a) the 2019 Accounts Rules by failing to obtain an accountant's report for the accounting periods 2019, 2020, 2021, 2022 and 2023 for the Firm 1 and Firm 2, respectively, within six months of the end of the relevant accounting period and that the Respondent's admissions as to breach of these Rules were thus properly made.

105.5 However, the Tribunal was not satisfied on the balance of probabilities that it had been proved that that the obligation to deliver to the SRA the outstanding Accountant's Reports for Firm 1 and Firm 2 existed, because that obligation only arose if the Reports were qualified. As those reports had never been prepared, it was impossible to say whether, had they been so prepared, they would have been qualified or not. Thus, the Tribunal was not able to find on the balance of probabilities that the Respondent had breached Rule 32A.1(b) of the 2011 Accounts Rules and/or Rule 12.1(b) the 2019 Accounts Rules, and the Tribunal thus concluded that Respondent's admission in this regard was not properly made.

Alleged failure to act in accordance with proper governance (Principle 8 of the SRA Principles 2011)

105.6 The Tribunal was satisfied on the balance of probabilities that by failing to obtain an accountant's report for the accounting periods 2019, 2020, 2021, 2022 and 2023 for Firm 1 and Firm 2, respectively, within six months of the end of the relevant accounting period in breach of the SRA 2011 and 2019 Accounts Rules, respectively, the Respondent had also breached Principle 8 of the SRA Principles 2011. Accordingly, the Respondent's admissions in this regard had been properly made.

105.7 The Tribunal agreed with the Parties' Statement of Agreed facts that a total failure to submit Accountants Reports in a timely manner, in accordance with the Accounts Rules, for so many accounting years showed that the Respondent was not running his business effectively or in accordance with proper governance and sound financial and risk management principles as was required by Principle 8 of the SRA Principles 2011.

Alleged failure to achieve Outcome 7.4 of the SRA Code of Conduct 2011

105.8 Outcome 7.4 of the Code of Conduct 2011 required a solicitor to maintain systems and controls for monitoring the financial stability of the solicitor's firm, and risks to money and assets entrusted to the solicitor by clients and others, and to take steps to address any issues identified.

105.9 The Tribunal agreed with the Parties' statement in the Statement of Agreed Facts that the obligation of a solicitor to obtain Accountant's Reports is a component of, or a mechanism for, the control and monitoring of risks to client money. The Tribunal was satisfied on the balance of probabilities that by failing to obtain an Accountant's Report for the accounting periods 2019, 2020, 2021, 2022 and 2023 for the Firm 1 and Firm 2, respectively, within six months of the end of the relevant accounting period in breach of the SRA 2011 and 2019 Accounts Rules, respectively, the Respondent had failed to control and monitor risks to client money and to the financial stability of Firm 1 and Firm 2.

105.10 Thus, the Tribunal found that the Respondent had failed to achieve outcome 7.4 of the Code of Conduct 2011, and that the Respondent's admission had in this respect been properly made.

Alleged Failure to achieve Outcome 4.2 of the SRA Code of Conduct 2019

105.11 Outcome 4.2 of the SRA Code of Conduct 2019 requires a solicitor to safeguard money and assets entrusted to the solicitor by clients and others. The Tribunal agreed with the Parties' statement in the Statement of Agreed Facts that obtaining of Accountants' Reports monitors and safeguards the client account.

105.12 The Tribunal was satisfied on the balance of probabilities that by failing to obtain the outstanding Accountant's Reports for Firm 1 and Firm 2, the Respondent had failed to monitor and safeguard the client accounts and had, thus, failed achieve Outcome 4.2 of the SRA's Code of Conduct 2019. Accordingly, the Respondent's admissions in this regard were properly made.

