Neutral Citation Number: [2023] EWHC 1032 (Ch)

Case No: CR-2020-002705

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 2 May 2023

Before :

Jon Turner KC sitting as a Deputy High Court Judge

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Between :

SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY	**Claimant**
- and –	
DUDLEY ARNOLD JOINER	**Defendant**

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Mr. Raj Arumugam (instructed by **Mr. George Squier of the Insolvency Service**) for the **Claimant**
Mr. Dudley Joiner acting in person as the **Defendant**

Hearing dates: 28 February, 1, 2, 3 March 2023

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Jon Turner KC sitting as a Deputy High Court Judge

Jon Turner KC sitting as a Deputy High Court Judge:

1. This is an application by the Secretary of State for a disqualification order under s.6 of the Company Directors Disqualification Act 1986 ("**CDDA 86**"). The Secretary of State seeks an order barring Mr. Joiner from being a director of a company, acting as a receiver of a company's property, or in any way being concerned in, or taking part in, the promotion, formation or management of a company without the permission of the court, and from acting as an insolvency practitioner. The period of disqualification for which the Secretary of State contends is 9 years.

2. The events giving rise to the application concern Mr. Joiner's conduct as a director of a company called Team Property Management Limited ("**Team**"). Team was incorporated on 6 September 2010. Mr. Joiner was the company's sole appointed director from the date of incorporation until the date a winding-up order was made against it seven years later, on 20 November 2017. Team's main business activity was the provision of property management services.

3. As set out below, the Secretary of State's case rests on two allegations against Mr. Joiner. These are, in essence, that (i) he failed to ring-fence and protect certain funds which were held by Team for the account of a major customer called the Quadrangle RTM Company Limited ("**Quadrangle**"), and, when the management agreement with Quadrangle was terminated, he failed to ensure that those funds were duly returned to Quadrangle; (ii) he failed to ensure that Team kept proper accounting records, or at least failed to deliver them up to the Official Receiver, and this made it impossible to determine (a) the reasons for payments that were made by Team to connected companies for which Mr Joiner acted as sole director, and to a member of Mr. Joiner's family, and to Mr. Joiner himself, and (b) the reasons for the transfer of money in respect of management fees from Quadrangle to Team that are said to be in excess of the sums to which Team was entitled.

4. The procedural background to the hearing of this action is tortuous. A brief summary is as follows.

5. The SoS's application for a disqualification order was made on 10 June 2020. It was supported by affidavit evidence of Mrs Wendy Jones, an official within the Investigations and Enforcement directorate of the Insolvency Service, sworn on 15 May 2020.

6. A number of extensions of time were granted for Mr. Joiner to serve an affidavit in opposition in late 2020, in order to accommodate his ill health. His affidavit in opposition was finally sworn on 15 December 2020. An affidavit in reply from Ms Jones was served on 11 February 2021.

7. At a directions hearing on 19 April 2021, the Court was informed that the defendant was then undergoing medical treatment. The matter was ordered to be listed not before 1 January 2022, with a time estimate of 5 days including 1-day pre-reading time. The hearing of the Secretary of State's application was given a 4-day listing between 23 and 26 March 2022.

8. Shortly before the trial was due to start, on 15 March 2022, Mr. Joiner wrote to the Court seeking an adjournment of the hearing owing to the side effects of medical

treatment that he was then undergoing. He said that these included in particular memory loss, inability to concentrate, brain fog and fatigue.

9. The Insolvency Service's solicitor, Mr. Squier, responded by email that same day expressing sympathy, but asking for some medical evidence in support of Mr. Joiner's contentions. Mr. Squier wrote again on 17 March 2022, to underline that what was needed was medical evidence to address Mr. Joiner's current symptoms, and how those symptoms were said to impact on his ability to participate in the trial process.

10. I understand that no such evidence was forthcoming. However, the hearing had to be adjourned for unrelated reasons. Mr. Joiner mentioned his medical condition to the Court and the Judge, HHJ Mithani, made clear that Mr. Joiner would need to have medical evidence to support a request for any adjournment.

11. The trial was subsequently re-listed to take place in a four-day window beginning in the week of 27 February 2023. No adjournment was sought by Mr. Joiner until the eve of the hearing. On the first day of the hearing, Mr. Joiner, who then appeared by counsel, applied for a further adjournment on health grounds. I gave judgment ex tempore refusing the application, which had not been properly supported by medical evidence: see the principles summarised by Warby J. (as he then was) in Decker v. Hopcraft [2015] EWHC 1170 (QB), at [21] – [31].

12. Thereafter, the substantive trial proceeded over 3 days. Mr. Joiner acted in person, and I made allowances for the concerns that he had raised about managing the stress and demands of the hearing by ensuring frequent rest breaks, and by providing that the parties' respective closing submissions should be submitted in writing sequentially following the hearing. Mr. Joiner cross-examined Mrs Jones for around two hours on aspects of her two affidavits. The Secretary of State's counsel cross-examined Mr. Joiner over the course of two days on his affidavit evidence.

13. After the oral hearing Mr. Joiner produced a potentially material document that it appeared had been omitted inadvertently from the trial bundle. It transpired that this document had previously been omitted from the copy exhibits to Mr. Joiner's affidavit in December 2020, although it was obliquely referenced in the main body of the affidavit, with the consequence that the Secretary of State had never reviewed it. Separately, in his post-hearing written closing submissions, Mr. Joiner also advanced a fresh line of argument that had not been raised before (even though it was constructed appropriately by reference to financial documents that were already within the trial bundle). These developments made it necessary to allow further written submissions to be received before the stage of argument was closed.

Legal principles

14. Section 6 of the CDDA 86 provides that the court must make a disqualification order against a person in any case where, on an application, it is satisfied-

(a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently), and

(b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.

15. Section 9 provides that where a court has to determine whether a person's conduct as a director of any particular company or companies makes him unfit to be concerned in the management of a company, it must, as respects his conduct as a director of that company or, as the case may be, each of those companies, have regard in particular-

(a) to the matters mentioned in Part I of Schedule 1 to the CDDA 86, and

(b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule.

16. The considerations listed in Schedule 1 are expressed to be "in particular" and are not exhaustive: Re Bath Glass Ltd [1988] BCLC 329. The main points in Schedule 1 which have been relied on by the Secretary of State as being relevant to the present application include:

"The extent to which the person was responsible for the causes of any material contravention by a company … of any applicable legislative or other requirement" (paragraph 1);

"The frequency of conduct of the person which falls within paragraph 1 …" (paragraph 3);

"The nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused, by the person's conduct in relation to a company …" (paragraph 4);

"Any misfeasance or breach of any fiduciary duty by the director in relation to a company …" (paragraph 5);

"The frequency of conduct of the director which falls within paragraph 5…" (paragraph 7).

17. It is well-established that section 6 is an instrument of public policy. It is principally directed at the protection of the public, and is not a punitive or compensatory mechanism. In this regard, Re Barings plc and others (No. 5) [1999] 1 BCLC 433 Jonathan Parker J. stated at p.482H (by reference to Lord Woolf MR's earlier judgment in Re Westmid Packing Services Ltd [1998] 2 BCLC 646):

> "*The primary purpose of the jurisdiction under s 6 is to protect the public against the future conduct of companies by persons whose past records as directors of insolvent companies have shown them to be a danger to others*."

18. In Secretary of State for Business Innovation and Skills v. Khan [2017] EWHC 288 (Ch), Mr. Registrar Jones summarised the broad aims of the provision succinctly in the following terms:

"*The purpose of disqualification is to protect the public and to some extent provide a deterrence and generally improve the standard of company management*."

19. As respects the legal test for "unfitness", the basic principles in the caselaw were distilled by Lewison J. in Secretary of State for Trade and Industry v. Goldberg and McAvoy [2003] EWHC 2843 (Ch). They include in particular the following propositions:

i) "Ordinary commercial misjudgment is in itself not sufficient to justify disqualification. In the normal case, the conduct complained of must display a lack of commercial probity, although … in an extreme case of gross negligence or total incompetence disqualification could be appropriate" (*per* Nicholas Browne-Wilkinson VC in In re Lo-Line Electric Motors [1988] Ch 477, 486);

ii) Addressing the question of "unfitness" requires making a value judgment. This value judgment is made within the context of an awareness of the significant responsibilities that attach to the management of a company. As Henry LJ stated in Re Grayan Building Services Ltd [1995] Ch 241:

"*The concept of limited liability and the sophistication of our corporate law offers great privileges and great opportunities for those who wish to trade under that regime. But the corporate environment carries with it the discipline that those who avail themselves of those privileges... must accept the standards laid down and abide by the regulatory rules and disciplines in place to protect creditors and shareholders. And, while some significant corporate failures will occur despite the directors exercising best managerial practice, in many, too many, cases there have been serious breaches of those rules and disciplines, in situations where the observance of them would or at least might have prevented or reduced the scale of the failure and consequent loss to creditors and investors*."

iii) "*To reach a finding of unfitness the court must be satisfied that the director has been guilty of a serious failure or serious failures, whether deliberately or through incompetence, to perform those duties of directors which are attendant on the privilege of trading through companies with limited liability. Any misconduct of a director qua director may be relevant, even though it does not fall within a specific section of the Companies Act or the Insolvency Act*": per Peter Gibson J in Re Bath Glass, *supra.*

iv) Incompetence in "*a marked degree*" is enough to render a person unfit: Re Sevenoaks Stationers Ltd [1991] Ch 164 at 184.

v) Time and again judges have emphasised that the court is required to take a broad-brush approach.

vi) In considering whether a director is unfit, it is important to consider the cumulative effect of such of the allegations as are proved against him.

vii) Although the consequences for a disqualified director are serious, these are civil proceedings. Thus the civil standard of proof applies. The burden of proof lies on the Secretary of State. The more serious the allegation, the more cogent must be the evidence required to prove it, even on the balance of probabilities: Re Living Images Ltd [1996] 1 BCLC 348, 355-356.

viii) If a director fails to understand or respect the fundamental principle that he or she owes a duty to exercise their powers in the best interests of the particular company of which they are a director, this could lead to the conclusion that they are not competent to be a director.

