SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12026-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DAVINDERJIT SINGH First Respondent
KUNAL AHIR Second Respondent
MUKHTIAR SINGH UBHI Third Respondent

Before:

Mr P S L Housego (in the chair)
Mrs J Martineau
Mr P Hurley

Date of Hearing: 7–9 December 2020

Appearances

Ms Nimi Bruce, Counsel, employed by Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR instructed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Mr Robert Lazarus, Counsel of 39 Essex Chambers, 81 Chancery Lane, London, WC2A 1DD instructed by HMA Law Solicitors of 5 Tenby Street, Birmingham, B1 3EL for the First Respondent.

Mr Harbinder Singh Lally, Counsel of Fosseway Cottage, Fosseway Lane, Litchfield, WS13 8JX instructed directly by the Second and Third Respondents.

JUDGMENT

Allegations

1. The allegations against the First, Second and Third Respondents made by the Solicitors Regulation Authority ("SRA") were that:

1.1 They failed to have a proper record of the Firm's accounts. In keeping two separate and inconsistent sets of client ledgers, not having readily ascertainable balances, and making posting errors, the Respondents breached:

1.1.1 Principles 6, 8, and 10 of the SRA Principles 2011 ("the Principles");

1.2.1 Rules 1.2(f), 29.1, 29.2, 29.4, and 29.9 of the Solicitors Accounts Rules 2011 ("the SAR").

1.2 They failed to keep client and office money separate. There was a client account debit of £3,283.97 as at 19 March 2018 due to office money being kept in client account. In so doing the Respondents breached:

1.2.1. Principles 6 and 8 of the Principles;

1.2.2 Rules 1.2(a), 14.2, and 17.9 of the SAR.

1.3 They failed to carry out accurate reconciliations. The reconciliations did not set out the balances the Firm held on the client ledger. By not doing so, the Respondents breached:

1.3.1 Principles 6, 8, and 10 of the Principles;

1.3.2 Rule 29.12 of the SAR.

1.4 They did not run their Firm with proper governance principles. There were a number of aspects in regard to which the Respondents did not run their Firm properly, in that they did not have proper employment arrangements with their staff, did not have a partnership agreement, and did not consider VAT registration. In failing to achieve each of the above matters, the Respondents breached:

1.4.1 Principles 2, 6 and 8 of the Principles;

1.4.2 Failed to achieve outcome 7.1 of the Code of Conduct 2011 ("the Code").

1.5 They charged clients variable sums for filling out a standard form, and a sum to pay for its indemnity insurance. Neither of these were appropriate. In so doing the Respondents breached:

1.5.1 Principles 4, 6, and 8 of the Principles;

1.5.2 Failed to achieve outcomes 1.1 and 1.13 of the Code.

1.6 The First Respondent went on holiday in February 2018 without leaving anyone qualified to supervise staff. The only solicitor in place was Mr Khawas Khan, who had conditions on his practising certificate stating that he could not be a manager. The Second and Third Respondents were not present to take the place of the First Respondent. The First Respondent was therefore in breach of the following:

1.6.1 Principles 6 and 8 of the Principles;

1.6.2 Failed to achieve outcomes 7.1 and 7.8 of the Code.

1.7 The allegation made by the SRA against the First Respondent alone was that the First Respondent, as the Compliance Officer for Finance and Administration ("COFA"), did not ensure compliance with the accounts rules and did not report breaches to the SRA. The First Respondent therefore breached:

1.7.1 Principles 6 and 8 of the Principles;

1.7.2 Rule 8.5(e) of the SRA Authorisation Rules 2011 ("the Authorisation Rules).

Documents

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

- Rule 5 Statement and Exhibit RH1 dated 15 November 2019
- First, Second and Third Respondents' Answer dated 23 December 2019
- Statement of Agreed Facts dated 3 February 2020
- Clarification of the Rule 5 Statement dated 3 July 2020
- Applicant's Reply to request for further information on the Rule 5 Statement dated 20 July 2020
- Applicant's Schedule of Costs dated 27 November 2020
- First, Second and Third Respondents' Statement of Costs for the hearing of 8 June 2020 dated 10 July 2020

Factual Background

3. The Respondents were all partners in Crown Gate Law Solicitors ("the Firm"). The First Respondent was admitted to the Roll in June 2008. He became a partner of the Firm when it commenced trading on 23 December 2013. At all material times, the First Respondent was the sole equity partner. The First Respondent held an unconditional practising certificate.

4. The Second Respondent was admitted to the Roll in March 2012. He became a partner in the Firm on 1 December 2014. The Second Respondent had his own separate firm in Leicester which provided him with his living. He did not receive any income from the Firm between 2014 and 2017, although he might have received some commission.

5. The Third Respondent was admitted to the Roll in July 2005. He became a partner in the Firm on 24 February 2016. The Third Respondent ran a company through which he provided a consultancy service. He had not undertaken any work for the Firm since becoming a partner.

6. The Second and Third Respondents confirmed in interview that:

- they did not carry out fee-earning work;
- they did not receive an income from the Firm;
- they did not supervise staff at the Firm; and
- they were not in regular attendance at the Firm.

7. The Firm did not hold formal partnership meetings and there was no profit share agreement. The Second Respondent received pay on a commission basis. Only the First Respondent had access to the Firm's accounts.

Witnesses

8. The following witnesses provided statements and gave oral evidence:

- Efzana Murtaza – Applicant's witness as to fact
- Davinderjit Singh – First Respondent (evidence in mitigation only)
- Kunal Ahir – Second Respondent (written evidence in mitigation only)
- Mukhtiar Ubhi – Third Respondent (written evidence in mitigation only)

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

Applicant's Application at the close of the Prosecution Case

10. Ms Bruce applied to withdraw the particulars of allegation 1.4 that related to the employment by the Firm of Ms K. It followed that withdrawing those particulars would also mean withdrawing the allegation that the Respondents' conduct had been in breach of Principle 2.

11. Mr Lazarus supported the application. Had the application not been made, he would have made an application of no case to answer on the basis (amongst other things) that the Applicant had failed to adduce any evidence that Ms K was under immigration control in any form, and there was no evidence that she was not entitled to work in the UK. Further, the Rule 5 Statement failed to state which statute or rule the Respondents were in breach of as regards Ms K. In addition, there was no evidence before the Tribunal that could lead it, properly directing itself as to the law to find that Ms K was employed by the Firm as alleged.

12. Mr Lally supported the application and endorsed and adopted Mr Lazarus' submissions.

13. The Tribunal considered the application with care. The Tribunal had noted at the outset of the hearing that the Applicant had not produced any evidence as regards Ms K's immigration status. The Tribunal determined that given the evidence adduced, the application was properly made. Accordingly, the Tribunal granted the application to withdraw those matters relating to the employment of Ms K and the allegation that the Respondents were in breach of Principle 2.

