

CASE NO.

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

- and -

DAVID BAYNON CROSBY

Respondent

**STATEMENT PURSUANT TO RULE 12 (2) OF THE SOLICITORS (DISCIPLINARY
PROCEEDINGS) RULES 2019**

I, **MICHAEL COLLEDGE**, am a Solicitor and Partner at Blake Morgan LLP of New Kings Court, Tollgate, Chandler's Ford, Eastleigh, SO53 3LG.

I make this statement on behalf of the Applicant, the Solicitors Regulation Authority Limited ("the SRA").

The Allegations

- 1 The allegations against the Respondent, David Baynon Crosby, made by the SRA are 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;

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

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

The facts and matters relied upon in support of this allegation are set out in paragraphs 16-35 below.

1.2 Whilst a manager/owner, COLP and COFA at the Firm, during the period 3 May 2018 to 3 May 2020 the Respondent 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, the Respondent has 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 SRA Principles 2019

1.2.3 Paragraphs 4.2 8.6 and 8.7 of the SRA Code of Conduct for Solicitors.

The facts and matters relied upon in support of this allegation are set out in paragraphs 11-15 and 19-20 below.

1.3 Whilst a manager and owner of the Firm, in or around February 2021 the Respondent 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, the Respondent has breached all or any of the following:

1.3.1 Principles 2, 4 and 5 of the SRA Principles 2019.

The facts and matters relied upon in support of this allegation are set out in paragraphs 36.1 to 36.3 below.

Appendices and Documents

2 The following appendices are attached to and relied upon in this Statement:

2.1 Appendix 1: Relevant rules and regulations.

2.2 Appendix 2: Anonymisation Schedule.

3 I also attach to this statement a bundle of documents, marked **Exhibit MJC1**, to which I refer in this statement. Unless otherwise stated, page references in this statement relate to that exhibit, using the format [**MJC1, X**].

4 The bundle is divided into the following sections:

4.1 Section A: Witness statement.

4.2 Section B: Documentary evidence.

4.3 Section C: Correspondence.

Professional Details

- 5 The Respondent was born on 17 August 1968 and he was admitted as a solicitor on 3 November 1997. His SRA number is 2040.
- 6 The Respondent is currently listed as a non-practising solicitor on the Law Society website. His last Practising Certificate was for the year 2020 – 2021, which was free from conditions, He has been prohibited from practicing as a solicitor and he has been suspended from 01 November 2020.

Background

- 7 The Respondent was a partner at the firm Crosby & Woods Solicitors (“the Firm”).
- 8 From 30 November 2019 the Firm had two partners, the Respondent and Mr David Brian Rippon (“Mr Rippon”).
- 9 The Respondent was the Compliance Officer for Legal Practice (“COLP”) and Compliance Officer for Finance and Administration (“COFA”) for the Firm. The Respondent was the sole signatory on the Firm’s client and office accounts.
- 10 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 [MJC1, 64-597] (“the FI Report”). The investigation concluded that:
- 10.1 The Respondent 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;
- 10.2 The Respondent 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);

- 10.3 The Respondent 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 the Respondent to mislead the SRA's investigation;
- 10.4 In respect of Client A's Personal Injury Trust matter, the Respondent, without the knowledge and consent of Client A or the Respondent's co-trustee, Client A's son:
- 10.4.1 transferred £75,780 from the trust's bank account to the Firm's client account; and
- 10.4.2 closed the trust bank account.
- 10.5 The Respondent failed to properly disclose to the Firm's professional indemnity insurer:
- 10.5.1 That his partner Mr Rippon worked at the Firm on a part-time basis; and
- 10.5.2 The correct financial information in respect of the Firm's balance sheet position for the year ended 31 December 2019

The Cash Shortage

- 11 The investigation concluded that the cash shortage was made by the Respondent making transfers for costs from the Firm's client bank account to the Firm's office bank account that were more than the amounts notified to clients in writing.
- 12 The Cash Shortages with respect set out above were accepted by the Respondent at interview. However, in an email to the FI Officer on 4 October 2021 [MJC1,195], he referred to the shortages as being "*purported shortages*" which he stated he had "*consistently denied as being shortages.*"

