SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12658-2024

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BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

DAVID BANYON CROSBY Respondent

Before:

Ms A E Banks (in the chair)
Ms B Patel
Dr S Bown

Date of Hearing: 17 February 2025

Appearances

Michael Colledge, solicitor in the employ of Blake Morgan LLP, New Kings Court, Tollgate, Chandler's Ford, Eastleigh, SO53 3LG for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegation made against Mr Crosby made by the Solicitors Regulation Authority Limited ("SRA") were that whilst in practice as a partner at Crosby & Woods ("the Firm") he:

1.1 Between 08 July 2021 and 15 September 2021 attempted to mislead the SRA investigation into the Trust of Client A as follows:

1.1.1 He made representations to the Forensic Investigation Officer, Joanne Wright ("The FI Officer") during the SRA investigation into the matter that he was not the fee earner with handling of the Trust and provided documents to support that position;

1.1.2 He provided the SRA with five letters he said had been sent to Client A which were not genuine; and

1.1.3 He provided the SRA with a file review document which was not a genuine document.

In doing so he breached any or all of:

(a) Principles 2, 4, and 5 of the SRA Principles 2019 ("the Principles");

(b) Paragraphs 7.3, 7.4 of the SRA Code for Solicitors ("the Code");

(c) Paragraphs 3.2 and 3.3 of the SRA Code of Conduct for Firms ("the Code for Firms")

1.2 Whilst a manager/owner, COLP and COFA at the Firm, during the period 3 May 2018 to 3 May 2020 he caused or allowed the Firm to withdraw monies from the client account for the Firm's costs without providing prior written notification to clients of the costs incurred, leading to a shortage totalling £39,660.00 on the client account of a number of matters. In doing so, Mr Crosby breached all or any of the following:

1.2.1 Rules 4.3, 5.1 and 6 of the SRA Accounts Rules 2019

1.2.2 Principles 2, 4, 5 and 7 of the Principles

1.2.3 Paragraphs 4.2, 8.6 and 8.7 of the Code.

1.3 Whilst a manager and owner of the Firm, in or around February 2021 Mr Crosby provided misleading information on the Firm's Professional Indemnity Insurance Proposal Form dated 16 February 2021 to the proposed insurer regarding the status of Mr Brian Rippon ("Mr Rippon") who was stated to be working full time at the Firm which was not the case. In doing so, he breached all or any of the following:

1.3.1 Principles 2, 4 and 5 of the Principles.

Executive Summary

2. The Tribunal found all allegations proved including that his conduct had been dishonest as alleged, save that the Tribunal did not find that Mr Crosby's conduct was in breach of Paragraphs 3.2 and 3.3 of the SRA Code of Conduct for Firms, as this matter had not been particularised by the Applicant in its Rule 12 Statement. Given those findings, the Tribunal determined that the only appropriate and proportionate sanction, absent exceptional circumstances, was to strike Mr Crosby off the Roll of Solicitors.

3. The Tribunal's reasons can be accessed here:

- Allegation 1.1
- Allegation 1.2
- Allegation 1.3

4. The Tribunal's reasons for sanction can be accessed here:

- Sanction

Preliminary Matters

Application to proceed in Mr Crosby's absence

5. Mr Crosby did not attend the hearing and was not represented. Mr Colledge referred the Tribunal to Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 which stated:

> *"If a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing."*

6. Mr Crosby was served with the proceedings in accordance with the Rules. That service was effected both by the Tribunal and by the Applicant in its letter dated 23 September 2024. In an email dated 25 September 2024, Mr Crosby stated:

> *"For the avoidance of doubt, I do not propose to enter into detailed or protracted correspondence regarding this ongoing matter, save I can of course note a date for the SDT hearing has now been scheduled for 17th February 2025.*
>
> *… I see no useful or constructive purpose being served in my taking any active part in this matter and I exercise my right not to do so…*
>
> *Currently and in the absence of representation I am therefore in agreement for the matter to proceed in my absence and without additional input from me – though of course acknowledging my ability to attend if my views and*

circumstances on this issue change in due course and especially should the ability to find and fund representation arise unexpectedly."

7. Mr Colledge submitted that in the circumstances, the matter should proceed in Mr Crosby's absence.

8. The Tribunal determined that Mr Crosby had been properly served with the proceedings and notice of this hearing in accordance with its Rules. His email dated 25 September 2024 evidenced that he was fully aware of the hearing date, and that he had chosen not to attend the Substantive Hearing. Mr Crosby had not made any application to adjourn the proceedings, and indeed had stated that he *"... will await to hear in due course in the new year post February hearing what decision is reached…"* The Tribunal thus determined that adjourning the proceedings was unlikely to secure Mr Crosby's attendance at any future date. The Tribunal had regard to the principles in R v Hayward, Jones and Purvis [2001] QB and GMC v Adeogba [2016] EWCA Civ 162. The Tribunal was satisfied that in this instance Mr Crosby had chosen voluntarily to absent himself from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. The Tribunal thus determined that in the light of these circumstances, it was just to proceed with the case, notwithstanding Mr Crosby's absence.