20. In his post-hearing written closing submissions, Mr. Joiner referred to the Secretary of State's submission, based on Lewison J's judgment in Goldberg, that the assessment by the court should be "broad brush" (see paragraph 17(19.v) above). He said that, if this was indeed so, then the Court should recognise that the allegations made against him mostly emanate from an individual representing Quadrangle, who had created a false impression of misappropriation of funds.

21. As to this, there is no question but that the Court will consider the evidence deployed by the Secretary of State critically, and will be alive to concerns such as that voiced by Mr. Joiner. However, Lewison J's reference to a "broad-brush" assessment should not be misinterpreted (and it is understandable that this expression might give rise to a degree of confusion with litigants in person such as Mr. Joiner). By using that expression, the learned judge was simply referring to the need to take a holistic approach to the assessment of "unfitness", rather than analysing it by reference to separate compartmental headings such as competence, discipline and honesty. Nor, for the avoidance of doubt, was the learned judge suggesting that the matter should be approached at a high-level only, without the necessity for a careful reading of the detailed material relied on by both sides.

Essential factual background

22. In his affidavit, Mr. Joiner recounts how he became involved in the property management business.

23. In 2005, he and his wife purchased a retirement flat for his mother-in-law. Shortly after she moved in to the flat an issue arose because the landlord wanted to cease to provide a resident manager and sell the manager's flat. Mr. Joiner ended up being elected by the lessees to chair an action group to stop the landlord taking that action. This led him to research the provisions that had been introduced in The Commonhold and Leasehold Reform Act of 2002, and to become aware of the "right to manage" or "RTM" provisions. He represented the leaseholders in a claim for RTM, which he says was the first successful claim of that nature at a retirement estate. This allowed them to block the landlord's plan, obtain control, keep the resident manager and appoint a manager of their own choosing.

24. Thereafter, he says he was approached by the head of the Government-owned Leasehold Advisory Service ('LEASE') and members of The Association of Retirement Housing Managers, to set up a service to help retirement estates to acquire the RTM. This resulted in Mr. Joiner establishing an organisation called The Right

To Manage Federation. Its objective was to offer right to manage services under a special scheme that would be cost-free to retired leasehold owners.

25. The scheme that Mr. Joiner developed was based on putting the management contract out to tender to a minimum of three companies and the company that won the tender would pay the various fees and costs incurred in processing the RTM claim. Mr. Joiner says that this process became extremely successful and that, by the date of signing his affidavit at the end of 2020, RTMF had assisted 3184 retirement-flat owners in 101 estates to acquire RTM.

26. Mr. Joiner says that, building on that success, RTMF expanded its services to non-retirement blocks. By the end of 2020, RTMF had successfully acquired RTM for over 420 buildings and 10,500 properties.

27. In or about 2012, Mr. Joiner explains that it was decided to handle the making of RTM claims through a separate company called RTMF Services Limited. The RTMF would thereafter be concerned with providing companies with post-RTM guidance and support, and at national level participating in policy debates and so forth.

28. When an RTM company was formed on behalf of a client, it would become a member of the RTMF, and then would receive help and support as required after the "right to manage" had been secured.

29. Mr. Joiner says that he has been involved in numerous discussions with the government, including the Department for Housing, Communities and Local Government. In 2017, he put forward proposals for amending RTM legislation, many of which he says were agreed with by the Law Commission, which was tasked with undertaking a review of the "right to manage" mechanisms. He adds that the RTMF is also working on a code of practice for RTM companies.

30. Mr. Joiner explains that RTMF Services Limited has operated as a commercial company. It charges clients on a time basis and pays a licence fee to the RTMF. Apart from Mr. Joiner himself, it has (or had at the date of signing his affidavit) one other executive. The rest of the team were self-employed, and this included his son Steven Joiner who was responsible for web development and digital marketing.

31. Team was formed by Mr. Joiner in 2010 to undertake property management work. Mr. Joiner recruited a lady called Sandra Lynch who had experience as a property manager, and who had expertise with the accounts system Sage. She would regularly visit the properties being managed, set budgets, oversee the collection of service charges, ensure that obligations under the leases were met and so forth.

32. In her affidavit evidence on behalf of the Secretary of State, Mrs Jones states that according to Team's records, information provided by Team's former clients and information available online, Team had the following portfolio of clients, and managed the following properties, before it was wound up on 20 November 2017 on the petition of Quadrangle:

    i) Fairfield Lodge RTM Company Ltd., in respect of a retirement block of 58 flats in Eastbourne, between 17 January 2012 and 20 May 2017;

ii) Millington RTM Company Ltd., in respect of a retirement block of 44 flats in East Sussex, in a period that is not known;

iii) Quadrangle, in respect of blocks of 87 (non-retirement) flats and 15 houses - known as Quadrangle House, Onyx Mews and Topaz House - in Romford, East London, between 4 May 2012 and 26 January 2016;

iv) Nautica La Marina Management Ltd., in relation to a property in Eastbourne, from a date unknown until around 2014;

v) Chichester Court (Bexhill on Sea) RTM Company Limited, in relation to 28 retirement housing units in Bexhill-on-Sea, between 16 October 2014 and 28 November 2016.

33. Mr. Joiner says in his affidavit that he was introduced to Quadrangle House following a radio programme in which he participated in 2009. He facilitated the making of a successful RTM claim in relation to the Quadrangle estate (after an initial failure owing to what is described as a "*structural technicality*").

34. At Quadrangle's first General Meeting, a decision was taken to appoint Team to manage the estate. Mr. Joiner gives reasons why this task was expected to be challenging: there had been a poor insurance claim history, there was a high insurance excess, there were high service charge arrears and also a lack of reserve funds.

35. Quadrangle entered into a management agreement with Team on 4 May 2012. Although the written agreement does not set out the amount of the management fee agreed to be paid to Team, the Secretary of State infers from records that this was £7,681 a month, and Mr. Joiner states in his affidavit: "*I accept that on average we were charging this as a nominal monthly fee and the assumption made by Mrs Jones … is correct in this respect.*"

36. Insofar as relevant, the terms of the management agreement included the following:

i) "*The Manager will not provide services for the Client which incur additional charges without the Client's written consent*" (cl. 3.2);

ii) "*In the provision of the Services to the Client, the Manager will not contract for services or supplies from a party that is connected with a director or employee of the Manager without the prior written approval of the Client…*" (cl. 3.4);

iii) "*The Manager will comply with the terms of the Lease as appended hereto*" (cl. 4.1);

iv) "*The Manager will not incur costs or fees (including legal costs or fees) for which the Client is liable, without the written consent of the Client*" (cl. 4.7);

v) "*Full payment for the provision of the Services is included within the agreed Management Fee*" (cl. 7.1);

vi) "*The Manager may deduct the Management Fee from the Client's designated bank account for service charge receipts*" (cl. 7.3);

vii) "*On execution of this agreement the Manager will pay to the RTMF its standard fee of £100 plus VAT per unit for Right to Manage services rendered to leaseholders of the Property. This fee will not be debited to the Client or to the service charge for the Property or any trust fund held by the Manager on behalf of leaseholders*" (cl. 7.4):

viii) "*Apart from the payment in [7.4] above, the Manager will make no additional payments to the RTMF or its employees without the prior written approval of the Client*" (cl. 7.5);

ix) "*The Manager will open a separate bank account in the Client's name for the receipt of all service charge monies due from leaseholders of the Property for payment of expenses relating to the Property and the provision of the Services*" (cl. 8.1);

x) "*The Manager will open separate bank account(s) in the Client's name for the receipt of all other monies held in trust by the Manager on behalf of leaseholders of the Property and attributable to a designated fund*" (cl. 8.2);

xi) "*The Manager will open separate bank account(s) in the Client's name for the receipt of all other monies held by the Manager on behalf of leaseholders of the Property and attributable to a designated fund*" (cl. 8.3);

xii) "*The Client authorises the Manager to make payments for the benefit of the Property and the provision of the Services from the bank account(s) held for the Client, subject to the provisions of the Lease and the designated purpose of the respective funds*" (cl. 8.4);

xiii) "*Upon termination of this Agreement the Manager shall immediately pay to the Client the balance of all moneys in the Client's bank accounts and any monies properly due to the Client that may be in its hands or receivable by it less any monies properly due to the Manager for any of the Services already performed and shall supply to the Client all records relating to the management of the Property*" (cl. 10.6).