- 13 The Respondent 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.
- 14 With reference to the cash shortage on the Client B matter, the Respondent 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, the Respondent stated that he was "*at fault for not checking what gone out on my behalf....*" .
- 15 In respect of the potential cash shortage of £14,520.00, as stated by the Respondent in his letter to the FI Officer dated 9 August 2021 [MJC1, 504-505], 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]....*" The Respondent 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].*"

The Trust Matter

- 16 In 2012, the Respondent, was a partner of the firm Crosby & Moore Solicitors ("C&M") and was instructed by Client A in a personal injury matter.
- 17 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.
- 18 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 the Respondent.
- 19 On 28 September 2018, the Respondent, 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 [MJC1, 360].
- 20 Between 26 March 2013 and 14 January 2020, the Respondent 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 2021 [MJC1, 336, 565-566].

- 21 According to the Respondent, Mr Woods was responsible for setting up and administration of Mr A's Trust after it was transferred from the Respondent's Personal Injury Department to Mr Woods' Private Client Department in early 2013.
- 22 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 the Respondent and he had no recollection of Mr Woods being mentioned to them by the Respondent.
- 23 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:
- 23.1 five letters purportedly written by the Respondent to Client A between 6 February 2013 and 9 November 2014 [MJC1,373-374,375-376,380-382] which Client A's son stated were never received by his father, and
- 23.2 A file memo purportedly from Mr Scott to the Respondent was 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") [MJC1,418-419].
- 24 Mr Scott, during the investigation said that he had no recollection of the matter, nor of writing the File Review Memo.
- 25 When asked during a recorded interview on 16 September 2021 with the FI Officer employed by SRA ("the FI Interview"), whether a letter dated 20 March 2013 was genuine, the Respondent 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 [MJC1,168]."*
- 26 In respect of the letter dated 20 March 2013 to Client A, at interview, the Respondent stated 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.”

- 27 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 the Respondent, 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.
- 28 The Respondent similarly confirmed that the other four letters addressed from him to Client A dated 6 February 2013, 25 March 2013, 19 September 2013 and 9 November 2013 were also genuine.
- 29 When asked at the FI Interview the Respondent 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.”* **[MJC1,168]**.
- 30 A review of correspondence by the FI Officer identified examples which strongly indicated that the Respondent was the only person at the Firm who had any input into this matter. In the example correspondence the Respondent did not make any reference to either Mr Woods or the Private Client Department, nor were they copied into any of the correspondence.
- 31 As stated by Client A's son, his father did not receive any of the five letters addressed to him by the Respondent dated between 6 February 2013 and 9 November 2014, nor were any of the Firm's invoices received by Client A **[MJC1,441-442]**.
- 32 On 2 August 2021, Client A's son in an email to the Respondent, 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 **[MJC1,494]**. He requested the original value of the fund of £75,780 to be transferred into his father's bank account.

33 At interview the Respondent 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.

34 At interview, the Respondent 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 [MJC1,156,158].*"

35 Also during his interview, the Respondent 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.*"

Renewal of the Firm's Professional Indemnity Insurance

36 In the renewal of the Firm's professional indemnity insurance in February 2021 the Respondent made two misstatements:

36.1 That the two partners worked full time at the Firm and that the Firm had a positive net worth of £147,000 for the financial year ended 31 December 2019 [MJC1,521-543].

36.2 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.

36.3 The Respondent 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. The Respondent did not provide an explanation in respect of the statements in respect of the firm's Accounts.

37 On 8 October 2021, an Adjudication Panel of the SRA decided that the SRA should intervene into the practice of the Respondent on the following grounds:

37.1 The Respondent had been adjudged bankrupt [MJC1,656-657]; and

37.2 It was necessary to intervene to protect the interests of clients or clients and any beneficiaries of any trust of which the Respondent was a trustee.

38 The SRA's intervention took place on 11 October 2021 [MJC1,178-183].

39 The Respondent has been suspended from practising being a solicitor from 1 November 2021.

The facts and matters relied upon in support of the allegations

Allegation 1

Whilst a partner at the Firm, during the period 08 July 2021 and 15 September 2021 the Respondent attempted to mislead the SRA investigation into the Trust of Client A as follows: (a) he made representations to the SRA that he was not the fee earner with handling of the trust and provided documents to support that position; (b) he provided the SRA with four letters he said had been sent to Client A which were not genuine; and (c) he provided the SRA with a file review document which was not a genuine document.

