SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12225-2021

BETWEEN:

SHAHIDA MOHAMED Appellant

and

SOLICITORS REGULATION AUTHORITY LTD Respondent

Before:

Mr P S L Housego (in the Chair)
Mrs C Evans
Dr A Richards

Date of Hearing: 21 June 2022

Appearances

Valerie Charbit, Counsel, Red Lion Chambers, 18 Red Lion Court, London, EC4A 3EB instructed by Evan Wright, solicitor of JMW Solicitors LLP, 1 Byrom Place, Spinningfields, Manchester, M3 3HG for the Appellant.

Andrew Bullock, Counsel in the employ of the Solicitors Regulation Authority Ltd., of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Respondent.

APPEAL JUDGMENT

Executive Summary

1. The Appellant, Ms Shahida Mohamed, exercised her right of appeal under section 46 of the Solicitors Act 1974 (as amended) against a decision of an Adjudicator of the Solicitors Regulation Authority Limited ("the SRA") dated 21 June 2021.

2. The Adjudicator's decision related to certain breaches of the SRA Accounts Rules 2011 ("SARs") which applied to the Firm's Client Account and he disqualified Ms Mohamed from holding any of the following positions: Head of Legal Practice, Head of Finance and Administration, and a manager under section 99 of the Legal Services Act 2007.

3. The Tribunal refused the appeal (including an application to admit fresh evidence) and affirmed the Adjudicator's decision.

- Burden and standard of proof
- Summary of Adjudicator's decision
- Factual background
- The Adjudicator's reasons
- Grounds of appeal
- Respondent's response
- Tribunal's decision
- Costs

Documents

4. The Tribunal considered all the documents in the case which were contained in an agreed electronic bundle.

The Legal Framework

5. 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.

6. On determining an appeal under these provisions, the Tribunal may:

   (a) affirm the Adjudicator's decision in whole or in part;

   (b) quash the Adjudicator's decision in whole or in part;

   (c) substitute for all or part of the Adjudicator's decision another decision of a kind that the Adjudicator could have taken.

   (d) remit a matter to the SRA (generally, or for determination in accordance with a finding made or direction given by the Tribunal).

7. 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:

- The appeal is a review of the disputed decision, not a re-hearing, and the Tribunal should apply by analogy the rules relating to appeals contained in the Civil Procedure Rules. The Tribunal should therefore only interfere with a 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.

- On matters of fact the proper starting point for the Tribunal is the findings made by the Adjudicator and the evidence before the adjudicator. The Tribunal must consider whether, on that evidence, the Adjudicator was justified in making the factual findings that they did.

- If, as in this case, the decision of the Adjudicator was based on written submissions the Tribunal is in as good a position as the Adjudicator to assess the evidence and draw appropriate inferences from it; and there was nothing to prevent the Tribunal, if satisfied for good reason that a finding of the adjudicator was wrong, from reaching a different conclusion.

- The Tribunal should not generally receive new evidence that was not before the original decision-maker, although it may do so if justice requires it. If, however, 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

8. 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.

9. The Tribunal was not making findings of fact (for which the standard of proof would be the civil standard of "more likely than not", but, upon hearing the submissions of both Appellant and Respondent, making an evaluative assessment of whether, on the basis of the material before them, the Adjudicator's decision was wrong / unjust.

Summary of the Adjudicator's decision

10. On 21 June 2021 an Adjudicator of the SRA considered the following allegations made against Ms Mohamed that:

> "1.2.1 On dates including the approximate period 1 November 2015 to 31 May 2018, Ms Mohamed caused or allowed client money, in respect of unpaid professional disbursements, to be held in the firm's office bank account, causing a minimum cash shortage in the client bank account of approximately £214,554.86.
>
> In doing so, she breached Principles 6, 8 and 10 of the SRA Principles 2011 ("the Principles") and Rules 17.1(b)(ii) and 20.1 of the SARs.

1.2.2 On dates including the approximate period from 25 April 2017 to 31 May 2018, those funds were retained in the firm's office account in circumstances when she knew, or ought to have known, that they were being retained in that account in breach of Rule 6.1 of the SAR. She therefore also breached Principle 2 of the Principles in relation to the retention of those funds during this period.

1.2.3 By failing to promptly rectify a minimum cash shortage on the client account that existed for the approximate period of November 2015 - May 2018, Ms Mohamed breached Principles 8 and 10 of the Principles and Rule 7 of the SAR.

1.2.4 Between approximately 31 May 2018 and 16 August 2019, Ms Mohamed had caused or allowed a client account shortage in the approximate value of £25,801.90 to exist in the books of account. In doing so, she breached Principles 6, 8 and 10 of the Principles and Rules 17.1(b)(ii), 20.1 and 29.1 of the SAR.

In addition, allegations 1.2.2, 1.2.3 and 1.2.4 were advanced on the basis that Ms Mohamed's conduct was reckless."

11. The Adjudicator found all allegations proved, save in relation to allegation 1.2.2, the Adjudicator did not find that Ms Mohamed acted with a lack of integrity, nor did they find recklessness proved.

12. The Adjudicator's Decision was to disqualify Ms Mohamed from holding any of the following positions pursuant to section 99 of the Legal Services Act 2007:

- Head of Legal Practice.
- Head of Finance and Administration.
- A manager.
- To publish the above disqualification
- To direct that Ms Mohamed should pay the SRA's costs of £1,350 of investigating this matter.

