SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12137-2020

BETWEEN:

ORIJIT DAS Appellant

and

SOLICITORS REGULATION AUTHORITY Respondent

Before:

Mr B Forde (in the chair)
Mr P Lewis
Mrs C. Valentine

Date of Hearing: 4 March 2021

Appearances

Alisdair Williamson Q.C. of 3, Raymond Buildings, Gray's Inn, WC1R 5BH, London, for the Appellant.

Rory Mulchrone, barrister, of Capsticks Solicitors LLP of 1 St. George's Road, London, SW19 4DR, for the Respondent.

APPEAL JUDGMENT

Documents

1. The Tribunal reviewed all the documents including:

Appellant

- Application dated 30 September 2020
- Grounds of Appeal dated 11 October 2020
- E-mails from Appellant to SRA dated 4 and 26 June 2019 and July 2019
- Character reference x 2

Respondent

- Respondent's Response to the Grounds of Appeal dated 19 November 2020
- Decision of Adjudicator dated 28 August 2020
- Bundle of material seen by Adjudicator including medical reports
- Notification e-mail and letter from SRA to Appellant 2 September 2020
- Costs schedules dated 2 and 24 February 2021

Authorities Bundle

- SRA Application, Notice, Review and Appeal Rules
- s. 44E Solicitors Act 1974 (Appeals against disciplinary action under section 44D)
- Pages from SRA Handbook
- Adesina v NMC [2013] 1 W.L.R. 3156
- Jeffery v Social Work England [2020] 10 WLUK 219
- The Solicitors Regulation Authority v Solicitors Disciplinary Tribunal v Huseyin Arslan [2016] EWHC 2862 (Admin)
- Adesemowo v Solicitors Regulation Authority [2013] EWHC 2020 (Admin) (09 December 2020) J42 - J72
- Guidance Note On Appeals - 4th Edition
- 11819.2018 - Dugdale
- Dugdale v Solicitors Regulation Authority [2019] EWHC 1808 (Admin)
- Wingate and Evans v SRA, and SRA v Malins [2018] EWCA Civ
- Bolton v Law Society [1994] 1 W.L.R. 512
- Ryan Beckwith v SRA [2020] EWHC 3231
- SRA v Dudley

Introduction

2. The Appellant, a solicitor, appealed under section 44E of the Solicitors Act 1974 (as amended) ("the Act") against a decision dated 28 August 2020 of an Adjudicator, Ms AF, ("the Adjudicator"), engaged by the Solicitors Regulation Authority ("the Respondent"). The decision of the Adjudicator was made pursuant to her powers under section 44D of the Act.

The Legal Framework

3. The procedure for the hearing of the Appeal is governed by the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011 which came into force on 1 October 2011.

4. The Tribunal has power under section 44E to make such order as it thinks fit, and such an order might in particular:

   (a) affirm the decision of the Society;

   (b) revoke the decision of the Society;

   (c) in the case of a penalty imposed under section 44D(2)(b), vary the amount of the penalty;

   (d) in the case of a solicitor, contain provision for any of the matters mentioned in paragraphs (a) to (d) of section 47(2);

   (e) …;

   (f) make such provision as the Tribunal thinks fit as to payment of costs.

   In light of the Divisional Court's judgment in SRA v SDT and Arslan and the Law Society (Intervening Party) [2016] EWHC 2862, the following framework principles apply to section 44E appeals:

   - The role of the Tribunal was to review the Adjudicator's decision, rather than to conduct a rehearing.

   - That review function was analogous to that of a court dealing with an appeal from another court or tribunal pursuant to Rule 52.11 of the Civil Procedure Rules. The case law that had developed under Rule 52.11 in relation to (i) the difference between a review and rehearing and (ii) the nature of a review, would inform the correct approach that the Tribunal should adopt when conducting a review.

   - The Tribunal should interfere with the Respondent's decision under review only if satisfied that the decision was wrong, or that the decision was unjust because of a serious procedural or other irregularity in the proceedings.

   - The Tribunal should not embark on an exercise of finding the relevant facts afresh. On matters of fact, the proper starting point for the Tribunal is the findings made by the Adjudicator and the evidence before the Adjudicator. If satisfied for good reason that a finding of the Adjudicator was wrong, the Tribunal was entitled to reach a different conclusion. The Tribunal had to consider whether, on that evidence, the Adjudicator was justified in making the factual findings that she did.

   - Where a challenge was made to conclusions of primary fact, the weight to be attached to the findings of the original decision-maker would depend upon the extent to which that decision-maker had an advantage over the reviewing body; the

greater that advantage, the more reluctant the reviewing body should be to interfere. Where the original decision involved an evaluation of the facts on which there is room for reasonable disagreement, the reviewing body ought not generally to interfere unless it is satisfied that the conclusion reached lay outside the bounds within which reasonable disagreement is possible.

The Burden and Standard of Proof

5. The burden of proving that the Adjudicator's decision was wrong or that the decision was unjust because of a serious procedural or other irregularity in the proceedings lay with the Appellant. The standard to which he was required to prove that the decision was unjust was the civil standard, namely that on a balance of probabilities it was more likely than not that the Adjudicator's decision was wrong, or that the decision was unjust because of a serious procedural or other irregularity in the proceedings.

