# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12328-2022

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

MLADEN KESAR First Respondent
ELIZABETH HILL (unadmitted) Second Respondent

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Before:

Ms A Horne (in the chair)
Mr P Jones
Mrs C Valentine

Date of Hearing:
12 – 13 September 2022

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**Appearances**

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

Ben Hubble KC, of 4 New Square Chambers, 4 New Square, Lincoln's Inn, London, WC2A 3RJ, for both Respondents.

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# JUDGMENT

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**Allegations**

**First Respondent**

1. The Allegations made against the First Respondent, Mladen Kesar, were that, whilst manager and owner of Kesar & Co Ltd ("the Firm"):

1.1 Between 2013 and 2019, he failed either to pay professional disbursements, or to transfer payments received to meet those professional disbursements into a client account within the requisite time frame;

and in doing so therefore breached any or all of Rules 1.2, 6.1 and 19 of the Solicitors Accounts Rules 2011 and Principles 6, 8 and 10 of the Principles 2011.

*Proved*.

1.2 Between 2013 and 2019, he misused money he had received from the Legal Aid Agency for professional disbursements;

and in doing so therefore breached any or all of Rules 1.2, 6.1 and 19 of the Solicitors Accounts Rules 2011 and Principles 2, 6, 8 and 10 of the Principles 2011.

*Proved save for breach of Principle 2.*

1.3 Between 2013 and 2019, he failed to ensure that account records were kept in compliance with the Solicitors Accounts Rules 2011;

and in doing so therefore breached any or all of Rules 1.2(f), 6.1 and 29.1, 29.2, 29.4 and 29.9 of the Solicitors Accounts Rules 2011 and Principles 8 and 10 of the Principles 2011.

*Proved.*

1.4 Between 2013 and 2019, he failed to remedy promptly, upon discovery, breaches of the Solicitors Accounts Rules 2011;

and in doing so breached any or all of Rule 7.1 of the Solicitors Accounts Rules 2011 and Principles 2, 6, 8 and 10 of the SRA Principles 2011.

*Not Proved.*

1.5 Between 2013 and 2019, he failed promptly to notify the SRA that the Firm was in serious financial difficulty;

and in doing failed to achieve Outcomes 7.4 and 10.3 of the SRA Code of Conduct 2011 and breached Principles 2 and 7 of the SRA Principles 2011.

*Proved save for breach of Principle 2.*

**Second Respondent**

2. The Allegations made against the Second Respondent, Elizabeth Hill, who is not a solicitor, are that she has been guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for her to be involved in a legal practice in that she, while employed by the Firm as Practice Manager and acting as their Compliance Officer for Financial Administration ("COFA"):

2.1 Between 2013 and 2019, she failed either to pay professional disbursements, or to transfer payments received to meet those professional disbursements into a client account within the requisite time frame;

and in doing so therefore breached any or all of Rules 1.2, 6.1 and 19 of the Solicitors Accounts Rules 2011 and Principles 6, 8 and 10 of the Principles 2011.

*Proved.*

2.2 Between 2013 and 2019, misused money she had received from the Legal Aid Agency for professional disbursements;

and in doing so therefore breached any or all of Rules 1.2, 6.1 and 19 of the Solicitors Accounts Rules 2011 and Principles 2, 6, 8 and 10 of the Principles 2011.

*Proved save for breach of Principle 2.*

2.3 Between 2013 and 2019, she failed to ensure that account records were kept in compliance with the Solicitors Accounts Rules 2011;

and in doing so therefore breached any or all of Rules 1.2(f), 6.1 and 29.1, 29.2, 29.4 and 29.9 of the Solicitors Accounts Rules 2011 and Principles 8 and 10 of the Principles 2011.

*Proved.*

2.4 Between 2013 and 2019, she failed to remedy promptly, upon discovery, breaches of the Solicitors Accounts Rules 2011;

and in doing so breached any or all of Rule 7.1 of the Solicitors Accounts Rules 2011 and Principles 2, 6, 8 and 10 of the SRA Principles 2011.

*Not Proved.*

2.5 Between 2013 and 2019, she failed promptly to notify the SRA that the Firm was in serious financial difficulty;

and in doing failed to achieve Outcomes 7.4 and 10.3 of the SRA Code of Conduct 2011 and breached Principles 2 and 7 of the SRA Principles 2011.

*Proved save for breach of Principle 2.*

**Executive Summary**

3. The entirety of the allegations related to Mr Kesar and Ms Hill's mismanagement of money received from the Legal Aid Authority ("LAA") to meet the professional fees of interpreters and counsel instructed on clients' cases.

4. It was broadly alleged by the Applicant that instead of using that money to pay the relevant professional fees, Mr Kesar and Ms Hill deployed it to meet other liabilities such as historic professional fees, office overheads and payroll expenses.

5. Mr Kesar and Ms Hill admitted the factual matrices of the allegations, breaches of Solicitors Accounts Rules 2011 ("SAR 2011"), having not met the Outcomes alleged and also having breached Principles 6, 7, 8 and 10 of the SRA Principles 2011 ("the 2011 Principles").

6. Mr Kesar and Ms Hill denied that their admitted misconduct amounted to a lack of integrity contrary to Principle 2. They averred that the LAA payment system was complex, difficult to navigate and unclear as to which cases payments received related to. Mr Kesar and Ms Hill contended that their admitted misconduct was borne out of misapprehension as opposed to nefarious intent. The Tribunal accepted their evidence in that regard and found the allegations pertaining to a lack of integrity NOT PROVED.

**Sanction**

**First Respondent**

7. Mr Kesar was Ordered to pay a financial penalty of £6,000.00 and costs in the sum of £35,950.88. He was further prohibited from holding the roles of Head of Legal Practice/ Compliance Officer for Legal Practice and/or Head of Financial Administration/Compliance Officer for Financial Administration with an alternative business structure and/or a legal practice.

**Second Respondent**

8. Ms Hill was Ordered to pay a financial penalty of £6,000.00 and costs in the sum of £17,975.44.00.

**Documents**

9. The Tribunal considered all of the documents in the case which included:

- Rule 12 Statement dated 21 April 2022 and Exhibit MLR/1.
- Answer dated 16 June 2022 and Disclosure Bundle.
- Witness statement of Mr Kesar dated 20 July 2022 and MK1.
- Witness statement of Ms Hill's dated 24 July 2022 and Exhibit EH1.
- Written submissions of Mr Hubble KC dated 5 September 2022.
- Respondents' authorities bundle.
- Written submissions in response of Mr Collis dated 6 September 2022.
- Testimonial of Dr Peter Packer dated 17 July 2022.

- Testimonial of Daniel Millar dated 20 July 2022.
- Statement of Costs dated

**Preliminary Matters**

*Anonymity*

Applicant's Submissions

10. Mr Collis submitted that, given the decision in Lu v Solicitors Regulation Authority [2022] EWHC 1729, it was no longer appropriate to pursue anonymity in relation to Company A and Company T, the complainants who had not been paid by the Respondents for a considerable period of time. Anonymity with regards to clients should, however, be maintained.

Respondent's Position

11. Mr Hubble KC made no submissions on the issue of anonymity.

The Tribunal's Decision

12. The Tribunal was well aware of the principles promulgated in Lu which made plain the importance of open justice and the fact that anonymity should only be afforded when the overarching public interest so required.

13. The Tribunal determined that the anonymity of clients, who played no part in the proceedings, should be maintained. The Tribunal concurred that the professional services provided, upon which the allegations were predicated, did not require anonymisation.

14. The Tribunal therefore directed that Company A and Company T, as they were referred to in the Rule 12 Statement, should be cited in open court as Clues Communications Limited ("Clues") and Skyline Interpreters ("Skyline").

**Relevant Background**

15. Mr Kesar was admitted to the Roll of Solicitors in August 2005. The Firm was established in July 2010. Mr Kesar was the Firms Compliance Officer for Legal Practice ("COLP"). He held 100% of the share capital and conducted the business management of the Firm.

16. Ms Hill joined the Firm in December 2011. She was the Firm's Company Secretary, Practice Manager, Compliance Officer for Financial Administration ("COFA") and "the Legal Aid Agency ("LAA") contract person dealing with LAA submissions, compliance and costs negotiations".

17. The financial management of the firm was conducted by Mr Kesar and Ms Hill. At the material time, the Firm held a Client Account and an Office Account with the Co-operative bank. The Firm also held a further Office Account with Lloyds Bank PLC. Mr Kesar and Ms Hill were both entitled to authorise cheques issued on those

accounts. The Firm operated online banking, again, with both Mr Kesar and Ms Hill able to access and operate the accounts separately.

18. Upon establishment, the Firm was awarded contracts by the LAA in the areas of (i) prison law and criminal appeals and (ii) immigration. In 2013 the Firm was awarded an LAA contract in mental health and in 2014 secured an LAA contract for claims against public authorities and public law.

19. During the course of the Applicant's investigation, the Forensic Investigation Officer ("FIO") was informed that Mr Kesar was assisted by 6 qualified staff and 15 unadmitted staff within the film. In addition to the contracts alluded to above, the FIO was also informed that the firm had received LAA contracts for (i) criminal defence, (ii) modern day slavery/trafficking and (iii) community care and discrimination.

20. Mr Kesar held a conditional Practising Certificate as at the date of the substantive hearing. The conditions to which he was subject essentially prohibited him from acting as COLP, COFA, manager, or owner of any authorised body. He was further prohibited from providing legal services in the capacity of a freelance solicitor in respect of reserved or unreserved activities.

**Witnesses**

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

- Mladen Kesar.
- Elizabeth Hill

**Findings of Fact and Law**

22. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

**Factual Background**

23. Mr Collis set out the regulatory framework (SAR 2011) with which the Respondents were collectively obliged to comply, as summarised below.

- Rule 12.2(c) classified money received by a solicitor or a firm to pay professional fees (a disbursement) as "client money".