Documents

9. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

- Rule 12 Statement and Exhibit MCJ1 dated 2 August 2024
- Applicant's schedule of costs
- Inter partes correspondence

Factual Background

10. Mr Crosby was born in 1968 and was admitted as a solicitor in November 1997. He was currently listed as a non-practising solicitor, with his last Practising Certificate being issued for the year 2020 – 2021. He had been prohibited from practicing as a solicitor and was suspended from 1 November 2020.

11. Mr Crosby was a partner at the Firm and was the Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA") for the Firm. Mr Crosby was the sole signatory on the Firm's client and office accounts. From 30 November 2019 the Firm had two partners, Mr Crosby and Mr Rippon.

12. Following reports to the SRA from another firm on behalf of the executors of an estate and a further report in respect of the estate of the late Client B, a FI Officer employed by the SRA commenced an investigation into the Firm on 9 June 2021, resulting in a Forensic Investigation Report dated 29 October 2021 ("the FI Report"). The investigation concluded that:

- Mr Crosby had caused a cash shortage of £39,660 (which was partially rectified but left an unrectified shortage of £33,000) by making transfers for costs from the Firm's client account to the office account that were more than the costs notified to clients in writing;

- Mr Crosby caused a potential additional cash shortage of £14,520 in respect of the Personal Injury Trust matter for Client A (which was eventually fully rectified);

- Mr Crosby gave a potentially incorrect account and provided documentation during the SRA investigation into the matter respect of Client A's Personal Injury Trust matter which strongly indicated upon examination an intention by Mr Crosby to mislead the SRA's investigation;

- In respect of Client A's Personal Injury Trust matter, Mr Crosby, without the knowledge and consent of Client A or Mr Crosby's co-trustee, Client A's son:

  (i) transferred £75,780 from the trust's bank account to the Firm's client account; and

  (ii) closed the trust bank account.

- Mr Crosby failed to properly disclose to the Firm's professional indemnity insurer:

  (i) That his partner Mr Rippon worked at the Firm on a part-time basis; and

  (ii) The correct financial information in respect of the Firm's balance sheet position for the year ended 31 December 2019

Findings of Fact and Law

13. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Crosby's 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.

Dishonesty

The test for dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> *"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 factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that*

> *the defendant must appreciate that what he has done is, by those standards, dishonest."*

When considering dishonesty, the Tribunal firstly established the actual state of Mr Crosby's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> *"Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up to their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession."*

14. Allegation 1.1- Between 08 July 2021 and 15 September 2021 attempted to mislead the SRA investigation into the Trust of Client A as follows: (1.1.1) He made representations to the FI Officer during the SRA investigation into the matter that he was not the fee earner with handling of the Trust and provided documents to support that position; (1.1.2) He provided the SRA with five letters he said had been sent to Client A which were not genuine; and (1.1.3)He provided the SRA with a file review document which was not a genuine document. In doing so he breached any or all of: Principles 2, 4, and 5 of the Principles; Paragraphs 7.3, 7.4 of the Code; Paragraphs 3.2 and 3.3 of the Code for Firms.

The Applicant's Case

14.1 In 2012, Mr Crosby was a partner of the firm Crosby & Moore Solicitors ("C&M") and was instructed by Client A in a personal injury matter. Damages of £75,780 were received in December 2012 and following the closure of C&M the funds were transferred to the Firm's client account.

14.2 Following receipt of damages, a Personal Injury Trust was set up in the name of Client A and the co-trustees of the trust were Client A's son, and Mr Crosby. A trust bank account was opened for the retention of the monies. £75,780 was deposited into the trust bank account on 18 September 2013.

14.3 On 28 September 2018, Mr Crosby, without the knowledge and consent of Client A and Client A's son, transferred £75,780 from the trust's bank account to the Firm's client account and closed the trust bank account.

14.4 Between 26 March 2013 and 14 January 2020, Mr Crosby took costs totalling £17,400 from the Firm's client account to the Firm's office account which resulted in a potential shortage of £14,500, which was subsequently rectified by an office to client bank account transfer of £16,200.00 on 13 August 2023.

14.5 According to Mr Crosby, Mr Woods was responsible for setting up and administration of Mr A's Trust after it was transferred from Mr Crosby's Personal Injury Department to Mr Woods' Private Client Department in early 2013.

14.6 Client A's son stated that it was his and his father's understanding that the trust would be set up and managed by Mr Crosby and he had no recollection of Mr Woods being mentioned to them by Mr Crosby.

14.7 During the SRA investigation into the matter, the only correspondence in which Mr Woods, Mr Scott (who the matter was transferred to following the departure of Mr Woods from the Firm in May 2015) or the Private Client Department were referred to were:

(i) five letters purportedly written by Mr Crosby to Client A between 6 February 2013 and 9 November 2014 which Client A's son stated were never received by his father, and

(ii) A file memo purportedly from Mr Scott to Mr Crosby entitled *"FILE REVIEW ON TAKEOVER OF FILES FROM GAW"* in respect of Client A's matter was dated *"SEPTEMBER 2015"* and was unsigned ("the File Review Memo").

14.8 During the investigation, Mr Scott stated that he had no recollection of the matter, nor of writing the File Review Memo.