106. Allegation 1.3 - Between 8 November 2022 and at least 31 August 2023, he failed to adequately cooperate with, and respond to, the SRA's enquiries and requests in respect of the provision of Accountants' Reports for Firm 1 and Firm 2 and other information sought and thereby breached any or all of the following:

1.3.1. Paragraphs 7.3, 7.4 and 7.10 of the 2019 Code

1.3.2. Principle 5 of the 2019 Principles.

<u>The Parties' Agreement on the Facts and the Respondent's admission of breaches of the 2019 Principles and the Code of Conduct 2019 in respect of Allegation 1.3</u>

106.1 As described further above, in the Parties' Statement of Agreed Facts, dated 11 September 2024, the Parties agreed on the facts relating to Allegation 1.3. In addition, the Respondent has admitted that he breached paragraphs 7.3, 7.4 and 7.10 of the SRA Code of Conduct 2019 by:

- failing to cooperate with the Applicant adequately or at all in respect of obtaining and providing Accountant's Reports, or in respect of the Applicant's investigation into why he was not able to provide the Accountants' Reports as required of him (whilst some reports were obtained and provided, they were very late, and others have simply not been prepared at all);

- failing to respond promptly to the Applicant, to provide full and accurate explanations or to provide the information and documents requested of him by the Applicant including in respect of a Production Notice; and

- failing to act promptly to take the remedial action requested by the Applicant.

106.2 As described further above, in the Statement of Agreed Facts, the Respondent further admitted that by his persistent failure to adequately cooperate with the Applicant and to take the remedial action requested by the Applicant over a number of years he had also breached Principle 5 of the 2019 Principles.

Tribunal's Findings – Allegation 1.3

Alleged breach of paragraphs 7.3, 7.4 and 7.10 of the SRA Code of Conduct 2019

106.3 Paragraph 7.3 of the SRA Code of Conduct 2019 requires a solicitor to cooperate with the SRA, other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.

106.4 Paragraph 7.4 of the SRA Code of Conduct 2019 requires a solicitor to respond promptly to the SRA, and provide full and accurate explanations, information and documents in response to any request or requirement; and to ensure that relevant information, which is held by the solicitor, or by third parties carrying out functions on behalf of the solicitor, which are critical to the delivery of legal services, is available for inspection by the SRA.

106.5 Paragraph 7.10 of the SRA Code of Conduct 2019 requires a solicitor to act promptly to take any remedial action requested by the SRA and, if requested to do so by the SRA, to investigate whether there have been any serious breaches that should be reported to the SRA.

106.6 The Tribunal was satisfied that it was proved on the balance of probabilities that the Respondent had failed to cooperate with the Applicant adequately or all in relation to obtaining and providing the outstanding Accountant's Reports, or in respect of the Applicant's investigation into why he was not able to provide the Accountants' Reports as required of him, and that the Respondent's admissions in this regard were properly made. Therefore, the Tribunal found that the Respondent had breached paragraph 7.3 of the SRA Code of Conduct 2019.

106.7 In addition, the Tribunal was satisfied that it was proved on the balance of probabilities that the Respondent had failed to respond promptly to the Applicant, to provide full and accurate explanations, or to provide the information and documents requested of him by the Applicant including in response to a Production Notice, and that the Respondent's admissions in this respect were properly made. Therefore, the Tribunal

found that the Respondent had breached paragraph 7.4 of the SRA Code of Conduct 2019.

106.8 The Tribunal was further satisfied that it was proved on the balance of probabilities that over a period of many years the Respondent had failed to take the remedial action requested by the Applicant, and the Respondent's admissions in this respect were properly made. Thus, the Tribunal found that the Respondent had breached paragraph 7.10 of the SRA Code of Conduct 2019.

Alleged lack of integrity (Principle 5 of the 2019 Principles)

106.9 The relevant test for integrity applied by the Tribunal was that set out by Jackson LJ in *Wingate and Evans v SRA and SRA v Malins* [2018] EWCA Civ 366:

> *"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 … [Professionals] are required to live up to their own professional standards.*
>
> *[…]*
>
> *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.*
>
> *The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. …*
>
> *Obviously, neither courts nor professional tribunals must set unrealistically high standards … The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public."*

106.10 The Tribunal was satisfied that it was proved on the balance of probabilities that the Respondent had persistently, and over a long period of time, failed to cooperate and communicate with the Applicant with regard to the production of Accountants' Reports for Firm 1 and Firm 2, and to take the remedial action requested by the Applicant. The Tribunal further considered that as COLP and COFA for both Firm 1 and Firm 2, the Respondent had heightened responsibilities over the financial management and oversight of both Firms, and for cooperation and engagement with the Applicant.