13. The Adjudicator decided not to disqualify Ms Mohamed from being an employee of a licensed body.

Factual Background

14. Ms Mohamed was formerly a non-lawyer manager of TPC Solicitors, a licensed body undertaking personal injury work from offices in Manchester ("the Firm"). Her former co-partner, Ms Gilmour is a solicitor.

15. On 20 June 2018 two Forensic Investigation Officers employed by the Respondent ("FIOs") commenced an inspection of the books of account and other documents of the Firm. That report confirmed that, at 31 May 2018, a minimum cash shortage of £214,554.86 existed on the client account. The largest part of that shortage (£212,988.36) had arisen because the Firm had transferred monies from client account to office account in respect of professional disbursements but then withheld payment

to the supplier. Throughout the relevant period (31 October 2015 to 31 May 2018) there were insufficient funds within the firm's office account to meet the total liabilities caused by the unpaid cheques.

16. Ms Mohamed did not deal with the Firm's accounts and was not therefore the person responsible for the failure to pay suppliers. However, the issue was identified within the Firm's accountant's report for the period 1 November 2015 to 25 April 2017, which was dated 25 April 2017. Despite this, the shortfall was not replaced in full until October 2018 (although Ms Mohamed herself did make a payment of £30,000 into the Client Account in July 2018 the balance of the shortage was thereafter replaced by a payment of £200,000 from a Ms Majid on 4 October 2018. Ms Majid joined the Firm as a partner in November 2018).

17. A second Report, dated 26 September 2019, was subsequently prepared which confirmed the existence of a minimum continuing shortage on the client account of £25,801.90 on 16 August 2019. The majority of this was attributable to an unexplained shortage of £22,907.80 which the Firm attributed to historical mis-postings. However, a further £2,894.10 related to unpaid professional disbursements. This included five transfers between client account and office account totalling £932 which were made between 26 September 2018 and 29 November 2018.

18. The FIO undertook a third inspection in August 2020 which confirmed that there was no current shortage on the client account, the bank reconciliation for 31 October 2020 balanced and the Firm had updated its processes for paying professional disbursements. Since the FIO was unable to identify any further breaches of the SARs at that stage, the inspection concluded without the preparation of a Report, all being in order.

19. The concerns identified within the two earlier FIO Reports were investigated in correspondence with the Respondent. Ms Mohamed had professional representation throughout the course of that investigation. She was also given the opportunity to comment on the contents of the Notice before it was considered by the Adjudicator, which she took. In essence, Ms Mohamed denied misconduct throughout on the basis that she had agreed with Ms Gilmour that Ms Gilmour would be responsible for all financial matters. She had rectified the cash shortage as promptly as possible (and in the circumstances in a reasonable time frame) on being made aware of its existence.

20. Ms Gilmour was later referred to the Tribunal which approved an Agreed Outcome under which she agreed to be suspended from practice for 18 months and thereafter subject to a restriction order.

The Adjudicator's Reasons *[paragraph 6 of his decision]*

21. The Adjudicator accepted that Ms Mohammed did not become aware of the issue until the forensic investigation. However, he found:

- That she ought to have known that the disbursements were being retained in breach of the SARs if she had been fulfilling and discharging her regulatory obligations as a manager. She was required to have a degree of oversight over the financial affairs of the firm and material financial issues. Given that two qualified accountant's

reports had been provided to the firm, she ought to have familiarised herself with these and the ramifications of their content.

- The Adjudicator found that Ms Mohamed failed to rectify promptly the minimum cash shortage of £214,554.86. This was brought to her attention at the beginning of the forensic investigation which commenced on 20 June 2018.

- While appreciating that Ms Gilmour and Ms Mohamed made payments totalling £30,000 into the firm in July 2018 to replace this, and payments were made to suppliers from the office account in June and July 2018, the remainder of the shortfall being £180,882.86 was not replaced until 4 October 2018. This was a period of three months from when they became aware of it. Whilst he accepted the steps that Ms Mohamed was taking during this time to find a firm with which to merge, a period of three months did not, in his judgment, constitute prompt rectification of the shortfall. During this period, the firm continued to trade and to accept client money.

- In relation to the professional disbursements, the Adjudicator did not agree that these were historic issues. While some did relate to 2016, there were several which related to the final few months of 2018. This was after June 2018 being the date when the firm changed its processes and systems regarding the payment of disbursements.

- Ms Mohamed was required as a manager to ensure an appropriate system was in place for the payment of professional disbursements. She was responsible for ensuring that appropriate systems were in place to achieve regulatory compliance. In addition, she was responsible for any breaches as a manager of the firm. Had she conducted proper oversight of the accounts then she may have identified this issue and been able to remedy it as required by the SARs. By virtue of her failure to properly discharge her obligations, she caused or allowed this shortfall to arise.

- The Adjudicator considered Ms Mohamed's conduct to have been continuous and repeated. He decided that she failed to discharge her obligations as a manager and owner over several years. Her conduct in this regard caused or allowed two client account shortages to arise, one of which was substantial. She also failed to replace the shortage in a time he considered prompt. These shortages arose, at least in part, due to her failure to carry out any degree of financial oversight or enquiry into the firm and its accounts. It was concerning to the Adjudicator that the second shortage arose despite Miss Mohamed stating that the firm had put in place appropriate systems and controls to prevent this occurring again following the first forensic investigation.