14.9 When asked during a recorded interview on 16 September 2021 with the FI Officer whether a letter dated 20 March 2013 was genuine, Mr Crosby stated:

> *"I am adamant that it is. I believe it entirely is consistent with the email to which you referred earlier. I am happy that that is a correct letter."*

14.10 In respect of the letter dated 20 March 2013 to Client A, Mr Crosby stated in interview that he was advising Client A:

> *"that I've actually now been told the actual real, real charge is substantially different to mine. And then it makes it clear that communications are, are to be with private client rather than myself. The rest of the time in-between as you'll see, is where I've been asked to go and physically get things signed and do thing, but that's about the extent of what I've done."*

14.11 The FI Officer noted that the letter of 20 March 2013 provided no explanation in respect of a significant increase in fees from £200 plus VAT as stated in an email sent on the same day at 07:54 AM to £1,500 plus VAT as stated in the letter. It was also noted by the FI Officer that whilst Mr Crosby in his email had informed both Client A and Client A's son of his fees, in respect of the letter addressed to Client A, there was no equivalent letter addressed to Client A's son.

14.12 Mr Crosby similarly confirmed that the other four letters addressed from him to Client A dated 6 February, 25 March, 19 September 2013 and 9 November 2014 were also genuine.

14.13 When asked in interview Mr Crosby stated that the File Review Memo was genuine commenting *"Yes that was found in* [Mr Scott's] *room. That is exactly how* [Mr Scott] *communicated with people in this firm. He didn't communicate by email he wrote long, long attendance notes to people where relevant."*

14.14 A review of correspondence by the FI Officer identified examples which strongly indicated that Mr Crosby was the only person at the Firm who had any input into this matter. In the example correspondence Mr Crosby did not make any reference to either Mr Woods or the Private Client Department, nor were they copied into any of the correspondence.

14.15 As stated by Client A's son, his father did not receive any of the five letters addressed to him by Mr Crosby dated between 6 February 2013 and 9 November 2014, nor were any of the Firm's invoices received by Client A.

14.16 On 2 August 2021, Client A's son, in an email to Mr Crosby, made a formal complaint against the Firm in respect of the Firm's withdrawal of £16,200 from his father's client matter ledger without informing either him or his father. He requested the original value of the fund of £75,780 to be transferred into his father's bank account.

14.17 In interview Mr Crosby stated that the first time he saw the File Review Memo was three years later in 2018. After reading the File Review Memo, on 28 September 2018 he transferred £75,780 from the trust bank account to the Firm's client account and then closed the trust bank account. He then raised invoices for the Firm's costs in the sum of £17,400.00 and made transfers to the Firm's office account in respect of these costs.

14.18 Mr Crosby stated that he had taken the above action because he believed after reading Mr Scott's file review memo that *"we were in fundamental breach"* and that with the money not being in the client account *"Bills could never be rendered."*

14.19 Also, during interview, Mr Crosby stated that he had not sought the authority of co-trustee, Client A's son, before making the transfer of the trust funds and the subsequent closure of the trust account because he *"thought this had all been agreed in advance…by someone else."*

14.20 In an email dated 10 June 2021, the FI Officer requested a scanned copy of the full client file of the Client A matter. On 8 July 2021, Mr Crosby provided by email to the FI Officer, documentation which included the firm's invoices, five letters from Mr Crosby to Client A including a draft template for the PI Trust, a completed IEP Financial Risk questionnaire and a file review memo.

14.21 On 29 July 2021, the FI Officer informed Mr Crosby that the file of papers he provided did not contain any email correspondence. After a number of reminders, Mr Crosby provided the email correspondence on 15 September 2021.

14.22 According to Mr Crosby, Mr Woods was responsible for setting up and administration of the PI Trust after Client A's file was transferred from Mr Crosby's Personal Injury Department to Mr Woods' Private Client Department in early 2013.

14.23 Mr Crosby asserted that the Private Client Department asked Mr Crosby to liaise with Client A on their behalf due to Mr Crosby's long-standing relationship with him on *"matters such as attending external meetings with 3rd parties and also to arrange for documentation to be signed by him"*.

14.24 Mr Crosby explained that following Mr Woods' departure, the matter was transferred to Mr Scott. Following Mr Scott's departure from the Firm in April 2016, the matter only came to Mr Crosby's attention in September 2018 when letters and notes pertaining to the matter were located by the Firm.

14.25 As stated by Client A's son, it was his and his father's understanding that the trust would be set up and managed by Mr Crosby. In his witness statement, Client A's son stated

> *"I have no recollection of* [Mr Woods] *being mentioned to us by* [Mr Crosby] *and certainly neither my father nor I received any communication from* [Mr Woods]. *My father's only recollection in respect of* [Mr Woods], *was that he had been [Mr Crosby's] work partner."*

14.26 A review of correspondence by the FI Officer identified examples which indicated that Mr Crosby was the only person at the Firm who had any input into the matter. These included an email dated 11 March 2013 to Client A and Client A's son, an email dated 20 March 2013 to Client A and Client A's son in which he referred to drafting the Trust Agreement *"last night"* and an email dated 10 April 2013 in which reference was made to a meeting with the bank manager in respect of opening the trust bank account.