106.11 Applying the test for integrity set out in Wingate and Evans, the Tribunal considered that a solicitor's duty to be scrupulously accurate, particularly when dealing with his regulator, required him to provide timely, full and frank disclosure to the Applicant about the status of the Accountant's Reports of Firm 1 and Firm 2, and in response to the Applicant's enquiries and requests.

106.12 Instead, over a long period of time the Respondent delayed answering the Applicant's enquiries, and failed to provide the requested information, or information that he had himself indicated he would provide. In addition, the manner in which the Respondent had answered the Applicant's enquiries demonstrated obfuscation, and was less than frank, particularly with regard to the stage reached by the accountants in the preparation of the outstanding Accountant's reports, when in reality the accountants had not even started to work on those Reports because the Respondent could not pay them.

106.13 Therefore, the Tribunal concluded that the Respondent had acted without integrity by persistently, and over a long period of time, failing to cooperate and communicate frankly with the Applicant in relation to obtaining Accountants' Reports for Firm 1 and Firm 2, and failing to take the remedial action requested by the Applicant despite being given many opportunities to do so. Accordingly, the Tribunal found that the Respondent had breached Principle 5 of the 2019 Principles and that his admission in this respect had been properly made.

107. Allegation 1.4 - By reason of the matters set out at Allegations 1.1 to 1.3 above or any of them in his capacity as the Firm's Compliance Officer for Finance and Administration (COFA), the Respondent failed to ensure or take adequate steps to ensure compliance with the Firm's regulatory obligations under the 2011 Accounts Rules and/or the 2019 Accounts Rules and:

1.4.1. insofar as the conduct took place before 25 November 2019, his obligations under Rule 8.5(e)(i) of the SRA Authorisation Rules 2011 and/or Principle 7 of the SRA Principles 2011;

1.4.2. insofar as the conduct took place on or after 25 November 2019, his obligations under Paragraphs 7.2 of the 2019 Code and/or 9.2 of the SRA Code of Conduct for Firms.

<u>The Parties' Agreement on the Facts and the Respondent's admission of breaches of the SRA Authorisation Rules, Principles and SRA Code of Conduct for Firms in respect of Allegation 1.4</u>

107.1 As described further above, in the Parties Statement of Agreed Facts, dated 11 September 2024, the Parties have agreed on the facts relating to Allegation 1.4. In addition, the Respondent has admitted in the Parties' Statement of Agreed Facts that he failed to fulfil his role and responsibilities as COFA, in that he failed to ensure, or take adequate steps to ensure, compliance with the Firm's regulatory obligations under the 2011 Accounts Rules 2011 and/or the 2019 Accounts Rules, and that consequently, in relation to his conduct before 25 November 2019, he breached Rule 8.5(e) (i) of the SRA Authorisation Rules 2011 and/or Principle 7 of the SRA Principles 2011 and in relation to his conduct after 25 November 2019, he breached paragraph 7.2 of the 2019 Code of Conduct and/or 9.2 of the SRA Code of Conduct for Firms.

<u>Tribunal's Findings – Allegation 1.4</u>
Alleged breach of Rule 8.5(e)(i) of the SRA Authorisation Rules 2011

107.2 Rule 8.5(e)(i) of the SRA Authorisation Rules 2011 requires the COFA of an authorised body to take all reasonable steps to ensure that the body and its managers, or the sole

practitioner, and its employees comply with any obligations imposed upon them under the SRA Accounts Rules.

