SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 CaseNo. 12362-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

CHRISTOPHER KENNETH SCROGGS Respondent

Before:

Mr M N Millin (in the chair)
Mr R Nicholas
Dr S Bown

Date of Hearing: 29 and 30 November 2022

Appearances

Cameron Scott, barrister, of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London, SW19 4DRfor the Solicitors Regulation Authority

The Respondent represented himself

JUDGMENT

Allegations

1. The allegations were set out in a Rule 12 Statement dated 8 August 2022 and were that:

1.1 Between 30 March 2016 and 9 August 2018, Mr Scroggs practised as a solicitor for clients when not authorised to do so. In doing so he breached all or any of:

1.1.1 Rule 1.1 of the SRA Practice Framework Rules 2011 ("the Practice Framework Rules"); and
1.1.2 Principles 2, 6 and 7 of the SRA Principles 2011 ("the Principles").

1.2 Between 30 March 2016 and 3 August 2018, Mr Scroggs made false and/or misleading statements when he knew or ought to have known these statements were false and/or misleading:

1.2.1 By an email dated 30 March and/or a letter dated 1 April 2016 to DWF Law LLP which both stated that Cook & Co ("the Firm") had been instructed by clients JB and GK in relation to a dispute with National Westminster Bank ("NWB"); and/or

1.2.2 By signing consent orders dated 20 and 24 June 2016 in the name of the Firm on behalf of clients JB and GK which represented that the Firm was acting on behalf of JB and GK in the claim brought by NWB; and/or

1.2.3 By letters dated 11 May 2018 and by email of 3 August 2018 which stated that the Firm was instructed on behalf of client JB.

In doing so he beached both or either of Principles 2 and 6 of the Principles.

1.3 On or around 12 and 13 August 2018 Mr Scroggs requested payment of fees to himself personally from client AF when the fees were payable to the Firm.

In doing so he breached both or either of Principles 2 and 6 of the Principles.

2. In relation to Allegations 1.2 and 1.3, it was further alleged that Mr Scroggs acted dishonestly.

Executive Summary

3. The facts were not disputed. A Statement of Agreed Facts was submitted by the parties and accepted by the Tribunal.

4. The Tribunal found that Mr Scroggs had practised as a solicitor for clients when not authorised to do so. Allegation 1.1, including the alleged breaches of the Practice Framework Rules and the Principles, was found proved.

5. The Tribunal found that Mr Scroggs had made the alleged false/misleading statements which he ought to have known were misleading. Allegation 1.2, including the alleged breaches of the Principles, was found proved.

6. The aggravating allegation of dishonesty in relation to allegation 1.2 was found not proved. The Tribunal found that Mr Scroggs' genuinely believed he was acting in accordance with a client instruction that the Firm be engaged without file opening and other procedural requirements being completed. The statements he made were consistent with this belief. Assessed in the light of that belief, his conduct breached the alleged Principles, as set out above, but did not amount to dishonesty.

7. The Tribunal found that Mr Scroggs had requested payment of fees to himself personally which were payable to the Firm. Allegation 1.3, including the alleged breaches of the Principles, was found proved.

8. The aggravating allegation of dishonesty in relation to allegation 1.3 was found proved. The Tribunal found that Mr Scroggs was aware that payment was due to the Firm. The Tribunal accepted that he intended to pay the appropriate proportion of the fees due to the Firm. Despite accepting his evidence, the Tribunal considered that the steps Mr Scroggs took to seek to prevent the Firm becoming aware of his request for direct payment met the test for dishonesty set out in the case-law that the Tribunal was required to apply.

Sanction

9. The Tribunal found that 'exceptional circumstances' as defined in the applicable case law were not present. Accordingly, and having regard to the case of SRA v Sharma [2010] EWHC 2022 (Admin), the Tribunal found that the necessary and appropriate sanction was strike off from the Roll of Solicitors.

Documents

10. The Tribunal considered all the documents in the case which were included in an electronic bundle agreed and supplied by the parties.

11. As stated above, the agreed electronic bundle included a Statement of Agreed Facts submitted by the parties.

Preliminary Matters

Anonymity

12. Mr Scott, for the SRA, invited the Tribunal to maintain the anonymity extended to four clients in the Rule 12 Statement. These individuals, and one linked firm, had been referred to by initials only in the Rule 12 Statement. Mr Scott invited the Tribunal to adopt the same approach during the hearing and in the judgment.

13. Mr Scott referred the Tribunal to the case of Lu v SRA [2022] EWHC 1729 (Admin). He submitted that Mr Justice Kerr had accepted that anonymity may be appropriate where there was a legitimate expectation of confidentiality. Mr Scott submitted that

clients of solicitors had such a legitimate expectation of confidentiality and anonymity which should be respected.

14. Mr Scroggs stated that he took no issue with this proposed approach.

15. The Tribunal determined that the clients should continue to be anonymised and be referred to by initials only as proposed by the SRA. The Tribunal considered that the widespread and uncontentious expectation of client confidentiality, and the Article 8 rights of such clients (from the European Convention for the Protection of Human Rights and Fundamental Freedoms) meant that in the absence of specific reasons to the contrary, clients should not be named in a public hearing or judgment. Applying the case of Lu and the principles of open justice, the Tribunal determined that other third parties should be named.

Factual Background

16. Mr Scroggs was admitted to the Roll of Solicitors in October 1988. From 3 December 2008 to 14 August 2018, he was engaged as a self-employed consultant by the Firm (which was subsequently known as Neath Raisbeck Golding Law Ltd).

17. At the date of the hearing Mr Scroggs was unemployed and had not applied to renew his 2021/22 practising certificate. He stated that he had not yet taken up a position he had been offered by Spencer West LLP.

Witnesses

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

19. The SRA relied on written evidence from four witnesses:

- AF, a client of the Firm represented by Mr Scroggs
- John Ritchie Macdonald Irvine, a partner at DWF Law LLP
- Victoria Neath, a director at the Firm
- Peter John Golding, a director at the Firm

20. Mr Scroggs did not require any of these witnesses to attend to answer questions and he did not seek to challenge their evidence.

21. Mr Scroggs was the only witnesses to give oral evidence.

Findings of Fact and Law

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

Statement of Agreed Facts

23. The Statement of Agreed Facts submitted was signed on behalf of the SRA on 29 November 2022. By an email dated 28 November 2022, Mr Scroggs confirmed his agreement with it.

24. The Statement of Agreed Facts covered the factual matters set out in the Rule 12 Statement and summarised by Mr Scott during the hearing. This Statement of Agreed Facts is set out below. The references in bold are to pages within the agreed hearing bundle.

