

The Tribunal's decision dated 8 September 2022 is subject to appeal to the High Court (Administrative Court) by the Respondent. The Order remains in force pending the High Court's decision on the appeal.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12323-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

SOOPHIA KHAN

Respondent

Before:

Mr A Ghosh (in the chair)

Mr G Sydenham

Mr P Hurley

Date of Hearing: 1 – 5 August 2022

Appearances

Rupert Allen, counsel of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH, instructed by Capsticks LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

The Respondent did not attend and was not represented until after Findings were announced. Thereafter the Respondent attended and made submissions as to mitigation and costs.

JUDGMENT

Allegations

1. The allegations made against the Respondent by the Solicitors Regulation Authority Limited (“SRA”) were that for the period prior to the SRA’s intervention into her practice and the practice of the Firm on 19 August 2021 (“the Intervention”) while in practice as a solicitor at Sophie Khan & Co Ltd (“the Firm”) (in relation to Allegations 1.1 to 1.8 below), and subsequently following the Intervention (in relation to Allegations 1.9 to 1.11 below):

Matter 1 – DC and JN

- 1.1 The Respondent settled damages claims advanced on behalf of two clients, DC and JN, for sums substantially lower than the sums she had advised the clients they would receive and in circumstances where she had neither sought nor obtained authority from the clients to settle the claims at that level, in breach of:
 - 1.1.1. Principles 2, 4 and/or 6 SRA Principles 2011 (“the Principles”); and/or
 - 1.1.2. O(1.2) and/or O(1.12) of the SRA Code of Conduct 2011 (“the Code”).
- 1.2. The Respondent settled costs claims advanced on behalf of two clients, DC and JN, without informing them of the offer of settlement or of its acceptance, and without seeking or obtaining authority from the clients to settle the claims, in breach of:
 - 1.2.1. Principles 2, 4 and/or 6 of the Principles; and/or
 - 1.2.2. O(1.2) and/or O(1.12) of the Code.
- 1.3. The Respondent received a cheque in respect of the settlement of DC’s and JN’s costs claims and paid the cheque directly into the Firm’s office account without first giving or sending a bill of costs or other written notification of the costs incurred to the clients, in breach of:
 - 1.3.1. Rules 14.1, 17.1 and/or 17.2 SRA Accounts Rules 2011 (“the SAR”); and/or
 - 1.3.2. Principles 2, 4 and/or 6 of the Principles.
- 1.4 On a date unknown but after 26 November 2019, the Respondent fabricated or falsified the Pro-Forma Fee Note and the purported letters to DC and JN dated 18 January 2018 and 9 April 2018 purporting to show contemporaneous notification to DC and JN of the costs claimed by the Firm, in breach of Principles 2, 4 and/or 5 SRA Principles 2019 (“the 2019 Principles”).
- 1.5. The Respondent received a cheque in respect of the settlement of DC’s and JN’s costs claims to which the clients’ former solicitors had or asserted a claim and paid the cheque directly into the Firm’s office account without accounting for the former solicitors’ costs, in breach of:
 - 1.5.1 Rules 14.1, 17.1 and/or 18.2 of the SAR; and/or

1.5.2 Principles 2, 4 and/or 6 SRA of the Principles.

- 1.6. The Respondent breached the undertakings she had given to the former solicitors of DC and JN to protect the former solicitors' position on costs in breach of O(11.2) the Code; and/or the Respondent failed to ensure that the Firm complied with the undertakings as it was required to do under O(11.2) the Code, for which the Respondent was responsible pursuant to rule 8.1(a) SRA Authorisation Rules 2011. In so acting, the Respondent also breached Principles 2, 4 and 6 of the Principles.

Matter 2 - JH

- 1.7. The Respondent failed to cooperate with the SRA and/or the Legal Ombudsman ("LeO") in relation to investigations by the SRA and LeO into her conduct and practice at the Firm, in breach of O(10.6) the Code; and/or the Respondent failed to ensure that the Firm complied with its obligation to cooperate with the SRA and/or the LeO as it was required to do under O(10.6) the Code, in breach of rule 8.1(a) SRA Authorisation Rules 2011. In so acting, the Respondent also breached Principle 7 of the Principles.
- 1.8. The Respondent failed to ensure that the Firm complied with the LeO's final decision dated 26 November 2019 in relation to JH's complaint, in breach of Principle 2 of the 2019 Principles and/or the Firm's obligation to cooperate with the Legal Ombudsman under rule 3.2 SRA Code of Conduct for Firms 2019 ("the Code for Firms"), in breach of her obligations as manager under rule 8.1 of the Code for Firms.

Failure to Comply with Court Orders

- 1.9. The Respondent failed to ensure that the Firm complied with the court orders set out in paragraph 201 below, where there was no reasonable excuse for the Firm's failure to comply, and thereby breached:
- 1.9.1. Principles 1, 2, 6 and/or 7 of the Principles (until 26 November 2019); and
- 1.9.2. Principles 1, 2 and/or 5 of the 2019 Principles (after 26 November 2019).

Attempts to Frustrate the Intervention and Contempt of Court

- 1.10. The Respondent failed to deliver up the practice documents of her own practice and the Firm's practice that were within her possession and/or control, as required by the SRA's Intervention Notice dated 19 August 2021 ('the Intervention Notice'). In doing so, the Respondent breached her statutory duties and caused the Firm to breach its statutory duties under paragraph 9 of Part II Schedule 1 Solicitors Act 1974; and the Respondent breached rules 7.3 and/or 7.4 Code of Conduct for Solicitors 2019 ("the Code for Solicitors"); and, in breach of her obligations under rule 8.1 SRA of the 2019 Code for Firms, caused the Firm to breach rules 3.2 and/or 3.3 SRA the Code for Firms. In so acting, the Respondent also breached Principles 2, 5 and 7 2019 Principles.
- 1.11. The Respondent failed to deliver up the items listed in Schedule B of the order of Adam Johnson J. dated 7 September 2021 ('7 September Order') in accordance with the terms of the 7 September Order or at all. In doing so, the Respondent committed a contempt of court and breached rules 2.5, 7.3 and/or 7.4 of the Code for Solicitors; and, in breach

of her obligations under rule 8.1 of the Code for Firms, the Respondent caused the Firm to breach rules 3.2, 3.3 and/or 7.1(a) of the Code for Firms. In so acting, the Respondent also breached Principles 1, 2, 5 and 7 of SRA Principles 2019.

- 1.12. The Respondent failed to deliver up the items listed in Schedule B of the order of Miles J. dated 21 September 2021 ('21 September Order') in accordance with the terms of the 21 September Order or at all. In doing so, the Respondent committed a contempt of court and breached rules 2.5, 7.3 and/or 7.4 of the Code for Solicitors; and, in breach of rule 8 of the Code for Firms, the Respondent caused the Firm to breach rules 3.2, 3.3 and/or 7.1(a) of the Code for Firms. In so acting, the Respondent also breached Principles 1, 2, 5 and 7 of the 2019 Principles.
2. In respect of the above allegations:
 - 2.1. Allegations 1.1 to 1.6 were advanced on the basis that the Respondent's conduct was dishonest. In the alternative, Allegations 1.1 to 1.3, 1.5 and 1.6 were advanced on the basis that the Respondent's conduct was reckless. Dishonesty or recklessness (as the case may be) were alleged as aggravating features of the Respondent's misconduct but neither was an essential element in proving the allegations.
 - 2.2. Allegations 1.7 to 1.12 were advanced on the basis that the Respondent's conduct was, in each case, a deliberate and/or knowing breach of her regulatory obligations. Such deliberate and/or conscious behaviour was alleged as an aggravating feature of the Respondent's misconduct but was not an essential element in proving the allegations.

Executive Summary

3. Ms Khan represented DC and JN. She failed to inform them that she had accepted settlement of their damages claims for substantially lower than the amount that she had advised that their claims were worth. She also failed to inform them of the offer to settle the costs claims on their behalf, and failed to obtain their authority before settling those claims. JN and DC were previously represented by MW. Ms Khan had given MW an undertaking that she would revert to them with regard to any settlement offer of costs, MW being entitled to a proportion of any costs settlement. Ms Khan breached that undertaking. She settled the costs and retained the entirety of the costs paid. In order to justify retaining the costs, Ms Khan fabricated documents to evidence that she had provided DC and JN with costs information when that was not the case. The Tribunal found that her conduct in this regard was dishonest.
4. Ms Khan failed to cooperate with investigations by the SRA and LeO in relation to complaints made by her client JH.
5. Ms Khan failed to comply with court orders. She had been found to be in contempt of court and had been committed to prison.
6. The Tribunal found that Ms Khan's misconduct was so serious that the only appropriate and proportionate sanction was to strike Ms Khan off the Roll of Solicitors.

7. The Tribunal's findings can be accessed here:

- [Allegation 1.1](#)
- [Allegation 1.2](#)
- [Allegation 1.3](#)
- [Allegation 1.4](#)
- [Allegation 1.5](#)
- [Allegation 1.6](#)
- [Allegation 1.7](#)
- [Allegation 1.8](#)
- [Allegation 1.9](#)
- [Allegation 1.10](#)
- [Allegations 1.11 and 1.12](#)

8. The Tribunal's findings and reasoning on sanction can be accessed here:

- [Sanction](#)

Documents

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

- Rule 12 Statement and Exhibit
- Respondent's Answer and Exhibits dated
- Applicant's Schedule of Costs dated

Preliminary Matters

10. Application to proceed in the Respondent's absence

10.1 The Respondent did not attend the hearing was not represented.

10.2 On 31 July 2022, Ms Khan sent an email timed at 22.39 in which she applied to vacate the proceedings. The application stated (amongst other things):

“... the Respondent makes an application to vacate the Substantive Hearing, which was listed without consulting or taking into account the Respondent's availability to attend a hearing.

The Respondent is unavailable to attend any hearing before 10 August 2022 due to her religious observance in fasting during the first 11 days of Muharram, the second holiest month for Muslims. The 1 Muharram 1444 AH commenced on the evening of 29 July 2022. The fasting day is from Fajr to Maghrib times, 3:30am to 9:00pm and the Respondent will not be at full time work during the time of fasting....”

- 10.3 Mr Allen applied for the case to proceed in the Respondent's absence, pursuant to Rule 36 of the Solicitors (Disciplinary proceedings) Rules 2019 ("SDPR"), which provides that:

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

- 10.4 It was submitted that Ms Khan had been served with the proceedings in accordance with the SDPR. The Applicant had emailed Ms Khan on 5 May 2022 informing her that the proceedings had been issued. On the same day, Ms Khan provided the Applicant with an address for service. The papers were delivered to the address provided. Mr Allen submitted that it was clear that Ms Khan had notice of the proceedings and the hearing date since that time.
- 10.5 Notwithstanding Ms Khan's assertion on 18 May 2022 that she would not be able to attend the substantive hearing, no application had been made by her to vacate the hearing until the application made on 31 July 2022, the day before the hearing was listed. Accordingly, the Tribunal now had a discretion whether to proceed in the absence of Ms Khan.
- 10.6 Mr Allen referred the Tribunal to the case of R v Jones [2002] UKHL 5, and GMC v Adeogba [2016] EWCA Civ 162.
- 10.7 In Adeogba, Sir Brian Leveson P considered that fairness to a Respondent was "a feature of prime importance", but it was also necessary to consider fairness to the regulator and the public interest. Further:

"It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when the practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed."

- 10.8 Mr Allen submitted that the Tribunal should exercise its discretion to proceed in Ms Khan's absence for the following reasons:
- Ms Khan had been properly served in accordance with the SDPR, and had been aware of the hearing date since that time. Her position from the outset had been that neither she nor her counsel would be available. However, despite having been advised by the Tribunal that it was necessary to make an application to adjourn the hearing dates, Ms Khan had failed to do so.
 - Ms Khan stated in a telephone call on 18 May 2022 that neither she nor her counsel were available for the substantive hearing due to annual leave and other commitments. The application to vacate was now made for different reasons to

those stated in May. Further, having been advised to make an application to adjourn the proceedings by both the Applicant and the Tribunal, Ms Khan had failed to do so.

- There was no explanation as to why instructed counsel had not attended, nor did there appear to be any efforts made by Ms Khan to instruct alternative counsel.
- Ms Khan had not explained why fasting meant that she was unable to attend the proceedings. It could be inferred from her application that she would still be working during the time of her fast as she stated that she would not be at “full time work”. Mr Allen submitted that Ms Khan had chosen her words with care with regard to working during the fast. Further, there was no suggestion that attending the proceedings was contrary to her religion.
- She had made a last-minute application to vacate the proceedings with no explanation as to why the application was so late.

10.9 Mr Allen submitted that the application should be considered in the context of Ms Khan’s conduct throughout the proceedings. Until the week before the substantive hearing, there had been very little communication from her. In particular, Ms Khan had failed to comply with any of the directions made by the Tribunal. She had not attended the CMH, which proceeded in her absence. She had not complied with the Tribunal’s Unless Order of 7 July 2022, which meant that she was debarred from adducing witness evidence, documents or cross-examination of the Applicant’s witnesses. Accordingly, proceeding in Ms Khan’s absence mitigated against any prejudice that Ms Khan might suffer.

10.10 Mr Allen submitted that the application to vacate was a tactic being deployed by Ms Khan to derail the hearing.

10.11 In addition, to adjourn the proceedings at this stage would be unfair and contrary to the public interest as:

- The hearing had been listed since May 2022.
- Significant costs had already been incurred in preparation for the hearing, some of which would be wasted if the matter were adjourned.
- The SRA was likely to incur significant further costs if the matter were to be adjourned and relisted.
- Ms Khan had failed to cooperate with the intervention; that failure was ongoing, as she had not complied with the Order of Miles J of 27 April 2022 to deliver up practice documents.
- Ms Khan was continuing to practise through JFP despite the fact that her practising certificate was automatically suspended as a result of the intervention.

- 10.12 The Tribunal firstly considered whether service had been effected in accordance with Rule 44 and determined that it was clear that Ms Khan had been properly served with the proceedings and notice of the hearing. Accordingly, Rule 36 was engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in Jones and Adeogba, and that the principles identified in Adeogba were affirmed by the Court of Appeal in GMC v Hayat [2018] EXCA Civ 2796. The Tribunal gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's right to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 10.13 The Tribunal noted that Ms Khan had had ample opportunity to make the application to adjourn or vacate the hearing. She had failed to do so until the last moment, despite being advised by the Applicant of the correct process in May 2022. On 10 June 2022, following receipt of an email from JFP regarding vacating the CMH listed for 13 June 2022, the Tribunal advised that a formal application was required, and directed JFP to the appropriate form and to the adjournment policy. No application was forthcoming, and there was no further communication from either Ms Khan or JFP until the night before the substantive hearing.
- 10.14 Further, in the memorandum of the CMH that took place on 13 June 2022, the Tribunal had made it clear that as no formal application had been received, and in the absence of any supporting documentation, there was no sufficient reason to interfere with the Standard Directions. The Tribunal stated that "for the avoidance of doubt, the Tribunal did not preclude Ms Khan from making an application in the future, on the appropriate form with the requisite supporting evidence".
- 10.15 There appeared to be no religious requirement that prevented Ms Khan from attending and participating in the proceedings during Muharram.
- 10.16 The Tribunal had regard to the gravity of the allegations, Ms Khan's history of non-engagement, her failure to file an Answer timeously or to comply with any of the Tribunal's directions notwithstanding an Unless Order and the fact that her application to vacate the proceedings, apart from totally lacking merit had been made at the last minute. It was in the public interest and in the interests of justice that the case should be determined without delay. On balance, the Tribunal found that it was just to proceed with the case, notwithstanding Ms Khan's absence.
- 10.17 In order to facilitate her attendance, the Tribunal considered that it was appropriate to convert the hearing from an in-person hearing to a virtual one. This would avoid Ms Khan having to travel to and from central London in order to participate in the proceedings. The Tribunal also considered that reasonable adjustments, such as shorter sitting days and regular breaks would also help to facilitate her participation. Accordingly, after announcing its decision to proceed in her absence, the Tribunal adjourned the proceedings to the following day.

11. Respondent's renewed application to vacate the proceedings

11.1 In a letter dated 1 August 2022 (received by the Tribunal via email at 17:10), Ms Khan renewed her application to vacate the hearing.

11.2 The Tribunal noted that there were no new reasons advanced for the application. The Tribunal considered that in the circumstances, it remained appropriate to proceed with the hearing in Ms Khan's absence for the reasons stated above.

12. Respondent's application to strike out allegations

The Respondent's Submissions

12.1 In her 31 July 2022 email, Ms Khan applied to strike out allegations 1.1 – 1.6, 1.7, 1.11 and 1.12.

Allegations 1.1 – 1.6

12.2 Ms Khan stated that:

“By Order of Mr Justice Martin Spencer made on 27 July 2022, ... the appeal against the findings and order of HHJ Backhouse made on 7 January 2021 was allowed. The parties had made a request to allow the appeal by consent pursuant to CPR 52APD6.4 ..., after permission to appeal was granted on 11 October 2021...

The preamble to the Order of 27 July 2022 says this: Upon the parties having agreed that the terms of this order shall be in full and final settlement of all claims and cross claims between the parties (whether raised in these proceedings or not) arising out of, or connected with, the case of [DC] and [JN] (including any claims about the costs payable by one party to the other).

The Order brings an end to the costs dispute by McMillan Williams Solicitors, as it then was, against Sophie Khan & Co. Ltd, and also releases Sophie Khan & Co. Ltd from the undertaking given on 2 June 2014. On 28 July 2022, a letter was sent to DWF LLP ... on behalf of Sophie Khan & Co. Ltd in relation to the outstanding costs issue in the claim of [DC] and [JN]. A Calderbank Offer has since been made by Sophie Khan & Co. Ltd to settle the outstanding costs in full and final settlement.

In respect of the accounts given by [DC] and [JN] in 2020/2021. These accounts contain untruths, are inconsistent with contemporaneous documentation and also contradict earlier accounts given on their behalf.

In 2015, a Report was made by McMillan Williams Solicitors, as it then was, on behalf of [DC] and [JN]. The Report was investigated by Iain Miller, at the time of Bevan Brittan LLP Solicitors...

On 18 August 2016, the investigation was closed and no further action was taken against Sophie Khan & Co. Ltd (Items 31 and 32).

There has been no review of the decision to close the investigaton (sic) ... Under its own set policy, the Applicant does not have jurisdiction to investigate a closed matter, let alone bring allegations on a matter that is closed.”

Allegation 1.7

12.3 Ms Khan stated:

“Sophie Khan & Co. Ltd, and the Respondent co-operated with the Legal Ombudsman in relation to the complaint made by [JH]...”

Allegations 1.10 and 1.11

12.4 Ms Khan stated:

“On 12 January 2021, the Respondent was by Order of Committal (Item 81) sanctioned to an immediate custodial sentence for Contempt of Court in breaching paragraph 1 of the Order made by Mr Justice Adam Johnson on 7 September 2021 (“the First Order”) and paragraph 1 of the Order made by Mr Justice Miles on 21 September 2021 (“the Second Order”).

The Respondent has been sanctioned for the Contempt of Court on 12 January 2022, and cannot be sanctioned again for the same breaches of the First and Second Orders.”

12.5 Given her inability to attend the substantive hearing, Ms Khan requested that the strike out application be listed on 10 August 2022.

The Applicant’s Submissions

12.6 Mr Allen submitted that the strike out application was curious. It had been submitted on the eve of the hearing with no proper explanation as to its lateness. The settlement agreement that had led to the Order of Spencer J dated 27 July 2022, had been agreed in June 2022. There was no explanation as to why the Order had taken over a month.

12.7 Mr Allen considered that the strike out application was an attempt by Ms Khan to circumvent the Unless Order; she sought to challenge the allegations by way of a strike out application as she was otherwise unable to challenge the evidence.

Allegations 1.1 – 1.6

12.8 Mr Allen submitted that it was Ms Khan’s case that the Order of Spencer J meant that the Applicant was no longer able to proceed with allegations 1.1 – 1.6. This was not accepted. HHJ Backhouse had made a number of findings of fact. The Applicant did not invite the Tribunal to rely on those findings or to place any weight on those findings. It was for the Tribunal to make its own findings based on the evidence in these proceedings. The Applicant would be relying on the witness statements of the clients and others in order to substantiate the allegations.