14. In the circumstances, the evidence of Ms Murtaza, (which related solely to the withdrawn matters) is not detailed in this Judgment.

Findings of Fact and Law

15. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of all the parties.

16. **Allegation 1.1 - They failed to have a proper record of the Firm's accounts. In keeping two separate and inconsistent sets of client ledgers, not having readily ascertainable balances, and making posting errors, the Respondents breached: Principles 6, 8, and 10 of the Principles; Rules 1.2(f), 29.1, 29.2, 29.4, and 29.9 of the SAR.**

Allegation 1.2 - They failed to keep client and office money separate. There was a client account debit of £3,283.97 as at 19 March 2018 due to office money being kept in client account. In so doing the Respondents breached: Principles 6 and 8 of the Principles; Rules 1.2(a), 14.2, and 17.9 of the SAR.

Allegation 1.3 - They failed to carry out accurate reconciliations. The reconciliations did not set out the balances the Firm held on the client ledger. By not doing so, the Respondents breached: Principles 6, 8, and 10 of the Principles; Rule 29.12 of the SAR.

Agreed Facts

<u>Inspection and initial data</u>

16.1 On 27 February 2018, the First Respondent said that the Firm's accounts were up-to-date, but he needed to check whether his accountant had prepared the last reconciliation. As the First Respondent had just come back from holiday, his accountant had the Firm's accounts records.

16.2 On that day, the accountant emailed a three-page Excel reconciliation of the Firm's bank account. It did not detail the balances on the client ledgers. The forensic investigation officer ("FI Officer") Ms Bridges asked the First Respondent whether he

had compared the amount in client account against the client ledger balances. The First Respondent needed an explanation of "client ledger balances" and said he would provide the information on 1 March 2018.

16.3 On 1 March 2018, the First Respondent provided what he said were client account reconciliations. They were the same reconciliations that the accountant had emailed on 27 February 2018. They were therefore still incomplete.

16.4 The First Respondent's explanations include the following.

- He had only become COFA the previous month.
- He was in sole charge of the ledgers, or, alternatively, that the accountant and staff also maintain the ledgers.
- All of the Firm's accounting information was in the ledger books or with the accountant.

16.5 Ms Bridges therefore requested that the First Respondent bring the accounts books up-to-date in the next two weeks. On 19 March 2018 the First Respondent provided the signed reconciliations and a list of client ledger balances dated 18 February 2018.

16.6 The reconciliations were the same format as those provided on 27 February 2018 and 1 March 2018, only over a longer period. From these documents, it was apparent that the reconciliations did not detail the balances on the client ledgers; and that the balances did not match those in the ledger book.

16.7 The First Respondent and the Firm's accountant admitted that the debit balances were not correct. On 20 March 2018 the First Respondent wrote to the SRA to apologise for "the breach of Solicitors Accounts Rules 2011 as notified by you to me". He said that this was "the fault of our incompetent accountant" and in interview had said that he did not see the list of client liabilities every month.

16.8 The First Respondent also stated that there were over 250 ledgers which the Firm had not properly billed. He therefore asked for 21 days to rectify the accounts rule breaches.

Return visit after breaches identified

16.9 On 22 May 2018 the FI Officer returned to the Firm to inspect the accounts. The First Respondent did produce a manual ledger. This contained all client ledgers. However, the client ledger book did not show an office account side of the ledgers, or a running balance of client ledgers.

16.10 There were still discrepancies on the accounts. Examples recorded by the FI Officer were:

- file reference S234/1 showed a balance on the reconciliations of £1,048, but on the manual ledger of £1,649 (£601 more);

- file reference S588/1 showed a balance on the reconciliations of £2,190, but on the manual ledger of £1,200 (£990 less).

16.11 On 12 June 2018, the SRA interviewed the Respondents, separately. The First Respondent conceded that the ledger balance on S234/1 was incorrect and that although he could not confirm the position immediately he would clarify the true position later.

16.12 The First Respondent, for the first time, stated that the Firm had a further set of client ledgers, on an excel spreadsheet. The First Respondent said that he had not provided them before because "I didn't know that you want those books", "they were with the accountant only" and the First Respondent had to re-create them. The First Respondent did not mention this set of ledgers when providing the manual ledger on 22 May 2018.

16.13 The excel spreadsheets did not show the office side of the ledgers and they did not agree with the manual ledger. The First Respondent accepted that he could not provide an accurate list of liabilities to clients.

16.14 On the same day the First Respondent provided a handwritten list of explanations for the incorrect balances. On the two examples above he stated (sic):

- S234/1: balance of ledger is £1048.00 as on book entry of 13/8/17 [?] was not on book but on excel sheet.

- S588/1: balance on excel sheet and ledger is [£]7.48. This ledger is related to [Mr S] not 588 [C] Road.

16.15 There were therefore, at times, discrepancies between the sets of accounts.

16.16 It was unclear which, if any, was the correct set of books, and on which the Firm relied. The First Respondent said "I was under the impression that the accountant is dealing with everything…we thought that he will do his job properly…I was under the impression that once we have instructed them they will deal with it properly". It was only on investigation that he realised that there was a problem.

16.17 On 15 June 2018 the First Respondent stated that the excel spreadsheets "is maintained by our account and the same is updated on monthly basis...he is using this spreadsheet in excel format as they are well established accountants".

<u>Cash receipts not in books</u>

16.18 On file S528/1, there was a cash receipt dated 21 September 2015, for the sum of £1,900. There was no further information as to why the Firm received this sum and no evidence whether the Firm paid this into the client account. The client matter ledger did not record this sum.

16.19 The First Respondent, who was the fee-earner on the matter, could not remember why he had received the cash, or explain why it was not on the file, saying he had to check the entry as "it has created confusion to me as well" and the ledger was not accurate.

16.20 On 18 March 2018, the First Respondent also said that there were other occasions when staff members had accepted client money. He had dismissed members of staff for "dishonest behaviour". However, the First Respondent had not provided any documentary evidence to support this despite a specific request.

16.21 Ms Bridges asked the First Respondent for copies of the cash receipt books, and a schedule of all cash payments that clients had made directly to staff, on the following dates:

- 13 June 2018;
- 29 June 2018;
- 11 July 2018;
- 12 July 2018.

16.22 On 11 July 2018 the First Respondent said that one former member of staff received £3,000 from a client and referred to other cash payments. In a witness statement, Ms Murtaza, a former member of staff, said that, on 24 May 2018, the First Respondent told a former client to accept that Ms Murtaza had taken £3,000 from him in cash, in return for the return of his file. Ms Murtaza said that she acted on that particular matter pro bono.