37. The Services (i.e., the management services) were listed in Schedule A to the management agreement. They included, among other matters:

i) "*Arranging and instructing the Statutory Audit of estate accounts, at cost*" (paragraph 27);

ii) "*Carrying out timely appraisals of reserve funds including arranging professional surveys of the Property when reasonably required*" (paragraph 31).

38. The associated lease terms, with which the managing agent was bound to comply, included terms that specifically envisaged both (i) the carrying out of periodic audits of the service charge accounts, and (ii) the operation of a reserve fund or funds for items of future expenditure expected to be incurred. In this regard, the costs of the "Maintenance Expenses" listed in Part G of the Sixth Schedule included:

i) costs incurred by the manager in the preparation for audit of the service charge accounts (paragraph 7.4);

ii) the cost of employing a qualified accountant for the purpose of auditing the accounts in respect of the Maintenance Expenses and certifying the total amount (paragraph 9);

iii) "*such sum as shall be considered reasonably necessary by the Manager (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of future expenditure*…" (paragraph 13).

39. The Tenth Schedule (Covenants on the part of the Manager) also provided at paragraph 3: "*The Manager shall ensure that the reserve fund or funds referred to in the Sixth Schedule shall be kept in a separate trust fund account* …".

40. In his affidavit, Mr. Joiner explains that there were a series of unforeseen management issues that arose at Quadrangle House after Team had assumed its responsibilities, such as water leaks from the roof and from the water supply pipes, false fire alarms and repeatedly malfunctioning electrified security gates to the car park. Mr. Joiner emphasises that attending to those sorts of emergencies involved a great deal of time and expense. He says, for example: "… *due to the regularity of water leaks I frequently used our own personnel to make repairs. My youngest son had a decorating and plastering business which traded under the name 'Decotex' and he attended many times to make good repairs to ceilings and walls*."

41. It appears that relations between various Quadrangle lessees and Mr. Joiner broke down progressively from at least 2013 onwards. The lessees did not consider that Team was properly discharging its obligations under the management agreement. Litigation ensued between Quadrangle and Team. The agreement was terminated with an effective date of termination set by the Court retrospectively at 26 January 2016, by an Order made 8 months later on 23 September 2016. Team ceased providing management services for Quadrangle on or about 12 February 2016.

42. In its Order of 23 September 2016, the Court also ordered that Team should pay Quadrangle a total sum of £41,649.87 inclusive of costs. Team did not pay the judgment sum, which led Quadrangle to serve a statutory demand on Team on 9 May 2017, and then to present a winding-up petition. A winding-up order was made on 20 November 2017 by Mr Chief Registrar Briggs.

43. Promptly after that, on 23 November 2017, the Insolvency Service wrote to Mr. Joiner to arrange an interview with the Official Receiver's Insolvency Examiner at their Brighton office on 6 December 2017. Mr. Joiner was asked to make sure that the accounting records and assets of the company were kept safe.

44. At the interview on 6 December 2017, Mr Joiner was asked why he believed Team had become insolvent. He responded that Team was "*unable to pay its debts when they became due*" from 2015. He stated: "*I would attribute this to the general problem of service charges not being paid in full across all of the properties that the company was managing. The company had a legal obligation to maintain the properties under the contracts and leases, so these costs had to be met, which caused*

the company to get into debt and not be able to pay its taxes, for example, as they fell due."

45. In his oral evidence before me, Mr. Joiner on reflection changed his view about what had precipitated the insolvency. He commented that the "*actual action that caused the insolvency, with hindsight, was the legal costs that were awarded against the company [in favour of Quadrangle]*", which he considered had resulted from unprincipled behaviour on the part of Quadrangle. In his affidavit evidence, he explained:

"*In breach of [an agreement that a hearing should not be listed for a date in August 2017 when he was unavailable], QRTM solicitors took unfair advantage of my absence and made an ex parte application to the court while I was out of the country and persuaded the Judge, with false representations, that Team's defence should be struck out*".

46. Immediately after the interview on 6 December 2017, Mr. Joiner was sent a letter asking him to provide within 14 days all records in his possession or control relating to Team, "*Sage records or computer on which they are held*", and other information and materials. He did not do so. On 29 December 2017, Mr. Pomfrett (the Insolvency Examiner) sent a letter chasing the missing information and materials, and expressing the hope that these would be provided (or at least a timescale within which compliance would be given) in early January 2018.

47. Eventually, following further correspondence, on 17 January 2018 Mr. Pomfrett attended Team's then trading premises and collected from Mr. Joiner 22 large boxes of files that appeared to be the totality of the hard copy requested materials.

48. On 23 February 2018, Mr. Joiner attended Brighton County Court to submit to a public examination, and undertook to the Court to deliver up to the Official Receiver a range of materials and information relating to Team, including "*Sage records or computer on which they are held.*" In response, on 13 March 2018 Mr. Joiner arranged to send the Official Receiver emails with hyperlinks intended to give access to Team's electronic financial records. Those hyperlinks did not work, and so Mr. Pomfrett chased repeatedly over the ensuing months for access to those records. In late April 2018, Mr. Joiner apparently told Mr. Pomfrett that he would aim to deliver the computer containing Team's Sage accounting records together with further hard copy files, but a month later on 25 May 2018 Mr. Joiner wrote to apologise for the continuing delay, which was caused by the need to "*separate data on the computer*".

49. After a number of further email exchanges over the following months concerning the outstanding Sage accountancy records and further hard copy files, Mr. Joiner attended the Official Receiver's Brighton offices for a further interview on 5 October 2018. This time, he brought a large box containing seven further lever arch files. Those held further client records and records for Team, the latter mostly comprised of sales invoices and purchase invoices.

50. The interview notes with Mr. Joiner on 5 October 2018 record him stating as follows:

"*In respect of Sage, my son has managed to access the server, but the issue is extracting the Sage data from that, as the server contains records that do not relate to the company …*

"No accountant was employed to do Team's accounts. I drafted Team's accounts. I don't have an accountancy background. I didn't think it necessary to employ an accountant because it wasn't a requirement and when we started out there was only one client and doing the accounts was straightforward…"

51. Eventually, on 23 November 2018, Mr. Joiner delivered the computer server to the Official Receiver's Brighton offices. It was then examined by the Official Receiver's Forensic Computing Examiner, Mr. Keith Lawrence. Mr. Lawrence stated in an email to Mr. Pomfrett on 29 January 2019 that the hard drive contained only a tiny file of 108 kilobytes, with effectively no information in it at all.

52. On 14 February 2019, the Civil Proceedings Team in the Insolvency Service sent Mr. Joiner a notice pursuant to s. 16 CDDA 86, notifying the intention to commence disqualification proceedings on the grounds that are now relied on, and to suggest to the Court that it should consider making a disqualification order of 9 years. The application was finally issued on 10 June 2020.

53. At the time of the Secretary of State's application, Team had total assets of £661, and liabilities of £605,548. This produced a deficiency as regards Team's creditors of £604,887.

Allegation 1: the parties' respective positions

54. The Secretary of State's first allegation against Mr. Joiner has two parts: (i) Mr. Joiner is alleged to have failed to ensure that funds in the sum of £82,286 belonging to Quadrangle, which should have been held in a reserve account by Team for the benefit of Quadrangle in accordance with the management agreement between them, were ring-fenced and protected; (ii) upon termination of the written agreement, Mr. Joiner failed to pay the money back to Quadrangle, thereby causing Quadrangle a loss in that amount.

55. As respects the second part of this allegation, Mr. Arumugam entered a qualification to the way that it had been framed, in his post-hearing written submissions. He acknowledged that Mrs Jones' main affidavit on behalf of the Secretary of State had pointed out that in fact Team did pay over £5,470 to Quadrangle's new managing agents, Rendall & Rittner, after the termination of the management agreement (even though this was in respect of service charge credits paid into Quadrangle's <u>current</u> account, not a repayment of sums from a separate reserve account). The Secretary of State therefore revised downwards the figure reflecting the alleged loss suffered by Quadrangle to £76,816 (i.e., £82,286 minus £5,470).

56. The gist of Mr. Joiner's case in opposition to Allegation 1 was as follows:

    i) Team was never under an obligation to hold the specified funds received from Quadrangle in a ring-fenced bank account, and Team did not do so.

ii) When Team was engaged by Quadrangle, Mr. Joiner addressed his mind to whether it was appropriate to establish any reserve (or sinking) fund, and he concluded that there was not adequate information available to assess the amount that would be needed each year. He decided that the focus of Team's activity should be on addressing a range of immediate maintenance issues, and that it was not reasonable to burden the Quadrangle leaseholders with an additional contribution to a reserve fund.

iii) In line with i) above, there was in fact no bank account opened by Team which was dedicated to holding service charge reserves for Quadrangle. As far as Mr. Joiner is aware, the only account that was opened specifically for Quadrangle was a service charge current account.

iv) Even if there had been a reserve bank account, it would not have been improper to draw on the funds in it to cover "service charge deficiencies".

v) Mr. Joiner did not fail to arrange for Team to pay money due to Quadrangle upon termination of the management agreement. The sum relied on by the Secretary of State (£82,286) was never a cash sum; it was an accounting figure.