- 12.9 The fact that the Firm's appeal had been allowed by consent was not inconsistent with the Tribunal making its own findings of fact. There had been no judicial consideration of the facts found by HHJ Backhouse. There was nothing in the Consent Order inviting the court to make any findings as to the merits of the findings made by HHJ Backhouse, including whether those findings were right in fact and/or law.
- 12.10 The Consent Order, it was submitted, had not resolved the issue of whether the undertaking had been breached, rather, it had established that an undertaking was not a contract and that the County Court did not have jurisdiction to enforce Solicitors' Undertakings nor to award compensatory damages for breach(es) of a Solicitors' Undertaking. That jurisdiction was vested in the High Court, the Crown Court and the Court of Appeal respectively, or any division or judge of those courts, s. 50 Solicitors Act 1974.
- 12.11 Mr Allen submitted that the Firm had conceded in the appeal that both the Firm and MW had a lien over the costs claim. MW ought to have pleaded its claim as an equitable share of the costs received. Mr Allen concluded that it was the Firm's case (and therefore Ms Khan's case) that MW had an interest in the costs monies received by the Firm. The costs monies, it was submitted, had been appropriated by the Firm. Mr Allen considered that a number of the facts found were either incontrovertible or not disputed/challenged by the Firm. It was not, and could not be the case, that a compromise in civil proceedings precluded a conduct investigation arising out of the same facts.
- 12.12 Ms Khan referred to a letter sent to DWF by JFP dated 28 July 2022. JFP demanded £15,592.27 in full and final settlement. The letter was sent 4 years after the event and in circumstances where there had been no correspondence in the intervening period. The letter, it was submitted, was remarkable when even on her own case, there was an agreement in principle to settle for approximately £120,000.00 and the Firm had received that approximate figure. Further, and in any event, that letter had no relevance to the current proceedings before the Tribunal.
- 12.13 It was noted that in the application to strike out, Ms Khan criticised the evidence of the clients. Mr Allen submitted that those criticisms were not particularised. Had Ms Khan wanted to challenge that evidence, she could have done so much earlier. She had been in possession of that evidence since 2021 when she received the Forensic Investigation Report. She was aware that the Applicant was relying on that evidence but had filed no Answer, had served no evidence and had not requested that the clients attend for cross-examination. Mr Allen submitted that in all the circumstances, it was not open to Ms Khan to criticise that evidence.
- 12.14 Ms Khan also sought to suggest that following the closure of the Bevan Brittan report, with no action being taken, the Applicant had no jurisdiction to investigate. Mr Allen submitted that the basis upon which Ms Khan considered that the SRA was precluded from investigating was unclear. It was for the Tribunal to consider whether the facts relied upon by the Applicant substantiated the allegations. In any event, the Bevan Brittan investigation and the investigation undertaken by the Applicant did not cover precisely the same matters. Allegations 1.2 – 1.6 post-dated the Bevan Brittan report and thus could not form part of that investigation. It was only allegation 1.1 that considered the same subject matter.

12.15 Mr Allen submitted that Ms Khan had failed to establish any reason for allegations 1.1 – 1.6 to be struck out.

Allegation 1.7

12.16 It was Ms Khan's case that she had cooperated with LeO. That was a matter for the Tribunal to assess having heard the evidence. Ms Khan had failed to develop or particularise this ground in her application. Further, in Ms Khan's challenge to the intervention, Mr James (counsel acting on behalf of Ms Khan) conceded that there was sufficient material to entitle findings to be made in relation to Ms Khan's failure to ensure that the Firm complied with its legal and regulatory obligations and to deal with the Legal Ombudsman in an open, timely and cooperative manner. To suggest now that Ms Khan had cooperated with LeO was, it was submitted, a complete *volte face*.

Allegations 1.11 and 1.12

12.17 It was Ms Khan's case that as she had already served a term of imprisonment for being in contempt of court, she was immune from any professional conduct proceedings. Such a position, it was submitted, was obviously misconceived. There was no double jeopardy in the Applicant bringing proceedings arising out of her being found in contempt. The Applicant had invited the High Court to use its inherent jurisdiction to strike Ms Khan from the Roll. Leech J declined to do so. He stated:

“I am not satisfied that this is an exceptional case in which the court should exercise its jurisdiction to strike a solicitor off the Roll. In particular, I am not satisfied that justice requires the court to exercise its inherent jurisdiction to adopt a summary procedure on the hearing of a committal application. In my judgment, it is more appropriate for the SRA to take proceedings before the SDT in the normal way if it wishes to secure an order that Ms Khan should be struck off. I have reached this conclusion for three principal reasons:

(1) Ms Khan's application to set aside the intervention has not yet been heard. I cannot determine that her application is bound to fail and the SRA did not ask me to do so. It is possible, therefore, that the court may set it aside. Although this does not excuse Ms Khan's contempt, for all I know it may have a significant effect on any sanction imposed by the SDT.

(2) There may be other, wider grounds of mitigation bearing on the conduct of her practice which Ms Khan may be able to put before the SDT but which would have no bearing on the applications before me.

(3) Finally, I am satisfied that Penna was exceptional and clearly distinguishable from the present case. In Penna the Law Society did not ask the court to impose a prison sentence or other sanction for contempt and the solicitor accepted that he should be removed from the Roll. In the present case, I have sentenced Ms Khan to a term of imprisonment on the basis that this is the appropriate sanction for her contempt of court.”

12.18 Mr Allen submitted that for the reasons detailed above, Ms Khan had failed to demonstrate that any of the allegations should be struck out.

The Tribunal's Decision

Allegations 1.1 – 1.6

- 12.19 It was not accepted that the Applicant did not have jurisdiction to bring the allegations. Ms Khan had referred to the Applicant's set policy but had failed to identify which policy was referred to. Ms Khan had not submitted that there had been an unequivocal representation given by the Applicant to Ms Khan stating that she would not be investigated or prosecuted for the matters that formed the basis of allegation 1.1. The Tribunal noted that the recommendation to take no further action regarding the matters underpinning allegation 1.1 was made as the report writer had determined that DC and JN should not be contacted. There was no evidence to contradict Ms Khan's account that the clients had both confirmed acceptance of the offers. Accordingly, it was determined that there was insufficient evidence to take any further action. Subsequently, both DC and JN had provided written statements in which stated that they were unaware that the claims had been settled, and that they had not provided consent for the settlement of the claims. The Tribunal considered that it was appropriate for the Applicant to take that further evidence into account, and to bring allegation 1.1.
- 12.20 The Tribunal noted that the investigation by Bevan Brittan did not relate to allegations 1.2 – 1.6 and thus could not form part of any application to strike out those allegations.
- 12.21 The Tribunal did not accept that the Consent Order precluded the Applicant from bringing allegations 1.1 – 1.6. Mr Allen had made it clear that the Applicant was not relying on the findings of fact of HHJ Backhouse. The Tribunal would be making its findings based on the evidence presented; no weight would be given to the findings made by HHJ Backhouse. The Tribunal did not consider that there was any inherent unfairness in the Tribunal considering allegations 1.1 – 1.6 following the granting of the Consent Order. Nor could it be said that those allegations were unarguable. With regard to the criticism made of the evidence of DC and JN, the Tribunal would assess that evidence and determine the weight to be given to that evidence.
- 12.22 The Tribunal found that Ms Khan had failed to show that any of the allegations were unarguable, nor had she demonstrated that it was unreasonable, unjust or otherwise unfair for allegation 1.1 – 1.6 to be brought. Accordingly, her application to strike out allegations 1.1 – 1.6 was refused.

Allegation 1.7

- 12.23 The Tribunal found that Ms Khan had wholly failed to particularise the application to strike out allegation 1.7. There was nothing in the application that demonstrated that allegation 1.7 was unarguable or that to proceed with allegation 1.7 would be unreasonable, unjust or otherwise unfair. Accordingly, the application to strike out allegation 1.7 was refused.

Allegations 1.11 and 1.12

- 12.24 The Tribunal did not accept that following the High Court's findings that she was in contempt of Court, Ms Khan was immune from investigation and prosecution by the Applicant. There was no double jeopardy in the Applicant bringing allegations arising

out of the findings of the high Court. The consideration for the Tribunal was whether, by being in contempt of Court, Ms Khan had breached the regulatory duties and obligations of a solicitor. That was not a matter that was adjudicated upon by the High Court. Indeed, Leech J considered that a determination of professional misconduct and any sanction were matters that should be considered by the Tribunal.

- 12.25 The Tribunal considered that the application to strike out these allegations as double jeopardy was misconceived. There was no double jeopardy in the Applicant bringing allegations in conduct based on the same factual matrix as the matters considered at the High Court.
- 12.26 The Tribunal found that Ms Khan had failed to show that the allegations were unarguable, nor had she demonstrated that it was unreasonable, unjust or otherwise unfair for allegations 1.11 and 1.12 to be brought. Accordingly, her application to strike out allegations 1.11 and 1.12 was refused.

Application to amend the Rule 12 Statement

- 12.27 Mr Allen applied to amend allegation 1.9.2. of the Rule 12 Statement in respect of the allegation that Ms Khan's conduct was in breach of Principle 7 of the 2019 Principles. Mr Allen applied to withdraw the allegation. The Tribunal noted that the allegation in question did not relate to the alleged misconduct particularised in the Rule 12 Statement. The Tribunal considered that it was appropriate for the alleged breach to be withdrawn. Accordingly, the application to withdraw that breach was granted.
- 12.28 Mr Allen applied to amend allegation 2.1 which alleged, (in the alternative to dishonesty), that allegations 1.1 – 1.4 and 1.6 were advanced on the basis that Ms Khan's conduct was reckless. Mr Allen submitted that there was a typographical error; the Applicant did not allege that Ms Khan's conduct with regard to allegation 1.4 was reckless as detailed. It was the Applicant's case that the Rule 12 Statement should have alleged recklessness with regard to allegation 1.5. That this was the position was clear from the particulars detailed in the Rule 12 Statement.
- 12.29 The Tribunal considered paragraph 140 of the Rule 12 Statement in which the Applicant particularised its case on recklessness. Paragraph 140 stated:
- “The Respondent knew that there was (at least) a risk that her clients' consent to settlement was required and that it had not been sought or obtained and she also knew that the settlement offers were for less than she had advised the clients their claims were worth and that there was (at least) a risk that they would not accept the settlement offer if their consent was sought. The Respondent also knew in all the circumstances that it was unreasonable for her to take those risks when settling their damages claims.”
- 12.30 The Tribunal found that paragraph 140 clearly related to allegations 1.1, 1.2, 1.3, 1.5 and 1.6. The Tribunal considered that it was fair and just to allow the amendment and that there was no prejudice to Ms Khan in doing so. Accordingly, the application to amend allegation 2.1 was granted.
- 12.31 The allegations detailed at paragraphs 1 and 2 above appear in the amended form.

13. Respondent's application to adjourn the proceedings to prepare submissions on sanction and costs

13.1 Having announced its findings on 4 August 2022, the Tribunal adjourned the proceedings to allow Ms Khan to either attend or make written representations as to sanction and costs. Ms Khan attended and requested time to prepare her submissions. The Applicant did not oppose the application, but did submit that a full day should not be necessary for the submissions to be prepared.

13.2 The Tribunal considered that it was reasonable for Ms Khan to be granted time to prepare her submissions. Accordingly, it adjourned the hearing until 11.30am on 5 August 2022 to enable Ms Khan to prepare her submissions.

14. Respondent's application for a rehearing

14.1 On 5 August 2022 in an email timed at 10:08, Ms Khan submitted an application for a rehearing pursuant to Rule 37 of the SDPR.

14.2 Rule 37 provides:

“(1) At any time before the Tribunal's Order is sent to the Society under rule 42(1) or within 14 days after it is sent, a party may apply to the Tribunal for a re- hearing of an application if—

(a) the party neither attended in person nor was represented at the hearing of the application;

and

(b) the Tribunal determined the application in the party's absence.”

14.3 At the commencement of the proceedings on 5 August 2022, the Tribunal stated that it considered that the application under Rule 37 was premature as the application made by the Applicant had not yet been determined.

14.4 Ms Khan submitted that as the Tribunal had announced its findings on 4 August 2022, she considered that the substantive hearing was at an end and that she was entitled to make the application.

14.5 Mr Allen submitted that Rule 37(1)(b) required the application to have been determined. The Tribunal had made no determination on sanction and thus the proceedings had not been determined. Further, as Ms Khan had now attended in person, she could not avail herself of the provision in Rule 37(1)(a).

14.6 The Tribunal was referred to Elliot v SDT [2004] EWHC 11769 (Admin). In that case Mr Elliot had attended the first day of his hearing and made an application to adjourn. The application was refused and Mr Elliot thereafter did not attend the hearing. Mr Elliot later made an application for a rehearing. That application was refused. Mr Elliot sought to quash that decision. Leveson J (as he then was) concluded that, having attended the hearing to make his application to adjourn, on the true construction

of the Rule, Mr Elliot did not fall within the description of a respondent who has neither attended in person nor been represented at the hearing. Further, “in any event, he cannot rely on his own deliberate and informed decision not to attend the substantive hearing as providing a basis for the exercise of the discretionary remedy of a re-hearing.”

14.7 The Tribunal had announced its findings with regard to the allegations on 4 August 2022. As no decision had been made in respect of sanction and costs, the proceedings were still continuing at the time of Ms Khan’s application. Given that Rule 37(1)(b) required the application to have been determined, (i.e. for the Tribunal to have concluded the proceedings) the application for a re-hearing was premature. Accordingly, the application for a rehearing was refused.

14.8 The Tribunal then considered whether, in the circumstances, it was open to Ms Khan to make a future application under Rule 37. The Tribunal was of the view that having attended the hearing, Ms Khan could not satisfy the criterion in Rule 37(1)(a) that the party applying “neither attended in person nor was represented at the hearing of the application”. The Tribunal determined that, having attended the hearing, it was not open to Ms Khan to make any future application under Rule 37.

15. Applicant’s application to make submissions on sanction

15.1 Mr Allen applied to make submissions as to the appropriate sanction following the Tribunal’s announcement of its findings. Mr Allen submitted that whilst this had not been the practice at the Tribunal, it was the practice in the criminal courts and other disciplinary tribunals. In criminal proceedings, the prosecution was expected to put relevant authorities and other matters before the court to assist it in sentencing. The Tribunal was referred to AG Ref No7 of 1997 (Robert Fearon) where it was held that Judges should not be slow to invite assistance from prosecuting counsel in sentencing matters, prosecuting counsel should be ready to offer assistance if asked and Judges should not be affronted if prosecuting counsel offered to give guidance on the relevant provisions and appropriate authorities. In R v Cain & Others [2006] EWCA Crim 3233, Lord Philips, CJ (as he then was) stated that prosecution advocates had a duty to assist the judge at the stage of sentencing and should be ready to assist the court by drawing attention to any statutory provisions that govern the court’s sentencing powers. “It is the duty of the prosecuting advocate to ensure that the judge does not, through inadvertence, impose a sentence that is outside his powers. The advocate for the prosecution should also be in a position to offer to draw the judge’s attention to any relevant sentencing guidelines or guideline decisions of this court.”

15.2 The Tribunal noted that the cases referred to were both criminal matters. It was not appropriate for the Tribunal to follow the practice of the criminal courts in this regard. The Tribunal was a specialist tribunal and not a court, its primary purpose in imposing a sanction was to protect the public and safeguard the reputation of the profession. By contrast, a primary purpose of sentencing by the criminal courts was to punish the offender for the offence committed. The Tribunal did not consider that it should depart from its usual practice.

Factual Background

16. Ms Khan was admitted to the Roll of Solicitors in November 2006. She was qualified as a solicitor-advocate with higher rights of audience in the civil courts. Between 6 August 2012 and 20 December 2013, Ms Khan was an assistant solicitor at McMillan Williams Solicitors (“MW”).
17. Ms Khan was the sole principal and director of the Firm, which she established following her departure from MW. She was also a director of Just For Public Limited (“JFP”). JFP was not regulated by the SRA or any other approved regulator under the Legal Services Act 2007. JFP described itself as a “not-for-profit organisation providing an advice service on civil liberties & human rights law, inquests, military & veteran [sic]”.

Witnesses

18. No witnesses provided oral evidence.

Findings of Fact and Law

19. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Ms Khan’s rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Dishonesty

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

“When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

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

Integrity

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

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

Recklessness

23. The test applied by the Tribunal was that set out in R v G [2003] UKHL 50 where Lord Bingham adopted the following definition:

“A person acts recklessly...with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur and it is, in the circumstances known to him, unreasonable to take that risk.”

24. This was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).

25. As Ms Khan had not provided an Answer in the proceedings, the Tribunal treated all allegations as if they had been denied, requiring the Applicant to prove each and every element of all allegations.

26. **Allegation 1.1 - The Respondent settled damages claims advanced on behalf of two clients, DC and JN, for sums substantially lower than the sums she had advised the clients they would receive and in circumstances where she had neither sought nor obtained authority from the clients to settle the claims at that level, in breach of: (1.1.1) Principles 2, 4 and/or 6 of the Principles; and/or (1.1.2) O(1.2) and/or O(1.12) of the Code.**

Allegation 1.2 - The Respondent settled costs claims advanced on behalf of two clients, DC and JN, without informing them of the offer of settlement or of its acceptance, and without seeking or obtaining authority from the clients to settle the claims, in breach of: (1.2.1) Principles 2, 4 and/or 6 of the Principles; and/or (1.2.2) O(1.2) and/or O(1.12) of the Code.

Allegation 1.3 - The Respondent received a cheque in respect of the settlement of DC’s and JN’s costs claims and paid the cheque directly into the Firm’s office account without first giving or sending a bill of costs or other written notification of the costs incurred to the clients, in breach of: (1.3.1) Rules 14.1, 17.1 and/or 17.2 of the SAR; and/or (1.3.2) Principles 2, 4 and/or 6 of the Principles.

Allegation 1.4 - On a date unknown but after 26 November 2019, the Respondent fabricated or falsified the Pro-Forma Fee Note and the purported letters to DC and JN dated 18 January 2018 and 9 April 2018 purporting to show

contemporaneous notification to DC and JN of the costs claimed by the Firm, in breach of Principles 2, 4 and/or 5 of the 2019 Principles.

Allegation 1.5 - The Respondent received a cheque in respect of the settlement of DC's and JN's costs claims to which the clients' former solicitors had or asserted a claim and paid the cheque directly into the Firm's office account without accounting for the former solicitors' costs, in breach of: (1.5.1) Rules 14.1, 17.1 and/or 18.2 of the SAR; and/or (1.5.2) Principles 2, 4 and/or 6 SRA of the Principles.

Allegation 1.6 - The Respondent breached the undertakings she had given to the former solicitors of DC and JN to protect the former solicitors' position on costs in breach of O(11.2) the Code; and/or the Respondent failed to ensure that the Firm complied with the undertakings as it was required to do under O(11.2) of the Code, for which the Respondent was responsible pursuant to rule 8.1(a) SRA Authorisation Rules 2011. In so acting, the Respondent also breached Principles 2, 4 and 6 of the Principles.

The Applicant's Case

- 26.1 The Firm acted for two clients, DC and JN, in a claim brought by them in respect of the alleged actions of a police force. The claim had been commenced by MW on behalf of DC and JN (with Ms Khan, then employed by MW, as the fee earner with conduct of the matter). However, the Firm took over conduct of the matter in June 2014, following Ms Khan's departure from MW and after setting up the Firm. The Firm was instructed by each of DC and JN under the terms of conditional fee agreements with each client, both dated 12 June 2014.
- 26.2 MW agreed to transfer its files to the Firm subject to Ms Khan and/or the Firm giving undertakings to MW to protect MW's interest in the costs already incurred. Undertakings were given in a letter written on the Firm's headed notepaper dated 2 June 2014 and signed by Ms Khan both in her own name and that of the Firm ('the Undertakings'). Under the terms of the Undertakings, Ms Khan and/or the Firm were obliged to ensure that:
- MW's lien as to costs and disbursements was preserved.
 - MW's claim for costs, success fees, disbursements and counsel's fees was included in any detailed assessment proceedings or other costs negotiations;
 - MW was notified of the sums being claimed on MW's behalf, and advised of any offers made in respect of its costs, success fees and disbursements; and
 - The Firm/Ms Khan did not settle any claim for MW's costs, disbursements or counsel's fees without the specific written consent of MW's managing partner.
- 26.3 Mr Allen submitted that given the Undertakings, it could not be disputed that any costs negotiations were on behalf of MW as well as the Firm.