14.27 In none of those emails did Mr Crosby make any reference to either Mr Woods or the Private Client Department, nor were they copied into any of the correspondence.

14.28 The FI Officer noted that the only correspondence in which Mr Woods, Mr Scott or the Private Client Department were referred to was in respect of:

- Five letters purportedly written by Mr Crosby to Client A between 6 February 2013 and 9 November 2014, which Client A's son stated were never received by his father; and

- The File Review Memo purportedly written by Mr Scott to Mr Crosby in September 2015 which Mr Scott stated he had no recollection of either writing nor its subject matter. Mr Woods also stated that he had no recollection of the File Review Memo.

14.29 In interview, Mr Crosby confirmed that he had not given any information to the FI Officer to mislead her investigation. In response to a question raised by the FI Officer regarding the letter of 20 March 2013 *"…..is this a genuine letter?"* Mr Crosby replied *"Yes it is."* When further questioned *"Authentic letter that you wrote and sent on 20 March 2013?"* Mr Crosby replied *"I am adamant that is (sic). I believe it entirely is consistent with the email to which you referred earlier. I'm happy that that is the correct letter."*

14.30 On review of the five letters referred to above, the FI Officer identified various inconsistencies, contradictions and omissions in three of them. In the letter to Client A

dated 6 February 2013, Mr Crosby stated that PI Trusts were not his area of legal practice and for that reason Client A's file was being transferred to Mr Woods of the Private Client Department to advise upon the PI trust. Mr Crosby did not provide contact details for Mr Woods or the Private Client Department in this letter.

14.31 In relation to a letter addressed to Client A dated 20 March 2013, Mr Crosby made no reference to an email he sent on 20 March 2013 at 07:54. Also, in this letter Mr Crosby referred to *"our recent meeting"* whereas in the email he stated: *"Good to meet you both last night."* Also, given that the annual fees stated in his email of £200 plus VAT were significantly lower than those stated in the letter of £1,500 plus VAT, it was noted that Mr Crosby provided no explanation in the letter in respect of the significant increase in fees. It was also noted that whilst Mr Crosby in his email had informed both Client A and Client A's son of his fees, there was no equivalent letter addressed to Client A's son.

14.32 In the letter of 20 March 2013, Mr Crosby stated that Mr Woods had recommended IEP; however, this contradicted his email to Client A and his son of 24 April 2014 in which he stated, *"I have also found a … local IFA"* and attached a document entitled *"ATR Form (IEP)"*.

14.33 Additionally, in the letter of 20 March 2013, Mr Crosby's reference to Client A's potential instruction of an IFA contradicted with what he had stated to Client A in his email dated 11 March 2013, namely that the value of the trust did not merit the substantial cost of using an IFA and that to generate any return, the IFA would need to invest in shares and *"that is very risky"* and stated that to keep costs small, then a *"very basic trust"* would be sufficient.

14.34 The File Review Memo purportedly from Mr Scott to Mr Crosby was unsigned. In interview, Mr Crosby stated that the first time he saw the File Review Memo was three years later in 2018. After reading the Memo, Mr Crosby:

- On 28 September 2018 transferred £75,780 from the trust bank account to the firm's account and then closed the trust bank account; and

- Raised invoices for the Firm's costs and made transfers from the Firm's client account to office in respect of these costs.

14.35 Mr Scott said that he had no recollection of the matter, nor of writing the File Review Memo. In his email to the FI Officer of 24 August 2021, Mr Scott commented that the style of the memo did not appear to be his and could not recall giving Mr Crosby advice in the matter.

14.36 Between 25 March 2013 and 6 January 2020, Mr Crosby raised bills totalling £17,400.00 for the Firm's costs for the years 2013 to 2020 based on a trust set up for a fee of £1,200 and an annual management fee of £1,800. Client A did not receive any of these bills as stated by Client A's son in his witness statement. In interview, Mr Crosby stated that, where costs were agreed on a fixed basis, he did not send bills.

14.37 Between 26 March 2013 and 14 January 2020, Mr Crosby made transfers for costs from the Firm's client bank account to the Firm's office bank account totalling £17,400. The value of the excess costs taken was £14,520.

14.38 Following a formal complaint by Client A's son to Mr Crosby, on 13 August 2021 the Firm paid £75,780.00 to Client A from the Firm's client account and the potential case shortage of £14,520.00 was subsequently rectified on 13 August 2021 by an office to client bank account transfer of £16,200.00.

14.39 Mr Colledge submitted that Mr Crosby was in a position of trust and responsibility as a solicitor to ensure that he did not mislead or attempt to mislead his regulatory body by making false representations and providing documentation to the regulatory body which was not genuine.

14.40 Members of the public should be able to place their trust in members of the profession, who were held in high regard. Any behaviour which undermined that trust damaged not only the regulated person, but also the ability of the legal profession as a whole to serve society. Members of the public would not expect a solicitor/owner of a firm of solicitors to attempt to mislead his regulatory body and to fabricate documents that he provided to the regulatory body. By giving information that he knew was not true, and providing documents that were not genuine, Mr Crosby failed to act in a way that upheld the public trust and confidence in the solicitors' profession and in legal services provided by authorised persons, and therefore breached Principle 2 of the Principles.