57. In his post-hearing written submissions, Mr. Joiner added a further argument which is relevant to the second part of the Secretary of State's first allegation. He carried out an analysis of the sets of accounts for Quadrangle that were prepared and certified for the 4-year period when Team acted as managing agent (p/e June 2013 – p/e June 2016), and he claimed that this analysis revealed that the aggregate difference between (a) all service charge income receivable from Quadrangle and (b) all certified legitimate expenditure, was less than £100,000. He then argued that a significant part of this difference will simply have been represented by service charge arrears (i.e., money that was never in fact paid by Quadrangle leaseholders at all, and which represented a cash shortfall in the receivable income). On this footing, he said the Secretary of State's case in these proceedings that cash sums amounting to £82,286 from a putative reserve fund were (i) taken from Quadrangle and (ii) (wrongly) not returned to Quadrangle when the management agreement was eventually terminated, is not made out.

Allegation 1: discussion and analysis

58. Based on information provided by Barclays Bank to the Official Receiver in January 2018, Team had operated 10 bank accounts in total with it. Two of those were Team's own accounts. Eight appeared to be client accounts for Quadrangle, Fairfield, Nautica and Millington Court.

59. So far as Quadrangle in particular was concerned, it is not in dispute that Team operated a dedicated client current account which was opened in May 2012 (the "**Quadrangle current account**"). The account name was the "Team Property Management Quadrangle Client", and the account number was 63142140. Over the five-year period ending on 31 July 2017, funds totalling £1,020,020 comprising service charge credits were paid into this account.

60. From this Quadrangle current account, funds totalling £82,286 are shown by the Secretary of State to have been transferred by Team into a different bank account, between 3 June 2013 and 30 October 2015. This other bank account was a business savings account, bearing the account number 83877345 ("**the 7345 savings account**"). It also bore the name "Team Property Management Limited Quadrangle Client", in common with the Quadrangle current account.

61. Pausing there, it is therefore clear that Mr. Joiner's argument that "*the sum of £82,286 [relied on by the Secretary of State] never existed as a sum of cash*" is misconceived. In this regard, the Secretary of State's counsel put to Mr. Joiner in cross-examination a document prepared by a representative of Quadrangle, which listed out, transaction-by-transaction, the net transfer of funds totalling £82,286 from the Quadrangle current account into the 7345 savings account. Mr. Joiner said without hesitation: "*I accept the numbers.*"

62. An analysis of the bank statements for the 7345 savings account reveals clearly that it was not used only for the purposes of Quadrangle's business. Among other matters:

    i) between March 2015 and March 2017 substantial sums were credited to the 7345 savings account in respect of service charges relating to the property of another client of Team, Chichester Court;

    ii) the 7345 savings account was used to transfer monies between Team's other three clients as well (Fairfield, Nautica, and Millington);

    iii) payments in respect of the salary of all Team's staff were made in December 2013, even though only two of them were employed on behalf of Quadrangle;

    iv) the 7345 savings account was used to make substantial payments to RTMF Services Limited, as well as into Team's current account (£40,874 and £114,679 respectively).

63. As indicated above, Mr. Joiner's essential answer to this is that the 7345 savings account was never a dedicated Quadrangle account at all, and certainly not a "reserve account". He stated in his affidavit that it was initially a general client saver account, and that at some time later it became designated as a dedicated bank account for the Chichester Court client. In support of this latter contention, which Mr. Joiner advanced in his affidavit evidence, he exhibited a single-page copy bank statement for the 7345 savings account relating to March 2015. This bore the name "CHICHESTER COURT CLIENT" prominently near the top of the page.

64. Mr. Joiner's evidence about the nature and function of the 7345 savings account over time requires careful scrutiny. Taking the latter period first (from March 2015 onwards), the bank ledger printouts from Barclays Bank in the trial bundles concerning transactions on the account after March 2015 do not show any change of name to "Chichester Court Client". Moreover, it is evident from those printouts that there were transfers made into the 7345 savings account from the Quadrangle current account in the months after March 2015, which obviously should not have happened on the assumption that the account had at that point become a dedicated client account for Chichester Court. Furthermore, a letter sent to the Official Receiver on 2 March

2018 by representatives of Chichester Court records "… *there never was a designated Chichester Court Account*", and this stands in tension with Mr. Joiner's account.

65. In his cross-examination of Mr. Joiner, Mr. Arumugam suggested bluntly that the single-page bank statement which Mr. Joiner had attached to his affidavit evidence was fabricated, which he denied. I shall make no finding on that particular extremely serious allegation. The exploration of the point at the oral hearing was too brief, and the available documentary material bearing on the point is too sparse, for me to draw such a conclusion. In particular, after receiving the single-page bank statement along with Mr. Joiner's sworn affidavit evidence in December 2020, the Secretary of State does not appear to have reverted to Barclays Bank to ask them about its authenticity, whether before filing its own reply evidence in February 2021, or at any time prior to the date of the trial before me. Having said that, I find on the evidence before me that the 7345 savings account was not dedicated to the Chichester Court client business after March 2015, as Mr. Joiner asserts in his case.

66. Turning back to the initial period of the bank account's operation (from May 2012 to March 2015), I note that: (a) the 7345 savings account was opened on exactly the same day as the Quadrangle current account (31 May 2012); (b) the 7345 savings account bore consistently the name "Team Property Management Limited Quadrangle Client" (although Mr. Joiner suggested that this may have been an error on the part of Barclays Bank); and (c) that there are various indications in the evidence that Mr. Joiner himself understood that there was a second Quadrangle bank account. Those indications include the following:

    i) In the manuscript transcript of Mr. Joiner's interview with the Official Receiver on 5 October 2018, Mr. Joiner is recorded as having said: "*I was not aware that any service charge receipts [for Chichester Court] were being paid into the Quadrangle reserve account*" (emphasis added);

    ii) In an email dated 16 February 2016 from Mr. Richard Daver of Rendall & Rittner to representatives of Quadrangle (i.e. a few days after Rendall & Rittner took over the property management from Team), the writer reported the contents of a discussion he had held that morning with Mr. Joiner. He stated: "*I took the opportunity to ask about the transfer of funds. He [Mr. Joiner] said these would be sent today, but there were only funds in one account – he said the second account relating to reserves had no funds …*" (emphasis added).

    iii) The Quadrangle service charge accounts for the period ending 30 June 2014 (which were not audited, but were based on accounting records, information and explanations supplied to the certifying accountants) referred in the balance sheet to the presence of two bank accounts holding Quadrangle funds. Manuscript notes on the copy accounts in the trial bundles identify these as being, respectively, the Quadrangle current account and the 7345 savings account.

67. Mr. Joiner has given no response in relation to the implications of the email from Mr. Daver of Rendall & Rittner. However, in his post-hearing submissions he says that neither of the other two of the three matters outlined at paragraph 66. above point to

the conclusion that the 7345 savings account was a dedicated Quadrangle account. Thus:

i) Mr. Joiner says that he had not previously picked up on the reference to him discussing a Quadrangle reserve account, in the transcript of his interview with the Official Receiver in October 2018. Focusing on the point now, he says "*the fact that the definite article 'the' was used instead of the indefinite article 'a' could easily have been a transcription error by Mr. Pomfrett [of the Official Receiver] and not much weight should be put on it.*" In my judgment, this submission is not convincing. Even if there was such a transcription error, the sentence at issue would still be indicative of the implicit acceptance of a second Quadrangle bank account. If it were otherwise, one would expect Mr. Joiner to have told Mr. Pomfrett that there was no second Quadrangle bank account.

ii) Mr. Joiner argues that the fact that the 2014 balance sheet refers to the existence of Quadrangle funds in two bank accounts is a neutral consideration. He says it is consistent with the position that some Quadrangle funds were at that time held within a general client saver account, and that this was "*presumably brought to the attention of the accountant at the time and the proper allocation made.*" In my judgment, this is a possible explanation, but unlikely. Were it the case, I would have expected to see a note in the accounts to this effect.

68. Standing back, I consider that the weight of the evidence overall indicates that there was a second Quadrangle bank account, contrary to Mr. Joiner's submissions. Mr. Joiner argues in his post-hearing submissions that the 7345 savings account "*could not properly be a 'Quadrangle Client Account' as other funds were deposited into this account from time to time.*" This argument is back-to-front: the nature of the Secretary of State's allegation is precisely that there was a Quadrangle client account, but this was wrongly used for diverse purposes not related to the property management services supplied to Quadrangle.