- 26.4 In 2015, both clients contacted MW and asked them to take over their matters. Upon MW serving a notice of acting on the Defendant's solicitors, MW was informed that the claims had already been settled, following acceptance of Part 36 offers made to DC and JN via the Firm. Ms Khan had accepted these offers on behalf of DC and JN on or before 15 July 2015, as evidenced by her signature dated 15 July 2015 on a consent order.
- 26.5 Both DC and JN confirmed (in witness statements dated 24 July 2020 prepared in connection with proceedings brought by MW against the Firm for breach of the Undertakings ("the MW Costs Proceedings")), that Ms Khan had agreed the settlement without their knowledge or consent. Both clients stated that they had received settlement cheques for sums that were considerably less than the amounts that Ms Khan had advised them they would receive as a result of a successful claim.
- 26.6 Under the terms of each conditional fee agreement between the Firm and DC and JN, the recovery of a settlement meant that they had won their claims within the meaning of the agreement and were accordingly liable to pay the Firm's fees (and MW's fees, under the terms of their agreements with MW). Although such fees would ordinarily be recoverable in large part from the Defendant, each of DC and JN had a direct, personal liability to pay the fees incurred (by the Firm and MW), and would accordingly be liable for any shortfall in costs recovery from the Defendant.
- 26.7 Following the settlement of the claims, MW and Ms Khan/the Firm disputed which of them were entitled to represent the clients in the costs assessment. On 27 November 2017, the Central London County Court ordered the appointment of an independent costs draftsman to prepare a joint bill of costs for MW and the Firm, for the purposes of detailed assessment. The independent costs draftsman produced a bill of costs dated 27 March 2018 ("the Joint Bill of Costs"), claiming the Firm's costs in the sum of £67,918 and MW's costs in the sum of £114,500. The Joint Bill of Costs was further evidence that any costs claimed were on behalf of both the Firm and MW. It included the VAT numbers for both firms and detailed the costs of both firms.
- 26.8 On 28 August 2018, MW notified Ms Khan/the Firm by email that it would be willing to settle its costs claim, as set out in the Joint Bill of Costs, for £80,000 and requested that a Part 36 offer be made to the Defendant in this sum in respect of MW's costs only. Ms Khan sought to persuade MW to accept £70,000. MW insisted that it would not accept any less than £80,000. There was no evidence that MW, at any point agreed to a reduction of that amount. That offer was not made to the Defendant by Ms Khan/the Firm.
- 26.9 On 3 September 2018, the Defendant's solicitors (DWF) made a Part 36 offer of £120,000.00 in full and final settlement of the costs claimed in the Joint Bill of Costs. The Part 36 Offer was stated to be a gross offer in respect of both the Firm's and MW's costs. The Part 36 Offer was made on the basis that deductions of (i) an interim payment of £15,000 (which had already been paid to and received by the Firm), and (ii) the further sum of £4,463.50 in respect of a cost order in favour of the defendant and the defendant's costs of dealing with a previously drawn but incorrect bill of costs, would be made from the gross sum offered.

- 26.10 On 5 September 2018, the Firm responded to DWF accepting the Part 36 Offer on behalf of DC and JN, but disputed whether part of the sum of £4,463.50 should be deducted from the settlement amount. The letter of 5 September concluded with a request for payment of £103,390.15 to the Firm's client account.
- 26.11 Mr Allen submitted that the terms of the Firm's letter dated 5 September 2018 made it clear that Ms Khan considered herself to be accepting the terms of the settlement offer made in relation to the costs claims and that the only outstanding issue was the extent of any deductions that the Defendant was permitted to make from the gross settlement sum of £120,000 that had been accepted.
- 26.12 Ms Khan did not inform MW of the Part 36 Offer, nor did she seek or obtain their consent to the acceptance of the terms of the Part 36 Offer, before sending the Firm's letter of 5 September 2018. Ms Khan accepted that this was the case during cross-examination at the trial of a claim bought by MW against the Firm. When it was suggested to Ms Khan that she had not communicated the offer to MW when she had notice of it on 5 September 2018, Ms Khan replied: "No, not until 12 October... I believe". She later confirmed that "there was no communication in relation to the, the offer, the settlement in principle until 12 October 2018".
- 26.13 Ms Khan also failed to inform the clients of the offer, that she proposed to settle their claim for costs, or obtain their consent to do so. It was the clients' positions that they had heard nothing from Ms Khan between 2015 and 2020, and that there was no contemporaneous notification of costs that the Firm had purportedly incurred.
- 26.14 DWF wrote to the Firm on 6 September 2018 and 11 September 2018 contending that the Firm had not validly accepted the Part 36 Offer because the Firm had sought to impose terms on the acceptance.
- 26.15 The Firm wrote to DWF on 19 September 2018 confirming that in its view, it had accepted the Part 36 Offer and that there was "a binding agreement between the parties" "enforceable against your client", notwithstanding the issue between the parties as to the amount of the deduction to be made. That letter repeated the Firm's request that the settlement sum be paid into the Firm's client account.
- 26.16 On 10 October 2018, DWF sent a cheque to the Firm in the sum of £100,536.50 which was tendered in full and final settlement of the costs claimed in the Joint Bill, as was confirmed in the statement of a partner from DWF.
- 26.17 The Settlement Cheque was presented for payment into the Firm's office account on 12 October 2018. Mr Allen submitted that Ms Khan had thereby accepted the amount of the Settlement Cheque in full and final settlement of the costs claim. However, Ms Khan did not inform DC, JN or MW that she had received the Settlement Cheque, nor did she seek or obtain their consent to the acceptance of the Settlement Cheque.
- 26.18 This was despite MW having emailed Ms Khan on 10 October 2018 stating: "It has been some time since I have heard from you. What is the position on this matter?". On 12 October 2018, the Firm wrote to MW stating that it had "in principle, accepted an offer to settle the Claimants' profit costs, disbursements, additional liabilities and VAT" in the Joint Bill of Costs for £120,000. The letter stated that the "outstanding

issue” was the Defendant’s costs of £2,451 for dealing with previously drawn bills and concluded: “Once there has been a resolution of this issue, we will write to you again with an up-date.” The letter of 12 October 2018 did not, however, mention that the Firm had received the Settlement Cheque or paid it into the office account, nor did it indicate that the Firm intended to retain the whole amount.

26.19 MW responded on the same day stating: “It is somewhat concerning that you have in principle accepted an offer of £120k without reverting to us. However, I trust that my instructions of £80,000 for our costs is hat [sic] I expect we will be getting. I wait to hear from you”. Ms Khan did not reply to this email.

26.20 By a letter to DWF dated 15 October 2018, Ms Khan continued to dispute the final settlement sum due and requested a further cheque for the alleged balance of £2,853.65 “in order for [the Defendant] to discharge his obligation” in relation to the settlement.

26.21 DWF replied on 17 October 2018, referring to their position as set out in their letters of 6 September and 11 September 2018 with regard to the Firm’s “purported acceptance” of this offer. However, at this stage, DWF were not aware that Ms Khan had paid the Settlement Cheque into the Firm’s office account. This was only discovered on or about 31 October 2018.

26.22 On 31 October 2018, MW emailed Ms Khan to request an update on whether settlement had been finalised. During a telephone conversation with Ms Khan on 5 November 2018, MW agreed to waive the sum of £1,270.50 from their costs claim. Ms Khan emailed MW after that telephone call, recording that agreement and stating that:

“the Defendant has made a payment on account of costs but has deducted the sum of £2,451.00 from the gross offer. The outstanding balance and the costs of the enforcement proceedings have yet to be paid by the Defendant...

I will write to the Defendant, to inform them that the outstanding balance has now been reduced, and will revert back to [sic] once I have a further update”.

26.23 MW responded to this email requesting a “brief breakdown of the settlement” and a “proposed split” (“as you said you would on the phone earlier”) and requesting an interim payment towards MW’s costs of £40,000 within 7 days. Mr Allen submitted that it was clear from this email that MW expected part of the proceeds of the Settlement Cheque to be paid by the Firm to MW. Ms Khan wrote back to MW on the same date declining to make an interim payment without further explanation. It was noted that she did not seek to disabuse MW of its belief that it would be paid part of the settlement. Indeed, by seeking the agreement of MW to waive part of its costs claim and indicating in her email of 5 November 2018 that she would “revert back” once she had “a further update” in relation to the “outstanding balance”, Ms Khan expressly or implicitly acknowledged that MW had an interest in the costs settlement.

26.24 On 9 November 2018, the Firm wrote to DWF, addressing what the Firm contended was the “outstanding sum” in respect of costs, with proposals for settlement of the outstanding issues.

- 26.25 On 13 November 2018, DWF responded, saying that the Settlement Cheque tendered in full and final settlement and had been accepted and paid in on this basis, and accordingly that “the matter is now concluded”.
- 26.26 The Firm did not respond to this letter and there was no further negotiation between the Firm and DWF on the costs claim. Mr Allen submitted that by the end of 2018, Ms Khan and DWF proceeded on the basis that there had been full and final settlement of the costs claim. It was not until 28 July 2022 that Ms Khan made a further demand for payment. Mr Allen submitted that even on the basis of her own case, the amount that she sought to claim from DWF was in excess of the agreement in principle. It was considered that the only reason for the late correspondence was to enable Ms Khan to state that she did not consider that there had been any valid settlement.
- 26.27 Notwithstanding the express confirmation that DWF considered the matter to be concluded by way of a binding settlement following acceptance of the Settlement Cheque, Ms Khan did not inform DC, JN or MW of the settlement (or alleged settlement). Neither MW nor the clients were made aware of the position that had been reached, or that DWF considered that the matter had been finally concluded. Nor were the clients informed of their outstanding liability for costs to the Firm or MW.
- 26.28 The Firm received a total of £115,536.50, in full and final settlement of both MW’s and the Firm’s costs. The interim payment (£15,000) and the Settlement Cheque (£100,536.30) were both paid into the Firm’s office account. No bill or other written notification of costs was provided to the clients when the monies were deposited.
- 26.29 On 15 February 2021, during the SRA’s forensic investigation, Ms Khan provided the SRA with a document headed ‘Pro-Forma Fee Note’ bearing the date 16 January 2018, stating that the Firm’s costs were £119,105.00 (“the Pro-Forma Fee Note”). It was submitted that this document, which had not previously been referred to or relied on by Ms Khan in the MW Costs Proceedings or otherwise, was not authentic and that it was created by her subsequently (on a date unknown but after 26 November 2019) to provide a purported basis for having paid the Settlement Cheque into the Firm’s office account (instead of the client account).
- 26.30 As a result of Ms Khan’s conduct, MW commenced the MW Costs Proceedings to recover their costs from the Firm, pursuant to or on the basis of a breach of the Undertakings.

Allegation 1.1

- 26.31 Ms Khan accepted Part 36 offers of settlement in respect of each of DC and JN’s damages claims without seeking or obtaining their approval or consent to the settlement proposed. In doing so, she committed her clients to a contractually binding settlement, which deprived them of the opportunity to make free and informed decisions about their representation, how their claims should be handled and what options were available to them. The settlements were for far less than Ms Khan had advised the clients that the claims were worth.
- 26.32 Pursuant to the conditional fee agreements, the Firm was required to give its clients its “best advice about whether to accept any offer of settlement”. The conditional fee

agreements also provided for the Firm to be able to terminate the agreements if its advice on settlement offers was not accepted. It was an implied term of the Firm's retainer that the clients' claims would not be settled without them having been given advice on the proposed offer of settlement and having consented to the proposed offer being accepted.

- 26.33 Mr Allen submitted that in unilaterally accepting the proposed offers of settlement without informing the clients or seeking their consent, in circumstances where the acceptance of the offer gave rise to a substantial liability for the clients in relation to costs which, depending on the recovery of costs from the Defendant, the clients may have to fund from their own resources, Ms Khan acted in a way which reduced the trust the public placed in her and in the legal profession, contrary to Principle 6 of the Principles.
- 26.34 In depriving the clients of their opportunity to make informed decisions about their representation, how their claims should be handled and what the options available to them were in respect of the claims, Ms Khan failed to achieve O(1.12) of the Code. Further, in failing to provide services to her clients in a manner which protected their interests in the matter, Ms Khan failed to achieve O(1.2) of the Code, in that she deprived them of the opportunity to make a free and informed choice about the progression of their claims, and exposed them to the risk of a substantial liability for costs if the costs claims against the Defendant were determined or settled for less than the amounts payable to the Firm and to MW. In so doing, Ms Khan failed to act in the best interests of her clients in breach of Principle 4 of the Principles.
- 26.35 In settling the clients claims without their knowledge or consent, Ms Khan failed to act with integrity in that she accepted the settlement offers in circumstances where she knew that her clients' consent was required or alternatively in circumstances where she was reckless as to whether it was required. In doing so, the Respondent demonstrated a failure to act with moral soundness, rectitude and steady adherence to an ethical code and, in particular, a failure to adhere to the ethical standards of the solicitor's profession, in breach of Principle 2 of the Principles.

Dishonesty

- 26.36 Mr Allen submitted that Ms Khan knew that she could only act on her clients' instructions and that she required their specific authority to accept a settlement offer. Ms Khan knew that she had not sought the consent of either client to settle their damages claims. In settling her clients' claims in the knowledge that they had not been informed of the settlement offers and that their consent to the terms of settlement had not been sought or obtained and that such consent was required, Ms Khan acted dishonestly according to the objective standards of ordinary decent people.

Recklessness

- 26.37 Ms Khan knew that there was (at least) a risk that her clients' consent to settlement was required and that it had not been sought or obtained and she also knew that the settlement offers were for less than she had advised the clients their claims were worth and that there was (at least) a risk that they would not accept the settlement offer if their

consent was sought. Ms Khan also knew in all the circumstances that it was unreasonable for her to take those risks when settling their damages claims.

Allegation 1.2

- 26.38 As detailed above, Ms Khan settled the clients' costs claims without informing them of the offer of settlement or of its acceptance, and without seeking or obtaining authority to settle the claims. The Settlement cheque was tendered in full and final settlement of the claims. By paying the cheque into the Firm's office account, Ms Khan accepted that offer.
- 26.39 Under the terms of the Firm's retainer, the Firm was obliged to seek and obtain client approval prior to accepting any offer of settlement, including any settlement offered in respect of costs. Ms Khan, it was submitted, was aware of this requirement or was alternatively reckless as to whether client approval of the settlement was required.
- 26.40 In accepting a settlement proposal in order to advance the financial interests of the Firm and herself, rather than for the purpose of advancing her clients' interests, Ms Khan failed to act in her clients' best interests in breach of Principle 4 of the Principles, and also failed to provide services to her clients in a manner which protected their interests in the matter in breach of O(1.2) of the Code.
- 26.41 In unilaterally accepting the proposed offer in respect of costs without informing the clients or seeking their consent, in circumstances where the acceptance of the offer left a significant shortfall in respect of the clients' liability for the Firm's and MW's costs, Ms Khan acted in a way which reduced the trust the public placed in her and in the legal profession, contrary to Principle 6 of the Principles. Further, she had deprived her clients of their opportunity to make informed decisions about their representation, how their claims should be handled and what the options available to them were in respect of the claims, in breach of O(1.12) of the Code.
- 26.42 Ms Khan had accepted the settlement offers when she knew that her clients' consent was required but had not been obtained, or alternatively in circumstances where she was reckless as to whether such consent was required. Such conduct, it was submitted, lacked integrity in breach of Principle 2 of the Principles.

Dishonesty

- 26.43 Mr Allen submitted that in settling her clients' claims in the knowledge that they had not been informed of the settlement offers and that their consent to the terms of settlement had not been sought or obtained and that such consent was required, Ms Khan had acted dishonestly according to the objective standards of ordinary decent people.

Recklessness

- 26.44 In the alternative, it was an aggravating factor that Ms Khan's conduct was reckless. She had agreed to the settlement of costs claims without seeking or obtaining the clients' consent when she was aware that there were (at least) the following risks and that it was unreasonable to take those risks:

- the clients' consent was required;
- the recovery of costs would be insufficient to cover the Firm's costs and MW's costs, such that the clients would be personally liable to the Firm and/or MW for fees in excess of the sums recovered; and/or
- the clients would or might not approve the costs settlement proposal, in circumstances where they had been advised by the Respondent that the damages claim was worth substantially more (such that they would have expected to achieve a recovery of damages which exceeded their personal liability for costs), and they would in fact be exposed to substantial liability for costs (well in excess of their damages) as a result of settling their costs claims on the terms offered.

Allegation 1.3

- 26.45 Ms Khan received a cheque in respect of the settlement of the clients' costs claims which was paid directly into the Firm's office account without giving or sending any written notification to the clients of the costs claimed by the Firm
- 26.46 As at the date of receipt, the sums paid by the Defendant in respect of costs were or included client money within the meaning of Rule 12 of the SAR.
- 26.47 In particular, it was money received in settlement of the clients' claims for costs against the Defendant. It was therefore money that was due and payable to the clients, i.e. client money.
- 26.48 Ms Khan and the Firm could only therefore transfer this money to the office account in payment of the Firm's fees if (and only if) the Firm had first given or sent a bill of costs, or other written notification of the costs incurred, to the clients for those fees in accordance with rule 17.2 of the SAR.
- 26.49 No such bill of costs or written notification of costs was given or sent. Mr Allen submitted that the Pro Forma Fee Note was not a genuine document (as alleged in respect of Allegation 1.4 below) and in any event, even if it were a genuine document, it would not have been sufficient to satisfy the requirement under rule 17.2 for a written notification of the costs incurred to be given or sent to the clients in advance.
- 26.50 As the settlement monies were client money (within rule 12.1 of the SAR), the Settlement Cheque should therefore have been paid into the Firm's client account (in accordance with rule 14.1 of the SAR).
- 26.51 Pursuant to rule 17.1 of the SAR, the Firm was permitted to handle monies received in respect of its own costs in one of five permitted ways. The payment of the entire sum directly into its office account was not a permitted method under rule 17.1, and accordingly the payment into the office account was a breach of rule 14.1, there being no relevant exception to the requirement that sums be paid into the client account.
- 26.52 In dealing with the settlement monies in the way that she did, Ms Khan breached Principles 2, 4 and 6 of the Principles.

Dishonesty

- 26.53 Mr Allen submitted that Ms Khan had appropriated the whole of the settlement sum to the Firm, despite being aware of the fact that she had not notified the clients of the amounts allegedly payable to the Firm, which amount substantially exceeded (i) any of the previous costs estimates given to the clients, and (ii) the amount claimed in the Joint Bill of Costs in respect of the Firm's fees. She knew that she would thereby expose the clients to the possibility of being held liable to MW in respect of the shortfall in respect of MW's incurred costs and deprived the clients of the opportunity of giving instructions to the Firm as to how the settlement monies should be dealt with. Further, she deliberately failed to keep the clients properly updated of the progress of the settlement of the costs claim in order to facilitate her appropriation of the whole of the settlement sum at the expense of MW.
- 26.54 By paying the Settlement Cheque into the office account with this knowledge of the surrounding circumstances, Ms Khan acted dishonestly according to the objective standards of ordinary decent people.

Recklessness

- 26.55 Alternatively, it was the Applicant's case that Ms Khan was reckless as to the risk that she could not properly pay the Settlement Cheque into the office account, without having given or sent the clients any notification of the amount which she alleged to be due from the clients to the Firm, and in appropriating the whole of the sum to the Firm notwithstanding that risk.

Allegation 1.4

- 26.56 Mr Allen submitted that Ms Khan had falsified or fabricated one or more documents purporting to show contemporaneous notification to the clients of the costs claimed by the Firm.
- 26.57 With regard to the Pro-Forma Fee Note:
- In the proceedings brought by MW against the Firm, Ms Khan did not refer to the existence of the Pro Forma Fee Note, despite her position at trial being that the clients owed the Firm more than the costs claimed in the Joint Bill of Costs and that this justified her retaining the settlement. This was despite the Pro Forma Fee Note being highly relevant to the case advanced by the Firm in those proceedings, and Ms Khan being cross-examined in those proceedings on what costs information she had provided to the clients.
 - The level of costs claimed by the Firm from the clients in the Pro Forma Fee Note was very high. The total amount of £119,105.00 exceeded the amount which was included in the Joint Bill of Costs in respect of the Firm's costs of the claim by more than £50,000. It was difficult to see how the costs could have increased by that amount after the settlement of the claims

- The costs in the Pro Forma Fee Note came to more than 75% of the Firm's total declared gross fee income for the financial years ending 2015, 2016, 2017 and 2018 combined.
- The amount of the Pro Forma Fee Note also closely corresponded to the amount which was claimed by the Firm from the defendant as the costs settlement amount. This tended to suggest that it was produced after the costs settlement had been agreed (in September/October 2018) and not in January 2018 (the date it bears on its face). Mr Allen submitted that the Tribunal could infer that the Pro Forma Fee Note had been reverse engineered so that Ms Khan and the Firm could retain the entirety of the settlement monies.
- The Pro Forma Note provided no meaningful detail to support the claim for such a large amount. The narrative stated only that it was: "The breakdown of our costs and disbursements are in relation to your claim against [the Defendant], and include costs recovery and negotiations with the Defendant." The total sum for "Profit Costs" was stated as £119,105.00 with no breakdown of this amount. No disbursements were listed nor was VAT included. Mr Allen submitted that the Pro Forma Fee Note was not a proper invoice or bill in respect of solicitors' fees and other charges due from the clients and, given the level of fees claimed, it was to be expected that a genuine fee note would include a more detailed narrative explaining how those costs had been incurred.
- There was no evidence of any further correspondence between the Firm and the clients after the costs settlement. Indeed, it was the clients' position that there was no further correspondence. Ms Khan's own evidence in the Intervention challenge claim was that there was no further correspondence with the clients after October/November 2018. The Firm did not therefore pursue them for the additional sums that Ms Khan claimed were due, whether pursuant to the Pro Forma Fee Note or otherwise, after receipt of the settlement sum. Nor was any revised bill issued by the Firm after the settlement.
- The Firm's office account ledgers for DC recorded entries for a payment on account on 12 October 2018 (i.e. the settlement sum) and a "Pro Forma Invoice" on 16 January 2018. However, those entries were not in chronological sequence since: (1) both appear after an entry dated 19 March 2019; and (2) the entry for the payment on account (i.e. the settlement) appeared before the Pro Forma Invoice entry.
- There was no documentary evidence of any response from either client to the Pro Forma Fee Note, which there surely would have been if they had received a letter informing them that they were liable to the Firm for such a large amount.