> "*The following facts and matters are agreed between the SRA and the Respondent:*
>
> *1. Between 30 March 2016 and 9 August 2018, the Respondent practised as a solicitor for clients when he was not authorised to do so.*
>
> *2. Between 30 March 2016 and 3 August 2018, the Respondent made the following statements:*
>
> *2.1. By an email dated 30 March 2016 and/or a letter dated 1 April 2016 to DWF which both stated that Cook & Co ("the Firm") had been instructed by clients JB and GK in relation to a dispute with National Westminster Bank ("NWB");*
>
> *2.2. By signing consent orders dated 20 and 24 June 2016 in the name of the Firm on behalf of clients JB and GK which represented that the Firm was acting on behalf of JB and GK in the claim brought by NWB; and*
>
> *2.3. By letters dated 11 May 2018 and by email of 3 August 2018 which stated that the Firm was instructed on behalf of client JB.*
>
> *3. On or around 12 and 13 August 2018, the Respondent requested payment of fees to himself personally from client AF when the fees were payable to the Firm.*
>
> *...*

Allegation 1.1

5. *The Respondent was a self-employed consultant with the Firm throughout the period covered by the allegations. A copy of his consultancy agreement with the Firm is exhibited (**HWP1/39**). He was paid a percentage of the fees billed for his work by the Firm, depending on the origin of the instructions. His percentage would only be due and payable to him once invoices raised by the Firm to the client had been settled in full.*

6. *The Respondent was not, at the relevant times, authorised as a recognised sole practitioner under Rule 1.1 of the SRA Practice Framework Rules 2011. The Respondent was therefore only authorised to practice as a solicitor as an employee (which term includes consultant) of the Firm.*

7. *The statements of Victoria Neath dated 26 November 2021 (**HWP1/1354** on) and 15 July 2022 (**HWP1/1348** on) are agreed. Ms Neath is a director and the managing partner of the Firm. Her statement of 15 July 2022 summarises the arrangements between the Respondent and the Firm in relation to file opening, billing and payments. The Respondent would work on matters either for clients which he introduced to the Firm, or which were existing clients of the Firm. He would be paid a percentage of the monies billed to and paid by the clients to the Firm.*

8. *When the Firm was instructed on a new matter, it would open a file and undertake the usual processes, such as identification and document checks, conflict checks, opening the matter on the Firm's case system (called "SOS") and sending an engagement letter. The Firm's fee earners would open up their files on the SOS system. All work carried out by the Firm's fee earners under the "umbrella" of the Firm had to be recorded properly and files needed to be opened. Consultants, including the Respondent, were not authorised to conduct litigation in the name of the Firm if the Firm were not aware and if there was no matter file opened.*

9. *The Respondent was, however, practising as a solicitor, and conducting litigation, on his own account and not under the umbrella of the Firm in relation to clients ETP, JB and GK as set out further below.*

10. *Documents were obtained by the Firm from the Respondent's laptop and provided by the Firm to the SRA on 5September 2018 and 11 February 2019. These included the following invoices issued in the Respondent's own name (i.e. not in the Firm's name) to clients:*

    10.1. *For £1,750 to client ETP dated 16 December 2016 (**HWP1/127**)*

*10.2. For £450 to client ETP dated 13 January 2017 (**HWP1/128**)*

*10.3. For £750 to client JB dated 18 May 2018 (**HWP1/129**)*

*10.4. For £500 to client SB dated 11 June 2018 (**HWP1/130**)*

*10.5. For £750 to client AF dated 31 July 2018 (**HWP1/7**)*

*10.6. For £750 to client ETP dated 9 August 2018 (**HWP1/131**)*

*11. The Respondent's personal bank account statements (**HWP1/ 98 to HWP1/100** and pages **HWP1/113 to HWP1/124**, and **HWP1/137 to HWP1/148**) show that he received payments in respect of the invoices dated 13 January 2017 (£450), 18 May 2018 (£750), 11 June 2018 (£500) and 9 August 2018 (£750). The invoice dated 16 December 2016 (£1,750) was not, as far as the SRA is aware, paid. The invoice dated 31 July 2018 (£750) is dealt with under Allegation 3 below.*

Client ETP

*12. The invoice to ETP dated 16 December 2016 in the amount of £1,750 (**HWP1/127**) states it was in respect of "Legal Services provided in the matter of a claim by GB Maintenance (Bristol) Ltd". Also recovered from the Respondent's laptop was an unsigned witness statement in relation to a county court claim by GB Maintenance (Bristol) Ltd against ETP (**HWP1/28**).*

13. The Respondent was acting as a solicitor and conducting litigation on behalf of ETP on his own initiative and not as an employee of the Firm. This was not being done through the Firm as the Firm had no active file open in relation to this matter. The Respondent intended to send a bill to ETP and to be paid by them for his services.

Clients JB and GK

*14. The invoice dated 13 January 2017 addressed to ETP (**HWP1/126**) states that it relates to "All work carried out ref NWB Plc claim".*

*15. The Respondent's laptop contained documents relating to a claim by National Westminster Bank ("NWB") against JB and GK (**HWP1/44 to HWP1/78**) and the following:*

*15.1. Notice of a hearing and an Application in the matter of NWB against JB and GK (**HWP1/44 to HWP1/50**);*

*15.2. A Consent Order in the matter of NWB against JB and GK dated 21 July 2016 and purportedly signed by the Firm on 24 June 2016 (**HWP1/51 to HWP1/53**);*

*15.3. A letter on the Firm's paper to DWF, who represented NWB in the matter, dated 1 April 2016 (**HWP1/57**) stating that the firm acted on behalf of the Defendants, JB and CG;*

*15.4. A defence (**HWP1/58-60**) signed by JB and GK giving their service address as c/o the Firm;*

*15.5. Further and Better Particulars (**HWP162-72**) signed by JB and GK giving their service address as c/o the Firm;*

*15.6. A version of the Consent Order above purportedly signed by the firm on 20 June 2016 (**HWP1/74**);*

*15.7. An email from the Respondent to DWF dated 30 March 2016 stating that the Firm had been instructed to act for JB and GK (**HWP1/77**).*

*16. The statement of John Irvine dated 27 July 2022 is agreed. John Irvine is a partner in DWF Law LLP who represented NWB in those proceedings (**HWP1/1263**). Mr Irvine has confirmed that from receipt of the Respondent's email of 30 March 2016, all his dealings and communications in respect of the NWB proceedings were conducted with the Respondent. It is clear from the documents on DWF's file (**HWP1/1269- 1294** and **HWP1/1295- 1347**) that he understood that the Firm was instructed by JB and GK in the proceedings and that the Respondent was a solicitor in the Firm with a warrant of authority to speak and act for the Defendants.*

*17. The statement of Peter Golding, a solicitor at the Firm, dated 26 November 2021 (**HWP1/156-160**) is agreed. The Firm had no active file open for this matter. The Respondent was acting as a solicitor and conducting litigation on behalf of JB and GK on his own initiative without being authorised but purporting to be authorised by the Firm and using the Firm's infrastructure. He billed JB and GK personally, not through the Firm, and was paid by them for these services.*

Client JB

*18. The invoice dated 18 May 2018 to JB (**HWP1/129**) states that it is for "work in respect of 14th May hearing". The invoice dated 9 August 2018 (**HWP1/131**) is addressed to ETP and states that is for "Services provided before and on 14th May: before and on 6th August and at various times in between".*

*19. The Respondent's laptop contained a letter dated 11 May 2018 (**HWP1/32**) and an email dated 3 August 2018 (**HWP1/35**). This correspondence relates to bankruptcy proceedings brought by HMRC involving JB. The letter and the email were written by the Respondent and purported to be from the Firm. However, the Firm had no active*

files open for client JB in relation to bankruptcy proceedings brought by HMRC.

