

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12479-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

MUSHARAF JAVID ASHARAF

Respondent

Before:

Mr G Sydenham (in the chair)

Ms C Rigby

Dr A Richards

Date of Hearing: 21 – 23 November 2023

Appearances

Victoria Sheppard-Jones, barrister in the employ of Capsticks LLP, 1 St George's Road, Wimbledon, London SW10 4DR for the Applicant.

Geoffrey Williams KC, counsel of Farrar's Buildings, Temple, London EC4Y 7BD for the Respondent.

JUDGMENT

Allegations

1. The allegations made against Mr Asharaf by the Solicitors Regulation Authority Limited (“SRA”) were that, whilst in practice as a Solicitor at SPG Law (trading name of Excello Law Limited) (“the Firm”) and based at Horton House, Exchange Flags, Liverpool, L3 3PF (“the Office”) he:
 - 1.1. On more than one occasion stood in close proximity to Person A in the office and/or touched and/or rubbed Person A on the shoulder area;
 - 1.2. On around 29 November 2018, whilst at the Office, approached Person A, and slapped and/or touched her on the buttocks and/or stated ‘is that sexual harassment?’ or words to that effect;
 - 1.3. On 13 December 2018, whilst at The Racquet Club Hotel, approached Person A and made a reference to her breasts as ‘two mountains on your chest’ or words to that effect;
 - 1.4. Between around 1 January 2019 and 14 January 2019, whilst at the Office approached Person A who was bending over and bumped into her from behind and/or said words to the effect of:
 - 1.4.1 it’s your fault for having such a fat...
 - 1.4.2 I’m not saying anything because I will get myself in trouble.
2. His actions described at paragraphs 1.1 to 1.4, were sexually motivated.
3. His conduct both individually and taken together, constituted:
 - 3.1. A breach of Principle 2 and/or Principle 6 of the SRA Principles 2011 (“the Principles”); and
 - 3.2. A failure to achieve Outcome 11.1 of the SRA Code of Conduct 2011 (“the Code”).

Executive Summary

4. Mr Asharaf denied all of the allegations. The Tribunal found all allegations proved save that it did not find that Mr Asharaf’s motivation as regards allegations 1.1 and 1.3 was sexual. The Tribunal’s findings can be accessed here:

- [Findings](#)

Sanction

5. The Tribunal determined that the seriousness of the misconduct was such that Mr Asharaf should be suspended from practice for 12 months. Further, in order to protect the public and the reputation of the profession, Mr Asharaf was made subject to a restriction preventing him from being a manager or a supervisor of any authorised body. The Tribunal’s sanction and its reasoning on sanction can be found here:

- [Sanction](#)

Documents

6. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):
- Rule 12 Statement and Exhibit HVL1 dated 17 July 2023
 - Respondent's Answer and Exhibits dated 25 August 2023
 - Applicant's Schedule of Costs dated 13 November 2023
 - Respondent's Statement of Means dated 22 November 2023

Factual Background

7. Mr Asharaf was a solicitor having been admitted to the Roll in October 1994. He held a current unconditional practising certificate. Between August 2018 and March 2019, Mr Asharaf was employed as a solicitor and office manager at the Firm. At the time of the alleged conduct in November 2018, he was 53 years old.
8. Between September 2018 and June 2019, Person A was employed as a paralegal at the Firm. At the time of the alleged conduct in November 2018, Person A was 21 years old.
9. The allegations related to the conduct of Mr Asharaf towards Person A between around 29 November 2018 and 14 January 2019 when he held a position of authority over her as a solicitor and office manager while she was working as a paralegal. In addition, during this time Mr Asharaf held a special position of responsibility for the paralegals since he was responsible for: recruitment, the physical and mental well-being of the paralegals as well as ongoing supervision.

Witnesses

10. The following witnesses provided statements and gave oral evidence:
- Person A – Anonymised witness for the Applicant
 - Ms Losty – Chief Operating Officer of the Firm
 - Mr Asharaf – Respondent
11. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

12. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Asharaf's rights to a fair trial

and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Integrity

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

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

14. **Allegation 1.1 - On more than one occasion stood in close proximity to Person A in the office and/or touched and/or rubbed Person A on the shoulder area.**

Allegation 1.2 - On around 29 November 2018, whilst at the Office, approached Person A, and slapped and/or touched her on the buttocks and/or stated is that sexual harassment? or words to that effect.

Allegation 1.3 - On 13 December 2018, whilst at The Racquet Club Hotel, approached Person A and made a reference to her breasts as two mountains on your chest or words to that effect.

Allegation 1.4 - Between around 1 January 2019 and 14 January 2019, whilst at the Office approached Person A who was bending over and bumped into her from behind and/or said words to the effect of: (1.4.1) it’s your fault for having such a fat...; (1.4.2) I’m not saying anything because I will get myself in trouble.

Allegation 3 – The conduct described at allegations 1.1 – 1.4 above taken both individually and cumulatively amounted to breaches of Principles 2 and 6 of the Principles and failed to achieve Outcome 11.1 of the Code.

The Applicant’s Case

- 14.1 Person A made three statements dated 8 February 2019, 2 December 2020 and 16 July 2023. Person A exhibited a number of documents including text messages, attendance notes and sketch plans relevant to the allegations.

Allegation 1.1

- 14.2 In her witness statement, Person A stated:

“The Respondent had a habit of standing extremely close and touching/rubbing my shoulders. Whilst I never told him to stop doing this, I would try to move away without drawing attention to the situation. The Respondent did this on a number of occasions”.

- 14.3 Person A recalled that Mr Asharaf would touch or rub her shoulders a number of times, at least once or twice a day, standing extremely close to her when he did so. Person A felt she could not tell him to stop doing this because he was unpredictable. Person A stated that the touching made her feel awkward and uncomfortable and that she would try and move away from Mr Asharaf without drawing attention to the situation. Person A stated she did not remember Mr Asharaf approaching or touching her in the office in a similar way.
- 14.4 Ms Sheppard-Jones submitted that the witness statements were not the first time that this had been raised by Person A. In her telephone call on 15 January 2019 with Ms Losty, the then HR Director of the Firm, Person A explained that Mr Asharaf had rubbed/touched her shoulders many times, but that whilst it felt awkward, she felt that she just had to go along with it.
- 14.5 Person A confirmed this allegation in the witness statement dated 8 February 2019 which had been prepared for the Firm's internal investigation. She stated:
- “Sometimes [Mr Asharaf] has a habit of standing extremely close and touching and rubbing my shoulders. It makes me feel uncomfortable and I try to move away without drawing attention to the situation. I do not feel that I have been able to tell him to stop doing this because he is very unpredictable and has made a big issue with others over minor comments.”*
- 14.6 Person A reiterated this in her 2 December 2020 statement prepared for the SRA investigation. Ms Sheppard-Jones submitted that Person A's complaint had remained consistent throughout her written evidence over a period of time.

Allegation 1.2

- 14.7 Person A explained that at approximately midday on 29 November 2018, she was at work in the office. She walked out of her office down the corridor towards the kitchen when she was approached by Mr Asharaf who she believed had come from the kitchen area. As Person A was walking past him, she could see that Mr Asharaf did not continue to move in the direction that he was travelling. He turned and slapped her on the buttocks.
- 14.8 Person A responded to this by asking Mr Asharaf *“What have you just done?”* Mr Asharaf replied by saying *“is that sexual harassment?”* before turning around and walking back towards the main office area. Person A was shocked by Mr Asharaf's conduct but continued in the direction of the kitchen to make herself a drink before returning to her desk.
- 14.9 Person A did not formally report this incident to the Firm at the time. She described feeling shocked by the incident but felt that she was financially vulnerable at this time and was fearful of losing her job. Person A was also hopeful of obtaining a training contract at the Firm and didn't want to “rock the boat” by reporting this incident. Instead, she chose to moderate her behaviour by being mindful not to put herself in a position where she would be alone with Mr Asharaf. Ms Sheppard-Jones submitted that the Tribunal might consider this to be a reasonable explanation of why she did not report the incident at the time.