26.58 With regard to the letters of 18 January 2018, Ms Khan only very belatedly - a few days before the trial of her challenge to the Intervention - produced purported letters dated 18 January 2018 under cover of which she claimed to have sent the Pro Forma Fee Note to the clients. No explanation had been given as to why, if these documents were genuine, Ms Khan did not produce them earlier. It was the evidence of both clients that they had not seen the Pro Forma Fee Note before it was shown to them by the SRA. Moreover, the absence from the purported covering letters of any information or explanation about the Pro Forma Fee Note and its implications for the clients' costs

liability was telling since it was to be expected that DC and JN would be horrified by the size of the bill. Mr Allen submitted that it was to be inferred that these documents were also late fabrications.

- 26.59 Ms Khan also relied on file copy letters to the clients dated 9 April 2018 which gave estimates of costs for DC of £80,000 and for JN of £40,000. It was the Applicant's case that these documents, which had also not previously been referred to or relied on by Ms Khan, were also not authentic and had been created subsequently (on a date unknown but after 26 November 2019) to support her case that the clients were informed of the level of costs that had purportedly been incurred by the Firm.
- 26.60 It was the SRA's case that some or all of (i) the Pro-Forma Fee Note, (ii) the purported costs updates dated 9 April 2018 and (iii) the purported covering letters dated 18 January 2018 by which the Pro-Forma Fee Note was allegedly sent to the clients were not genuine documents and that they were created by Ms Khan after the event in order to give the false impression, to the SRA and/or the court, that she had complied with rule 17.2 of the SAR in relation to the Settlement Cheque.
- 26.61 In creating documents purportedly sent to clients in order to evade scrutiny and mislead her regulator and/or the court as to what had been done with regard to client costs and compliance with the SAR, Ms Khan had acted so as to undermine the trust and confidence placed in her, and in the provision of legal services by authorised persons, in breach of Principle 2 of the 2019 Principles and had failed to act with integrity in breach of Principle 5 of the 2019 Principles.

Dishonesty

- 26.62 In falsifying or fabricating documents and/or in representing to the SRA and/or the court that they were contemporaneous evidence when she knew that they were not genuine documents, Ms Khan had acted dishonestly according to the objective standards of ordinary and decent people and accordingly, had breached Principle 4 of the 2019 Principle.

Allegation 1.5

- 26.63 The Settlement Cheque was not received solely for the Firm's benefit or solely in respect of the Firm's costs; it had been paid in full and final settlement of the Defendant's liability under the Joint Bill of Costs. Accordingly, it was received by the Firm (a) partly as agent for MW on whose behalf it was conducting the costs negotiations pursuant to the Undertakings and in respect of the Joint Bill of Costs and the court's directions; and/or (b) subject to an equitable lien in favour of MW as security for the costs it had claimed.
- 26.64 As already noted, MW told Ms Khan that it was not willing to accept less than £80,000 for its costs. In those circumstances, one would expect Ms Khan to have acknowledged that: (1) she had carriage of the costs negotiations on behalf of not only the clients, but also MW, on the basis that MW would be interested in the fruits of the settlement, and (2) MW was entitled to at least part of the settlement.

- 26.65 Mr Allen submitted that it appeared to be Ms Khan's position that the Firm was entitled to retain the full amount of the settlement sum for itself and to pay nothing whatsoever to MW because:
- The clients owed the Firm more than the amount claimed in respect of the Firm's fees in the Joint Bill of Costs. These additional costs were said to include costs which were not recoverable from the defendant and/or which were incurred by the Firm in dealing with costs recovery, including its dispute with MW over who should be entitled to represent the clients in the detailed assessment proceedings; and
 - The total sum owed by the clients to the Firm exceeded the settlement sum and, on this basis, it was said that the Firm was entitled to assert a lien over the entire settlement sum and/or to pay it into the office account (to the exclusion of MW).
- 26.66 Mr Allen submitted that this was clearly and obviously wrong and that the settlement sum must have been at least partly client money to which the Firm had no entitlement. The only situation in which Ms Khan would be entitled to treat all or part of the settlement sum as office money would have been if it belonged to the Firm absolutely and was not subject to any competing legal or equitable claims.
- 26.67 Accordingly, even if Ms Khan had given a bill of costs or other written notification of the costs incurred to the clients, the settlement sum was not received solely for the Firm's benefit or solely in respect of the Firm's costs. The payment was made by DWF to the Firm in full and final settlement of the defendant's total liability under the Joint Bill of Costs for both MW's costs and the Firm's costs. This was the particular purpose for which the settlement sum was paid by DWF to the Firm.
- 26.68 Mr Allen submitted that as a matter of legal analysis, the settlement sum was either received by the Firm at least in part as agent for MW on whose behalf it was conducting the costs negotiations pursuant to the Costs Undertaking. Further or alternatively, it would be received by the Firm subject to an equitable lien in favour of MW as security for the costs it had claimed. Notably the Firm conceded in its skeleton argument in support of its appeal against the judgment in favour of MW that MW would have an equitable remedy against the Firm on the basis of a lien.
- 26.69 It would be inconsistent with the particular purpose for which the settlement sum was paid to and received by the Firm for it to be applied by the Firm towards anything other than the costs claimed in the Joint Bill of Costs on behalf of both MW and the Firm. This precluded any form of lien in the Firm's favour over the full amount of the settlement to secure payment of other sums due from the clients.
- 26.70 It followed that as the settlement sum was either client money or a mixed payment - and it was certainly not exclusively office money, Ms Khan breached Rule 18.2 of the SAR. Ms Khan also breached Rules 14.1 and/or rule 17.1 of the SAR by making the payment into the office account when the settlement sum included client money in circumstances where this was not permitted by any provision of the rules.

- 26.71 Ms Khan implicitly recognised in her letters dated 5 September and 19 September 2018 that this settlement sum was - at least in part - client money when asking that it be paid into the client account. Subject to immaterial exceptions, only client money or a mixed payment may be paid into or held in a client account.
- 26.72 Mr Allen submitted that such conduct also amounted to a breach of Principles 2, 4 and 6 of the Principles as Ms Khan had failed to act with integrity, act in the best interests of her clients and to maintain the trust the public had in her and in the provision of legal services.

Dishonesty

26.73 Mr Allen submitted that Ms Khan knew that:

- she was conducting the costs negotiations for the benefit of MW as well as the Firm;
- the settlement was specifically and only in respect of the costs claimed in the Joint Bill of Costs and did not relate to any other costs incurred by the Firm - still less any of the Firm's costs that would not even be recoverable from the defendant;
- MW had or was likely to have a claim to part of the settlement;
- the settlement would prevent MW making any claim against the defendant for its costs and would therefore leave MW facing a significant shortfall on its costs; and
- the settlement amount greatly exceeded the Firm's costs in the Joint Bill of Costs.

26.74 Ms Khan had been in contact with MW regarding the costs negotiations, thereby at least implicitly recognising that they had an interest in the settlement. Her failure nevertheless to keep MW properly updated on the progress of the costs negotiations, it was to be inferred, was deliberate and intended by Ms Khan to facilitate the misappropriation of the settlement for the benefit of the Firm.

26.75 In this regard, Ms Khan first informed MW of the agreed settlement in the letter dated 12 October 2018. This was more than a month after the Firm's purported letter of acceptance dated 5 September 2018 and the same day that Ms Khan banked the settlement cheque which she had received into the Firm's office account. Even then, however, Ms Khan did not say that she had already received a payment from DWF. Mr Allen submitted that an honest solicitor would have conducted themselves far more openly and transparently with MW than Ms Khan did, in accordance with the clear terms of the Costs Undertaking.

26.76 Indeed, Ms Khan did not actually inform MW that she had received any payment from the defendant in respect of costs until around 5 November 2018. This was despite MW having indicated to Ms Khan a month earlier (in an email of 12 October 2018, sent in response to Ms Khan's email telling them that she had agreed a settlement in principle) that MW still expected to receive £80,000 for its costs. Further, MW responded to learning of the payment received by the Firm by requesting: (1) "a brief breakdown of the settlement on this case and a proposed split as you said you would on the phone earlier", (2) confirmation of the amount received by the Firm, and (3) an interim

payment of £40,000. Mr Allen submitted that Ms Khan's response could only be described as evasive: she did not engage with MW's requests save for declining without explanation to make any interim payment.

26.77 Ms Khan also gave no indication at all that she was laying claim to the whole amount. This reticence was not consistent with Ms Khan believing she is entitled to the money. Furthermore, it was submitted, the very fact that Ms Khan felt compelled to continue corresponding with MW at all after the settlement sum was received (and, in particular, to discuss the outstanding issue of the defendant's deductions from the overall settlement figure) confirmed that Ms Khan recognised that MW had a continuing interest in the settlement amount.

26.78 In the circumstances, the misappropriation of the whole settlement amount for the Firm's exclusive benefit would be regarded by ordinary decent people as dishonest.

Recklessness

26.79 Alternatively, Ms Khan acted recklessly because she must at the very least have been aware that there was a risk that MW had a claim to part of the settlement amount and, in those circumstances, it was unreasonable for Ms Khan to appropriate the entire amount notwithstanding that risk.

Allegation 1.6

26.80 The terms of the Undertakings included that the Respondent and/or the Firm would:

- “notify [MW] (or its successor organisation) of the sums being claimed on its behalf, to advise them of any offers made in respect of its costs and success fees and disbursements” and
- “not settle any costs or disbursements or counsel's fees claim [sic] on behalf of [MW] (or its successor organisation) without the specific written consent to do so from its managing partner [...].”

26.81 Ms Khan signed the Undertakings in her own name as well as that of the Firm. Accordingly it was the Applicant's case that the Undertakings were given by Ms Khan personally in her individual capacity and/or on behalf of the Firm for the purposes of O(11.2) of the Code and Rules 1.3 of the Code for Solicitors and SRA Code for Firms.

26.82 Ms Khan and/or the Firm failed to notify MW of the settlement offers made in respect of its costs, success fees and disbursements. Further, the claim was settled without the consent of MW's senior partner.

26.83 Ms Khan has breached the undertakings she had given to MW in respect of protecting its position on costs, or alternatively failed to ensure that the Firm complied with the undertaking it had given. In so doing, Ms Khan and/or the Firm breached O(11.2) of the Code. Pursuant to Rule 8.1 of the Authorisation Rules 2011, Ms Khan was also responsible for any breach by the Firm.

- 26.84 Ms Khan failed to act in the best interests of her clients, in that by accepting a settlement proposal in respect of costs without regard to MW's interests in order to advance the financial interests of the Firm and herself, she exposed her clients to the risk of a claim by MW for its unpaid fees. In doing so, she breached Principle 4 of the Principles.
- 26.85 In failing to comply with the Undertakings she and/or the Firm had given, in order to advance the financial interests of the Firm and herself, Ms Khan had acted in a way which reduced the trust the public placed in her and in the legal profession, contrary to Principle 6 of the Principles.
- 26.86 Ms Khan and/or the Firm had failed to act transparently to disclose the state of the costs negotiations to MW in order to exploit the Firm's position as the firm responsible for progressing the costs claim and negotiating with the paying party's solicitors, to the advantage of the Firm and herself. Such conduct, it was submitted, lacked integrity in breach of Principle 2 of the Principles.

Dishonesty

- 26.87 Ms Khan knew that the sum appropriated by the Firm was greater than the sum claimed in the Joint Bill of Costs in respect of the Firm's costs, from the paying party. She also knew that MW had incurred substantial fees which the clients would be liable to meet from their own funds, but which exceeded the damages paid to them and would be unlikely to be in a position to pay. Mr Allen submitted that Ms Khan intended to hide the position in the costs claim from MW so that (i) MW was unable to insist on its right to be involved in approving any settlement; and (ii) in order to facilitate her plan that the Firm should recover and appropriate the whole of any payment in respect of costs, before MW was aware of the settlement and had any opportunity to prevent the settlement from proceeding.
- 26.88 Mr Allen submitted that Ms Khan had sought throughout to advance her own interests, and those of the Firm, even where she knew this to be directly contrary to MW's reasonable expectations in light of the Undertakings.
- 26.89 Ms Khan was aware of the Undertakings and their terms and was aware that she was acting in breach of those terms. Mr Allen submitted that, in agreeing to the settlement of costs claims in breach of the terms of the Undertakings, Ms Khan acted dishonestly by the objective standards of ordinary and decent people.

Recklessness

- 26.90 Further or alternatively, in circumstances where Ms Khan was aware of the terms of the Undertakings and the fact that she had not notified MW of the settlement offer and/or had not sought or obtained MW's consent to acceptance of the settlement offer, she was reckless as to whether she was acting in breach of the Undertakings.

The Tribunal's Findings

Allegation 1.1

- 26.91 In his witness statement dated 16 March 2021, DC explained that having transferred his matter from MW to the Firm, he was thereafter not kept regularly informed as to the progress of his case. He was not aware that his case had been settled until he asked MW to take over conduct of his matter. He stated: "I had not been informed of the settlement and had not provided my consent to settle." He received a cheque from MW. He was "very disappointed with the amount as Ms Khan had led me to believe that the settlement would be much higher".
- 26.92 In his witness statement dated 16 March 2021, JN also stated that he had not consented to the settlement of his claim. He had only discovered that the claim had been settled following the transfer of his case back to MW. He also considered the sum received to be disappointing as Ms Khan had advised that the likely settlement would be much higher.
- 26.93 Mr Forde was the solicitor at MW who took conduct of the matters when DC and JN transferred their cases from the Firm back to MW. In his statement dated 24 July 2020, Mr Forde explained that he sent a Notice of Acting to DWF. He received a call from DWF who advised that the claims had settled following acceptance of a Part 36 offer made by DWF to the Firm. That offer had been accepted by Ms Khan on the Firm's behalf.
- 26.94 Mr Forde stated that he informed DC that the damages had been settled by Ms Khan. It became clear that neither DC nor JN were aware of the settlement.
- 26.95 The Tribunal determined that the witness evidence established unequivocally that the claims had been settled by Ms Khan without the knowledge or consent of her clients. Further, they had been settled for sums that were lower than she had advised the clients they would receive.
- 26.95 Principle 2 of the Principles required solicitors to act with integrity.
- 26.96 Principle 4 of the Principles required solicitors to act in the best interests of each client.
- 26.97 Principle 6 of the Principles required solicitors to behave in a way that maintained the trust the public placed in them and in the provision of legal services.
- 26.98 Outcome 1.2 required: "You provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice;"
- 26.99 Outcome 1.12 required that "Clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them;"
- 26.100 The Tribunal found that in accepting the offers of settlement without obtaining the authority or consent of her clients, Ms Khan had not provided a service which protected their interests in their matters, nor had she allowed her clients to make informed

choices. As they were unaware of the acceptance of the settlement, Ms Khan had deprived her clients of any input into how their matters were handled and had failed to advise them of the options available to them. Accordingly, the Tribunal found that Ms Khan had failed to achieve O(1.2) and O(1.12) as alleged. That such conduct breached Principle 4 of the Principles was evident. In accepting offers for substantially lower than the clients expected without the knowledge or consent of her clients, Ms Khan had absolutely failed to act in her clients' best interests.

26.101 Members of the public would not expect a solicitor to accept an offer of settlement without first obtaining the consent of the client. Still less would it be expected that the offer accepted would be for an amount that was substantially lower than the amount the solicitor had advised the client that the claim was worth. Ms Khan knew that she was settling the claims for far less than she had advised her clients in circumstances where their liability for costs was potentially extremely high and far in excess of the amount of damages agreed. The Tribunal found that Ms Khan's conduct failed to maintain the trust the public placed in her and in the provision of legal services in breach of Principle 6 of the Principles.

26.102 Solicitors acting with integrity would not settle their clients' damages claims without first seeking the consent of their clients, particularly when the settlement offered was substantially lower than the amount the solicitor had advised their clients that their claims were worth. In doing so, Ms Khan had acted without integrity in breach of Principle 2 of the Principles.

Dishonesty

26.103 The Tribunal found that Ms Khan knew that she required her clients' instructions before accepting any offer made to settle their damages claims. She knew that she had advised them that their claims were worth more than the offers made by DWF. Ms Khan knew that she had not advised her clients of the Part 36 offers and knew that she did not have their instructions or consent to accept the offers. The Tribunal found that ordinary and decent members of the public would consider that it was dishonest for a solicitor to accept an offer when they knew that the consent of their clients was required to do so, and further knew that their clients were unaware of the offers and had not consented to any acceptance. Accordingly, the Tribunal found that Ms Khan had acted dishonestly.

26.104 The Tribunal found allegation 1.1 proved, including that Ms Khan had been dishonest.

26.105 As recklessness had been pleaded in the alternative to dishonesty, it was unnecessary for the Tribunal to make a finding as to recklessness but had the allegation been pleaded in addition, it would have found the Respondent to have been reckless."

Allegation 1.2

26.106 The Tribunal considered that the documentary evidence proved unquestionably that the costs claim had been settled by Ms Khan:

- On 3 September 2018 DWF made a Part 36 Offer in full and final settlement of costs in the sum of £120,000.

- On 5 September 2018 the Firm/Ms Khan accepted that offer (although there was a disputed deduction)
- On 6 and 11 September 2018, DWF wrote to the Firm, stating that the acceptance of the offer was not valid as a result of the attempt to impose terms on its acceptance.
- On 19 September the Firm wrote to DWF stating that there was a “binding agreement” and that the agreement was “enforceable” against the Defendant.

26.107 A cheque for the outstanding amount was sent to the Firm on 10 October 2018. That cheque was deposited in the Firm’s office account on 12 October 2018. The Tribunal found that Ms Khan knew that the Settlement Cheque represented the amount required to fully and finally settle the costs claim. That this was the position was clear. In response to a letter in which Ms Khan requested payment of the “outstanding sum”, DWF stated:

“With reference to your letter dated 09 November 2018 we would refer you to our letter of 12 October 2018 enclosing our client’s cheque for £100,536.50.

That cheque was tendered in full and final settlement of your clients’ claim for costs. We understand that the cheque was cashed on 16 October 2018.

As such the matter is now concluded.”

26.108 The Tribunal noted that there was no further correspondence between Ms Khan and DWF on the issue until Ms Khan’s letter to DWF on 28 July 2022. The Tribunal agreed with Mr Allen’s analysis that this letter was a device so that Ms Khan could argue that it was her position that there had been no valid settlement. The Tribunal considered that had that been the case (i) Ms Khan would have responded to the letter of 13 November 2018 (detailed above), (ii) she would not have banked the cheque as it was tendered (and Ms Khan understood that it was tendered) in full and final settlement, and (iii) Ms Khan would not have waited for almost 4 years to chase the purportedly outstanding amount.

26.109 The Tribunal thus determined that the costs claim had been settled by Ms Khan.

26.110 In their witness statements, JN and DC stated that having been informed by MW of the settlement of their claims, they understood that the only outstanding matter was the settlement of the costs of MW and the Firm. After their cases had been transferred back to MW, they did not receive any further communication from Ms Khan.

26.111 The Tribunal found that the clients’ evidence demonstrated that they were not aware of the offer from DWF with regard to costs, nor were they aware that the offer had been accepted by Ms Khan and/or the Firm.

26.112 In failing to inform her clients of the costs settlement offer, Ms Khan had deprived them of the opportunity to make any informed decisions, have any say in how the matter was handled or of the options available to them. Thus she had failed to achieve O(1.12).

- 26.113 The Tribunal determined that in accepting the settlement offer without recourse to her clients, Ms Khan had subordinated her clients' interests to her own interests and that of the Firm. The settlement offer did not cover the costs claimed in the Joint Bill of Costs, and thus her clients would have been liable for any costs not recovered. In serving her own interests rather than that of her clients, Ms Khan had failed to act in their best interests in breach of Principle 4 of the Principles and had failed to achieve O (1.2) of the Code.
- 26.114 Members of the public would not expect a solicitor to accept an offer without first informing their clients when those clients were liable for any shortfall. Nor would members of the public expect solicitors to accept offers contrary to the terms of the Firm's own retainer. In doing so, Ms Khan had failed to maintain the trust the public placed in her and in the provision of legal services in breach of Principle 6 of the Principles.
- 26.115 That such conduct lacked integrity in breach of Principle 2 of the Principles was clear. Solicitors acting with integrity did not act otherwise than in accordance with their retainer in this manner; nor did they accept offers knowing that by doing so, they were leaving their clients with significant liabilities, when they knew that their clients were unaware of the offers or their potential liabilities. Accordingly, the Tribunal found that Ms Khan's conduct lacked integrity.

