



Appeal number: CA/2020/0006 V¹

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(CHARITY)

MUSTAFA MURKARAM MUSA

Appellant

- AND -

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Before:

DDJ Rebecca Worth (authorized to sit as a Tribunal Judge in the GRC),
Tribunal Member Susan Elizabeth and Tribunal Member A'Isha Khan

Appearances:

Mr Peter Collins for the Appellant

Mr Felix Rechtman for the Respondent

Determined at a remote hearing via Cloud Video Platform on 04 June 2021

¹ V: video whether partly (someone physically in a hearing centre) or fully (all remote)

DECISION

1. The appeal is dismissed.

MODE OF HEARING

2. The proceedings were held by video (Cloud Video Platform). All parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

REASONS

Background

3. “Darul-Uloom School London” was entered onto the Register of Charities on 13 January 1995 – for clarity this decision will refer to this entity as “the Charity”. The purpose of the School is: “The advancement of education and religion in accordance with the tenets and doctrines of Islam”. One of the primary activities is provision of education through the running of an independent school for boys from the age of 11 to 19 – for clarity, this entity will in this decision be referred to as “the School”. The School is a registered independent school, its proprietors are the trustees of the Charity. The School is inspected by Ofsted, any regulatory action about the education at the School is a matter for the Department for Education.
4. Mr Mustafa Musa was one of the original Trustees, he raised funds to build the school, and he signed the original deed dated 15 December 1994 (from which the Charity was registered with the Charity Commission on 13 January 1995); he resigned in June 2018 and his name was removed from the Charity’s entry on the Register of Charities.
5. On 31 May 2018 the Charity Commission received from the Trustees a “Serious Incident Report” about Mr Mustafa Musa’s son (and fellow trustee) who had been arrested. During a search following that arrest the police found over £400,000 in cash (Mr Mustafa Musa says the amount was £406,657.52) on the premises which was seized under the Proceeds of Crime Act 2000; some knives (or replicas) and swords (or replicas) belonging to the son were also seized.
6. The Secretary of State for Education made a complaint to Westminster Magistrates’ Court, seeking closure of the School. On 22 June 2018 Westminster Magistrates’ Court issued an Order in respect of the School; this was as a result of terms being agreed by the parties to the proceedings. One of the agreed terms was that Mr Yusuf Musa and his father, Mr Mustafa Musa “shall have not involvement whatsoever with the school known as Darul Uloom London”.

7. On 30 January 2020, the Charity Commission made an Order pursuant to s.181A of the Charities Act 2011 which disqualified Mr Mustafa Musa for 5 years from being a charity trustee or a trustee of a charity, it also disqualified him from holding certain office or employment in charities. It is the Order made under s.181A which is the subject of the appeal before us. The effect of the Order has been suspended whilst the appeal proceedings were on-going.
8. Mr Yusuf Musa was also disqualified under s.181A of the Charities Act 2011; he also appealed against the decision. His appeal was, by this Panel, dismissed on 18 February 2021. Permission to appeal against that decision has been granted, permission of the First-tier Tribunal being limited to the question of whether the Tribunal is limited to considering disqualification for the same period or a reduced period or whether the Tribunal is able to make an order for a longer period than that imposed by the Charity Commission.

Appeal to the Tribunal

9. A Notice of Appeal dated 11 March 2020 was submitted to the Tribunal. Mr Musa's Notice of Appeal relied on grounds that:
 - 9.1. The Charity Commission erred in law because the decision was manifestly unfair, wholly unreasonable, irrational, unlawful and disproportionate.
 - 9.2. The Charity Commission failed to properly and/or sufficiently and/or carefully consider all the relevant circumstances prior to making the decision.
 - 9.3. Any alleged shortcomings in the appellant's conduct in relation to Darul Uloom Charity do not mean that the appellant should be prevented from being a trustee in another Charity in circumstances where he was already a trustee in another charity (the Taqwaa Social & Cultural Society ("TSCS")), or in holding senior position / employment in different charities.
 - 9.4. Any disqualification should have been confined to the Darul Uloom Charity.
 - 9.5. The length of time of the disqualification – 5 years – was manifestly unreasonable and wholly disproportionate.
 - 9.6. If there was mismanagement, it was the collective responsibility of all the Trustees, it is wrong that he was singled out and disqualified when two of the others were only given Official Warnings.