69. As respects the nature and purpose of this second Quadrangle bank account, the matters outlined at paragraph 66.(i) and (ii) above are indicative that this was intended (and was understood by Mr. Joiner) to hold service charge reserve funds, i.e., that it was indeed a reserve account. This is, moreover, consistent with the formal requirements of the written management agreement which was entered into between Quadrangle and Team. The management agreement specifically provides that a reserve fund is to be established and kept in a separate trust fund account: see cl. 4.1 and 8.2, when read together with the lease provisions in paragraph 13 of Part G of the Sixth Schedule, and paragraph 3 of the Tenth Schedule.[1] In this connection, I do not accept the argument advanced by Mr. Joiner that the management agreement in fact allows the property manager to decide in its discretion whether to keep any funds in a reserve account at all, on the basis that paragraph 13 of Part G of the Sixth Schedule stipulates that relevant costs shall include "*such sums as shall be considered reasonably necessary by the Manager (whose decision shall be final as to questions of fact) to provide a reserve fund or funds …*". That provision refers to a professional

[1] These terms are set out above at paragraphs 36(iii) and (x), and 38 and 39 above.

judgment to be reached as to the quantum of the sums needed for the reserve fund, and not to a discretion to do away with a reserve fund altogether.

70. However, before coming to a landing on this particular point (i.e., whether the second Quadrangle account was intended to provide a reserve fund for items of expected future expenditure in connection with the property), it is necessary to address the document that was supplied by Mr. Joiner only after the end of the trial, which appears to have been inadvertently omitted from the exhibit to his affidavit and also from the trial bundles (see paragraph 13. above). This was a copy letter agreement dated 4 August 2012 between Team and Quadrangle. It was authored by Mr. Joiner, as the director of Team. In it, at point (5), Mr. Joiner wrote: "*I have proposed that we postpone any future contributions to a reserve fund or maintenance fund from the service charge until all outstanding maintenance issues are addressed.*" He continued: "*Can one of you please sign and return the attached copy of this letter signifying your acceptance of the terms therein.*" The document bears the counterparty signature of Ms C. Pinder-Smith, on behalf of Quadrangle.

71. In my judgment, this letter agreement does not undercut the Secretary of State's case in Allegation 1. First, the letter agreement was made over two months after the 7345 savings account was set up, at the end of May 2012 (on the same day as the Quadrangle current account). It is highly likely in all the circumstances that the account was originally created in order to serve as the Quadrangle reserve account. At one point in his oral evidence, Mr. Joiner claimed that the 7345 savings account was set up as an additional savings account for Team, and that the bank mistakenly called it a Quadrangle account. I do not accept this claim. Secondly, the letter agreement refers only to a temporary pause (postponement) of future payments into a reserve fund pending the addressing of outstanding maintenance issues: it does not entail that the Quadrangle representatives agreed to the shelving of a reserve fund for the almost 4-year period of Team's tenure as the property manager. Thirdly, and most important, the real gravamen of Allegation 1 (as Mr. Arumugam emphasised) is that Mr. Joiner failed to observe a fundamental duty arising under Team's property management agreement with Quadrangle not to commingle the client's funds with other monies, but to keep those funds ring-fenced and protected: see cl. 8.1 to 8.4 inclusive of the management agreement (set out in paragraphs 36.(ix) to 36.(xii) above). The operation of the 7345 account as a "general" client bank account into which substantial funds were transferred from the Quadrangle savings account and also from other client accounts, and out of which funds were paid to a range of beneficiaries including beneficiaries which had nothing to do with Quadrangle, was without doubt wrongful. The categorisation of the 7345 savings account as a reserve account or otherwise does not touch on this fundamental issue.

72. Mr. Joiner was questioned about this at the trial. His response, essentially, was a candid acceptance that his business practices were incompatible with the formal terms of Team's management agreements (at least the agreement with Quadrangle), but to argue robustly that this reflected the reality of any significant property management business today, in which a degree of juggling of various client funds is needed to deal with the cash flow problems of individual clients failing from time to time promptly to pay the service charges: a general pool of cash is needed to defray pressing maintenance and other costs where these occur in specific cases. In particular, my

contemporaneous note of Mr. Joiner's evidence records him explaining his perspective as follows:

"*A: How all the big companies … deal with this is to deal with all service charge money through one big account. The only way you can deal with this is to have a degree of porosity. Unfortunately, we did sometimes have to supplement one service charge account with money from another client. It was juggling around … What the statute says and what the leases say doesn't matter a diddly because if you don't have cash the whole thing falls apart.*"

…

"*Q: Why do you think this is acceptable?*

"A: I didn't say it was acceptable. I was explaining to you the reality."

73. In my judgment, Mr. Joiner exhibited a serious lack of concern for the basic obligations to which Team was subject under its property management agreements, being obligations of which he was fully aware. He was responsible for placing Team in breach of its duties in a systematic fashion, and his basic approach to property management had the consequence that money belonging to different clients was mixed together. I do not accept the contention that this is how all the big property management companies operate The money belonging to Quadrangle in particular, which was decanted from the dedicated current account into the 7345 savings account, should have been ring-fenced but it was not: it was mixed with funds from other sources, and flowed out of the 7345 savings account to a range of beneficiaries including beneficiaries without any connection to Quadrangle, and without Mr. Joiner having obtained authority from Quadrangle to act in this manner. I therefore find that the first part of Allegation 1 is proven by the Secretary of State.

74. I turn to consider the second part of Allegation 1, namely that upon termination of the management agreement Mr. Joiner failed to pay over to Quadrangle £82,286 from the 7345 savings account (revised to £76,816 in the Secretary of State's post-hearing submissions – see paragraph 55. above), so causing a loss to Quadrangle in that amount.

75. Mr. Joiner took issue with this in his own written submissions. His position was that one practical use for the 7345 savings account was to hold funds received by Team in accordance with a special arrangement made with the Quadrangle directors (reflected in the terms of the letter agreement that he produced after the trial, which is discussed at paragraph 70. above), such as service charge funds recouped by Team from the previous property manager, and money recouped by Team from Quadrangle leaseholders in respect of historic service charge arrears. He pointed out that the letter agreement referred to Team recovering "additional fees" in this way, and he argued: "*It is reasonable to conclude that some of these funds could have been held in the 7345 account and subsequently drawn down to Team as and when appropriate as agreed with the Quad directors.*"

76. On reviewing the evidence made available to me in the context of this application, I am unable safely to conclude that £76,816 or any other specific sum was (wrongly) not paid back by Team to Quadrangle when the management agreement was

terminated. This does not mitigate the seriousness of the finding that I have made on the first part of Allegation 1. On the contrary, it is precisely Mr. Joiner's unsatisfactory practice of commingling funds received from different clients in the 7345 savings account, combined with the absence of records (to which subject I shall turn more generally, in connection with Allegation 2), which creates this difficulty.

Allegation 2: the parties' respective positions

77. The gist of Allegation 2 is that Mr. Joiner failed to ensure that Team kept adequate accounting records, or to deliver up such records to the Official Receiver.

78. In his defence:

i) Mr. Joiner maintains that he did ensure that Team kept adequate accounting records, which were both paper-based and electronic:

a) As respects the former, he says that Team operated a comprehensive paper-based record system. Hard copies of all invoices and correspondence were kept in colour-coded lever arch files, one colour for each building / block that was in management. Each flat owner had their own file containing service charge demands, statements and correspondence. All service charge invoices were kept in annual files, indexed by supplier name. He argues that the fact that Team maintained adequate records is evidenced by the volume of files collected by and delivered to the Official Receiver.

b) As respects the latter, he says that Team had a modified form of Sage accounting software, which could handle central accounts and the accounts of each individual managed block. Each block had its own sales and purchase ledgers, and transactions were posted to each block as appropriate.

ii) Mr. Joiner maintains that he duly arranged to deliver up the records to the Official Receiver following the winding-up order against Team:

a) On 17 January 2018, Mr. Joiner cooperated with the Official Receiver's representative Mr. Pomfrett, who attended Team's former offices and removed 22 boxes of paper records. On that occasion, Mr. Pomfrett had the opportunity also to take away the computer server, but chose not to do so.

b) Subsequently, Mr. Joiner used his best endeavours to comply with an undertaking given to the Court on 23 February 2018, to provide the Official Receiver within 14 days the "*Sage records or computer on which they are held*". The computer server was eventually provided on 23 November 2018. It was found by the Insolvency Service's Forensic Computing Unit not to contain any meaningful data at all, but Mr. Joiner considers it possible that the data had been wiped by Team's former bookkeeper or else was always stored "in the cloud" rather than on the hard drive.

iii) As respects the various transfers of funds into and out of Team, which the Secretary of State argues are incapable of being properly justified in the absence of proper accounting records:

a) The Secretary of State's reference to a "*transfer of management fees from one of Team's clients £373,056 in excess of those to which Team was entitled*" is based on a misunderstanding, according to Mr. Joiner. He says in particular that Team was entitled to receive more from the client (Quadrangle) than the management fees due to it under the management agreement. Team was entitled to collect money to be used for the various purposes specified in the lease.

b) So far as concerns unexplained payments by Team to Mr. Joiner personally (£67,711), he was following normal practice in the property management industry by charging an hourly rate for non-budgeted services, and was frequently called upon to work unsociable hours.

c) So far as concerns unexplained payments that were made by Team to connected companies (£279,562), these too are readily explicable by reference to work done, so that all payments were legitimate and made for proper commercial reasons.

d) So far as concerns unexplained payments by Team to a family member (Mr. Joiner's son Steven, in the sum of £89,596), this was consistent with the level of services that Steven Joiner provided to Team in his capacity as a graphic designer, web designer and digital marketing expert, which included the design and maintenance of Team's website as well as the production of brochures, handbooks, newsletters and day-to-day stationary required by Team.