Dishonesty

- 26.116 The Tribunal determined that Ms Khan knew that she should obtain her clients' instructions prior to settling any offer, and knew that she had not done so. The offer received was for a lesser amount than that claimed in the Joint Bill of Costs which meant that the liability for any costs not recovered lay with the clients. Having not informed the clients of the settlement offer, Ms Khan knew that they were unaware of that liability. The Tribunal had found that Ms Khan had subordinated her clients' interests to her own and those of the Firm. Ordinary and decent people would consider that it was dishonest for a solicitor to settle a claim without their clients instructions when they knew that those instructions were required. Further, it would be considered dishonest to do so in order to further that solicitor's interests to the potential detriment of her clients. The Tribunal thus found that Ms Khan's conduct had been dishonest.
- 26.117 Accordingly, the Tribunal found allegation 1.2 proved on the balance of probabilities, including that Ms Khan had been dishonest.
- 26.118 As previously in relation to allegation 1.1, the Tribunal would have found the Respondent to have been reckless, but in view of the finding of dishonesty, this was unnecessary."

Allegation 1.3

- 26.119 Rule 14.1 of the SAR provided:

“Client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary”

26.120 Rule 17.1 of the SAR provided:

“When you receive money paid in full or part settlement of your bill (or other notification of costs) you must follow one of the following five options:

- (a) determine the composition of the payment without delay, and deal with the money accordingly:
....
- (b) ascertain that the payment comprises only office money and/or out-of-scope money, and/or client money in the form of professional disbursements incurred but not yet paid, and deal with the payment as follows:
 - (i) place the entire sum in an office account at a bank or building society branch (or head office) in England and Wales; and
 - (ii) by the end of the second working day following receipt, either pay any unpaid professional disbursement, or transfer a sum for its settlement to a client account; or
- (c) pay the entire sum into a client account (regardless of its composition), and transfer any office money and/or out-of-scope money out of the client account within 14 days of receipt; or
- (d) on receipt of costs from the Legal Aid Agency, follow the option in rule 19.1(b); or
- (e) in relation to a cheque paid into a client account under rule 14.2(e), transfer the costs element out of the client account within 14 days of receipt.”

26.121 Rule 17.2 of the SAR provided:

“If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party.”

26.122 In their witness statements, JN and DC stated that they had not been provided with any costs information or with any interim bills from Ms Khan.

26.123 It was clear that Ms Khan considered that the monies should be paid into the client account; that was her position in her correspondence with DWF of 5 and 19 September 2018, in which it was requested that payment of the settlement monies be made into the Firm’s client account.

26.124 The settlement monies related to the costs’ liabilities of the clients, and were therefore client monies. No bill or notification of costs had been sent to the clients for the Firm’s fees. Accordingly, until a bill or notification of costs had been sent, those monies should have remained in the client account. Further, those monies were received in settlement of the Firm’s fees as well as MW’s fees. The Joint Bill on Costs, pursuant

to which the settlement was made, claimed the Firm's fees in the sum of £67,918. Even if (which the Tribunal did not accept) Ms Khan believed that she was entitled to take the fees of the Firm, it was not accepted that she considered that she was entitled to take more than the amount claimed by the Firm in the Joint Bill of Costs.

- 26.125 The Tribunal found that the settlement monies received by way of the Settlement Cheque were client monies and should thus have been dealt with in accordance with the relevant SAR. In failing to pay those monies into the client account, Ms Khan had breached Rule 14.1. By paying the entire sum into the office account, Ms Khan had breached Rule 17.1. As she had failed to provide any bill or written notification of costs to the clients, Ms Khan had also breached Rule 17.2.
- 26.126 The correspondence sent to DWF by the Firm in September 2018 evidenced that Ms Khan knew that the monies were client monies; if she did not consider that to be the case, she would not have requested on 5 September, and repeated the request on 19 September, of payment of the settlement monies into the Firm's client account.
- 26.127 The clients were not aware of the settlement, nor were they aware of the liability to MW as a result of Ms Khan's retention of the entire settlement sum. The Tribunal found that in failing to notify the clients of the costs settlement, and retaining the entirety of the sum received, Ms Khan had failed to act in their best interests in breach of Principle 4 of the Principles.
- 26.128 Members of the public would not expect a solicitor to accept a settlement offer without first informing them. Nor would they expect a solicitor to retain the entire amount when the bill upon which those costs were predicated was a joint bill. The Tribunal considered that in doing so, Ms Khan had failed to maintain the trust the public placed in her and in the provision of legal services in breach of Principle 6 of the Principles.
- 26.129 The Tribunal considered that it was plain that Ms Khan's conduct was in breach of Principle 2 as alleged. Solicitors acting with integrity did not deliberately fail to keep their clients informed in order to appropriate monies, and by so doing, leave their clients with a substantial financial liability.

Dishonesty

- 26.130 Ms Khan knew that the monies paid were in full and final settlement of the Joint Bill of Costs. She also knew that the costs claimed by MW were almost double the amount that had been claimed on behalf of the Firm. Ms Khan knew that she had not sent any bill or other written notification of costs to her clients, and that she had not informed them of the Part 36 offer with regard to costs. Further, Ms Khan plainly knew that the monies were client monies and had to be dealt with in accordance with the SAR. Notwithstanding this knowledge, Ms Khan deposited the Settlement Cheque in the office account and retained the entirety of those monies. Ordinary and decent people would consider that it was dishonest for a solicitor to deliberately fail to keep her clients informed so as to appropriate monies when received. The Tribunal found that in conducting herself as she did, Ms Khan had acted dishonestly.
- 26.131 Accordingly, the Tribunal found allegation 1.3 proved on the balance of probabilities, including that Ms Khan's conduct had been dishonest.

26.132 For the avoidance of doubt, and whilst it did not form part of the Tribunal's findings, the Tribunal considered that Ms Khan's conduct had also been reckless as alleged.

Allegation 1.4

26.133 As detailed in its findings at allegation 1.3, the Tribunal found that the clients were not sent a bill or other notification of costs. The Tribunal noted that both clients stated that they had not seen the Pro Forma Fee Note until it was shown to them by the SRA. It was the evidence of both clients that they had not received any interim bills or a final bill in connection with the costs of their cases. The Tribunal accepted that evidence

26.134 The Tribunal noted that the Pro Forma Fee Note was not produced by Ms Khan until February 2021, during the course of the Applicant's investigation. The Tribunal considered that such a document would have been materially relevant to the proceedings instigated by the Firm, and it would have been produced by Ms Khan in those proceedings. It had been Ms Khan's position in those proceedings that the Firm was entitled to retain the entire sum, as the clients owed the Firm more than that which had been claimed on the Firm's behalf in the Joint Bill of Costs. The Tribunal inferred that if the Pro Forma Fee Note existed at that time, it would have been produced by Ms Khan in those proceedings in support of her case.

26.135 The Tribunal considered that the proximity of the amount paid by the Defendant, and the amount claimed by Ms Khan in the Pro Forma Fee Note, indicated that it had been produced after the settlement had been made for the purposes of justifying the monies that had been retained.

26.136 The Tribunal found that the Pro Forma Fee Note was deficient in numerous regards:

- There was no explanation as to why the fees charged were far in excess of the fees claimed on the Firm's behalf in the Joint Bill of Costs;
- There was no explanation of the work undertaken such as to increase the amount claimed by more than £50,000. The increase in the fees equated to almost 75% of the sum claimed in the Joint Bill of costs on behalf of the Firm. The Tribunal considered that it was implausible that the Firm and/or Ms Khan had undertaken such a substantial amount of work post the settlement of the claims;
- Indeed there was no sufficient explanation of any of the work undertaken;
- It included a VAT number but no VAT was charged;
- There were no disbursements listed.

26.137 Additionally, it was noted that the Firm's ledger was chronologically out of sequence, suggesting that the information on the ledger with regard to the Pro Forma Invoice and the payment on account, were input after the entry dated 19 March 2019, and not in 2018 as detailed.

26.138 As to the letters dated 18 January 2018, and purportedly covering letters to the clients enclosing the Pro Forma Fee Note, they were not produced by Ms Khan until 24 January 2022, shortly before her challenge to the Intervention was to be determined. Those letters stated:

“I write further to previous correspondence and enclose a copy of the firm’s Pro-Forma Fee Note dated 16 January 2018 in respect of the costs and disbursements incurred to date in relation to your now settled claim against the Chief Constable of Dorset Police.

If you have any queries over the costs and disbursements, please do not hesitate to contact me.”

26.139 As detailed above, there were no disbursements contained in the Pro Forma Fee Note.

26.140 The Tribunal noted that the letters of 9 April 2018 made no reference to the costs already claimed in the Pro Forma Fee Note, which, the Tribunal found, would be expected in circumstances where that pre-dated the letter sent.

26.141 The Tribunal determined that the Pro-Forma Fee Note, and the letters of January and April 2018 were later fabrications made by Ms Khan in order to justify her inappropriate retention of the entirety of the settlement sums. The Tribunal found that such conduct failed to maintain the trust the public placed in Ms Khan and in the provision of legal services. Members of the public did not expect solicitors to falsify or fabricate documents in order to justify their misconduct. Such behaviour fell far below the ethical standards that the profession expected of itself. Accordingly, the Tribunal found Ms Khan’s conduct breached Principles 2 and 5 of the 2019 Principles as alleged.

26.142 Ms Khan had produced documents as evidence that she had provided her clients with costs information and thus demonstrating that she was entitled to take the costs as she did, when she knew (i) that no such information had been provided, and (ii) that the documents were not a contemporaneous record of events but were later fabricated by her in order to support her position. Ordinary and decent people would not hesitate in finding that such conduct was dishonest. The Tribunal found that Ms Khan’s conduct was dishonest and in breach of Principle 4 of the 2019 Principles as alleged.

26.143 Accordingly, the Tribunal found allegation 1.4 proved on the balance of probabilities.

Allegation 1.5

26.144 It was clear, and as detailed above at allegation 1.3, the Tribunal had found that the Settlement Cheque was for full and final settlement of MW’s fees, as well as the fees of the Firm. It was obvious that Ms Khan knew that this was the case:

- The Joint Bill of Costs detailed the fees claimed by both MW and the Firm.
- On 28 August 2018, MW notified Ms Khan that it would settle its claim for costs for £80,000.

- On 29 August 2019, Ms Khan sought to persuade MW to accept a lesser amount. That was not accepted. MW maintained that it would settle at £80,000.
- On 19 September (following correspondence between the Firm and DWF as to whether the offer had been accepted) the Firm wrote to DWF stating that there was a “binding agreement”, and that the agreement was “enforceable” against the Defendant.

26.145 In response to MW’s request for an update with regard to costs, Ms Khan explained that the Firm had accepted an offer “in principle” and that she would update MW once there had been resolution of the “outstanding issue”. She did not inform MW that she had received the Settlement Cheque, nor did she suggest that MW were not, in fact, entitled to any of the monies received as the monies recovered were to pay the fees of the Firm. Nor did Ms Khan respond when MW re-iterated that it expected to receive the £80,000 that it had informed her it would accept in full and final settlement.

26.146 It was evident, the Tribunal found, that Ms Khan knew that she was not entitled to retain the entirety of the Settlement Cheque, and that MW had a claim to part of the monies received. The Tribunal did not accept that Ms Khan was entitled to retain the monies as, post settlement, she had incurred more costs. The Settlement Cheque had been sent to satisfy the Defendant’s obligations as detailed by the Joint Bill on Costs – Ms Khan knew that this was the case.

26.147 The Tribunal agreed with Mr Allen’s submissions that the Settlement Cheque was either received by the Firm acting as MW’s agent or that it was subject to an equitable lien favour of MW. It was noted that Firm had conceded that MW would have an equitable remedy against the Firm on the basis of a lien. The sum received amounted to a mixed payment and was subject to Rule 18.2 of the SAR which provided:

“A mixed payment must either:

- (a) be split between a client account and office account as appropriate; or
- (b) be placed without delay in a client account.”

26.148 In failing to do either of those things, Ms Khan breached Rule 18.2 of the SAR. Further, and for the reasons already detailed above at allegation 1.3, Ms Khan breached Rules 14.1 and 17.1 of the SAR.

26.149 In paying the cheque into the office account, without accounting to MW, Ms Khan had caused her clients to be exposed to the possibility of a claim for costs against them by MW. That such conduct was not in their best interests in breach of Principle 4 of the Principles was plain. It was also plain that members of the public would not expect any solicitor to conduct themselves in this way. Accordingly, Ms Khan’s conduct was also in breach of Principle 6 of the Principles.

26.150 A solicitor acting with integrity would not retain monies which she knew had been paid in settlement of her own costs and the costs of another firm. Still less would a solicitor acting with integrity do this when she knew that the bulk of the costs claimed were the costs of the other firm. Ms Khan’s conduct, the Tribunal determined, fell well below

the ethical standards expected of the profession. Accordingly, the Tribunal found that Ms Khan had failed to act with integrity in breach of Principle 2 of the Principles.

Dishonesty

26.151 Ms Khan knew that the costs negotiations were being conducted by her on behalf of both the Firm and MW. Indeed, that had been ordered by the Court which had also ordered the production of the Joint Bill of Costs. She knew that the Settlement Cheque had been tendered in full and final settlement of the costs claimed in the Joint Bill of Costs, that being the costs of both MW and the Firm. She knew that the amount received exceeded the amount claimed by the Firm in the Joint Bill of Costs and that, in fact, MW had claimed a far larger proportion of costs in the Joint Bill on Costs. She also knew that MW was expecting to receive its share of the costs settlement, and that it was not prepared to accept less than £80,000.

26.152 Ms Khan knew that she had received and banked the Settlement Cheque but that MW was not aware of this. In fact, Ms Khan did not inform MW that she had received any monies until around 5 November. Ms Khan refused to provide MW with any breakdown or to make an interim payment with no explanation. At no time did she inform MW that she was entitled to, and had, retained the entire amount in settlement of the Firm's costs. The Tribunal found that Ms Khan's knowledge and conduct evidenced that she knew that she was not entitled to retain the entire amount, but elected to do so. Ordinary and decent people would consider that it was dishonest for a solicitor to retain monies for their own purposes in the knowledge that they were not entitled to do so. The Tribunal found that in doing so, Ms Khan had acted dishonestly.

26.153 Accordingly, the Tribunal found allegation 1.5 proved on the balance of probabilities, including that Ms Khan's conduct was dishonest.

26.154 For the avoidance of doubt, and whilst it did not form part of the Tribunal's findings, the Tribunal considered that Ms Khan's conduct had also been reckless as alleged.

Allegation 1.6

26.155 The Tribunal considered that the terms of the Undertakings were clear. Ms Khan and/or the Firm had undertaken (amongst other things) to advise MW of any offers made in respect of its costs and not to settle any costs without the specific written consent of MW's managing partner.

26.156 Notwithstanding the Undertakings, on 5 September 2018, Ms Khan accepted DWF's settlement offer without informing MW of the offer or obtaining MW's consent. Ms Khan had accepted that this was the case during her evidence in the proceedings brought by MW against the Firm.

26.157 Having accepted the offer, Ms Khan received and banked the Settlement Cheque. On the day that the cheque was presented, Ms Khan was in communication with MW but did not mention that she had already received payment. Instead, she explained that she had accepted a settlement offer "in principle". In response MW stated that it was 'somewhat concerned' that an offer had been accepted in principle without reference to

MW, however it expected to receive costs in the sum of £80,000 in accordance with its instructions.

26.158 In November 2018, when it became clear to MW that payment for cost had been received by the Firm, MW requested a breakdown of the settlement, a proposed split and an interim payment of £40,000. Ms Khan did not provide any of that information and refused to make any interim payment.

26.159 The evidence clearly showed that Ms Khan and/or the Firm had failed to comply with the Undertakings.

26.160 Outcome (11.2) required: “You perform all undertakings given by you within an agreed timescale or within a reasonable amount of time.”

26.161 Rule 8.1(a) SRA Authorisation Rules provided:

- “(a) An authorised body and its managers or the sole practitioner must ensure that:
 - (i) any obligations imposed from time to time on the authorised body, its managers, employees, interest holders or the sole practitioner by or under the SRA’s regulatory arrangements are complied with; and
 - (ii) any other statutory obligations imposed on the authorised body, its managers, employees, interest holders or the sole practitioner, in relation to the body’s business of carrying on authorised activities, are complied with.”

26.162 In failing to ensure that the MW’s position on costs was protected in accordance with the Undertakings, Ms Khan and/or the Firm had breached the Undertakings and thus had failed to achieve Outcome (11.2). Ms Khan was responsible for the Firm’s failure pursuant to Rule 8.1(a) of the SRA Authorisation Rules 2011.

26.163 As detailed above, in accepting the settlement proposal without regard to MW’s interests, Ms Khan had placed her clients at risk of a claim by MW for its costs. Such conduct, the Tribunal found, was contrary to her clients’ best interests in breach of Principle 4 of the Principles.

26.164 Members of the public did not expect a solicitor to breach undertakings provided. Still less was a solicitor expected to do so in order to advance her own financial interests over those of her clients. In doing so, Ms Khan/the Firm had failed to maintain the trust the public placed in her and in the provision of legal services in breach of Principle 6 of the Principles.

26.165 A solicitor acting with integrity would have honoured the Undertakings given. Ms Khan and/or the Firm had deliberately failed to comply with the Undertakings so as to facilitate the retention of the entire sum paid to in full and final settlement of the costs of both the Firm and MW. Ms Khan had taken advantage of the Firm’s position as the firm responsible for progressing the costs claim to the detriment of MW and at

risk to her clients. Such conduct, the Tribunal found, lacked integrity in breach of Principle 2 of the Principles.

Dishonesty

26.166 As detailed above, Ms Khan knew that the sum appropriated by the Firm was greater than the sum claimed by the Firm in the Joint Bill of Costs. She also knew that MW had incurred substantial fees which the clients would be liable to meet from their own funds, but which exceeded the damages paid to them and would be unlikely to be in a position to pay. Ms Khan knew that she had signed the Undertakings and was aware of what she/the Firm needed to do to comply with the Undertakings. She had deliberately chosen to breach the Undertakings in order to appropriate the entirety of the settlement monies. Ordinary and decent people would consider that it was dishonest for a solicitor to purposefully and intentionally act in breach of an Undertaking for her own financial gain. Thus the Tribunal found that Ms Khan's conduct was dishonest.

26.167 Accordingly, the Tribunal found allegation 1.6 proved on the balance of probabilities, including that Ms Khan's conduct was dishonest.

26.168 For the avoidance of doubt, and whilst it did not form part of the Tribunal's findings, the Tribunal considered that Ms Khan's conduct had also been reckless as alleged.

27. Allegation 1.7 - The Respondent failed to cooperate with the SRA and/or the Legal Ombudsman in relation to investigations by the SRA and the Legal Ombudsman into her conduct and practice at the Firm, in breach of O(10.6) the Code; and/or the Respondent failed to ensure that the Firm complied with its obligation to cooperate with the SRA and/or the Legal Ombudsman as it was required to do under O(10.6) the Code, in breach of rule 8.1(a) SRA Authorisation Rules 2011. In so acting, the Respondent also breached Principle 7 of the Principles.

The Applicant's Case

27.1 JH instructed the Firm on or around 13 September 2017. He considered that the Firm had failed to adequately progress his claim and around 28 May 2018, he terminated his instructions to the Firm.

27.2 On 26 June 2018, JH sent a letter of complaint to the Firm. By a letter dated 18 September 2018, on the Firm's letterhead and signed personally by Ms Khan, the Firm enclosed a copy of its complaints procedure and indicated that a response to the substantive complaint would be provided within 35 days or, if that was not possible, within 8 weeks. No substantive response was ever provided to JH in relation to this complaint.

27.3 The Firm also declined to return JH's papers, claiming that fees were payable by and outstanding from JH in respect of alleged work done by the Firm on JH's matters.

