SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12530-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

MARTIN DARREN ROUNTHWAITE Respondent

Before:

Ms A Banks (in the Chair)
Mrs L Murphy
Mr P Hurley

Date of Hearing: 8 July 2024

Appearances

Michael Collis, counsel, of Capsticks LLP, 1 St George's Road, London, SW19 4DR, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Martin Darren Rounthwaite, are that, while in practice as a solicitor, as sole practitioner through Pro-Law Network ("the Firm") and as COLP of the Firm:

1.1 On various dates between August 2016 and 16 September 2019**,** he, having received payment of funds in respect of his firm's costs and disbursements, failed to pay disbursements totalling £14,208 [£8,238 for Ramsay Norbert and £5,970 for other suppliers] or to pay the funds into client account.

In doing so the Respondent breached:

1.1.1 Rule 17.1(b) (ii) of the Solicitors Accounts Rules 2011; and/or

1.1.2 All or any of Principles 2, 6 and 10 of the SRA Principles 2011.

PROVED

1.2 Between 2017 and June 2019, he failed to notify the SRA of the Firm's serious financial difficulties. In doing so he failed to achieve Outcome 10.3 of the SRA code of Conduct 2011 and breached Principle 8 of the SRA Principles 2011.

PROVED

1.3 He breached undertakings given to Spencer Solicitors Ltd ("SSL") on or around 5 March 2013 in the following respects:

1.3.1 He failed to account to SSL for that proportion of costs paid to the Firm on or around May 2017 which were due to SSL and subject to a lien;

1.3.2 He failed to advise SSL immediately or at all upon the settlement of the client's claim;

1.3.3 He failed to provide SSL with an update every six months regarding the file progression and recoverability of costs;

In doing so he failed to achieve Outcome 11.2 of the SRA Code of Conduct 2011 and breached either or both of Principles 2 and 6 of the SRA Principles 2011.

PROVED

1.4 In emails dated 20 July 2017, 5 December 2017 and 5 February 2018, he made inaccurate and misleading statements to SSL to the effect that costs in a road traffic accident claim had not been agreed and would proceed to a Detailed Assessment when, in fact, the costs had been agreed and paid to the Firm in or around May 2017. In doing so the Respondent breached Principle 2 of the SRA Principles 2011.

PROVED

1.5 His conduct in relation to allegation 1.4 was also dishonest. Dishonesty is alleged as an aggravating feature of allegation 1.4 but is not an essential ingredient in proving the misconduct. Further details of the dishonesty are set out in paragraphs 64-65 below.

PROVED

1.6 Between around 17 June 2019 and 18 February 2020, he failed to effect an orderly closure of the Firm. In doing so, and to the extent the conduct took place prior to 25 November 2019, he failed to achieve outcomes 1.12 and 6.3 of the SRA Code of Conduct 2011 and breached either or both of Principles 4 and 5 of the SRA Principles 2011. To the extent the conduct took place from 25 November 2019, the Respondent breached paragraphs 5.3 and 8.6 of the Code of Conduct for Solicitors, RELs and RFLs and Principle 7 of the SRA Principles (2019).

PROVED

Executive Summary

2. Mr Rounthwaite was a solicitor of 25 years standing as at the time of the Substantive Hearing. The allegations levelled against him related not only to the administration of his practice, but also non-compliance with professional undertakings, sending dishonest communications in the course of litigation and failure to engage with his regulator. Mr Rounthwaite did not engage in the Tribunal proceedings in any meaningful manner. He did not attend the Substantive Hearing, which proceeded in his absence. All allegations were found proved.

Sanction

3. Mr Rounthwaite was Struck Off the Roll of solicitors and Ordered to pay the Applicant's costs.

Documents

4. The Tribunal considered all of the documents contained in an electronic Substantive Hearing bundle.

Preliminary Matters *(if required)*

5. Application to proceed in the Respondent's Absence

Applicant's Submissions

5.1 Mr Rounthwaite did not attend the hearing and was not represented. Mr Collis for the Applicant, set out the relevant chronology.

5.2 Standard Directions issued by the Tribunal dated 18 December 2023 fixed the substantive hearing to be 7-days starting from 8 July 2024. On 4 June 2023, the substantive hearing was reduced to only two days, due to the lack of engagement from Mr Rounthwaite and the fact that he did not require the attendance of SRA witnesses.

5.3 During the course of the Tribunal proceedings, Mr Rounthwaite failed to attend on two occasions, namely, the Non-compliance Hearing on the 6 February 2024 due to his failure to provide an Answer and the Case Management Hearing ("CMH") on the 29 February 2024.

5.4 On 2 July 2024, the Tribunal sent an email to Mr Rounthwaite reminding him the date of his hearing, informing him that the Tribunal could proceed in his absence and asking if he was content with the court doing so. Whilst Mr Rounthwaite indicated that he was experiencing health problems, Mr Collis submitted that he was nonetheless aware of the hearing date and did not request an adjournment due to the same. Mr Collis invited the Tribunal to infer from certain documents that Mr Rounthwaite requested be considered, that he expected the Tribunal to proceed in his absence.

5.5 Mr Collis stated that the Applicant has been aware of Mr Rounthwaite's health issues since September 2022, as Mr Rounthwaite responded to the Applicant's notices with health documents. Mr Collis submits that none of the health documents positively assert that the Respondent is too unwell or ill to participate in the hearing, as required under the Tribunal's Health Guidelines and the Court of Appeal decision of *General Medical Council v Ijaz Hayat [2018] EQCA Civ 2796.*

5.6 Referencing correspondence between the Applicant and Respondent from 2 – 5 July 2024, Mr Collis reminded the Tribunal that Mr Rounthwaite had not requested an adjournment. He merely asked that certain documents including ones containing information about his finances were put before and considered by the Tribunal when and if deciding costs.