22. The Adjudicator gave the following reasons for the sanction he imposed:

- Ms Mohamed in her representations of 11 April 2019 denied all the allegations against her. One of the main reasons was because she sought to rely on an oral agreement that she had with Ms Gilmour. Ms Mohamed did not appear to appreciate or understand the full implications and obligations of being a manager of a law firm.

- She was not able to abrogate responsibility for her regulatory obligations and to assume no responsibility for the financial affairs of her own law firm. It was concerning that she considered that it was possible for a manager to have no responsibility or liability for such issues.

- Based on her current understanding there was a clear risk that she would fail to properly discharge her responsibilities as a manager if she were allowed to continue holding this role in a licensed body and she was unsuitable to hold the roles of HOLP/COLP and HOFA/COFA given the regulatory breaches the Adjudicator found and the comments he had made above about her lack of understanding regarding the role and responsibilities of being a manager. The Adjudicator had no confidence that she would be able to discharge properly the additional responsibilities of a HOLP/COLP and HOFA/COFA.

- Her conduct caused significant harm to the reputation of the profession given the large sums of money involved and the risk posed by this being held outside of the firm's client account for an extended period.

- While he appreciated that the third forensic investigation did not reveal any further shortage, this did not mean that the disqualification order should not be imposed. This was because of the magnitude of her regulatory failings which continued over a prolonged period, coupled with her misunderstanding as to responsibilities of a manager/owner of a law firm.

The Appellant's Appeal

23. Ms Mohamed accepted liability for the identified breaches and her appeal was limited to the sanction only.

24. Ms Mohamed relied on Grounds of Appeal settled first, by Alison Padfield QC, dated 19 July 2021, and additional/complementary grounds settled by Valerie Charbit of Counsel dated 15 June 2022.

Grounds dated 19 July 2021 *(Counsel's numbering adopted)*:

25. *Ground 4(a and b) – Continuous and repeated and failed to replace the shortage promptly*

25.1 The Adjudicator was wrong to conclude that Ms Mohamed's conduct was continuous and repeated. The Adjudicator found that the second shortage arose despite Ms Mohamed saying that the firm had put in place appropriate systems and controls to prevent this occurring again following the first forensic investigation. Ms Mohamed was correct to say that the firm had put in place appropriate systems and controls. This was not a straightforward task, and it took time to work through the historical position and get the accounts into proper order after the original accounting failures came to light. The second shortage was a legacy of the first shortage, and it was wrong to treat it as repetition within the meaning of the guidance.

25.2 The Adjudicator was wrong to say that Ms Mohamed failed to replace the shortage promptly when she had taken immediate steps to replace the shortage. This involved raising capital and she did this as speedily as possible. In all the circumstances, the shortage was replaced promptly.

26. *Ground 4(c) and 4 (d) - fresh evidence contained in a statement dated 19 July 2021*

25.1 Ms Mohamed accepted that in her April 2021 representations to the Adjudicator she had denied the allegations and she had relied on an oral agreement with Ms Gilmour. This had given the impression that she did not appreciate or understand the full implications and obligations of being a manager of a law firm. Ms Mohamed understands that her representations gave this impression, and she therefore provided a statement dated 19 July 2021 *(and later 16 June 2022, see below)* which she asked the Tribunal to consider on this appeal.

26.2 It was submitted that this new information would have had had a material influence on the decision made by the Adjudicator's conclusion that, based on her current understanding, there would be a clear risk that she would fail to properly discharge her responsibilities as a compliance officer or manager of a licensed body.

26.3 Ms Mohamed was wrong to think that her responsibilities could be discharged by relying upon the assurances provided by Ms Gilmour; she understands that this was not a sufficient discharge of her duty as a manager of a licensed body and that it was her responsibility to seek detailed written accounting information so that she could review the firm's position and effectively discharge her responsibilities.

26.4 She recognised her past failings and is ashamed and remorseful. She has worked hard with Ms Majid, now the Firm's HOLP and HOFA, to ensure that the firm has proper controls in place. She had also undertaken training courses to enhance her skills and knowledge including in the management and running of a licensed body and the Accounts Rules.

27. *Ground 4(e), 4(f), 4(g) and 4(h) - Reference to Case Study 3*

27.1 The Adjudicator referred to but did not take proper account of the Guidance. Case study 3 in the guidance *"How we Regulate Non-Authorised Persons"*.

27.2 Case Study 3 reads as follows:

> *'The Head of Finance and Administration of a large, licensed body we regulate improperly transfers significant sums from a client account on several occasions to keep the firm's office account within the overdraft limits set by the firm's owners. If she does not do this, the firm will exceed its overdraft and she will not be entitled to a large performance bonus. The funds are replaced by the firm after our investigation. In view of her seniority and the abuse of her position of trust, we disqualify her from being any type of compliance officer or from being a manager in any firm we regulate. We also decide to fine her £10,000 and publish both decisions.'*

27.3 In the case study, the sanction is disqualification from being any type of compliance officer or being a manager, a £10,000 fine and publication of the decision. The reasons given for the sanction in the case study are her seniority and the abuse of her position of trust.