27.4 JH complained to the SRA on 20 September 2018, and to LeO in June 2019.

- 27.5 On 31 December 2018, a regulatory support officer of the SRA wrote to Ms Khan to notify her that it was investigating a complaint of misconduct by JH. Ms Khan provided a response on 18 January 2019.
- 27.6 On 15 March 2019 the SRA wrote to Ms Khan requesting that information and documentation relating to JH's complaint be provided to the SRA by 3 April 2019. An extension to reply by 19 April 2019 was subsequently granted.
- 27.7 In a letter to the SRA dated 14 May 2019, Ms Khan stated that she had reviewed her file for JH but could not see what assistance could be gained from the documentation requested.
- 27.8 Mr Allen submitted that at this stage, Ms Khan was not aware of the LeO investigation. This was significant as Ms Khan later suggested that she had not responded to the SRA investigation due to the LeO investigation. There was no link between the investigations at that stage and thus that later justification of parallel investigations was not available to Ms Khan.
- 27.9 LeO notified the Firm and Ms Khan of JH's complaint on 27 June 2019. The case handler at LeO wrote to Ms Khan on 4 July 2019 requesting evidence to be provided no later than 12 July 2019. The requested documentation consisted of papers which should have been held by the Firm on JH's client file. As such they were or should have been readily available to Ms Khan. The letter emphasised the importance of a response within the allocated time.
- 27.10 The Firm requested and, on 10 July 2019, received an extension of time to 19 July 2019 to comply with LeO's request for evidence. On 24 July 2019, a further extension of time was given (despite the previous deadline having been missed) until 7 August 2019.
- 27.11 On 6 August 2019 an investigating officer of the SRA wrote to Ms Khan again reiterating its request for information/documentation relating to JH's complaint. The letter explained that it had been considered that the matter could have been dealt with by the Applicant's Early Resolution Team, but the documentation had not been provided. On 23 August 2019, the Firm wrote to the SRA informing it that the Firm would not be responding to the SRA's investigation, as LeO's investigation was more advanced and Ms Khan did not consider it "proportionate to simultaneously take part in two investigations which cover the same complaints".
- 27.12 As to that assertion, Mr Allen submitted that:
- The purpose of the investigations was different; LeO was considering client service whereas the SRA was considering conduct.
 - Ms Khan was seeking to play LeO and the SRA off against each other whereas the reality was that she was not cooperating with either
 - The suggestion that the LeO investigation was "further advanced" was misleading. The LeO investigation commenced in late June 2019. The Applicant had been trying to obtain information from Ms Khan since December 2018. If it was the case

that the LeO investigation was further advanced, that was a result of Ms Khan's failure to provide the requested information.

- 27.13 On 23 August 2019, the Firm wrote to LeO seeking more time to respond to its requests. That request was refused on the ground that it was prejudicial to JH in light of the repeated extensions which had already been given. In refusing that request, LeO noted that the Firm's failure to respond to requests for documents was preventing it from processing the matter effectively, and that this failure to co-operate may be referred to the SRA without further notice.
- 27.14 On 30 October 2019, LeO's investigator issued a Case Decision in relation to JH's complaint, concluding that the Firm's service was unreasonable in two of the three respects alleged by JH, that the Firm should pay compensation in the sum of £250, and that the Firm should release JH's documents to him without further delay.
- 27.15 Both parties rejected that Case Decision, and a Final Decision was issued by LeO in relation to JH's complaint on 26 November 2019 ('the Final LeO Decision').
- 27.16 On 28 January 2020, a production notice pursuant to section 44B was served, requiring the Firm to produce its full files and ledgers in connection with JH's matter ('the January 2020 Notice'). On 3 February 2020, in a telephone call with the Applicant, Ms Khan, when asked to respond to the January 2020 Notice stated that she would probably be too busy, and hoped that the decision of LeO would bring the matter to an end.
- 27.17 Ms Khan did not provide the documents requested by the January 2020 Notice. The Applicant sent a letter before action dated 7 October 2020 which required Ms Khan to comply with the January 2020 Notice by 14 October 2020. If she failed to do so, enforcement proceedings would be issued in the High Court.
- 27.18 On 7 October 2020, Ms Khan called the Applicant questioning why the January 2020 Notice had been signed and accusing the Applicant of bullying and harassment. As at the time of the hearing, Ms Khan had not complied with the January 2020 Notice.
- 27.19 Mr Allen submitted that notwithstanding repeated extensions of time to supply documents, Ms Khan failed to provide documents and information on behalf of the Firm and/or failed to ensure that the Firm provided the documents and information as requested by both LeO and the SRA.
- 27.20 The documents and information requested by LeO and the SRA were reasonably requested for the purposes of their investigations. They were documents which were or ought to have been held on JH's client or matter file (or files) and any information requested was or ought to have been contained in such documents. Ms Khan had not suggested, either to LeO or the SRA, that they were not available.
- 27.21 It was the Applicant's case that Ms Khan could have made the documents available had she wished to do so, and that neither the Firm nor Ms Khan had any reasonable excuse for failing to provide them.

- 27.22 In the circumstances, Ms Khan failed to cooperate with the LeO and the SRA, in breach of O(10.6) the Code and Principle of the Principles.
- 27.23 Alternatively, if and in so far as the request by LeO and the SRA was made solely to the Firm, Ms Khan breached rule 8.1(a) SRA Authorisation Rules 2011, in that as the sole manager of the Firm, she failed to ensure that the Firm complied with the SRA's regulatory arrangements, in particular the Firm's obligation under O(10.6) of the Code.
- 27.24 Additionally, it was submitted, Ms Khan was well aware of both investigations and of her regulatory obligation to cooperate with the SRA and the LeO. Instead, however:
- Ms Khan advanced spurious reasons why she said she did not need to or would not comply with the SRA's requests for documents and information; and
 - Ms Khan requested extensions of time to comply with the LeO's document requests which went far beyond what could have reasonably been required.
- 27.25 Mr Allen submitted that Ms Khan deliberately and/or knowingly breached her regulatory obligations concerning cooperation with the SRA and LeO with the intention of frustrating or hindering the SRA's and LeO's investigations.

The Tribunal's Findings

- 27.26 The Tribunal found that the documentary evidence demonstrated that Ms Khan and/or the Firm had failed to provide the information requested by both the SRA and LeO.
- 27.27 The Tribunal noted on 13 May 2019, Ms Khan emailed the SRA stating that she had reviewed the file and was in a position to prepare a response to the questions raised. No response was forthcoming. At no point did Ms Khan seek to substantively address any of the issues raised in either investigation.
- 27.28 The Tribunal found it extraordinary that a solicitor, in response to a request for documents and information from the regulator, would state that no assistance could be gained from the documentation requested, and would thereafter fail to provide any of the documents. Further, it was not for a solicitor to choose which investigation would be complied with. Ms Khan considered that it was disproportionate to "simultaneously take part in two investigations which cover the same complaints".
- 27.29 Further, Ms Khan had failed to comply with the January 2020 Notice, notwithstanding the letter before action dated 7 October 2020.
- 27.30 The Tribunal found that the documentary evidence indisputably demonstrated that Ms Khan did not comply with either investigation.
- 27.31 Outcome 10.6 provided:

"you co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you".

27.32 It was plain that Ms Khan had failed to do so. Thus the Tribunal found that Ms Khan had failed, and had caused the Firm to fail, to achieve O10.6 as alleged.

27.33 Principle 7 provided:

“You must comply with your legal and regulatory obligations and deal with your regulators and ombudsman in an open, timely and co-operative manner”.

27.34 Ms Khan had not dealt with the SRA or LeO in an open, timely and co-operative manner. She had requested numerous extensions to deadlines provided, and having been granted a number of extensions, she failed to provide the requested documentation. Instead of complying with the requests to provide documents, Ms Khan sought to question the basis of the SRA investigation. Her failures meant that the Applicant was unable to deal with the complaint in using its Early Resolution Team. The Tribunal found that Ms Khan had breached Principle 7 as alleged.

27.35 Rule 8.1(a) of the SRA Authorisation Rules 2011 provided:

“(a) An authorised body and its managers or the sole practitioner must ensure that:

(i) any obligations imposed from time to time on the authorised body, its managers, employees, interest holders or the sole practitioner by or under the SRA’s regulatory arrangements are complied with; and

(ii) any other statutory obligations imposed on the authorised body, its managers, employees, interest holders or the sole practitioner, in relation to the body’s business of carrying on authorised activities, are complied with.”

27.36 It was plain, the Tribunal found, that Ms Khan failed to ensure that the Firm complied with its regulatory obligation to cooperate fully with the SRA and LeO. The Tribunal found that Rule 8.1(a) was therefore breached.

27.37 Accordingly, the Tribunal found allegation 1.7 proved on the balance of probabilities. The Tribunal further found that the breaches were deliberate, and that Ms Khan was knowingly in breach of her regulatory duties.

28. Allegation 1.8 - The Respondent failed to ensure that the Firm complied with the Legal Ombudsman’s final decision dated 26 November 2019 in relation to JH’s complaint, in breach of Principle 2 of the 2019 Principles and/or the Firm’s obligation to cooperate with the Legal Ombudsman under rule 3.2 of the Code for Firms, in breach of her obligations as manager under rule 8.1 of the Code for Firms.

The Applicant’s Case

28.1 The Final LeO Decision upheld the initial Case Decision, and found that although the Firm’s level of service in progressing the case had been reasonable in the circumstances, its refusal to return files (claiming to exercise a lien in respect of costs without having sought payment of costs or given the client notice of what the costs

were) and its failure to take reasonable steps to provide a copy of the complaints procedure were unreasonable, and that the Firm should pay compensation in the sum of £250 and return JH's files within 30 days of the date of acceptance of the decision, with evidence to be provided to LeO of the documents having been returned.

- 28.2 JH accepted the Final LeO Decision on 26 November 2019. The Firm was notified of the acceptance of the decision on the same day or the following day. On 12 December 2019 and 19 June 2020, LeO wrote to the Firm noting that it had failed to comply with the Final LeO Decision. Both letters reminded Ms Khan that failure to comply with the Final LeO Decision was regarded as serious professional misconduct. The letter of 19 June 2020 was also a pre-action letter threatening court proceedings to compel compliance under s.141 Legal Services Act 2007, with possible proceedings for contempt of court to follow any further non-compliance. The letter of 19 June 2020 also expressly invited representations, should the Firm not intend to comply with the Final LeO Decision.
- 28.3 The Firm neither complied with the Final LeO Decision nor responded to the Legal Ombudsman's letter dated 19 June 2020.
- 28.4 Mr Allen noted that in her 2nd Witness Statement in the intervention challenge, Ms Khan strongly disputed the findings made by LeO, and that notwithstanding its warning, no enforcement action had been taken. There was no suggestion in the 2nd Witness Statement that Ms Khan had complied with the Final LeO Decision.
- 28.5 The Applicant believed that the failure to comply with the Final LeO Decision was ongoing.
- 28.6 Mr Allen submitted that in failing to comply with the Final LeO Decision, (and by failing to ensure that the Firm complied with the statutory ombudsman scheme as it was required to do), Ms Khan had failed to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons in breach of Principle 2 of the 2019 Principles.
- 28.7 The Firm also failed to cooperate with the Legal Ombudsman under Rule 3.2 of the Code for Firms. In this respect Ms Khan breached her obligations as manager under rule 8.1 of the Code for Firms.
- 28.8 Mr Allen submitted that Ms Khan's failures were deliberate and/or conscious misconduct as she knew of the Final LeO Decision, knew that the Firm was required to comply with it, but chose not to do so.

The Tribunal's Findings

- 28.9 The Tribunal found that it was plain from the documentary evidence that Ms Khan had not complied with the Final LeO Decision of 26 November 2019. Indeed, in her 2nd Witness Statement dated 24 September 2021, Ms Khan referred specifically to the Final LeO Decision, expressing that she continued to "strongly dispute" the findings and noting that no enforcement action had been taken. The Tribunal inferred that Ms Khan's reference to no enforcement action having been taken demonstrated that she

had not complied with the Final LeO Decision; there would be no need to refer to the lack of enforcement action if there had been compliance.

- 28.10 LeO was established under the Legal Services Act. Part of its role was to help resolve disputes between consumers and legal service providers. Having found that the Firm's service was unreasonable, LeO determined that JH should be paid £250 in compensation and have his documents returned to him. Ms Khan did neither of these.
- 28.11 The Tribunal found that Ms Khan was required to ensure that the Firm complied with the Final LeO Decision. The Tribunal considered that in failing to do so, Ms Khan had failed to act in a way that upheld public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. Members of the public would expect a solicitor to comply with decisions made when there had been a finding that the service provided did not meet the expected and accepted standard. Accordingly, the Tribunal found there had been a breach of Principle 2 of the 2019 Principles as alleged.
- 28.12 Rule 3.2 of the Code for Firms provided:
- “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.”
- 28.13 Rule 8.1 of the Code for Firms provided:
- “If you are a manager, you are responsible for compliance by your firm with this Code. This responsibility is joint and several if you share management responsibility with other managers of the firm.”
- 28.14 As detailed above, the Tribunal found that Ms Khan had failed to ensure that the Firm cooperated with LeO and the LeO Final Decision. It was plain, the Tribunal found, that Ms Khan had breached her obligation as a manager under Rule 8.1 and had failed to ensure that the Firm complied with its obligations under Rule 3.2.
- 28.15 Accordingly, the Tribunal found allegation 1.8 proved on the balance of probabilities. Further, the Tribunal considered that the conduct was deliberate, and that Ms Khan was knowingly in breach of her regulatory duties.
29. **Allegation 1.9 - The Respondent failed to ensure that the Firm complied with the court orders set out in paragraph 201 below, where there was no reasonable excuse for the Firm's failure to comply, and thereby breached: (1.9.1) Principles 1, 2, 6 and/or 7 of the Principles (until 26 November 2019); and (1.9.2) Principles 1, 2 and/or 5 of the 2019 Principles (after 26 November 2019).**

The Applicant's Case

- 29.1 On 4 August 2017, the SRA served a production notice pursuant to s.44B of the Solicitors Act 1974 on the Firm requiring production of two original client files and a copy of the Firm's complaints procedure (“the August 2017 s.44B Notice”). Ms Khan raised various unfounded objections to complying with the 2017 s.44B Notice in correspondence.

- 29.2 In a letter dated 9 August 2017, Ms Khan stated that with regard to one of the client files, the Firm was “exercising a solicitors’ lien on costs” and that once the costs were paid in full, a copy of the file would be released. Further, as a solicitors’ lien was being exercised, the Applicant would need to “provide us with a written Undertaking” that the file would not be released to the clients or anyone else purporting to act on their behalf.
- 29.3 In its response dated 11 August 2017, the Applicant stated:
- “The Production Notice is an unconditional statutory notice. We are not prepared to give you conditional assurances to release the files to us.
- Having said this, we will not release the file to [the clients] or anyone acting on their behalf. For the avoidance of doubt, this is in no way an undertaking. If there are specific documents we need to show to [the clients] for the purposes of our investigation, these may be disclosed.”
- 29.4 Mr Allen submitted that the assertion the Ms Khan was entitled not to comply with the August 2017 Section 44B Notice as she was exercising a solicitors’ lien was plainly wrong in view of paragraph 12 of Part 2 of Schedule 1 of the 1974 Act which provided: “The powers in relation to ... documents conferred by this Part of this Schedule shall be exercisable notwithstanding any lien on them or right to their possession.” This provision applied (with necessary amendments) to notices issued under s.44B (see 1974 Act, s.44B(7)).
- 29.5 The protracted correspondence between the SRA and the Firm concerning noncompliance with the August 2017 s.44B Notice continued until July 2018. Having reached an impasse with the Firm over the production of the missing documents, the SRA issued High Court proceedings against the Firm to enforce the August 2017 s.44B Notice on 27 November 2018 (“the Section 44B Claim”).
- 29.6 The trial of the Section 44B Claim was listed before Master Clark on 28 August 2019. Shortly before the trial, Ms Khan claimed for the first time that she had already delivered the original client files that she had previously refused to produce by hand to the SRA’s offices in May 2019. This development led to the adjournment of the trial. However, at the hearing on 28 August 2019, Master Clark made an order requiring the Firm in the meantime to produce a complete copy of that client file to the SRA (“the August Order”). This order was made without any objection from Ms Khan who appeared on behalf of the Firm.
- 29.7 The Firm nevertheless did not comply - and has still not complied - with the August Order. Instead, the Firm applied on 18 September 2019 for permission to appeal against paragraphs 2 to 8 of the August Order. That application was dismissed by Birss J on 11 December 2019.
- 29.8 At an oral hearing on 28 January 2020, the Firm renewed its application for permission to appeal. Birss J dismissed the renewed application on all grounds save for one ground relating to the order for costs made in the August Order. On 28 January 2020, Birss J ordered that a copy of the files in relation to one of the clients be provided to the

Applicant by 17 February 2020 (“the January Order”). The Firm failed to comply with that order.

- 29.9 On 9 April 2020, a hearing took place before Master Clark. Master Clark also ordered that the Firm provide a complete copy of the files by 24 April 2020 (“the April Order”). The April Order was endorsed with a prominent penal notice warning of the consequences of non-compliance, including the possibility of imprisonment for contempt. The Firm still did not comply with the April Order.
- 29.10 The Firm applied, after the deadline for compliance had expired, for permission to appeal against the April Order and for a stay to be granted in respect of its obligation to deliver up a copy of the files (amongst other things). The application for a stay was refused by an order of Mann J. dated 27 May 2020, which the Firm in turn applied to set aside. That application was dismissed on 9 June 2020.
- 29.11 The trial of the Section 44B Proceedings took place before Master Clark on 23 November 2020 and Master Clark handed down a written judgment on the Section 44B Proceedings on 5 January 2021.
- 29.12 Mr Allen submitted that the Firm had repeatedly and systematically failed over an extended period to comply with the August Order, the January Order and the April Orders in circumstances where (1) Ms Khan was well aware of the terms of the orders and what she had to do to comply with them, and (2) there was no reasonable excuse for the Firm’s for non-compliance.
- 29.13 Ms Khan was personally responsible for the Firm’s failure to comply with the Court orders, as the manager of the Firm, pursuant to Rule 8.1(a) of the SRA Authorisation Rules 2011 (to 25 November 2019) and Rule 8.1 of the Firm 2019 Code (from 25 November 2019).
- 29.14 In failing to comply with the Court orders, the Firm was in breach of Principle 1 of the Principles (to 25 November 2019) and Principle 1 of the 2019 Principles (from 26 November 2019). upholding the administration of justice would require that the Firm comply with court orders made against it, unless a stay had been sought and granted by the court, within the time permitted by the court order (or alternatively within a reasonable time). Ms Khan and the Firm systematically failed to comply with court orders, in a repeated and sustained manner, which no solicitor or firm acting with proper respect for the court and the administration of justice would do.
- 29.15 Members of the public would reasonably expect Ms Khan, as an officer of the court with a duty (when conducting litigation and exercising rights of audience) to uphold the administration of justice, would ensure that her Firm complied with court orders made against it promptly and in full. Her failure to do so undermined the trust that the public reasonably place in solicitors and in the provision of legal services by authorised persons on breach of Principle 6 of the Principles (to 25 November 2019) and Principle 2 of the 2019 Principles (from 26 November 2019).

- 29.16 In failing to comply with the court's orders, Ms Khan prevented the SRA from promptly and fully investigating complaints made against her and/or the Firm by her clients, when it was in her clients' best interests that their complaints be properly assessed. In doing so Ms Khan breached Principle 7 of the Principles.
- 29.17 As a result of her flagrant and deliberate disregard for court orders aimed at the enforcement of her regulatory obligations, Ms Khan acted in a way that was wholly inconsistent with the ethical standards of the profession. Ms Khan, it was submitted, demonstrated sustained disregard for the lawful authority of both the court and the SRA as her regulator as well as demonstrating disregard for the interests of her clients. Such conduct, it was submitted, was in breach of Principle 2 of the Principles (to 25 November 2019) and Principle 5 of the 2019 Principles (from 26 November 2019).
- 29.18 Mr Allen submitted that in the circumstances, given her knowledge of the Orders and what she was required to do to comply, the only possible inference was that Ms Khan deliberately and consciously failed to ensure that the Firm satisfied its legal obligations to comply with the Court orders.

The Tribunal's Findings

- 29.19 The Tribunal found that the court orders had not been complied with. That this was the case was clear. Following the making of the August Order, the Court had to make further orders in January and again in April. Notwithstanding this, Ms Khan failed to ensure that the Firm complied with the orders made. The Tribunal noted that Ms Khan had been present when the orders were made in January and April. It could not be said that Ms Khan was unaware of the making of the Orders or the terms of the Orders. Indeed, Ms Khan and the Firm had made a number of applications to appeal, stay or set aside the orders at various times.
- 29.20 The Tribunal found that Ms Khan had failed to ensure that the Firm complied with the Orders as alleged. Ms Khan had, the Tribunal found, chosen to ignore the orders made by the Court, as she either considered that she was not required to ensure the Firm complied, or considered that notwithstanding the duty to comply, the Firm would not do so. The continued failure to comply with the Court orders was extraordinary. Such conduct, it was determined, failed to uphold the rule of law and the administration of justice in breach of Principle 1 of both the Principles and the 2019 Principles.
- 29.21 The Tribunal found that members of the public would expect a solicitor to comply with orders made by the Court. They would not expect a solicitor to frustrate the investigation into complaints by refusing to provide client files for inspection and review in contravention of court orders that required her to do so. Such conduct, the Tribunal found, undermined the trust the public placed in solicitors and in the provision of legal services in breach of Principle 6 of the Principles and Principle 2 of the 2019 Principles. It also demonstrated the failure by Ms Khan to ensure that the Firm complied with its legal and regulatory obligations in breach of Principle 7 of the Principles.
- 29.22 Ms Khan had systematically failed to ensure that both she and the Firm complied with their obligations. There was no justification for the non-compliance. The Tribunal considered that her conduct evidenced her lack of regard for her obligations and duties

as a manager of the Firm and a solicitor. Solicitors acting with integrity did not repeatedly and deliberately fail to comply with orders imposed by the Court. The Tribunal found that Ms Khan's conduct fell far below the higher standards expected of solicitors. That such conduct lacked integrity in breach of Principle 2 of the Principles and Principle 5 of the 2019 Principles was plain and incontrovertible.