5.7 Further, Mr Rounthwaite referred in written communications to his ambitions to eventually return to work as a solicitor, notwithstanding his health problems. Mr Collis stated that it would therefore be in Mr Rounthwaite's interest to proceed in his absence, as concluding the hearing would produce a definitive and final answer to the allegations, and the extent it would affect his ability to return to work in the future, if any.

5.8 In the event that the Tribunal decided to adjourn proceedings, Mr Collis submitted that there was no guarantee that Mr Rounthwaite would attend future hearings in circumstances where the present matter was the third occasion upon which he had failed to attend.

5.9 Lastly, Mr Collins added that proceeding in Mr Rounthwaite's absence would minimise the inconvenience caused to witnesses, namely, two Forensic Investigation Officers ("FIO") both of whom were on standby to assist the Panel if required.

The Tribunal's Decision

5.10 The Tribunal carefully considered the submissions of Mr Collis and the written communications of Mr Rounthwaite. In so doing, it determined that Mr Rounthwaite (a) was aware of the hearing date, (b) had not made an application to adjourn the substantive hearing, (c) had submitted medical evidence which did not support any contention that he could not attend, (d) had never attended a Tribunal hearing, (e) demonstrated, in his written communications, an expectation that the hearing would proceed in his absence, (f) seriousness of the allegations and (g) the overarching public interest in the expeditious determination of them. Weighing all of the factors in the balance, the Tribunal determined that Mr Rounthwaite had voluntarily absented himself from the proceedings.

5.11 Therefore, the Tribunal GRANTED the application to proceed in Mr Rounthwaite's absence.

6. Application to amend the Schedule of Anonymity

Applicant's Submissions

6.1 Mr Collis applied for anonymity in respect of individuals, mainly former clients of Mr Rounthwaite. The application was predicated on the need to maintain legal professional privilege ("LPP") as regards former clients. Anonymity in respect of non-former clients was sought so as to avoid the identification of former clients. Mr Collis relied upon *SRA v Williams [2023] EWHC 2151 (Admin)* support the contention that anonymisation of clients past and present was appropriate and proportionate in all of the circumstances.

The Tribunal's Decision

6.2 The Tribunal carefully considered the submissions made. The Tribunal applied the principles laid down in *Williams*, in particular:

> *"… LPP does not involve the balancing of competing interests against a client's right to the confidentiality of communications with his solicitor, e.g. whether the broader interests of justice require disclosure. LPP either applies to a communication, or it does not. Where it applies, then it is absolute unless it is waived by the client…"*

6.3 Given that all of the communications related to client matters, the Tribunal determined that they were subject to LLP. There was no suggestion, and none was evident on the papers, that the former clients had waived LLP.

6.4 The Tribunal therefore GRANTED the application for the anonymisation of former and non-former clients.

7. Application to amend allegations

Applicant's Submissions

7.1 Allegation 1.1 related to the value of disbursements or funds received by Mr Rounthwaite but were not paid. The application was to amend the value of "£14,208" to "£13,248" and "£5,970" to "£5,010". The Forensic Investigation Officers in the case were unable to assert with any degree of confidence that the Firm did in fact receive £960 that was owed by 'Person H' that should have been paid to Liverpool Civil Law Chambers. Mr Collis submitted that this amendment would not prejudice Mr Rounthwaite as it resulted in a reduction in value. Furthermore, Mr Rounthwaite had made admissions to not paying disbursements where funds were in fact received to meet the same.

7.2 Allegation 1.4 related to the date emails sent which contained inaccurate and misleading information to Spencer Solicitor Ltd ("SSL") as regards a road traffic accident claim. The amendment sought was to correct a typological error of "5 December 2017" to "15 December 2017".

The Tribunal's Decision

7.3 The Tribunal carefully considered the submissions made and the impact of the proposed amendments. Cognisant of the fact that Mr Rounthwaite was not in attendance, the Tribunal assessed whether any prejudice would be caused to him in the event that the application was granted.

7.4 As regards Allegation 1.1, the Tribunal determined that, conversely, the impact would benefit Mr Rounthwaite as opposed to prejudice him.

7.5 As regards Allegation 1.4, the Tribunal accepted that the amendment sought was to correct an administrative typo error and did not detract from the mischief sought to be addressed in the allegation. The Tribunal determined that an amendment would not prejudice Mr Rounthwaite.

7.6 The Tribunal therefore GRANTED both limbs of the application to amend the allegations.

Factual Background

8. Mr Rounthwaite was admitted to the Roll of Solicitors in September 1999. From April 2003 until around 18 February 2020, he practised as a sole practitioner through the Firm. He was COLP of the Firm. Jill Rounthwaite, who was not a solicitor, held the role of COFA for the Firm.

9. Mr Rounthwaite was made bankrupt on 16 September 2019. As at the date of the substantive hearing he held a Practising Certificate subject to the following conditions:

   a. The Respondent is not a manager or owner of any authorised body;

   b. He is not a COLP or COFA of an authorised body; and

c. He shall not provide legal services as a freelance solicitor offering reserved and unreserved services on his own account under regulations 10.2(a) and (b) of the SRA Authorisation of Individuals Regulations.

10. The Firm began trading in April 2003. It closed on 18 February 2020 following an SRA intervention.

Witnesses

11. The Tribunal did not receive any oral evidence. The written 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 written evidence and submissions it received. 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.

Findings of Fact and Law

12. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 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 the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

13. Allegation 1.1: Failure to use received funds for payment of disbursement

Applicant's Submissions

13.1 The Applicant received a report from Ian Pownall of Ramsay Norbert Ltd, a company which provided the Firm with expert medical reports, dated 4 September 2019. That report alleged that medical experts and clients had not been paid for medical reports and damages despite the file settling and costs being recovered by the Firm. The report stated that Ramsay Norbert currently had two outstanding County Court Judgments against the Firm totalling £24,242.98. In an email to the Applicant dated 11 September 2019, Mr Pownall identified six cases which had settled and invoices totalling £8,238 which had not been paid.