Allegation 2: discussion and analysis

79. I reject Mr. Joiner's contention that the adequacy of the accounting records kept by Team is demonstrated by his evidence that he arranged for the keeping of colour-coded and clearly-labelled lever arch files (of which there are photographs of the spines in the trial bundles), complemented by parallel information which he asserts was kept on an electronic accounting system. That contention does not even touch on the issue of adequacy, which depends on a review of the contents of those records.

80. The obligation to maintain adequate accounting records of a company is found in s.386 Companies Act 2006. This provides, in particular:

"***386 Duty to keep accounting records***

(1) Every company must keep adequate accounting records.

(2) Adequate accounting records means records that are sufficient–

(a) to show and explain the company's transactions,

(b) to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and

(c) to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act

(3) Accounting records must, in particular, contain–

(a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and

(b) a record of the assets and liabilities of the company."

81. In recognition of the high importance of the company's duty to keep adequate accounting records, section 387 of the Companies Act 2006 provides that a breach involves criminal consequences for any officers who are responsible. It provides, in particular:

"*(1) If a company fails to comply with any provision of section 386 (duty to keep accounting records), an offence is committed by every officer of the company who is in default.*

"*(2) It is a defence for a person charged with such an offence to show that he acted honestly and that in the circumstances in which the company's business was carried on the default was excusable*."

82. In Secretary of State v. Arif [1997] 1 BCLC 34, Chadwick J (as he then was) explained that the statutory requirements on a company to keep adequate financial records have at least two important purposes, which can be relevant to the issue of "unfitness" of a director:

"*First, to ensure that those who are concerned in the direction and management of companies which trade with the privilege of limited liability, do maintain sufficient accounting records to enable them to know what the position of the company is from time to time. Without that information, they cannot act responsibly in making decisions whether to continue trading. But equally important is a second purpose. If the company fails, a licensed insolvency practitioner will become office holder, as liquidator or as administrator or as administrative receiver. The office holder requires information as to the company's trading and transactions which is sufficient to enable him to identify and recover or exploit the company's assets. His task is made extremely difficult, if not impossible, if the company has failed to comply with its obligations …*".

83. In the present case, the Secretary of State's evidence is that, after eventually managing to obtain what appeared to be the full set of hard copy accounting records held by Team (22 lever arch files were collected in January 2018, and another 7 files were delivered in October 2018: see paragraphs 47. and 49. above), these were found by the Official Receiver to be seriously inadequate. It was in particular impossible to use those records to ascertain the reasons for very large sums of money paid over by the major client Quadrangle to Team, to companies connected with Team, to one of Mr. Joiner's sons, and to Mr. Joiner himself. There were no adequate invoices or receipts located in respect of those payments.

84. Mr. Joiner takes issue with this at the level of generality, by arguing: "*There is no evidence that the [Official Receiver] thoroughly searched the paper records for evidence in reply to the allegations made by Quad …"* (*per* his post-hearing submissions). I cannot accept this contention. Mrs Jones' affidavit evidence on behalf of the Secretary of State is cogent and detailed. In order to succeed, Mr. Joiner needs to provide some solid reason for supposing that the Official Receiver's work really has been deficient: making a sweeping assertion about there being a lack of evidence of thoroughness carries no weight.

85. Along similar lines, in his responsive affidavit evidence, Mr Joiner claimed that when he attended the Official Receiver's office in June 2019 to inspect the records himself, he found that "*a number of files were missing.*" Mrs Jones countered this in her reply affidavit and then again when this was put to her at trial in cross-examination: she stated that the Official Receiver's representative Mr. Pomfrett had said that Mr. Joiner had raised no concerns with him about missing records at the time. Mrs Jones also stated in her reply affidavit that a detailed receipt/ledger of all the documentation held by the Official Receiver had been produced in 2018 (and was exhibited to her first affidavit), but Mr. Joiner nonetheless failed to say what documents were allegedly missing. In the circumstances, I do not accept this suggestion by Mr. Joiner either.

86. I turn to deal with the specific points alleged by the Secretary of State under Allegation 2.

87. I start with the issue of unexplained payments to Team itself, from Quadrangle's resources. The Secretary of State refers to a figure of "*£373,056 in excess of [the management fees] to which the Company was entitled.*" This figure is calculated by (a) taking the net sum of £711,020 found to have been transferred from Quadrangle's current and savings accounts into Team's own Barclays Bank current account between July 2012 and July 2017, and then (b) deducting from it the assumed management fees of £7,681 per month, multiplied over the 44 months of Team's engagement for Quadrangle (4 May 2012 until 26 January 2016): 44 multiplied by £7,681 is £337,964.

88. As indicated above, Mr. Joiner's principal response is that the payments from Quadrangle to which Team was legitimately entitled were substantially in excess of the basic figure relied on by the Secretary of State (which he did not disagree with in itself). He says that Team was entitled to be paid or reimbursed for many kinds of outlay, on top of the basic level of management fee. The point however is that, even assuming in Mr. Joiner's favour that this is correct, there is an absence of accounting records to evidence it.

89. In a similar vein, Mr. Joiner referred to the letter agreement of August 2012 (produced only after the trial) as conferring written authority on Team to supplement the basic management fees with money recouped from the previous property manager and/or from Quadrangle leaseholders in respect of service charge arrears. After the trial, he analysed the Quadrangle current account bank statements and filed a schedule purporting to show that more than £150,000 came to Team through this channel. He claimed, in an email sent to the Court on 20 March 2023, that "…*these monies would have been paid to Team's account directly or held in the interim account until needed*." Again, however, this does not meet the charge made against him: there are

no sufficient accounting records to enable one to understand the reasons for the unexplained elements of the sums paid by Quadrangle to Team.

90. Finally, in his post-hearing written submissions, Mr. Joiner also analysed the sets of Quadrangle accounts in the trial bundle for the four periods to June 2016 during which Team acted as Quadrangle's property manager: see paragraph 57. above. He calculated by reference to the sets of Quadrangle accounts included in the trial bundle that the service charge sums receivable during the period of Team's management would have been £966,941. He compared this against the total certified expenditure recorded in the accounts, which summed to £872,899. He reasoned that the difference (£94,052) was the maximum that could in theory be misappropriated, and of that sum a significant part was accounted for by service charge arrears in any event, i.e. it was not actual cash.

91. The immediate problem with Mr. Joiner's argument is that the sets of accounts for the periods ending June 2013 and June 2014, on which his argument relies, which were the ones prepared during Team's tenure as the property manager, were not audited. This contrasts with the accounts for the subsequent periods, which were prepared and audited after the management agreement with Team had been terminated, and when Team had been replaced by Rendall & Rittner. Thus, the certifying accountants stated in relation to the accounts prepared for the period ending June 2014: "*In accordance with instructions given to us, we have prepared without carrying out an audit the annexed financial statements from accounting records, information and explanations supplied to us."*

92. It is true, as Mr. Joiner urges, that those accountants also certified that the financial statements were, in particular "*…a fair summary of the costs incurred and the service charges raised*", and expressed the view that "*These are sufficiently supported by accounts, receipts and other documents supplied to us.*" However, the exercise conducted by those accountants was undeniably different in nature from and less reliable than an audit, and it drew on the "*information and explanations*" supplied to them, which might in principle have involved material misstatements. The nature of this important distinction is well summarised in the notes to the audited accounts for the following accountancy period, ending June 2015 (prepared in December 2018). The auditors stated:

"***Auditor's responsibility***

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

"An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the accounts, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the preparation of the accounts in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness

of the internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made, as well as evaluating the overall presentation of the accounts."

93. Significantly, those accountants felt it necessary to express serious concern, as part of their audit. They stated:

"*...we report that proper accounting records have not been maintained and we have only been able to verify £45,929 of expenditure to relevant supporting documents ... there are additional net charges in the year totalling £184,519 which comprise of payments totalling £154,958 where assumptions have been made to include these costs within specific cost headings and a further balance of unknown amounts totalling £29.561. We have not been able to verify any of the £184,519 to supporting invoices or other appropriate documentation and we are therefore unable to confirm that these costs have been correctly incurred and correctly classified within the service charge accounts.*"

94. It is appropriate to recall at this stage that the management agreement between Quadrangle and Team specifically required the preparation of audited service charge accounts: see paragraphs 37.i) and 38. above. The failure by Team to do so was, therefore, a breach of that requirement. Mr. Joiner contended that the concept of an audit for these purposes was flexible, but it is plain that the accountants who certified the 2013 and 2014 accounts did not consider that they were conducting an audit at all: they said so in terms. After the hearing, Mr. Joiner sent the Court an extract from a commentary entitled "*Do we need to get our service charge accounts audited?"* (11 March 2020) by Mr. Paul Jepps. This did not advance Mr. Joiner's argument. On the contrary, the extract stated: "*...legal counsel's opinion was along the lines of "an audit is an audit is an audit". If the lease states that an audit of the service charge accounts is required then that means that an audit should be carried out in accordance with International Auditing Standards.*"

95. Accordingly, Mr. Joiner's reliance on a high-level analysis of the Quadrangle accounts in an attempt to show that he did arrange for Team to keep adequate accounting records fails, on two grounds. The first is that an examination of the same Quadrangle accounts reveals them to be insufficiently reliable for the purposes of Mr. Joiner's argument, and also that the reason for their unreliability derives from an additional failure by Mr. Joiner, namely his failure to ensure that there was an audit of the Quadrangle accounts during Team's tenure as property manager, and to maintain proper accounting records in relation to Quadrangle. The second ground is simply that the fundamental charge that has been levelled by the Secretary of State again remains unanswered: there were no adequate accounting records kept for Team capable of explaining the reasons for the payments of large sums paid by Quadrangle into Team's bank account.