- 14.10 Whilst Person A did not report this incident to the Firm, she did, however, inform Persons B and C, both work colleagues, shortly after the incident via a text message. The message, which was sent on the same day at 12.56 stated: "*Jav just smacked my bum!!!*". Person A believed this message was sent either when she was in the kitchen or shortly after she had returned to her desk.
- 14.11 Ms Sheppard-Jones submitted that the text message was important contemporaneous evidence that could not have been fabricated later. Again, it was submitted, Person A's evidence on this had been consistent since January 2019 when she informed Ms Losty of the incident. Whilst she was unable, at that time, to recall the date of the incident, she had described the incident and that she had sent a message to Persons B and C. Person A provided a consistent account of this incident in all of the witness statements produced.

Allegation 1.3

- 14.12 On 13 December 2018, Person A attended the Firm's Christmas party at a hotel. The hotel was decorated in a way that made it obvious to everybody present that this was a party being hosted by the Firm. During the pre-dinner drinks, she was talking to Mr Asharaf alongside two of her colleagues. During the conversation, Mr Asharaf made a comment about Person A's breasts, referring to them as "*two mountains on your chest*". Person A was embarrassed by the comment which made her feel uncomfortable.
- 14.13 Following the champagne reception Person A recalled being seated at a table with an allotted seat next to Mr Asharaf. During the meal Person A stated how she spent most of the meal with her back to him and talking to a colleague on the opposite side to him.
- 14.14 Prior to leaving the Hotel and moving on to a bar for drinks, Mr Asharaf approached Person A when she was outside and asked her to sing his praises to senior management. Later that evening/early the next morning Mr Asharaf sent Person A a text message enquiring if a number of people went on to the bar. The names referenced by Mr Asharaf were all senior people within the Firm. His message was consistent with the conversation Person A had had with Mr Asharaf prior to leaving the hotel.
- 14.15 Person A responded to this message by stating:
- "They all came, I sang your praises all night and said you were the backbone of SPG law so I I expect w raise tomorrow"(sic).*
- 14.16 Person A did not report the Christmas party incident. She explained that she had chosen to 'keep her head down' and concentrate on her job in the knowledge that she would be leaving to pursue a summer job abroad in May/June 2019.
- 14.17 Ms Sheppard-Jones submitted that Person A's evidence of this incident had been consistent since January 2019.
- 14.18 In his response to this allegation, Mr Asharaf stated that he did not realise that he was drinking rum and/or vodka with Coca-Cola. Further, that because of the mixture of alcohol with his medication he did not recall making the comment about Person A's

breasts being like mountains and did not consider it would be the kind of comment it was appropriate to make.

- 14.19 Ms Sheppard-Jones submitted that the SRA did not necessarily accept that (a) Mr Asharaf was unaware that he had consumed alcohol that evening and (b) that consequent to this and the medication he was on, he had a memory gap about what he said. However, if that was correct, then it followed that Person A had the clearer memory of what occurred and her account was to be preferred. A senior colleague remarking that her breasts were like *“two mountains on her chest”*, was unlikely to be something that a twenty-one-year-old paralegal would misinterpret; mishear or forget.
- 14.20 Further, it was submitted, being in drink was not a defence, but an aggravating feature.

Allegation 1.4

- 14.21 In January 2019, Person A recalled a bonus scheme in the office whereby paralegals were paid an extra £10.00 for every additional piece of work completed. Person A recalled how the bonus scheme created a hard-working environment where people were trying to complete as many reports/schedules as possible. The completed report/schedule had to be submitted in hard copy to Mr Asharaf for him to review. A desk close to where Mr Asharaf sat was allocated for the reports/schedules to be placed.
- 14.22 In January 2019, having completed a report/schedule, Person A walked over to the desk in order to get her document checked. As Person A placed the papers down, she leant over the desk to write her name on a Post-it note to stick to the document. Whilst leaning over the desk Mr Asharaf walked past her and deliberately bumped his crotch area into her buttocks from behind. Person A immediately turned and asked Mr Asharaf why he had done. He replied saying: *“it’s your fault for having such a fat...”*. Mr Asharaf stopped himself before finishing his sentence before going on to say: *“I’m not saying anything because I will get myself in trouble”*. Person A believed:
- Mr Asharaf was going to complete his sentence by saying *“fat bum”* or words to that effect; and
 - His actions in touching her were deliberate. He could have passed her easily without touching her and by bumping into her in the manner that he did, he would have to have turned his body and positioned himself directly behind her as he was walking past.
- 14.23 Ms Sheppard-Jones submitted that Person A’s evidence as regards this incident had remained consistent since January 2019.
- 14.24 Having not previously reported any of the incidents, on 14 January 2019, Person A made a complaint to Ms Losty, then the Firm’s Recruitment and HR Director, regarding Mr Asharaf’s behaviour.
- 14.25 Person A explained that she had agonised over making a complaint. She talked to a colleague before doing so and drafted and redrafted the email several times. Person A was concerned about having to face Mr Asharaf again after making a complaint but decided to do so given the escalating nature of his behaviour and to protect other young

women starting their legal careers. Person A was concerned that as a junior member of staff making a complaint about a senior colleague, she would not be believed or would be seen as a troublemaker.

- 14.26 When making the initial complaint on 14 January 2019, Person A was concerned about revealing her identity as the complainant and did not reveal that she was somebody that had been touched inappropriately by Mr Asharaf. Person A did, however, reference the inappropriate comment made to her at the Firm's Christmas party:

"I did identify myself when talking about the "two mountains on your chest" comment, however, I did not believe that this would necessarily lead to my identification given that the comment was made in front of other individuals and it could have been them that had brought this to the firm's attention. On reflection, I think I also felt more comfortable identifying myself when reporting the comments the Respondent made at the Christmas Party as there were other individuals the firm could turn to, to corroborate what I had said. To me it was a significant factor, and something I had agonised over before making the complaint, that a very junior member of staff was making a complaint against an experienced senior colleague. I had a genuine fear that I simply wouldn't be believed and would be labelled a troublemaker."

- 14.27 On 15 January 2019, Person A had a telephone interview with Ms Losty. During this interview Person A revealed additional details about Mr Asharaf's conduct towards her as she became more confident that the complaint was being dealt with properly and responsibly by the Firm.

- 14.28 Person A was not provided with the note of her interview with Ms Losty on 15 January 2019, until September 2020 when she prepared her first witness statement. However, she confirmed it was an accurate reflection of the conversation which took place. Clearly, Person A did not have a copy of the note when she provided her statement to the Firm in February 2019.

- 14.29 Person A described that she felt shocked, uncomfortable and embarrassed at Mr Asharaf's behaviour. She became wary of him and chose to moderate her behaviour in order to protect herself. Despite fearing she would not be believed and labelled a troublemaker, Person A made the report as she felt if she didn't, Mr Asharaf would continue to target young girls entering the legal profession.

- 14.30 In his witness statement dated 23 April 2021, Mr Asharaf set out his position in relation to each of the incidents:

- In relation to the incident on 29 November 2018, he denied touching or slapping Person A's bottom, stating that that there were many people in the office.
- In relation to the incident at the Christmas party on 13 December 2018, he stated that he was being given rum and/or vodka and Coca-Cola by colleagues when he thought he was only drinking soft drinks, and that this did not mix with his medication. He did not have any recollection of making such a comment and stated it was *"not the kind of comment I would consider it appropriate to make"*.

- He stated that he received a text message from Person A at 01:08 on 14 December 2018, a few hours after the Christmas party, in which Person A stated she was “*singing [his] praises all night*”.
- He denied touching or rubbing other women’s shoulders in the office.
- He issued Person A, Person B and Person C with a final written warning which he believed “*was the final nail in the coffin for me: henceforth I think that they had a mission to make my life hell and get their revenge*”.