27.4 There are several aggravating features in the case study which are not present in Ms Mohamed's case:

- The size of the licensed body. A large body has greater resources and the people working in it have access to greater support.
- The person sanctioned is the HOFA.
- She makes the improper transfers herself.
- She does this on several occasions.
- She does this deliberately and for personal gain, i.e. to secure a large performance bonus.

27.5 Ms Mohamed was not fined, but otherwise the sanction is the same. A comparison with the case study indicates that the sanction imposed on Ms Mohamed was too severe.

27.6 For the reasons set out above: the disqualification from being any type of compliance officer or a manager should be removed from the sanction and a lesser penalty imposed in its place such as a rebuke and/or a fine (subject to means). Alternatively, the disqualification as a manager should be removed from the sanction, so that Ms Mohamed is disqualified from being any type of compliance officer but not disqualified from being a manager.

Supplementary/complementary grounds dated 15 June 2022 *(grounds adopt Ms Padfield Q.C's numbering)*

Ms Charbit made the following submissions:

28. *Ground 4(a and b) - Failed to replace the shortage promptly*

28.1 The accounts were found to be completely regularised by October 2020, the SRA financial investigator reported at a third investigation, following an inspection on 12 October, that there was no current shortage on the client account reconciliation on 31 October 2020, and the bank reconciliation on 31 October 2020 balanced.

28.2 Although the accounting position had largely been redressed three months after the first investigation by the SRA by a £200,000 cash injection from a new partner, it is accepted that Ms Mohamed had, until August 2019, allowed the client account shortage to exist although she had injected as much money as she was able from her personal savings (approximately £30,000).

28.3 Ms Mohamed replaced the minimum client account shortage on 4 October 2018. The investigation began on 20 June 2018. For a period of 3.5 months approximately therefore the Firm operated with a shortage of funds. Further the breaches that existed between 31 May 2018 and 16 August 2019 were in part historic *(paragraph 6.21 of the Adjudicator's decision)* and related to a lesser sum of money (£22,907.80 and £2,894.10).

28.4 It was accepted that the breaches overall took place over a lengthy period between 2015 and 31 May 2018 and between 31 May 2018 and 16 August 2019. However, it was submitted that Ms Mohamed's efforts to regularise the position (which were acknowledged by the Adjudicator) and the fact that she was found not to be acting deliberately or recklessly mitigated the breaches.

28.5 The Adjudicator accepted that she was not involved in the running of the accounts department and that she was not involved with the procedures regarding payment of disbursements or managing financial affairs of the firm.

28.6 Her conduct was described by the Adjudicator as continuous and repeated in that she failed to discharge her obligations as a manager and owner over several years. However, Ms Charbit submitted that there is a difference between a manager who continuously and repeatedly, deliberately or recklessly allows a situation to exist, to one that who took no positive action but allows a situation to exist overtime due to a single failure i.e. a lack of knowledge. Whilst the distinction is a fine one, it was submitted it is one which attracts lesser culpability. It was, in effect, one error of omission.

28.7 Whilst Ms Mohamed accepted her responsibilities under the SAR when she was acting as a manager to ensure compliance, it was submitted that once matters were brought to her attention, she took positive steps to regularise the firm's accounts and to educate herself, and that Ms Mohamed acted alongside Ms Majid as a good manager once she realised that the firm's accounts were in breach of the SRA rules. She set about regularising the position as quickly as she could.

28.8 Given the scale of the problem, a complete resolution, to the satisfaction of the SRA's FIO, in a little over 3 months could not be seen as other than prompt. It was unrealistic to suggest that her actions in that regard were not prompt, bearing in mind that she managed to orchestrate a merger and redress the shortage within a period of a little more than three months. Her priority was to minimise the risk to the public, clients, and suppliers and although she did not fully regularise the position until sometime afterwards, there was a considerable backlog to work through and she did so whilst continuing to maintain her other roles within the firm.

29. *Ground 4(c) and 4 (d) - fresh evidence contained in a statement dated 19 July 2021*

29.1 The Adjudicator determined that it was undesirable for Ms Mohamed to act as a manager due to the way she had performed her roles prior to the first investigation and up to the third investigation. However, it was submitted that if the Tribunal considered the training which Ms Mohamed carried out, referred to in her statement dated 19 July 2021 and 16 June 2022 *(see below)*, then this would have a material effect on the decision of whether it was undesirable for her to continue acting as a manager.

29.2 Ms Mohamed's statement referred to the fact that she appreciated the need fully to understand and analyse the accounts regularly and not to rely on the assurances of others. She had engaged in specific training, despite her disqualification on 21 June 2021. Her statement therefore demonstrated insight.

29.3 Ms Charbit said that this information, some of which had been available at the time the Adjudicator reached his decision, had not been brought to his attention by those who then represented Ms Mohamed. This evidence demonstrated that she had had insight and understanding at that time and was not to be viewed as simply blaming Ms Gilmour.