10. In respect of the outcome sought, Mr Musa asked the Tribunal to quash the order of disqualification.
11. The Charity Commission's Response dated 09 April 2020 resisted the Charity's grounds of appeal on the following basis:
 - 11.1. Mismanagement / misconduct is evident in that:
 - 11.1.1. £400,000 represents a sum almost equivalent to the previous year's income; that sum was stored outside the safe and outside a bank account, placing it at considerable risk.
 - 11.1.2. Mr Mustafa Musa was a Trustee and the Principal of the School. During that time 2 of his sons were employed as teachers and receiving wages from the School and there is no evidence that any conflict of interest was identified or managed.
 - 11.1.3. Mr Mustafa Musa received wages in excess of what was authorised by the Charity Commission.
 - 11.1.4. The School was not meeting the Independent School Standards when Mr Mustafa Musa was the Principal.
 - 11.2. Mr Mustafa Musa was either responsible for the above or knew of it and failed to take any reasonable steps to oppose what was happening, or he contributed or facilitated it.
 - 11.3. A disqualification order is in the public interest as it will protect public trust and confidence in charities.
 - 11.4. It is appropriate that all charities are protected, including the TSCS.
 - 11.5. The conduct was in the middle of seriousness and the period of 5 years is, therefore, appropriate.

The law

12. Section 181A of the Charities Act 2011 provides (where relevant) as follows:

Section 181A – Disqualification Orders

- (1) The Commission may by order disqualify a person from being a charity trustee or trustee for a charity.

- (2) The order may disqualify a person—
 - (a) in relation to all charities; or
 - (b) in relation to such charities or classes of charity as may be specified or described in the order.
- (3) While a person is disqualified by virtue of an Order under this section in relation to a charity, the person is also disqualified, subject to subsection (5), from holding an office or employment in the charity with senior management functions.
- (4) A function of an office of employment held by a person (“A”) is a senior management function if—
 - (a) it relates to the management of the charity, and A is not responsible for it to another officer or employee (other than a charity trustee or trustee for the charity), or
 - (b) it involves control over money and the only officer or employee (other than a charity trustee or trustee for the charity) to whom A is responsible for it is a person with senior management functions other than ones involving control over money.
- (5) An order under this section may provide for subsection (3) not to apply—
 - (a) generally, or
 - (b) in relation to a particular office or employment or to any office or employment of a particular description.
- (6) The Commission may make an order disqualifying a person under this section only if it is satisfied that—
 - (a) one or more of the conditions listed in subsection (7) are met in relation to the person,
 - (b) the person is unfit to be a charity trustee or trustee for a charity (either generally or in relation to the charities or classes of charity specified or described in the order), and
 - (c) making the order is desirable in the public interest in order to protect public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order.

(7) These are the conditions—

A

B

C

D that the person was a trustee, charity trustee, officer, agent or employee of a charity at a time when there was misconduct or mismanagement in the administration of the charity, and—

(a) the person was responsible for the misconduct or mismanagement,

(b) the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or

(c) the person's conduct contributed to or facilitated the misconduct or mismanagement.

E

F

(8)-(12) ...

13. The Charity Commission's statutory objectives under s. 14 of the 2011 Act include a public confidence objective, a compliance objective and an accountability objective. Its statutory functions under s. 15 of the 2011 Act include encouraging and facilitating the better administration of charities, identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action.
14. An appeal against the Charity Commission's Order under s.181A requires the Tribunal to "consider afresh" the Charity Commission's decision (s.319 (4) (a) of the 2011 Act). In so doing, it can consider evidence which has become available subsequent to the Charity Commission's Order (s.319 (4) (b) of the 2011 Act).
15. It follows that the issue for the Tribunal in determining the Charity's appeal is whether the Tribunal would, as at the time of the hearing, disqualify Mr Mustafa Musa from being a charity trustee or a trustee for a charity in relation to all charities and from holding an office or employment with senior management functions in any

charity and, if appropriate to make such order, the length that order should last. Any claimed irrationality in decision-making is, therefore, not relevant to this Tribunal.