20. The Respondent was acting as a solicitor and conducting litigation on behalf of JB on his own initiative without being authorised but purporting to be authorised by the Firm and using the Firm's infrastructure. He billed JB personally and was paid by him for these services.

Allegation 1.2

21. The Respondent was conducting litigation on behalf of JB and GK on his own initiative and without the knowledge or authorisation of the Firm. No file had been opened at the Firm and there was no engagement letter with the Firm. Despite this, the Respondent wrote to DWF on 30 March 2016 and 1 April 2016 representing that the Firm was instructed by JB and GK in relation to the dispute with NWB knowing that was not the case. He also signed Consent Orders dated 20 and 24 June 2016 in the name of the Firm, representing that the Firm were acting on behalf of JB and GK knowing that was not the case.

22. The Respondent was conducting litigation on behalf of JB on his own initiative and without the knowledge or authorisation of the Firm. No file had been opened at the Firm and there was no engagement letter with the Firm. Despite this, on 11 May 2018, the Respondent wrote to HMRC purportedly on behalf of the Firm and representing that the firm acted for JB when he knew this was not the case. He wrote again to HMRC on 3 August 2018 purportedly on behalf of the Firm, again representing that the Firm represented JB when he knew this was not the case.

Allegation 1.3

*23. The Respondent requested money from a client of the Firm, AF. The Firm had issued an invoice to AF dated 31 July 2018 (**HWP1/6**). The Respondent sent an invoice in his own name to the client dated 31July 2018 in the same amount (**HWP1/7**). He contacted AF asking if he could invoice him personally. The Respondent suggested that he would not charge VAT so there would be a £150 saving and there would be no further liability to the Firm. He also asked if communication could be by text only (**HWP1/22-24**).*

…

*25. On 14 August 2018, AF reported the incident to the Firm (**HWP1/9**). The Firm conducted an investigation and met with the Respondent the same day (14 August). A note of the meeting was taken (**HWP1/27**). At the meeting it was put to the Respondent that he had been harassing AF to pay him directly for legal services rather than through the Firm.*

The Respondent was shown text messages and correspondence with AF and a copy of the personal invoice.

26. The Respondent responded to the allegations at the meeting by saying that he only wanted to say one thing and that "If it helps, I did it". The Firm then terminated his consultancy agreement."

25. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the factual admissions made by Mr Scroggs within the Statement of Agreed Facts were properly made. The oral evidence he gave was consistent with the Statement of Agreed Facts, save that he maintained in his oral submissions that he acted under the "banner" of the Firm, whilst in the Statement of Agreed Facts it was acknowledged that he did not act under its "umbrella" but on his own account. Nevertheless, he confirmed during the hearing that he did not challenge the facts asserted by the SRA. The Tribunal duly found the facts as set out in the Statement of Agreed Facts, with this one caveat discussed below, proved to the requisite standard.

26. During the hearing Mr Scroggs accepted that his actions had breached the Practice Framework Rules (although he maintained he had not realised this at the time). The alleged breaches of the Principles and that his conduct was dishonest were denied.

27. The remainder of this section of the judgment is structured around the areas which remained in dispute between the parties in relation to allegations 1.1 to 1.3.

28. **Allegation 1.1: Between 30 March 2016 and 9 August 2018, Mr Scroggs practised as a solicitor for clients when not authorised to do so. In doing so he breached all or any of:**

1.1.1 Rule 1.1 of the Practice Framework Rules; and
1.1.2 Principles 2, 6 and 7 of the Principles.

<u>The SRA's Case on the alleged breaches</u>

28.1 The relevant parts of Rule 1.1 of the Practice Framework Rules state that solicitors may practice as a solicitor from an office in England and Wales only:

- As a recognised sole practitioner; or
- As a manager, employee, member or interest holder of an authorised body.

28.2 Mr Scroggs accepted that he was not a recognised sole practitioner at the relevant time. The SRA's case was that accordingly he was only authorised to practise as a solicitor as an employee of the Firm.

28.3 However, as set out in the Agreed Statement of Facts, he practised as a solicitor and conducted litigation for ETP (in relation to a claim by GB Maintenance), JB and GK (in relation to a claim by NWB) and JB (in relation to proceedings brought by HMRC), on his own initiative when being privately instructed and paid. He was acting without the knowledge or authorisation of the Firm. He had not opened files with the Firm or arranged engagement letters between the Firm and the respective clients. The SRA's case was that in doing so he was neither acting as a recognised

sole practitioner nor through an authorised body. It was submitted that he therefore breached Rule 1.1 of the Practice Framework Rules.

28.4 Principle 2 of the Principles requires solicitors to act with integrity. The Tribunal was referred to Wingate v SRA [2018] EWCA Civ 366 in which it was said that integrity connotes adherence to the ethical standards of one's profession. In giving the leading judgement, Lord Justice Jackson said:

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

28.5 It was submitted that a solicitor acting with integrity would not act as a solicitor or conduct litigation outside proper regulatory arrangements and without proper authorisation. Nor would he represent to clients and third parties that he was acting with the authority of an authorised body, in this case the Firm, when he was not. It was submitted that in acting for clients ETP, JB and GK and JB as set out in the Statement of Agreed Facts, Mr Scroggs had therefore breached Principle 2.

28.6 Principle 6 of the Principles requires solicitors to behave in a way that maintains the trust the public places in them and in the provision of legal services. It was submitted that such trust was undermined by a solicitor providing legal services outside the proper regulatory arrangements and without proper authorisation.

28.7 Principle 7 of the Principles requires solicitors to comply with their legal and regulatory obligations. By breaching Rule 1.1 of the Practice Framework Rules and by providing legal services and advice to clients when he was not properly authorised it was submitted that Mr Scroggs had breached Principle 7.

The Respondent's Case on the alleged breaches

Overview applying to all allegations

28.8 In his formal Answer, Mr Scroggs stated that he did not seek to challenge the actions alleged against him. He stated that he did not shirk from what he had done and had immediately accepted it. He provided some overarching comments relating to all allegations:

- He stated that no clients were misled;
- Every client knew exactly what they were getting;
- Every client knew who they were dealing with and on precisely what basis.

28.9 None of his clients had complained in any way, that they had been misled or otherwise. AF had stated that Mr Scroggs had done a "great job".

28.10 The various allegations against him amounted to requesting £750 from AF (which was not received) and claiming £2,450 in other matters. When considered in context, Mr Scroggs submitted that his admitted conduct would not undermine public trust and was not dishonest.

28.11 Mr Scroggs gave oral evidence during the hearing, having affirmed the truth of the evidence he would give. He also made oral submissions. The elements applying to all allegations are set out directly below in order to minimise repetition.