13.2 The Forensic Investigation Officer ("FIO") sought production of the client files for the six identified cases from the Mr Rounthwaite. He provided four files; one file was provided by the costs draftsman and one of the files remained outstanding. The FIO identified three files in respect of which the client ledgers showed that the Firm had received a total of £3,168 in respect of three clients for payment for costs and disbursements. Mr Rounthwaite transferred those funds into the office account but the Firm's ledgers were completed to show that the funds had been used to settle the Ramsay Norbert invoices in circumstances where they had not.

13.3 Further investigations carried out by the FIO revealed that the Firm had received funds in respect of costs, which included disbursements payable to Ramsay Norbert, in respect of six clients amounting to £8,238. Four of those payments were deposited into the Firm's office account and two into the Firm's client account.

13.4 Despite having received sums for payment of these disbursements, the Respondent failed to pay them. A statement from Richard Conroy of Ramsay Norbert dated 8 December 2023 confirmed that the invoices remain outstanding.

13.5 Mr Collis relied upon admissions made on behalf of the Mr Rounthwaite on 26 September 2022 in which he acknowledged that a number of providers had not been paid and asserted that he;

> *"… should have dealt with things better and ensured that where payments had been made to the Firm including monies for disbursements, those disbursements should have been paid."*

13.6 Mr Rounthwaite also acknowledged that his failures amounted to a breach of Principles 6 and 10 of the SRA Principles 2011.

13.7 Mr Collis detailed the offending transactions namely:

Person A

13.8 On 12 May 2017, £4,300 was received in the Firm's client account. On 16 May 2017, the same amount was transferred into the Firm's office account.

Person F

13.9 On 31 May 2017 the sum of £17,500 was paid into the Firm's client account in respect of the client's damages. On the same day, £15,000 was paid to Person F and £2,500 was transferred into the Firm's office account and then paid to the Mr Rounthwaite's personal account.

13.10 Between 5 July and 12 August 2019, three sums of £15,000, £15,000 and £9,000 were received into the Firm's client account. Between 5 July and 13 August 2019 eleven transfers totalling £38,990 and annotated "Pro Law Office [Person F]" were made from the firm's client account to the Firm's office account. Mr Collis stated that all but £10 of the funds received for costs on the Person F matter were transferred to the Firm's office account. Virtually all of the Person F costs totalling £38,990 were utilised to pay items including the salaries of the Mr Rounthwaite (£1,700), J Rounthwaite (£19,650, D Rounthwaite (£5,812), payments to S and A Rounthwaite (£1,410) and other business or personal costs. No payments to Ramsay Norbert were made.

13.11 The FIO prepared a further schedule of disbursements totalling £24,000 outstanding in respect of three other suppliers: 1 Chancery Lane (barristers), Liverpool Civil Law (barristers) and Expert Medical Ltd. Those disbursements were due in respect of 14 client matters. On 17 October 2018 sums for the Firm's costs were received into the Firm's office account in respect of one of these matters, Person D. On 3 January 2019,

sums for the Firm's costs were received into the Firm's office account in respect of and Person E. In respect of one matter, Person F, sums for the firm's costs were received into the Firm's office account between 5 July and 12 August 2019.

13.12 Despite those sums having been received by the Firm, the Respondent did not use the same to settle the outstanding disbursement fees. Total sums due to Chancery Lane Chambers (£3,690) and Liverpool City Law (£2,280) were not paid and remained outstanding as at the date of the Substantive Hearing.

Breaches Alleged

13.13 Mr Collis reminded the Tribunal that Rule 17.1(b) of the Solicitors Accounts Rules 2011 required Mr Rounthwaite, upon receipt of settlement / part settlement to:

> "… *ascertain that the payment comprises only office money and/or out-of-scope money, and/or client money in the form of professional disbursements incurred but not yet paid, and deal with the payment as follows:*
>
> *(i) place the entire sum in an office account at a bank or building society branch (or head office) in England and Wales; and*
>
> *(ii) by the end of the second working day following receipt, either pay any unpaid professional disbursement, or transfer a sum for its settlement to a client account…"*

13.14 Mr Collis submitted that despite having received payment of funds in respect of fees and disbursements in respect of six client matters, Mr Rounthwaite failed either to pay the disbursements or to transfer the sums received back to the client account.

Principle 2 of the SRA Principles 2011 requires solicitors to act with integrity. In Wingate v SRA [2018] EWCA Civ 366, Jackson LJ held:

> *"…*
> *[97] … 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 …*
>
> *[100] Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty…*
>
> *[101] … It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors:… iv) making improper payments out of the client account…"*

13.15 Mr Collis submitted that a solicitor acting with integrity would have overseen the financial management of his firm. He would have appreciated that there were failings in the management of the Firm's finances such that fees due for professional disbursements were not being paid on receipt of settlement monies. Such a solicitor would ensure that monies received for fees and professional disbursements were managed in accordance with the Solicitors' Accounts Rules. He would ensure that

sums received in respect of disbursements were either used to pay those disbursements immediately or transferred into the client account.

13.16 Further, a solicitor acting with integrity would not have used funds received in respect of professional disbursements to pay his personal and business expenses including his own and others' salaries. Mr Collis submitted that Mr Rounthwaite demonstrably lacked integrity having transferred funds received in respect of professional disbursements into his office account, failed to pay professional disbursements and used funds received for disbursements to pay personal and business expenses including his own and others' salaries.

13.17 Principle 6 of the SRA Principles 2011 requires solicitors to behave in a way that maintains public trust. Mr Collis submitted that the public should be able to trust that a solicitor who is a sole practitioner will (a) competently oversee the management of his firm's finances, (b) ensure that client monies are managed in accordance with the regulatory framework and (c) that creditors are paid on time for services provided. Further, the public should also be able to trust a solicitor to ensure that funds received for payment of professional disbursements are used to pay those disbursements and are not used to pay a solicitor's business or personal costs including his and others' salaries. Mr Rounthwaite's repeated misuse of funds (totalling over £14,000) received for disbursements to pay his own salary and other personal and business expenses diminished the public trust.