- Rule 14.1 mandated that "client money" must be paid into a client account without delay unless exempted.

- Rule 19 sets out the exemptions in relation to "client money" emanating from the LAA. It distinguishes between "regular payments" and "a payment for costs (interim and/or final)".

- Rule 19.2(b) and (c) provided that regular payments must be paid into a Client Account. Within 28 days of the LAA being notified that the matter had been concluded, any unpaid professional fees/disbursements must be paid *or* the sum due must be transferred to a Client Account.

- Rule 19.1(b) stated that payments for costs may be paid into an Office Account, providing that within 14 days thereafter, any unpaid professional fees/disbursements are paid *or* the sum due is transferred into a Client Account.

24. On 17 May 2017, Clues submitted a report to the Applicant with regards to the Firm's non-payment of two invoices sent to the Firm in February 2016, totalling £2,764.80. Clues sought payment from the Firm to no avail, in that the Firm did not respond. Consequently, Clues instigated County Court proceedings and obtained a judgment ("CCJ") against the Firm on 7 May 2019.

25. The Applicant sought the Firm's position in relation to the report by way of a letter dated 18 June 2019. Ms Hill responded on behalf of the Firm on 2 July 2019. In that response she accepted awareness of the CCJ, and advised that it had now been paid. Ms Hill averred;

> "… As the LAA payments do not specifically state which cases are paid when payments are made each month, nor is there any delineation between profit costs, disbursements and VAT on their remittance advices, it is not possible to categorically state that where a claim has been submitted, the payment has been received ...
>
> … please be assured we are aware of our obligations to pay suppliers on time and we make every effort to meet this obligation. There will inevitably be some items that slip through - no system is fool proof especially where a firm has limited staff resources such as our own..."

26. The Applicant received a second report on 20 June 2019 from Skyline in relation to 68 unpaid invoices for translation services, dating back 2–3 years, and totalling £7,744.91. Skyline believed that the Firm had already received payment from the LAA to meet those outstanding fees. The Applicant sought the Firm's position in relation to the Skyline report by way of a letter dated 18 July 2019, which letter contained explicit reference to the record keeping requirements of the SAR 2011. Ms Hill responded on behalf of the Firm on 5 August 2019. Ms Hill stated that an arrangement had been in place to pay Skyline a set amount each month to pay off the outstanding invoices, but that arrangement had lapsed.

27. The Applicant wrote to the Firm again on 3 October 2019, raising further queries about the Clues report. Ms Hill replied on the same date, providing information on how the Firm conducted its billing process with the LAA. The Applicant responded by a letter dated 4 October 2019, regarding the Firm's latest annual accountants' report.

28. On 4 November 2019, Ms Hill sent a full response to all queries raised, from which the key points are summarised below:

- The Firm was founded in July 2010 by Mr Kesar and comprised of a single office in Beckenham. This primary office moved to Bromley in 2013. Offices were also subsequently opened in Tonbridge, Dover and Bedford.

- Difficulties with the Legal Aid system, commercial pressures associated with maintaining offices, and delays in receiving payment from the LAA created significant financial problems for the Firm.

- The financial pressures resulted in the Firm having to defer payments due to third parties. Notably, it was said:

> "… it also meant, owing to our own misapprehension... as to the nature of bulk payments received from the LAA on contract work, we have on occasion used those payments from the LAA (regardless of their makeup) to pay older creditors, the firm's overheads and salary costs rather than to pay outstanding disbursements on the matters those funds received related to. Now that we have identified this practise as a problem, we are implementing processes to ensure that it is not repeated with the assistance of expert third party bookkeepers... That we have only recently become aware of this requirement under the Solicitors Accounts Rules is of course a matter of considerable regret…"

- The Firm had taken steps to manage its financial difficulties, which included (i) closing down offices, (ii) terminating the Firm's LAA mental health contract, (iii) making staff redundant, (iv) diversifying into new areas of practise and (v) diversifying into alternative areas of funding, including Conditional Fee Agreements and privately funded work.

- Both Respondents had invested considerable sums of their own money into the firm by providing interest free loans. Additionally, Mr Kesar had obtained two loans from external funders, totalling £110,000.00 in respect of which he provided a personal guarantee.

- Weaknesses in the Firm's accounting procedures were acknowledged, and it was asserted that:

> "… we are a relatively small practice which means that a lot of responsibility and responsibilities often falls on just a few people. Unfortunately, this has meant that, at times, it seems we have failed to do everything necessary to ensure compliance with all of our different regulatory and other obligations. We wish to make clear that this is not

through any sense of deliberate disregard for professional rules; rather, it is that, at times, we have found our hands overly full meaning that we have not been successful in keeping all the balls in the air at all times. We are sorry that this has turned out to be the case. We do wish to emphasise, however, at no point do we believe that any clients have been adversely affected. We recognise that we have come up short in some areas in terms of complying with certain rules and … we have implemented changes - including engaging a third-party accounting firm to assist - to ensure that our accounting systems are fully compliant with the SRA's requirements and properly resourced going forwards…"

- Both Respondents would be undertaking training on the Solicitors Accounts Rules in order to ensure that they understood the current requirements and the new requirements that were coming to force on the 25 November 2019.

- It was believed that the Firm was now on a sound financial footing, and that their priority would be to ensure that all their creditors were paid at the earliest opportunity.

- A list of the Firm's unpaid creditors at that time was provided. That revealed that the Firm owed creditors £283,543.81 with the oldest debt dating back to October 2012.

- A copy of the Firm's most recent accountants' report for the year ending 31 October 2016 was provided. That report declared that no breaches had been discovered in relation to the handling of client money. Whilst issues were identified with accounting records and the management of the client account, they did not relate to the Firm's handling of money received from the LAA.

- Two categories of cases for which the firm received payment from the LAA were identified namely:

  (a) *Contract work*; In respect of which no payment was received from the LAA during the life of the case. A claim for payment was only made at the end of the case. Submissions for that payment had to be made the month following the conclusion of the case, and then payment was made by the LAA one month after that. Submissions for payments were made in bulk, through the provision of a single spreadsheet to the LAA. That spreadsheet covered multiple cases, and set out the individual and cumulative costs incurred for each case. The LAA would then make a bulk payment. A cross checking exercise would have to be carried out in order to identify the cases to which the LAA payment related. Since 2013, the Firm had opened on average 405 contract cases per year. As at November 2019, the Firm held approximately 700 open contract cases.

  (b) *Certificated/licenced cases;* payments could be and were sought during the life span of the case, and they could be received prior to incurring the costs and/or disbursements. The remittance received from the LAA for payment in certified cases enabled the firm to easily identify the case to which the payment related. As at November 2019, the firm held approximately 75 certificated open cases.

- For certificated cases, the Firm created and maintained individual client ledgers on the Firm's financial management system; "QuickBooks". QuickBooks was used to record payments received from the LAA and also to record when disbursements were paid. Disbursements incurred on a case were recorded on the Firm's case management system ("CMS"). Given that the firm was able to seek payments on account from the LAA for certificated cases, all disbursements in those cases were paid within 30 days of receipt of an invoice. QuickBooks and CMS did not, however, synchronise with each other. The firm did not conduct manual reconciliations to confirm that disbursements incurred (recorded on CMS) matched with disbursements paid (recorded on Quickbooks).

- For contract cases, the firm did not create and operate individual financial ledgers for each client on QuickBooks. Instead, disbursements that were incurred on contract cases were recorded on CMS. When payment was received from the LAA at the conclusion of a case, no record was kept on QuickBooks. Due to the nature of bulk payments received from the LAA it was difficult to be precise in allocating specific sums to each specific matter.

- Further to the concerns raised by the Applicant, the Firm had identified a number of areas in which their processes and IT systems could be improved so that disbursements and financial records were held in a single location. The Firm had therefore requested that their external bookkeepers implement a system to ensure that each client matter had his own financial ledger, upon which all financial transactions relating to that file could be recorded.

- A copy of the Firm's Staff Handbook was provided. Section 33 of that document detailed the manner in which the Firm would handle payments of disbursements. As a result of responding to the Applicant's concerns, the Firm identified that the Handbook did not make provision for the handling of payments received from the LAA to cover disbursements in accordance with the SAR. The Firm would therefore be undertaking work to update its policies.

- The Firm now understood that the requirements under the SAR 2011 for payments received from the LAA for unpaid disbursements required either (a) prompt payment of those disbursements or (b) the transfer the relevant funds into the client account.

- The confusion regarding the handling of such payments may have arisen due to the fact that there were cases where disbursements had already been paid from the Firm's own funds, prior to receiving payment from the LAA. That may have resulted in the Firm subsequently treating LAA payments as office money, rather than taking steps to identify the proportion of those payments which would be deemed as client money, and then treating that proportion in accordance with Rule 19.

- In relation to Skyline, once the Firm became aware of the amount of unpaid invoices, the Firm stopped instructing them in order to deal with the outstanding liability An agreement was reached whereby monthly payments would be made by the Firm in order to settle the outstanding debt. However, due to the Firm's

financial problems payments ceased in July 2018. The Firm hoped to settle the outstanding debt with Skyline by the end of November 2019.

29. On 4 December 2019, Ms Hill emailed the Applicant to advise that:

- Both Respondents had taken steps to correct the mistakes that had been identified, including appointing several professional advisers to help review past records and provide advice as to how to avoid the errors in the future.

- Letters of apology had been sent to the Firm's creditors, along with assurances that the invoices would be paid.

- Over the preceding 2 months, the amount owed to suppliers had been reduced by approximately £90,000.00. The Firm was confident that all their creditors would be paid by the end of June 2020.

30. A forensic investigation into the Firm commenced on 28 January 2020. The Forensic Investigation Officer ("FIO") completed his Forensic Investigation Report ("FIR") on 1 September 2020. The brief findings are detailed below.