107.3 The Tribunal was satisfied that it was proved on the balance of probabilities that the Respondent had failed to obtain the Accountants' Reports in breach of the 2011 Accounts Rules as described further in relation to Allegations 1.1- 1.3 above. Therefore, the Tribunal found that in so far as the Respondent's conduct took place before 25 November 2019, as COFA the Respondent had breached Rule 8.5(e)(i) of the SRA Authorisation Rules 2011 by failing to comply with the 2011 Accounts Rules, and that the Respondent's admissions in this respect were properly made.

Alleged failure to comply with legal and regulatory obligations (Principle 7 of the SRA Principles 2011)

107.4 Principle 7 of the SRA Principles 2011 required solicitors to comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner. The Tribunal considered that as COFA the Respondent had a heightened duty to comply with his and the Firms' legal and regulatory obligations.

107.5 The Tribunal was satisfied that it was proved on the balance of probabilities that the Respondent had failed to fulfil his role and responsibilities as COFA, in that he failed to ensure, or take adequate steps to ensure, compliance with the Firm's regulatory obligations under the 2011 Accounts Rules. Therefore, the Tribunal found that in so far as the Respondent's conduct took place before 25 November 2019, the Respondent had breached Principle 7 of the SRA Principles 2011 and that the Respondent's admissions in that respect were properly made.

Alleged breach of paragraph 7.2 of the SRA Code of Conduct 2019

107.6 Paragraph 7.2 of the SRA Code of Conduct 2019 requires solicitors to justify their decisions and actions in order to demonstrate compliance with their obligations under the SRA's regulatory arrangements.

107.7 The Tribunal was satisfied that it was proved on the balance of probabilities that the Respondent had failed to fulfil his role and responsibilities as COFA, in that he failed to ensure, or take adequate steps to ensure, compliance with the Firm's regulatory obligations under the 2019 Accounts Rules. Therefore, the Tribunal found that in so far as the Respondent's conduct took place after 25 November 2019, the Respondent had breached paragraph 7.2 of the SRA's Code of Conduct 2019 and that the Respondent's admissions in that respect were properly made.

Alleged breach of paragraph 9.2 of the SRA Code of Conduct for Firms.

107.8 Paragraph 9.2 of the SRA Code of Conduct for Firms requires a COFA to take all reasonable steps to ensure that:

(a) the firm and its managers and employees comply with any obligations imposed upon them under the SRA Accounts Rules;

(b) ensure that a prompt report is made to the SRA of any facts or matters that she or he reasonably believes are capable of amounting to a serious breach of the SRA Accounts Rules which apply to them; and

(c) notwithstanding sub-paragraph (b), she or he ensures that the SRA is informed promptly of any facts or matters that she or he reasonably believes should be brought to its attention in order that it may investigate whether a serious breach of its regulatory arrangements has occurred or otherwise exercise its regulatory powers.

107.9 The Tribunal was satisfied that it was proved on the balance of probabilities that in so far as the Respondent's conduct took place after 25 November 2019, the Respondent had failed to obtain the missing Accountants' Reports in breach of the 2019 Accounts Rules as described further in relation to Allegations 1.1- 1.3 above. Therefore, the Tribunal found that in respect of that conduct, as COFA the Respondent had breached paragraph 9.2 of the SRA Code of Conduct for Firms and that the Respondent's admissions to that allegation were properly made.

Previous Disciplinary Matters

108. On 5 November 2003, the Respondent was severely reprimanded due to the fact that he had been convicted of possession of 0.41g of cocaine.

109. On 5 July 2012, an authorised officer of the SRA issued the Respondent with a warning as a result of their finding that the Respondent had breached Rules 6, 7, 19(2), 22(1)(b), 29 and 32 of the Solicitors' Accounts Rules 1998.

110. At a hearing before the Tribunal on 16 and 17 August 2017, the Respondent was found to have had a personal relationship with a client in family law proceedings, and had failed to disclose the details of that relationship to the Court, which resulted in there being a risk of the Respondent's interests being in conflict with those of his client. The Tribunal found that the Respondent had, thus, breached principles, 1, 2 3, 4, 5 and 6 of the SRA Principles 2011, as well as outcome 5.6 of the SRA Code of Conduct 2011 and, consequently, ordered the Respondent to pay of fine of £8,500 and costs in the sum of £9,483.