96. I turn from the issue of unexplained payments from Quadrangle to Team, to the issue of unexplained payments by Team to a group of connected parties. The Secretary of State relied on a schedule showing, among other matters, payments made after May 2012 to RTMF Services Limited and to the Leaseholder Association. The former was incorporated on 4 October 2012 and Mr. Joiner has been the sole appointed director since that date. Its intimate functional connection with Team, and the RTMF, is described at paragraphs 27. and 30. above. According to Mr. Joiner's own analysis,

Team paid a total of £247,961 to RTMF Services Limited between 3 June 2013 and 26 May 2017, which is in the same broad territory as the Secretary of State's estimation of a total payment of £265,046 in the period from 1 November 2012 to 26 May 2017: the precise figure does not matter for present purposes.

97. In his interview with the Official Receiver on 5 October 2018, Mr. Joiner was asked about these payments. He stated:

"*Payments to RTMF Services from Team bank account: If any RTMF staff spent time working for Team or its clients would've resulted in a charge. My rate was £90-100 per hour. There would've been some invoices for secretarial services, but not all of it … Payments to "Services" from Team bank account: I tend to think these were also to RTMF Services Limited, but am not sure*."

98. Mr. Joiner's response is vague, and necessarily based on a degree of guesswork. This serves only to highlight the significance of the failure to keep proper accounting records that would enable the payments to RTMF Services Limited to be understood, and their legitimacy verified. There is a further point to be made too, if one focuses on the contractual relationship between Team and its major client, Quadrangle. As stated at paragraph 36. above, the written management agreement entered into between them included the following terms:

i) "*In the provision of the Services to the Client, the Manager will not contract for services or supplies from a party that is connected with a director or employee of the Manager without the prior written approval of the Client…*" (cl. 3.4);

ii) "*The Manager will not incur costs or fees (including legal costs or fees) for which the Client is liable, without the written consent of the Client*" (cl. 4.7).

99. There is no suggestion, and no evidence, that Mr. Joiner obtained the prior written approval of Quadrangle before contracting for services from RTMF Services Limited. Nor is it possible to see how any such services as were in fact provided (and which were paid for by Team) could amount to the sums in question totalling around £250,000.

100. In the course of his cross-examination of Mr. Joiner, Mr. Arumugam put to Mr. Joiner the provisions of the Quadrangle management agreement controlling Team's ability to commission services from connected parties. He responded "*The [letter] agreement we had ran counter to terms of the management agreement and to some extent overrode it.*" However, an inspection of the letter agreement (a copy of which produced after the trial) provides no support for this assertion. Moreover, Mr. Joiner sent an email after the trial on 29 March 2023, in which he said: "*It is not my submission that this letter represented a variation of the Management Agreement. It merely supplemented it*."

101. However, Mr. Joiner made a new argument on this point in his post-hearing closing submissions, namely that "*The payments to connected parties were payments made in the provision of services <u>to Team</u>, not to Quad*" (emphasis added). He therefore now suggested that clause 3.4 of the Quadrangle management agreement had no application here. This argument is plainly incorrect: clause 3.4 of the management

agreement was concerned generally with situations where Team entered into contracts with connected parties relating to the provision of the relevant services, whether Team chose to so in its own right or an agent. Furthermore, the prohibition in clause 4.7 on Team incurring any costs or fees for which the client was liable without the client's consent, plainly applied in any event. In this regard, Mr. Joiner stated in his own affidavit evidence:

"*Mrs Jones appears to have completely misunderstood that Services provided by RTMF Services Limited were charged to Team as the property manager and that Team in turn recovered these monies from the leaseholders at The Quadrangle and other managed blocks. Accordingly, if services were provided by RTMF then they would ultimately be paid for by the leaseholders through Team*."

102. Similar points apply in relation to the Leaseholder Association. The Leaseholder Association Limited was incorporated on 17 November 2014 and dissolved on 29 August 2017. The sole director of the company during its existence was Mr Joiner and, therefore, it was similarly a company connected to Team by virtue of common directorship. An analysis of Team's current account statements shows that it was paid £14,515 by Team between 26 May 2015 and 13 July 2016.

103. In his affidavit evidence, Mr. Joiner explained: "*The payments from Team to the Leaseholder Association were for time expended by Mark Spall who was experienced in retirement leasehold management, having previously been responsible for leasehold complaints at Age UK. Mark stood in and undertook on-site duties at Fairfield Lodge and in addition he sometimes gave assistance to Team staff on difficult issues, such as dealing with disabled persons or handling incontinent residents*." Yet, as the Secretary of State's counsel pressed at the hearing, there are no invoices from Team to support this claim.

104. In addition to the payments made by Team to the two connected companies, there were also payments totalling £89,596 to Mr. Joiner's son Steven. In his affidavit, Mr. Joiner stated:

"*My son Steven Joiner is a qualified graphic designer, web designer and digital marketing expert and was responsible for the design and maintenance of Teams website as well as the brochures, handbooks, newsletters and day to day stationary required by the company … He did not work full time for Team. He also provided similar services to RTMF and the Leaseholder Association. I believe his charges of £89,596 are consistent with the level of services he provided to Team during the period. Invoices for his services were regularly submitted …*". Mr. Joiner exhibited one example of an invoice from his son's firm Grafiko to Team. That invoice, in the amount of £1,100.11, related to initial work carried out in August 2010 prior to the incorporation of Team on 6 September 2010. It concerned the design of the company logo and "folder". The invoice pre-dated the relevant period for the purposes of these proceedings, which starts in May 2012 and which is the subject of the Secretary of State's analysis of Team's current account expenditure. There is no evidence of any supporting invoices from Steven Joiner for the relevant period.

105. Next, the Secretary of State also focuses on unexplained payments that were made by Team to Mr. Joiner himself, in the sum of £67,711. Mr. Joiner states in his affidavit:

"*…if I spent my own time dealing with Team clients, either on days off or during evenings or weekends I would charge this time to Team. I only have records from 2014. During the 38-month period to 2nd March 2017 I charged a total of £50,814.91. My hourly rate varied from £95 per hour to £190 per hour if it was double time. This was not spent entirely on the Quadrangle but across all sites we managed. During this period I spent a total of 361 hours of my own time working for Team, which is an average of 9.5 hours per month. I am unable to verify the figure of £67,711 at p97 as it includes 2013 and I no longer have figures that far back*."

106. Once again, there is simply an absence of invoices or receipts or any other proper evidence supporting the charges that were made by Mr. Joiner in his own right. Insofar as the charges relate to Quadrangle, there is no evidence of any prior approval being given by the client to this manner of dealing.

107. Finally in relation to Allegation 2, it is necessary to address the failure by Mr. Joiner to produce the electronic accountancy records for Team on the Sage system. Mr. Arumugam devoted considerable attention in cross-examination to questioning Mr. Joiner about his delays in providing such records to the Official Receiver, over many months, despite repeated promises. It was established that:

i) The existence of those electronic records was disclosed by Mr. Joiner on 6 December 2017; Mr. Joiner was specifically asked to provide the Sage records or the computer on which they were held at the end of his interview with the Official Receiver that day;

ii) Mr. Joiner failed to deliver those electronic records promptly, resulting in an undertaking being given to the Court in this regard, on 23 February 2018;

iii) There were then successive requests for the Sage records. Mr. Joiner purported to provide the Official Receiver with links to the Sage records by email in March 2018, but those links did not work;

iv) On 25 May 2018, Mr. Joiner apologised for the delay, saying it was taking longer than anticipated to separate data on the computer. There was only one person who could do that (which he clarified in his oral evidence was his son Steven) "*and he has been overloaded due to GDPR compliance.*" Mr. Joiner said he hoped to have the problem sorted in the next few days.

v) When the computer was finally given to the Official Receiver on 23 November 2018 (over a year after Team entered liquidation on 20 November 2017), the computer was found by the Official Receiver's forensic unit to have no material data on it. Mr. Arumugam suggested in cross-examination that Mr. Joiner had "*wiped it*." Mr. Joiner responded: "*I had no cause or the ability to delete files from that computer*", which was not a fully satisfactory answer. I make no finding that Mr. Joiner did act positively to frustrate the Official Receiver, but I do note that (i) even if he did not personally have the ability to delete files from the computer others were likely to have done, and (ii) if the electronic records of Team did not support Mr. Joiner's arguments in all respects, then there would indeed be a motivation to delete the files.