40 The facts relied upon by the Applicant are set out at paragraphs 16-35 above and in the following paragraphs.

41 On 10 June 2021, in an email to the Respondent [MJC1,220] the FI Officer requested a scanned copy of the full client file of the Client A matter.

42 On 8 July 2021, the Respondent provided by email to the FI Officer documentation which included the firm's invoices [MJC1,366-372] five letters from the Respondent to Client A including a draft template for the PI Trust [MJC1,373-382] a completed IEP Financial Risk questionnaire [MJC1,383-384] and a file review memo [MJC1, 385-386].

- 43 On 29 July 2021, the FI Officer informed the Respondent that the file of papers he provided did not contain any email correspondence and, after a number of reminders, the Respondent provided the email correspondence [MJC1, 392- 434] by email on 15 September 2021 [MJC1, 391].
- 44 According to the Respondent Mr Woods was responsible for setting up and administration of the PI Trust after Client A's file was transferred from the Respondent's Personal Injury Department to Mr Woods' Private Client Department in early 2013.
- 45 According to the Respondent, the Private Client Department asked the Respondent to liaise with Client A on their behalf due to the Respondent'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*" [MJC1,502].
- 46 According to the Respondent, following Mr Woods' departure, the matter was transferred to Mr Scott [MJC1, 436].
- 47 According to the Respondent, following Mr Scott's departure from the Firm in April 2016, the matter only came to the Respondent's attention in September 2018 when letters and notes pertaining to the matter were located by the Firm [MJC1, 436].
- 48 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 the Respondent [MJC1,441]. In his witness statement, Client A's son stated
- "I have no recollection of [Mr Woods] being mentioned to us by [the Respondent] 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 [the Respondent's] work partner."*
- 49 A review of correspondence by the FI Officer identified examples which indicated that the Respondent 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 [MJC1, 431], an email dated 20 March 2013 to Client A and Client A's son [MJC1, 429] in which he referred to drafting the Trust Agreement [MJC1, 429] "*last night*" and an

email dated 10 April 2013 in which reference is made to a meeting with the bank manager in respect of opening the trust bank account [MJC1,423].

50 In none of these examples did the Respondent make any reference to either Mr Woods or the Private Client Department, nor were they copied into any of the correspondence.

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

51.1 Five letters purportedly written by the Respondent to Client A between 6 February 2013 and 9 November 2014 [MJC1, 479-480, 481-482, 483, 484, 485], which Client A's son stated were never received by his father; and

51.2 The File Review Memo purportedly written by Mr Scott to the Respondent in September 2015 [MJC1, 510-511] which Mr Scott stated he had no recollection of either writing nor its subject matter [MJC1, 512]. Mr Woods also stated that he had no recollection of the File Review Memo [MJC1,517]

52 The Respondent confirmed at the FI Interview that he had not given any information to the FI Officer to mislead her investigation. In response to a question raised by the FI Office at the FI Interview regarding the letter of 20 March 2013 "*.....is this a genuine letter*" The Respondent replied "*Yes it is*". When further questioned "*Authentic letter that you wrote and sent on 20 March 2013?*" the Respondent 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.*" [MJC1,168].

53 On review of the five letters referred to above, the FI Officer identified various inconsistencies, contradictions and omissions in three of them. For example, in the letter to Client A dated 6 February 2013, the Respondent 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. The Respondent did not provide contact details for Mr Woods or the Private Client Department in this letter. In relation to a letter addressed to Client A dated 20 March 2013 [MJC1,375-376], the Respondent made no reference to an email he sent on 20 March 2013 at 07:54 AM [MJC1,429]. Also, in this letter the Respondent 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 the Respondent provided no explanation in the letter in respect of the significant increase in fees. It was also note by the FI Officer that, whilst the Respondent in his email had informed both Client A and Client A’s son of his fees, there was no equivalent letter address to Client A’s son.

54 In the letter of 20 March 2013, the Respondent stated that Mr Woods had recommended IEP; however, this contradicted with his email to Client A and his son on 24 April 2014 [MJC1, 417-418] in which he stated “*I have also found a....local IFA*” and attached a document entitled “*ATR Form (IEP)*”.

55 Additionally, in the letter of 20 March 2013, the Respondent’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 [MJC1, 431] in which he stated 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.

56 The File Review Memo [MJC1, 510-511] purportedly from Mr Scott to the Respondent was entitled “*FILE REVIEW ON TAKEOVER OF FILES FROM GAW*” and was unsigned.

