

**SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11731-2017

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

MUSHARAF ASHARAF

Respondent

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Before:

Miss H Dobson (in the chair)

Ms A Horne

Mrs C Valentine

Date of Decision: 8 June 2022

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**MEMORANDUM OF  
CONSIDERATION OF AN APPLICATION FOR NON-PARTY  
DISCLOSURE**

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## Background

1. The substantive hearing of this matter took place on 26 July 2018. The Tribunal's findings, decisions and reasons were set out in its Judgment dated 21 August 2018.
2. The Tribunal received, by way of an application notice dated 21 March 2022, an application for non-party disclosure from a former client of the Respondent, Ms LS ("LS"). This application was supplemented with a letter dated 22 March 2022, a statement of reasons for making the request dated 21 March 2022, 27 pages of documents (which included a 10-page letter) and an email dated 6 June 2022.

## The Application

3. LS requested two categories of document:
  - "All documentation relating to 'Client LS...'"
  - "especially in respect of who answered that 'Client LS' (me!) was happy with the outcome of her claim and did not any consequences of Mr Asharaf's handling of it"
4. The basis of the application was set out in great detail in the documents referred to above. In very brief summary, LS was deeply dissatisfied with the Respondent's handling of her personal injury claim. LS had signed a CFA at the time of instructing the Respondent to bring the claim. LS had told the Tribunal that she had subsequently suffered substantial loss and that she continued to suffer the consequences to this day. This included a negative impact on her health.

## The Tribunal's Decision

5. The Tribunal read all of the documents supplied to it by LS with great care. The Tribunal also reviewed the documents that had been before it at the substantive hearing. This included the statement from the Solicitors Regulation Authority setting out the allegations, the exhibits to that statement, witness statements and the Respondent's response. The Respondent had not given evidence at the hearing.
6. In considering the application, the Tribunal applied the Policy on the Supply of Documents from Tribunal Records to a Non-party (June 2020). The Tribunal's starting point was that members of the public should have access to documents and that this was important in order to advance the principle of open justice. This was consistent with Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38. The Tribunal's policy set out a non-exhaustive list factors that would be taken into account in determining any application as follows:
  - The reasons for the request;
  - The nature of the document(s) requested;
  - The stage of the proceedings at which the request is made;
  - Whether an application for the proceedings to be heard in private has been or is likely to be made;
  - The potential value of the material in advancing the purpose of open justice;
  - Any risk of harm which access to the documents may cause to the legitimate

- interests of others;
  - Whether the information is confidential
  - Whether the information includes medical, financial or other sensitive personal information; -
  - Whether the information relates to a person with a particular vulnerability;
  - Whether disclosure might impede any judicial process or the information includes legally privileged material;
  - Whether the information concerns allegations against other persons which have not been explored and could be potentially damaging to them;
  - Whether the information is of such peripheral, if any, relevance to the judicial process that it would be disproportionate to require its disclosure;
  - The likely costs of complying with the application; and
  - Whether the information is so voluminous and/or requires such editing or redaction before it could lawfully be disclosed that the compliance with the request is not practicable or proportionate given the size and administrative resources of the Tribunal.
7. The Tribunal reminded itself of the Allegations that the Respondent had faced at the hearing. They related to misleading clients as to costs recovered (Allegation 1.1), using the costs recovered from some clients for the benefit of other clients (Allegation 1.2) and misleading his firm (Allegation 1.3). LS was only referred to in the proceedings in relation to Allegation 1.2.
  8. Allegation 1.2 alleged that the Respondent had wrongly credited funds to the wrong client account. In other words, funds that had been received for one client were not put into the client account for that client, but into one for a different client. It was important to note, in the context of this application, that no money received for, or due to, LS was placed into the wrong account. The only reason LS was referred to in the proceedings was that money that should have gone to a different client's client account was wrongly placed into LS' client account instead. That was the full extent of the references to LS in the proceedings. The overwhelming majority of the documentation before the Tribunal at the substantive hearing related to other clients, particularly those who should have had money credit to their client account and had not.
  9. At the substantive hearing, as far as LS was concerned, the Tribunal had not been asked to examine how the Respondent had conducted her matter, how he had communicated with LS or the standard of service he had provided to her. The only reason that LS featured at all was because her client account had been the destination for a payment of £3,000 on 8 June 2015 that should have been placed on a different client account. This sum was then transferred out of LS' client account on 12 November 2015. The Tribunal's focus had therefore been solely on the financial aspect of the client ledger for LS, not the substantive conduct of her case.
  9. As indicated above, there were very few references to LS contained within the documents. The documents did, however, contain extensive, sensitive and personal details relating to other clients. If the Tribunal had been minded to order disclosure of any document with LS' name contained within it, it would have had to redact the vast majority of that document. The Tribunal was not satisfied that this would be a proportionate exercise given the volume of material, and what remained may not have

made a great amount of sense in isolation. The Tribunal was keen, however, for LS to have as full an understanding as possible of the proceedings insofar as they related to her, hence the detailed explanation set out above, of the extent of her limited reference in the proceedings.

10. The Tribunal therefore refused the application in respect of “All documentation relating to ‘Client LS’”.
11. The Tribunal then considered the second part of the application, which requested disclosure of any documents which made reference to LS being happy with the outcome of her claim and suffered no consequences. This request was also widened somewhat in correspondence to include references to the Respondent’s clients being satisfied with the way in which their claim had been handled.
12. The Tribunal could find no document in its possession that referred to LS being happy with the outcome of her claim. There was no document which made any assertion about LS’ views on the matter of any sort. That was consistent with the fact that this question had not been an issue in the proceedings. If the Respondent had made such an assertion, the Tribunal was unable to identify it in any document in its possession and it had therefore not featured in the proceedings.
13. On the wider point about client satisfaction, the Tribunal acknowledged that the Judgment, at paragraph 28, contained the following sentence:

“There was harm to the public perception of the profession and the reputation of the profession, although such harm was limited and every indication was that the Respondent's clients were satisfied with his work and the outcomes achieved for them.”
14. The Tribunal was referring to those clients whose funds had not been credited to their client account when it ought to have been, where there was no evidence of loss. It could have perhaps been more clearly expressed in terms of there being no evidence of dissatisfaction on the part of clients before the Tribunal. In any event, that reference was not intended to include clients in the category of LS, who had money wrongly credited to their client account. The loss that LS referred to was not part of the case before the Tribunal.
15. There was no document that referred to client satisfaction of the type that LS was seeking and the Respondent had not given evidence at the hearing. There was therefore no document available to disclose to LS and accordingly the Tribunal refused the application in respect of “especially in respect of who answered that ‘Client LS’ (me!) was happy with the outcome of her claim and did not any consequences of Mr Asharaf’s handling of it”.
16. The application made by LS was therefore refused in full. LS is reminded that any challenge against the Tribunal’s decision is to the High Court by way of judicial review.

Dated this 13<sup>th</sup> day of June 2022  
On behalf of the Tribunal

A handwritten signature in black ink that reads "H. Dobson". The signature is written in a cursive style with a large, prominent 'H' and 'D'.

H Dobson  
Chair