Mitigation

111. In mitigation, the Respondent referred to his enduring health issues, which had started in or around 2017 and had prevented the Respondent from working for prolonged period of times. The Respondent further explained that he had been unable to pay to his accountants to produce the overdue Accountants Reports because his illness, and his consequent inability to work, had reduced his earnings.

112. In addition, the Respondent explained that his prolonged inability to work, coupled with the lack of criminal law work during the Covid pandemic, had ultimately caused the Respondent to become bankrupt. This had resulted in an automatic suspension of his practising certificate.

113. The Respondent further explained that, once he had received a new treatment for his health issues, his health had considerably improved in or around December 2023, and

that thereafter he had fully cooperated with the Applicant's investigations and these proceedings. The Respondent had since then also been able to obtain a practising certificate from the Applicant, which had been issued with significant conditions.

114. The Respondent further advised that the Firm 1 and Firm 2 were in the process of being closed down, but he had been offered employment by a new entity, Harbord & Co Ltd, which had been approved by the Applicant as a regulated entity. However, the Respondent confirmed that he would not have any management function in Harbord & Co Ltd, as the operations of Harbord & Co Ltd would be managed by his partner, Ms Frost. The Respondent also stated that he would not be seeking to apply to have the conditions on his practising certificate removed.

115. The Respondent assumed that his bankruptcy would be closed in November 2024, unless the official receiver decided otherwise.

116. The Respondent apologised profusely to the Applicant and the Tribunal for being before the Tribunal again.

Sanction

117. In determining a sanction for the Respondent, the Tribunal considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanction (10th Edition /June 2022) (the "**Sanctions Guidance**").

118. The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, the Tribunal's role was to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances. In determining the seriousness of the misconduct, the Tribunal was to consider the Respondent's culpability and identified harm, together with the aggravating and mitigating factors that existed.

119. In assessing the Respondent's culpability, the Tribunal found that the Respondent had been given wrong and misconceived advice from his colleagues as to the appropriateness of retaining his money in the Firm's client account. Whilst others had contributed to the Respondent's misunderstanding, the Respondent was solely responsible for his own compliance with his regulatory obligations and for his misconduct. The Respondent's misconduct in relation to Allegation 1.1. had not been planned but it had continued for a considerable period of time.

120. The Tribunal further noted that the Respondent had been an experienced solicitor and, although he had demonstrated an unfamiliarity with the SRA's Accounts Rules, he should have been familiar with the Accounts Rules, especially given his role as COFA, and the previous finding of Accounts Rules breaches in 2012. As regards Allegations 1.2-1.4, the Tribunal considered that the Respondent had deliberately failed to cooperate with his regulator. Whilst the Tribunal considered that the Respondent had not deliberately misled the Applicant, he had been less than forthcoming and less than frank in relation to his assurances that he would be in a position to provide the overdue Accountants Reports for both Firm 1 and Firm 2.

121. The Tribunal then considered the issue of harm. The Tribunal found that the Respondent had not caused any harm to anyone in relation to Allegation 1.1 when he had used Firm 1's and Firm 2's client accounts as a personal banking facility, because the funds in question had belonged to the Respondent as the client in the relevant conveyancing transactions.

122. However, the Tribunal found that the Respondent had caused harm to Firm 1 and Firm 2, and indeed to their clients, by failing to obtain the required Accountants' Reports for those Firms for several accounting years, because that failure had put the financial stability and of Firm 1 and Firm 2 into jeopardy, and had removed the safeguards for the protection of client monies that such Reports provide.

123. It must have been foreseeable to the Respondent that harm would be caused to Firm 1 and Firm 2 by the failure to obtain Accountants' Reports for several years, because this meant that the Firm 1 and Firm 2 had no safeguards in place to ensure proper governance and sound financial and risk management, and no way of monitoring what was happening in the client accounts of those Firms.