57 At interview, the Respondent stated that the first time he saw the File Review Memo was three years later in 2018. After reading the Memo, the Respondent:

57.1 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

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

58 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 on 24 August 2021 [MJC1, 512] Mr Scott commented that the style of the memo did not appear to be his and could not recall giving the Respondent advice in the matter.

- 59 Between 25 March 2013 and 6 January 2020, the Respondent 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 **[MJC1, X]**.
- 60 At interview, the Respondent stated that, where costs were agreed on a fixed basis, he did not send bills **[MJC1,93-176]**.
- 61 Between 26 March 2013 and 14 January 2020, the Respondent 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.
- 62 Following a formal complaint by Client A's son to the Respondent, 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.
- 63 At interview, the Respondent stated that he had authorised a bank transfer of £75,780.00 from the trust bank account to the Firm's client account and for the trust bank account to be closed. At interview, the Respondent 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.*"
- 64 At interview, the Respondent stated that he had not sought the authority of co-trustee Client A's son, before making the transfer and closure of the account because he "*thought this had all been agreed in advance, years in advance by somebody else.*"
- 65 As noted above, the Respondent was the sole signatory on the Firm's client account as, as a result, Client A's son had no access to the trust funds once they had been moved to the Firm's client account.
- 66 On 2 August 2021, Client A's son in an email to the Respondent, made a formal complaint against him and the Firm in respect of the movement of the full trust fund from the nominated trust bank account to the Firm's client account in September 2018 without his and his father's knowledge **[MJC1,494]**.

Breaches of the Principles and the Code of Conduct in relation to Allegation 1

Principle 2 – upholding public trust and confidence

67 The Respondent 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.

68 Members of the public should be able to place their trust in members of the profession, who are held in high regard. Any behaviour which undermines this trust damages 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, the Respondent 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 SRA Principles.

Principle 4 – honesty

69 The Applicant relies upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67:

“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.”

- 70 The Respondent 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 suggest 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 was also not a genuine document as Mr Scott denies that he wrote the File Review Memo.
- 71 At the time the Respondent provided the five letters and the File Review Memo to the FI Officer he knew or believed the following matters:
- 71.1 That he had not sent the letters dated 6 February 2013, 20 March 2013, 25 March 2013, 19 September 2013 and 9 November 2013 to Client A and/or Client A's son;
 - 71.2 That Mr Scott had not written the File Review Memo, and had not advised the Respondent about Client A's matter;
 - 71.3 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.
 - 71.4 The Respondent further knew 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.
- 72 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, the Respondent attempted to mislead his regulator. In doing so, the Respondent 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, the Respondent failed to act with honesty and therefore breached Principle 4 of the SRA Principles.

Principle 5 - Integrity

73 In Wingate v SRA [2018] EWCA Civ 366, the Court of Appeal held that integrity connotes adherence to the ethical standards of one's profession. 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".

74 Paragraphs 70-72 are repeated.

75 The Respondent 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 is to the detriment of others. By deliberately providing his regulatory body with falsified documentation, the Respondent attempted to mislead his regulatory body he failed to act with integrity and therefore breached Principle 5 of the SRA Principles.

7.3 and 7.4 Code of Conduct for Solicitors, RELS and RFLs ("Code of Conduct for Solicitors")

76 In accordance with paragraph 7.3 of the Code of Conduct for Solicitors, the Respondent 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 of Conduct for Solicitors, the Respondent 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 the Respondent which were critical to the Respondent'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 of Conduct for Solicitors the Respondent provided false documentation to the SRA in an attempt to mislead the SRA's investigation into the Respondent's provision of legal services.

Allegation 2 – Whilst a manager/owner, COLP and COFA at the Firm, the Respondent 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.

77 The Applicant relies upon paragraphs 11-15 and 19-20 above and the following paragraphs.

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

79 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).

80 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.

81 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.

82 The Respondent, in his email to the FI Officer on 28 September 2021 **[MJC,191]** 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.

83 The cash shortage of £39,660 was caused by the Respondent making transfers for costs from the Firm’s client account to the Firm’s office bank account that were more than the amounts of costs notified to the clients in writing. The shortages by client matter were:

83.1	Probate Late Client C	£12,000.00
83.2	Probate Late Client B	£19,500.00
83.3	Probate Late Client D	£7,800.00

83.4	Probate Late Client E	<u>£360.00</u>
	TOTAL	£39,660.00 (“the Cash Shortages”)

84 In addition to the Cash Shortages, there was a further potential cash shortage of £14,500.00 in respect of the Personal Injury Trust matter for Client A.