Relevant Background

6. The Adjudicator's decision of 28 August 2020 was as follows:

- That the Appellant's conduct was in breach of Principle 6 of the SRA Principles 2011 ("the Principles") because he was convicted at Uxbridge Magistrates Court on 25 November 2015 of driving with excess alcohol *(Allegation 1)*.

- Also, that he had failed to achieve Outcome 10.3 of the SRA Code of Conduct ("the Code") and had breached Principle 7 by failing to promptly inform the SRA of his conviction or when he renewed his practising certificate *(Allegation 2)*.

7. The Adjudicator ordered publication of this decision and directed that the Appellant pay a financial penalty in the sum of £2,000 and ordered the publication of this. In addition, the Appellant was ordered to pay costs in the sum of £600.

SRA Principles and Outcomes

- Principle 6: You behave in a way that maintains the trust the public places in you and in the provision of legal services.

- Principle 7: Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner.

- SRA Outcome 10.3: You notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the Principles, rules, outcomes and other requirements of the Handbook.

<u>Background</u>

8. The Appellant was admitted to the Roll on 2 April 2001.

9. On 31 October 2015, the Appellant was riding a motorcycle and collided with a vehicle. No other persons were injured or harmed. When the police attended the scene, the Appellant was asked to provide a road-side breath test. The Appellant was unable to provide a specimen and was arrested. Once in police custody, the Appellant provided two positive samples.

10. On 25 November 2015, at Uxbridge Magistrates Court, the Appellant pleaded guilty to driving with excess alcohol. The Memorandum of Conviction states that the Appellant was disqualified from driving for 16 months, to be reduced by 4 months if by 25 September 2016 he had satisfactorily completed a course. He was also fined £1,500.00 and ordered to pay a victim surcharge, and other costs.

11. The Appellant did not notify the SRA promptly of the conviction. The Appellant went to live abroad in January 2016 and returned to the United Kingdom in February 2018. During this period, he did not hold a practising certificate.

12. On 20 March 2018, the Appellant applied for a practising certificate for the practising year 2017/2018. The application form required the Appellant to declare whether any event or circumstance listed in Regulation 3.1 (SRA Practising Regulations 2011) applied to him.

13. The Adjudicator later determined that Regulation 3.1(n) applied to the Appellant, as he had been made subject to a judgment which involved the payment of money (he had been fined £1,500.00). The Appellant did not declare the conviction. The Appellant was granted a practising certificate free from conditions.

14. On 14 May 2018, the Appellant made a self-report to the Respondent regarding the conviction.

15. In December 2018, the Appellant made a further application to renew his practising certificate, however he did not disclose the conviction or fine. The Appellant was again granted a practising certificate free from conditions.

16. On 18 January 2019, the Respondent wrote to the Appellant seeking his explanation by way of an Explanation with Warning letter.

17. On 27 March 2019, the Appellant responded, stating he did not notify the Respondent as he considered the conviction to have been spent.

18. On 3 February 2020, an Investigation Officer provided the Appellant with a notice and bundle. A Supervision Report was prepared dated 20 February 2020, in which it was alleged that: "by virtue of Mr Das being convicted at Uxbridge Magistrates Court on 25 November 2015 of driving with excess alcohol, he has failed to behave in a way which maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011"; and "by not notifying the SRA promptly of his conviction at the material time or upon renewing his practising certificate in March 2018, he failed to achieve Principle 7 of the SRA Principles 2011 and Outcome 10.3 of the SRA Code of Conduct 2011".

19. The Supervision Report requested the Adjudicator to "make a finding against Mr Das"; "to direct Mr Das to pay a financial penalty of £2,000.00", and to order costs.

20. On 23 June 2020, the Appellant's legal representative responded to the Supervision Report. The representations are summarised below:

21. In March 2015, the Appellant was diagnosed with certain debilitating health issues *(known to the Tribunal)*. Since that time, he has not practised as a solicitor in England and Wales.

22. In December 2015, the Appellant was offered the role of Global General Counsel and Senior Vice President with a NYSE company in India. He left the UK to take up this role and only returned in 2018 to defend divorce proceedings.

23. While making applications for car insurance, he realised his conviction still had implications and wondered if his conviction would have regulatory implications. He immediately contacted the SRA.

24. There were no aggravating circumstances to the offence. The Appellant contested that the offence was serious and aggravated, and noted that the court had showed him leniency. The Appellant had received legal advice which stated the offence would be spent after 12 months and he therefore did not believe he had to inform the SRA.

25. The Investigation Officer had not accounted for the Appellant's guilty plea and mitigation. The Appellant's representative submitted medical evidence in the form of occupational health records, and a report from a consultant psychiatrist dated 19 August 2015.

26. On 5 August 2020, the Appellant's representative submitted further representations.

27. On 6 August 2020, the Investigation Officer considered the further representations and confirmed in a Memorandum dated 6 August 2020 that the representations did not change their recommended decision.