30. *Ground 4(e), 4(f), 4(g) and 4(h) - Reference to Case Study 3*

30.1 The Adjudicator did not take proper account of the SRA guidance *"How we Regulate Non-Authorised Persons"*. The sanction he imposed was too severe. The Guidance says when considering whether to disqualify a person from the role of HOLP and HOFA, Manager or Employee, a person's conduct would bear some or all of the following hallmarks:

- It had caused significant harm.
- It was deliberate pre-motivated, repeated, or reckless.
- Has caused harm to or to the interests of a vulnerable person.
- Was motivated by any form of discrimination.

30.2 Ms Charbit argued that none of these factors applied to Ms Mohamed's case and that the factors set out in the Guidance which may have applied, abuse of trust; putting the confidence in the regulation of the profession at risk and that the breaches indicated that she was unsuitable for the role being undertaken were mitigated by other factors within the Guidance which might support a decision not to disqualify and which characterised Ms Mohamed's conduct, namely:

- The misconduct was committed because of a genuine mistake or misunderstanding.
- She had cooperated fully with the SRA.
- There was a low likelihood of repetition.

30.3 Ms Charbit submitted that Case Study 3 illustrated a case where there is more serious conduct than that which the Adjudicator found in Ms Mohamed's case. In particular, Ms Mohamed's Firm is a small one with no more than three employees. She was not the HOFA at the time. She submitted that there was no likelihood of repetition.

30.4 The Adjudicator had also noted that she was not performing anything other than a managerial role and that she did not make transfers herself. Further, they accepted that Ms Mohamed was not involved in the accounting within the firm and her actions were not done with the intention of ensuring that she obtained a performance bonus (as indicated in Case Study 3).

30.5 Ms Charbit submitted that in such circumstances the appropriate penalty could have been a disciplinary decision on its own or a rebuke. Alternatively, Ms Mohamed could simply be disqualified from acting in the role of HOLP or HOFA.

30.6 If the Tribunal allowed Ms Mohamed to become a manager this would allow her to demonstrate her skills positively and to share with her Partner, Ms Majid, some of the Firm's responsibilities.

Fresh evidence

31. This consisted of two statements produced by Ms Mohamed dated 19 July 2021 and 16 June 2022.

Statement dated 19 July 2021

32. Ms Mohamed set out her background history and how she came to join the Firm, TPC Solicitors, as a Senior Fee Earner and Business Development Manager and her success and achievements in this role which led her to being offered Partnership under the ABS structure.

33. Whilst she was aware of her responsibilities as a manager within the firm, she understood that the accounts were to be managed, ultimately, by Ms Gilmour.

34. Ms Mohammed said that she was now aware of the responsibility that lay with her in ensuring that the accounts of the Firm were managed correctly. However, at the time, although she did not have day to day control or oversight of the accounts, she accepted that she had been mistaken in taking comfort in assuming these responsibilities could be discharged by relying upon the assurances provided Ms Gilmour, by reason of her seniority, considerable experience, and business acumen.

35. When the breaches came to light Ms Mohamed actively involved herself in the accounting processes to ensure tighter controls and measures were put in place. She also worked with Ms Majid, following the merger of their two firms, and the accountants, to regularise the position.

36. She had reflected on what had occurred and had taken steps to reinforce her skills and knowledge in the management and running of a licensed body by undertaking courses, some of which she had completed prior to the Adjudicator's decision.

37. Also prior to the decision she had already enrolled with the Institute of Legal Finance; kept a portfolio of the developments in relation to changes within the scope of the SRA Rules; watched webinars and was listening to podcasts on matters ancillary to finances of a legal practice firm including, money laundering and cyber-crime and the running and managing of a firm. Ms Charbit directed the Tribunal to evidence within the bundle of Ms Mohamed's training and professional affiliations.

Statement dated 16 June 2022

38. Ms Mohamed referred to the training she had undertaken prior to the date of the Adjudicator's decision. She explained that she had not brought this training as evidence of insight to the Adjudicator's attention because those who had represented at that time did not advise her that this was permissible, and she asked the Tribunal to take this information into consideration.

The Respondent's Response

39. Mr Bullock submitted that the Adjudicator had been justified in reaching the decision he did.

40. Mr Bullock reminded the Tribunal that in accordance with the test set out in *Arslan* it should not interfere with the Adjudicator's decision and his evaluation of the evidence before him unless it was satisfied that the conclusions reached were outside the bounds within which reasonable disagreement was possible, having regard to the experience and expertise of the Regulator in determining the application of its own rules.

41. This was a high hurdle. The operative question was whether the decision at first instance was one which no reasonable Adjudicator could have reached as set out in Henderson v Foxworth Investments Ltd [2014] UKSC 41; [2014] 1 WLR 2600 and cited in Solicitors Regulation Authority v Good [2019] EWHC 817 (Admin).