85 This potential additional cash shortage of £14,520.00 as subsequently rectified on 13 August 2021.

86 As noted above, the SRA received a report concerning the Respondent in respect of his administration of the estate of the Late Client C.

87 In a letter dated 2 May 2018 to the executors of the estate, the Respondent gave an estimate of between £20,000 to £25,000 plus VAT in respect of the Firm’s fees **[MJC1,127]**.

88 Between 3 May 2018 and 16 October 2019, the Respondent raised bills for his costs totalling £42,000 (inclusive of VAT) in respect of Client C, as shown by the ledger **[MJC1, 198-203]**.

89 The Respondent confirmed to the FI Officer by email on 5 July 2021 **[MJC1, 223]** that these bills had not been sent to the executors.

90 The Respondent had taken £42,000 from client account for costs which was £12,000 more than the maximum value of £30,000 stated by the Respondent to an executor of the estate in a letter dated 2 May 2018 **[MJC1, 129]**. Ms Wright was informed in an email dated 15 August 2021 **[MJC1,229]** that the executors did not know anything about the additional £12,000 including VAT in costs.

91 As noted above, the SRA received a report concerning the Respondent in respect of his administration of the estate of the late Client B.

92 In the Firm’s terms of business signed by the executors of Client B on 8 March 2018 **[MJC1, 256-257]** the maximum fees quoted for obtaining a grant of probate and a non-contested administration was £5,100.00 including VAT. It had been the Respondent’s understanding, as stated in his letter to an executor dated 5 July 2021 **[MJC1,224]**, 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...” [MJC1,264].

- 93 When provided with the terms of business that had been signed by the executors, the Respondent informed the FI Officer in his letter dated 7 September 2021 [MJC1,299] that he had no personal recollection of seeing these terms of business and that he assumed that they were sent in error [MJC1,300].
- 94 Between 6 March 2018 and 3 May 2020, the Respondent raised bills for his costs totalling £24,600 (inclusive of VAT).
- 95 The Respondent confirmed to the FI Officer on 5 July 2021 [MJC1,224] that the bills had not been sent to the executors.
- 96 At interview, the Respondent 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 the Respondent’s costs. As at the date of the FI Report, the shortage had not been rectified.
- 97 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, the Respondent responded on 5 July 2021 [MJC1,224] stating “it was *onerously 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.*”
- 98 The Respondent 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 [MJC1,326]. The executors stated in an email to the FI Officer dated 4 October 2021 [MJC1,322] that the letter from the Respondent 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.*”
- 99 On 11 August 2021 the FI Officer asked the Respondent if he had paid the £2,400.02 balance to the beneficiaries. The Respondent stated in his letter to the FI Officer

dated 18 August 2021 [MJC,332] that he had not paid the balance as he had “not received a response.”

Breaches of the Principles and the Code of Conduct in relation to Allegation 2

Principle 2 – upholding public trust and confidence

100 The Respondent 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.

101 Members of the public should be able to place their trust in members of the profession, who are held in high regard. Any behaviour which undermines this trust damages not only the regulated person, but also the public trust in the ability of the legal profession as a whole to serve society. 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 lead 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, the Respondent 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 SRA Principles.

Principle 4 - acting with honesty

102 The Applicant relies upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67 referred to above at paragraph 69.

103 Paragraphs 11-15 and 19-20 are repeated.

104 The Respondent, 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.

- 105 At the time the Respondent caused or allowed the Firm to withdraw monies from the client of the Firm, he knew or believed:
- 105.1 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;
 - 105.2 Bills had not been sent to the executors in relation to the estate of Client C;
 - 105.3 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 than the fixed fee quoted to Client C;
 - 105.4 In relation to Client B, the Respondent 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
- 106 As a result of this conduct, the Respondent 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, the Respondent failed to act with honesty and therefore breached Principle 4 of the SRA Principles.

Principle 5 – acting with integrity

- 107 The Applicant relies on Wingate v SRA [2018] EWCA Civ 366 as referred to above.
- 108 Paragraphs 11-15 and 19-20 are repeated.
- 109 The Respondent 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 the Respondent's actions, the Respondent failed to act with integrity, in breach of Principle 5.