13.18 Principle 10 of the SRA Principles 2011 required solicitors to protect client money and assets. Mr Collis submitted that in failing to (a) use funds received for payment of disbursements for their intended purpose, (b) hold them in the client account and using those funds to pay his own salary and other personal and business expenses, Mr Rounthwaite failed to protect client money.

Respondent's Position

13.19 The Respondent did not file an Answer to the Rule 12 allegations therefore his position was unknown save for the admissions made during the Applicant's investigation.

The Tribunal Findings

13.20 The Tribunal carefully considered the evidence before it and the submissions of Mr Collis. In so doing, it found that the paper trail demonstrates the movement of client monies. It was plain that client monies did not reach the client account. It went into the office account and was deployed to pay bills, overheads and multiple salaries (to members of his family in his employ) in circumstances where it should have been held in full in the office account and used to settle any unpaid professional disbursement with the surplus being transferred into the client account.

13.21 Mr Rounthwaite was solely responsible for financial transactions within the Firm. He misused client monies for personal and other professional purposes.

13.22 The Tribunal determined that his misconduct breached Rule 17.1(b) of the Solicitors Accounts Rules 2011, represented a demonstrable lack of integrity, undermined

public trust in him and the provision of legal services and flagrantly disregarded the duty incumbent upon him to protect client monies.

13.23 The Tribunal therefore found Allegation 1.1 PROVED in its entirety on a balance of probabilities.

Allegation 1.2: Failure to notify the SRA of the Firm's serious financial difficulties

Applicant's Submissions

14. Between 1 August 2018 and 3 September 2018, the Applicant received reports from Central Claims, Costs ADR Ltd and Head First (Assessment, Rehabilitation and Case Management) LLP relating to non-payment of fees for expert witness services, costs draftsmen and marketing services.

14.1 The report from Costs ADR Ltd attached a consent order in the County Court against Mr Rounthwaite for payment of £3,058.79 in respect of outstanding professional disbursements.

14.2 A further report from Oracle Costs Consultants Ltd dated 28 May 2019 confirmed that they had obtained a default judgment for £16,167.66 against the Firm.

14.3 An email from Oracle Costs to the Applicant dated 28 May 2019 indicated that Oracle Costs had been informed by Mr Rounthwaite on 24 May 2019 that a bankruptcy writ was before the court. The Applicant had not been notified of the same until 6 June 2019. Mr Rounthwaite stated that he had instructed Paul Formby of SAS Daniels LLP to advise him in relation to those proceedings. On 7 June 2019, Mr Formby advised the Applicant that Mr Rounthwaite intended to enter into an Individual Voluntary Arrangement ("IVA"). According to the IVA, as at 24 July 2019, Mr Rounthwaite owed a total of £225,075 to 15 creditors. The IVA was rejected on 19 August 2019. On 20 August 2019, Mr Formby advised the Applicant that the Respondent intended to close the Firm and Mr Rounthwaite was declared bankrupt on 16 September 2019.

14.4 Mr Collis relied upon admissions made in representations dated 26 September 2022 on behalf of Mr Rounthwaite in which he stated that he:

> *" … accepts that he did not notify the SRA promptly of his financial difficulties which had arisen as a result of the* [circumstances described in his letter]. *The personal issues he was suffering from at the relevant time meant that he did not consider whether he should have reported his financial position… he was not fully aware of the Firm's precarious finances until it was too late to do anything about it and he sought advice from insolvency practitioners… However* [this] *is offered as mitigation only and* [Mr Rounthwaite] *would accept that he breached Principle 8 and failed to achieve Outcome 10.3."*

14.5 Mr Collis contended that it could be inferred from the admission that the Firm began to encounter serious financial difficulties in 2017. Mr Rounthwaite failed to notify the SRA of those facts. The SRA was only notified by Mr Formby of the Respondent's intention to enter into an IVA on 7 June 2019.

Breaches Alleged

14.6 Outcome 10.3 of the SRA Code of Conduct requires solicitors to notify the SRA promptly of any material changes to relevant information about them including serious financial difficulty. The Firm, and Mr Rounthwaite began to encounter serious financial difficulties in 2017. At no stage did Mr Rounthwaite inform the SRA of the serious financial position at any time.

14.7 Principle 8 of the SRA Principles 2011 requires solicitors to run their business or carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles. The Firm began to encounter financial difficulties in 2017. Mr Rounthwaite resorted to borrowing to pay disbursements but was unable to maintain the repayments. His accountant retired in 2017 and was not replaced. As at 24 July 2019, the Firm had incurred liabilities to creditors totalling at least £225,075. Three creditors obtained County Court judgments against the Firm. Ultimately, Mr Rounthwaite was declared bankrupt and the Firm ceased to trade. The SRA was required to intervene in the Firm on 18 February 2020.

14.8 Mr Collis submitted that Mr Rounthwaite, as owner and COLP of the Firm, was aware of the financial difficulties the firm was facing. He himself described the Firm's position in his representations of 26 September 2022 as "precarious" and admitted that he was not fully aware of the Firm's precarious finances until it was too late to do anything. Mr Collis contended that he therefore failed to run the Firm effectively and in accordance with proper governance and sound financial principles. Amongst other things he failed to:

- Make himself aware of the Firm's financial position.
- Report the firm's financial difficulties to the SRA.
- Take effective steps to respond to the financial difficulties when they began in 2017 and as they continued beyond that.
- Appoint a replacement following the retirement of his accountant in 2017.
- Pay professional and other creditors of the firm.
- Seek advice from insolvency practitioners prior to June 2019.

<u>Respondent's Submissions</u>

14.9 The Respondent did not file an Answer to the Rule 12 allegations therefore his position was unknown save for the admissions made during the Applicant's investigation.

<u>The Tribunal's Findings</u>

14.10 The Tribunal carefully considered the evidence before it and the submissions of Mr Collis. The Tribunal paid significant regard to the admissions made by Mr Rounthwaite in correspondence with the Applicant dated 26 September 2023. The

Tribunal concluded thar Mr Rounthwaite was aware of the precarious financial position of the Firm, elected not to notify the Applicant of the same. Further, Mr Rounthwaite did not run the Firm effectively and had little, if any, financial governance or risk management procedure in place. In so doing he failed to achieve Outcome 10.3 and breached Principle 8.