14.41 Mr Crosby provided the SRA with five letters dated 6 February 2013, 20 March 2013, 25 March 2013, 19 September 2013 and 9 November 2013 that he said had been sent to Client A, which had not been sent to Client A. Upon examination of the five letters, various inconsistencies were identified which strongly suggested that they were not genuine having regard to the conflicting contents of contemporaneous emails. Further, he provided the SRA with a File Review Memo document which was also not a genuine document.

14.42 At the time Mr Crosby provided the five letters and the File Review Memo to the FI Officer he knew or believed the following matters:

- That he had not sent the letters dated 6 February, 20 March, 25 March, 19 September and 9 November 2013 to Client A and/or Client A's son;

- That Mr Scott had not written the File Review Memo, and had not advised Mr Crosby about Client A's matter;

- That by sending these documents to the FI Officer when he knew they were not genuine documents, that the FIO Officer was likely to be misled about the history of Client A's matter.

- That the documentation he provided to the FI Officer at the FI Interview was not genuine and intended to mislead the FI Officer during the course of the investigation.

14.43 By providing copies of letters which he knew had not been sent, and a File Review Memo which had not been drafted by the claimed author to the FI Officer, Mr Crosby attempted to mislead his regulator. In doing so, Mr Crosby acted dishonestly by the standards of ordinary decent people. Ordinary decent people would consider it dishonest for a solicitor to knowingly provide his regulatory body with falsified documents. By doing so, Mr Crosby failed to act with honesty and therefore breached Principle 4 of the SRA Principles.

14.44 Mr Crosby was in a position of trust and responsibility as a solicitor and owner of a firm of solicitors. A solicitor acting with integrity would not have attempted to mislead his regulator in order to protect their own position, especially if it was to the detriment of others. By deliberately providing his regulatory body with falsified documentation, Mr Crosby attempted to mislead his regulatory body. Thus, he failed to act with integrity therefore breached Principle 5 of the Principles.

14.45 In accordance with paragraph 7.3 of the Code, Mr Crosby was required to cooperate with the SRA in its role as overseeing and supervising the delivery of, or investigating concerns in relation to, legal services. In accordance with paragraph 7.4 of the Code, Mr Crosby was required to respond promptly to the SRA and (a) provide full and accurate explanations, information and documents in response to any request or requirement; and (b) ensure that relevant information which was held by Mr Crosby which were critical to Mr Crosby's delivery of his legal services, was available for inspection by the SRA. In breach of paragraphs 7.3 and 7.4 of the Code Mr Crosby provided false documentation to the SRA in an attempt to mislead the SRA's investigation into Mr Crosby's provision of legal services.

The Tribunal's Findings

14.46 The Tribunal found that Mr Crosby made representations that he was not the fee earner handling the Trust, when he was. Further, he had fabricated the letters and the file review note in support of that contention. Accordingly, the Tribunal found allegation 1.1 proved on the facts and evidence, save that it did not find there had been any breach of paragraphs 3.2 and 3.3 of the Code for Firms, as the alleged breaches had not been particularised in the Applicant's Rule 12 Statement. Mr Crosby was entitled to know the case against him. In circumstances where the Applicant had failed to particularise its case in its pleadings, the Tribunal determined that it was contrary to the interests of justice for it to make a finding that Mr Crosby had breached the unparticularised allegations, notwithstanding that Paragraphs 3.2 and 3.3 mirrored Paragraphs 7.3 and 7.4 of the Code.

15. Allegation 1.2 - Whilst a manager/owner, COLP and COFA at the Firm, during the period 3 May 2018 to 3 May 2020 he caused or allowed the Firm to withdraw monies from the client account for the Firm's costs without providing prior written notification to clients of the costs incurred, leading to a shortage totalling £39,660.00 on the client account of a number of matters. In doing so, Mr Crosby breached all or any of the following: Rules 4.3, 5.1 and 6 of the SRA Accounts Rules 2019; Principles 2,4, 5 and 7 of the Principles; and Paragraphs 4.2 8.6 and 8.7 of the Code.

The Applicant's Case

15.1 The Firm had a number of bank accounts that were held at NatWest Bank. Mr Crosby was the only signatory on the client account and client to office transfers were only authorised by Mr Crosby. The Firm operated online banking and this could only be accessed and operated by Mr Crosby and the Firm's Accounts Manager.

15.2 As at the date of the FI Report, the Firm had an unrectified shortage of £33,300. The books of account were not in compliance with the SRA Accounts Rules 2011 and SRA Accounts Rules (2019).

15.3 A list of liabilities to clients as at the date of 30 April 2021 totalled £2,287,736.47. Further liabilities existed in the sum of £39,660.00 which were not shown by the books. The cash shortage of £39,660.00 had not been rectified in full. Only £6,360.00 was rectified by office bank account transfers to two client matters. Mr Crosby, in his email to the FI Officer on 28 September 2021 stated that he was not able to confirm when the remaining shortage would be rectified. As at the date of the FI Report, the remaining shortage of £33,300.00 had not been rectified.