28. On 28 August 2020, the matter was considered by an Adjudicator. The Adjudicator was asked to make a finding in respect of the allegations; to direct that the Appellant paid a financial penalty and to publish this; and to direct that the Appellant paid the costs of investigating the matter.

29. The Adjudicator stated at paragraph 4.1 of the Decision that they had considered the Supervision Report dated 20 February 2020 and the appended documents:

- The Decision set out the background at paragraphs 4.2 to 4,11
- The Appellant's representations at paragraph 4.12;
- The legal and regulatory framework at paragraph 5;
- The Adjudicator's reasons at paragraph 6;
- The decision on costs at paragraph 7;
- The decision on publication at paragraph 8.

30. The Adjudicator made the following order: to direct the Appellant to pay a financial penalty of £2,000.00; to publish the financial penalty; and to direct the Appellant to pay £600 in relation to the SRA's costs of investigating the matter.

31. On 2 September 2020, the Appellant's legal representative was notified of the Decision by email.

The Appellant's Appeal

32. In his written grounds of appeal dated 11 October 2020 the Appellant appealed against the decision of an Adjudicator dated 28 August 2020.

33. It was submitted that the Adjudicator:

- Failed to give adequate weight to the Appellant's acknowledged debilitating health issues in respect of Allegation 1 and
- Failed to give any weight to those issues in respect of Allegation 2.
- Moreover, while it was right that the Appellant's failure to inform the SRA of his conviction gave rise to the effluxion of time, the failure to give weight to his ill-health meant that there was no attempt to weigh that passage of time as a mitigating factor,
- The Adjudicator's failure to give effect to the Appellant's state of health and mitigation was reflected in her decision to impose the maximum fine. Had proper consideration been given to his circumstances, neither Allegation would have been found proved.

34. Mr Williamson expanded his argument as follows:

34.1 The SRA in its Enforcement Strategy at 2.2 "*Factors which affect our view of seriousness"* sets out that: *"We recognise the stressful circumstances in which many solicitors and firms are working and are aware that the health of the individual at the time of the events may have a significant bearing on the nature and seriousness of the alleged breach."*

34.2 Allegation 1: In her reasoning, the Adjudicator had simply set out (at 6.2): *'While I can sympathise with Mr Das' health issues [sic], we have to consider the impact of any solicitor, who is an officer of the court and expected to comply with the law, being convicted of breaking the law. The public do not expect to see solicitors being convicted of criminal offences, when those solicitors are predominantly in place to advise, assist and maintain legal principles.'*

34.3 Having set out the well-known dicta from Bolton v Law Society, the Adjudicator continued (at 6.5): *"Mr Das' "fortunes" do not take precedence over the whole of the profession. The "price" of the profession is that we expect solicitors to maintain standards that we do not expect of all members of society. The SRA will always investigate criminal convictions whether or not these relate to the individual's practice, given the importance of rule-abiding behaviour and public confidence in those involved*

in the overall effectiveness of our criminal justice system. Therefore, it is essential that solicitors do not find themselves in trouble with the law as this taints the trust placed in all solicitors. The simple fact is Mr Das broke the law, he drove while over the permitted limit of alcohol consumed. He was in a crash, which luckily did not involve any serious casualties and he was convicted for his actions. The public expect, and are entitled to expect, that solicitors will comply with the law and with Mr Das not doing so, he has breached SRA Principle 6."

34.4 Mr Williamson Q.C. submitted that the Adjudicator failed to give any adequate weight to the Appellant's health condition and it was not right for the Adjudicator to have said that *every* criminal conviction for drink-driving necessarily breaches SRA Principle 6 and Mr Williamson cited by way of example the first instance decision in SRA v Dudley SDT Case 11208-2013 the circumstances of which were that the Respondent in that case had two convictions for drink drive offences but had only been referred by the Regulator to the Tribunal after second such offence.

34.5 Mr Williamson submitted that in the Appellant's case the Adjudicator failed to refer to the SRA's guidance on drink-driving and therefore failed to weigh any of the features recognised by the SRA as aggravating or mitigating the situation and in his circumstances at the time, it was submitted therefore that Principle 6 was not breached.

34.6 In his oral submissions before the Tribunal Mr Williamson added to the grounds with matters which had not previously been reduced to writing and he submitted that in the light of the decision of the High Court in Ryan Beckwith v SRA [2020] EWHC 3231 (Admin) the Regulator should consider whether an investigation engages a solicitor's right to a private and family life under Article 8 under the Human Rights Act 1998 and that in accordance with matters set out in Beckwith alleged breaches had to be closely tied the guidance set out in the Solicitor's Handbook. This required an exercise in judgment on behalf of the Regulator and not to assume that every transgression of the criminal law would engage a breach of the Principles. As support for this contention Mr Williamson quoted paragraph 54 of the Beckwith judgment:

> *"There can be no hard and fast rule either that regulation under the Handbook may never be directed to the regulated person's private life, or that any/every aspect of her private life is liable to scrutiny. But Principle 2 or Principle 6 may reach into private life only when conduct that is part of a person's private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession (Principle 6). Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook. In this way, the required fair balance is properly struck between the right to respect to private life and the public interest in the regulation of the solicitor's profession. Regulators will do well to recognise that it is all too easy to be dogmatic without knowing it; popular outcry is not proof that a particular set of events gives rise to any matter falling within a regulator's remit."*

34.7 In the instant case Mr Williamson submitted that the Adjudicator had taken a dogmatic approach in concluding that the Appellant had breached Principle 6 with respect to Allegation 1 and this conclusion had been not supported by the matters set out in the Handbook to which she should also have addressed her mind.