14.31 Ms Sheppard-Jones referred the Tribunal to Wingate in which it was held:

- “100. *Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.*
101. *The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors:*
- (i) *A sole practice giving the appearance of being a partnership and deliberately flouting the conduct rules (Emeana);*
 - (ii) *Recklessly, but not dishonestly, allowing a court to be misled (Brett);*
 - (iii) *Subordinating the interests of the clients to the solicitors’ own financial interests (Chan);*
 - (iv) *Making improper payments out of the client account (Scott);*
 - (v) *Allowing the firm to become involved in conveyancing transactions which bear the hallmarks mortgage fraud (NewellAustin);*
 - (vi) *Making false representations on behalf of the client (Williams).*
102. *Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public. Having accepted that principle, it is not necessary for this court to reach a view on whether Howd was correctly decided.*
103. *A jury in a criminal trial is drawn from the wider community and is well able to identify what constitutes dishonesty. A professional disciplinary tribunal has specialist knowledge of the profession to which the*

respondent belongs and of the ethical standards of that profession. Accordingly, such a body is well placed to identify want of integrity. The decisions of such a body must be respected, unless it has erred in law.”

14.32 In Beckwith v SRA [2020] EWHC 3231 (Admin), the Court made clear that, when identifying lack of integrity, the Tribunal did not have carte blanche to decide what, for the purposes of the Handbook, the requirement to act with integrity meant: [33]:

“The requirement to act with integrity must comprise identifiable standards. There is no free-standing legal notion of integrity in the manner of the received standard of dishonesty; no off-the-shelf standard that can be readily known by the profession and predictably applied by the Tribunal. In these circumstances, the standard of conduct required by the obligation to act with integrity must be drawn from and informed by appropriate construction of the contents of the Handbook, because that is the legally recognised source for regulation of the profession.”

14.33 Ms Sheppard-Jones submitted that whilst ultimately it was a matter for the Tribunal’s judgment, it was the SRA’s case that a solicitor, who touched a junior paralegal in the manner described and in circumstances when she clearly did not consent, whilst also subjecting her to remarks which were personalised and/or sexually motivated, fell well below the standards required of the profession. It was submitted that the question of integrity should encompass the significant power imbalance between Mr Asharaf, given his position as a solicitor and manager, and an unqualified paralegal at the Firm. Moreover, Mr Asharaf himself had emphasised that he had a particular pastoral care relationship in respect of the paralegals, namely: *“responsibility for the physical and mental well-being of the paralegals”*.

14.34 Further, the question of integrity should take into account that, on the SRA’s case, Mr Asharaf knew that his attentions were unwelcome and unwanted given that:

- Person A sought to move away when Mr Asharaf touched and/or rubbed her around the shoulder area albeit that she understandably did not wish to draw attention to what was going on;
- Person A directly challenged Mr Asharaf when he slapped her buttocks saying words to the effect of: *“what have you just done?”* Ms Sheppard-Jones submitted that this question should be understood rhetorically, because Person A was very clear what he had just done and Mr Asharaf understood this when he replied in terms of whether what he had just done amounted to sexual harassment;
- It was Mr Asharaf himself who used the phrase *“sexual harassment”* which demonstrated that he understood perfectly well the implications of what had just occurred; this statement also amounted to an admission;
- When Mr Asharaf bounced his crotch area against Person A she again challenged him immediately asking him why he had done that; again, Mr Asharaf’s response was significant in that he did not seek to deny it but stated instead that it was Person A’s fault for having a part of her body that was fat. He also said: *“I’m not*

saying anything because I will get myself into trouble". Again, it was submitted, this amounted to an admission that Mr Asharaf knew that he was doing was wrong.

- 14.35 The SRA's primary case on integrity was that Mr Asharaf knew that what he was doing was wrong and also that Person A did not consent. His conduct amounted to an escalation of his misconduct over a period of time: starting with rubbing Person A's shoulders and culminating in him bouncing his crotch on her from behind as she bent over. This was not a single isolated incident but a pattern of poor and escalating behaviour. At each step Person A made clear that his attentions were unwanted.
- 14.36 In the alternative, it was submitted that Mr Asharaf should have known that what he was doing was wrong and that Person A did not consent because this was entirely obvious given what he was doing and saying and her responses to what he was doing and saying.
- 14.37 For the avoidance of doubt, it was submitted that in relation to the breasts like two mountains observation, the consumption of alcohol was an aggravating and not a mitigating factor. That such a remark would be humiliating and degrading to Person A was also entirely obvious. Ms Sheppard-Jones submitted that the Tribunal should pay careful attention to the credibility of Mr Asharaf's account of the evening with reference to whether it was possible to drink vodka and/or rum without being aware of the taste.
- 14.38 Mr Asharaf, it was submitted, had failed to adhere to the ethical standards of the profession. A solicitor acting with integrity towards another legal professional both at work and an event such as the Firm's Christmas party, would not have behaved as Mr Asharaf did, if he were adhering to the obligation to act with integrity. His conduct thus lacked integrity in breach of Principle 2.
- 14.39 His conduct also amounted a breach of the requirement to behave in a way which maintains the trust placed by the public in the profession and in the provision of legal services. Members of the public would be appalled at the treatment Mr Asharaf, a fifty-three year old practising solicitor and office manager, meted out to a twenty-one year old paralegal who was taking her very first steps towards a career in the law. Further, Mr Asharaf was in a special position of responsibility over the paralegals because, on his own account, he was responsible for their physical and mental well-being at work. His actions were in direct contradiction to that duty of care and amounted to a significant breach of trust. Mr Asharaf therefore breached Principle 6 of the Principles.
- 14.40 Ms Sheppard-Jones submitted that Mr Asharaf took unfair advantage of Person A in a professional capacity. In particular, he took advantage of her age, lack of experience and his position of authority over her. By touching Person A in the manner described and subjecting her to personalised and inappropriate comments, Mr Asharaf took unfair advantage of Person A.
- 14.41 Ms Sheppard-Jones submitted that the Principles and outcomes also applied to allegation 1.3 notwithstanding that the incident had taken place outside of the office at a social gathering. The notes to the SRA Principles 2011 made clear that:

- Personal integrity was central to a solicitor's role as the client's trusted adviser and should characterise all professional dealings with clients, the court, other lawyers and the public; and
- Members of the public should be able to place their trust in you. Any behaviour either within or outside your professional practice which undermines this trust damages not only you, but also the ability of the legal profession as a whole to serve society.

14.42 Ms Sheppard-Jones noted that the event prominently displayed banners with the name of the Firm and that it was exclusively for the Firm's employees and was attended by the Firm's staff. It was clear that the event was closely connected to his work. Accordingly, it was submitted, Mr Asharaf's conduct at the Firm's Christmas party was governed by the Principles. Mr Asharaf had subjected Person A, a junior paralegal, to remarks that were personalised and/or sexually motivated. This conduct was in full view of fellow junior colleagues at the event. In acting as he did, Mr Asharaf had abused his position as a solicitor and had taken unfair advantage of Person A. It was therefore conduct that (a) clearly touched upon his practice as a solicitor and the standing of the profession; and (b) engaged a standard of behaviour set out in the Handbook. Such conduct, it was submitted, undermined the trust the public placed in him and in the profession, and demonstrated a lack of personal integrity.

Allegation 2

14.43 The case of Basson v GMC [2018] EWHC 505 (Admin) defined sexual motivation as conduct which was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship. Ms Sheppard-Jones submitted that either or both limbs applied in this case. The evidence was that Mr Asharaf approached Person A on two separate occasions and touched her buttocks firstly with his hand and secondly with his crotch. Neither occasion could be said to comprise an accidental or momentary physical contact; they were deliberate acts. It could only sensibly be inferred that this conduct towards Person A was sexually motivated. Ms Sheppard-Jones submitted that there was no other possible explanation for Mr Asharaf's words and conduct. He accompanied his sexualised actions with sexualised words and himself made the connection between what he was doing and sexual motivation: for example by his reference to "*sexual harassment*" and "*getting into trouble*" immediately after he had touched Person A in a sexual manner.

The Respondent's Case

14.44 Mr Asharaf denied all of the allegations. In his oral and written evidence, Mr Asharaf explained that none of the events described by Person A had taken place as alleged or at all.