- 29.23 Accordingly, the Tribunal found allegation 1.9 proved on the balance of probabilities. Further, the Tribunal considered that the conduct was deliberate, and that Ms Khan was knowingly in breach of her regulatory duties.
30. **Allegation 1.10 - The Respondent failed to deliver up the practice documents of her own practice and the Firm's practice that were within her possession and/or control, as required by the SRA's Intervention Notice dated 19 August 2021 ('the Intervention Notice'). In doing so, the Respondent breached her statutory duties and caused the Firm to breach its statutory duties under paragraph 9 of Part II Schedule 1 Solicitors Act 1974; and the Respondent breached rules 7.3 and/or 7.4 Code of Conduct for Solicitors 2019 ("the Code for Solicitors"); and, in breach of her obligations under rule 8.1 SRA of the 2019 Code for Firms, caused the Firm to breach rules 3.2 and/or 3.3 SRA the Code for Firms. In so acting, the Respondent also breached Principles 2, 5 and 7 2019 Principles.**

Allegation 1.11 - The Respondent failed to deliver up the items listed in Schedule B of the order of Adam Johnson J. dated 7 September 2021 ('7 September Order') in accordance with the terms of the 7 September Order or at all. In doing so, the Respondent committed a contempt of court and breached rules 2.5, 7.3 and/or 7.4 of the Code for Solicitors; and, in breach of her obligations under rule 8.1 of the Code for Firms, the Respondent caused the Firm to breach rules 3.2, 3.3 and/or 7.1(a) of the Code for Firms. In so acting, the Respondent also breached Principles 1, 2, 5 and 7 of SRA Principles 2019.

Allegation 1.12 - The Respondent failed to deliver up the items listed in Schedule B of the order of Miles J. dated 21 September 2021 ('21 September Order') in accordance with the terms of the 21 September Order or at all. In doing so, the Respondent committed a contempt of court and breached rules 2.5, 7.3 and/or 7.4 of the Code for Solicitors; and, in breach of rule 8 of the Code for Firms, the Respondent caused the Firm to breach rules 3.2, 3.3 and/or 7.1(a) of the Code for Firms. In so acting, the Respondent also breached Principles 1, 2, 5 and 7 of the 2019 Principles.

The Applicant's Case

- 30.1 On 19 August 2021, an Adjudication Panel of the SRA decided to intervene in the practices of Ms Khan and the Firm on the grounds that (i) there was reason to suspect dishonesty, and (ii) there had been breaches of professional regulatory rules.
- 30.2 The Adjudication Panel made a number of formal resolutions including:
- to exercise the power under paragraphs 6(1) and 6(2) of the Solicitors Act 1974, Schedule 1, Part II, to direct that the right to recover and receive money in connection with the Firm should vest in the Law Society;

- to exercise the power under paragraph 9(1) of the Solicitors Act 1974, Schedule 1, Part II, to appoint a person ('the Intervention Agent') to take possession of the Firm's and Ms Khan's practice documents and otherwise to act as the Law Society's agent in relation to the Intervention; and
 - to suspend Ms Khan's practising certificate.
- 30.3 A copy of the Intervention Notice was sent to the Firm under cover of a letter dated 19 August 2021. This correspondence confirmed that the Intervention Agent would attend the Leicester Office the following day. The notice was sent to the Leicester Office and by email to Ms Khan.
- 30.4 A telephone conversation took place between Ms Andersen of the SRA ('the Intervention Officer') and Ms Khan later on 19 August 2021, during which Ms Khan stated that she would not be attending the Leicester Office on 20 August 2021 to enable the SRA to carry out the Intervention because that date was a significant date for her religion. Ms Khan was reminded that she was obliged to permit the SRA to enter the Firm's offices to carry out the Intervention, and that the SRA would seek a court order to that effect if necessary. Mr Allen submitted that the telephone call was reflective of Ms Khan's refusal to accept the consequences of, and cooperate with, the Intervention. It was clear that she remained intent on continuing to represent former clients of the Firm notwithstanding the Intervention and the suspension of her practising certificate.
- 30.5 Later the same day, the Intervention Officer emailed Ms Khan to confirm that, given her religious observance on the date originally planned to carry out the Intervention, the SRA would attend the Leicester Office on Monday, 23 August 2021 at 10:30am to effect the Intervention. However, Ms Khan did not attend the office on that date or respond to emails and telephone calls from the SRA, despite being warned of the SRA's intention to apply for a Court order to authorise the SRA to force entry into the office and effect the Intervention.
- 30.6 The SRA applied for and obtained an order from Adam Johnson J on 7 September 2021 which (among other things) required the Firm and Ms Khan to produce the practice documents and other items listed in Schedule B (defined as 'Listed Items') to the Intervention Agent. It contained a penal notice in standard form, addressed both to Ms Khan personally and to any director or officer of the Firm (i.e. also Ms Khan), confirming that breach of the order may be a contempt of court.
- 30.7 Ms Khan was aware of the 7 September order and its terms because she attended the remote hearing before Adam Johnson J by telephone. However, Ms Khan and the Firm failed to produce practice documents to the SRA as required by the 7 September Order. On the contrary, when the SRA attended the Firm's office to carry out a search pursuant to the 7 September Order, the SRA discovered that all of the Firm's practice documents had been removed from the premises on an unknown date prior to the search taking place.
- 30.8 During the hearing on 7 September 2021, Ms Khan had indicated that she was continuing to represent clients through JFP. Further, on 7 September 2021, JFP's registered address was changed from the Firm's Leicester office to the same

Wimbledon office address as the Firm's registered branch office. The Firm's registered address was also changed to Ms Khan's residential address on 17 September 2021.

- 30.9 On 27 August 2021, a Twitter account in Ms Khan's name announced that the Firm "has been taken over by [JFP]. Client work continues as normal". On the same day, Ms Khan was quoted in a publication called Business Live as saying that she had been able to transfer the Firm's business to JFP.
- 30.10 In written submissions made to the Carmarthenshire and Pembrokeshire Coroner's Court on 13 September 2021, Ms Khan asserted that the Firm had been sold to JFP and that all client matters were taken over by JFP on 10 August 2021.
- 30.11 Subsequent investigations revealed that Ms Khan had transferred or purported to have transferred the business of the Firm to JFP pursuant to an apparent agreement dated 10 August 2021. Companies House records indicate that Ms Khan's shares in the Firm were in fact only transferred to JFP on 23 August 2021, which was the same day that Ms Khan knew the SRA would attend at the Leicester Office to take possession of the Firm's papers and secure access to the monies which vested in it when the intervention decision was made (of which Ms Khan was notified on 19 August 2021).
- 30.12 The SRA therefore applied for a further order, granted by Miles J. on 21 September 2021 requiring, inter alia, the Firm, the Respondent and JFP to produce the Listed Items (defined in the same terms as under the 7 September Order) and authorising the search of the Wimbledon Office and the Residential Address and the seizure of practice documents found as a result of that search (albeit that in respect of the Residential Address, the SRA was only permitted to enter and search if Ms Khan was present at the premises at the time when the SRA attended).
- 30.13 The application was made without notice, but copies of the 21 September Order were left at the Wimbledon Office, posted by Special Delivery to both the Wimbledon Office and the Residential address, and sent by email to both of the known email addresses of Ms Khan/the Firm and an email address for JFP. Mr Allen submitted that the 21 September Order was therefore effectively served. Indeed, Leech J subsequently found in his judgment dated 12 January 2022 on the committal applications that the 21 September order (and indeed the 7 September order) had been validly served on Ms Khan and that she was aware of their terms. This was not disputed by Ms Khan in the committal proceedings.
- 30.14 As with the 7 September Order, the 21 September Order was endorsed with a prominent penal notice in the same form, addressed to Ms Khan personally and to the directors or officers of each of the Firm and JFP (which included Ms Khan).
- 30.15 On 23 September 2021, the SRA sought to execute the 21 September Order. It was unable to search the Residential Address because Ms Khan was not in attendance. A search of the Wimbledon Office was conducted but no Listed Items were found at that address. Ms Khan also failed to produce the Listed Items as required by the 21 September Order or to procure that the Firm or JFP to do so.

- 30.16 The SRA therefore brought contempt applications against Ms Khan in respect of her noncompliance with the 7 September and 21 September Orders (with a view to procuring belated compliance with the orders and thereby enabling the Intervention to proceed). In particular, the SRA relied on Ms Khan's failure, both personally and as a director of each of the Firm and JFP, to deliver up the Listed Items as required by the orders.
- 30.17 The contempt applications were heard by Leech J on 17 December 2021 and judgment was delivered on 12 January 2022. Ms Khan accepted during the contempt proceedings (in particular, by a letter dated 9 December 2021 from her solicitors to the SRA's solicitors) that she had not produced the Listed Items and, accordingly, that she had not complied with the orders. That admission was repeated (through counsel) during the hearing.
- 30.18 At the conclusion of the hearing on 17 December 2021, Leech J. indicated that he would hand down judgment the following Monday, 20 December 2021. Counsel for Ms Khan requested an additional 24 hours, on the basis that Ms Khan was willing to comply with both orders but wanted to be present when the SRA executed the orders. Leech J granted that application to allow for Ms Khan to comply with the orders.
- 30.19 Leech J delayed the handing down of his Judgment for a number of reasons. Ms Khan took no steps to comply with the Orders notwithstanding the delay in the handing down of the Judgment.
- 30.20 Leech J. handed down judgment on the contempt applications on 12 January 2022. He found, to the criminal standard of proof that (amongst other things):
- Ms Khan had failed to deliver up any of the Listed Items required by the 7 September Order and 21 September Order and that the SRA had been unable to locate any of the Listed Items when they sought to execute the search and seizure elements of the 7 September Order and 21 September Orders;
 - Ms Khan had failed to give a witness statement in compliance with paragraph 5 of the 7 September Order or the 21 September Order explaining what steps she had taken to comply with them;
 - The Listed Items were in the possession and/or control of Ms Khan and/or the Firm.
 - Ms Khan deliberately failed to comply with the orders knowing that she might be held in contempt of court as a consequence, in circumstances where:
 - The failure to comply with the orders was admitted, but Ms Khan had not offered any explanation for her sustained failure to comply;
 - She was a litigation solicitor with higher rights of audience and she fully understood the importance of court orders and the consequences of failing to comply with them;
 - She had attended the hearing when the 7 September Order was made, and the order contained a prominent penal notice and a separate warning that

failure to comply may lead her and the Firm being found guilty of contempt, such that she might be sent to prison;

- Ms Khan was notified of the terms of the 21 September Order on 28 September 2021 (as she had accepted) and that order contained the same provisions;
- Ms Khan was aware of the routes open to enforce compliance with the 7 September Order and 21 September Order, having filed a witness statement dated 9 November 2021 in which she expressly referred to the SRA having the option to bring contempt proceedings, and to the SRA having chosen to initiate such proceedings;
- There was no suggestion in the limited medical evidence placed before the Court that Ms Khan was unable to understand the 7 September Order or 21 September Order, or when she appeared before Fancourt J on 22 October 2021, or at the date of her witness statement of 9 November 2021.

30.21 Leech J found that in the circumstances, the only conclusion the court could reach was that Ms Khan had deliberately breached the 7 September Order and the 21 September Order knowing full well what the consequences would be.

30.22 In considering sanction, Leech J. stated:

“I consider Ms Khan’s contempt of the court to be serious. She has committed breaches of two court orders for three months and fourteen weeks respectively. Both Orders were clear on their face and I have found that Ms Khan knew that she was acting in breach of both of them and understood the consequences of the failure to comply with them. Moreover, it was necessary for the SRA to obtain those Orders to compel Ms Khan to comply with her obligations to her regulator. Her failure to comply with the orders involved not only an attack on the administration of justice ... - but also defiance of her regulator. The powers of the SRA to intervene in a solicitors practice are intended to protect both members of the public and public confidence in the profession and there is a strong public interest in ensuring that solicitors co-operate promptly with the SRA. Finally, Ms Khan is a solicitor and should be held to a higher standard than an unqualified defendant”.

30.23 Leech J noted that:

- Ms Khan was the sole director of the Firm, and a director of JFP, and took all decisions on behalf of both of those bodies. She breached the 7 September Order and the 21 September Order as a result of her own decisions, not as a result of any act of a third party or pressure from a third party;
- Despite admitting breaching the 7 September Order and the 21 September Order on 9 December 2021, Ms Khan gave no indication of any intention to comply with them until after her application for an adjournment had been dismissed on 17

December 2021, and thereafter failed to comply with the orders despite repeated delays to the handing down of judgment;

- Ms Khan admitted breach of the 7 September Order and the 21 September Order, but did not admit contempt, express any remorse or put forward any reasonable excuse for her conduct.

30.24 Leech J. concluded that the seriousness of Ms Khan's contempt was such that an immediate custodial sentence was required, and that the minimum sentence he could impose was one of six months' imprisonment. Leech J. indicated that he would suspend the second three months of the sentence if Ms Khan complied with the orders in full within six weeks of the date of the judgment. Ms Khan failed to do so and thus was required to serve the second half of her sentence.

30.25 Ms Khan appealed to the Court of Appeal against sentence (as she was entitled to do as of right, without permission). However, that appeal was dismissed on 17 February 2022. It was noted that there was no appeal against the finding that she was in contempt of court.

30.26 Mr Allen submitted that there was no sign that the imprisonment had had any impact on Ms Khan's attitude towards compliance with her obligations with regard to the Intervention. Her claim challenging the Intervention was heard in February 2022 and dismissed by Sir Gerald Barling, sitting as a judge of the High Court, in a judgment dated 7 March 2022, while she was in prison. To the extent, therefore, that she was (wrongly) relying on that claim as a reason not to comply with her statutory obligations and the Court orders, that excuse had fallen away.

30.27 In his judgment, Sir Gerald Barling concluded:

“I am sorry to say that on the evidence before me [Ms Khan] appears to be unsuitable to carry on practice as a solicitor in any capacity” noting that “[Ms Khan's] attitude is one of open defiance of and hostility towards the SRA as her professional regulator, and a lack of respect for the authority of the courts. I have no confidence that [Ms Khan] would conduct any solicitors' practice appropriately in the future.”

30.28 On 27 April 2022, following Ms Khan's release from prison, the SRA obtained a new order from Miles J requiring Ms Khan to deliver up the practice documents by 5 May 2022. Ms Khan has failed to comply with that order. No explanation or justification has been provided by Ms Khan for her continued non-compliance.

30.29 Instead, on 3 May 2022, City AM published what Mr Allen considered to be an extraordinary interview with Ms Khan in which she suggested that she took a deliberate decision to breach the Court orders and to face going to the prison for contempt because her clients did not want her to hand over the practice documents to the SRA and that she saw herself as “the subject matter in a battle against the state”. Ms Khan was reported as having said: “I was taking a stand”. It should be noted that Ms Khan's assertion in this interview that she was taking a principled (albeit obviously misguided) stance was difficult to reconcile with the submissions made to the Court of Appeal on

her behalf that she should have received a lesser sentence because she acted under pressure from clients to breach the orders.

30.30 With regard to allegation 1.10, Mr Allen submitted that it was clear from the matters detailed above that Ms Khan had breached her statutory obligations under paragraph 9 of Part II Schedule 1 Solicitors Act 1974 to provide documents to the SRA and her legal obligations under the 7 September and 21 September Orders to produce practice documents to the SRA. In doing so, Ms Khan had also breached her duty to cooperate with the SRA under Rules 7.3 and 7.4 of the Code for Solicitors.

30.31 Ms Khan had sought to frustrate in the Intervention. She had undermined the integrity of a statutory scheme intended to protect the public and maintain public trust and confidence in the solicitors' profession. Her conduct demonstrated a willingness to flout statutory obligations and regulatory requirements in pursuit of her own, and the Firm's, interests. Such conduct undermined public trust and confidence in the solicitors' profession and in legal services provided by authorised persons in breach of Principle 2 of the 2019 Principles.

30.32 Ms Khan had acted in her own interests, seeking to frustrate or disregard the effect of the Intervention, notwithstanding the risks of clients generated by the uncertainty to which that course of conduct could give rise, and in open defiance of her regulatory and statutory obligations, in a way which a solicitor acting with integrity and proper adherence to the ethical standards of the profession would not have done. Accordingly, such conduct lacked integrity in breach of Principle 5 of the 2019 Principles.

30.33 Ms Khan's conduct was also in breach of Principle 7 of the 2019 Principles, in that she failed to act in the best interests of her clients because they were left:

- in an uncertain regulatory position, without lawful representation with regard to the carrying on of reserved legal activities on their behalf;
- with their documents and files being held at an undisclosed and unregulated location;
- without the benefit that would have followed if the SRA had been able to carry out its usual processes on an intervention, whereby the Firm's client matters would be transferred to new firms in accordance with the clients' instructions, thereby ensuring certainty and continuity of representation for clients; and
- being represented (whether directly or through JFP) by a solicitor whose practising certificate had been suspended following the Intervention, made on the basis that there were substantial rule breaches and grounds to suspect dishonesty by Ms Khan;

in circumstances where, (to the best of the SRA's knowledge) Ms Khan had not obtained the informed consent of each client.

30.34 Further or alternatively, Ms Khan also procured that the Firm to breach its obligations under Rules 3.2 and 3.3 of the Code for Firms and Principles 2, 5 and 7 of the 2019 Principles for the same reasons detailed above. Under Rule 8.1 of the Code for Firms,

Ms Khan was accountable for such breaches by the Firm in her capacity as a manager of the Firm.

- 30.35 With regard to allegations 1.11 and 1.12 Mr Allen submitted that Ms Khan had deliberately and knowingly breached the 7 September Order and the 21 September Order by failing to deliver up the Listed Items to the Intervention Agent (as defined in each order). That breach was continuing in that there had still been no compliance with the Orders, notwithstanding Ms Khan's imprisonment for contempt.
- 30.36 Ms Khan further failed to ensure or take reasonable steps to ensure that the Firm complied with the 7 September Order and that the Firm and JFP complied with the 21 September Order. The Firm remained in breach of both Orders, and JFP remained in breach of the 21 September Order.
- 30.37 Mr Allen submitted that Ms Khan's conduct was serious. She was found in contempt of court. Her failure to comply was deliberate in the knowledge of the Orders made and what she needed to do to comply with the Orders. She was aware of the importance of compliance and the consequences of failing to do so. Despite the delay in the handing down of the Judgment, and Ms Khan's request for additional time to comply, she did not do so. Ms Khan was solely responsible. There was no reasonable excuse for her non-compliance. Mr Allen submitted, (as Leech J had found), that Ms Khan's conduct was an act of defiance of her regulator. This was particularly serious as the powers being exercised by the Applicant were to protect the public and public confidence in the profession.
- 30.38 The seriousness of Ms Khan's conduct was aggravated by the fact that despite admitting failure to comply with the orders during the contempt proceedings, she did not express any remorse, comply with the orders requiring her to explain non-compliance and provide a timeframe for compliance, and did not put forward any reasonable excuse for her conduct.
- 30.39 Ms Khan's conduct in breaching the 7 September Order and the 21 September Order was a contempt of court and brought about a contempt of court by the Firm. Accordingly, she breached Rule 2.5 of the Code for Solicitors in respect of both orders. The Firm also breached Rule 7.1(a) of the Code for Firms and the Respondent was responsible for that breach under Rule 8 of the Code for Firms.
- 30.40 Mr Allen submitted that for the reasons detailed at allegation 1.10 above, Ms Khan's conduct was also in breach of Principles 2, 5 and 7 of the 2019 Principles.
- 30.41 In addition, her conduct, which was deliberate, sustained and serious, was an attack on the administration of justice in breach of Principle 1 of the 2019 Principles.

The Tribunal's Findings

Allegation 1.10

- 30.42 Paragraph 9 of Part II Schedule 1 Solicitors Act 1974 provided:

“(1) The Society may give notice to the solicitor or his firm requiring the production or delivery to any person appointed by the Society at a time and place to be fixed by the Society-

(a) where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 1, of all documents in the possession [or under the control] of the solicitor or his firm in connection with his practice [or former practice or with any trust of which the solicitor is or was a trustee]; and

(b) where they are exercisable by virtue of paragraph 3, of all documents in the possession [or under the control] of the solicitor or his firm in connection with the trust or other matters [of which the Society is satisfied] (whether or not they relate also to other matters).

(2) The person appointed by the Society may take possession of any such documents on behalf of the Society.

(3) Except in a case where an application has been made to the High Court under sub-paragraph (4), if any person having possession [or control] of any such documents refuses, neglects or otherwise fails to comply with a requirement under sub-paragraph (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [level 3 on the standard scale].