15.4 The investigation concluded that the cash shortage was made by Mr Crosby transferring monies for costs from the Firm's client bank account to the Firm's office bank account in excess of the amounts notified to clients in writing. The shortages by client matter were:

• Probate Late Client C	£12,000.00
• Probate Late Client B	£19,500.00
• Probate Late Client D	£7,800.00
• Probate Late Client E	£360.00
TOTAL	**£39,660.00**

15.5 In addition to the shortage detailed above, there was a further potential cash shortage of £14,520.00 in respect of the Personal Injury Trust matter for Client A, which was subsequently rectified on 13 August 2021.

15.6 The SRA received a report concerning Mr Crosby in respect of his administration of the estate of the Late Client C. In a letter dated 2 May 2018 to the executors of the estate, Mr Crosby gave an estimate of between £20,000 to £25,000 plus VAT in respect of the Firm's fees.

15.7 Between 3 May 2018 and 16 October 2019, Mr Crosby raised bills for his costs totalling £42,000 (inclusive of VAT) in respect of Client C. Mr Crosby confirmed to the FI Officer in an email of 5 July 2021, that these bills had not been sent to the executors.

15.8 Mr Crosby had taken £42,000 from client account for costs. This was £12,000 more than the maximum value of £30,000 stated by Mr Crosby to an executor of the estate in a letter dated 2 May 2018. The FI Officer was informed in an email dated 15 August 2021 that the executors did not know anything about the additional £12,000 including VAT in costs.

15.9 The SRA received a report concerning Mr Crosby in respect of his administration of the estate of the late Client B. In the Firm's terms of business signed by the executors of Client B on 8 March 2018, the maximum fees quoted for obtaining a grant of probate and a non-contested administration was £5,100.00 including VAT. It had been Mr Crosby's understanding, as stated in his letter to an executor dated 5 July 2021, that the Firm's standard terms of business had been provided to the executors which stated under the heading *"4.2 Basis of charging" the narrative "5% of gross Estate charged…".*

15.10 When provided with the terms of business that had been signed by the executors, Mr Crosby informed the FI Officer in his letter dated 7 September 2021 that he had no personal recollection of seeing these terms of business and that he assumed that they were sent in error.

15.11 Between 6 March 2018 and 3 May 2020, Mr Crosby raised bills for his costs totalling £24,600 (inclusive of VAT). Mr Crosby confirmed to the FI Officer that the bills had not been sent to the executors.

15.12 In interview, Mr Crosby accepted that there was a shortage of £19,500.00 in respect of this matter which was the difference between the maximum value of £5,100.00 and the amount received into the office account from client funds totalling £24,600.00 in respect of Mr Crosby's costs. As at the date of the FI Report, the shortage had not been rectified.

15.13 After payments had been made to the residuary beneficiaries, the client balance on the ledger was £2,400.02. When queried by the FI Officer for an explanation in respect of the undistributed balance, Mr Crosby responded on 5 July 2021 stating *"it was onerously (sic) believed that an outstanding estate debt/liability existed. The Residuary beneficiaries have been advised that in fact the balance is residue and confirmation that it is to be sent to the 3 beneficiaries is awaited."*

15.14 Mr Crosby provided the FI Officer with the letter he had written to an executor dated 25 June 2021 in respect of the £2,400.02 balance. The executors stated in an email to the FI Officer dated 4 October 202 that the letter from Mr Crosby had not been received and commented that it was *"strange that he sent a letter when all other contact has been by email at their request as both quicker and easier.*"

15.15 On 11 August 2021 the FI Officer asked Mr Crosby if he had paid the £2,400.02 balance to the beneficiaries. Mr Crosby stated in his letter to the FI Officer dated 18 August 2021 that he had not paid the balance as he had *"not received a response."*

15.16 Mr Crosby accepted at interview that there was a shortage of £12,000 in respect of the estate of Client C matter; however, as at the date of the FI Report, this shortage had not been rectified.

15.17 With reference to the cash shortage on the Client B matter, Mr Crosby said that he had no personal recollection of the terms of business which had been signed by the executors of Client B's estate and that he could *"only assume"* that they *"were sent in error."* At interview, Mr Crosby stated that he was *"at fault for not checking what gone out on my behalf…."*

15.18 In respect of the potential cash shortage of £14,520.00, as stated by Mr Crosby in his letter to the FI Officer dated 9 August 2021, it became apparent to him following Client A's son's recent communication that *"neither* [Mr Woods] *or* [Mr Scott] *appear to have communicated with* [Client A]*...."* Mr Crosby stated that given the charges had not been *"effectively or at all conveyed to [Client A],"* the *"only appropriate action is to immediately write off the charges and refund the full original sum to* [Client A]*."*

15.19 Mr Colledge submitted that Mr Crosby was in a position of trust and responsibility as a solicitor/owner of the Firm who had the responsibility to ensure that the Firm did not withdraw monies from the client account for the Firm's costs without providing prior written notification to clients of the costs incurred, leading to a shortage on the client account of a number of matters.