14.11 The Tribunal therefore found Allegation 1.2 PROVED in its entirety on a balance of probabilities.

Allegations 1.3 and 1.4: Breached of undertakings to SSL

Applicant's Submissions

15. The Applicant received a report with supporting documents from SSL in relation to Mr Rounthwaite dated 6 November 2019.

15.1 SSL were instructed by Persons I and J on 30 March 2011 in relation to a road traffic accident claim. On 28 January 2013, the clients requested the transfer of the file to the Firm. SSL asked Mr Rounthwaite to sign undertakings prior to the release of the files which he did on or around 4 March 2013. They were sent to SSL on 5 March 2013 and included:

> *"… [SSL]'s costs fall due for payment; however [SSL] will agree to defer payment of its costs on the proviso that we give the following undertaking:*
>
> *1. We will preserve a lien in respect of SSL costs and disbursements;*
>
> *2. We will advise SSL immediately upon settlement of the claim…*
>
> *3. We will pursue SSL's claim for costs against the defendant and/or third party…*
>
> *4. We will provide SSL with an update every 6 months regarding file progression…"*

15.2 Mr Collis detailed the correspondence between SSL and Mr Rounthwaite from 5 March 2013 onwards, when the files were first sent to the Firm.

15.3 Between 6 June to 10 February 2013, Mr Rounthwaite failed to provide an update on the progression of the matter or any information at all despite numerous requests for information.

15.4 On 12 February 2015, SSL spoke to and requested a written update of the case from a "Martin" at the Firm which confirmed the status of the case but did not provide a written update.

15.5 Between 9 March and 16 April 2015, further requests for updates were sent by SSL to Mr Rounthwaite. A brief update was provided by the Firm on 20 April 2015.

15.6 No further updates were provided until 17 December 2015 when Mr Rounthwaite confirmed that the case had been concluded and that he was in the process of preparing the file for costing. The Firm instructed Prof Costs Ltd ("Prof Costs") to draft a bill of costs which would include SSL's costs. This was approved by SSL on 1 February 2016.

15.7 On 7 April 2016, SSL accepted an offer in settlement of their costs totalling £16,712.50. SSL understood that the Firm's costs were still being negotiated by Prof Costs. SSL sought updates from Prof Costs from 2 June 2016 onwards.

15.8 On 2 August 2016, Prof Costs confirmed that they had been "sacked" by the Firm and that the Firm had received a substantial payment on account of costs in respect of the case. SSL had not received any payment.

15.9 On 8 August 2016, Mr Rounthwaite wrote to SSL confirming that he would be instructing another costs draftsman and he would keep SSL updated.

15.10 On 25 October 2016, Mr Rounthwaite wrote to SSL confirming that he had changed the costs draftsman which had delayed things.

15.11 On 20 December 2016, Mr Rounthwaite advised that the costs were being negotiated. If they could not be settled, then the case would be set down for a Detailed Assessment.

15.12 On 30 January 2017 and 27 February, Mr Rounthwaite confirmed that costs remained subject to negotiation.

15.13 On 8 May 2017, Mr Rounthwaite confirmed that they were "quite close" in negotiations but had applied to set the case down for a detailed assessment.

15.14 On 20 July 2017, Mr Rounthwaite wrote to SSL and stated:

> "*… I think we are heading for a DA…"*

15.15 On 15 December 2017, Mr Rounthwaite confirmed in an email to SSL:

> "*… We are going to progress to the DA in the New Year, if no agreement has been reached before..."*

15.16 Following an email from SSL in which they asked, "*Please provide an update in relation to our costs and the detailed assessment position"*, Mr Rounthwaite confirmed to SSL on 5 February 2018: "*We do not have a firm date yet be expect it to be July? August* [sic.]."

15.17 Mr Rounthwaite did not at any stage tell SSL that a payment on account had been received in respect of the costs or that the matter had been settled and costs agreed. SSL continued to seek further updates on 4 September and 30 October 2018.

15.18 On 30 November 2018, Mr Rounthwaite sent an email confirming he had been away from the office but would update SSL when he returned on 7 December 2018. SSL

received no further communication from Mr Rounthwaite, despite writing to him on 5 March and 2 April 2019 and telephoning the Firm on 2 April 2019.

15.19 On 2 May 2019, SSL contacted the Defendant insurers in the matter. The insurers responded on 15 May 2019 confirming that, as far as they were aware, the matter was settled in May 2017 and they had no knowledge of the matter going to a detailed assessment of costs. They confirmed that they paid a total of £41,000 costs in respect of one client and £36,000 in respect of the other.

15.20 Pure Legal Costs which were instructed by the Firm in the matter confirmed that £77,000 was paid to the Firm and exhibited an email from Mr Rounthwaite dated 29 August 2018 which states:

> *"You deal with this case for us and it was settled in* [May]. *We had received interim payments totalling £72,000. This left a balance of £5,000 to pay… We cannot trace having received the balance…"*

15.21 Mr Rounthwaite was therefore aware by the latest on 29 August 2018 that the matter had been settled and interim costs paid. However, Mr Collis submitted that it could be inferred that Mr Rounthwaite would have been aware of the settlement and payment of costs far earlier than that due to the amount of money involved and his involvement in dealing with the case.

15.22 Esure, the Defendant's insurers in the matter confirmed that (1) the case for both the Claimants in the matter was settled in August and December and that the Claimant's solicitors claim for costs had been received; (2) the bill of costs was submitted by Professional Costs Consultants Ltd on 3 February 2016 and included both SSL's and the Firm's costs; (3) entries on the bill of costs show that Mr Rounthwaite was heavily involved in the matter along with other fee earners, and was the main fee earner involved in negotiating the settlement of the claim; and (4) the claim for costs was settled in the sum of £77,000 and that £72,000 had already been paid.