14.45 Mr Asharaf stated that the allegations that he would touch/rub Person A's shoulders on numerous occasions was entirely untrue. He noted that no such allegation had ever been raised with him or his line manager, or with anyone else in the Firm at the time. Mr Asharaf considered that Person A's assertion that she did not want to draw attention to the situation was "*irrational and makes no sense*". Person A, it was asserted, had

had every opportunity to make a formal complaint and had not done so. This was because such conduct did not and had never taken place.

- 14.46 Mr Asharaf denied that he had slapped Person A on the bottom as alleged or at all. He explained that they worked in the same office and would frequently pass each other in the office. Further, there were many people working in the office who would constantly be moving around the office and between the different sections. As well as this, builders were in the office working on renovations. Had this event occurred, it would have been witnessed by others.
- 14.47 With regard to the allegation that Mr Asharaf made reference to Person A's breasts being like two mountains on her chest, Mr Asharaf explained that his recollection was that there was a tab behind the bar. "*I did not get a drink for myself at any stage in the evening*". Colleagues had stated that they would get him a drink as Mr Asharaf normally purchased drinks when they were out. Mr Asharaf believed that he was drinking coca cola throughout the evening but later found out that his colleagues had been buying him coke and rum or coke and vodka.
- 14.48 Whilst he could not say why alcohol had been purchased for him, he thought that his colleagues, who were drinking a lot at the party, might have found it amusing. Mr Asharaf was unable to say how much alcohol he had consumed during the course of the evening. At the time, he was taking prescribed medication which does not mix well with alcohol and was a reason for him to avoid drinking alcohol.
- 14.49 Mr Asharaf explained that during the latter part of the evening he felt unwell and his memory of the evening was somewhat hazy. As a result of feeling unwell, Mr Asharaf did not attend the after party with other colleagues. Mr Asharaf explained that he had no recollection of making the alleged comment to Person A. Further, it was not the kind of comment that he would consider appropriate to make.
- 14.50 Mr Asharaf referred to the text message he received from Person A in which she stated that she had been singing his praises all night and that he was "*the backbone of SPG law*". Mr Asharaf considered that the content of that message tended to demonstrate that there were no issues with Person A, and that she would not have sent such a message if he had committed the acts that she now alleged.
- 14.51 Mr Asharaf denied, in its entirety, the allegation that he had deliberately bumped into Person A or said the words attributed to him. Such conduct had not taken place as alleged or at all.
- 14.52 Mr Asharaf considered that the allegations made against him were malicious and were the result of Person A holding a grudge against him as she was disgruntled following Mr Asharaf having reprimanded her by way of formal warnings and a final written warning.
- 14.53 Mr Asharaf explained that his responsibilities included the recruitment of paralegals and the ongoing supervision of the paralegals to ensure that they attended on time; worked efficiently and entered the claims correctly using the Firm's software system.

- 14.54 Mr Asharaf interviewed Person A and mentioned that the Firm operated a “no smoking policy”. In her interview, Person A said that she did not smoke. This was not true. Mr Asharaf stated that when she was employed, he observed Person A smoking inside and outside.
- 14.55 He recalled that Person A was frequently leaving her desk and it soon transpired that that she was going for a “*smoke break*”. Other paralegals also noticed this and were unhappy with the frequency and number of breaks and complained to Mr Asharaf about this. Mr Asharaf stated that he had to speak to Person A about this and that she was clearly unhappy with this.
- 14.56 Mr Asharaf also noticed that Person A and Person B, who sat together, became “*the best of friends very quickly*” and would take breaks together. Several other workers noticed a trend whereby Persons A and B were spending anything up to 20 minutes on their tea/coffee/water breaks. Other paralegals became upset about this. This caused Mr Asharaf to make a verbal announcement reminding everyone to be prompt and not to “*dilly dally*” when they went for their break. Whilst Persons A and B were not mentioned by name, Mr Asharaf considered that everyone knew that these comments were aimed at Persons A and B.
- 14.57 Mr Asharaf stated that Persons A and B were loud and disruptive, querying decisions and processes. He did not confront them about this as he needed as many paralegals as possible to undertake the work. As the Firm recruited more paralegals, an additional adjacent room was taken. This placed Mr Asharaf under more pressure as he could not be in both rooms at the same time. He transferred Person A to the new room whilst leaving Person B in the old room. Mr Asharaf explained that he thought that the separation would make them work more productively and would also reduce the friction amongst the paralegals. Persons A and B were upset by the separation. Person A, it was asserted, became more disruptive and made the life of the other paralegals “*miserable and really difficult.*”
- 14.58 Mr Asharaf stated that he had to intervene and remind Person A of her responsibilities, duties and the chain of command.
- 14.59 Mr Asharaf referred to a “*mean book*” created by Persons A and B, which had pictures and comments about other paralegals. When this became known, the paralegals were shocked and offended.
- 14.60 Mr Asharaf stated that Persons A and B began “*consistently turning up late*”. Person A would try and sneak in. She would not ring or text if she was coming in late whereas Person B would make some effort to notify him. Mr Asharaf felt that he had no choice but to give them both formal verbal warnings so as to be consistent. Person A continued to arrive late. In order to resolve her tardiness, Mr Asharaf offered to change her working hours so that she started and finished later, but his offer was declined.
- 14.61 Mr Asharaf believed that because he had punished them for their lateness, Persons A and B gave him “*the hard shoulder*”; they did not like him and he was on their ‘hit list’. In order to appease Person A, Mr Asharaf made her the ‘paralegals supervisor’ of the new room. He thought that the experience would temper her resistance and bring

her on board rather than fighting against him and the system. He also asked both Persons A and B to interview potential recruits as he was *“trying to build bridges”*.

- 14.62 Mr Asharaf explained that he was receiving pressure from seniors at the Firm to process the claims. He was encouraged to push the paralegals hard. Mr Asharaf considered this to be unrealistic but tried to convince the paralegals to participate including by doing overtime to get the work done. Person A was reluctant to do this and influenced Person B in this regard. This, it was asserted, caused friction with the other paralegals as it was considered that Persons A and B were not *“pulling their weight or being team players”*.
- 14.63 When the Firm moved to a new space, a small kitchen area was constructed which could be used as a breakout space. Persons A and B avoided using this facility and would go elsewhere so that they could *“sneak away for up 20 minutes at a time or longer”*. The other paralegals had noticed this and were upset. Mr Asharaf sent an email to all paralegals reminding them of the tea/coffee facilities in the kitchen area and limiting their time away from their desks.
- 14.64 Whilst everyone knew who *“the main culprits were”*, Mr Asharaf considered that it was strategically better for it to go to all paralegals and not to point fingers at anyone specific or to name names. Mr Asharaf stated that whilst this worked for a while, Persons A and B would still *“try it on”* when he was not looking or was distracted. He, again, had to talk to them about this notwithstanding the email he had sent.
- 14.65 Mr Asharaf explained that on 21 November 2018, when he had a day off work, he received calls from several different paralegals informing him that Persons A and B were not at their desks. The paralegals were upset about their disappearance. *“I spoke to ES (the person who was left in charge in my absence) and she confirmed that it was true that Persons A and B “had gone walk about” for over 40 minutes during the middle of the afternoon and that no one knew where they were, until ES bumped into them in the corridor”*.
- 14.66 The following day Mr Asharaf emailed them (and KP) asking for an explanation for their actions. Mr Asharaf stated that *“it was not surprising that they came back with similar stories”* and that it was clear to him that *“the three of them had concocted this story over night as they knew that they were in hot water because ES had clocked them on the 5th Floor fraternising with men down there”*.
- 14.67 Mr Asharaf explained that he decided with ES to undergo a formal disciplinary hearing in relation to all three. At the end of their respective hearings, each was given a final written warning. Mr Asharaf considered that the giving of the final written warning was *“the final nail in the coffin”*, and that henceforth they had a mission to make his life hell and get their revenge.
- 14.68 Mr Asharaf considered that this was the reason for Person A making the false allegations that he now faced at the Tribunal.
- 14.69 Mr Williams KC submitted that Person A, when giving evidence, had demonstrated a selective memory. Whilst she had a clear recollection of the incidents of which she complained, when asked questions that she perceived were to her disadvantage, she was

'unable to recall' or *'could not be sure'*. For example, Person A could not recall whether she was asked or told about the Firm's no smoking policy during her interview. She denied that Mr Asharaf had seen her smoking but on being pressed, accepted that she was a smoker. Mr Asharaf stated that he had seen her smoking inside and outside of the building. Mr Williams KC submitted that Mr Asharaf's evidence was to be preferred.