Principle 7 – acting in the best interests of each client

- 110 Paragraphs 11-15 and 19-20 are referred to above.
- 111 Principle 7 of the Code of Conduct requires solicitors to act in the best interests of each client. It is 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 is not 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.
- 112 As a result of the conduct referred to above, the Respondent, in breach of Principle 7 of the Code of Conduct 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.

Rules 4.3, 5.1 and 6 of the SRA Accounts Rules 2019 ("the Accounts Rules")

- 113 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.
- 114 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.
- 115 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.

116 In breach of Rules 4.3 and 5.1 of the Accounts Rules, the Respondent 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, the Respondent failed to rectify the breaches and replace any shortage on client account promptly, or in respect of some client matters, at all.

Paragraphs 4.2, 8.6 and 8.7 of the SRA Code of Conduct for Solicitors

117 In compliance with Paragraph 4.2 of the Code of Conduct the Respondent was required to safeguard money and assets entrusted to him by clients and others.

118 With reference to paragraph 8.6 of the Code of Conduct, the Respondent was required to ensure that clients were given information in a way that they could understand, which the Respondent failed to do.

119 Paragraph 8.7 of the Code of Conduct required the Respondent to give clients the best possible information about how their matter will be priced and, as their matter progresses, about the likely cost of the matter and any costs incurred.

120 Paragraphs 11-15 and 19-20 are repeated.

121 The Respondent, as a result of his actions described above at paragraphs 26 to 29 has acted in breach of the provisions of paragraphs 4.2, 8.6 and 8.7 of the Code of Conduct

Allegation 3 – Whilst a manager and owner of the Firm, the Respondent 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 Rippon who was stated to be working full time at the firm which was not the case.

122 The Applicant relies upon paragraphs 35.1 - 36.3 above and the paragraphs below.

123 In the renewal of the Firm's professional indemnity insurance in February 2021 **[MJC1, 521-543]** the Respondent made two misstatements (1) that the two partners worked full time at the firm and (2) that the Firm had a positive net worth of £147,000 for the financial year ended 31 December 2019.

- 124 The above were misstatements 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 **[MJC1,549]**.

Principle 2 – upholding public trust and confidence

- 125 The public is entitled to rely on solicitors behaving in an appropriate and trustworthy manner. The Respondent provided misleading information on the Firm's professional indemnity insurance proposal form dated 16 February 2021. By his actions, in misleading a third party would be considered to be something which would damage the public's perception of trust in the legal profession accordingly the Respondent has not acted in a way that upholds public trust and confidence in the solicitors' profession, and therefore breached Principle 2 of the SRA Principles.

Principle 4 - acting with honesty

- 126 The Applicant relies upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67 referred to above at paragraph 42.
- 127 Paragraphs 36.1-36.3 are repeated.
- 128 The Respondent was responsible for completing the professional indemnity insurance proposal form dated 16 February 2021. When completing the form, the Respondent was required to be transparent and honest with the insurance company. At the time of completing the form it would have been clear to the Respondent that Mr Rippon was not working full-time (as defined by the insurer) for the Firm.
- 129 The Respondent is an experienced practitioner but has demonstrated a clear lack of judgment in his behaviour. By misleading his insurance company, the Respondent acted dishonestly and without integrity. A solicitor acting with honesty would ensure that accurate information was provided within the insurance proposal form. By failing to ensure that the information that he was providing to the insurer was accurate, the Respondent acted dishonestly.
- 130 As a result of this conduct, the Respondent acted dishonestly by the standards of ordinary decent people. Ordinary decent people would consider it dishonest for a

solicitor to knowingly provide misleading information to his professional indemnity insurer. By acting dishonestly, the Respondent breached Principle 4 of the SRA Principles.

Principle 5 – acting with integrity

131 The Applicant relies on Wingate v SRA [2018] EWCA Civ 366 as referred to above.

132 Paragraphs 36.1-36.3 are repeated.

133 The Respondent 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, the Respondent failed to act with integrity and therefore breached Principle 5 of the SRA Principles.

The SRA's investigation

134 Following notice being given to the Firm, the investigation started on 09 June 2021 at the Firm's offices. The remainder of the investigation was conducted remotely. The investigation of the books of account and other documents was conducted by the FI Officer.