15.23 The FIO confirmed that on 14 March 2016, two sums of £36,000 were received into the Firm's office account on 14 March 2016. These were shown as "costs & disbs" or "costs" on the client ledgers for the matter. The relevant bank statement showing the payments into the office account were produced and traced no payment of the sums due to SSL through the firm's office or client account.

15.24 Mr Collis submitted that Mr Rounthwaite breached the undertakings he had given in the following respects (1) he failed to account to SSL for that proportion of costs paid to the Firm which were due to SSL and subject to their lien; (2) he failed to advise SSL immediately or at all upon the settlement of the clients' claim in May 2017; and (3) he failed to provide SSL with an update every six months regarding the file progression and recoverability of costs.

15.25 Further, the information provided by Mr Rounthwaite in his emails of 20 July 2017, 15 December 2017 and 5 February 2018 was inaccurate and misleading. In fact, and to Mr Rounthwaite's knowledge, the costs claim had been settled in May 2017 and costs totalling at least £72,000, which included SSL's costs, had been paid to the Firm. There was no detailed assessment of costs. Mr Rounthwaite therefore misled SSL in

relation to the position regarding settlement of the costs of the matter. He also failed to account to SSL for their share of the costs received by the Firm.

15.26 Mr Collis also relied upon admissions made on behalf of Mr Rounthwaite in representations dated 26 September 2022. Mr Rounthwaite accepted that the information he provided to SSL was inaccurate in that the bill of costs had not been sent for a detailed assessment. He accepted he should have checked the position before writing to SSL. He admitted that he failed to pay SSL. He also accepted that he failed to discharge the undertaking he gave and breached outcome 11.2.

Breaches Alleged

15.27 Outcome 11.2 of the SRA Code of Conduct 2011 imposes a duty on solicitors to:

> *"… perform all undertakings given by you within an agreed timescale or within a reasonable amount of time."*

15.28 Principle 6 of the SRA Principles 2011 requires solicitors to behave in a way which maintains the trust the public places in them and the provision of legal services. In *Briggs v The Law Society [2005] EWHC 1830 (Admin),* it was held:

> *"… The breach of an undertaking given by a solicitor damages public confidence in the profession and in the system of undertakings upon which property transactions depend*…"

15.29 Mr Collis submitted that while the present matter did not concern a property transaction, the effect of Mr Rounthwaite's breach of his undertakings to SSL similarly damaged public confidence in the profession. It further undermined the system of undertakings in respect of costs which enables clients to transfer personal injury files from one solicitor to another in circumstances where costs will not be received until the end of the case.

15.30 Principle 2 of the SRA Principles 2011 requires solicitors to act with integrity. In *Wingate v SRA [2018] EWCA Civ 366*, the Court of Appeal stated that integrity connotes adherence to the ethical standards of one's profession. In giving the leading judgement, Lord Justice Jackson held:

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

15.31 His Lordship went on to examples of conduct which constituted acting without integrity. Those examples including recklessly, but not dishonestly, allowing a court to be misled and making false representations on behalf of a client.

15.32 Mr Collis stated that in emails dated 20 July 2017, 15 December 2017 and 5 February 2018, Mr Rounthwaite misled SSL about the position regarding the costs in the matter and caused them to believe that they had not been agreed and would proceed to a detailed assessment. He also failed to tell SSL about the fact that the Firm

had received an interim payment of costs and that the overall costs had been agreed in or around May 2017. Mr Collis submitted that a solicitor acting with integrity would not have misled SSL. Instead, they would have confirmed promptly to SSL that costs had been agreed and accounted to SSL for their share of any payment or interim of costs received.

Respondent's Position

15.33 The Respondent did not file an Answer to the Rule 12 allegations therefore his position was unknown save for the admissions made during the Applicant's investigation.

The Tribunal's Findings

15.34 The Tribunal carefully considered the evidence before it and the submissions of Mr Collis. The documentary evidence spoke for itself. Mr Rounthwaite entered into professional undertakings with SSL but failed to comply with the same. The Tribunal noted that whilst Mr Rounthwaite admitted having failed to achieve Outcome 11.2 (performance of undertakings within an agreed timescale or reasonable time), he denied that in so doing he lacked integrity and that his misconduct did not undermine public trust in him and the profession.

15.35 The Tribunal rejected Mr Rounthwaite's assertions. No solicitor acting with integrity would ignore and / or deceive professional opponents in litigation in the manner that Mr Rounthwaite did. Mr Rounthwaite essentially received £72k in client monies and not only failed to disclose that fact to his opponent, he falsely asserted that funds could not be released to settle costs as fictitious negotiations were ongoing which was likely to result in Detailed Assessment – none of which was true. The public should be able to trust their solicitor and the provision of legal services. In circumstances where professional undertakings are not complied with, public trust will inevitably be undermined.

15.36 The Tribunal therefore found Allegations 1.3 and 1.4 PROVED in their entirety on a balance of probabilities.

Allegation 1.5: Dishonesty

16. Mr Collis relied upon the test for dishonesty as formulated in *Ivey v Genting Casinos [2017] UKSC 67* and which applies to all forms of legal proceedings, namely;

> "… *When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no*

requirement that the defendant must appreciate that what he has done is, by those standards, dishonest…"

16.1 Mr Collis submitted that, at the time when he sent the emails dated 20 July 2017, 15 December 2017 and 5 February 2018, the Mr Rounthwaite knew (a) that the bill of costs in the matter had been agreed with the defendant's insurers in May 2017 (b) that an interim payment of costs totalling £72,000 had been made to the Firm in March 2016, and (c) that there was not going to be a Detailed Assessment of costs in relation to the matter. Those emails indicated that costs had not been agreed and that a Detailed Assessment was to take place. The email of 5 February 2018 suggested that the Detailed Assessment would take place in July or August 2018. Those statements were untrue and Mr Rounthwaite knew they were untrue. Ordinary decent people would regard those emails to be dishonest.