Authorities bundle

16. There are no binding authorities about s.181A, such matters having so far been considered at the First-tier Tribunal.
17. The bundle of authorities included decisions of this Tribunal, the First-tier Tribunal General Regulatory Chamber (“GRC”), in other appeals against disqualifications orders made under section 181A of the Charities Act 2011.
18. It is settled law that one First-tier Tribunal does not bind another, albeit that First-tier Tribunals seek to provide some consistency in decision making. However, what is clear to us from the legal principles as argued by the parties, is that the GRC was, in each of the cases provided to us, unable to increase the amount of time of a disqualification – there were (as there are for us) three options: keep the period as set by the Charity Commission, reduce the period or rule that there was to be no disqualification.

Evidence

19. The Tribunal considered open evidence comprising of:
 - 19.1. Hearing bundle comprising of 419, additional pages A114 to A114e, A126, A126a and A127 (total, including index 432 pages);
 - 19.2. Supplemental Bundle comprising of 133 pages (including the index);
 - 19.3. Witness evidence on behalf of the appellant from Mr Mustafa Musa and Mr Yusuf Musa;
 - 19.4. Witness evidence on behalf of the respondent from Tim Hopkins.
20. In the Notice of Appeal, Mr Mustafa Musa said that an Urdu interpreter would be needed (see Bundle page A7). We asked Mr Collins about this at the outset of the hearing and Mr Collins stated that he did not consider Mr Mustafa Musa needed an interpreter. Throughout his evidence and the rest of the hearing, Mr Mustafa Musa appeared to us to understand English and able to fully participate in the hearing.
21. Mr Mustafa Musa came across to us as angry about the disqualification. Even though it was appropriate for him to correct any factual errors made in opening submissions, he was argumentative and seemed to consider that those errors in submissions means that he should win his appeal. It seemed to us that he still does not fully appreciate the situation that he created at the Charity and how that situation could

be perceived by outsiders (i.e. those who were not part of the School or Charity by being pupils/parents/teachers/trustees/locals and friends invested in the project).

22. Mr Yusuf Musa supported his father's position but, despite having (we trust) read our decision in his appeal, he also does not seem to appreciate the public perception of what was going on at the Charity.
23. Both Mr Mustafa and Mr Yusuf Musa questioned why certain documents were not in the bundle and said that a photo of the premises would have been useful. Any appellant is able to add documents to the bundle – the Case Management Directions of 14 May 2020 required parties "to use their best endeavours to agree the contents of a bundle" which clearly means that Mr Mustafa Musa was (via his representatives) able to list documents that he wanted to have included and, if the Charity Commission refused to include them, Mr Mustafa Musa (via his representatives) could have applied to the Tribunal for an order concerning the item(s) in dispute. In other words, they are just as responsible for what was not in the bundle as they may believe the Charity Commission is responsible. We did not consider that any additional documentation was needed by the Tribunal to make a fair and just determination of the appeal.
24. Charities are given real and significant advantages by the Government, including business relief rate, no corporation tax on fee income, VAT advantages; charities can also receive additional money in the form of gift aid. It is important, therefore, that a Charity and those who are Trustees of Charities or Charity Trustees can be considered by the public (that is, objectively) as appropriate persons to not only administer the funds that supporters provide but also to appropriately administer such funds as the taxpayer has paid to that charity. Neither Mr Mustafa Musa nor Mr Yusuf Musa appears to appreciate the level of responsibility that is required of a Trustee, including ensuring that they, as a Trustee, must use taxpayers' money (including tax revenue which is claimed back by taxpayer donors) in a responsible way so that their actions do not undermine the public's confidence in charities.
25. During his evidence, Mr Mustafa Musa gave additional, significant, information which he had not placed before the Charity Commission during its investigation or in the appeal documents. This additional information was:
 - 25.1. That he was afraid of taking money to the bank because one time he was at a bank, he took out £7,000 and then felt intimidated by a person who was standing closely behind him. The £7,000 was not lost because he and a Trustee who he was with were able to run away from the threat.