31. *Unpaid professional disbursements*

31.1 Further to Ms Hill's list of creditors, included with her letter of 4 November 2019, the FIO requested a schedule of all unpaid professional disbursements on Legal Aid matters in respect of which funds had been received from the LAA.

31.2 On 5 August 2020, the Firm provided its first schedule, representing the position as at 22 October 2019. That schedule revealed unpaid disbursements in relation to 440 client matters, in amounts ranging from £0.53 to £5,040.00. Invoice due dates ranged from 20 January 2013 to 19 October 2019. The total unpaid amount was £184,727.65. As a consequence of the Firm not maintaining individual client ledgers, it was not able to provide a date for when funds would have been received from the LAA for each of those 440 matters.

31.3 A second schedule was provided which represented the position as at 31 July 2020. In the nine months between the two schedules, the Firm had succeeded in significantly reducing the number of cases on which there were unpaid disbursements. The second schedule concerned 134 matters, on which there were unpaid disbursements totalling £94,528.18. That represented payment by the Firm of £90,199.17 of outstanding professional fees/disbursements.

31.4 The FIO discovered that, as at 31 July 2020, the Firm's total liability to its clients (in relation to unpaid disbursements and otherwise) amounted to £130,888.59. At the material time, the Firm held £36,360.41 in its Client Account, which represented a shortfall of £94,528.18.

31.5 The FIO concluded that the cash shortage was caused entirely by the Firm failing either (a) to pay disbursements within the time frame identified within Rule 19 of the SAR 2011, or alternatively (b) to transfer the corresponding amount into its client account within that same time frame, pending outward payment of the same.

32. *Joint statement*

32.1 On 24 July 2020, the Respondents provided a joint statement to the FIO. That statement reiterated points previously made, but further averred:

- The Firm was owed a total of £137,243.00 in unpaid bills by the Government Legal Department, LAA or clients. Had those bills been assessed and paid in a timely manner, the Firm would have already paid all the outstanding disbursements.

- The Respondents had worked hard to keep the firm open, as it was the only way of ensuring that the Firm's creditors would receive payment.

- Not only had the Firm taken steps to pay its creditors, it had also sought to instruct them in new matters as compensation for the delayed payment.

- None of the delayed payments for disbursements related either to cases involving privately paying clients or on "Legal Aid Certificate matters". In those cases, the Firm and always paid the disbursements immediately the funds to settle them were received.

33. *Rectification of unpaid professional disbursements*

33.1 Between 4 and 7 August 2020, the Firm had paid £22,791.75 of unpaid professional disbursements from its office bank accounts. That reduced the unpaid figure to £71.736.43. That payment was facilitated via a £50,000.00 loan taken out with Lloyds Bank, which was received in the Firm's bank account on 4 August 2020.

33.2 The unpaid figure was further reduced to £2,470.00 three payments made between 24 and 28 August 2020. An updated schedule was provided by Ms Hill via e-mail on 28 August 2020, which recorded payment date for the cases for which amount still had been Eoin as of seven August 2020. The Firm's payment of this further £69,266.43 what of unpaid professional disbursements had been facilitated primarily by a payment for £62,897.32 received from the LAA 24 August 2020.

34. *Books of Account*

34.1 In addition to the unpaid disbursements, Ms Hill (in an e-mail dated 13 August 2020) indicated that the Firm also owed:

- £34,297.77 for PAYE.
- £64,789.95 for VAT.
- £18,365.00 for corporation tax.

34.2 Over and above the personal funds invested in the firm by the Respondents, and the loans obtained by Mr Kesar, in relation to which he provided personal guarantees, they had both taken significant reductions in their salaries. Mr Kesar had reduced his salary from £70,000 to £40,000. Ms Hill had reduced her salary from £40,000 to £30,000.

34.3 The steps taken by the Firm to improve its financial situation appeared to the FIO to have been successful. The Firm was in a position to pay the totality of the outstanding disbursements by 1 September 2020. Furthermore, the firms practise accounts for the 17-month period ending 31 March 2020, reported a 1,719% increase in pre-tax profits from the previous accounts.

34.4 Notwithstanding the fact that some of the Firm's unpaid disbursements dated back to 2013, and that the explanation provided by the Firm was that their inability to settle disbursement invoices promptly was due to financial problems within the firm, neither Respondent had reported any financial problems to the Applicant prior to the enquiries made in 2019 as a consequence of the Clues and Skyline reports.

34.5 In an e-mail to the FIO dated 18 August 2020, Mr Kesar stated:

> "… this provided a short-term loan in the past which was later paid in full. This was a relatively small amount which was paid back to her and given the size of the company at that time, we did not consider it large or serious enough to be reported to the SRA…"

35. **Allegations 1.1/2.1 - Failure to pay professional fees within a reasonable time**

Applicant's Case

35.1 Mr Collis submitted that the Firm received payments from the LAA relating to claims submitted by the Firm for professional fees/disbursements. Those payments were made by the LAA to meet the unpaid professional fees/disbursements on particular files. Under the SAR 2011 rules, those payments were classified as "client money". The funds should have been used to pay the professional fees/disbursements or transferred into a Client Account. Neither was done.

35.2 Mr Collis therefore submitted that, by virtue of their conduct, Mr Kesar and Ms Hill breached:

*SAR 2011*

- Rule 1.2 in that they failed to comply with the SRA Code of Conduct in relation to effective financial management of the Firm, namely the prescribed handling and use of "client money".

- Rule 6.1 in that they, as Principal and COFA of the Firm, failed to ensure compliance with the rules.

- Rule 19 in that they failed to use the LAA payments to either meet the professional fee/disbursement for which the payment had been claimed *or* transfer the payment to a Client Account.

*SRA Principles 2011*

- Principle 6 required Mr Kesar and Ms Hill to behave in a way that maintained public trust in them and in the provision of legal services. Their failures to manage

client money as required by the SARs repeatedly, and over a six-year period, undoubtedly undermined public confidence.

- Principle 8 required Mr Kesar and Ms Hill to run the Firm effectively, in accordance with proper governance and adhering to sound financial and risk management principles.

- Principle 10 required Mr Kesar and Ms Hill to protect client money and assets. Their mismanagement of client money caused a shortfall on the client account, which conduct plainly did not protect client money or assets.

First Respondent's Position

35.3 Mr Kesar admitted the factual matrix of Allegation 1.1, breach of SAR 2011 Rules 1.2, 6.1 and 19, and breach of Principles 6, 8 and 10 of the SRA Principles 2011.

Second Respondent's Position

35.4 Ms Hill admitted the factual matrix of Allegation 2.1, breach of SAR 2011 Rules 1.2, 6.1 and 19, and breach of Principles 6, 8 and 10 of the SRA Principles 2011.

The Tribunal's Decision

35.5 The Tribunal considered the admissions of Mr Kesar and Ms Hill, who had both been represented by DAC Beachcroft LLP and Mr Hubble KC throughout the proceedings. The Tribunal determined that the admissions were properly made and accepted the same.

35.6 The Tribunal therefore found on the evidence before it and the admissions made, Allegation 1.1 levelled against Mr Kesar PROVED in its entirety on a balance of probabilities, and Allegation 1.2 levelled against Ms Hill PROVED in its entirety on a balance of probabilities.

36. **Allegations 1.2/2.2 - Mismanagement of LAA monies**

Applicant's Case

36.1 Mr Collis submitted that Mr Kesar and Ms Hill failed properly to manage the payments received from the LAA. Professional fees/disbursements had been incurred from 2013. Payments had been received from the LAA to meet those fees/disbursements yet, as at 2020, during the course of the forensic investigation, they remained outstanding. Furthermore, at no stage during the material time had transfers been made to the Client Account to represent the LAA payments received to meet professional fees/disbursements. Conversely, Mr Kesar and Ms Hill used the LAA payments to meet other debts of the Firm, such as older professional fees/disbursements and the Firm's overheads.

36.2 Mr Collis therefore submitted that, by virtue of their conduct, Mr Kesar and Ms Hill breached:

*SAR 2011*

- Rule 1.2 in that they failed to comply with the SRA Code of Conduct in relation to effective financial management of the Firm, namely the handling and use of "client money".

- Rule 6.1 in that they, as Principal and COFA of the Firm, failed to ensure compliance with the rules.

- Rule 19 in that they failed to use the LAA payments to either meet the professional fee/disbursement for which the payment had been claimed *or* transfer the payment to a Client Account.

*SRA Principles 2011*

- Principle 2 required Mr Kesar and Ms Hill to act with integrity. In Wingate v Solicitors Regulation Authority [2018] EWCA Civ 366, it was held that integrity connotes adherence to the ethical standards of one's own profession. Mr Collis submitted that a solicitor and/or COFA of a firm acting with integrity would not have used money from the LAA, intended to pay counsel's fees or expert witness fees, to meet another debt owed by the Firm.

36.3 Mr Collis reminded the Tribunal that the misuse and mismanagement of LAA payments was not an isolated incident. The failures were repeated over a protracted period of time, between 2013 and 2019, and followed a conscious decision by Mr Kesar and Ms Hill, as COLP and COFA, that use of these monies was an appropriate way for the Firm to manage it financial difficulties.

36.4 Mr Collis contended that it was inconceivable for Mr Kesar as COLP and Ms Hill as COFA and the Firm's "LAA contract liaison person", to have been unaware of the requirements set out in the SAR 2011 regarding the handling of LAA payments. If that position was accepted, then their conduct was a deliberate breach of the rules regarding handling "client money".

36.5 Mr Collis submitted that, even if Mr Kesar and Ms Hill did not know that their conduct represented a breach of the SAR 2011, it still represented a lack of integrity. Mr Collis averred the Respondents were aware that LAA payments were received on the basis of claims submitted by them in relation to professional fees/disbursements incurred on a particular case. Notwithstanding that knowledge, Mr Kesar and Ms Hill chose not to use the LAA payments to meet the claim that they had made. They chose to divert the LAA payments to meet other debts of the Firm. Mr Collis described that conduct as "robbing Peter to pay Paul" and submitted that an individual acting with moral soundness would not have deployed the LAA payments in this manner, irrespective of whether or not they were aware of the SAR 2011 requirements.