34.8 The Adjudicator had erred in concluding that the fact of conviction gave rise to a determination that the Appellant had automatically breached Principle 6 of the Principles without setting any reasoned basis why his conduct had offended Principle 6. This was a 'blanket approach' akin to strict liability and which smacked of 'mission creep' on the part of the Regulator.

34.9 Mr Williamson also drew the Tribunal's attention to paragraphs 43 and 44 of Beckwith:

> "*We consider the same general approach must also apply when determining the scope of Principle 6. The content of Principle 6 must be closely informed by careful and realistic consideration of the standards set out in the 2011 Code of Conduct. Otherwise Principle 6 is apt to become unruly. There is a qualitative distinction between conduct that does or may tend to undermine public trust in the solicitor's profession and conduct that would be generally regarded as wrong, inappropriate or even for the person concerned, disgraceful. Whether that line between personal opprobrium on the one hand and harm to the standing of the person as a provider of legal services or harm to the profession per se on the other hand has been crossed, will be a matter of assessment for the Tribunal from case to case, but where that line lies must depend on a proper understanding of the standards contained in the Handbook" (para.43).*
>
> *"The submission of the SRA in this appeal was that the standard to be derived from the Handbook relevant to the conduct alleged against the Appellant was that the public would have a "...legitimate concern and expectation that junior members [of the profession or of staff] should be treated with respect ... "by other members of the profession. We accept that submission; in our view it is a reasonable formulation having regard to the "outcomes" and "indicative behaviours" set out in Chapter 11 of the 2011 Code of Conduct. Seriously abusive conduct by one member of the profession against another, particularly by a more senior against a more junior member of the profession is clearly capable of damaging public trust in the provision of professional services by that more senior professional and even by the profession generally" (para.44).*

34.10 The question in the case of the Appellant was whether his conviction for drink drive would truly affect the perception of the reputation of the solicitors' profession in the eyes of the public or affect only his personal reputation? Fundamentally, it was Mr Williamson's contention that a conviction for drink-driving, without evidence to show how this related to the Appellant's practise did not engage Principle 6 of the Principles as an inevitability.

34.11 Mr Williamson also cited the case of SRA v Dugdale SDT Case 11819 -2018. In this case, which had also involved a drink drive conviction, Mr Williamson said it was more reasonable to determine that the Respondent had breached Principle 6 of the Principles as she had a been a solicitor who working in the area of criminal law advising members of the public on road traffic offences. In those circumstances the public would not expect a solicitor to fall foul of the criminal law. This was in marked contrast to the Appellant whose area of practise did not involve him in advising the public on matters of criminal law as he practised in a completely different area of the law: it was difficult therefore to see how he had breached Principle 6 in such circumstances.

34.12 Additionally, had the public been aware, as the Adjudicator was, of the Appellant's crisis of health then it was likely that the event would have been seen for what it was, namely, a personal issue. The fact of the conviction and the surrounding circumstances were no doubt very serious but given the Appellant's particular circumstances it was not something which would tarnish the reputation of the profession as a whole.

34.13 With respect to Allegation 2 Mr Williamson submitted the real question was whether the Appellant should have informed the SRA of his conviction sooner than he did and Mr Williamson referred the Tribunal to the Adjudicator's reasoning at paragraphs 6.6 and 6.7 of the decision:

> *"Mr Das was ordered by a court to pay a fine. Regulation 3.1(n) is about financial judgments. There are exceptions to regulation 3.1(n) which include where the judgment has been paid and evidence has been provided to the SRA of the same. I have not seen evidence that Mr Das paid the fine in order to use this exception.*
>
> *6.6 Mr Barton has said the Court's sanction of a fine does not fall within Regulation 3.1 (n) of the SRA Practising Regulations. Whether or not Mr Das is subject to that Regulation is a moot point. All I need to consider is whether Mr Das should have informed the SRA of his conviction sooner than he did. Mr Das states he was advised by his barrister that the conviction would be spent after 12 months. This does not explain why that absolves Mr Das of his regulatory obligations. The SRA is primarily concerned with the imposition of a conviction as this can affect the trust placed in the provision of legal services. The spent status may have relevance to publication to ensure there are no breaches of the Rehabilitation of Offenders Act 1974, but it has no relevance with regard to Outcome 10.3 or Principle 7. While the SRA may not concern itself with low-level breaches in terms of seriousness (for example, actions that result in fixed penalty notices, or minor motoring offences) it does take seriously convictions for drink-driving.*
>
> *6.7 Mr Das is not newly qualified. He has been admitted for long enough to know the professional and personal standards expected of a solicitor and to be familiar with his regulatory obligations. Outcome 10.3 places a mandatory obligation on a solicitor to inform the SRA of any material changes to their status. A criminal conviction is a material change. That obligation existed regardless whether Mr Das' barrister advised him when the conviction would be spent. I find Mr Das failed to achieve Outcome 10.3 and breached SRA Principle 7."*

34.14 In his written submissions Mr Williamson submitted that the Adjudicator failed to consider the separate limbs of the allegation i.e. the Appellant had failed at the material time *or* upon renewing his practising certificate. The two time periods were both ones when the Appellant was suffering from health related issues, the nature of which was known to the Adjudicator and the Tribunal.