42. Mr Bullock informed the Tribunal that *Good* was a sentencing authority and it was of relevance to the instant matter given that liability was not in question. Whilst Mr Bullock accepted that *Good* was a judgment of the High Court considering whether it should interfere with a decision of the Tribunal, it was of relevance to any appellate or court of review, a position occupied by the Tribunal in this matter. Mr Bullock referred the Tribunal to paragraph 31 of that judgment:

> *"Similar restraint should be exercised by an appellate court before interfering with the sanction imposed by a specialist disciplinary tribunal for professional misconduct. That involves a multi-factorial exercise of discretion and evaluative Judgment by the relevant tribunal, which is particularly well-placed to assess what sanction is required in the interest of the profession and to protect the public. It is well-established that the court will only interfere if the sanction passed was "in error of law or clearly inappropriate": see the authorities cited and summarised by Carr] at [6p) and [20] of her judgment in Shaw v Solicitors Regulation Authority [2017] EWHC 2076 (Admin); [2017] 4 WLR, 143; and see also my judgment in the Divisional Court in Solicitors Regulation Authority v James [2018] EWNC 3058 (Admin); [2018] 4 WLR 163 at [53]-[ss]."*

43. Mr Bullock submitted that the Adjudicator's decision should only be subject to interference if it was clearly inappropriate (Law Society v Salsbury [2008] EWCA Civ 1285) and that the Adjudicator had made no serious procedural error and had not permitted other irregularities in the proceedings which would entitle the Tribunal to interfere with the decision he had made. The sanction he had imposed was proportionate and proper for the protection of the public and to maintain the reputation of the solicitors' profession.

44. Ms Bullock said that the Adjudicator found, amongst other things, that Ms Mohamed caused or allowed client money to be held in office account for a period of approximately two and a half years resulting in a shortage on the client account of £214,554.86. The Adjudicator further found that from 25 April 2017 onwards, she should have known that those monies were being retained in that account.

45. The obligation to comply with SARs is an onerous one such that a failure to properly monitor client money which leads to its misappropriation or misuse by others may lead to a solicitor being struck off the Roll (Weston v The Law Society (1988) Times 15 July). In *Weston* the Divisional Court went so far as to uphold the 'striking off' of a solicitor where, unknown to him, his partner had used client money to meet partnership liabilities. In the judgment of Bingham CJ *"had* [the partner] *performed his duty under the Accounts Rules it is something of which he would have been aware and something which he would have been able to prevent."*

46. There is also a penal element to sanction, and the Adjudicator was entitled to regard the Appellant's conduct in the same light and impose an analogous penalty in her case. None of the Grounds for Appeal advanced by Ms Mohamed, considered either individually or collectively, were matters of such weight as to lead to the conclusion that the Adjudicator had been wrong to do so.

47. Mr Bullock next considered each of the grounds of appeal in turn.

48. *Ground 4 a*: *The Adjudicator was wrong to find that the Appellant's conduct was continuous and repeated.*

48.1 The Adjudicator was correct to find Ms Mohamed's conduct was continuous and repeated. The Adjudicator found that she had caused or allowed client money, in respect of unpaid professional disbursements, to be held on the office account of the Firm throughout the period from 1 November 2015 to 16 November 2019. Given this primary finding, he was entitled to go on to find that her conduct was continuous and repeated because it constituted a continuing course of conduct extending over a substantial period. Whether one defined this as continuous and/or repeated was a matter of semantics only: it amounted to the same thing, a serious lapse in scrutiny on Ms Mohamed's part.

48.2 In any case, the Adjudicator directed his mind to the question of whether the shortage identified within the Second Report was purely historic (as submitted by Ms Mohamed) and concluded that it was not. Since that shortage included five payments totalling £932 which post-dated the extraction date for the First Report, his conclusion on this point was correct. A significant contributing factor to the duration of the shortage on the client account was caused by Ms Mohamed's failure to exercise proper scrutiny on the accounts as she should have done as a manager of the Firm and her conduct would have caused serious harm to the profession.

49. *Ground 4 b: The Adjudicator was wrong to find that the minimum cash shortage of £214,554.86 was not remedied promptly*.

49.1 The finding that the minimum cash shortage of £214,554.86 was not remedied promptly was one which was reasonably open to the Adjudicator, as a primary finding of fact, and ought not to be disturbed on appeal. The question of whether the minimum cash shortage was remedied promptly was an evaluative exercise of the type contemplated by Leggatt J in *Arslan*. In undertaking that exercise, the Adjudicator correctly directed himself to the relevant underlying facts.

49.2 He found that the existence of a shortage was brought to the attention of Ms Mohamed on 20 June 2018 but that it was not replaced until 4 October 2018. He considered the steps which she was taking to find a firm to merge with during that period. He also had regard to the fact that the Firm continued to trade and accept client money at a time when client account was already deficient, with consequent risk to the clients whose money went into client account while it was in deficit. None of the factual findings of the Adjudicator on these matters were challenged by Ms Mohamed in her appeal.

49.3 Given the above, the conclusion that the shortage had not been rectified promptly was one which was reasonably open to him. The Tribunal ought not therefore to interfere with that conclusion.

50. *Grounds 4 c. and 4 d. - The fresh evidence provides new information which would have been material to the Adjudicator's decision.*

50.1 In Mr Bullock's submission Ms Mohamed should not be permitted to put in further evidence. The admission of her witness statements dated 19 July 2021 and 16 June 2022 would be contrary to the general approach to be taken to the admission of new evidence as indicated within *Arslan* and there was nothing within that witness statement which she could not, with reasonable diligence, have been placed before the Adjudicator in her original representations and she had not explained adequately her failure to do so.