- 14.70 Motivation was a central issue in the case. Person A accepted that she had been upset by criticisms made of her by Mr Asharaf in front of colleagues and on more than one occasion. Mr Williams KC submitted that the working environment was toxic, with Mr Asharaf being subject to considerable pressure to get a volume of work done. He was the middle-man and passed that pressure on to those whom he managed. Person A agreed that they were being asked to do too much work with too few people, hence the constraints and harsh regime as regards taking breaks during the working day.
- 14.71 Person A also acknowledged the existence of the *'mean book'* in which she, together with Person B made disparaging remarks about colleagues. Person A explained that this was based on a film. Mr Williams KC submitted that her explanation should be rejected as implausible; the mean book was symptomatic of the relationship between the paralegals. She was also upset after being spoken to Mr Asharaf following an argument in the office with a male paralegal.
- 14.72 Mr Asharaf stated, and Mr Williams submitted that the Tribunal should accept, that Mr Asharaf had given Person A a verbal warning for attending work late and failing to provide any explanation. The warning, it was submitted, should have been included by Person A in her written evidence. Things then got worse, and Person A (along with others) was given a final written warning by Mr Asharaf for being away from her desk for an extended period when Mr Asharaf was on leave. Whilst there was no final warning documents that had been produced, Mr Williams KC submitted that Mr Asharaf was adamant that such a warning had been given. Person A accepted that she was upset at the end of the meeting. Mr Williams KC submitted that the only possible conclusion was that the meeting had not gone well for Person A, and that there had been an adverse outcome for her. In her oral evidence, Person A was evasive about the action that was taken as a result of that disciplinary meeting; her evidence failed to deal, in any meaningful way, with Mr Asharaf's evidence in this regard. Given the nature of her evidence, Mr Asharaf's evidence should be preferred.
- 14.73 In her evidence, Person A stated that her relationship with Mr Asharaf had become very bad at that point, but that it had recovered well. Mr Williams KC submitted that Person A was clearly aggrieved and that her evidence of the relationship recovery should be rejected by the Tribunal, particularly as she alleged that shortly thereafter, Mr Asharaf had misconducted himself. Such conduct would be entirely inconsistent with relations improving. On the contrary, relations could only have improved if, as is Mr Asharaf's case, the conduct alleged, did not occur.
- 14.74 Allegation 1.4 was said to have occurred in plain sight of several other people and allegation 1.3 was said to have been witnessed by two other people who were party to the conversation. However, it was of note that there were no other witnesses that had given evidence at the Tribunal about these incidents. Mr Asharaf explained that his drinks had been spiked at the Christmas party. Ms Sheppard-Jones had submitted that

the consumption of alcohol was an aggravating feature. This could not be the case when the drink had been adulterated; the consumption of alcohol could not be an aggravating factor when the consumption had not been voluntary. Mr Asharaf had given evidence stating that he was not a drinker. He had answered questions about the medication he was taking at the time and explained that he did not attend the after event as he was feeling unwell. Mr Williams KC submitted that it would have been easier for Mr Asharaf to simply deny making the comment alleged. Instead, he had been completely honest even though that honesty might be to his detriment.

- 14.75 Mr Williams KC referred the Tribunal to the text sent by Person A to Mr Asharaf in which she stated that she had been singing his praises to senior staff. Person A stated that she was intoxicated when she sent it. Mr Williams KC noted that the text was coherent, witty and in line with she said that Mr Asharaf had asked her to do. When questioned about this message, Person A denied that the content of the message was true, but also stated that it was not untrue, rather it was an exaggeration of the truth in that she only ‘sang his praises’ to one senior member of staff. If that was the case, it was submitted, then the content of the text was untrue; telling one person was not singing the praises of Mr Asharaf all night. Mr Williams KC submitted that Person A’s evidence on this point demonstrated her lack of a clear grip on the concepts of truth and untruth. Mr Williams KC submitted that the text should be taken at face value.
- 14.76 Allegation 1.4 was said to have occurred in a crowded office, and not quite in isolation as the sketch Person A provided seemed to suggest. Mr Williams KC noted that there were no other witnesses who had attended the Tribunal to support this allegation.
- 14.77 Mr Williams KC noted that there had been no like allegations made against Mr Asharaf before these allegations were said to have occurred or in the almost 5 years since; Mr Asharaf did not behave in this way. Mr Asharaf had given straightforward evidence and had not sought to evade difficult questions by pleading a lack of memory. This was in stark contrast to Person A. Ms Sheppard-Jones, in opening, had highlighted the consistency of Person A’s evidence. The same applied to Mr Asharaf who had steadfastly denied all allegations from the outset.
- 14.78 Whilst it was not necessary to have corroborative evidence, the lack thereof made it difficult for the Applicant to prove its case to the necessary standard. For the Tribunal to find the matters against Mr Asharaf proved, it would have to reject his evidence out of hand. Mr Williams KC submitted that such a course was unjustifiable. It was noted that there were, on Person A’s case, approximately twenty people who could have given evidence but had failed to do so. The inference was that none of those people were prepared to give evidence on oath stating that these incidents had happened because they had not. Mr Williams KC noted that in an email to Mr Asharaf’s former representative dated 13 February 2021, the SRA confirmed that none of the witnesses who had provided statements for the Firm’s internal investigation were willing to support the SRA’s investigation. Accordingly, the SRA would be relying solely on Person A and Ms Losty.
- 14.79 As regards the allegation that Mr Asharaf’s conduct was sexually motivated, Mr Williams KC noted that Person A stated:

“Whilst I am reluctant to believe that there is any sexual motivation or sexual intention behind these interactions between (Mr Asharaf] in the office it is definitely inappropriate behaviour which needs to be raised with him”.

14.80 Mr Williams KC submitted that the Tribunal was being asked to make findings of sexual motivation when the sole witness was reluctant to believe that the conduct was sexually motivated. Accordingly, all the allegations against Mr Asharaf should be dismissed.

The Tribunal’s Findings

14.81 The Tribunal noted that Mr Williams KC suggested that the lack of corroborative evidence tended to suggest that the allegations were not true, given the number of witnesses that could have been called and were not. The Tribunal did not accept that a lack of corroborative evidence was suggestive of the truth or otherwise of the allegations. There was no necessity for corroborative evidence to be adduced. That was the position in this and other jurisdictions. Accordingly, the Tribunal did not draw any inference from the lack of corroborative evidence.

14.82 The Tribunal rejected Mr Asharaf’s case that the allegations were brought as Person A was *“disgruntled”*, and that the allegations were in fulfilment of her mission to *“make his life hell”* and get her revenge for the actions Mr Asharaf said he took as her manager. It was clear that Mr Asharaf was not aware that Person A had intended to leave the Firm to attend her position abroad.

14.83 Mr Asharaf’s evidence of his reason for promoting Person A was not accepted. The Tribunal found that there was an incongruence in the promotion of someone whose performance was as poor as Mr Asharaf suggested Person A’s performance was. In all the circumstances, it was odd to promote someone in order to *“build bridges”*. In his oral evidence Mr Asharaf explained that he was trying to hold onto the paralegals as they were needed for the volume of work, however, he had sacked a paralegal who was agitating against doing overtime. He also suggested that Person A was proficient in the Firm’s Proclaim system; in his statement he attributed this proficiency to Person B.