34.15 In particular, at the time of renewal in March 2018, the Appellant was shortly afterwards declared to lack capacity to conduct legal affairs (this was following his return from India). However, very shortly after that, in May 2018, he informed the SRA

of the situation. In Mr Williamson's submission the Appellant was not to be punished for following erroneous advice regarding spent convictions. The Appellant had reported as soon as he was in a position to do so i.e. when he was in better health and when he had a correct understanding of the legal position with respect to spent convictions.

34.16 In Mr Williamson's submission such an action was consistent with the Appellant's account and the Adjudicator failed entirely to consider his health during either period and did not consider the effect of his leaving the country shortly after the conviction and no longer practising as a solicitor in this country.

34.17 In such circumstances the Adjudicator erred in failing to adequately consider the matter and finding that the Appellant had breached Principle 7 or Outcome 10.3.

34.18 Mr Williamson said that in the SRA Handbook there were examples of what was covered by Outcome 10.3 but that there was nothing in the Outcomes and Indicative behaviours which on their face required the Appellant to notify the Regulator of a criminal conviction of the type applicable to the Appellant.

34.19 Mr Williamson also referred the Tribunal to the Regulation 3.1 of the SRA Practising Regulations 2011. On an initial application for a practising certificate or on an application for renewal, the SRA has a discretion to impose conditions on the certificate, or to refuse the application *'following certain events'* which were listed in Regulation 3.

34.20 Mr Williamson said that the Adjudicator had misdirected herself with respect to her understanding of Regulation 3.1(n) as this applied only to judgments for civil indebtedness and not to the payment of fines in criminal convictions. Further, Regulation 3.1 also gave an indication of the level of seriousness the Regulator attached to various events for example being charged with an indictable offence *(3.1(o))* and conviction for an indictable offence and certain regulatory matters *(3.1(p))*.

34.21 In Mr Williamson's submission there is nothing in Regulation 3.1 which required a solicitor to declare a criminal offence which did not fall within the ambit of Regulation 3.1(o) and 3.1 (p) when applying for a Practicing Certificate.

34.22 Whilst the Appellant had been convicted of a summary only offence which he was not obliged to report Mr Williamson conceded however that had the Appellant been convicted of a summary matter which had been related to sexual assault or harassment then the issue would be somewhat different and it was likely that these were reportable matters as the role of a solicitor brought one into contact with members of the public who should be protected.

34.23 Fundamentally, it was Mr Williamson's contention that the reporting of a conviction not specifically set out in Regulation 3 was a matter of judgment dependent upon the seriousness of the conviction.

The Respondent's Response

35. Mr Mulchrone, for the Respondent, submitted that the Tribunal should not interfere with the Adjudicator's decision, and her evaluation of the evidence before her, unless it was satisfied that the conclusions reached were outside the bounds within which reasonable disagreement was possible, having regard, in particular, to the experience and expertise of the Regulator in determining the application of its own rules. He also submitted that it was the Adjudicator's decision which was under appeal, and it was this decision which the Tribunal should review in accordance with the approach set out in Arslan.

36. Mr Mulchrone reminded the Tribunal that Principles 6 and 7 were two of the ten mandatory principles applicable to all solicitors, and required that a solicitor must behave in a way that maintains the trust the public places in them and in the provision of legal services *(Principle 6 of the Principles)* and solicitors must comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner *(Principle 7 of the Principles)*.

37. The relevant mandatory Outcomes from the Code required that solicitors notify the SRA promptly of any material changes to relevant information about them including serious financial difficulty, action taken against them by another regulator and serious failure to comply with or achieve the Principles, rules, outcomes and other requirements of the Handbook (Outcome 10.3).

38. With respect to the Appellant's grounds of appeal Mr Mulchrone said that the Adjudicator clearly considered and gave due weight to the Appellant's health conditions and the medical documentation supplied.

39. The Adjudicator made the following references to the Appellant's health in the Decision:

- Paragraph 4.12 (1st bullet): the Adjudicator referred to the Appellant's representations and set out the Appellant's health issues in detail, including in respect of his mental health;

- Paragraph 4.12 (10th bullet): the Adjudicator referred to the Appellant's representation that the SRA's Investigating Officer had recommended the maximum penalty with no regard for the Appellant's mitigation and health issues.