16.23 On 19 July 2018, the First Respondent supplied photocopies of some of the cash receipt book stubs, from which it was impossible to identify:

- the client matter number;
- whether the money was client or office money;
- where the Firm had paid the money;
- whether the Firm had recorded it on the client ledger.

16.24 On 9 August 2018 Ms Bridges asked the First Respondent once more for a schedule of all cash payments. On 13 August 2018 the First Respondent promised to send it through "shortly". He had not yet done so.

Ignorance of Accounts Rules

16.25 Even though the First Respondent had been the Firm's COFA since January 2018, he said that he kept office funds (£3,283.97 of client balances that the Firm should have billed) in client account "as a reserve, so that if there will be any financial problem in the future we can raise the bills". He agreed that the Firm was in breach of the SAR, albeit he put the blame on the accountant and did not reply when asked about keeping a register of breaches.

16.26 The previous COFA was the Second Respondent, who had held the role from August 2014 to November 2017, when he resigned for personal reasons. He said on 12 June 2018 that he looked at the ledgers once every two months or quarterly and relied on the First Respondent and accountants.

16.27 Rule 29.12 of the SAR stated that reconciliations should take place every five weeks. The Second Respondent admitted not knowing the rule.

16.28 On 12 June 2018 the Third Respondent said that he had no involvement in the preparation and relied on the First Respondent's assurances that "everything was perfectly safe". He did however appreciate that, as a partner, he was responsible for compliance with the accounts rules even though he had no involvement.

Firm's reply and correction of accounts

16.29 On 14 January 2019, following further investigation and queries from the SRA, a firm of forensic accountants, Salhan, wrote to the SRA, to give the First Respondent's "provisional responses while he is in the process of obtaining legal representation for himself". Salhan stated the following:

- Salhan had carried out a forensic report into the Firm's accounts to make sure the accounts were in proper order.
- Following a full audit, "in relation to the vast majority of the alleged ledger discrepancies that there were no discrepancies".
- The First Respondent had managed to match the cash receipts with the ledgers.
- VAT registration is not a simple issue and depends in part as to the source of money, which is relevant to the immigration cases the firm undertook.
- There was no shortfall in the Firm's accounts.
- The First Respondent had conducted client reconciliations in a way that was compliant with the SRA's requirements.
- The Firm was changing the way it employed its staff.
- The Firm had proper procedures for dealing with cash payments.

16.30 Salhan included a forensic report which dealt with the ledger discrepancies, claiming that there were no discrepancies. In fact, the table revealed that there were discrepancies, which needed correcting (e.g. "within the Excel ledger the entries for File Ref S349/2 have been entered into S349/1 by mistake").

16.31 There were further instances where the Firm had corrected the discrepancy identified by the FI officer. For instance, in the matter S693/1:

- on 18 February 2018, its ledger balance was £1,093.24;
- the list of ledger balances at 19 April 2018 said that it was £619.40 overdrawn;
- on 4 June 2018, the First Respondent explained that there was a £600 costs transfer, seemingly not in relation to the matter, not written on the ledger;
- on 6 June 2018, the FI officer said that the balance as per list of balances was £619.40 overdrawn, but on the manual ledger it was £1,112.84;

- however Mr Salhan says that there was no discrepancy as the "balance" was a transaction, and not a balance;

- nevertheless, on 23 March 2018 and 19 September 2018, there were transfers on the file (one to pay a bill, and one booked to another matter), to balance the costs on the file.

16.32 The supplemental report also conceded that there was a period of time when the Firm did not record the office side of matters, coinciding with the First Respondent's marriage ending.

The Applicant's Case

16.33 Allegation 1.1 - Rule 1.2(f) of the SAR stated that firms should keep proper accounting records showing the amount held for each client. Rules 29.1, 29.2, 29.4, and 29.9 stated that client and office accounts should be properly written up, appropriately recorded, and the accounts must show the current balance, or the current balance should at least be readily ascertainable.

16.34 The Respondents, as partners in the Firm, were responsible for the proper keeping of accounts. The Firm did not have accurate accounts.

16.35 At the time of investigation, the Firm had separate handwritten ledgers, and an Excel spreadsheet. These often contained inconsistent figures. There was office money kept in client account. It was impossible to ascertain the true financial position, and to whom the client money properly belonged. The Respondents therefore had breached the provisions in the rules set out above.

16.36 By not running a proper set of accounts, the Respondents were also in breach of Principles 6, 8, and 10. There was a risk to client money because the Respondents had not got accurate accounts. It was a fundamental principle of running a business properly to have accounts in proper order; not doing so meant the Firm could not know its true financial position.

16.37 The public expected firms to have proper accounts, given the trusted nature of the profession, and having inaccurate accounts tended to undermine the faith the public should have in the Respondents and the profession as a whole.

16.38 Allegation 1.2 - Rule 1.2(a) of the SAR stated that the firm should keep its money separate from client money, and Rule 14.2 stated that only client money should be in client account. As the First Respondent admitted, the Firm left a "float" of just over £3,000 in client account, seemingly as a buffer in case there was a client account shortfall. Rule 17.9 of the SAR specifically forbade this practice. The Respondents were therefore in breach of all of these Rules by doing so.

16.39 In mixing office money with client funds in that way, the Respondents were also in breach of Principles 6 and 8. Doing so was not running a properly efficient business (indeed, it assumed that the Respondents would be inefficient and make a mistake with client accounts), and the public would have less trust in solicitors (and the

profession) for breaking the accounts rules so obviously. The Respondents did not seem to be aware of these provisions at all.

16.40 Allegation 1.3 - Rule 29.12 of the SAR stated that the Firm must, every five weeks, prepare proper reconciliations, by comparing the client cash account balance with the balances on the separate client accounts, and preparing a list of all balances shown on the client ledger account.

16.41 The Excel spreadsheets and manual records that the Firm used at the time of investigation did not contain an office account side and so could not provide proper three-way reconciliations.

16.42 The reconciliations the Firm provided were not full reconciliations. They did not set out the individual balances the Firm held on the client ledger. The Respondents, therefore, as partners breached rule 29.12 of the SAR.

16.43 By not having proper reconciliations, the Respondents were also in breach of Principles 6, 8, and 10. There was a risk to client money because the Respondents could not readily tell what the state of their accounts was. It was a fundamental principle of running a business properly to be able to work out the position of the business.

16.44 The public expected firms to have proper accounts, given the trusted nature of the profession, and having inaccurate accounts tends to undermine the faith the public should have in the Respondents and the profession as a whole.