(4) The High Court, on the application of the Society, may order a person required to produce or deliver documents under sub- paragraph (1) to produce or deliver them to any person appointed by the Society at such time and place as may be specified in the order, and authorise him to take possession of them on behalf of the Society.”

30.43 The 7 September Order required Ms Khan and the Firm to deliver up all the ‘Listed Items’ to the Agent within 3 working days of service of the Order. Listed Items were defined as:

“All Documents and Property including, without limitation: -

1. Any files and the contents thereof relating to present or Former Clients of the Practices;
2. Any deeds or wills or other documents relating to the present or Former Clients of the Practices;
3. Any ledgers relating to present or Former Clients of the Practices and all other accounting records relating to the Practices;
4. Any diaries or appointment books relating to the Practices and any other documents in which court dates and deadlines are recorded by or on behalf of the Defendants;
5. Any logs of telephone calls, incoming or outgoing correspondence or visits to the Premises relating to the Practices;
6. Any computer records relating to present or Former Clients of the Practices and accounting matters relating to their Practices.
7. Any Computer, hard disk or server used in connection with the Practices.”

30.44 The 21 September Order had the same requirements. In addition to applying to Ms Khan and the Firm, the 21 September Order also applied to JFP.

30.45 It was evident that Ms Khan had not delivered up the documents as she was bound to do. Nor had she caused the Firm or JFP to do so. The Tribunal considered that it was evident that in failing to deliver up the practice documents, Ms Khan had breached her statutory duties under the Solicitors Act as alleged, and had caused the Firm to breach its duties under that Act.

30.46 Rule 7.3 of the Code for Solicitors, and Rule 3.2 of the Code for Firms provided:

“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.”

30.47 Rule 7.4 of the Code for Solicitors and Rule 3.3 of the Code for Firms provided:

“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.”

30.48 In failing to deliver up the practice documents, Ms Khan had failed to comply with her regulatory obligations pursuant to Rules 7.3 and 7.4 of the Code for Solicitors. Similarly, she had caused the Firm to fail to comply with its regulatory obligations pursuant to Rules 3.2 and 3.3 of the Code for Firms. In so doing, Ms Khan was in breach of her obligation under Rule 8.1 to ensure that the Firm complied with the Code for Firms.

30.49 Ms Khan, the Tribunal found, had wholly disregarded her obligations so as to prevent the SRA from effecting the intervention into both her practice and the practice of the Firm. That Ms Khan did not intend to comply with the Intervention was clear from her telephone conversation with the Applicant on 19 August 2021, in which she stated that she would continue to represent clients and was entitled to do so. Her conduct thereafter demonstrated that she would not comply with the Intervention. In an attempt to ensure compliance, the Applicant commenced proceedings in the High Court. The Tribunal considered that there could be no suggestion that Ms Khan was unaware of the requirements of the Orders. She attended the hearing on 7 September by telephone. Whilst the hearing on 21 September took place without notice, Ms Khan was served with the 21 September Order. Further, it had not been Ms Khan’s case that at the hearing of the contempt applications that she was unaware of the September Orders. On the contrary, Ms Khan accepted, in those proceedings, that she was in breach of the September Orders. Despite the September Orders (and in the knowledge of the consequences of non-compliance), Ms Khan still did not comply with her statutory and regulatory obligations. She also caused the Firm to fail to comply. The Tribunal considered that Ms Khan had subordinated the interests of her clients to her own

interests and the interests of the Firm. In so doing, Ms Khan had failed to act in the best interests of her clients in breach of Principle 7.

- 30.50 Ms Khan's conduct was deliberate and in open defiance of her regulatory and statutory obligations. Members of the public would not expect solicitors to act in deliberate breach of their obligations, particularly when those obligations were ultimately intended to protect clients. Such conduct, the Tribunal found, failed to uphold public trust and confidence in the solicitors' profession in breach of Principle 2 of the 2019 Principles.
- 30.51 That her conduct lacked integrity was clear. Solicitors acting with integrity would not act so as to circumvent an Intervention into their practice by breaching their regulatory and statutory obligations. Nor would solicitors acting with integrity deliberately and persistently fail to comply with Court orders. Such conduct did not adhere to the ethical standards of the profession. The Tribunal found that Ms Khan had failed to act with integrity in breach of Principle 5 of the 2019 Principles.
- 30.52 Accordingly, the Tribunal found allegation 1.10 proved on the balance of probabilities. Further, the Tribunal considered that the conduct was deliberate, and that Ms Khan had knowingly chosen to act in breach of her regulatory and statutory duties.

Allegations 1.11 and 1.12

- 30.53 The Tribunal found that Ms Khan had failed to deliver up the items in accordance with the 7 September and 21 September Orders. The Tribunal noted that these failings were not in dispute; Ms Khan accepted, during the hearing of the contempt applications, that she had breached both Orders. Leech J found, and the Tribunal agreed, that her conduct amounted to a contempt of court. In failing to ensure that the Firm complied with the Orders, Ms Khan had caused the Firm to also be in contempt of court.
- 30.54 Rule 2.5 of the Code for Solicitors provided:
- “You do not place yourself in contempt of court, and you comply with court orders which place obligations on you”
- 30.55 By virtue of Rule 7.1(a) of the Code for Firms, Rule 2.5 of the Code for Solicitors also applied to the Firm.
- 30.56 It was evident that having been found in contempt of court, Ms Khan had breached Rule 2.5 of the Code for Solicitors and in failing to ensure that the Firm complied with its obligations (as she was bound to do by virtue of Rule 8.1 of the Code for Firms) Ms Khan had caused the Firm to breach Rule 7.1(a) of the Code for Firms.
- 30.57 Ms Khan, the Tribunal found, had displayed no regard for the Orders made against her and the Firm. She had displayed the same defiant attitude to orders of the Court that she had displayed to the regulator in order to prevent the SRA from effecting the intervention. Ms Khan had asked for additional time to comply with the Orders. She received that time. In fact, she had received significantly more time than she asked for as a result of other matters. Notwithstanding this, Ms Khan still failed to comply with the Orders. Ms Khan was fully aware of the possible consequences on non-compliance

with the Orders, however she maintained her position of non-compliance. For the same reasons as detailed at allegation 1.10 above, the Tribunal found that Ms Khan's conduct breached Principles 2, 5 and 7 of the 2019 Principles as alleged.

- 30.58 In failing to comply with the September Orders, Ms Khan had failed to act in a way that upheld the proper administration of justice in breach of Principle 1 of the 2019 Principles.
- 30.59 Accordingly, the Tribunal found allegations 1.11 and 1.12 proved on the balance of probabilities. Further, the Tribunal considered that the conduct was deliberate, and that Ms Khan had knowingly chosen to act in breach of her regulatory and statutory duties.

Previous Disciplinary Matters

31. Ms Khan had no previous matters before the Tribunal.

Mitigation

32. Allegation 1.1 – Ms Khan referred the Tribunal to the Bevan Brittan investigation which found that no further action should be taken. That investigation considered the matters that formed the basis of allegation 1.1. The contradictory findings should be taken into account and balanced against each other. Ms Khan submitted that she was deprived of the opportunity to take part in any re-investigation as there was none. That amounted to an exceptional circumstance and should be taken into account by the Tribunal when assessing culpability.
33. Allegation 1.2 – Following the Consent Order, which set aside the Order of HHJ Backhouse, the finding that there had been a breach of the Undertaking was also set aside. All findings by HHJ Backhouse fell away. No harm had been caused to MW. The Consent Order released the Firm from any undertaking, and there was no judicial finding of any breach. As MW had suffered no harm or prejudice, this amounted to an exceptional circumstance.
34. Allegations 1.3 and 1.4 – No harm had been caused to DC, JN or MW as everyone was aware of the costs situation in accordance with the letters of October and November 2018. It had never been disputed by the SRA that those letters were received. They were contemporaneous documents that clearly amounted to exceptional circumstances.
35. Allegation 1.5 – Ms Khan referred the Tribunal to the preamble of the Consent Order whereby MW gave up any claim to monies received for the settlement of costs. This meant that MW had not suffered any harm or prejudice. MW giving up its claim amounted to an exceptional circumstance.
36. Allegation 1.6 – Following the Consent Order, the Firm was released from any undertaking.
37. Allegation 1.7 - The Tribunal had the documents that were before LeO. No harm had been caused to LeO, the SRA or JH. Ms Khan submitted that she was exercising a lien on costs. That was not challenged by LeO. There were still monies outstanding.

38. Allegation 1.8 – No harm had been caused to LeO as it had not taken any enforcement action. This amounted to an exceptional circumstance.
39. Allegation 1.9 – Ms Khan submitted that there had only been non-compliance with the Order of 9 April as compliance with the January and August Orders had been extended to 9 April.
40. Allegations 1.11 and 1.12 – The Tribunal was aware of the principle of *autrefois convict*. As Ms Khan had already been committed to prison for contempt, she could not be sanctioned again for the same breaches.
41. With regard to sanction, Ms Khan submitted that she had been suspended for nearly a year when no harm or prejudice had been identified by the SRA. There had been no harm caused to any client or to MW; MW had relinquished its claim. As a result of the Consent Order, all matters had been resolved in favour of the Firm. These amounted to exceptional circumstances.

The Tribunal's Observations

42. Allegation 1.1 – The Tribunal had made its findings of fact. The mitigation advanced sought to go behind those findings. As detailed in its findings above, the Tribunal had noted that at the time of the Bevan Brittan investigation, no evidence had been obtained from the clients. That position changed, and it was the evidence of both clients (which the Tribunal had accepted) that Ms Khan had settled the claims without their knowledge or consent.
43. Allegation 1.2 – It did not follow that the Consent Order meant that there was no breach of the Undertaking. The allegation was that Ms Khan had settled the costs claims without informing, seeking or obtaining the authority of her clients to do so. The Tribunal had found that this was the case. As to the harm caused, the Tribunal addressed that below. In her mitigation, Ms Khan had failed to address the relevant issues.
44. Allegations 1.3 and 1.4 – It was not the case that the SRA did not dispute that the clients' had received the costs information. On the contrary, it was the SRA's case (and the Tribunal had found) that the costs information relied upon by Ms Khan was fabricated and had not been sent to the clients.
45. Allegation 1.5 – The Tribunal did not accept Ms Khan's submission that by virtue of the Consent Order, MW had not suffered any harm or prejudice. It had not received the sums it was entitled to for the work it had undertaken on behalf of the clients prior to their transferring to the Firm.
46. Allegation 1.6 – The Tribunal considered that whether or not the Firm was released from the Undertakings was not relevant to a consideration of whether the Firm and/or Ms Khan had breached the Undertakings. As detailed above, the Tribunal found that the Undertakings had been breached.

47. Allegation 1.7 - The Tribunal noted that Ms Khan, (as with all the allegations) sought to go behind the Tribunal's findings. The Tribunal had found that Ms Khan had failed to cooperate with LeO and the SRA, not whether there had been any harm caused. Ms Khan had not addressed the relevant issues in her mitigation.
48. Allegation 1.8 – The Tribunal considered Ms Khan's mitigation with regard to this allegation to be incredible. It simply did not accept that as there was no enforcement action taken by LeO, this amounted to an exceptional circumstance. Such mitigation was irrational and totally devoid of merit.
49. Allegation 1.9 – The Tribunal had found that Ms Khan/the Firm had failed to comply with the court orders as alleged. It did not accept the submission that there had only been non-compliance with the order of 9 April. The Tribunal considered that this was another attempt by Ms Khan to go behind its findings of fact.
50. Allegations 1.11 and 1.12 – The Tribunal was aware of the principle of *autrefois convict*. It did not apply to the proceedings. Ms Khan had not been re-tried and was not being sanctioned for the contempt. Any sanction imposed by the Tribunal would relate to the breach of her professional duties and obligations.
51. During the course of her mitigation, the Tribunal referred Ms Khan to the comments made by Sir Gerald Barling in his Judgment of 7 March 2022 in relation to the intervention challenge:

“I am sorry to say that on the evidence before me SK appears to be unsuitable to carry on practice as a solicitor in any capacity. The grounds for intervention were clearly established on the material before the Panel as at the date of the Decision in August 2021. The arguments and explanations given by SK, whether through the medium of counsel, or in her witness statements in these proceedings, have not undermined in any way the SRA's reasons for suspecting dishonesty on her part. Nor do I consider that they provide good grounds for challenging the findings that SK and the Firm were in breach of the rules in the several respects relied upon by the SRA. Moreover, through counsel SK has conceded certain serious breaches of those rules, not least failures to comply with orders of the court. I agree with Mr Allen's submission that SK's attitude is one of open defiance of and hostility towards the SRA as her professional regulator, and a lack of respect for the authority of the courts. I have no confidence that SK would conduct any solicitors' practice appropriately in the future. In the circumstances, whilst reminding myself of the caution to be exercised in relation to the draconian remedy of intervention, I have no hesitation in concluding that intervention here was and remains necessary and proportionate for the protection of clients and the public interest.”
52. The Tribunal asked Ms Khan to address the issue of reputational damage to the profession in light of those comments, and her committal to prison for contempt of court.
53. Ms Khan submitted that her committal arose out of her protection of her clients, not by causing harm to any clients. The clients did not want their files released to anyone. Accordingly, she had caused no harm to her clients. She had caused no damage to the

reputation of the profession, but had in fact done the opposite. The Tribunal rejected that assertion in its entirety.

Sanction

54. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.
55. The Tribunal found that Ms Khan was motivated by financial gain for herself and the Firm. She sought to subvert any investigation into complaints about her service. The Tribunal did not accept that Ms Khan was motivated by a desire to protect her clients. Her actions were planned and motivated by her desire for financial gain. She had deliberately failed to inform MW of the costs settlement received and had deliberately not sought her clients' consent to settle the claims as she was aware that the sum accepted for their damages claims fell far short of the amount she had told them they were likely to receive. She had fabricated documents so as to support her contention that the clients had been informed of the costs. She had wholly failed to cooperate with LeO or the SRA when they attempted to investigate her conduct. She had deliberately and knowingly breached orders of the court. She was solely responsible for her conduct, and by her conduct, had caused the Firm to be in breach of its regulatory obligations. She had breached the trust placed in her by her clients to act in their best interests, and had breached the trust placed in her by MW to pay MW its share of the costs settlement monies. Ms Khan was an experienced solicitor who had purposefully acted in flagrant breach of her regulatory obligations.
56. Ms Khan's assertion that her conduct had caused no harm was in the Tribunal's opinion reprehensible and demonstrated a complete lack of insight and remorse. MW had not received monies that it was due as a result of her appropriation of the settlement monies. The fact that they had chosen to agree a consent order and thus to forgo those monies did not mean that no harm had been suffered. JC and DN had been left with a huge liability to MW as a result of Ms Khan's failure to deal with the costs settlement monies in an appropriate manner.
57. JH had received a sub-standard service. LeO had awarded him compensation; he had received none. Nor had Ms Khan returned his file to him. The extent of the harm caused by Ms Khan's misconduct was easily foreseeable and inevitable. Thus the Tribunal rejected the submission that there had been no harm caused to clients or MW by her conduct.
58. Furthermore, Ms Khan had caused immense damage to the reputation of the profession. Her misconduct was aggravated by the numerous findings of dishonesty, which were in material breach of her obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

“34. There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”

59. The misconduct was further aggravated as it was deliberate, calculated and repeated and had continued over a period of time. Ms Khan had abused her position as the solicitor with conduct of the costs negotiations and had appropriated all of the monies received from the Defendant in settlement of MW’s costs, in addition to the costs of the Firm. She had sought to conceal her wrongdoing by fabricating documents in order to support her assertion that costs had been notified to her clients when that was not the case.
60. The Tribunal did not find that there were any features that mitigated Ms Khan’s misconduct. She demonstrated a complete lack of insight and contrition. Indeed, it was her position that being sent to prison for contempt of court enhanced, rather than diminished, the reputation of the profession. As stated above, the Tribunal found that assertion to be reprehensible.
61. Given the very serious nature of the Respondent’s misconduct, which included dishonesty, the Tribunal considered that any sanction short of striking off the Roll would be insufficient. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:
- “...Lapses from the required standard (of complete integrity, probity and trustworthiness)...may....be of varying degrees. The most serious involves proven dishonesty....In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors.”
62. The Tribunal did not find any exceptional circumstances of the nature referred to in the case of Sharma. The Tribunal did not consider that any of the matters raised in mitigation by Ms Khan amounted to an exceptional circumstance. The Tribunal decided that the only appropriate and proportionate sanction was to strike Ms Khan off the Roll of Solicitors. Indeed, the Tribunal considered that Ms Khan’s conduct with regard to allegations 1.9 - 1.12 was, of itself, so serious, that the appropriate sanction for those matters alone (which did not include allegations of dishonesty) was to strike Ms Khan off the Roll. The Tribunal agreed with the comments of Sir Gerald Barling, namely that Ms Khan was “unsuitable to carry on practice as a solicitor in any capacity”.

Costs

63. Mr Allen applied for costs in the sum of £109,681.82.
64. Ms Khan submitted that the costs were extremely high. The SRA investigation costs of £16,381.82 included matters that had not been pursued by the Applicant at the Tribunal. The bulk of the papers included were not relevant to the allegations that were pursued. Further, a number of the documents contained in the bundle had already been claimed for in other proceedings. Accordingly, there was an overlap in the costs claimed in these proceedings; the Applicant should not have double recovery of those costs.

65. Ms Khan detailed a number of items that were claimed for that she considered were either disproportionate, excessive, unnecessary or duplicated.
66. Ms Khan also considered that the brief fee for Mr Allen was “extortionate” and that counsel’s fees were generally excessive.
67. In response Mr Allen submitted that none of the costs claimed in these proceedings had been claimed elsewhere. The costs claimed included counsel’s fees and all profit costs. The breakdown in the costs schedule showed the work undertaken. As costs were being claimed under a fixed fee, the work undertaken was not being charged at an hourly rate. Ms Khan’s submissions with regard to duplication were unfounded. The fact that a number of fee earners had worked under the same category did not mean that their time involved duplication or that it was disproportionate or unreasonable.
68. The fixed fee for this matter was £77,750. When considering the fixed fee, the removal of counsel’s fees meant that the notional hourly rate, considering the work undertaken, was approximately £67 per hour. That was an extremely modest rate. In considering costs, the Tribunal should consider whether the fixed fee was reasonable and proportionate.
69. The Tribunal examined the costs schedule and the breakdown of work undertaken. The Tribunal considered that even if it removed all the items that Ms Khan considered were unreasonable, disproportionate or unnecessary, it would still leave an entirely reasonable, indeed modest, notional hourly rate. Accordingly, the Tribunal did not consider that there should be any reduction in the costs; they were reasonable and proportionate.
70. The Tribunal then considered whether there should be any reduction in costs due to Ms Khan’s means. Ms Khan had filed and served a means statement dated 5 August 2022. The Standard Directions dated 12 April 2022 specified that if Ms Khan wanted her means to be taken into account she was required to include “full details of assets (including, but not limited to, property)/income/outgoings supported by documentary evidence. Any failure to comply with this requirement may result in the Tribunal drawing such inference as it considers appropriate, and the Tribunal will be entitled to determine the sanction and/or costs without regard to the Respondent’s means.”
71. The Tribunal noted that the statement of means was not supported by any documentary evidence. Ms Khan confirmed that she owned the property in which she resided but gave no details of its approximate value or how much was outstanding on any mortgage. She had provided details of her bank account, but had not stated what the current balance. She had listed a number of items of expenditure, but had provided no documentary evidence in support. The Tribunal found that the statement of means was wholly deficient such that it could not be taken into account when considering costs.
72. Accordingly, having found the costs claimed were reasonable and proportionate, the Tribunal ordered that Ms Khan pay costs in the sum claimed.

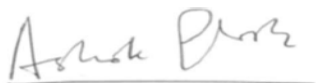
73. At the conclusion of the proceedings, after the Chair had read out the Tribunal's Order, and when the Tribunal was in retirement, Ms Khan stated to the Deputy Clerk that she had not been given an opportunity to make submissions on the enforcement of any costs order. The Deputy Clerk explained that any submissions in that regard ought to have been made when Ms Khan was making her submissions as to costs. Ms Khan considered that submissions could not have been made at that time as there was no costs order in place. Ms Khan asked whether the Tribunal would be prepared to hear her on costs enforcement. The Tribunal declined to hear any further submissions. Ms Khan should have made any submissions with regard to enforceability when she made her submissions as to quantum. Moreover, enforceability of any costs order made by the Tribunal was dependant on the Respondent's means and Ms. Khan had been given ample opportunity to provide evidence as to her means but had failed to do so.

Statement of Full Order

74. The Tribunal Ordered that the Respondent, SOOPHIA KHAN solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £109,681.82.

Dated this 8th day of September 2022

On behalf of the Tribunal



A Ghosh
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
08 SEPT 2022