28.12 The allegations concerned events dating back between 4 and 6 years. Mr Scroggs stated that he had cooperated fully with the SRA. He said he was unsure why it had taken so long for the matter to get to a hearing and why there were thousands of pages before the Tribunal for a case about £2,450 in which all the alleged facts were admitted.

28.13 Mr Scroggs said he had started at the Firm in 2008 and received £205 in his first month. When he left the Firm, he was billing between £10,000 and £12,000 each month. He stated that the Firm took either 40% or 60% of the billings, depending on the type of client, simply for the introduction.

28.14 Mr Scroggs apologised for his actions. He said that he had brought shame on the profession but that he had never sought to deceive or mislead anyone.

Allegation 1.1

28.15 Mr Scroggs stated that he had never previously acted in the way he did for JB, ETP and GK and at the time, in the circumstances, it had seemed plausible to him to do so.

28.16 The total of the invoices sent to these clients, and paid, was £2,450. Mr Scroggs acted in two matters for JB/GK/ETP. These clients were related. He knew GK very well. ETP was JB's company. JB and GK were in business together. Mr Scroggs acted in two matters for these clients involving NWB and HMRC.

28.17 Mr Scroggs' evidence was that it was known to these clients that there was a partner at the Firm who was "not particularly cautious" about telling clients about the affairs of other clients. The reason that Mr Scroggs did not act through the Firm in the usual way was that these clients were sensitive about such matters and specifically did not wish for their affairs to become common knowledge at the Firm. Mr Scroggs stated that his clients had "seen client information bandied around" by this partner.

28.18 The clients wished to instruct Mr Scroggs. In the context of 'know your client' requirements for the opening of matter files, Mr Scroggs said that he would not need to ask for a passport to identify his brother, for example, and the same was true of these clients whom he had known for many years.

28.19 Mr Scott asked him about his contract with the Firm which stated that he should not compete with the Firm. Mr Scroggs stated that he understood that to mean he could not work for a competing firm. A client would not be competing with the Firm whereas another firm would be.

28.20 Mr Scroggs agreed that he was authorised as a solicitor and not as a sole practitioner. He did not believe he was acting as a sole practitioner and at the time thought he was acting under the Firm's auspices for clients ETP, JB and GK. In reply to a question from Mr Scott, Mr Scroggs agreed that he was not authorised to write in his own

name in the relevant matters. His oral evidence was that he considered at the time he was acting "under the Firm's banner".

28.21 Mr Scroggs did not agree that DWF or NWB had been deceived when he signed letters to them in the Firm's name. He said that had he carried out the file opening formalities in the usual way, then the clients would have been on the Firm's system. The clients did not wish their private and confidential business to become common knowledge at the Firm. Mr Scroggs' evidence was that his clients' instructions were for him to write on their behalf as the Firm, but not to go through the systems which would make their case visible in this way.

28.22 Mr Scroggs said he simply considered himself as a solicitor at the Firm acting for these clients, albeit not complying with the usual file opening formalities on the instructions of his clients.

28.23 Mr Scroggs agreed that when a law firm is instructed there were various checks which were carried out initially including conflict checks. He said that such checks were unnecessary where the client was well known, and it was obvious there was no conflict.

28.24 Mr Scroggs said that the contents of his laptop had been wiped so he could not be certain, but he thought he would have sent a letter of engagement to the clients in these relevant matters. In response to a question from Mr Scott, Mr Scroggs said that he thought 85% of clients did not care whether these formalities were carried out in every case, provided the solicitor was transparent about costs and how complaints were handled. He agreed that the public was entitled to expect that there be some form of correspondence setting out the basis of the instructions and what was to be done for the client. He agreed that "of course" a client was entitled to expect that the solicitor would be covered by professional indemnity insurance.

28.25 Mr Scroggs stated that at the time he, and his clients, had considered he was entitled to act in the way he did, and he was instructed accordingly. In response to a question from Mr Scott he said that based on what he now knew he accepted that he had not, in fact, been authorised by the Firm to act as he did. He maintained, however, that he was not acting as a sole practitioner.

28.26 In response to questions from the Tribunal about his system at the time, and whether he intended and did pay a proportion of the money received from these clients to the Firm, Mr Scroggs said that he was unable to recall and did not have access to the relevant documents.

<u>The Tribunal's Decision on the alleged breaches</u>

28.27 Mr Scroggs had admitted that he was not authorised under Rule 1.1 of the Practice Framework Rules to act in the way he did. Having reviewed all the material before it, and considered Mr Scroggs' oral evidence, the Tribunal was satisfied on the balance of probabilities that this admission was properly made. He was not authorised to act for and in the name of the Firm in matters of which the Firm was unaware. The Tribunal duly found the alleged breach of Rule 1.1 of the Practice Framework Rules proved to the requisite standard.

28.28 In his oral evidence Mr Scroggs had said he was acting as a solicitor under the "banner" of the Firm. He had specifically mentioned the insurance cover that acting through the Firm provided. However, he had acknowledged in the Statement of Agreed Facts, and acknowledged in his oral evidence, that the Firm did not have knowledge of these matters. Without the Firm's knowledge, and without the relevant file opening checks and formalities being complied with, the Tribunal found that Mr Scroggs was not authorised to act under the Firm's auspices and yet had done so. Mr Scroggs had accepted this, with hindsight, as stated above. The Tribunal found that acting in the manner described, without authorisation, amounted to a clear failure to comply with legal and regulatory obligations. The Tribunal found the alleged breach of Principle 7 proved to the requisite standard.

28.29 The Tribunal considered Mr Scroggs to be a credible witness who gave cogent, candid and truthful evidence. The account he gave was consistent with that he had provided to the SRA during their investigation. He was clear about his beliefs at the relevant time and his current understanding. The Tribunal considered he showed clear insight and remorse.

28.30 The Tribunal accepted Mr Scroggs' case that his clients were not misled. The Tribunal accepted his evidence that he was acting on their wishes at the time for their matters to be handled in the way described above. The Tribunal accepted Mr Scroggs' evidence that at the time he believed he was acting properly. He considered at the time that the ends justified the means.

28.31 When considering Wingate and the allegation that this conduct lacked integrity, the Tribunal reminded itself that it was said in that case that solicitors were not required to be "paragons of virtue". However, proper processes in law firms were vitally important. The Firm being unaware of the instructions, and the progress of the matter, ran the very significant risk that the Firm's indemnity insurer would not have covered any loss had anything gone wrong. The client was therefore exposed to a potentially very significant risk. The risk management processes of the Firm were undermined. Such processes exist to protect clients. The Tribunal found that deliberately, and repeatedly, circumventing these processes, even accepting this was genuinely considered to be a way of achieving the clients' wish for confidentiality, was conduct incompatible with the ethical standards of the profession. The Tribunal found the alleged breach of Principle 2 was proved to the requisite standard.

28.32 The Tribunal also found that failing to comply with the Firm's processes, to the extent that the Firm was completely unaware of the matter, inevitably undermined public trust. Public trust in solicitors and the provision of legal services relied upon scrupulous risk management, oversight and processes to ensure that advice was provided appropriately to clients for which the firm was entitled to act. The Tribunal found the alleged breach of Principle 6 proved to the requisite standard.