The First Respondent's Case

16.45 The First Respondent admitted allegations 1.1, 1.2 and 1.3.

The Second Respondent's Case

16.46 The Second Respondent admitted allegations 1.1, 1.2 and 1.3.

The Third Respondent's Case

16.47 The Third Respondent admitted allegations 1.1, 1.2 and 1.3.

The Tribunal's Findings

16.48 The Tribunal found allegations 1.1, 1.2 and 1.3 proved beyond reasonable doubt on the facts and the evidence.

16.49 The Tribunal found the Respondents' admissions were properly made.

17. **Allegation 1.4 - They did not run their Firm with proper governance principles. There were a number of aspects in regard to which the Respondents did not run their Firm properly, in that they did not have proper employment arrangements with their staff, did not have a partnership agreement, and did not consider VAT registration. In failing to achieve each of the above matters, the Respondents**

breached: Principles 2, 6 and 8 of the Principles; Failed to achieve outcome 7.1 of the Code

Agreed Facts

17.1 On 18 March 2018 the First Respondent sent a schedule of payments made to staff [349ff]. The schedule suggested that the total salary paid was £25,949.20. The Firm made these payments to six members of staff, of which the First Respondent took £10,290, and six further members of staff (including the Second and Third Respondent) did not receive any payments at all.

17.2 On 4 June 2018 the First Respondent confirmed that:

- the other Respondents had not undertaken any fee earning;
- other members of staff are paid on a commission basis;
- others were paid for any bills raised.

17.3 Regarding two members of staff, the First Respondent did not give any explanation. The First Respondent has given further contradictory explanations:

- on 12 June 2018, that the practice accounts had not stated the salaries correctly;
- on 19 July 2019, that the practice accounts did state the salaries correctly.

17.4 The Respondents had not provided any documentary evidence regarding the status of staff, such as employment contracts, at the time of the investigation, although according to Salhan, by January 2019, the Firm had changed the way in which it was employing its staff.

17.5 There was also no written partnership agreement – the First Respondent said that the partnership was a verbal agreement, the Second Respondent confirmed he had not signed any partnership deed and the Third Respondent did not know of a partnership agreement.

17.6 Two former members of staff have stated that they did not receive formal salaries. Instead:

- Mr D: the First Respondent "put [a minimum wage salary] through the books", but instead of a formal salary the First Respondent paid Mr D at least £3,000 in cash;
- Ms Murtaza: "it was agreed that I would be paid the national minimum wage as per the training contract rules and regulations, however [the First Respondent] failed to pay any wages even upon requests for payment they were never made".

17.7 The First Respondent admitted that Ms Murtaza and Mr D were paid for bills they raised at the Firm. He also stated that Mr R, a paralegal who had been the main fee-earner, but whom the Firm had not paid for at least eight months, had not raised

any bills, as "he was saying that whenever he required the money he would raise the bills… that was the only way out, you know, to save money".

VAT status

17.8 The VAT threshold for the financial year ending on 31 March 2017 was £83,000. Businesses with a turnover above this amount need to register with HMRC for VAT purposes.

17.9 The Firm's turnover for the financial year ending on 31 March 2017 was £97,031, having come close to the VAT threshold the year before. The Firm should therefore have registered with HMRC.

17.10 On 12 June 2018, the First Respondent said that he did not know that he needed to consider whether the firm had to register with HMRC. He only knew about that when Ms Bridges told him. He said he was relying on his accountant to tell him about that.

17.11 The First Respondent told the SRA that he notified HMRC and that he would send a copy of the notification. He had not yet done so.

The Applicant's Case

17.12 Outcome 7.1 states that the firm should have a clear and effective governance structure, and reporting lines. The Firm did not have this in place: there were no partnership meetings; there were no formal contracts of employment; and it was not clear to a third party whom the Firm employed or on what terms. The Respondents, as the Firm's partners, therefore failed to achieve these outcomes.

17.13 By not running the Firm in a proper way, the Respondents were also in breach of Principles 6 and 8. The Respondents had to run their business effectively and in accordance with proper governance, financial, and risk management principles. Not having a partnership agreement or proper contracts with staff was not a proper way to govern a business and was not a proper way to manage risk. A properly run business had contracts in place for its staff, with enforceable terms, if nothing else then for the protection of the staff members.

17.14 The public expected firms to have proper contractual arrangements, and not having these basic provisions in place tended to undermine the faith the public should have in the Respondents and the profession as a whole.

The First Respondent's Case

17.15 The First Respondent admitted allegation 1.4.

The Second Respondent's Case

17.16 The Second Respondent admitted allegation 1.4.

The Third Respondent's Case

17.17 The Third Respondent admitted allegation 1.4.

The Tribunal's Findings

17.18 The Tribunal found allegation 1.4 proved beyond reasonable doubt on the facts and the evidence. The Tribunal found the Respondents' admissions were properly made.

18. **Allegation 1.5 - They charged clients variable sums for filling out a standard form, and a sum to pay for its indemnity insurance. Neither of these were appropriate. In so doing the Respondents breached: Principles 4, 6, and 8 of the Principles; Failed to achieve outcomes 1.1 and 1.13 of the Code.**

Agreed Facts

18.1 On 12 June 2018 the First Respondent said that:

- standard costs on conveyancing depended on the value of the property;
- whether it was a residential or commercial property; and
- the fee "is charged according to the amount of work done on the matters".

18.2 The Firm charged indemnity insurance contributions and land transaction return fees to clients. The amounts of each varied. The First Respondent said that this was to cover the Firm's indemnity insurance and he only applied the charge on conveyancing matters.

18.3 The Firm's insurance was an overhead of the Firm. It was something the Firm should pay as an overhead, rather than something clients should have to pay themselves. As the First Respondent conceded, all clients got the same level of indemnity cover and same protection.

18.4 The land transaction return form was a standard form. It set out the stamp duty land tax that the client has to pay and gave details of the transaction. The only differences in the completed form were the address and value. They therefore all took a similar amount of time to prepare and did not, of themselves, protect the client.

18.5 The First Respondent accepted this. When asked why the Firm was charging different amounts for different properties, the First Respondent stated that "if [the clients] don't have any objections, what's the problem with that?"

18.6 The First Respondent said that clients knew that they were being charged different amounts for this work. However, the First Respondent had not produced any evidence for this.

18.7 On 14 January 2019, Salhan accountants stated that the First Respondent's "understanding is that it is standard practice in the conveyance to pass on charges for indemnity insurance and Land Transaction Returns, and such charges may be variable on the basis of the value of the transactions. This is purely a matter of contract…"

The Applicant's Case

18.8 Outcome 1.1 stated that the Firm should treat clients fairly. Outcome 1.13 stated that the Firm should provide the best possible information about the likely overall cost.

18.9 The Firm charged some clients on conveyancing matters a sum of money for completing a standard form, and charged an amount depending on the value of the property. The value of the property bore no relation to the effort or time needed on a standard form. The Firm was therefore not being fair to its clients.

18.10 The Firm provided no evidence to show that it told its clients it would charge a sliding scale for this sort of fixed time investment depending on the value of the purchase. The client care letters stated the fee as a fixed disbursement.