- Paragraph 4.12 (12th bullet): the Adjudicator explained that the documentation had been provided in respect of the Appellant's health;

- Paragraph 6.1: the Adjudicator stated that the Appellant "*has provided extensive representations regarding his health conditions and his mental health including explanations as to why he did not disclose the conviction to the SRA in 2015";*

- Paragraph 6.2: the Adjudicator stated: "*While I can sympathise with Mr Das' health issues, we have to consider the impact of any solicitor, who is an officer of the court and expected to comply with the law, being convicted of breaking the law. The public do not expect to see solicitors being convicted of criminal offences, when*

those solicitors are predominantly in place to advise, assist and maintain legal principles. "

- Paragraph 6.10 (5th bullet): the Adjudicator stated: *"....While I can see that Mr Das has serious health issues, and in his representations he says the court showed him leniency, he has not explained how the health issues impacted his ability to report the matter to the SRA. I therefore find no persuasive arguments to reduce the basic penalty of £2,000".*

40. Mr Mulchrone said that the Appellant's documentation regarding his health conditions was therefore considered carefully and in detail by the Adjudicator and he submitted that it was plain that adequate weight was given to the health conditions in the context of a conviction.

41. The Adjudicator determined at paragraph 6.5 of the Decision: *"The simple fact is that Mr Das broke the law, he drove while over the permitted limit of alcohol consumed. He was in a crash, which luckily did not involve any serious casualties and he was convicted for his actions."* It was submitted that the Adjudicator's conclusions were wholly reasonable and could not fairly be described as wrong.

42. With respect to the Appellant's assertion that the Adjudicator failed to refer to the SRA's guidance on drink-driving. Mr Mulchrone said that the SRA's *"topic guide on driving with excess alcohol convictions"* was contained within the bundle provided to the Adjudicator. Whilst there is no express reference to this document, there was nothing in the Decision to suggest that the Adjudicator did not consider the topic guide as part of its review of the whole bundle before it. Similarly, there was nothing in the Decision which suggested that the Adjudicator automatically considered as a matter of course that every criminal conviction for drink driving breaches Principle 6 of the SRA Principles 2011.

43. Mr Mulchrone said that there was no requirement for the Adjudicator to refer to every document she had reviewed. The Adjudicator clearly considered the Appellant's mitigation, as detailed at paragraph 6.10 (final paragraph) of the Decision, in which the Adjudicator stated: *"The guidance suggests a discount for early admission: Mr Das has made no admissions. Or early remedying of the harm: Mr Das took over two years to contact the SRA. Or the removal of any benefit: Mr Das did not benefit from his misconduct. While I can see that Mr Das has serious health issues, and in his representations he says the court showed him leniency, he has not explained how the health issues impacted his ability to report the matter to the SRA. I therefore find no persuasive arguments to reduce the basic penalty of £2,000".*

44. In Mr Mulchrone's submission the first instance decision of Dudley to which Mr Williamson had referred the Tribunal was something of an outlier from which only limited assistance and no point of principle could be derived. Drink-drive is always serious and in the Appellant's case there had been a collision: Mr Mulchrone said that this type of behaviour clearly undermined the reputation of the Appellant and the reputation of the profession in the eyes of the public thus breaching Principle 6 of the Principles. Objective professional standards must be interpreted by the relevant professional tribunal with reference to the proven facts and a finding that Principle 6 of

the Principles had been breached did not require evidence of actual public outrage, or media reporting. It was a notional objective standard.

45. In the case of Dugdale the Tribunal treated the Respondent's conviction for a drink driving offence as a serious matter and a breach of Principle 6 of the Principles and fined the Respondent in that case £15,000.00. However, Mr Mulchrone said that such decisions were of limited utility as each case turned on its own facts.

46. In Mr Mulchrone's submission the decision in Beckwith did not provide authority for the contention that a conviction for an offence of drink driving could not provide a basis for a finding a breach of Principle 6 of the Principles.

47. Mr Mulchrone said that whilst the Tribunal must have careful regard to the Handbook, as reinforced in Beckwith this was only one source to which the Tribunal should have reference and the Tribunal should use its own judgment. The Tribunal would have regard to the Principles and the Code of Conduct. Ill- health could not be used to excuse the Appellant's behaviour either with respect to the fact of the conviction and his delay in failing to disclose the conviction to the Regulator.

48. With respect to Allegation 2 and the findings that the Appellant had breached Principle 7 of the Principles and failed to achieve Outcome 10.3, Mr Mulchrone said that the Adjudicator's reasoning was unimpeachable. The Appellant had been well enough to take up a high level post in India and had therefore been well enough to comply with his obligations to his Regulator. The matters set out in Regulation 3.1 was clearly non exhaustive and there was no reason to suppose that 3.1(n) was limited to civil judgments only as suggested to the Tribunal by Mr Williamson. There was an obligation upon the Appellant to report his conviction to the Regulator.