29. **Allegation 1.2: Between 30 March 2016 and 3 August 2018, Mr Scroggs made false and/or misleading statements when he knew or ought to have known these statements were false and/or misleading:**

1.2.1 By an email dated 30 March and/or a letter dated 1 April 2016 to DWF Law LLP which both stated that the Firm had been instructed by clients JB and GK in relation to a dispute with NWB; and/or

1.2.2 By signing consent orders dated 20 and 24 June 2016 in the name of the Firm on behalf of clients JB and GK which represented that the Firm was acting on behalf of JB and GK in the claim brought by NWB; and/or

1.2.3 By letters dated 11 May 2018 and by email of 3 August 2018 which stated that the Firm was instructed on behalf of client JB.

In doing so he beached both or either of Principles 2 and 6 of the Principles.

The SRA's Case on the alleged breaches

29.1 Mr Scroggs sent an email dated 30 March 2016 and a letter dated 1 April 2016 to DWF representing that the firm was instructed on behalf of clients JB and GK when this was not true and he knew it was not true. He also signed consent orders in the name of the Firm, thereby representing that the firm was acting on behalf of the clients when he knew that was not true. He also wrote to HMRC on 11 May and 3 August 2018 representing that the Firm was acting on behalf of client JB when he knew that was not true.

29.2 In respect of both these matters, Mr Scroggs was acting as a solicitor and conducting litigation on behalf of the clients on his own initiative. He had not opened a file for either matter with the Firm. No engagement letters had been entered into with the Firm.

29.3 It was submitted that a solicitor acting with integrity would not have sent correspondence representing that the Firm was acting on behalf of clients, or signed Consent Orders in the Firm's name, when he knew that the Firm was not instructed by the clients but that he was representing the clients personally. He would have ensured that he opened a file and complied with the Firm's relevant processes to ensure that he was acting with the knowledge and authorisation of the Firm. It was alleged that Principle 2 was therefore breached.

29.4 Public Trust was said to be undermined by a solicitor who sends correspondence purporting to be on behalf of an authorised firm and representing that an authorised firm is instructed in a matter when that was not the case. Public trust was also submitted to be undermined by a solicitor who signs Consent Orders in a firm's name knowing that the firm is not instructed. It was alleged that Principle 6 was therefore breached.

Allegation of Dishonesty in relation to allegation 1.2

29.5 It was alleged that Mr Scrogs also acted dishonestly in accordance with the test set out in Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67. He knew that the Firm had not been instructed by the clients and that he was representing the clients personally and yet held out that the Firm was instructed and was representing them. It was submitted that ordinary decent people would consider that doing so was dishonest.

The Respondent's Case on the alleged breaches (including Dishonesty)

29.6 Mr Scroggs again relied on the points summarised above in relation to allegation 1.1. The further points he set out in relation to allegation 1.2 are summarised below.

29.7 Mr Scott asked about the letters that Mr Scroggs had sent to DWF and NWB saying that the Firm was instructed when it was not. Mr Scroggs' stated that the Firm was instructed. His evidence was that he was acting "under the Firm's banner" in a manner which prevented the client details becoming public knowledge.

29.8 In response to a question from the Tribunal, Mr Scroggs said that the clients wanted "proper representation" and that he had put the Firm's name on the headed paper, rather than his own, as his clients would otherwise not have been insured.

29.9 The Tribunal was referred to two consent orders lodged with the Court which were signed by Mr Scroggs in the Firm's name. Mr Scott asked whether the Court was misled on the basis that the Firm was not instructed and knew nothing about the matter. Mr Scroggs said that this amounted to the same question: he repeated that he was acting under the Firm's banner according to the clients' instructions.

29.10 Mr Scroggs reiterated that he had had no intention to deceive anyone. He did not accept that DWF, HMRC or the Court were misled.

The Tribunal's Decision on the alleged breaches

29.11 The Tribunal considered that much of allegation 1.2 turned on the same points determined above in relation to allegation 1.1.

29.12 As set out above, the Tribunal had accepted that Mr Scroggs' clients were not misled. The Tribunal had accepted his evidence that he was acting on their wishes at the time for their matters to be handled in the way described above and in the Statement of Agreed Facts. The Tribunal had accepted Mr Scroggs' evidence that at the time he believed he was acting properly, although he now recognised he was not authorised to act in the way he had.

29.13 There was no dispute that the alleged statements had been made. By the time of the hearing there was no dispute that Mr Scroggs had not been authorised to act in the way he did. It was plain from the face of the documents to which the Tribunal was referred, and Mr Scroggs did not dispute, that he had signed an email and letter to DWF stating that the Firm had been instructed by clients JB and GK when in fact the Firm had no knowledge of the matter. The position was as stark in relation to the consent orders described above and letters relating to JB's matter.

29.14 The statement provided by Mr Irvine, which was not challenged by Mr Scroggs, confirmed that as a recipient of such letters he had understood that the Firm was instructed in the matter and that Mr Scroggs was authorised to speak and act for the Firm's clients in the matter. The Tribunal had found that no such authority existed.

29.15 For the same reasons applying to allegation 1.1, the Tribunal considered that the disregard for the Firm's processes was so profound, and those processes were so important in terms of client protection and proper legal practice, that the admitted conduct fell below the ethical standards of the profession. The clients had been exposed to the risks described above and Mr Scroggs had unilaterally dispensed with formalities to the extent that the Firm was entirely unaware of the clients' instructions.

29.16 The various statements had unambiguously represented that the Firm was instructed when in fact no one at the Firm other than Mr Scroggs was aware of the matters. The Tribunal considered it was completely unsustainable to suggest, in those circumstances, that those to whom the statements were made were not misled. By making the statements in way he did, in matters where he had unilaterally dispensed with the Firm's processes for file opening and case management, the Tribunal found that Mr Scroggs' conduct had failed to meet the ethical requirements of the profession. The Tribunal accepted the submission that in these circumstances, where he was representing to others that the Firm was instructed, acting with integrity required that Mr Scroggs ensure that the Firm's proper processes were observed. His failure to do so misled those, including the Court, to whom the statements were directed and exposed the clients to the risks mentioned above. That he genuinely considered he was acting in accordance with his clients' instructions under the "banner" of the Firm was not sufficient to meet the minimum ethical requirements of the situation. The Tribunal found the alleged breach of Principle 2 was proved to the requisite standard.

29.17 For the same reasons the Tribunal found that public trust in solicitors and the provision of legal services would be undermined by such conduct. The Tribunal found the alleged breach of Principle 6 proved to the requisite standard.

The Tribunal's Findings on the allegation of Dishonesty

29.18 When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. Accordingly, the Tribunal adopted the following approach:

- firstly, the Tribunal established the actual state of Mr Scroggs' knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;

- secondly, once that was established, the Tribunal then considered whether this conduct would be thought to have been dishonest by the standards of ordinary decent people.