18.11 The Firm also charged a variable amount to cover its indemnity insurance. Indemnity insurance was a Firm overhead and not something the client should pay for. Essentially the client was paying the Firm for the work, and also paying the Firm's insurance to cover the Firm's errors. This was also unfair to the clients. The Respondents therefore did not achieve the above outcomes.

18.12 The Respondents also breached Principles 4, 6, and 8. It was not a proper way to run a business by charging clients for a standard overhead or to seek to make an unconscionable profit from clients buying more expensive property. Treating clients in that way did not maintain the trust the public had in the Firm (or the profession) and it was not in the best interests of clients to charge them for something the Firm itself should pay.

The First Respondent's Case

18.13 The First Respondent admitted allegation 1.5.

The Second Respondent's Case

18.14 The Second Respondent admitted allegation 1.5.

The Third Respondent's Case

18.15 The Third Respondent admitted allegation 1.5.

The Tribunal's Findings

18.16 The Tribunal found allegation 1.5 proved beyond reasonable doubt on the facts and the evidence. The Tribunal found the Respondents' admissions were properly made.

19. **Allegation 1.6 - The First Respondent went on holiday in February 2018 without leaving anyone qualified to supervise staff. The only solicitor in place was Mr Khawas Khan, who had conditions on his practising certificate stating that he could not be a manager. The Second and Third Respondents were not present to take the place of the First Respondent. The First Respondent was therefore in breach of the following: Principles 6 and 8 of the Principles; failed to achieve outcomes 7.1 and 7.8 of the Code.**

Agreed Facts

19.1 On 26 February 2018, two FI officers attended the Firm's offices without notice. None of the partners were available and the Firm's receptionist could not contact them. The receptionist said that:

- the First Respondent was returning from India;
- the Second Respondent was at his office in Leicester;
- the Third Respondent was at court, but the receptionist did not know which one, or on which case.

19.2 The FI Officers left the Firm temporarily to let the receptionist contact the partners. On their return, Mr Khawas Khan stated that he was supervising the Firm's office. Mr Khan was a solicitor who, according to the SRA's records, was a consultant at Kings Law Solicitors from 22 February 2016 to 19 October 2018, and had been a consultant at the Firm since 22 October 2018 (6 months after the FI Officers saw him there). At the time of inspection, Mr Khan was under the following conditions:

- not to be a manager or owner of an authorised body without the SRA's approval
- tell any employer (actual or prospective) why he was subject to conditions.

19.3 At the time, therefore, Mr Khan was not an employee of the Firm, and the SRA had not given him approval to be a manager of the Firm. Neither the Second nor Third Respondent was in a position to supervise while the First Respondent was away.

19.4 The Respondents therefore left in charge someone who was not suitable to supervise the other staff. The Respondents did not appear to have checked Mr Khan's status and had not provided any evidence to show that Mr Khan was even an employee.

<u>The Applicant's Case</u>

19.5 Outcome 7.1 stated that the Firm should have a clear and effective governance structure, and reporting lines. The Firm did not have this in place while the First Respondent was away as neither of the other Respondents were able to supervise work, and the office was left in the charge of someone under a condition that they could not be a manager.

19.6 Outcome 7.8 stated that the Firm should have a system for supervising matters. Given the First Respondent left the Firm with no effective person in charge, there could not have been proper supervision in place. The Respondents therefore failed to achieve these outcomes.

19.7 The Respondents were also in breach of Principles 6 and 8. A properly-run firm has proper supervision in place, under someone suitably qualified. The public expected firms to have proper supervision arrangements, and not having these basic provisions in place tends to undermine the faith the public should have in the Respondents and the profession as a whole.

The First Respondent's Case

19.8 The First Respondent admitted allegation 1.6.

The Second Respondent's Case

19.9 The Second Respondent admitted allegation 1.6.

The Third Respondent's Case

19.10 The Third Respondent admitted allegation 1.6.

The Tribunal's Findings

19.11 The Tribunal found allegation 1.6 proved beyond reasonable doubt on the facts and the evidence. The Tribunal found the Respondents' admissions were properly made.

20. **Allegation 1.7 - The First Respondent, as the COFA, did not ensure compliance with the SAR and did not report breaches to the SRA. The First Respondent therefore breached: Principles 6 and 8 of the Principles; Rule 8.5(e) of the Authorisation Rules.**

Agreed Facts

20.1 As detailed out above, the First Respondent admitted that the accounts were not compliant. Essentially, he put the blame on the Firm's accountant, although the Firm continued to use the accountant.

20.2 The First Respondent did not appear to be familiar with accounts or the SAR, in particular not knowing what a list of client ledger balances was as well as keeping office money in client account.

20.3 On 12 June 2018, the First Respondent said that he was still in the process of dealing with office money in client account, even though he had known about the issue since February, and did not know how much was in the client account. The First Respondent said that he thought he could keep office money in client account by not raising bills "just as a reserve", demonstrating that he did not know about Rule 17.9 of the SAR. The First Respondent apologised and said "I confirm that it will never happen again".

The Applicant's Case

20.4 The First Respondent admitted during the investigation that the accounts were not in a fit state. Rule 8.5(e) of the Authorisation Rules made it clear that, as the Firm's COFA, the First Respondent was responsible for taking all reasonable steps to make sure the Firm was compliant, and for recording problems for the SRA's inspection. The First Respondent did not do so, as was evident from the inspection. He therefore breached the Authorisation Rules.

20.5 The First Respondent was also in breach of Principles 6 and 10, in that not noticing accounts rule failings undermined the trust the public had in the profession, and in the Firm, as it was unclear whether the Firm was financially stable, or risking client money. It also carried a risk to client money as it was not clear whether client money was properly intact.

The First Respondent's Case

20.6 The First Respondent admitted allegation 1.7

The Tribunal's Findings

20.7 The Tribunal found allegation 1.7 proved beyond reasonable doubt on the facts and the evidence. The Tribunal found the First Respondent's admission to be properly made.

Previous Disciplinary Matters

21. There were no previous matters before the Tribunal for any of the Respondents.

Mitigation

The First Respondent

22. In his oral evidence in mitigation, the First Respondent explained that the Firm had now merged. There were 2 partners and 9 members of staff. All of the staff had contracts of employment, and there was also a partnership agreement in place. The First Respondent was the COLP and COFA. The Firm had employed new accountants. It was noted by the Applicant in an email of 4 December 2019, that there had been improvements in the keeping of the accounts. The Firm now employed an electronic accounts system and following proper training, transactions were properly recorded.

23. The First Respondent wished to take full responsibility for his conduct. On 11 December 2018, the Applicant informed the First Respondent of its intention to intervene into the Firm. Following representations, the Applicant stood that decision over. Following a further investigation into the Firm in July 2019, the Applicant confirmed that the accounts were up to date. In December 2019, the Applicant confirmed that it was taking no further action as regards the intervention. The First Respondent considered that the Firm now had proper procedures in place to continue to undertake legal work ensuring that the best interests of the clients were met.