15.20 Members of the public should be able to place their trust in members of the profession, who are held in high regard. Members of the public would not expect a solicitor to withdraw monies in respect of a firm's costs without providing written notification to clients as he was required to do, which led to a shortage on the client account of a number of matters. By transferring monies from the Firm's client account to its office account in respect of fees, without first providing the client/executors with written notification of those fees, Mr Crosby failed to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons, and therefore breached Principle 2 of the Principles.

15.21 Mr Crosby, whilst manager/owner, COLP and COFA at the Firm, caused or allowed the Firm to withdraw monies from the client account of the Firm without providing notification to clients. Further, this caused a shortage on the client account of a number of matters totalling £39,660.00. At the time Mr Crosby caused or allowed the Firm to withdraw monies from the client of the Firm, he knew or believed:

- The Transfers for costs from the Firm's client bank account to the firm's office bank account were more than the amounts notified to the clients in writing;
- Bills had not been sent to the executors in relation to the estate of Client C;
- Transfers for costs totalling £42,000 from the Firm's client bank account to the Firm's office bank account amounted to £12,000 more that the fixed fee quoted to Client C;
- In relation to Client B, Mr Crosby raised bills for his costs totalling £24,600 (inclusive of VAT) which was £19,500.00 more than the maximum value of £5,100.00 (inclusive of VAT) based on the costs detailed in the Firm's terms of business

15.22 As a result of this conduct, Mr Crosby acted dishonestly by the standards of ordinary decent people. Ordinary decent people would consider it dishonest for a solicitor to knowingly withdraw monies as referred to above and to seriously affect the financial position of a number of client matters. By doing so, Mr Crosby failed to act with honesty and therefore breached Principle 4 of the Principles.

15.23 Mr Crosby was in a position of trust and responsibility as a solicitor. A solicitor acting with integrity would not have caused a cash shortage to occur on his Firm's client account by making transfers for costs from the firm's client account to the Firm's office bank account that were more than the costs notified to clients in writing. A solicitor of integrity would ensure that any monies transferred from the Firm's client account was only transferred in circumstances permitted by the SRA Accounts Rules. As a result of Mr Crosby's actions, Mr Crosby failed to act with integrity, in breach of Principle 5.

15.24 Principle 7 of the Code of Conduct requires solicitors to act in the best interests of each client. It was clearly not in the client's best interest to have money belonging to them and held on the Firm's client account transferred to the Firm's office account in circumstances other than those permitted by the SRA Accounts Rules. In particular, it was not in their best interests for monies to be transferred in respect of costs, without them being notified in writing beforehand of those costs thereby giving them the opportunity to raise any concerns about the costs to be paid.

15.25 As a result, Mr Crosby failed to act in the best interests of the Firm's clients by creating a shortage on the client account of a number of matters in breach of Principle 7

15.26 Rule 4.3 of the Accounts Rules requires a regulated firm, where holding client money and some or all of that money is to be used to pay its costs, (a) to give a bill of costs or other written notification of the costs incurred to the client or the paying party (b) this must be done before the firm transfers any client money from a client account to make the payment (c) any such payment must be for the specific sum identified in the bill of costs or other written notification of the costs incurred and covered by the amount held for the particular client or third party.

15.27 Rule 5.1 of the Accounts Rules requires that a regulated firm (specific to this matter) must only withdraw client money from a client account (a) for the purpose for which it is being held (b) following receipt of instructions from the client or the third party for whom the money is held.

15.28 Rule 6 of the Accounts Rules requires a regulated firm to correct any breaches of the Account Rules promptly upon discovery. Any money improperly withheld or withdrawn from a client account must be immediately paid into the account or replaced as appropriate.

15.29 In breach of Rules 4.3 and 5.1 of the Accounts Rules, Mr Crosby caused or allowed the Firm to withdraw monies from the client account for the Firm's costs without providing prior written notification to clients of the costs incurred, leading to a shortage on the client account of a number of matters. In breach of Rule 6 of the Accounts Rules, Mr Crosby failed to rectify the breaches and replace any shortage on client account promptly, or in respect of some client matters, at all.

15.30 Paragraph 4.2 of the Code required Mr Crosby to safeguard money and assets entrusted to him by clients and others. Paragraph 8.6 of the Code required Mr Crosby to ensure that clients were given information in a way that they could understand, which Mr Crosby failed to do. Paragraph 8.7 of the Code required Mr Crosby to give clients the best possible information about how their matter would be priced and, as their matter progressed, about the likely cost of the matter and any costs incurred.

15.31 As a result of his conduct, Mr Crosby breached the Code as alleged.

The Tribunal's Findings

15.32 The Tribunal found that Mr Crosby had caused or allowed the Firm to withdraw monies from the client account for the Firm's costs without providing prior written notification to clients of the costs incurred, leading to a shortage totalling £39,660.00 on the client account of a number of matters. Further, Mr Crosby knew that he was not entitled to transfer those monies. The Tribunal thus found allegation 1.2 proved on the facts and the evidence.

16. Allegation 1.3 - Whilst a manager and owner of the Firm, in or around February 2021 Mr Crosby provided misleading information on the Firm's Professional Indemnity Insurance Proposal Form dated 16 February 2021 to the proposed insurer regarding the status of Mr Brian Rippon ("Mr Rippon") who was stated to be working full time at the Firm which was not the case. In doing so, he breached all or any of Principles 2, 4 and 5 of the Principles.