49. The Appellant stated at paragraph 9 of the Grounds of Appeal: "*The Adjudicator failed to consider the separate limbs of the allegation - that he failed at the material time or upon renewing his practising certificate. The two time periods both were ones during which Mr Das was suffering from mental ill-health. In particular, at the time of renewal in March, Mr Das was shortly afterwards declared to lack capacity under the Mental Health Act. Yet, very shortly after that, in May 2018 he informed the SRA of the situation. Such an action is consistent with his account. The Adjudicator has entirely failed to consider his mental health during either period nor have they considered the effect of his leaving the country shortly after the conviction and no longer practising as a solicitor in this country".*

50. With respect to this ground Mr Mulchrone said that it was clear from paragraph 6.10 of the Decision the Adjudicator was not satisfied that the Appellant had demonstrated how his health issues had impacted his ability to report his conviction to the SRA and in Mr Mulchrone's submission the Adjudicator had plainly considered and given adequate weight to the Appellant's health during both relevant periods (at the time of the conviction and on his applications for practising certificates).

51. Mr Mulchrone noted that there was no standalone appeal against sanction and observed that the Adjudicator did not impose the maximum fine but the maximum financial penalty which was available to her. If, as in the case of Dugdale, the matter had been referred to the Tribunal the Appellant could have received a much higher fine and the

sanction the Appellant did receive from the Adjudicator was not an inappropriate sanction.

52. Mr Mulchrone reminded the Tribunal that in Adesemowo v Solicitors Regulation Authority [2013] EWHC 2020 (Admin) the Court held that a tribunal's reasons did not need to be elaborate or lengthy, but should be sufficiently detailed so as to inform the parties of the panel's conclusions on the main issues and why it had reached the conclusions it did. The reasons should be sufficient to enable an appellate court to ascertain whether the panel had committed an error of law.

53. Mr Mulchrone did not accept that the Adjudicator's reasons had fallen short of this standard. The Adjudicator had not been wrong to find there had been breaches of Principles 6 and 7 of the Principles and had made no error of law, fact, or in the application of her discretion in doing so.

54. In light of the legal framework and Arslan Mr Mulchrone submitted that the Tribunal should only interfere with the Adjudicator's decision if it is satisfied by the Appellant that the decision was wrong or that the decision was unjust because of a serious procedural or other irregularity.

55. Mr Mulchrone submitted that there was no such irregularity and no reasonable basis upon which to conclude that the Adjudicator's decision was wrong (as a matter of fact or law).

56. The memorandum of conviction was a self-proving document and absent exceptional circumstances, of which none were present in the Appellant's case, the Tribunal should not go behind the facts found by the Adjudicator and the Tribunal should not embark on an exercise of finding the relevant facts afresh.

57. On matters of fact, the proper starting point for the Tribunal was the findings made by the Adjudicator and the evidence before the Adjudicator. If satisfied for good reason and on the balance of probabilities that a finding of the Adjudicator was wrong, or that the decision was unjust because of a serious procedural or other irregularity in the proceedings the Tribunal was entitled to reach a different conclusion. The Tribunal had to consider whether, on that evidence, the Adjudicator was justified in making the factual findings that she did and Mr Mulchrone submitted that she was.

58. In summary, it was Mr Mulchrone's position that the Tribunal ought not to interfere with the Adjudicator's evaluation of the evidence unless it was satisfied (by the Appellant) that the conclusions the Adjudicator reached lay outside the bounds within which reasonable disagreement is possible, having regard, in particular, to the experience and expertise of the Respondent in determining the application of its own rules.

The Tribunal's Decision on the Appeal

59. The Tribunal applied the approach endorsed by the High Court in the Arslan case as the correct approach to an appeal under section 44E. The Tribunal applied the civil standard of proof to the appeal, the balance of probabilities. The Tribunal considered

with care all the material submitted by the parties and had regard to the oral submissions each side had made and to the authorities to which it was referred by both parties.

60. The Tribunal first considered the argument made on the Appellant's behalf that the Adjudicator had failed to give adequate weight to the Appellant's debilitating health issues in making her decision with respect to Allegation 1 and Allegation 2.

61. When reading her decision it was clear to the Tribunal that the Adjudicator had been aware of the nature and degree of the Appellant's state of health at all relevant times pertinent to the case i.e. at the time of the offence and before and after the Appellant's return from India. The requisite material relating the Appellant's health condition had been in the bundle of material before the Adjudicator and as set out in the Respondent's response the Adjudicator had made frequent references to the Appellant's state of health throughout the course of her decision e.g. at paragraph 6.1 of her decision the Adjudicator stated that the Appellant "*has provided extensive representations regarding his health conditions….including explanations as to why he did not disclose the conviction to the SRA in 2015"*.

62. The Tribunal considered that the Appellant's documentation regarding his health conditions was considered carefully and in detail by the Adjudicator and that she had given adequate weight to his health when making her decision. The Tribunal therefore concluded that the Appellant had not discharged the burden of proving on a balance of probabilities that this aspect of the Adjudicator's decision was wrong or unjust because of a serious procedural or other irregularity in the proceedings.

63. Having found that the Adjudicator had given the appropriate weight to the Appellant's state of health the Tribunal did not consider that the Adjudicator unreasonably concluded that the Appellant was responsible for not reporting his conviction to the Regulator at the material time or when he had attempted to renew his practising certificate.