24. The First Respondent apologised for his appearance before the Tribunal. At the time of his misconduct he was facing trying personal circumstances that contributed to his failings.

25. Mr Lazarus submitted that a significant part of the First Respondent's practice was immigration work, acting for some of the most vulnerable members of society. Such work did not typically generate high levels of income. There had been no adverse findings against the First Respondent of the Firm by the Legal Ombudsman, and prior to 2016, there had been no complaints to the SRA.

26. As regards culpability, there had been no findings of dishonesty or lack of integrity. It was not, nor could it be alleged, that there was any malign intent for the misconduct; there was little to suggest that there was any intention behind the First Respondent's acts and omissions. All of the issues were in respect of a lack of competence which the First Respondent had taken steps to address.

27. His misconduct was not planned, and there was no loss to any clients. The First Respondent had not acted in breach of his position of trust. Further, there was no suggestion, nor could there be, that the First Respondent deliberately misled the SRA.

28. It was accepted, that as managing partner and, more latterly, as COLP and COFA, the First Respondent had direct control of and responsibility for the matters in question. The First Respondent had never sought to demur from the position that his culpability was greater than that of the other two Respondents. It was also accepted that the First Respondent was a relatively experienced solicitor.

29. Taking all of that into consideration, it was submitted that the First Respondent's level of culpability was low.

30. Mr Lazarus submitted that it was clear that there was little if any harm caused by the First Respondent's actions. As regards the SAR breaches, the forensic accountancy report commissioned by the First Respondent evidences that all client balances could ultimately be reconciled and that there was no evidence of client monies being at risk. On the contrary, there was a surplus in client account (although it was accepted that the surplus was in contravention of the SAR). The First Respondent accepted that it should not take the work of a forensic accountant to sort out the reconciliation of the accounts.

31. Similarly, all the cash receipts had been reconciled. The First Respondent accepted that the commentary to those entries that were not clearly documented on the client ledgers set out matters that were not acceptable. However, the sums of monies involved were small and, there was no evidence of any actual harm to clients or otherwise.

32. Accordingly, whilst the breaches of the SAR were accepted, there was no evidence of any harm caused by those breaches (save, of course, for the time and expense incurred by the SRA investigating this matter).

33. As regards allegation 1.4, it was submitted that there was no evidence that the First Respondent's admitted failings had caused harm to staff or to clients. Ms Murtaza, it was submitted, was not a credible witness and had her own agenda in respect of her dealings with the First Respondent and the Firm.

34. It was agreed that VAT threshold for the year ending 31 March 2017 was £83,000 and the Firm's turnover for that year was £97,031.27. Mr Lazarus submitted that given the nature of the First Respondent's work and the rules as regards VAT, it was a reasonable inference, given the narrow margin between the VAT threshold and the total turnover, that the turnover subject to VAT remained below the threshold. In the circumstances, the evidence was such that the Tribunal can conclude that HMRC has not in fact suffered any quantifiable loss.

35. As regards allegation 1.5, the sums involved were very small; had it not been for the other matters, it was unlikely that the Applicant would have pursued this matter.

36. The First Respondent accepted the importance of proper supervision of his staff. Nonetheless, this was only an issue on the day which the FI Officer visited the Firm whilst the First Respondent was in transit between India and the UK. The First Respondent remained contactable whilst he was away. Further, there was no evidence of any harm arising as a result of a lack of supervision.

37. Accordingly, it was submitted, the level of harm caused by the First Respondent's misconduct was minimal.

38. As to aggravating factors, the misconduct had taken place over a period of time and was not a single episode. There were no other aggravating factors.

39. In mitigation, the SRA's application was made on 15 November 2019. All allegations (save for the now withdrawn matter) were admitted promptly on 23 December 2019.

40. The First Respondent accepted by 12 June 2018 (notwithstanding his criticism of his previous accountants) that he should not have solely relied on his accountant. He had also accepted that the real responsibility for the misconduct was his and that the other Respondents involvement was rather peripheral.

41. Further the email from the SRA dated 4 January 2019 disclosed that the SRA was sufficiently satisfied with the improvements made by the Firm to take no further action against it. In any event, the First Respondent had put a number of changes in place to ensure that such breaches were not repeated:

- He had merged with another firm and works with another partner;
- He now used LEAP Legal Software Case Management System for dealing with the Firm's accounts and took personal responsibility to ensure that all data was entered promptly and accurately;
- He completed appropriate training to improve his understanding of his financial and administrative responsibilities;

- He had updated agreements with staff working on a consultancy basis;
- He had proper terms and conditions of employment in place for all employees;
- He had sufficient suitably qualified staff to ensure that the practice was properly supervised at all times.

42. Mr Lazarus submitted that the problems in the Firm arose at a time of great stress in the First Respondent's personal life. It was accepted that a reprimand would not be sufficient regarding the overall seriousness of the admitted misconduct, however, anything more than a fine, would be wholly disproportionate to the matters admitted.

43. As regards the level of the fine, it was submitted that this matter fell, at most within level 2 if the Tribunal's Indicative Fine Bands. Mr Lazarus explained the First Respondent's current financial position as to his ability to pay any fine imposed.

The Second Respondent

44. The Second Respondent explained that his role in the Firm had always been limited and that he had very little day to day involvement with the Firm. He had no responsibility for staffing issues or supervision. As regards the admitted breaches, the Second Respondent submitted that too much reliance was placed on the Firm's accountants. There was no shortfall on the client account. The proceedings had caused considerable stress and anxiety. To rectify the position, the Firm now employed a different firm of accountants, and the issues with the accounts were rectified.

45. The Second Respondent regretted and apologised for his appearance before the Tribunal. He had admitted the proceeded with allegations at the earliest opportunity. He had severed all connection with the Firm. The Second Respondent had found the investigation and proceedings stressful.

The Third Respondent

46. The Third Respondent explained that he was a self-employed Solicitor Advocate practising in criminal law. On joining the Firm as a partner, it had been intended to build the Firm's criminal practice with a view to applying for a criminal contract. The Third Respondent had very little involvement in the day to day running of the Firm and had no responsibility for staff or supervision. The Third Respondent also considered that the Firm had been too reliant on its previous accountants. The allegations had caused the Third Respondent considerable stress and anxiety. The Third Respondent apologised for his appearance before the Tribunal, which was a matter of deep regret to him. As a result of these matters, the Third Respondent was no longer able to pursue a career in the Judiciary, which was a course he had been actively pursuing. As soon as these matters came to his attention he had severed all connection with the Firm.