14.84 The Tribunal accepted that Mr Asharaf had had occasion to talk to Person A as regards her conduct, including the taking of lengthy breaks when she was expected to be at her desk. The Tribunal did not find that Mr Asharaf had given Person A a final written warning following her absence from her desk for an extended period in November 2018. The Firm had been unable to find any documentary evidence of such a warning being administered. The Tribunal did not accept that having sent it using the Firm’s system, that the document was no longer available. Further, Mr Asharaf’s evidence on when he gave her the warning was not clear. In his witness statement, Mr Asharaf stated that the final written warning was given to Person A at the end of the meeting. In his oral evidence Mr Asharaf stated that he would have sent the final written warning a couple of days later. The Tribunal found Person A’s evidence to be plausible. It was clear that she had been upset as her reasons for being away from her desk were not believed. However, it did not follow that the outcome of the meeting was a formal written warning. Given the inconsistency in Mr Asharaf’s evidence on this matter, the Tribunal found that it was understandable that Person A was unable to recollect what action was actually taken but was sure that she did not receive a final written warning.

- 14.85 The Tribunal preferred the account of Person A, whom it found to be a truthful witness. Her account had been consistent from her complaint to the Firm in January 2019 through to her evidence before the Tribunal. The Tribunal found that it was more likely than not that Mr Asharaf had, on numerous occasions, rubbed/touched Person A's shoulders as alleged. Accordingly, it found allegation 1.1 proved.
- 14.86 The Tribunal noted that on the date that Person A alleged Mr Asharaf had smacked her on her bottom, she had sent a text to Persons B and C. The text, the Tribunal determined, was strong supportive contemporaneous evidence, that Mr Asharaf had conducted himself as alleged. It was clear that the text message was not a later fabrication; indeed, it was not Mr Asharaf's case that this was the position. If the text was fabricated at the time (that is that the incident did not happen) Person A must have cynically falsified the content of the message in order to create documentary evidence in the contemplation of later fabricating a complaint against Mr Asharaf. The Tribunal did not accept that this was the position. Further, it was noted that this was not put to Person A in cross-examination. The Tribunal accepted Person A's evidence of this incident which was supported by the contemporaneous text message. Accordingly, the Tribunal found allegation 1.2 proved.
- 14.87 The Tribunal considered the initial complaint made by Person A to the Firm and noted that whilst she had not initially been prepared to say that the conduct complained of, was conduct that she had experienced personally, Person A had described the incident at the Christmas party as she knew that there were witnesses who could attest to what had occurred; this had given her the confidence to confirm that she was the subject of the comment. Mr Asharaf's evidence was that he had been drinking alcohol as his drink had been spiked. The Tribunal did not accept Mr Asharaf's evidence on this point. The Tribunal noted that in his written evidence, Mr Asharaf stated that he avoided alcohol due to the medication that he was taking at the time. In his oral evidence, Mr Asharaf stated that he was tee-total. The Tribunal considered this evidence to be inconsistent. A person who did not drink alcohol would have no need to avoid it as a result of medication. The Tribunal considered that Mr Asharaf was reluctant to accept that this incident had taken place relatively early in the evening (at the pre-dinner drinks) as this meant that his account of his drink being spiked was less credible.
- 14.88 The Tribunal found that Person A would have expected those others named as being present when the comment was made at the Christmas party to be asked about what they had heard in any investigation. Whilst Mr Asharaf intimated that there was a conspiracy against him, he provided no evidence of that. The Tribunal considered that had the comment been fabricated by Person A, she would have been much more likely to have stated that the comment was made when nobody else was there to hear it. The Tribunal considered that in the circumstances, her evidence of this incident was more likely to be true. Accordingly, the Tribunal found allegation 1.3 proved.
- 14.89 The Tribunal accepted that Mr Asharaf had deliberately bumped into Person A and had made the comments alleged. It noted the consistency of the language used with the language used in the other matters. Mr Asharaf's defence was a flat denial of the allegation. He seemingly relied on the lack of corroborative evidence given that there were others present. The Tribunal noted that Person A had always stated that there were others present in the room when this incident took place. The Tribunal preferred

the evidence of Person A as regards this incident. Accordingly, it found allegation 1.4 proved.

- 14.90 Having made its findings of fact, the Tribunal then considered whether the conduct had breached the Principles and Code as alleged.
- 14.91 The Christmas party was a Firm event, organised for the staff. It was clearly related to the Firm and was, the Tribunal found, sufficiently proximate to the work of the Firm that Mr Asharaf was required to comply with his regulatory responsibilities and duties. The Tribunal thus determined that the Principles and the Code applied to allegation 1.3, notwithstanding that the misconduct took place outside of the Firm's offices at a social function.
- 14.92 Members of the public would not expect a solicitor to behave in an inappropriate manner with a junior member of staff over whom he had management responsibilities. His actions were in direct contravention of, on his own case, his responsibility for the physical and mental health of the paralegals. He had pursued an improper course of conduct, subjecting Person A to inappropriate touching, inappropriate comments, slapping her bottom and deliberately bumping into her when she was bent over a desk. Such conduct, the Tribunal found, was wholly improper in all the circumstances. Accordingly, the Tribunal found that in acting as he had, Mr Asharaf had failed to maintain the trust that the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles. The Tribunal found that Mr Asharaf's conduct breached Principle 6 as alleged both individually and cumulatively as regards allegations 1.1 – 1.4.
- 14.93 The Tribunal found that a solicitor acting with integrity would not abuse his position of trust and authority by subjecting a junior member of staff to inappropriate physical contact and comments. That such conduct lacked integrity was plain. Accordingly, the Tribunal found that Mr Asharaf's conduct breached Principle 2 as alleged both individually and cumulatively as regards allegations 1.1 – 1.4.
- 14.94 Outcome 11.1 required Mr Asharaf not to take advantage of third parties in either his personal or professional capacity. The Tribunal found that in conducting himself as he had, he had taken advantage of Person A. Accordingly, the Tribunal found that Mr Asharaf had failed to achieve Outcome 11.1 both individually and cumulatively as regards allegations 1.1 – 1.4.

Allegation 2 – Sexual Motivation

- 14.95 The Tribunal noted that whilst sexual motivation was alleged in relation to allegations 1.1 – 1.4, the Applicant had failed, in the Rule 12 Statement, to particularise its case as regards allegations 1.1 (rubbing/touching Person A's shoulders) and 1.3 (commenting on Person A's breasts). The Rule 12 Statement expressly detailed its case of sexual misconduct for allegations 1.2 (slapping Person A's bottom) and allegation 1.4 (deliberately bumping into Person A when she was bent over a desk) as a course of conduct.

- 14.96 The Tribunal determined that the failure to particularise its case on sexual motivation for allegations 1.1 and 1.3, was fatal to the Applicant's case; fairness dictated that Mr Asharaf should know the case against him. Accordingly, the Tribunal did not find, nor could it properly find, that Mr Asharaf's conduct as regards allegations 1.1 and 1.3 was sexually motivated. The Tribunal thus dismissed the allegation of sexual motivation as regards those allegations.
- 14.97 The Tribunal noted that Person A had expressed that she was reluctant to believe that Mr Asharaf's conduct was sexually motivated. Mr Williams KC had submitted that given that position, the allegation of sexual motivation fell away. The Tribunal did not accept that analysis. The fact that Person A was reluctant to believe that this was the motivation did not mean that the conduct was not, in fact, sexually motivated. The Tribunal found that the physical contact made with Person A and the words used by Mr Asharaf demonstrated that the contact was sexually motivated. The Tribunal agreed with the submissions made by Ms Sheppard-Jones, namely that there could be no other possible explanation for the deliberate contact and the words used. Accordingly, the Tribunal found that Mr Asharaf's conduct as regards allegations 1.2 and 1.4 was sexually motivated.