64. A conviction and fine for drink-driving is a serious matter and something of which the Regulator should be made aware. This was a reportable matter which should have been reported promptly. The Adjudicator had not erred in her understanding of Regulation 3.1 as had been suggested and her findings with respect to Allegation 2, that the Appellant had breached Principle 7 of the Principles and failed to achieve Outcome 10.3, were not out-with the bounds within which reasonable disagreement was possible. The Tribunal concluded that there were no grounds to conclude the Adjudicator's decision was wrong, and no serious procedural or other irregularity which meant the Adjudicator's decision should be quashed with respect to this aspect of her decision.

65. With respect to a potential breach of Principle 6 of the Principles the Tribunal had regard to the decision in Arslan and the matters set out at paragraph 39 of the judgment as follows:

> *"… the Tribunal should not embark on an exercise of finding the relevant facts afresh. On matters of fact the proper starting point for the Tribunal in this case was the findings made by the adjudicator and the evidence before the adjudicator. The Tribunal had to consider whether, on that evidence, the adjudicator was justified in making the factual findings that he did."*

66. In the instant case the Tribunal considered that the reasoning given by the Adjudicator as to why there had been a breach of Principle 6 with respect to Allegation 1 had been inadequate and gave the appearance that the Adjudicator had automatically considered as a matter of course that every criminal conviction for drink-driving breached Principle 6 of the SRA Principles 2011:

> *"….The simple fact is Mr Das broke the law (emphasis added), he drove while over the permitted limit of alcohol consumed. He was in a crash, which luckily did not involve any serious casualties and he was convicted for his actions. The public expect, and are entitled to expect, that solicitors will comply with the law and with Mr Das not doing so, he has breached SRA Principle 6"* (paragraph.6.5 of the Adjudicator's decision).

67. The Tribunal accepted that the Adjudicator's reasons did not need to be elaborate or lengthy, but should be sufficiently detailed so as to inform the parties of the panel's conclusions on the main issues and why it had reached the conclusions it did. In this case the reasons for finding a breach of Principle 6 of the Principles were not sufficient to enable the Tribunal, as the appellate court, to ascertain whether the Adjudicator had correctly identified why the Appellant's actions had been a breach of Principle 6.

68. The circumstances underpinning the conviction were serious i.e. that there had been a collision; he suffered serious injury which required his admittance to hospital and that the Appellant had provided two samples in which the level of alcohol in his breath were both high (*the first was 64ug/100ml of breath and the second was 66ug/100ml breath. The prescribed limit in England & Wales is 35ug/100ml breath)* and that he had been banned from driving for 16 months and fined £1,500.00.

69. The Tribunal considered that with respect to Allegation 1 a reasonable Adjudicator would have made the necessary segue between the fact of the conviction, the circumstances of the conviction (set out above) and why this represented a breach of Principle 6. In this case the Adjudicator had not done so.

70. To this limited extent, in an otherwise well-reasoned decision, the Tribunal considered on the balance of probabilities that the Adjudicator's approach to determining there had been a breach of Principle 6 had been wrong and it quashed this aspect of the decision.

71. The Tribunal upheld the Adjudicator's decision with respect to the failure to report the conviction in Allegation 2 (i.e. breach of Principle 7 and failure to achieve Outcome 10.3) and the costs of £600.00.

72. With respect to sanction the Tribunal did not consider £2,000 to be a disproportionate or unreasonable fine, however, on the basis of its finding with respect to the Principle 6 breach the Tribunal substituted a financial penalty of £660.00 which it considered sufficient to mark the seriousness of the Adjudicator's findings with respect to her decision in Allegation 2.

73. Finally, the Tribunal noted that the Appellant had lodged two testimonials which spoke to the positive qualities of the Appellant as a lawyer. The Tribunal was not taken to the testimonials by the Mr Williamson in his submissions and they were not referred to in the grounds of appeal.

74. The Tribunal nonetheless reviewed this material, as it did all the material before it, but given its task as a court of review it was not able to place much weight upon this material in reaching the decision it made.

Costs

75. The Tribunal having announced its decision on the Appellant's appeal next considered the question of costs and indicated to the Appellant and Respondent that in the light of its decision with respect to the appeal, it would, subject to submissions on the point be minded to make no order for costs with each party to bear its own costs.

76. Having had time to take instructions neither Mr Williamson for the Appellant nor Mr Mulchrone for the Respondent made an application for costs and accordingly the Tribunal made no order for costs in this case.

77. **Statement of Full Order**

The Tribunal Ordered that the appeal of the Appellant ORIJIT DAS under Section 44(E) of the Solicitors Act 1974 (as amended) be ALLOWED IN PART.

The Tribunal Ordered that the Adjudicator's decision with respect to her finding the Appellant breached Principle 6 of the SRA's Principles 2011 (as set out in Allegation 1) and the financial penalty of £2000.00 be hereby revoked with immediate effect.

The Tribunal Substituted a financial penalty of £660.00

The Tribunal Affirmed the remainder of the Adjudicator's decision dated 28 August 2020 (including the decision on costs).

The Tribunal made no order for costs.

Dated this 31st day of March 2021
On behalf of the Tribunal

B. Forde
Chair