47. Mr Lally submitted that both the Second and Third Respondents did not attempt to excuse or justify their misconduct; they understood and accepted the importance of their roles as a partner in a firm. They had both embarked on partnership with the

First Respondent with a view to growing and expanding the Firm. The First Respondent had assured them that everything was fine, and they trusted and believed that the Firm was in safe hands. They were both shocked to discover the breaches as detailed in the Applicant's forensic investigation report, and resigned from the Firm shortly thereafter. The Second and Third Respondents had accepted their liability and admitted all matters (save for the now withdrawn matter). Their acceptance of their responsibilities from the outset was demonstrative of their genuine remorse.

48. In addition, the Second and Third Respondents:

- They had no day to day running or involvement in the Firm;
- The Second Respondent had his main firm in Leicester and the Third Respondent had his own criminal consultancy practice in Birmingham;
- The Second Respondent was at the Firm on average twice per month and the Third Respondent was at the firm even less;
- The reason for the Second Respondent becoming a partner at the Firm was to eventually move his Indian Law practice from Leicester to Birmingham and the Third Respondent was hoping to apply for a Criminal Legal Aid Contract for the Firm before moving permanently - the partnership was held in abatement until an appropriate time where a formal equity/share could be agreed;
- They had no income from the Firm;
- They had accepted the facts and failures at the outset;
- They had relied upon the First Respondent and on the Firm's accountant (whom he believed were a competent firm of accountants dealing in solicitors accounts) to be in control and in charge of the Firms accounts and all matters to deal with the employees.

49. Mr Lally submitted that in all the circumstances, the level of culpability was low. The Second and Third Respondents had no real control of or responsibility (other than the being a partner) for the circumstances giving rise to the failures. They had not deliberately or otherwise misled the regulator.

50. Save for the period of time over which the failures were ongoing, there were no aggravating factors. In mitigation, the Second and Third Respondents were misled by the First Respondent. The First Respondent accepted that the Second and Third Respondents had no dealings with the running of the business, had no access to the accounts, and had no dealings with the employees of the business.

51. In addition, they had made open and frank admissions at an early stage and fully cooperated with the investigating body. There was genuine remorse. Further both had suffered mental and financial hardship. Appearing before the Tribunal had had an invaluable and salutary effect. The financial status of both the Second and Third Respondents was detailed in the statements of means filed and served.

52. Mr Lally submitted that in all the circumstances, the appropriate sanction was one of No Order.

Sanction

53. The Tribunal had regard to the Guidance Note on Sanctions (7th Edition). 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.

The First Respondent

54. The Tribunal found that the First Respondent's misconduct arose as a result of his failure to pay proper regard to his obligations as a partner to manage the Firm and its accounts in accordance with the SAR and Principles. The First Respondent had focussed on client work but had not focussed on the management of the Firm. The Tribunal accepted that there was no malign motivation on the part of the First Respondent.

55. His conduct was not planned; it was by way of omission. To the extent that the First Respondent breached the SAR, he breached the trust the public place in him to comply with his regulatory obligations. He was directly responsible for his misconduct.

56. The First Respondent caused harm to the reputation of the profession. He had admitted in all the allegations that he had failed to maintain the trust placed in him by members of the public. The harm caused was reasonably foreseeable; when accounts were not dealt with properly, it was foreseeable that those failures would lead to breaches of the SAR.

57. The First Respondent's misconduct was aggravated by its repetition that continued over a period of time. Further the First Respondent ought to have known that he was in material breach of his obligation to protect the reputation of the profession. In mitigation, the failures to comply with the SAR did not lead to the loss of any client monies. The First Respondent had displayed genuine insight, had made open and frank admissions at an early stage, and had fully cooperated with the SRA. In addition, he had an unblemished regulatory record.

58. The Tribunal agreed that the First Respondent's misconduct was such that sanctions such as No Order or a Reprimand did not adequately reflect the seriousness of his misconduct. The Tribunal did not consider that the First Respondent's misconduct was such that there should be any interference with his ability to practise. The Tribunal found that a financial penalty was appropriate and proportionate in all the circumstances. The Tribunal did not find, as submitted, that the misconduct fell within its Indicative Fine Band 2. The Tribunal assessed the First Respondent's misconduct as more serious such that it fell at the lower end of Indicative Fine Band Level 3. The Tribunal considered that a fine in the sum of £8,000 adequately and proportionately reflected the seriousness of his misconduct.

The Second and Third Respondents

59. The Tribunal did not find that there was any distinction between the misconduct of the Second and Third Respondents. The Tribunal found that the Second and Third Respondents' misconduct arose as a result of their failure to pay proper regard to their obligations as partners to ensure the Firm and its accounts were being properly managed in accordance with the SAR and Principles. They had abrogated all responsibility for the running and management of the Firm to the First Respondent. Whilst they were not responsible for the failings of the Firm in the same way as the First Respondent, their lack of engagement in the Firm was culpable. They were both experienced solicitors who ought to have known and acted upon their obligations as partners. In failing to do so, they had caused harm (which they ought to have foreseen) to the reputation of the profession.

60. Their misconduct was aggravated by the period of time over which it occurred, and that it was continuing misconduct. In mitigation the Second and Third Respondents had displayed genuine insight, had made open and frank admissions at an early stage, and had fully cooperated with the SRA. In addition, they both had unblemished regulatory records.

61. The Tribunal did not find, as was submitted, that a sanction of No Order appropriately reflected the seriousness of their misconduct. The Second and Third Respondents had admitted numerous breaches of the SAR and of Principles. Their culpability arose from their failure to undertake due diligence as partners of the Firm. The level of seriousness of their misconduct, the Tribunal found, was not so low that to impose a sanction would be unfair or disproportionate. The Tribunal found that the seriousness of the Second and Third Respondents misconduct was such that a Reprimand was not proportionate; the protection of the public and the reputation of the profession required a greater sanction.

62. The Tribunal determined that a financial penalty appropriately and adequately reflected the seriousness of the Second and Third Respondents' misconduct. The Tribunal considered that their misconduct fell within Indicative Fine Band 1, as it assessed their misconduct as sufficiently serious to justify a fine. The Tribunal determined that a fine in the sum of £1,500 appropriately and proportionately reflected their misconduct.

Costs

63. Ms Bruce applied for costs in the sum of £53,841.60, which included investigation costs of £33,723.00. Ms Bruce had been advised that the Respondents were seeking an order for their costs. That application was opposed. The award of costs against the regulator were constrained by the principles to be derived from Baxendale-Walker v The Law Society [2007] EWCA Civ 233 in which Laws LJ stated:

> "In respect of costs, the exercise of its regulatory function placed the Law Society in a wholly different position from that of a party to ordinary civil litigation. Unless a complaint was improperly brought or for example, had proceeded as a "shambles from start to finish", when the Law Society was discharging its responsibilities as a regulator of the profession, an order for

costs should not ordinarily be made against it on the basis that costs followed the event."