124. The Tribunal then considered whether there were any aggravating and/or mitigating factors to take into account in its assessment of the seriousness of the Respondent's misconduct. The Tribunal considered that the Respondent's conduct had not been aggravated by dishonesty, and his failure to obtain the Accountants' Reports for Firm 1 and Firm 2 for several years had not been deliberate as such, as the reason behind his misconduct was his inability to pay the accountants' fees. However, the Tribunal considered that the Respondent's failure to cooperate with the Applicant had been deliberate, and that it had continued for a long period of time.

125. The Tribunal considered that the previous disciplinary proceedings against the Respondent, particularly in relation to the finding of breaches of the Account Rules, constituted aggravating factors. Given the previous disciplinary matters, the Respondent would have been expected to take more care not to breach the Accounts Rules and other Regulations again.

126. The Tribunal nevertheless considered that the Respondent had shown genuine insight into his misconduct by making full and open admissions. The Tribunal also noted that the Respondent had cooperated with the Applicant in these proceedings, which was demonstrated by the Parties' Statement of Agreed Facts. The Tribunal further noted that the Respondent's misconduct may have at least to some extent resulted from his ill health, and consequent lack of funds, although in the Tribunal's view these factors did not entirely excuse the Respondent's misconduct.

127. The Tribunal considered that the Respondent's misconduct in relation to Allegation 1.1 was not very serious in the circumstances of the case because no harm was caused to any third party, and the funds in question belonged to the Respondent. However, the Tribunal assessed the Respondent's misconduct in failing to obtain the required Accountants' Reports, failing to cooperate with the Applicant, and failing to comply with his obligations as COFA, and involving several breaches of the Accounts Rules, the SRA Principles and Code of Conduct, including acting without integrity, as serious.

128. The Respondent's misconduct was further aggravated by the fact that the Respondent had in previous disciplinary proceedings been found to have breached the Accounts Rules, so this was repeated behaviour.

129. Given the serious nature of the Respondent's misconduct, the Tribunal concluded that the appropriate and proportionate sanction was to order the Respondent, Mr Richard Harbord, to pay a level 3 fine, amounting to £8,500.00.

130. The Tribunal considered, but rejected, the lesser sanctions within its sentencing powers such as no order, a reprimand, or restrictions, because the Tribunal considered that such lesser sanctions would not have the appropriate effect on public confidence in the legal profession and would not adequately reflect the Respondent's serious misconduct.

Costs

131. The Applicant's schedule of costs amounted to £49,483.30, which comprised the fees of four fee earners of different seniority from Capsticks Solicitors LLP. The fees included disbursements and VAT.

132. The Respondent had submitted a statement of means, dated 11 June 2024 and the bankruptcy order made against him on 1 November 2023.

133. Having carefully reviewed and considered the Applicant's costs schedule, the Respondent's Statement of Means as well as the Parties' respective submissions on costs in the oral hearing, the Tribunal concluded that the costs of and incidental to this application and enquiry should be fixed in the sum of £40,000.00.

134. The Tribunal reduced the Applicant's costs on the basis that the hearing concluded a day earlier than had been anticipated, and the recorded work showed some duplication of work due to the involvement of four fee earners.

135. The Tribunal noted that the bankruptcy against the Respondent was likely to be discharged in the near future. In addition, the Tribunal was not satisfied that the Respondent's salary would not increase after the discharge of the bankruptcy order, because the Respondent had not provided sufficient evidence of his earnings in the new firm, Harbord & Co Ltd. However, in light of the uncertainty of the Respondent's financial position, the Tribunal considered that the order of costs should not be enforced against the Respondent without leave of the Tribunal.

Statement of Full Order

136. The Tribunal Ordered that the Respondent, RICHARD HARBORD solicitor, do pay a fine of £8,500.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £40,000.00, such costs order not be enforced without leave of the Tribunal.

Dated this 11th day of November 2024
On behalf of the Tribunal

A M Horne

JUDGMENT FILED WITH THE LAW SOCIETY
11 NOVMEBER 2024

A M Horne
Chair