29.19 As to the state of Mr Scroggs' knowledge, the Tribunal had found that he considered he was acting under the "banner" of the Firm according to his clients' instructions. The Tribunal accepted that he considered he was dispensing with formalities which did not apply in circumstances where the clients were so well known to him and where he considered there was no risk of any conflict of interest. Mr Scroggs had known at the time that he was not authorised to conduct the litigation in his own name. That these beliefs were not objectively reasonable, and that as an experienced solicitor he should have known better, as reflected in the findings above, did not persuade the Tribunal that they were not genuinely held.

29.20 Applying the second limb of the Ivey test, whilst ordinary, decent people would have serious concerns about the conduct, the Tribunal considered that it would be regarded as profoundly unprofessional rather than dishonest. Given the Tribunal's findings about Mr Scroggs' belief and intention at the time, the Tribunal found that the aggravating allegation that he had acted dishonestly when making the various statements about the Firm acting was not proved.

30. **Allegation 1.3: On or around 12 and 13 August 2018,Mr Scroggs requested payment of fees to himself personally from client AF when the fees were payable to the Firm.**

In doing so he breached both or either of Principles 2 and 6 of the Principles.

The SRA's Case on the alleged breaches

30.1 Mr Scroggs issued an invoice in his own name to a client, AF, dated 31 July 2018 and tried to persuade a client, AF, to pay these fees to him personally when the fees had properly been invoiced by and were due to the Firm.

30.2 It was submitted that a solicitor acting with integrity would not have tried to persuade a client to pay these fees, which he knew had been properly billed and were payable to the Firm, to him personally. Nor would he have suggested to the client that he would not have to pay VAT if he paid the solicitor personally. It was alleged that Principle 2 was therefore breached.

30.3 It was submitted that public trust was undermined by a solicitor who seeks to divert to himself payment of fees properly due to his employer. It was alleged that Principle 6 was therefore breached.

Allegation of Dishonesty in relation to allegation 1.3

30.4 It was alleged that Mr Scroggs also acted dishonestly in accordance with the test in Ivey. He knew that the fees for the work done for client AF were chargeable by and payable to the Firm. It was submitted that ordinary decent people would consider attempting to persuade the client to pay fees instead to himself to be dishonest.

The Respondent's Case on the alleged breaches (including dishonesty)

30.5 Mr Scroggs again relied on the points summarised above in relation to the previous allegations. The further evidence and submissions he set out in relation to allegation 1.3 are summarised below.

30.6 Mr Scroggs stated that AF had been billed by the Firm, and when that bill had not been paid for two weeks Mr Scroggs had contacted AF and issued his own bill. Mr Scroggs' evidence was that he did not intend for anyone to lose out. He intended to pay the Firm, including the VAT element, from the money he had requested from AF.

30.7 Mr Scroggs explained that the request to AF resulted from cash-flow difficulties. He was helping a close family member who was in very difficult financial circumstances and Mr Scroggs stated that perhaps he sought to help more than he should. His submission was that his actions were "pretty inexcusable" but not dishonest.

30.8 Mr Scott asked about whether AF had been misled by Mr Scroggs by reference to an exchange of text messages between them. Relevant extracts, to which the Tribunal was referred, were:

From 12 August 2018

Mr Scroggs: *"… I have a favour to ask: i hope you won't mind."*

Mr Scroggs: *"Would you mind if I invoiced you for July i.e., personally? If the firm does, then regardless of when you pay, I don't get paid out until month end. It's I'm afraid cashflow and I could really do with the £ soonest. I'm sorry this is inappropriate and I hope you don't mind? I don't charge vat so you won't pay it which will be a £150 saving. I'm sorry to ask and to bother you on a Sunday. I'll be shot for asking but here goes anyway*

My invoice to you will conclude all matters and liabilities. There will be no further invoice or liability. If you're not comfortable then please forget my request. I shouldn't have".

AF: *"Send something to me. We can get the wording accurate, just so we are clear, as this is a slight curve ball approach, have a conversation and hopefully I can pay you as requested. Its not an issue of trust just belt and braces. Hope you understand considering. I take no offence by the way ..."*

Mr Scroggs: *"Totally. I aplologise [sic] for the approach. The narrative will say legal services provided in July. Is that ok?"*

From 13 August 2018

Mr Scroggs: *"Do you think we could text only on this please [AF]? My work e mails are read. I wanted this bryween [sic] us for one reason - cashflow. I'd just welcome payment of the agreed figure to come to me direct. Happy to amend the wording. Not a problem. But that's the sole reason. And can we text only please?"*

Mr Scroggs: *"(I should have said, I'm self employed. So i quite often invoice clients myself, rather than the company)".*

30.9 Mr Scroggs said that he did not believe AF was misled. He said that he had asked for fees, which he would receive at the end of the month in any event, to be paid to him in advance. His intention was to pay the Firm their 40% and the VAT due. Ultimately, he would receive exactly and only that to which he was entitled. AF would pay what he was due to pay. His evidence was that he was going to pay the VAT charged by the

Firm from his 60% of the fee and so it was accurate to say to AF that he would have no liability for VAT.

The Tribunal's Decision on the alleged breaches

30.10 Mr Scroggs had accepted that the Firm's invoice had been issued before he raised the possibility of payment being made directly to him by AF. The Tribunal accepted, and Mr Scroggs did not dispute, that the relevant fees were properly due to the Firm and not to him personally.

30.11 The Tribunal accepted Mr Scroggs' evidence that his intention was to pay the appropriate sum to the Firm, including the VAT element.

30.12 However, the Tribunal was profoundly troubled by a solicitor approaching a client of the firm for whom he worked and asking for payment to be made directly. It was at best extremely ill-advised even accepting that the Firm would not ultimately lose out financially. The Tribunal considered it was conduct which the public would not expect, and which would be likely to undermine public trust in solicitors and the provision of legal services. AF had been sufficiently concerned to report the matter to the Firm, who had in turn reported the matter to the SRA.

30.13 Mr Scroggs had denied that public trust had been affected but had said during the hearing that his actions had brought shame on the profession. As set out above, in the text messages in which the request for direct payment were made, Mr Scroggs had said "*I'll be shot for asking but here goes anyway", "If you're not comfortable then please forget my request. I shouldn't have"* and *"Do you think we could text only on this please [AF]? My work e mails are read."* The Tribunal considered this suggested Mr Scroggs knew the request was inappropriate. The Tribunal found it was not a matter which would purely be of concern to the Firm but to the wider public. The Tribunal found the alleged breach of Principle 6 proved to the requisite standard.

30.14 The Tribunal considered that probity and transparency in relation to the treatment of fees due from clients was a cornerstone of ethical legal practice. It also went to the heart of a solicitor's relationship with their employer. Mr Scroggs had asked for fees to be paid to him directly when he knew they were properly payable to the Firm and he had taken steps to conceal this request from the Firm. Applying the test in Wingate, the Tribunal found that making such an approach to a client of the Firm, in the manner and circumstances accepted by Mr Scroggs, even allowing for the pressures upon him the fact he intended to retain only that to which he would ultimately be entitled, represented a clear failure to meet the necessary ethical standards of the profession. The Tribunal found that the alleged breach of Principle 2 was proved to the requisite standard.