50.2 Mr Bullock said that the Respondent and the Tribunal were entitled to expect an Appellant, who has been professionally represented throughout, to present her case in an orderly manner and there was a compelling public interest in excluding material which was being put in late because of her failure to do so. It was not right to reassess insight by reference to evidence provided only after the Adjudicator had concluded that she had none. The assessment of lack of insight was, he submitted, an entirely reasonable assessment when it was made, and the Tribunal's task was to review that assessment, not make a new assessment on new evidence.

50.3 There was also a compelling public interest in the finality of proceedings, and in the effective regulation of the legal profession, which militated against the admission of material which was not before the Adjudicator at first instance. Following on from this, the Tribunal was entitled to take cognisance of the fact that that witness statement would fall to be excluded under the first limb of Ladd v Marshall [1954] 1 WLR 1489 C.A.

50.4 The witness statements were self-serving, written *ex post facto* and with sight of the Adjudicator's decision for the purpose of casting doubt upon the Adjudicator's findings with respect to the question of future risk. Mr Bullock said that the statements were an attempt to 're-write history' in order to alter the stance Ms Mohamed had adopted before the Adjudicator, in which she cast blame solely upon Ms Gilmour, accepting none herself. It also introduced elements of insight and reflection which she had not presented to the Adjudicator.

50.5 In these circumstances, the statements carried little evidential weight and they would therefore also fall to be excluded under the second and third limbs of Ladd v Marshall.

50.6 Because of the above, the interests of justice did not favour the admission of the witness statements. However, even if admitted, then the evidential weight was so slight that it would not justify the Tribunal in disturbing the Adjudicator's conclusions:

- That Ms Mohamed did not appear to appreciate or understand the full implications and obligations of being a manager of a law firm (which were supported by the Adjudicator's prior findings as to the extent to which she had ignored her responsibilities and obligations as such).

- That the imposition of a disqualification order was warranted (amply supported by his other findings in his decision). If the Tribunal accepted that the witness statements might probably have an important influence on the Adjudicator's decision, then the proper course would be to remit the matter to the Respondent generally in line with the approach indicated in Ladd v Marshall. It should not substitute its own order as it was invited to do in the Grounds of Appeal.

51. *Grounds 4e; 4f. and 4g: Failure to follow the Guidance*

51.1 Mr Bullock submitted that this ground was misconceived. The Adjudicator did take the Guidance into account and his findings were consistent with its contents. The Adjudicator confirmed that he had considered the Guidance and the examples provided as to when conduct may result in a disqualification order being made.

51.2 The Adjudicator had regard to factors identified as relevant within the Guidance (and, specifically, the continuous and repeated nature of Ms Mohamed's conduct; the evidence of her unsuitability to act as a HOLP and HOFA; and the impact of her conduct on the reputation of the profession) in reaching the conclusion that she should be disqualified.

51.3 The Adjudicator's decision not to disqualify her from being an employee of a licensed body was also reached by having regard to those factors because the Adjudicator directed his mind to the question of whether she unsuitable for such a role.

51.4 With respect to Case Study 3, this was simply an illustrative example of the approach which the Respondent had taken to the issue of penalty on a specific set of facts. The Adjudicator was not, therefore, required to do the exercise which Ms Mohamed appeared to suggest he should have undertaken before arriving at his decision.

51.5 In any event, there was no inconsistency between the approach to sanction indicated by Case Study 3 and that taken in the Decision. Case Study 3 was a more serious situation (because of the extent of the individual's personal culpability and because of the aggravating factor of personal gain). This distinction was reflected in the fact that Ms Mohamed was not made subject to a financial penalty.

51.6 In conclusion, Mr Bullock said that when looked at in the round there was nothing objectionable about the sanction given that it related to breaches of the SARs resulting in a shortage on the client account in the region of £200,000 which persisted over 3 years without remedy.

The Tribunal's Decision on the Appeal

52. The Tribunal applied the approach endorsed by the High Court in *Arslan* as the correct approach to an appeal under section 46 of the Solicitors Act 1974.

53. The Tribunal applied the civil standard of proof to the appeal, namely the balance of probabilities and it considered with care all the material submitted by the parties. The Tribunal had regard to the oral submissions each side had made and to the authorities to which it had been referred. It noted that its role was to evaluate the decision of the Adjudicator, and not to make a fresh decision.

54. The Tribunal noted that the facts, as found by the Adjudicator, were not in issue, neither was liability as this was accepted by Ms Mohamed. The sole issue for determination by the Tribunal on appeal was whether the Adjudicator had been wrong to impose the sanction that he did, based upon the material facts presented to him at the date he made his decision.

55. The Tribunal observed that Ms Mohamed had not faced allegations of dishonesty and that neither recklessness nor lack of integrity had not been found by the Adjudicator.

56. The Tribunal found the judgment in *Weston* to be compelling and a useful yardstick in assessing the seriousness of the conduct with respect to a breach of SARs:

> *"the Accounts Rules exist to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording this protection and assuring the public that such protection is afforded, an onerous obligation is placed on solicitors to ensure that the Accounts Rules are observed. That is a duty which binds solicitors, quite apart from a duty to act honestly and in accordance with the duties of a trustee."*

And:

> *"It is important to appreciate that in speaking of "trustworthiness" in that passage* [Reference to Bolton v Law Society [1994] 1 WLR 512], *the court had in mind, of course, honesty, but also had in mind the duty of anyone holding anyone else's money to exercise a proper stewardship in relation to it. That is violated if one solicitor with a duty to see that the rules are observed fails to do so.* [Note: the paragraphs in this judgment are not numbered].

