

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12487-2023

**BETWEEN:**

MLADEN KESAR

Applicant

and

SOLICITORS REGULATION AUTHORITY LTD

Respondent

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Before:

Ms T Cullen (in the chair)

Ms H Hayat Appleby

Mr A Pygram

Date of Hearing: 14 November 2023

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## **Appearances**

The matter was dealt with on the papers.

The Tribunal invited Mr Kesar to make oral representations in order to clarify matters in his written submissions.

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## **MEMORANDUM OF DECISION ON AN APPLICATION TO REMOVE RESTRICTIONS**

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## Background

1. On 3 August 2023, Mr Kesar applied to remove conditions imposed by the Tribunal on 13 September 2022.
2. The hearing in the original matter took place on 12 and 13 September 2022. The Tribunal found the following allegations proved:
  - 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 SRA Principles 2011.
  - 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 SRA Principles 2011.
  - 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.
  - 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.
3. The Tribunal imposed a fine of £6,000 and also ordered that Mr Kesar may not “be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration.”
4. The application had been made on the basis that the current COLP/COFA has resigned and finding a replacement had proved extremely difficult. It had taken 6 months to appoint the current compliance officer. It was not anticipated that she would remain given that she was newly qualified and was likely to leave the Firm to obtain more lucrative work.
5. Mr Kesar submitted that in the event that the Firm was forced to close as it was without a compliance officer, 20 members of staff would lose their jobs, and the Firm’s almost one thousand clients would have to seek alternative representation. It was also noted that should the same conduct arise today, the matters would not amount to misconduct under the Accounts Rules 2019.
6. In its Answer, the SRA submitted that any risk being addressed by the current condition regarding the duties of a COFA was adequately addressed by Mr Kesar putting in place three firms of accountants to assist and monitor the financial affairs of the Firm. One of these bodies alerts the Firm of any errors or improprieties. Although this did not address COLP responsibilities, it was the financial management of the Firm that was

lacking.

7. The SRA also noted that should the same conduct around the use of the LAA payments happen under the current SRA Accounts Rules it would not be a breach.
8. Mr Kesar, it was submitted, had shown insight into the nature of the misconduct. He had appointed a COLP and COFA before any conditions were in place. Further, any risk regarding the duties of a COFA had been adequately addressed with the appointment of Accountancy Firms to ensure the financial integrity of the Firm.
9. The SRA accepted that Mr Kesar had complied with the condition imposed on his practising certificate.
10. The Tribunal invited Mr Kesar to attend the hearing to make representations (notwithstanding that the matter was being considered on the papers). Mr Kesar explained that he had taken what happened very seriously and was very sorry for the misconduct. Prior to the Tribunal's decision in September 2022, he had hired someone to act as the Firm's COLP/COFA, as he recognised that this was beneficial for the Firm. He had also engaged three firms of accountants who managed the Firm's finances. This had been working well and it was intended that this arrangement would continue.
11. Mr Kesar confirmed that he had attended update courses on the Accounts Rules prior to the hearing in September 2022. A further course had been booked, but was cancelled as a result of the illness of the trainer. It was anticipated that the course would be re-scheduled for the near future. Mr Kesar recognised that he needed to continue to undertake Accounts Rules training, and explained that he kept up-to-date with the Accounts Rules.

#### The Tribunal's Decision

12. The Tribunal had regard to the Guidance Note on Other Powers of the Tribunal (6th edition). The Tribunal determined that its key consideration was whether the condition imposed remained necessary in order to protect the public and the reputation of the profession.
13. The Tribunal had regard to the submissions made by the parties and the previous findings of the Tribunal of September 2022. The Tribunal noted that should the same conduct occur today, the change in the Solicitors Accounts Rules meant that it would not amount to a breach of the Accounts Rules and therefore would not amount to misconduct. Mr Kesar had demonstrated insight both at the time and now.
14. It was noteworthy that the SRA supported the application, and that Mr Kesar had complied with the condition imposed.
15. The Tribunal found, taking all of these matters into consideration, that there was no evidence of any risk of harm to the public or the profession if the condition were to be removed. The Tribunal considered that it would be appropriate for Mr Kesar to undertake courses in relation to the Accounts Rules and the roles and responsibilities of a COLP/COFA, given the nature of the misconduct, and Mr Kesar's compliance roles at the time of the misconduct.

16. In all the circumstances, the Tribunal was satisfied that it was no longer necessary for the protection of the public or the reputation of the profession for the condition to remain in place. Accordingly, the Tribunal granted the application for the condition to be removed.

Costs

17. The parties agreed that there should be no order as to costs. The Tribunal agreed that this was reasonable and appropriate in the circumstances. Accordingly, the Tribunal made no order as to costs.

18. **Statement of Full Order**

1. The Tribunal Ordered that the application of MLADEN KESAR for the removal of the condition imposed by the Tribunal on 12 September 2022 be **GRANTED** and it further Ordered that there be No Order as to Costs.
2. The Tribunal further Orders that Mr Kesar undertake within the next 12 months:
  - i An update course on the Solicitors Accounts Rules; and
  - ii A course relating to his roles and responsibilities as a COLP/COFA

Dated this 6<sup>th</sup> day of December 2023

On behalf of the Tribunal

*T Cullen*

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**6 DEC 2023**

T Cullen  
Chair