The Tribunal's Findings on the allegation of Dishonesty

30.15 The Tribunal applied the two-stage test in Ivey summarised above.

30.16 As set out above, the Tribunal had found that Mr Scroggs was aware that his direct approach to AF was improper. The extracts from the text messages set above confirmed this. On 12 August 2018 he stated: "*I'll be shot for asking but here goes*

anyway". He also took steps to conceal his request from the Firm. When requesting the advance by text message he stated on 13 August 2018: "*Do you think we could text only on this please [AF]? My work e mails are read."* The Tribunal found that Mr Scroggs had deliberately taken steps, through a series of text messages sent over two days, to make a request he knew to be improper and to conceal this from the Firm. He knew that the Firm was expecting, and entitled to, payment by AF of the invoice which had been issued to him.

30.17 As set out above, the Tribunal accepted Mr Scroggs' evidence that he intended to pay the Firm the proportion of the fee to which it was entitled, together with the VAT element. The Tribunal accepted that Mr Scroggs' was seeking an advance, for cash-flow purposes, of a sum to which he would be entitled under his contract with the Firm. He had not misled AF. Mr Scroggs had been candid with the Firm as soon as the issue was raised with him, as he had been with the SRA and subsequently with the Tribunal during the hearing. However, by reference to the text messages in which the request was made, the Tribunal found that he had taken steps to conceal his request from his employer when he knew it was improper.

30.18 Applying the second limb of the Ivey test, given the efforts at concealment and the knowledge that the approach was improper, the Tribunal found that ordinary decent people would regard the conduct as dishonest. Applying the test in Ivey, as it was obliged to do, the Tribunal found the aggravating allegation that the conduct alleged in allegation 1.3 was dishonest was proved to the requisite standard.

Previous Disciplinary Matters

31. There were no previous Tribunal findings against Mr Scroggs.

32. Mr Scott drew the Tribunal's attention to an internal rebuke which was issued to Mr Scroggs by the SRA in 2008. The rebuke was issued following a finding that he had:

> "*… backdated five letters of advice inserting them into five separate client files giving the impression that he had sent the letters to the clients at a date significantly earlier than they were in fact sent…*"

Mitigation

33. Mr Scroggs confirmed he had received a copy of the Tribunal's Guidance Note on Sanctions. Following a break in the hearing for him to prepare any mitigation he wished to put forward, Mr Scroggs made the following representations.

34. He said that he accepted the Tribunal's findings. He asked the Tribunal to take into account his 34 years as a solicitor with no previous blemish.

35. When he was dismissed by the Firm he lost shares which were worth £20,000. He had already suffered severely for his actions.

36. He had received an offer of engagement as a consultant from Spencer West LLP. He had made full disclosure to them of the Tribunal proceedings. He intended to borrow the money needed to take up this offer. He expressed the hope that the sanction imposed by the Tribunal would not prevent this happening.

37. Mr Scroggs said that as he was 60, a suspension or worse would effectively mean he would never return to the profession. He invited the Tribunal to keep the sanction commensurate with the admitted wrongdoing.

38. Addressing the rebuke imposed by the SRA in 2008, Mr Scroggs said that he had got behind with an incredibly busy workload and was without secretarial support at the time. The position today was very different. He completed his own typing and filing, for example. Having got behind he had backdated engagement letters so that his then firm would not think that they had not been completed.

39. The Tribunal invited Mr Scroggs to address them on the cases it was obliged to apply, in particular Sharma and SRA v James et al [2018] EWHC 3058 (Admin), which were summarised in the Sanctions Guidance. Additional time was provided for Mr Scroggs to prepare further submissions.

40. Mr Scroggs then referred to the above cases and the fact that 'exceptional circumstances' would invariably be required for strike off not to be ordered where dishonesty was found. He noted that the nature, scope and extent of the dishonest conduct found proved, and whether it benefitted the solicitor and had an adverse effect on others were factors relevant to whether the circumstances were exceptional.

41. The nature of the dishonesty was the request for payment of the £750 from AF. Mr Scroggs submitted that it was a one-off event, not part of any campaign or course of conduct. He submitted that it was not of benefit to him, although it did allow him to benefit a family member. He noted that the money was not paid to him, so the benefit did not materialise. He submitted that there was no detriment caused to others, and he had sought only that money to which he would be entitled. The Firm had not lost out and he submitted there was no evidence that AF had suffered any detriment.

42. Mr Scroggs said that he did not contend there was any illness, stress or mental health issues which would constitute or contribute to exceptional circumstances, beyond typical issues and pressures.

43. He invited the Tribunal to consider what the effect of allowing him to continue to practise would be. He had received an offer of engagement from a firm fully informed of the events giving rise to the allegations. He submitted they were evidently sufficiently reassured about his integrity, honesty and capabilities.

44. He had made prompt admissions. He had cooperated with the SRA fully in every respect.

45. Mr Scroggs submitted that by reference to the nature, scope and extent of the conduct exceptional circumstances as defined in case-law existed and a sanction which allowed him to continue to practise would be proportionate and appropriate.

Sanction

46. The Tribunal referred to its Guidance Note on Sanctions (10th edition/June 2022) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of Mr Scrogg's culpability and the harm caused, together with any aggravating or mitigating factors.

47. In assessing culpability, the Tribunal found that the motivation for the Mr Scroggs' conduct was in part to provide services to clients in the way they had requested in a way he had, wrongly, considered was acceptable at the time. In relation to the request for payment from AF, there was no motive of self-interest other than the wish to be able to help a family member. He did not seek to take more than that to which he was ultimately entitled but did so in a manner which breached the Principles and met the Ivey test for dishonesty. The work carried out for clients without the Firm's knowledge was planned. There were several instances over an extended period of time. The test message requests to AF were made over two days. The conduct was not extended, but neither was it a "one-off" moment of madness. It involved a decision and consistent actions over the two days on which text messages on the topic were sent. The Tribunal considered that Mr Scroggs was in a position of trust in relation to his employer. He also had full control of the circumstances of the misconduct found proved. He was an experienced solicitor, having been admitted to the Roll in 1988. He had cooperated fully with the regulator. The Tribunal found that Mr Scroggs was fully responsible for his actions, with a high degree of culpability.

48. The Tribunal then turned to assess the harm caused by the misconduct. There was little direct harm from the request for payment to those involved. The reputational harm to the profession, which was foreseeable, was significant, however. The work conducted for clients without the knowledge of the Firm had also risked very significant harm. Those clients may not have been covered by indemnity insurance.

49. The misconduct found proved was aggravated by the fact that the conduct found proved included conduct satisfying the Ivey test for dishonesty. It was also aggravated by the fact that in relation to all allegations, Mr Scroggs should have known that his conduct was in breach of his obligations to protect the public and the reputation of the legal profession. The Tribunal also considered the previous findings made internally by the SRA were a further aggravating factor as they involved conduct designed to mislead his then employer.