Previous Disciplinary Matters

15. Mr Asharaf appeared at the Tribunal on 26 July 2018 (Case No. 11731-2017). On that date the Tribunal found the following allegations proved:
- Between 2014 and 2016 Mr Asharaf misled clients in litigation cases by preparing invoices which did not accurately reflect the costs recovered from the other side. The invoices sent to clients misrepresented that a lower figure had been recovered in costs from the other side than was actually the case. He therefore breached any or all of: Principles 2 and 6 of the SRA Principles 2011 ("the Principles") and Rule 29.1 of the SRA Accounts Rules 2011 ("the Accounts Rules").
 - Between 2014 and 2016 the Respondent used costs recovered on behalf of some clients for the benefit of other clients. The Respondent therefore breached any or all of Principles 2 and 6 and Rules 17.1 and 27.1 of the Accounts Rules.
 - Between 2014 and 2016 the Respondent, by using costs recovered on behalf of some clients for the benefit of other clients, misled his firm as to the true financial position of his case-holding. The Respondent therefore breached any or all of: Principles 2, 6 and 8 and Rule 29.1 of the Accounts Rules.
16. The Tribunal imposed a financial penalty in the sum of £5,000 and ordered that he pay costs in the sum of £13,000. The Tribunal also imposed indefinite restrictions of Mr Asharaf's practise as follows:

Mr Asharaf may not:

- Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

- Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;
 - Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration.
17. As the restrictions on his practice were for an indefinite period, the Tribunal granted the parties liberty to apply to vary the restrictions. As there had been no application to vary those restrictions, they remained in place at the time of the hearing.

Mitigation

18. With regard to the previous matter, Mr Williams KC submitted that two medical reports had been adduced from Dr Wilkins, a consultant psychiatrist. As a result, allegations of dishonesty were withdrawn and no live evidence was called. The misconduct which had taken place between 2014 and 2016 occurred when Mr Asharaf was suffering very serious mental health problems. The previous matter had absolutely no common features with the case. Mr Williams submitted that the previous findings should thus be treated in that light.
19. Mr Asharaf was 58 years old and had, for the past two years, been working as a property consultant. He had not been practising as a solicitor. His decision not to practise was a direct result of the investigation and proceedings in this matter. He was currently separated from his wife who remained in the former matrimonial home with their four children. He paid £1,000 per month in financial support to Mrs Asharaf.
20. The matters found proven related to a short period in 2018 – 2019. There had been no previous matters of this type alleged against Mr Asharaf and nothing of this type had been alleged against him since. Mr Williams KC submitted that there was absolutely no risk of repetition of the misconduct that the Tribunal had found proved.
21. In his witness statement Mr Asharaf explained that he was placed under extreme pressure to meet targets in relation to the litigation. The paralegals were expected to do more than they were capable of doing. There was significantly more work than there were people to undertake the work. Mr Asharaf explained that at some stage the Firm moved to operating 3 shifts: 7am to 12 noon, 1pm to 5 pm and 5pm to 10 pm. The Firm used agency paralegals during these 3 shifts along with its normal full-time paralegals. Mr Asharaf stated that he was there for all 3 shifts for a period of 4 weeks (running into December 2018), until other senior staff were recruited. It placed a very heavy burden on Mr Asharaf and he was extremely stressed trying to co-ordinate overtime with existing full-time paralegals and the agency paralegals. They had to process a vast amount of work. The Firm needed a work force of at least 120 paralegals, working on all 3 shifts so as to meet the deadlines set by the Court. The Firm had 34,000 of its own cases (which increased to 40,000 due to advertising) and 11,500 bought in cases called Your Lawyers. The number of paralegals processing these claims (at any one time) varied between 30 to 35 and that was not enough. Mr Asharaf expressed that by the first week of December 2018, he was on the verge of having a nervous breakdown. He set out, in a text message, the failings of the current system and what was needed to do to rectify the situation and the fact he was really stressed out and not coping. Mr Asharaf

considered that this was a cry for help. He mentioned to ES that he was heading towards a nervous breakdown. Mr Asharaf explained that he was depressed and that his mental health was not good.

22. As a result of the complaint made by Person A, he felt humiliated. He was “*frog marched*” off the premises. Whilst he should have stayed and defended himself against the false allegations when they were raised, he was too physically and mentally exhausted. When he was offered a settlement, he accepted it as he had had enough and wanted a break so as to deal with his mental health issues. Mr Williams KC submitted that Mr Asharaf very much struggled with the toxic atmosphere at the Firm where a vast amount of unreasonable pressure was being put upon him by those above him which he had to transfer to those below him.
23. Mr Williams KC submitted that the Tribunal would strive for consistency of sanction, the Tribunal being aware of other sanctions recently imposed in cases involving similar conduct issues. Whilst the conduct was not to be diminished, the Tribunal should consider it in its proper context. It was submitted that the misconduct found proved was nearer the bottom of the scale for misconduct of this nature. It was noted that Person A had not provided a victim impact statement; the Tribunal would reach its own conclusion as to what, if any, lasting effect this had had upon Person A. It was her evidence that she was more concerned about others than herself. Mr Williams KC noted that there were no complaints from any others. Further, Person A was reluctant to believe that the conduct was sexually motivated.
24. Mr Williams KC submitted that there was no risk of repetition and that the misconduct was not of sufficient gravity for the Tribunal to interfere with Mr Asharaf’s right to practise. The Tribunal invited submissions on the imposition of a restriction that prevented Mr Asharaf from being a manager or supervisor. Mr Williams KC submitted that the Tribunal had an unfettered discretion to impose restrictions. There was no objection to the imposition of such a restriction if the Tribunal considered that to be fair and proportionate. The appropriate sanction, it was submitted, was a financial penalty, taking into account Mr Asharaf’s means. The nature of the misconduct was not such that there should be any interference with his right to practise.

Sanction

25. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). The Tribunal’s overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal’s role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.
26. The Tribunal found that Mr Asharaf’s conduct was sexually motivated as regards allegations 1.2 and 1.4. He had pursued an improper course of conduct which, it was determined, was consistent with his attitudinal failings as regards his treatment of Person A. His actions were planned, albeit that the plan was unsophisticated, and Mr Asharaf had taken advantage of opportunities as they arose. He had taken advantage of his position of superiority over Person A and had breached the trust placed in him to behave appropriately towards junior members of staff whom he managed and was responsible for. He was an extremely experienced solicitor at the time of his

misconduct and was fully aware that his conduct was improper and inappropriate. He had sole control of the circumstances giving rise to his misconduct and was fully culpable for that misconduct.

27. He had caused harm to the reputation of the profession. It was clearly a matter of public concern when a solicitor conducted himself in the way that Mr Asharaf had done. His departure from the standards of integrity, probity and trustworthiness expected of a solicitor had been significant. The harm that he had caused to the reputation of the profession was wholly foreseeable. He had also caused harm to Person A, who, for a time, had simply put up with his improper behaviour, thinking that she would not be believed. He had caused Person A to moderate her own behaviour in order to avoid any further improper and unwanted interactions with Mr Asharaf. He had made Person A feel uncomfortable and awkward and worried that if she were to report his conduct, she would be considered a troublemaker with her complaint not being taken seriously.
28. Mr Asharaf's conduct was aggravated by his abuse of his position of power and authority over Person A. Whilst the misconduct had not continued for an extended period of time, this was the result of the complaint made by Person A. Mr Asharaf had persisted in his course of conduct of inappropriate behaviour, which was deliberate, calculated and repeated. The Tribunal considered that Person A's position made her vulnerable; she was a paralegal who had to endure conduct from her solicitor manager that was sexually motivated. Mr Asharaf, the Tribunal found, had behaved in the way that he did due to Person A's age, sex and junior status. Mr Asharaf knew that such conduct was in material breach of his obligation to protect the public and the reputation of the profession.
29. The Tribunal, whilst noting that Mr Asharaf's previous misconduct was of a dissimilar nature, considered that his previous matter was relevant. Mr Asharaf had appeared at the Tribunal in July 2018, where his conduct was found to have breached the trust the public placed in him and in the reputation of the profession. His conduct had also been found to have lacked integrity. A very short time later, and by November 2018 at the latest, he had embarked on a course of conduct which the Tribunal found had lacked integrity and breached his public trust obligations. Whilst the underlying conduct for the 2018 matter was not of specific concern, the proximity of the Tribunal's findings in that matter to the misconduct in this matter was of extreme concern. On that basis, the Tribunal found that the previous findings were an aggravating feature of Mr Asharaf's conduct in this matter.
30. In mitigation, the Tribunal found that Mr Asharaf had co-operated with the Applicant's investigation and the proceedings. The Tribunal noted and took account of the health issues raised by Mr Williams KC.
31. The Tribunal found that sanctions such as No Order or a Reprimand did not adequately reflect the seriousness of Mr Asharaf's misconduct. Mr Williams KC submitted that a financial penalty was the appropriate sanction given the nature of the misconduct and was in line with other sanctions imposed for cases of sexual misconduct at the Tribunal. The Tribunal did not consider that a financial penalty was appropriate taking into account the nature of the misconduct together with the aggravating features identified. The seriousness of the misconduct was such there was a need to protect both the public

and the reputation of the profession by removing Mr Asharaf's ability to practise, however those factors did not require that Mr Asharaf be struck off the Roll. Mr Asharaf's lack of insight into his misconduct called into question his continued ability to practise appropriately. His misconduct, together with the aggravating features meant that his misconduct was so serious that he should be suspended from practice. The Tribunal determined that a suspension from practice for a period of 12 months appropriately reflected the seriousness of Mr Asharaf's misconduct.