Respondent's Position

16.2 The Respondent did not file an Answer to the Rule 12 allegations therefore his position was unknown save for the admissions made during the Applicant's investigation.

The Tribunal's Findings

16.3 The Tribunal applied the test for dishonesty as set out in ***Ivey***. Firstly it considered Mr Rounthwaite's state of mind at the material time. In so doing it determined that Mr Rounthwaite, (a) was heavily involved in the matter, (b) was well aware as at March 2016 that the case had settled and costs agreed given the £72k interim payment to the Firm, (c) knew that costs had been agreed as at May 2017 and (d) knew that the matter would not be subject to Detailed Assessment. Notwithstanding all of those factors, Mr Rounthwaite, in numerous emails, presented the impression to SSL that costs their claim for costs was contentious in circumstances where it was not. The Tribunal, applying the second limb of ***Ivey*** determined that Mr Rounthwaite's conduct was dishonest in the eyes of ordinary decent people.

16.4 The Tribunal therefore found Allegation 1.5 PROVED in their entirety on a balance of probabilities.

Allegation 1.6: Failed to effect orderly closure of the Firm

Applicant's Submissions

17. On 17 June 2019, after being informed of Mr Rounthwaite's proposed IVA, the Applicant provided him with information regarding how to conduct an orderly closure of the Firm which advised that he should:

" ... give [his] clients as much notice of [his] intended closure date as possible to enable them to instruct another firm. In particular… need your clients' (properly informed) consent to transfer any client money you are holding for them to someone else..."

17.1 The proposed IVA was rejected at a meeting on 19 August 2019. On 20 August 2019, Paul Formby, Mr Rounthwaite 's insolvency adviser, advised the Applicant that the IVA had been rejected and that Mr Rounthwaite intended to conduct an orderly closure of the Firm. On 20 August 2019, the Applicant wrote to Mr Rounthwaite stating the following:

> *"… please ensure that your clients give informed consent to the transfer of their live files to other firms - please provide a copy of the proposed letter that is to be sent to clients in this regard please confirm the number of live and archive files - please confirm future storage arrangements for archive files ... "*

17.2 No response was received to that letter. The Applicant wrote again on 23 August 2019 stating that they had not heard from the Respondent regarding proposals for the orderly closure of his firm and in particular the need urgently to contact clients so that live files could be transferred with their informed consent. That email also referred to a report from one client, Client WP.

17.3 Mr Formby wrote to the Applicant on 23 August 2019 with a draft letter to be sent to client for the Applicant's approval. He also confirmed that Mr Rounthwaite had been talking to two other firms, Simpson Miller and Aegis Legal, regarding transfer of live files.

17.4 On 27 and 30 August 2019, the Applicant wrote to Mr Formby and Mr Rounthwaite asking for confirmation when the letters to the clients informing them of the Firm's closure and the transfer of files had been sent. Mr Formby responded on 30 August 2019 confirming that he was seeking instructions. In relation to the bankruptcy proceedings against Mr Rounthwaite he was instructed to seek a short adjournment to allow the orderly transfer of files. The Applicant wrote to Mr Formby and Mr Rounthwaite on 3 and 6 September 2019 again seeking confirmation as to when the letters to clients were to be sent out.

17.5 On 9 September 2019, Mr Formby confirmed that Mr Rounthwaite was in the process of finalising the letters to clients which would be sent as soon as he had reached an agreement with a firm regarding transfer of the files.

17.6 On 3 October 2019, Mr Rounthwaite confirmed that the Firm closed on 17 September 2019 and that existing matters were being transferred to MWG solicitors. All clients were getting a letter with a transfer authority and he was speaking to them as well. On 4 October, he advised that transfer letters had been sent to all outstanding clients and that he would follow this up with phone calls (B168; ML1 page 194).

17.7 However, the Applicant subsequently contacted MWG solicitors. On 13 November 2019, Mr Iqbal of that firm confirmed that Mr Rounthwaite was employed there. However, no client files had been transferred and none were expected to be transferred.

17.8 Mr Rounthwaite was employed by MWG Solicitors from 21 October to 13 November 2019. No files were transferred from the Firm to MWG Solicitors. Mr Rounthwaite had mentioned a case list and his intention to transfer the files but no

discussions progressed and there was no agreement to do this. Mr Collis submitted that it could be inferred therefore that Mr Rounthwaite failed to make arrangements for the transfer of ongoing client files on the closure of the Firm.

17.9 Mr Collis informed the Tribunal that four reports were received by the Applicant from the clients which demonstrated that Mr Rounthwaite did not contact them regarding the closure of the Firm or to seek their informed consent to the transfer of their files.

17.10 Mr Collis referred the Tribunal to the admissions made by Mr Rounthwaite dated 26 September 2022 in which he acknowledged that he did not effectively close down the Firm and accepted that he breached Principles 5, 7 and 10 of the SRA Principles 2011 and failed to achieve Outcomes 1.12 and 7.2. The representations also stated that he had taken steps to ensure that old client files would be stored in the Firm's storage facility and that live client files would be transferred to another firm once client authority had been obtained. Unfortunately, the new firm which agreed to take on both Mr Rounthwaite and the client files, having received correspondence from the SRA, determined that they would not be willing to take over conduct of the client files for fear of investigation into their own firm.

Breaches Alleged

17.11 Outcome 1.12 of the SRA Code of Conduct 2011 requires solicitors to ensure that clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them.

17.12 Outcome 6.3 of the SRA Code of Conduct 2011 requires solicitors to ensure that clients are in a position to make informed decisions about how to pursue their matter.

17.13 Principle 4 of the SRA Principles 2011 requires solicitors to act in the best interests of each client.

17.14 Principle 5 of the SRA Principles 2011 requires solicitors to provide a proper standard of service to their clients.

17.15 From 25 November 2019, paragraph 5.3 of the SRA Code of Conduct for Solicitors RELs and RFLs required solicitors to only refer, recommend or introduce a client to a separate business where the client has given informed consent. From 25 November 2019, Principle 7 of the SRA Principles requires solicitors to act in the best interests of each client.