- Principle 6 required Mr Kesar and Ms Hill to behave in a way that maintained public trust in them and in the provision of legal services. Their failures to manage client money as required by the SAR's repeatedly, and over a six-year period, undoubtedly undermined public confidence.

- Principle 8 required Mr Kesar and Ms Hill to run the Firm effectively, in accordance with proper governance, and adhering to sound financial and risk management principles. Their individual and collective mismanagement of "client money", even if it was predicated on a lack of understanding of the SAR 2011, was a demonstrable failure to act in accordance with proper governance, and sound financial and risk management principles.

- Principle 10 required Mr Kesar and Ms Hill to protect client money and assets. Their mismanagement of client money caused a shortfall on the client account, which plainly did not protect client money or assets.

First Respondent's Position

36.6 Mr Kesar admitted the factual matrix of Allegation 1.2, breach of SAR 2011 Rules 1.2, 6.1 and 19, and breach of Principles 6, 8 and 10 of the SRA Principles 2011. Mr Kesar denied having breached Principle 2; he averred that he did not lack integrity and gave oral evidence in that regard.

36.7 Mr Kesar confirmed that the content of his witness statement dated 24 July 2020 was true. In response to additional questions from his counsel, Mr Hubble KC, he denied having "deliberately chosen not to inform" the Applicant of the financial difficulties faced by the Firm at the material time. Mr Kesar directed the Tribunal to an email sent by him to the Applicant on 18 August 2020, in which he set out the comparative exercise he had undertaken with other prominent Legal Aid firms which, he submitted, were in a similar if not worse financial position. Mr Kesar also drew the Applicant's attention to the well-publicised state of Legal Aid firms as reported by the Law Society Gazette. Mr Kesar stated in his email, and maintained at the substantive hearing, that the position of the Firm was no worse than other publicly funded firms. He averred that the analysis undertaken by him was "the responsible thing to do" because he knew that the Firm was in "some" difficulty. He was aware of the duty incumbent upon him to report "serious" financial difficulty to the Applicant, but believed that the Firm was "doing considerably better" than other firms. That belief informed his decision that it was not necessary to report.

36.8 Mr Kesar was cross examined by Mr Collis. He confirmed that prior to establishing the Firm, he had been a fee earner in other firms working on publicly funded matters. When he established the Firm, it was not mandatory to undertake Solicitors Accounts Rules training and "[he] believed that [he] had a reasonable understanding" of the same. Mr Kesar accepted that he had had no previous involvement in the financial management of firms in his prior employment.

36.9 Mr Kesar acknowledged that he had never held the positions of COLP or COFA in any prior employment. Mr Kesar accepted that he had not undertaken any training to ensure compliance with the Rules when he set up the Firm. He "thought [he] knew enough to set up a small firm with two fee earners and a secretary (at the time). [He] believed [he] knew enough. [It was] difficult to anticipate how the Firm would grow".

36.10 Mr Kesar stated that between 2013 and 2019, 95% of the Firm's receipts were from LAA payments. The Solicitors Accounts Rules 2011 came into force in October 2011. Prior to their implementation, the Firm had existed for 12 months. He received "no

formal training" in relation to the new Accounts Rules but "tried to keep up with the changes". Mr Kesar averred that setting up a firm was "time consuming and challenging". He was "fee earning, attending on clients, visiting prisons and juggling many things at the same time".

36.11 Mr Kesar made plain that he had been involved in the early correspondence (from 2 July 2019) between the Applicant and Ms Hill. He was aware of all communications and was kept informed as to the position throughout by Ms Hill.

36.12 Mr Kesar referred the Tribunal to the Firm's 4 November 2019 letter to the Applicant which acknowledged their "misapprehension" with regards to the use of bulk payments from the LAA. Mr Kesar stated that it was not until the forensic investigation commenced that he understood those funds were considered to be "client money" and had to be treated as such.

36.13 Mr Kesar accepted that he became aware of the position in the summer of 2019, when they were asked by the Applicant to produce ledgers for client matters. They did not have the ledgers, save for on certificated cases, thus he immediately employed expert bookkeepers to retrospectively assess and correct the position. It was when they commenced to do so that it became apparent that the Firm had "been in breach for a considerable period of time". Mr Kesar stated that:

> "… The forensic investigation officer asked for ledgers on 18 July 2019. I can't clearly remember when, but during that period it became clear to us that we had acted in breach of the Accounts Rules. Over a nine-year period from set up until [the July letter] it wasn't obvious how to treat LAA bulk payments. The LAA doesn't specify what is paid [in respect of a particular case]. If we had cross referenced [the bulk payment] with what was claimed every month it was unlikely to match because there would've been adjusted payments, delayed payments … no payment for work which the LAA did not approve. It was hard to know what [the bulk payment] related to with no breakdown [from the LAA]. Cross checking and referencing was time consuming. Now we pay accountants to do this but at the time we did the best we could with the manpower we had to pay out liabilities as quickly as we could…"

36.14 Mr Kesar stated that he understood the importance of handling "client money" properly. He accepted that steps were not taken to find out what constituted "client money" according to the Accounts Rules. Mr Kesar maintained that he simply did not appreciate prior to the forensic investigation that bulk payments from the LAA were "client money".

36.15 The lack of ledgers for Legal Aid matters was, Mr Kesar contended, borne out of a "lack of understanding". It was a "pragmatic" decision not to open ledgers in such cases as LAA payment was only made at the conclusion of a case, when a submission for the payment of professional fees could be made. Mr Kesar accepted that he "did not have a complete understanding of [his] duties" in that regard.

36.16 Mr Collis referred Mr Kesar to the Accountants' Report of 2017 in which issues were identified with the Firm's "maintenance of records". Mr Kesar explained that the report did not specify what the issues were, and did not identify concerns regarding the Firm's use of LAA bulk payments. Mr Kesar stated that, at the material time, the Firm had undergone five audits undertaken by the LAA which expressed no concern. The LAA audits and the Accountants' Report, which also identified "substantial departures", were sent to the Applicant at the material time. The Applicant did not raise concerns in either regard with the Firm.

36.17 Mr Kesar stated that when The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force it entirely reformed civil litigation costs and funding. The Firm had relied upon Legal Aid as its main source of income. The effect of LASPO was that many of the areas of law practised by the Firm became exempt from Legal Aid funding. That significantly reduced the Firm's main source of income and marked the start of its financial problems in 2013 and beyond.

36.18 Mr Collis put to Mr Kesar that his response to LASPO was to improperly deploy LAA bulk payments to address the Firm's financial difficulties. Mr Kesar refuted that suggestion and asserted that, with regard to the Firm's use of LAA bulk payments, he "was not aware [that it] was "client money", and if he had been they wouldn't have continued to [use the payments] in that way for so many years and [acted] in breach".

36.19 Mr Collis put to Mr Kesar that he deployed the LAA bulk payments erroneously over many years because the Firm's financial problems continued over many years. Mr Kesar refuted that suggestion and asserted that he had hoped the financial problems would be "resolved sooner, that didn't happen, covid didn't help, the Firm was forced to move often because landlords always decided to sell [the office premises] for re-development" thus, in short, there were a lot of factors at play at the material time. Mr Kesar reiterated that the use of LAA bulk payments was borne out of a "genuine misunderstanding of the rules, [there was] no deliberate intention to breach the rules or act like that for a long period".

36.20 Mr Collis asked Mr Kesar why he considered it was ok to use LAA bulk payments for matters beyond that for which they were intended to be used. Mr Kesar stated that he was "using them to pay suppliers as quickly as [he] could. Because there were no ledgers, the bulk payments were used for the intended purpose [to satisfy professional fees/disbursements] but perhaps not for the specific case or in the exact amount".

36.21 Mr Kesar maintained the position set out in the 4 November 2019 letter , namely that:

> "§90 …Where the payments are for contract work, our procedure has been to receive the payments into the firm's office account and then to use the funds (including to make payments due to third parties) from the office account without first transferring sums paid by the LAA for unpaid disbursements to our client account. Again in the course of responding to the SRA's queries, we have very recently come to realise that this approach is prima facie in breach of the rules when those payments are mixed office and client monies. This is, in particular, where client monies are paid by the LAA for unpaid disbursements.

> §91 In those circumstances, we now understand that those funds should have been paid out promptly in satisfaction of the specific disbursements in question or transferred to a client pending their payment. We believe that confusion may have arisen as a result of the fact that we have, in many cases, had to pay for experts, interpreters and so forth out of the firm's own funds and before receiving funding for these services from the LAA. We believe that this resulted in our coming to understand that funds received in bulk payments from the LAA did not have to be broken down individually by client on receipt with efforts then made to identify what proportion of funds received for specific clients related to specifically client money as opposed to office money, with payments and transfers then made accordingly."

36.22 In response to questions from the Tribunal, Mr Kesar stated that;

- The LAA audits were not on set dates. The Firm would receive an email from the LAA setting out what was required. Pre-covid the audit visits took place in person. "No-one from the LAA questioned or alerted us to problems or mismanagement" of LAA bulk payments.

- The Firm was aware of the default CCJ obtained against it, as well as the reminders from Chambers regarding outstanding counsel's fees. Mr Kesar stated that they were doing the best they could to pay professional fees/disbursements, did the best they could at the material time, accepted that some payments remained outstanding for some time, those suppliers were spoken to, they understood the widely accepted difficulties in the Legal Aid system, and some were prepared to wait. The CCJ was paid immediately upon notification.