32. The Tribunal considered that given the nature of his misconduct, it was appropriate to impose a restriction on Mr Asharaf's ability to practise at the conclusion of his period of suspension. In order to protect the public and the reputation of the profession, the Tribunal deemed that it was necessary to impose a condition prohibiting Mr Asharaf from acting as a manager or supervisor of any member of staff. The Tribunal determined that the restriction should be imposed indefinitely. The Tribunal considered that this restriction was necessary notwithstanding that Mr Asharaf was still subject to the restrictions imposed on his practice by the Tribunal in its decision of July 2018.
33. Accordingly, the Tribunal imposed a suspension from practise for a period of 12 months, together with the restriction on Mr Asharaf's practice detailed above.

Costs

34. Ms Sheppard-Jones applied for costs in the sum of £22,989.60. which was comprised of the SRA's internal costs and Capsticks costs. This case was initially a fixed fee matter, however the contract with the SRA came to an end at the end of October 2023. Accordingly, the fixed fee had been adjusted, and work undertaken after October 2023 was charged on an hourly rate. The total now claimed was less than would have been the case had the original fixed fee been claimed in its entirety. Ms Sheppard-Jones submitted that the costs claimed were reasonable. The fee for the advice from Counsel was subsumed within the reduced fixed fee and was not charged separately.
35. As regards the Statement of Means submitted by Mr Asharaf, it was submitted out of time, having been provided on 22 November 2023. Ms Sheppard-Jones did not consider that the Tribunal should disregard the Statement of Means due to its late submission, however there was additional information that Mr Asharaf had not included within that Statement of Means which came to light within the SRA's Costs Recovery Team, and which the Tribunal should take into account. Mr Asharaf was the registered owner of a property in Devon together with his wife. That property was not subject to any charges. It was understood that Mr Asharaf now stated that he had no beneficial interest in the property as his wife was the sole beneficial owner following their separation. Ms Sheppard-Jones noted that there was no documentary evidence of that arrangement. Accordingly, Mr Asharaf seemingly had a significant equitable interest in the property.
36. There was a further property in which Mr Asharaf had an interest and that he had failed to declare. That property was owned by a Firm in which Mr Asharaf had an interest. Ms Sheppard-Jones stated that his interest in the property was unclear, however, he had failed to declare any interest in that property on his means form.
37. Additionally, Mr Asharaf was listed as a director of a company that he had not declared on the statement of means.

38. Mr Williams KC confirmed that there was no objection in principle to an order for costs being made against Mr Asharaf. It was noted that five fee earners had been named as working on the matter which tended, it was submitted, to lead to duplication. 34.7 hours had been claimed for reviewing the case papers. That amount of time seemed excessive and worked out to a full week's work and was not reasonable given the papers in the case. Further, additional time had been charged for reviewing case papers. Mr Asharaf should not be liable for any costs associated with the preparation for or attending case conferences with external counsel; those costs should be borne by the Applicant in circumstances where external counsel had not been instructed to represent the Applicant in the proceedings. Mr Williams submitted that costs were a discretionary matter for the Tribunal; it was for the Tribunal to order costs that it considered to be fair, reasonable and proportionate in all the circumstances.
39. Mr Williams KC submitted that it was clear from the statement of means that Mr Asharaf was of limited means. He was living from hand to mouth. His monthly salary was fully accounted for. He had returned to live with his mother. His legal fees had been paid by his family.
40. As regards the properties, it had been agreed that he would have no equitable interest in the former matrimonial home that his wife and children resided in. The firm that had been instructed to deal with the transfer of the former matrimonial home to Mr Asharaf's wife had been intervened into by the SRA. Mr Asharaf was not aware of which firm now had conduct of the matter.
41. The other property belonged to a firm of which Mr Asharaf was formerly a partner. When he left that firm, he lost his equitable interest in the property. Mr Asharaf did not know why he remained on the deeds for that property, but the agreement made when he left was that he would no longer have any interest in the partnership assets.

The Tribunal's Costs Decision

42. The Tribunal examined the claim for costs with care. The Tribunal considered that there should be a reduction for the shortened hearing time. The Tribunal found that it was not necessary for both Ms Lane and Ms Mattu to be in attendance at the hearing. The Tribunal agreed that given the number of fee earners working on this matter, there was likely to have been duplication of work. The Tribunal was aware that the disbursement in relation to external counsel was not separately charged but had been included in the adjusted fixed fee. There were additional charges that related to external counsel beyond the disbursement, including preparation for and attendance at a case conference and correspondence. Those items, the Tribunal determined, were not properly chargeable to Mr Asharaf in circumstances where external counsel had not been instructed. The Tribunal determined that, notwithstanding that these costs were claimed as part of the adjusted fixed fee, there should be a reduction in the amount of the fixed fee to reflect that Mr Asharaf was not liable for those costs.
43. Taking all these matters into account, the Tribunal considered that an order for costs in the sum of £17,500 was reasonable and proportionate.

44. The Tribunal then considered whether there should be any further reduction in costs due to Mr Asharaf's means. The Tribunal noted that Mr Asharaf had failed to provide any documentary evidence in support of his means statement as was required pursuant to the Standard Directions issued by the Tribunal dated 19 July 2023. Additionally, he had failed to disclose his interest in the properties or his directorship. Whilst the Tribunal took no issue with the lateness of the filing of the means statement, it was concerned with the deficiencies and the lack of candour.
45. The Tribunal was mindful of the decision in Barnes v SRA [2022] EWHC 677 (Admin) in which it was held that no order for costs should be made where it was unlikely, on any reasonable assessment of Mr Asharaf's current or future means, that he would ever be able to satisfy that order. It had not been submitted, and the Tribunal did not find, that Mr Asharaf would not be in a position now or in the future, to satisfy any order for costs. In particular, the Tribunal noted the ages of Mr Asharaf's children; two were adults and the younger two were in their mid-teens. Once the younger children became adults, Mr Asharaf would no longer be responsible for their maintenance, and would thus be in a stronger financial position as regards satisfaction of any costs order. Further, the Tribunal was aware that the Applicant would come to a reasonable arrangement as regards the satisfaction of its costs order.
46. Having considered the matter carefully, the Tribunal determined that Barnes was distinguishable from the current case. The Tribunal did not find that there should be any further reduction in costs as a result of Mr Asharaf's means.
47. **Statement of Full Order**
1. The Tribunal Ordered that the Respondent, MUSHARAF JAVID ASHARAF, solicitor, be suspended from practice as a solicitor for the period of 12 months to commence on the 23rd day of November 2023 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £17,500.00.
 2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to the condition imposed by the Tribunal as follows:
 - 2.1 The Respondent may not act as a supervisor or manager of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;
 3. There be liberty to either party to apply to the Tribunal to vary the condition set out at paragraph 2 above.

Dated this 5th day of December 2023

On behalf of the Tribunal

G Sydenham

G Sydenham
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
5 DEC 2023