17.16 By, at the latest, June 2019, Mr Rounthwaite was aware that he was facing bankruptcy proceedings. He instructed an insolvency practitioner to advise him and a draft IVA was subsequently prepared. On 17 June 2019, he was told by the Applicant that, if he were declared bankrupt, his practising certificate would be automatically suspended and he would not be able to continue practising. He was advised to give his clients as much notice of his intended closure date as possible to enable them to instruct another firm. He was provided with a link to the Applicant's guidance on closing down a firm. The email stated:

"It is therefore important that matters are not left to the last minute which could lead to a rushed closure. "

17.17 Following the rejection of the proposed IVA, Mr Rounthwaite was aware that a bankruptcy order would be made. He was advised by the Applicant on the steps to take on closing down the firm and to ensure that clients gave informed consent to the transfer of their live files to other firms.

17.18 Despite this, the Respondent failed:

(i) To inform all of the Firm's clients about the impending closure of the firm.

(ii) To seek their informed consent to the transfer of their files to MWG Solicitors or any other firm.

(iii) To make arrangements for the transfer of live client files to another Firm.

17.19 Mr Collis submitted that those failures continued up to the time when the Applicant intervened in the Firm. Consequently, clients were unaware of the firm's closure. They were not provided with updates as to the current position with their cases nor were they given advice or information about the future conduct of their cases. They were not put in a position to enable them to take informed decisions about the conduct of their cases or the transfer of their cases to another Firm. They did not give their informed or any consent to the transfer of their files to MWG Solicitors or any other firm. Their interests were not adequately protected. Further, they were not provided with the standard of service they were entitled to expect.

17.20 Mr Collis therefore submitted that Mr Rounthwaite failed to achieve Outcomes 1.12 and 6.3 of the SRA Code of Practice 2011. In addition, Principles 4 and 5 of the SRA Principles 2011 were breached. The conduct continued after the Respondent stated that he closed the Firm. To the extent that the conduct took place from 25 November 2019, the Respondent breached paragraph 5.3 of the SRA code of Conduct for Solicitors, RELs and RFLs. He also breached Principle 7 of the SRA Code of Conduct (2019).

Respondent's Position

17.21 The Respondent did not file an Answer to the Rule 12 allegations therefore his position was unknown save for the admissions made during the Applicant's investigation.

The Tribunal's Findings

17.22 The Tribunal carefully considered the evidence before it and the submissions of Mr Collis. The Tribunal paid significant regard to the admissions made by Mr Rounthwaite in correspondence with the Applicant dated 26 September 2023.

17.23 It was plain from the evidence before it and the admissions made by Mr Rounthwaite, that the Firm was not closed in an orderly manner. Mr Rounthwaite knew, by June 2019, that he was facing bankruptcy. The Applicant advised Mr Rounthwaite in

written correspondence on no less than seven occasions how to close the Firm in an orderly manner so as to protect the interests of his clients. Mr Rounthwaite failed to do so contrary to Outcome 1.12, 6.3 of the 2011 Code of Conduct and Principles 4 and 5 of the 2011 Principles. His dereliction of duty continued under the 2019 Code of Conduct and Principles in respect of which he breached paragraph 5.3 and Principle 7.

17.24 The Tribunal therefore found Allegation 1.6 PROVED in their entirety on a balance of probabilities.

Previous Disciplinary Matters

18. None.

Mitigation

19. None.

Sanction

20. The Tribunal referred to its Guidance Note on Sanctions (Tenth Edition: June 2022) when considering sanction.

21. Mr Rounthwaite was solely culpable for serious, dishonest misconduct. He did not advance, and the Tribunal did not see, any exceptional circumstances that mitigated the imposition of an Order Striking him from the Roll of Solicitors.

Costs

22. Mr Collis applied for costs in the sum of £52,595.50 as particularised in its Schedule of Costs dated 28 June 2024. The Solicitors Regulation Authority had incurred costs prior to instructing Capsticks LLP on the matter. Capsticks accepted the case on the basis of a fixed fee at inception. From 1 November 2023, the commercial arrangement between the Solicitors Regulation Authority and Capsticks LLP changed. It moved from a fixed fee to an hourly rate. The Applicant's Schedule of Costs therefore comprised of:

- £20,674.30 Solicitors Regulation Authority
- £18,630.00 Capsticks fixed fee until 31 October 2023.
- £ 4,889.40 Capsticks retainer on an hourly rate from 1 November 2023.

23. Mr Rounthwaite had not filed a Statement of Means.

<u>The Tribunal Decision</u>

24. The Tribunal considered the application for costs on the basis of whether they were reasonably incurred and proportionate to matter. The SRA costs of investigation were found to be reasonable and proportionate thus awarded the same in full.

25. The Tribunal noted that the Capsticks LLP were initially instructed on a fixed fee basis of the type that the Tribunal is familiar with. The Tribunal considered the fixed fee (inclusive of VAT) to be reasonable and proportionate thus awarded the same in full. The Tribunal did not consider the "hourly rate costs" incurred from 1 November 2023 to be reasonable or proportionate. All costs for the case including the substantive hearing was regarded as subsumed in the initial fixed fee. The Tribunal did not consider it reasonable, proportionate or indeed fair for Mr Rounthwaite to meet costs outside of the initial fixed fee just because the commercial arrangement between the SRA and Capsticks LLP had changed.

26. The Tribunal therefore rejected the "hourly rate costs". The Tribunal took into account the fact that the two day hearing had in fact concluded within one day and the Tracing Agent disbursement.

27. The Tribunal therefore GRANTED the application for costs in the reduced sum of £39,460.30.

Statement of Full Order

28. The Tribunal ORDERED that the Respondent, MARTIN DARREN ROUNTHWAITE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £39,460.30.

Dated this 5th day of September 2024
On behalf of the Tribunal

A Banks

Ms A Banks
Chair