- Mr Kesar stated that if he had been aware at the material time that their approach to LAA bulk payments amounted to regulatory breaches, resources would have been found to address the same, or he would have closed the Firm. The breaches were borne out of ignorance as opposed to nefarious intent.

- Mr Kesar stated that he thought that they had tried to identify which professional fees/disbursements were included in bulk payments, but found it very cumbersome, such that they did not endeavour to do so thereafter. Mr Kesar further stated that they "didn't realise it was an important requirement". He vehemently refuted having "used the LAA bulk payments for a purpose other than what it was intended for" given that they had no ledgers, and were therefore in difficulty in understanding what claims each bulk payment was made in respect of. Mr Kesar reminded the Tribunal that post 2019 the reconciliation by way of ledgers was delegated to external bookkeepers so as to avoid reoccurrence.

<u>Second Respondent's Position</u>

36.23 Ms Hill admitted the factual matrix of Allegation 2.2, breach of SAR 2011 Rules 1.2, 6.1 and 19 and breach of Principles 6, 8 and 10 of the SRA Principles 2011. Ms Hill denied having breached Principle 2; she averred that she did not lack integrity and gave oral evidence in that regard.

36.24 Ms Hill confirmed that the content of her witness statement dated 19 July 2022 was true. In so doing she stated that she joined the Firm on 19 December 2011. Prior to that she was the Business Manager in the Higher Appeals, Reconsideration and Information Department, and the Administration Manager for London and Southeast regions for the Immigration Advisory Service, before it went into administration in 2011.

36.25 Ms Hill was cross examined by Mr Collis. She accepted that she did not undertake any training with regards to the Solicitors Accounts Rules 2011 before she assumed the role of COFA at the Firm. Ms Hill asserted that she "tried to familiarise [herself] with the Rules when issues cropped up". She could not recall when she was appointed COFA. Ms Hill explained that as "Contract liaison person for the LAA" she had daily contact with the LAA, during which no issues were ever raised in relation to the Firm's management of LAA bulk payments.

36.26 Ms Hill stated that the LAA provided a "bulk load spreadsheet" which was their document template which she completed with Legal Aid claims on specific cases before uploading onto the LAA portal ("the initial submission"). The initial submission would not have a running total. It simply set out the amount claimed in respect of a particular case. The total claimed was calculated by the LAA portal when the initial submission was uploaded.

36.27 The LAA would consider the initial submission and revert the following month with a remittance advice ("the advice"). The advice would set out the LAA assessment of what elements of the initial submission it was prepared to pay. Ms Hill would then compare the initial submission with the advice in order to identify discrepancies but "some discrepancies wouldn't be capable of calculation" as entries on the initial submission could have been reduced by the LAA, but not attributed to any particular case given the nature of bulk payments.

36.28 Ms Hill made plain that she "knew 'client money' had to be kept separately from 'office money' but [she] didn't know that LAA contract money amounted to 'client money.' [She] knew that LAA certified case money amounted to 'client money' [given the ledgers created for certificated cases]".

36.29 Ms Hill explained that she genuinely believed that LAA bulk payments amounted to the Firm's money, which could be deployed as they saw fit, namely on the oldest outstanding professional fees/disbursements or for "other purposes".

36.30 Ms Hill vehemently denied using LAA bulk payments to keep the Firm afloat. The first time she became aware that the manner in which they were using LAA bulk payments amounted to a breach of the Rules was "during the initial correspondence" with the Applicant in July 2019. When the Applicant sought copies of all client ledgers, and she could not provide them as they did not exist, she explained that records of disbursements were kept on the Firm's Case Management System. The Applicant advised that was not an appropriate approach, and she therefore appointed external bookkeepers to retrospectively create client ledgers in around September 2019.

36.31 Ms Hill accepted that the breaches identified were not remedied until the end of 2020. She explained that was because the bookkeepers had to interrogate the Firm's systems to ascertain where the breaches existed, which took time. As soon as they were identified both she and Mr Kesar took immediate steps to remedy the position, which steps included them both investing personal money into the Firm, accepting salary cuts (£40,000 to £30,000 for her and £70,000 to £40,000 in respect of Mr Kesar), and Mr Kesar acting as guarantor on loans granted to the Firm, all of which represent efforts made to pay what was owed. Ms Hill stated that "lockdown impacted on cases, as work was on hold until the courts restarted" and that this adversely impacted the Firm's cashflow.

The Tribunal's Decision

36.32 The Tribunal considered the admissions of Mr Kesar and Ms Hill who had both been represented by DAC Beachcroft LLP and Mr Hubble KC throughout the proceedings. The Tribunal determined that the admissions were properly made and accepted the same.

36.33 The Tribunal therefore found on the evidence before it and the admissions made, the factual matrix, breach of Rules 1.2, 6.1 and 19 of the Accounts Rules and breach of Principles 6, 8 and 10 of Allegation 1.2 (levelled against Mr Kesar) and Allegation 2.2 (levelled against Ms Hill) PROVED on a balance of probabilities.

36.34 With regards to the alleged breach of Principle 2 (integrity), the Tribunal carefully considered the submissions made and the evidence of the Respondents.

*The First Respondent*

36.35 With regard to Mr Kesar, the Tribunal found him to be a credible witness who was genuine and measured in the evidence he gave. It was evident to the Tribunal that Mr Kesar was doing his best to recall events from 2013 and his state of mind at the material time. His evidence was consistent in that he averred that the misconduct was borne out of misapprehension as opposed to nefarious motives. The Tribunal accepted Mr Kesar's evidence that he did not appreciate at the material time that LAA bulk payments for contract cases were categorised as client money, because they were a mixture of the Firm's fees and disbursements which were due to external experts/Counsel. The admissions made to the factual matrix of Allegation 1.1 and all breaches, save for lack of integrity, was a measure of his character. Mr Kesar appeared to the Tribunal to be an honourable man who was doing his best to serve his local community.

*The Second Respondent*

36.36 With regard to Ms Hill, the Tribunal found her to be straightforward, honest and credible. Ms Hill did not attempt to evade responsibility for the admitted misconduct. Ms Hill demonstrated her lack of knowledge of the Accounts Rules in the evidence she gave, which underlined the admissions she had made. Despite her extensive experience in the legal profession, Ms Hill was not a solicitor. She was employed by the Firm in an administrative/financial management capacity. She was subsequently appointed COFA by Mr Kesar, who oversaw the manner in which LAA bulk

payments were managed. She was entitled to follow his lead in that regard, and rely on his professional expertise.

36.37 The Tribunal also paid significant regard to the authorities relied upon with regard to the condition of the Legal Aid System at the material time, and its impact on Legal Aid firms namely:

- The Right to Justice: the final report of the Bach Commission, September 2017.
- Civil legal aid: the Law Society's review of its sustainability and the challenges to its validity, September 2021.
- The Law Society's heat maps for Legal Aid Deserts, June 2022.
- Lexis Nexis: A look into the Legal Aid Deserts of 2020, November 2021.

36.38 Having reached the conclusions set out above with regard to the evidence of the Respondents, the Tribunal determined that neither Mr Kesar nor Ms Hill had at the material time read or understood the Accounts Rules. The Tribunal accepted their evidence that they did not appreciate that LAA bulk payments constituted "client money" and therefore did not treat them as such. Without doubt Mr Kesar and Ms Hill ought to have known how to treat those payments, particularly given their respective roles as COLP and COFA, but the evidence before the Tribunal did not substantiate that they did, or substantiate the allegation that they lacked integrity.

36.39 The Tribunal therefore found breach of Principle 2 in respect of Allegations 1.2 and 2.2 NOT PROVED on a balance of probabilities.

37. **Allegations 1.3/2.3 - Failure to maintain accounting records**

Applicant's Case

37.1 Mr Collis submitted that Mr Kesar and Ms Hill failed to ensure that individual client ledgers were kept in relation to all matters, namely "contract cases" as opposed to just the "certificated cases". That failure resulted in the Firm's inability to keep track of LAA payments received in respect of individual cases, be they contract or certificated.

37.2 Mr Collis therefore submitted that, by virtue of their conduct, Mr Kesar and Ms Hill breached:

*SAR 2011*

- Rule 1.2(f) in that they did not keep proper accounting records which accurately showed the position with regard to money held for each client.
- Rule 6.1 in that they, as Principal and COFA of the Firm, failed to ensure compliance with the Rules.
- Rule 29(1), 29(2), 29(4 and 29(9) in that they did not comply with the specific requirements contained therein in relation to records regarding the management of "client money" in the form of individual ledgers.

- Rule 19 in that they failed to use the LAA payments to either meet the professional fee/disbursement for which it was claimed *or* transfer the payment to a Client Account.

*SRA Principles 2011*

- Principle 8 required Mr Kesar and Ms Hill to run the Firm effectively, in accordance with proper governance and adhering to sound financial and risk management principles. They demonstrably failed to adhere to the basic requirements of record keeping of "client money" as prescribed by the SAR 2011.

- Principle 10 required Mr Kesar and Ms Hill to protect client money and assets. Their failure to keep any records regarding the use of "client money" undoubtedly led to the mismanagement of client money, which plainly failed to protect client money or assets.

First Respondent's Position

37.3 Mr Kesar admitted the factual matrix of Allegation 1.3, breach of SAR 2011 Rules 1.2(f), 6.1, 29.1, 29.2, 29.4 and 29.9 and breach of Principles 8 and 10 of the SRA Principles 2011.

Second Respondent's Position

37.4 Ms Hill admitted the factual matrix of Allegation 2.3, breach of SAR 2011 Rules 1.2(f), 6.1, 29.1, 29.2, 29.4 and 29.9 and breach of Principles 8 and 10 of the SRA Principles 2011.

The Tribunal's Decision

37.5 The Tribunal considered the admissions of Mr Kesar and Ms Hill who had both been represented by DAC Beachcroft LLP and Mr Hubble KC throughout the proceedings. The Tribunal determined that the admissions were properly made and accepted the same.