50. In mitigation, the misconduct found proved in allegations 1.1 and 1.2 followed a request from clients which Mr Scroggs sought to accommodate. The Tribunal considered that he had genuine remorse and insight for his conduct. He made frank and early admissions of all factual matters and cooperated fully with the SRA. He had no previous Tribunal findings against him.

51. The Tribunal had regard to the case of Sharma and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll of Solicitors. The Tribunal was not persuaded that any exceptional factors were present such that the normal penalty was not appropriate. As stated in Sharma, in considering what amounts to exceptional circumstances, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it

was momentary, or over a lengthy period of time; whether it was a benefit to the solicitor, and whether it had an adverse effect on others. The nature of the dishonesty involved making a request to a client for direct payment of fees properly due to the Firm. The steps taken to keep this request from the Firm were central to the Tribunal's findings. The scope of the dishonest conduct was the text messages, set out above, sent over two days. The text message in which Mr Scroggs said "*Do you think we could text only on this please [AF]? My work e mails are read*" and also "*And can we text only please?*" were sent the day after the initial request which included the words "*… I'll be shot for asking but here goes anyway…*" The conduct was not momentary. The extent of the dishonest conduct found proved was this single request for £750 (which was not paid). The conduct was of some benefit to Mr Scroggs as it was intended to alleviate cash-flow difficulties even though the Tribunal accepted that his intention was to give the money to someone else and he intended to retain only that to which he would be entitled from the Firm. The direct impact on others was limited.

52. Whilst the Tribunal had considerable sympathy for the pressures outlined by Mr Scroggs which had led to the finding of dishonesty, the Tribunal did not consider that they amounted to exceptional circumstances. Financial pressures were often acute and could not be described as exceptional. The conduct was not momentary but the result of a decision which was confirmed and pursued the following day.

53. In addition to the finding of dishonesty in relation to allegation 1.3, the Tribunal had found that Mr Scroggs' conduct had lacked integrity in relation to allegations 1.1 and 1.2. These findings in themselves represented serious misconduct. The Tribunal carefully considered the personal mitigation raised by Mr Scroggs, but in light of the various findings, and the absence of exceptional circumstances as set out in Sharma and James, the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> *"to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".*

The Tribunal determined that the findings against Mr Scroggs, including dishonesty, required that the appropriate sanction was strike off from the Roll.

Costs

54. Mr Scott applied for the SRA's costs in the sum of£22,800 as set out in the schedule dated 22 November 2022. He submitted that the proceedings were appropriately brought, and the costs claimed reasonable. Whilst admissions had been made, this was shortly before the substantive hearing. More significantly, none of the breaches of the Principles had ben admitted so a hearing had been necessary. In his Answer, Mr Scroggs had denied that his conduct was dishonest or breached public trust. His refusal to accept these elements had meant an Agreed Outcome was not a realistic possibility. The hearing bundle was reduced to reflect the areas where admissions were made. Mr Scott stated that there necessarily remained a lot of evidence for the Tribunal to go through.

55. Mr Scott reminded the Tribunal that it should have regard to Mr Scroggs' ability to pay. He referred the Tribunal to the case of Barnes v SRA [2022] EWHC 677 (Admin) which confirmed that any costs awarded should be capable of repayment. Mr Scott said it was difficult to challenge Mr Scroggs' statement of means as it was unsupported by documents. Rule 43(5) of the SDPR required respondents to provide evidence to support such statements of means. Mr Scott submitted that in the absence of any supporting documentation the Tribunal should be slow to take the schedule of means entirely at face value.

56. Capsticks Solicitors were instructed under a fixed fee. Slightly over 170 hours had been spent on the matter. This translated to a notional hourly rate of around £108 per hour which Mr Scott submitted was reasonable.

57. In reply, Mr Scroggs suggested that his statement of means was more credible than the schedule of costs produced by Capsticks. His statement of means stated that he was unemployed and receiving universal credit. He described doing odd jobs. He referred the Tribunal to an email which appeared to show universal credit payments, the most recent being £703.24 for November 2022.

58. Mr Scroggs said he did not understand why the hearing bundle had not been substantially reduced as he had never disputed the factual matters alleged. The case had involved 170 hours work which he submitted was disproportionate.

59. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal accepted that the Statement of Agreed Facts had only been completed shortly before the hearing, and the Principle breaches and dishonesty were denied, but Mr Scroggs had never sought to contest the factual matters alleged. His Answer stated: "*I do not wish anything that is contained herein to be seen as a challenge to Allegations 1.1, 1.2 or 1.3*". He did go on to deny the professional breaches and that he had acted dishonestly but did not seek to challenge any of the facts alleged. His response to the SRA in January 2022, before the case was referred to the Tribunal, was similarly candid. Given this, the Tribunal considered that the costs were high. Given the areas which were in dispute, the Tribunal regarded the fees as disproportionate.

60. The Tribunal carefully reviewed the schedule of costs. The Tribunal considered the £600 sought for the SRA's supervision costs to be reasonable. However, for the reasons summarised above, the fixed fee of £18,500 was excessive for a matter in which such extensive factual admissions were made, and the areas of dispute were so narrow. The case was not legally or factually complex. The Tribunal had not been referred to the vast majority of the pages in the electronic bundle during the hearing. In all the circumstances, based on its review of the schedule of costs claimed, the complexity and documentation involved in the case and its experience of comparable cases, the Tribunal considered that the fixed fee should be reduced to £12,000 (to which VAT of £2,400 should be added) which reflected reasonable and proportionate costs. Coupled with the assessed investigations costs, the Tribunal thus determined that the fees reasonably incurred by the Applicant were £15,000.

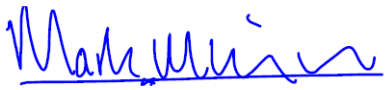
61. The Tribunal had carefully reviewed Mr Scroggs' statement of means. The Tribunal accepted that it should not order him to pay more than he could realistically pay in a costs award, although the ability to pay instalments over an extended period was a relevant factor. As noted by Mr Scott, there was very little provided to support the statement. However, the email referred to above indicated receipt of universal credit. The handwritten schedule contained considerable detail. Notwithstanding the findings made, the Tribunal had found Mr Scroggs a credible and truthful witness. The Tribunal accepted the statement of means provided. The financial position set out was very challenging, with rent accounting for the bulk of the universal credit payment received. Whilst Mr Scroggs had received an offer of engagement of a solicitor the sanction imposed meant that his income in the near future was likely to be limited and uncertain. Given the significant monthly deficit revealed by the schedule, the amount already owed, and the immediate income prospects, the Tribunal did not consider there was any realistic or reasonable prospect of Mr Scroggs being able to make any contribution to the assessed costs in the foreseeable future. Having regard to Barnes, the Tribunal was driven to the conclusion that it should make no order as to costs.

Statement of Full Order

62. The Tribunal ORDERED that the Respondent, Christopher Kenneth Scroggs, be STRUCK OFF the Roll of Solicitors.

63. The Tribunal made no Order as to costs.

Dated this 12th day of January 2023
On behalf of the Tribunal



JUDGMENT FILED WITH THE LAW SOCIETY
12 JAN 2023

M N Millin
Chair