The Applicant's Case

16.1 In the renewal of the Firm's professional indemnity insurance in February 2021 Mr Crosby, it was submitted, made two misstatements:

(i) That the two partners worked full time at the Firm; and

(ii) That the Firm had a positive net worth of £147,000 for the financial year ended 31 December 2019.

16.2 The above were untrue because Mr Rippon stated that he worked part-time, and the Firm's Accounts for the financial year ended 31 December 2019 stated that the Firm's liabilities exceeded its assets by £287,381.

16.3 Mr Crosby stated that he viewed Mr Rippon as a full-time partner because he was available to the firm on a full-time basis if the need arose. He did not provide an explanation in respect of the statements in respect of the firm's Accounts.

16.4 Mr Colledge submitted that the public was entitled to rely on solicitors behaving in an appropriate and trustworthy manner. Mr Crosby had provided misleading information on the Firm's professional indemnity insurance proposal form dated 16 February 2021. Misleading a third party damaged the public's perception of trust in the legal profession. Accordingly, Mr Crosby had not acted in a way that upheld public trust and confidence in the solicitors' profession, and he therefore breached Principle 2 of the Principles.

16.5 Mr Crosby was in a position of trust and responsibility as a solicitor. A solicitor acting with integrity would not have knowingly provided his professional indemnity insurer with incorrect information. By doing so, Mr Crosby failed to act with integrity and therefore breached Principle 5 of the Principles.

16.6 When completing the professional indemnity insurance proposal form, Mr Crosby was required to be transparent and honest with the insurance company. At the time of

completing the form it would have been clear to him that Mr Rippon was not working full-time (as defined by the insurer) for the Firm. By misleading his insurance company, Mr Crosby had acted dishonestly. A solicitor acting with honesty would ensure that accurate information was provided within the insurance proposal form. Ordinary decent people would consider it dishonest for a solicitor to knowingly provide misleading information to his professional indemnity insurer. By acting dishonestly, Mr Crosby breached Principle 4 of the Principles.

The Tribunal's Findings

16.7 The Tribunal found that Mr Crosby had made misleading statements on the professional indemnity insurance proposal form as alleged. He knew that Mr Rippon was not full-time, indeed Mr Rippon only worked for 1 day a week. He also knew that the Firm did not have a positive net worth of £147,000 for the financial year ended 31 December 2019, rather the Firm was £287,381 in deficit for that financial year. Accordingly, the Tribunal found allegation 1.3 proved.

Previous Disciplinary Matters

17. None

Mitigation

18. None

Sanction

19. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

20. The Tribunal found that Mr Crosby was motivated by his desire to avoid regulatory sanction, which was the reason for his dishonesty about his role in acting for Client A. Further, he was motivated by financial gain. His actions were planned. He had fabricated documents to support his contentions. He was in a position of trust that his clients place in him to act in their best interests and to charge them appropriately. He had direct control and responsibility for his conduct. He was an experienced solicitor and had deliberately attempted to mislead the SRA. Accordingly, the Tribunal assessed his culpability as very high.

21. Mr Crosby had caused financial and emotional harm to his clients. That harm was wholly foreseeable. It was only due to the SRA investigation that some clients discovered the impact of his misconduct on themselves. The damage he caused to the reputation of the profession was considered to be significant.

22. Mr Crosby's misconduct was aggravated by the multiple findings of dishonesty, conduct which was deliberate, calculated and repeated over a period of time. He had abused his position as a solicitor with access to client funds, which he had withdrawn

from client accounts in circumstances where he knew that he was not entitled to take those monies. He had fabricated documents in order to try to conceal his wrongdoing. Mr Crosby knew that his misconduct was in material breach of his obligation to protect the public and the reputation of the profession.

23. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> *"….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty… In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."*

24. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring Mr Crosby in line with the residual exceptional circumstances category. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike Mr Crosby off the Roll of Solicitors.

Costs

25. Mr Colledge applied for costs in the sum of £38,355.40. As there was no evidence from Mr Crosby in relation to his means, there should be no reduction in the costs claimed to take account of his means. Mr Colledge accepted that the hearing had taken less time than anticipated. However, the fee was a fixed fee arrangement and such that the reduced hearing time did not affect the costs claimed.

26. The Tribunal determined that the costs claimed were not reasonable or proportionate. The Applicant had spent approximately 73 hours in the preparation and presentation of the case. This equated to a notional hourly rate of approximately £335. The Tribunal determined that an hourly rate of £200 was reasonable given the nature of the case and the issues to be considered. Accordingly, the Tribunal reduced the Applicant's costs from £24,400 to £14, 600 + VAT. Together with the internal costs of the investigation, the Tribunal ordered costs in the sum of £26,595.40

Statement of Full Order

27. The Tribunal ORDERED that the Respondent, DAVID BAYNON CROSBY 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 £26,595.40.

Dated this 3rd day of March 2025
On behalf of the Tribunal

A.E. Banks

Ms A E Banks
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
3 MARCH 2025