37.6 The Tribunal therefore found on the evidence before it and the admissions made, Allegation 1.3 levelled against Mr Kesar PROVED in its entirety on a balance of probabilities, and Allegation 2.3 levelled against Ms Hill PROVED in its entirety on a balance of probabilities.

38. **Allegations 1.4/2.4 - Failure to remedy breaches of SAR 2011 promptly**

Applicant's Case

38.1 Mr Collis submitted that Mr Kesar and Ms Hill, both in relation to the management of LAA payments and their failures to keep accounting records, failed to remedy breaches of the SAR 2011 promptly. The shortfall on the Client Account was not remedied in full until June 2020.

38.2 Mr Collis therefore submitted that, by virtue of their conduct, Mr Kesar and Ms Hill breached:

*SAR 2011*

- Rule 7.1 in that they were obliged to remedy breaches of the Accounts Rules promptly upon discovery. That obligation extended to Mr Kesar, as Principal, and to Ms Hill, as an individual who caused the breach given her role as COFA and "LAA contracts liaison", and who had a mandate to execute financial transactions on behalf of the Firm.

38.3 Mr Collis submitted that the Respondents made a conscious and deliberate choice to breach the requirements of the SAR 2011, certainly insofar as the management of payments from the LAA was concerned, even if solely to alleviate the financial pressures the Firm was facing. Mr Collis asserted that, if the Tribunal accepted that proposition, it followed that the Respondents were aware of the Accounts Rules breaches from 2013, yet took no steps to remedy them until the SRA started corresponding with them in 2019. Such conduct could not possibly amount to remedying a breach promptly.

*SRA Principles 2011*

- Principle 2 required Mr Kesar and Ms Hill to act with integrity. Choosing to act in breach of the requirements of the SAR 2011 for a six-year period, and not promptly remedying those breaches, even if intended to assist the economic woes of the Firm, did not represent the conduct of an individual acting with integrity.

- Principle 6 required Mr Kesar and Ms Hill to behave in a way that maintained public trust in them and in the provision of legal services. Their failures to remedy the breaches promptly correlates directly with their decision to divert the LAA payments to assist with the Firm's financial problems. Such conduct was precisely the type of behaviour which undermined public trust in solicitors and in the provision of legal services.

- Principle 7 required Mr Kesar and Ms Hill to comply with regulatory obligations. The deliberate and conscious decision to knowingly allow breaches of the SAR 2011 over a six-year period was a flagrant disregard of Principle 7.

- Principle 8 required Mr Kesar and Ms Hill to run the Firm effectively, in accordance with proper governance and adherence to sound financial and risk management principles. They caused and allowed breaches of the SAR 2011 to occur and continue. By failing to take steps to remedy the same they demonstrated a lack of proper governance and a failure to adhere to sound financial and risk management principles.

- Principle 10 required Mr Kesar and Ms Hill to protect "client money" and assets. They failed to correct their breaches of the SAR 2011 with regard to record keeping and management of "client money", which conduct plainly failed to protect the same.

First Respondent's Position

38.4 Mr Kesar admitted the factual matrix of Allegation 1.4, breach of SAR 2011 Rule 7.1 and breach of Principles 6, 7, 8 and 10 of the SRA Principles 2011. Mr Kesar denied having breached Principle 2; he averred that he did not lack integrity and gave oral evidence in that regard as set out above at §36.7 - §36.22.

Second Respondent's Position

38.5 Ms Hill admitted the factual matrix of Allegation 2.4, breach of SAR 2011 Rule 7.1 and breach of Principles 6, 7, 8 and 10 of the SRA Principles 2011.

38.6 Ms Hill denied having breached Principle 2, averred that she did not lack integrity and gave oral evidence in that regard as set out above at §36.24 – §36.31.

The Tribunal's Decision

38.7 The Tribunal carefully considered the evidence before it and the timeline of events, in line with its previous finding that it accepted Mr Kesar and Ms Hill's evidence in full. The timeline demonstrated that:

| **Date** | **Occurrence** |
|---|---|
| 18 June 2019 | Firm notified of Clues report and a response was requested. |
| 2 July 2019 | Ms Hill provided a full response and notably stated:<br><br>"As LAA payments do not specifically state which cases are paid when payments are made each month, nor is there any delineation between profit costs, disbursements and VAT on their remittance advice is, it is not possible to categorically state that where a claim has been submitted, the payment has been received." |
| 18 July 2019 | Firm notified of the Skyline report, reference to record keeping requirements of the SAR 2011 was set out and a response was requested. |
| 5 August 2019 | Ms Hill provided a full response which emphasised that an arrangement to settle outstanding invoices with Skyline had been reached previously but unfortunately had lapsed. |
| September 2019 | External bookkeeper appointed to interrogate the Firm's accounts. |
| 4 October 2019 | Further queries were raised with regards to the Clues report.<br><br>Ms Hill responded on the same date and set out the Firm's billing process with regards to LAA bulk payments.<br><br>Further queries were raised with regards to the Skyline report. |
| 21 October 2019 | Ms Hill sent the Firm's annual accountant's report and seven week of bank statements to the Applicant. She further confirmed that a full response to the outstanding queries would be addressed shortly. |
| 4 November 2019 | Mis Hill provided a full response to all outstanding queries which was essentially in line with the evidence she and Mr Kesar gave at the substantive hearing. |

| Date | Occurrence |
|---|---|
| | Attached to that response was the first schedule showing all unpaid professional fees/disbursements as of 22 October 2019.<br><br>Steps taken by the Firm to remedy the breaches by stabilising the financial position of the Firm included:<br><br>• Closing offices.<br>• Redundancies.<br>• Injection of personal funds.<br>• Taking salary reductions.<br>• Mr Kesar standing as guarantor for two loans amounts to £110,000.00. |
| 5 August 2020 | The Firm provided a second schedule which set out all unpaid professional fees/disbursements as of 31 July 2020. |
| 1 September 2020 | All unpaid professional disbursements paid. |

38.8 Having accepted the evidence of Mr Kesar and Ms Hill that they were unaware that they had been in breach of the Accounts Rules prior to the forensic investigation, the Tribunal determined that they first became aware of the breaches in June 2019. What followed thereafter was a series of communications between the Firm and the Applicant with a view to ascertaining the full nature and extent of the breach. Because of the absence of ledgers on all client matters, the Firm appointed external bookkeepers to review their accounts and create client ledgers retrospectively. To address the financial difficulties, the Firm downsized and made redundancies. The Respondents both invested personal money in the Firm to keep it afloat. Mr Kesar stood as guarantor for a substantial loan in order to allow the Firm to continue trading. All of those actions demonstrated to the Tribunal that the Respondents were taking steps to remedy the Accounts Rules breaches brought to their attention in June 2019.

38.9 The Tribunal took judicial notice of the impact of Covid, and the lockdown imposed from March 2020, on the Firm's ability to operate and its inability to conclude cases so that LAA payments could be claimed.

38.10 In order for the Respondents to fully remedy the breaches, namely to satisfy all of the outstanding professional fees/disbursements, the external bookkeeper had to complete its task. That task was to recreate ledgers for all client matters during the material time so that retrospective reconciliations could be undertaken as between the ledgers and the LAA bulk payments received. The Tribunal accepted that would have been a monumental task, and was demonstrably so by the fact that the final figure was only known and sent to the Applicant on 5 August 2020. Within a month of the final figure being known, all outstanding invoices had been satisfied by 1 September 2020.

38.11 The stem of Allegation 1.4 / 2.4 alleged that Mr Kesar and Ms failed to remedy the breaches promptly, upon discovery, between 2013 and 2019. Given the Tribunal's finding that the Respondents did not discover that they were in breach until June 2019, and given the fact that they were unaware of the extent of remedy required until

August 2020 (upon production of the second schedule) the Tribunal found that the Respondents could not have been under an obligation to remedy the breaches during the period alleged and, and therefore found Allegation 1.4/2.4 NOT PROVED on a balance of probabilities.

39. **Allegations 1.5/2.5 - Failure to notify the SRA of the Firm's serious financial difficulty**

39.1 Mr Collis submitted that the "Schedule of unpaid LAA professional disbursements as at 22 October 2019" showed a total of £184,727.65 some of which dated back to 2013. The Respondents asserted throughout the investigation and the Tribunal proceedings that their mismanagement of LAA payments, which payments were intended to meet those disbursements, arose from the financial problems the Firm was facing at the material time. At no stage did either Mr Kesar or Ms Hill notify the Applicant of the difficulties that the Firm was experiencing. The Applicant first became aware of the same as a consequence of the Clues and Skylines reports in 2019.

39.2 Mr Collis therefore submitted that, by virtue of their conduct, Mr Kesar and Ms Hill failed to meet:

*SRA Code of Conduct 2011 Outcomes*

- O7.4 required Mr Kesar and Ms Hill to maintain systems and controls within the Firm to monitor its financial stability and risks posed to client money/assets. They were further obliged to take steps in order to address identified issues.

39.3 Mr Collis submitted that the financial management systems, up until November 2019, appeared to have allowed the Firm to slip into serious financial difficulties. That caused the Respondents to misuse LAA payments to meet debts other than those for which the payments were intended, and in so doing they failed to meet Outcome 7.4.

- O10.3 required Mr Kesar and Ms Hill promptly to notify the Applicant of any material change to relevant information, which included serious financial difficulty.

39.4 Mr Collis submitted that Mr Kesar and Ms Hill made a conscious decision to use LAA payments in the manner that they did. It naturally followed, he contended, that they must have been aware that the Firm was in serious financial difficulty. Notwithstanding that knowledge, the Applicant was oblivious to the financial difficulties which the Firm was labouring under until the Clues and Skyline reports and its subsequent investigation. At no stage prior to that did Mr Kesar or Ms Hill notify the Applicant of such serious financial difficulty.