64. Costs should not be awarded against the SRA unless there was good reason. Competition and Markets Authority & Flynn Pharma Holdings Ltd, Pfizer Inc and Pfizer Ltd [2020] EWCA Civ 617 applied. There was no such good reason in this case. The success of the Respondent was not, without more, a good reason to award costs against the SRA. There had been no suggestion of bad faith, nor was it suggested that the withdrawn matter was a shambles from start to finish, nor could it be said that the Applicant's conduct had been in any way unreasonable. Moreover, the Applicant had done all that it could to withdraw the Principle 2 breach and underlying particulars by applying to the Tribunal on 2 previous occasions to withdraw those matters. On each occasion, the application was refused. In applying for their costs, the Respondents were, in effect, asking the Applicant to indemnify the decisions of the Tribunal.

65. Any financial costs incurred were more properly dealt with by way of a reduction to the Applicant's costs. Insofar as the investigation costs were concerned, they were not affected by the withdrawal of Principle 2 and the particulars relied on in relation to the alleged (and withdrawn) breach.

66. Mr Lazarus submitted that it was agreed that costs did not follow the event and that an award of costs against the regulator could only be made where there was good reason to do so. There were two elements to the First Respondent's application for costs; (i) the Applicant was entitled to its costs up to 3 March 2020 and (ii) beyond 3 March 2020 the Applicant was not entitled to its costs and the First Respondent should be awarded his costs.

67. Mr Lazarus detailed the chronology:

- 15 November 2019 –Application.
- 23 December 2019 - First Respondent made admissions to all save the withdrawn matter.
- 21 January 2020 - Case Management Hearing.
- 3 February 2020 – Agreed Facts settled.
- 3 March 2020 – Application to withdraw Principle 2 and underlying particulars on the basis that the Applicant had limited evidence of Ms K's alleged employment. No reference was made at that hearing to her immigration status.

68. As regards the evidence of Ms Murtaza and the Applicant's investigation the Applicant contacted her three times prior to 3 March 2020. No response to those communications was sought by the Applicant. Mr Lazarus submitted that it was clear that the Applicant had made no attempts by 3 March 2020 to gather any further evidence.

- 4 March 2020 – SRA spoke to Ms Murtaza following which they sent her the documents in the case.

- 18 March 2020 – SRA email Ms Murtaza requesting an update to her statement and for some points to be clarified. This, it was submitted, was seemingly the first time Ms Murtaza was asked for any information.

- 3 April 2020 – SRA send a chasing email having received no response.

- 26 May 2020 – paper application to withdraw Principle 2 and the underlying particulars.

- 5 June 2020 – Ms Murtaza responded explaining that had been delayed in responding due to ill health.

- 8 June 2020 – In response to an email from the SRA, Ms Murtaza confirmed that she was willing to give evidence.

69. Mr Lazarus submitted that the chronology set out woefully inadequate attempts by the Applicant to obtain evidence from Ms Murtaza. Further, it seemed that the Tribunal had been misled about attempts to gain further evidence.

70. In addition to the failure to obtain evidence from Ms Murtaza, the Applicant had also failed to obtain any evidence as regards Ms K's immigration status setting out her requirement to comply with appropriate legislation.

71. Had the Applicant obtained the necessary evidence it could have properly set out the application to withdraw and made clear that the application was based on there being insufficient evidence. Any suggestion that the inability to withdraw was due to the Tribunal was improper.

72. As regards quantum, there was no issue with the legal costs claimed, however the investigation costs were excessive and disproportionate to the complexity and seriousness of the matter. The time claimed represented 57 working days. Whilst it was not suggested that the figures were inaccurate, it was submitted that they were wholly disproportionate. The claim for writing the report was 134 hours, which, it was submitted, given the content of the report was an extraordinary amount of time. There was also a claim for approximately 9-10 days visiting the Firm, and 127 hours reviewing documents. Mr Lazarus submitted that a proportionate sum for the investigation costs was £10,000. He was not opposing the suggestion to be made by Mr Lally as to apportionment of the costs, that they be apportioned proportionate to the fines imposed.

73. It was further submitted that the Tribunal should take account of the First Respondent's means when assessing any costs order against him.

74. Mr Lally endorsed and adopted the submissions made by Mr Lazarus. As regards any apportionment of costs between the Respondents, that should reflect the apportionment of the fines imposed.

75. The Tribunal noted that the Respondents had, at a very early stage, admitted the allegations save for the withdrawn matter. The Tribunal found that the legal costs claimed accurately reflected the work undertaken given those admissions. The Tribunal did not find that there was any good reason for costs to be awarded against the Applicant. The Applicant had applied to the Tribunal on two separate occasions to withdraw the allegation of a breach of Principle 2 and the underlying facts. The divisions considering those applications had not heard the evidence and were considering whether there was a prima facie case, and not whether the Applicant was able to make the case out beyond reasonable doubt. The Tribunal had the benefit of hearing all of the Applicant's evidence in relation to the breach of Principle 2 and the underlying facts when the further application to withdraw was made. This put the Tribunal in a far better position as to its knowledge of the facts than the previous divisions. The Tribunal found that the Applicant had behaved perfectly properly, and that is conduct was not unreasonable, nor had the Applicant acted in bad faith. Therefore the only reason for making a costs order against the Applicant was the success of the Respondents in resisting the allegation of a breach of Principle 2. The cases made it clear that without more, this was not a good reason for an award of costs to be made against the Applicant. Accordingly, the Respondents' application for costs was refused.

76. The Tribunal considered that the investigation costs were excessive and ought to be reduced. Further, there should be an additional reduction for the shortened hearing time. The Tribunal summarily assessed costs, and determined that total costs in the sum of £35,000 was reasonable and proportionate taking into account the matters to be investigated and the proceedings in this matter. The Tribunal agreed that costs should be apportioned in the same percentage as the fines imposed. This adequately and properly reflected each Respondents culpability. The Tribunal ordered that the First Respondent pay costs in the sum of £23,250.00 and that the Second and Third Respondents each pay costs in the sum of £4,725.00.

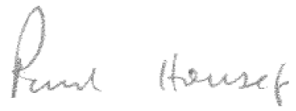
Statement of Full Order

77. The Tribunal Ordered that the Respondent, DAVINDERJIT SINGH, solicitor, do pay a fine of £8,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,550.00.

78. The Tribunal Ordered that the Respondent, KUNAL AHIR, solicitor, do pay a fine of £1,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,725.00.

79. The Tribunal Ordered that the Respondent, MUKHTIAR UBHI, solicitor, do pay a fine of £1,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,725.00.

Dated this 12th day of January 2021
On behalf of the Tribunal



P S L Housego
Chair