57. The client account is sacrosanct, and breaches of the SARs, and any abrogation of responsibility with respect to them, are inherently serious.

58. The Tribunal found that the Adjudicator had carefully considered the evidence, including the Respondent's own Guidance and the Adjudicator had exercised critical thought which he applied rationally to the facts before him. This was evidence by his dismissal of recklessness and by not finding Ms Mohamed had exhibited lack of integrity. However, the material before the Adjudicator at the time he made his decision showed that Ms Mohamed simply did not accept that, as HOFA, the responsibility was hers. While doubtless Ms Gilmour had betrayed the trust Ms Mohamed had reposed in her (on the basis of Ms Gilmour's representations to Ms Mohamed), the Adjudicator was faced with a submission from Ms Mohamed that blame attributable to Ms Gilmour was in some way exculpatory for her. It was not. It was an abdication of responsibility.

59. Further, there had been two qualified accountant's reports, and Ms Mohamed had ignored the warning sign of the first. The Adjudicator was entitled to form the opinion that the lack of insight was serious and lengthy. At a fundamental level, for a small firm to function with a client account deficit of some £200,000 for several years was a very serious matter, and Ms Mohamed, as HOFA, had been responsible for ensuring the sound financial management of the firm. While no loss had occurred, that was because of a subsequent cash injection by a new business partner. During the years it existed there was no guarantee that the shortage on client account would be replaced. All these factors entitled the Adjudicator to take the view that he did. Much of the material now placed before the Tribunal was better suited to an application to review or revoke the order, not appeal against its making.

60. The Adjudicator did not prevent Ms Mohamed being an employee, however, he considered that she should be prevented from being a manager to protect the public and maintain the reputation of the profession in the eyes of the public.

61. The Tribunal was not satisfied that the conclusions the Adjudicator reached in the exercise of his judgment were outside the bounds within which reasonable disagreement was possible and/ or was one which no reasonable Adjudicator could have reached given the intrinsic seriousness of the breaches.

62. The Tribunal decided that it should not interfere with the Adjudicator's decision, which it would affirm in full.

63. With respect to the putative fresh evidence the Tribunal observed that this was not fresh evidence *per se* but matters known to Ms Mohamed at the time of the Adjudicator's decision but not deployed by her (albeit this was a matter which should perhaps have been in the contemplation of her representatives at the time).

64. Therefore, given the Tribunal's finding that the original decision involved an evaluation of the facts on which there was no room for reasonable disagreement it considered that it should not receive this 'new evidence' which had not been before the Adjudicator.

65. Nevertheless, had the Tribunal considered it to be in the interests of justice to admit the evidence it would have done so. However, the evidence was of marginal value when compared to the seriousness and magnitude of the conduct found by the Adjudicator and it would have been unlikely to have carried sufficient weight with the Adjudicator for him to have reached a different decision on sanction.

Costs

66. The Tribunal having announced its decision on the Appellant's appeal, next considered the question of costs and it invited the parties to make the necessary applications.

67. Mr Bullock submitted that the Respondent was entitled to its proper costs. The quantum of costs claimed by the Respondent was set out in its statement for costs dated 13 June 2022 and was in the sum of £6,166.00.

68. Mr Bullock submitted that this was a reasonable and proportionate sum given that the Respondent, had been placed in the position of having to respond to the appeal and that it had discharged it responsibility to the Tribunal and the appellant in doing so.

69. Ms Charbit made no submissions with respect the Respondent's claim for costs save to ask the Tribunal to consider Ms Mohamed's statement of means which had recently been placed in the bundle.

70. This did not give any indication of Ms Mohamed's capital position. It stated that after Ms Mohamed's essential monthly outgoings she would be left with £701 disposable income per month.

Tribunal's Decision on Costs

71. The Tribunal summarily assessed costs to consider whether they were reasonable and proportionate. The Tribunal had heard the case and it was appropriate for the Tribunal to determine the liability for costs and the quantum of any costs it ordered to be paid.

72. The Tribunal considered that it was appropriate for the Respondent to recover all its costs which were reasonable and proportionate in all the circumstances of this case. Ms Mohamed had brought the appeal and was ultimately unsuccessful. On the evidence presented by her with respect to her means Ms Mohamed would be able to pay the Respondent's costs within a reasonable period.

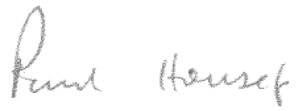
73. Therefore, considering, all the material circumstances, it was reasonable and proportionate for Ms Mohamed to pay the costs of and incidental to the appeal in the sum of £6.166.00.

Statement of Full Order

74. The Tribunal Ordered that the appeal of SHAHIDA MOHAMED ("the Appellant") made under Section 46 of the Solicitors Act 1974 (as amended) be REFUSED and the Tribunal affirms, in whole, the Adjudicator's decision dated 21 June 2021.

75. And it further Ordered that the Appellant do pay the costs of the response of the Law Society to this appeal fixed in the sum of £6,166.00.

Dated this 29th day of June 2022
On behalf of the Tribunal



P S L Housego
Chair