39.5 Mr Collis further submitted that, by virtue of their conduct, Mr Kesar and Ms Hill breached:

*SRA Principles 2011*

- Principle 2 required Mr Kesar and Ms Hill to act with integrity. Mr Collis submitted that a solicitor and COFA acting with integrity would have

communicated with their regulator about the financial difficulties the Firm was experiencing. Conversely, Mr Kesar and Ms Hill endeavoured to manage the Firm's debts by the misapplication of LAA payments.

39.6 Mr Collis submitted that their decision not to report the Firm's serious financial difficulties to the Applicant was on all fours with their decision to misuse LAA payments. Mr Collis therefore contended that if the Tribunal determined that the misuse represented a lack of integrity, it naturally followed that the subsequent failure to report also lacked integrity, given the alternative use to which the Respondents deployed LAA payments with the intention of "propping up the Firm".

- Principle 7 required Mr Kesar and Ms Hill to comply with regulatory obligations. Their delayed communication to the Applicant, in relation to the serious financial difficulties of the Firm at the material time, represented a failure to deal with their regulator in an open and transparent manner, contrary to Principle 7.

First Respondent's Position

39.10 Mr Kesar admitted the factual matrix of Allegation 1.5, failure to meet Outcomes 7.4 and 10.3 and breach of Principle 7 of the SRA Principles 2011.

39.11 Mr Kesar denied having breached Principle 2; he averred that he did not lack integrity and gave oral evidence in that regard as set out above at §36.7 - §36.22.

Second Respondent's Position

39.12 Ms Hill admitted the factual matrix of Allegation 2.5, failure to meet Outcomes 7.4 and 10.3 and breach of Principle 7 of the SRA Principles 2011.

39.13 Ms Hill denied having breached Principle 2; she averred that she did not lack integrity and gave oral evidence in that regard as set out above at §36.24 - §36.31.

The Tribunal's Decision

39.14 The Tribunal considered the admissions of Mr Kesar and Ms Hill, who had both been represented by DAC Beachcroft LLP and Mr Hubble KC throughout the proceedings. The Tribunal determined that the admissions were properly made and accepted the same.

39.15 The Tribunal therefore found on the evidence before it and the admissions made, the factual matrix, failure to meet Outcomes 7.1 and 10.3 and breach of Principles 7 of Allegation 1.5 (levelled against Mr Kesar) and Allegation 2.5 (levelled against Ms Hill) PROVED on a balance of probabilities.

39.16 With regard to the alleged breach of Principle 2 (integrity), the Tribunal carefully considered the submissions made and the evidence received from the Respondents.

*First Respondent*

39.17 For the reasons set out above, the Tribunal accepted Mr Kesar's evidence in its entirety. In so doing it determined that during the material time (a) he undertook

comparative exercises with other Legal Aid Firms, (b) based on those comparisons he did not consider the Firm to be in "serious" financial difficulty and (c) for that reason he did not consider it necessary to notify the Applicant that it was. Mr Kesar accepted that, with the benefit of hindsight, the Firm was in "serious" financial difficulty and that this should have been reported (hence the admissions made), but at the material time he did not appreciate that it was. On that basis, the Tribunal determined that Mr Kesar did not lack integrity in not reporting that the Firm was in "serious" financial difficulty given that he genuinely believed that it was not during the relevant period.

*Second Respondent*

39.18 Ms Hill stated that she was unaware of the duty incumbent on her to report that that the Firm was in "serious" financial difficulty. The Tribunal determined that she could not be said to have lacked integrity by failing to report something that she was unaware of. Plainly she became aware of the obligation during the course of the investigation and the proceedings, but was not so aware at the material time.

39.19 The Tribunal therefore found breach of Principle 2 in respect of Allegations 1.5 and 2.5 NOT PROVED on a balance of probabilities.

**Previous Disciplinary Matters**

40. None recorded against either Mr Kesar or Ms Hill.

**Mitigation**

41. Mr Hubble KC reminded the Tribunal that Mr Kesar and Ms Hill had accepted, from the stage of the forensic investigation, that it was incorrect to have treated the disbursement element of the LAA bulk payments as office monies. They accepted that those payments should have been treated as client monies. Consequently, in the Tribunal proceedings, Mr Kesar and Ms Hill admitted from the outset that they acted in breach of the Accounts Rules, SRA Principles and SRA Code of Conduct. Mr Kesar and Ms Hill apologised to the Tribunal and the Applicant for those breaches.

42. Mr Kesar and Ms Hill did not make any deliberate or conscious decision to act in breach of the Accounts Rules or the Code of Conduct. It was for that reason that they denied having acted without integrity. Their position was borne out by the Tribunal's findings that they did not lack integrity.

43. Mr Kesar and Ms Hill's response to the realisation that they had been in breach was to: (i) bring the Firm's accounting processes into compliance, (ii) rectify the shortfall by using their own funds and (iii) put the Firm on a sound financial footing. Mr Hubble KC submitted that there was no danger of repetition, both because Mr Kesar and Ms Hill were now well aware of their responsibilities, and further because they no longer held the positions of COLP and COFA; nor did they intend to do so in future, whether at the Firm or elsewhere.

44. Mr Hubble KC contended that there was exceptional personal mitigation present namely:

- The efforts made by Mr Kesar and Ms Hill to correct the Accounts Rules breaches and to remedy the shortfall on the client account.
- The personal financial commitment that formed part of such efforts.
- The fact that all historic creditors have now been paid.
- The fact that a suspension of Mr Kesar and/or a Section 43 Order against Ms Hill was likely to result in the collapse of the Firm which would result in:
    - The loss of employment of some 30 staff.
    - Some 1,100 clients of the Firm, a significant number of whom have disabilities, would have to find new representation, which would not necessarily be straightforward as the bulk were publicly funded.
    - Other potential clients in the area will lose the ability to seek publicly funded representation as described in (i) the Law Society's September 2021 summary of its review of the sustainability and challenges to the viability of Legal Aid (September 2021) and the June 2022 heat maps showing the shortage of providers across the country for community care, education, housing, immigration and asylum and welfare and (ii) the Lexis Nexis' November 2021 Article: A look into the Legal Aid Deserts of 2020.
    - Some 250 clients of a Charity run by the Respondents would be left unrepresented, and young (would-be) lawyers would lose the opportunity of gaining valuable training and experience.
    - The loss of Mr Kesar and Ms Hill's livelihoods, as well as the loss of their personal savings lent to the Firm. The likely consequence for Mr Kesar would be the loss of his home and bankruptcy, in light of his standing as security for various of the Firm's liabilities.

45. The overriding concern of Mr Kesar and Ms Hill was that the Firm, and thereby the Charity, be allowed to continue and to carry out the important work that they undertake. Mr Hubble KC submitted that there was no risk to the public in allowing the Firm to continue. The Firm was on a sound financial footing and its procedures had been strengthened. Mr T had been employed and had taken over the roles of COLP and COFA. There was no danger of repetition. Mr Hubble KC submitted that, far from being at risk, it would be a disservice to the public if sanctions were imposed which resulted in the collapse of the Firm and the Charity

46. Mr Hubble KC made plain that, whilst Mr Kesar and Ms Hill hoped that no restrictions were necessary, they reiterated their previous offer of undertakings not to be a COLP or COFA for any authorised body.

47. Mr Kesar and Ms Hill accepted that their failures were such that some form of sanction was appropriate. Mr Hubble KC respectfully invited the Tribunal to impose a financial penalty of (i) £10,000.00 (Level 3: more serious misconduct) in respect of Mr Kesar given his relatively limited means, and (ii) £5,000.00 (Level 2: moderately serious misconduct) in respect of Ms Hill given that she was neither a solicitor nor a director of the Firm. Mr Hubble KC submitted that the proposed sanctions were proportionate and would enable Mr Kesar and Ms Hill to maintain their livelihoods, undertake their valuable work for charity, and allow the Firm to continue in existence.

**Sanction**

48. The Tribunal referred to its Guidance Note on Sanctions (June 2022: Tenth Edition) when considering sanction, and carefully considered the submissions made by Mr Hubble KC.

49. The Tribunal immediately ruled out the feasibility of the proposed undertakings of Mr Kesar and Ms Hill. The Tribunal did not have the power to direct the Applicant to accept, and therefore enforce, an undertaking advanced by a Respondent. Similarly, the Tribunal had no power to enforce, if necessary, breach of any undertaking. The only appropriate manner in which the Tribunal could impose conditions, and enforce any breach thereof, on the Respondents was by way of a Restrictions Order if this was deemed necessary.

50. The Tribunal assessed the misconduct found and firstly considered the respective culpability of Mr Kesar and Ms Hill.

51. Mr Kesar was entirely responsible for ensuring the Firm's compliance with the regulatory framework. He was the sole director and the sole owner of the Firm. He was therefore responsible for managing the Firm's processes, systems, financial transactions, regulatory compliance and the appointment of a suitably qualified COFA. Mr Kesar was eight years qualified at the start of the misconduct, and 14 years at the end. The Tribunal therefore considered him to have a reasonable level of experience as a solicitor. His lack of experience with regard to the Accounts Rules was part of the problem, in that he neither appreciated nor understood what was involved in running a firm. His previous experience prior to establishing the Firm did not include managerial roles. He should have ensured that he properly understood they regulatory requirements of running a firm, and the financial management of Legal Aid contracts before he set up the Firm. 95% of the Firm's work was in respect of Legal Aid matters. The Tribunal therefore determined that Mr Kesar was highly culpable for the failure of the Firm to manage Legal Aid payments in accordance with the Rules.

52. Ms Hill was not a solicitor. She was entitled to rely on the lead provided by Mr Kesar who appointed her COFA. However, she should have taken steps to learn and/or ascertain what was required of her in the role of COFA. It was rash of her to accept the role without any training. The inadequacy of the Firm's record keeping stemmed from her lack of expertise and training. She had the mandate and ability to use the LAA bulk payments properly had she known, as she should have done, how to do so. The Tribunal therefore considered her to be culpable for the misconduct, but less so than Mr Kesar.