108. In summary, the thrust of Mr. Joiner's evidence on this topic was that he was not close to the workings of the Sage accountancy system. He left it to others, including a lady called Sandra Lynch, Team's original property manager who set up the system initially, and then a lady called Katherine Annis, who was formerly Team's bookkeeper. He said that it was Ms Annis on whom he had relied to send the electronic information to the Official Receiver in 2018. He explained in his oral evidence that the professional relationship with Ms Annis deteriorated in that period, for various reasons which he outlined, and that although she had assured Mr. Joiner that she had sent electronic information to Mr. Pomfrett of the Official Receiver, on reflection he now had cause to re-evaluate what she had said to him. He was unable to explain how it came to be that the computer eventually delivered up to the Official Receiver had no relevant information on it, but said that at all times he was doing his best to cooperate.

109. In my judgment, this cannot be accepted as a sufficient explanation for the failure to deliver up any of Team's electronic accountancy records to the Official Receiver. Putting it no higher, Mr. Joiner's lack of action over many months in seeking to ensure that those who were familiar with the system and with the way the computer worked to identify and extract the relevant electronic accountancy records for Team was lamentable.

Overall conclusion on "unfitness", and disqualification consequences

Unfitness

110. I have no hesitation in finding that the Secretary of State's case on "unfitness" under each of Allegation 1 and Allegation 2 succeeds.

111. The essence of the case under Allegation 1 is the failure over an extended period of time to ring-fence and protect certain funds belonging to a major client, Quadrangle. Mr. Joiner mixed those funds with funds belonging to other clients, and drew on them to make a series of payments to a range of beneficiaries including beneficiaries which had nothing to do with Quadrangle. I find that this business practice was in breach of the requirements of the management agreement: see paragraphs 69. to 73. above.

112. Furthermore, the Secretary of State has drawn attention to s.42 of the Landlord and Tenant Act 1987 (entitled "Service charge contributions to be held in trust"). Subsections (2) and (3) provide:

> "*(2) Any sums paid to the payee [i.e., a person to whom any such charges are payable by the tenants under the terms of their leases] by the contributing tenants ... by way of relevant service charges, and any investments representing those sums, shall (together with any income accruing thereon) be held by the payee either as a single fund or, if he thinks fit, in two or more separate funds.*
>
> *"(3) The payee shall hold any trust fund—*
>
> *(a) on trust to defray costs incurred in connection with the matters for which the relevant service charges were payable*
>
> *(whether incurred by himself or by any other person), and*

(b) subject to that, on trust for the persons who are the contributing tenants for the time being ...".

113. The Secretary of State also drew attention in this regard to the RICS Code of Practice entitled "*Service charge residential management Code and additional advice to landlords, leaseholders and agents*" (3rd edn). This is a document to which Mr. Joiner himself referred in his main affidavit evidence, and a copy of which he exhibited. Section 7.6 of the RICS Code of Practice is entitled "Holding service charge funds in trust". It provides, in particular:

*"**7.6 Holding service charge funds in trust***

...

[Service charge monies] should be held in either separate client service charge bank accounts for each scheme you manage, or a universal client service charge bank account for all service charge monies but where monies for each scheme are separately accountable. If you operate one universal account it is a breach of trust to allow funds held for one scheme to be used to finance any other scheme. The accounts should include the name of the client or the property (or both) within the title of the account ..." (emphasis added).

114. Mr. Joiner responded to this in a specific written submission by email on 22 March 2023, in which he showed a strong acquaintance with the legislation in this field, and with relevant commentary about it. The thrust of Mr. Joiner's response was that the only statutory requirement to hold service charge contributions in a separate designated bank account is to be found in s.42A of the Landlord and Tenant Act 1987, the material part of which had not yet been brought into force. Accordingly, his submission glossed over the distinct (and critical) point, which is the statutory requirement in s.42 that the service charge monies for a given client should be held in trust, and should not be used to finance other schemes. On top of the statutory requirement, the contractual requirements of the Quadrangle management agreement with Team provided that the service charge monies should be held in a separate bank account and spent only for the purposes stipulated in that agreement: see clauses 8(i)–(iv) (extracted at paragraph 36. above).

115. In a nutshell, Mr. Joiner was personally fully responsible for the breaches of these important requirements, and for the failure to protect the money belonging to Quadrangle that was paid into the 7345 savings account over a period of years (amounting to £82,286). The improper business practices of Team exposed Quadrangle to serious financial harm. I accept the Secretary of State's submission that these matters engage - at least - Schedule 1, paragraphs 1, 3, and 4 of the CDDA.

116. The essence of the case under Allegation 2 is the failure to ensure that Team maintained adequate accounting records, and to deliver such records up to the Official Receiver. The failure to maintain adequate records constitutes a breach of s.386 of the Companies Act 2006, and it involves every officer of the company who is in default potentially committing a criminal offence under s.387 of that Act. The evidence that I have read and heard clearly establishes that Team did not deliver up adequate accounting records to the Official Receiver, and I find that it is highly likely that this was the consequence of a failure to keep such records in the first place (in

breach of the statutory requirement under s.386). This has frustrated the ability of the Official Receiver to understand the company's transactions, and to verify the reasons for the payment of very large sums both to Mr. Joiner and to persons connected with Mr. Joiner in his capacity as a director of Team, including a close family member. These business practices have potentially resulted in losses to (at least) the client Quadrangle of very large sums. At liquidation, Quadrangle was Team's largest creditor: it was owed an estimated £425,569. I consider that these matters engage - at least - Schedule 1, paragraphs 1, 3, and 4 of the CDDA.

Disqualification consequences

117. In Re Sevenoaks (*supra.*), at p.174E-G, Dillon LJ endorsed the division of the potential 15-year disqualification period into three brackets, *viz*:

i) the top bracket of disqualification for periods over 10 years should be reserved for particularly serious cases. These may include cases where a director who has already had one period of disqualification imposed on him falls to be disqualified yet again;

ii) the minimum bracket of two to five years' disqualification should be applied where, though disqualification is mandatory, the case is, relatively, not very serious;

iii) the middle bracket of disqualification for from six to 10 years should apply for serious cases which do not merit the top bracket.

118. The Secretary of State contends that this is a case where the appropriate period of disqualification should be near the top of the middle bracket, at 9 years, in view of the seriousness of the conduct at issue and the protection that is in consequence required for the public. In my assessment, I take into account in this regard:

i) Mr. Joiner remains a director of a number of companies, including RTMF Services Limited, the Right to Manage Federation Limited (which Mr. Joiner said is not currently actively trading), Harbour House (Wadebridge) Limited; and Harbour House RTM Company Limited.

ii) He holds himself out as an expert in "Right To Manage" matters, including speaking on the radio and liaising with Government. As the Secretary of State submits, he is relatively "high-profile" and the public needs to be protected from his conduct;

iii) In the course of the trial, Mr. Joiner has consistently demonstrated a marked casual attitude to the compliance with rules and requirements of which he was for the most part, it seems, fully aware;

iv) In various ways, Mr. Joiner also repeatedly sought to cast on other persons the blame for many of the problems that are discussed above, when the likelihood in each instance was that the fault lay with himself. This included, among other matters (a) blaming the legal representatives of Quadrangle for having by false representations obtained a court order including an order for costs against Team, which with hindsight he considered had precipitated Team's

insolvency; (b) suggesting that the Official Receiver's representative had mislaid files of accountancy records supplied to him, or may have lost them in the process of reorganising them; (c) suggesting that his former bookkeeper, who had developed a grudge, had not sent electronic information to the Official Receiver when she had assured Mr. Joiner that she had done so;

v) It is a matter of particular concern that Mr. Joiner himself and connected persons have benefitted personally from Team's payments, and that there are no adequate invoices or receipts to support those transactions;

vi) It is similarly of concern that Mr. Joiner was responsible for numerous breaches of the management agreement between Team and the major client Quadrangle, ranging from the failure to ensure an audit of Quadrangle's accounts, to the making of payments from Quadrangle's funds for his own benefit and for the benefit of connected persons seemingly without having obtained the informed consent of the client (see paragraph 36.ii) above).

vii) Mr. Joiner's prolonged failure over the best part of a year to attend to the Official Receiver's repeated requests for the electronic Sage company records, or the computer on which those records were kept, was also of particular concern. It led ultimately to the production of the computer with no meaningful information whatsoever on the hard drive, and I cannot accept Mr. Joiner's argument that at all times he was making reasonable efforts to co-operate with the Official Receiver.

119. In summary, Mr. Joiner has failed to appreciate and observe the duties attendant on the privilege of conducting business with limited liability, and he has demonstrated a serious lack of commercial probity and a lack of insight as to the unacceptability of his business practices.

120. In conclusion, I agree with the Secretary of State's assessment of the appropriate disqualification period, and I decide that a 9-year period of disqualification should be made.

121. I invite the Secretary of State's counsel to draw up the minute of order, and seek to agree it with Mr. Joiner.