135 The SRA has taken the following steps to investigate the allegations which it makes against the Respondent:

135.1 On 16 September 2021, Ms Wright held a recorded interview with the Respondent at the firm. The SRA produced a transcript of the recording **[MJC,131-176]**.

135.2 On 16 September 2021, Ms Wright held a recorded interview with Mr Rippon at the Firm. The SRA produced a transcript of the recording **[MJC,93-109]**.

135.3 A Forensic Investigation Report ("FIR") was finalised on 29 October 2021 **[MJC,65-597]**.

- 135.4 On 2 February 2024 a recommendation of referral to the SDT was produced by the SRA.
- 135.5 On 23 April 2024 an Authorised Decision Officer of the SRA decided to refer the Respondent to the Tribunal **[MJC1,3-10]**.
- 135.6 In respect of Allegation 1, the Respondent states that the five letters addressed to Client A and the File Note Memo are genuine documents and that he has not attempted to mislead the FI Officer and the SRA investigation. When asked by the FI Officer at the FI Interview with reference to the letter to Client A dated 20 March 2013 “...is this a genuine letter” the Respondent replied “Yes it is.” **[MJC1, 168]** In response to a further question raised by the FI Officer at the FI Interview “..you have not given me any information in any way that has been the intention to mislead me in my investigation?” the Respondent stated “Absolutely none whatsoever.” **[MJC1,170]**
- 135.7 In respect of Allegation 2, the Respondent comments accepts that errors were made regarding the transfer of monies from client accounts in respect of bills raised “I would wish to make clear that in these matters the reasoning, which based on your guidance and further review of the accounts rules, does appear to clearly indicate the basis for our approach (whilst a genuinely held one albeit not clearly indicative that it was a mistaken understanding of the rules, irrespective of the transparency that we believe it gives at all times) has arisen.” **[MJC1, 23]**
- 135.8 In respect of Allegation 3, the Respondent comments that Mr Rippon asked to be considered to be a partner and work exclusively for the Firm and that request was received favourably. The Respondent further comments that, at no point was it ever raised that Mr Rippon had any other active roles with any other firms, including locum positions via his agency. The Respondent states that every employee at the Firm was required to make themselves available to work full-time at the Firm and to work exclusively for the Firm. The Respondent questions why this matter or dual roles was not raised at the time by the Authorisation Team at the SRA. The Respondent has made no representations in respect of the declaration of the Firm’s financial status

contained in the Professional Indemnity Proposal Form 2021 [MJC1, 521-543]

136 The Respondent's position is set out in detail in his email to the SRA dated 2 April 2024 [MJC1 712-714], in which the Respondent raises four general points in respect of his defence which bear reading in full despite not responding to the specific allegations above.

Statement of Truth

I believe that the facts and matters stated in this statement are true.

Signed: 

Dated: 02 August 2024

CASE NO.

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

- and -

DAVID BAYNON CROSBY

Respondent

**APPENDIX 1 TO STATEMENT PURSUANT TO RULE 12 (2)
SOLICITORS (DISCIPLINARY PROCEEDINGS) RULES 2019
Relevant Rules and Regulations**

SRA Principles 2019

You act:

Principle 2 in a way that upholds public trust and confidence in the solicitors profession and in the legal services provided

Principle 4 with honesty

Principle 5 with integrity

Principle 7 in the best interests of each client

SRA Code of Conduct for Solicitors, RELs and RFLs 2019

- 4.2 you safeguard money and assets entrusted to you by clients and others.
- 7.3 You cooperate with the SRA, other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.
- 7.4 You 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 is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the SRA.
- 8.6 you give clients information in a way that they can understand. You ensure they 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.
- 8.7 You ensure that clients receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred.

SRA Code of Conduct for Firms

- 3.2 you cooperate with the SRA, other regulators, ombudsmen and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.

- 3.3 You 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 is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the SRA.

SRA Accounts Rules 2019

- 4.3 Where you are holding client money and some or all of that money will be used to pay your costs:
- (a) you must 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 you transfer 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.
- 5.1 You only withdraw client money from a client account
- (a) for the purpose for which it is being held;
 - (b) following receipt of instructions from a client, or the third party for whom the money is held;
 - (c) on the SRA's prior written authorisation or in prescribed circumstances.
- 6 You correct any breaches of these 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.