53. With regards to Mr Kesar and Ms Hill's motivation for the misconduct, the Tribunal considered that they were honourably motivated, but their aspirations fell far short of what they delivered. They appeared to be motivated by expediency rather than regulatory compliance. Their misconduct was planned, in that they made a conscious decision to deploy Legal Aid payments in the manner that they did, albeit that they did not appreciate that this was not permitted. They had direct control over the erroneous use of the same. Mr Kesar was an experienced solicitor, but he had no experience of running a Firm, hence he did not appreciate the importance of establishing and maintaining client ledgers, financial records and the distinction been client and office monies insofar as Legal Aid bulk payments were concerned. Ms Hill had no experience of financial management within private practice. She had no experience of being a COFA. She intended to "learn on the job" but never found the time to undertake any formal training. The Tribunal determined that neither Mr Kesar nor Ms Hill deliberately sought to mislead. Their failures were borne out of ignorance, as opposed to sinister motives.

54. With regard to harm, the Tribunal accepted that none of the Firm's lay clients were negatively impacted. However, the delay in payment of experts and Counsel, in respect of whose fees payment had been received from the LAA, resulted in harm to them. The reputation of the solicitors' profession was undoubtedly harmed as a consequence of Mr Kesar and Ms Hill not bothering to find out what was required of them in managing LAA payments. The resultant harm to professionals and the profession was eminently foreseeable.

55. With regard to aggravating features, Mr Kesar and Ms Hill acted from a position of ignorance, but repeatedly so and over a protracted period of time. Their failures were not remedied prior to the Applicant's involvement, despite having received a County Court judgment against the Firm, Counsel's chambers repeatedly chasing outstanding fees, and Mr Kesar's knowledge that the Firm was in some financial difficulty. The reason why neither Mr Kesar nor Ms Hill remedied the position sooner appeared to be a consequence of inadequate, or no, training. Both Mr Kesar and Ms Hill went into the Firm in a position of ignorance, which situation they allowed to persist for six years. They both took a cavalier approach to running the Firm, and Mr Kesar to establishing it. The Tribunal gave credit to the Respondents' assertion that the misconduct was in effect a single error (namely the mismanagement of LAA payments), but the gravamen of the misconduct was Mr Kesar and Ms Hill allowing it to perpetuate notwithstanding the warning signs set out above. They did not know better, but they ought to have done.

56. With regard to mitigating features, the Tribunal noted the full, frank and open admissions made by Mr Kesar and Ms Hill from the investigation stage and throughout the proceedings. That was to their credit and demonstrated insight into their failings, although they had limited insight into the harm caused both to their creditors and to the reputation of the profession. The Tribunal acknowledged the strenuous efforts made by Mr Kesar and Ms Hill to make good their failures, and noted that all debts had been satisfied by September 2021.

57. The Tribunal weighed all of the factors set out above in the balance with the overarching public interest namely (i) the protection of the public from harm, (ii) the

declaration and upholding of proper standards within the profession and (iii) maintenance of public confidence in the regulatory system. In so doing, the Tribunal assessed the misconduct of Mr Kesar as "more serious" and the misconduct of Ms Hill as "moderately serious". Given those findings, making No Order or imposing a Reprimand was neither appropriate nor proportionate.

First Respondent

58. The Tribunal determined that a Level 3 fine should be imposed. The Tribunal rejected the submission that such a fine should be in the sum of £10,000.00. The Tribunal considered that a fine in the sum of £12,000.00 was required in the public interest.

59. The Tribunal took into account the total financial detriment to Mr Kesar, which including any subsequent Order for costs, and the adverse financial impact of the decision itself. The Tribunal noted the claim for costs advanced by the Applicant, and took full account of the Respondent's means, as set out in his Personal Financial Statement. The Tribunal therefore reduced the fine by 50% and imposed a fine in the sum of £6,000.00

60. The Tribunal also considered it necessary to impose a Restriction Order which prevented Mr Kesar from holding the positions of COLP or COFA in any regulated practice.

Second Respondent

61. The Tribunal determined that a Level 2 fine should be imposed. The Tribunal rejected the submission that such a fine should be in the sum of £5,000.00. The Tribunal considered that a fine in the sum of £6,000.00 was required in the public interest.

62. The Tribunal was unable to take Ms Hill's financial circumstances into account as she had not filed or served a Personal Financial Statement. There was therefore no basis for reducing the fine to reflect Ms Hill's ability, or inability, to pay it.

**Costs**

Applicant's Submissions

63. Mr Collis applied for costs in the sum of £53,926.32 as particularised in the Statement of Costs dated 2 September 2022, which amounted to £26,963.16 in respect of each Respondent. Those costs comprised the FIO costs of £30,376.32 and the costs of Capsticks LLP, solicitors instructed to represent the Applicant, of £18,500.00 plus VAT. Capsticks had expended 204.3 hours on bringing the proceedings to, and attending at, the substantive hearing. That, in turn, provided a nominal hourly rate of £107.68 which the Tribunal found was reasonable and proportionate in all of the circumstances.

Respondent's Submissions

64. Mr Hubble KC accepted that costs were due in principle, but disputed quantum. Mr Hubble KC stated that the costs incurred by the FIO during the forensic investigation were reasonably incurred and should be awarded. However, in

circumstances where Mr Kesar and Ms Hill made admissions to their failures in the 4 November 2019 letter to the Applicant, as well as when the formal allegations were first put to them by the Applicant on 2 November 2021, the costs incurred by the Applicant thereafter (namely those of Capsticks LLP) should be disallowed. The only contentious issue before the Tribunal was whether or not the Respondents lacked integrity. The Applicant failed to establish that Mr Kesar and Ms Hill lacked integrity, and the Tribunal found that they had not failed to notify the Applicant that the Firm was in "serious financial difficulty". Mr Hubble KC submitted that Mr Kesar and Ms Hill were not seeking their own costs to reflect the matters found not proved, rather they were seeking to limit the costs claimed by the Applicant to those which were incurred by the FIO.

65. Mr Hubble KC averred that Mr Kesar would be in great difficulty if required to pay a financial penalty and the costs as claimed. His financial position was clearly set out in his Personal Financial Statement which demonstrated a shortfall between his disposable income and expenditure. Mr Hubble stated that Mr Kesar did, however, have assets in which he had equity, namely his matrimonial home (£345,000.00) and two rental properties (£95,000 and £20,000.00). The yield on his rental properties was £1,000.00 per month for each.

66. In any event, Mr Hubble KC submitted that the hours claimed to have been spent on the matter by Capsticks LLP were both unreasonable and disproportionate.

The Tribunal's Decision

67. The Tribunal carefully considered the submissions made by the parties.

68. The Tribunal noted the Respondents' concession that the FIO costs were reasonable and proportionate. The Tribunal proceeded to consider Mr Hubble KC's submissions with regard to the matters found not proved, namely the breach of Principle 2 (Integrity) and Allegation 1.5/2.5. In so doing, the Tribunal took into account the decision of Broomhead v Solicitors Regulation Authority [2014] EWHC 2772 (Admin), in which Mr Justice Nicol held:

> "§42. However, while the propriety of bringing charges is a good reason why the SRA should not have to pay the solicitor's costs, it does not follow that the solicitor who has successfully defended himself against those charges should have to pay the SRA's costs. Of course there may be something about the way the solicitor has conducted the proceedings or behaved in other ways which would justify a different conclusion. Even if the charges were properly brought it seems to me that in the normal case the SRA should have to shoulder its own costs where it has not been able to persuade the Tribunal that its case is made out. I do not see that this would constitute an unreasonable disincentive to take appropriate regulatory action."

69. The Tribunal distinguished the decision in Broomhead on the present facts in that significant argument, evidence and consideration was required in order for the Tribunal to adjudicate on the only contentious issue in the proceedings, the lack of integrity. Had the case not been brought that issue would not have been capable of determination. The matter was always going to be prosecuted to a hearing in any

event, given the extensive admissions made by Mr Kesar and Ms Hill to the majority of the allegations. That would have caused the Applicant to incur costs in bringing the case before the Tribunal. The costs claimed by Capsticks, and the hours spent in preparation and presentation of the case were found to be reasonable and proportionate in circumstances where (i) there were two Respondents, (ii) the issues in play were technical and relatively complex and (iii) a number of interlocutory applications had required consideration.

70. The Tribunal therefore determined that the costs sought by the Applicant were reasonable and proportionate and awarded the same in full. Given the Tribunal's finding that Mr Kesar was more culpable than Ms Hill for the misconduct, the Tribunal apportioned their liability for costs as 66.6% to Mr Kesar and 33.3% to Ms Hill.

71. Costs Orders were therefore imposed in the sum of £35,950.88 in relation to Mr Kesar and £17,975.44 in relation to Ms Hill.

**Statement of Full Order**

72. **First Respondent**

1. The Tribunal Ordered that the First Respondent, Mladen Kesar, do pay a fine of £6,000.00, such penalty to be forfeit to His Majesty the King, and the Tribunal further Ordered that he do pay the costs of and incidental to this application and inquiry fixed in the sum of £35,950.88.

2. The Tribunal further Ordered that the First Respondent may not:

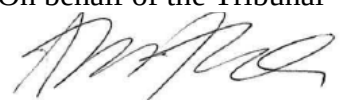
2.1 Be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out in paragraph 2.1 above.

73. **Second Respondent**

1. The Tribunal Ordered that the Second Respondent, Elizabeth Hill, do pay a fine of £6,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that she do pay the costs of and incidental to this application and inquiry fixed in the sum of £17,975.44.

Dated this 2nd day of November 2022
On behalf of the Tribunal



A Horne
Chair