- 25.2. In May 2018, the School had Public Liability insurance but did not have buildings insurance and did not have contents insurance.
26. Due to questions asked in cross-examination it appears that there are on-going issues between Mr Mustafa Musa and the Charity Commission about ownership of the premises and land which the School uses. That issue is not before us.

Submissions

27. Both parties provided the Tribunal with written submissions for which we were grateful.
28. The Appellant's submissions dated 10 September 2020, and those made at the hearing may be summarised as follows: there was no mismanagement of the charity or, if there was, then it was the collective responsibility of the Trustees, two of whom were only given Official Warnings. Therefore, the appeal should be allowed, and the Tribunal should quash the disqualification. If the Tribunal does not quash the disqualification, it should make the disqualification be only in respect of the Charity (and not charities generally) and any disqualification should be shorter than 5 years.
29. The Charity's submissions in reply, found in the Supplemental Bundle and made at the hearing may be summarised as follows: the Charity Commission no longer pursues the issues of payment of salaries. However, even without pursuing that element, there was mismanagement due to the £400,000 being in a box in a flat, the Ofsted findings of being overall inadequate and the lack of management of conflicts of interests. Mr Mustafa Musa was responsible for that mismanagement and/or contributed and/or failed to prevent it. The public interest is that Mr Mustafa Musa should be disqualified, and that the disqualification should be for 5 years and relate to all charities.

Discussion

30. The parties agree the following:
- 30.1. Until June 2018 Mr Mustafa Musa was the Principal of the School as well as being a Trustee.
- 30.2. Over £400,000 of the Charity's funds was found in a locked box in a flat, neither the box nor the money was in a safe.
- 30.3. That money was seized by the police.

- 30.4. The money was returned almost 2 years after it had been seized by way of a cheque dated 14 May 2020 for the sum of £406,607.52.
31. Parties disagree on the following relevant matters:
- 31.1. Who should be seen as responsible for the Ofsted outcomes.
- 31.2. Whether there was mismanagement.
- 31.3. If there was mismanagement whether Mr Mustafa Yusuf should be disqualified at all and, if so the nature of that disqualification.
- 31.4. Parties also disagreed whether the Tribunal has power to lengthen the disqualification. Mr Rechtman for the Charity Commission considered the wording of the statute limits the Tribunal to only using its Schedule 6 powers if it allows an appeal; Mr Collins for Mr Mustafa Musa considered that the statute could be read to allow the Tribunal to lengthen a disqualification.
32. We will start by considering the over £400,000 which was seized by the Police (we will now refer to this amount as “the Cash”).
33. Mr Mustafa and Mr Yusuf Musa say that the money was a combination of School fees and donations (mostly collected at Friday prayers) and had built up over a period of time. The sum was large as they had been carrying out additional fundraising activities as they were planning a refurbishment of the School. Mr Mustafa Musa says that, at the time it was seized by the police, he did not know exactly how much there was, but was subsequently able to work it out from going back over receipts and looking at money spent; he further believes that a lot of the Cash was accrued in April/May 2018. Mr Mustafa Musa says that there was only one key to the box and that he usually held it; if he was not holding it for any period of time, then one of the other Trustees would hold the key.
34. The Charity’s declared income (Bundle page A227) for the years 2014 to 2017 inclusive was £411,958 at the lowest and £496,280 at the highest. The returned accounts for the year ending 31 July 2018 declared that year’s income as £571,766. We find, therefore, that to this Charity, £400,000 was, in 2018, a large sum of money.
35. In his witness statement and in his evidence, Mr Mustafa Musa gave various reasons why the Cash was kept in the locked box and not placed in the safe or in a bank. Dealing with those, we find:

- 35.1. The perceived risk of a burglary targeting the School (as had been the case with Mosques) should have raised the need to ensure that money was taken to and deposited at the Bank. The Bank is a far safer place for the Charity's money than a safe or a locked box. Mr Mustafa Musa's case is that the flat itself was separated from the public by 5 doors, some of which had code entry, some had key entry; each Trustee could go through each of the doors but that this number of doors made the flat an appropriate place to keep the Cash. Each door could, in our view, be breached by a determined person and, therefore, did not make the flat a safe place to hold the Cash.
- 35.2. Mr Mustafa Musa's experience of taking out £7,000 cash and feeling intimidated should have caused him to realise that having possession of a large amount of cash was a risk. It is troubling to us that he did not ensure that there was no risk at all of someone searching the premises (perhaps using violent means and demanding access codes and keys) in order to get access to £400,000. It seems to us that the Trustee he was with at the time of the £7,000 cash incident would, perhaps, have been rather understanding of a demand that they frequently attend the School and ensure that all Cash was frequently deposited in a bank.
- 35.3. The argument that there were never two unconflicted Trustees able to take the money to the bank and deposit it there also does not stand up to scrutiny. Mr Mustafa Musa could have demanded that either two unconflicted Trustees or one Trustee who was not a member of his family frequently attend the School and ensure that the money was frequently taken to the Bank. As an alternative, he could have asked for special permission (particularly during the additional fundraising) that he and one of his sons could take the money to the Bank. A further alternative would have been to obtain permission that a non-related teacher or responsible adult was also in attendance at counting, transporting and depositing (or stood in as an unconflicted Trustee's proxy). They could have asked that fees were paid straight into the bank by direct debit and that additional sums were also deposited direct; a JustGiving Page could have been set up. Even if all these routes failed, the excuse cannot hold up against the fact that, instead of two unconflicted Trustees taking the money to the Bank, placing the money in the locked box, two conflicted Trustees (i.e. Mr Mustafa and his son Mr Yusuf Musa) were keeping the money in premises where Mr Yusuf Musa lived (which meant he had some element of control of access) and that Mr Mustafa Musa did not live and, therefore, had far less control of. Whilst there is no suggestion

of wrong-doing, it is clear to us that by choosing to keep the Cash in a locked box in his son's flat, Mr Mustafa Musa was putting the reputation of the Charity at far greater risk than if he and his son had frequently gone to the Bank and deposited the money.

35.4. The argument that there had been a recent arson incident also does not stack up. Cash is able to burn in a fire; if the Cash was deposited at the Bank, the Bank would be responsible for safekeeping of the money and, if the School had burned down, the Charity would have had been able to use the Cash as part of its rebuilding and recovery, bearing in mind that the buildings were not insured, whether against arson or other incidents which caused damage to or destruction of the buildings, and so an insurance company would not be meeting such costs.

35.5. The fact of cash being on the premises was not generally known is also not a good reason to have kept the money in the locked box. Whilst some say that secrecy is good security, Mr Mustafa Musa could not be sure that the secret would not leak out. Further, Mr Mustafa Musa does not appear to have had a plan for what to do if the secret did leak out and how quickly any plan could be activated. To our knowledge there was no risk assessment in respect of this amount of money.

36. Clause 11 of the Trust Deed provides that all cash is to be handed to the treasurer who would then deposit it in the bank. Questions were raised of the Charity Commission's witness as to why the Charity Commission had not identified who the Treasurer was. We find it curious that, if the identity of the Treasurer was so important to Mr Mustafa Musa's appeal, he does not state in his witness statement the identity of that person, in his oral evidence he did not name the treasurer. However, it seems from the evidence provided to us that neither Mr Mustafa Musa nor Mr Yusuf Musa was the treasurer, therefore it is Mr Mustafa Musa's own case that he did not pass money to the treasurer as per the Trust Deed.

37. We find that keeping the Cash in a locked box in the flat is very serious mismanagement of the Charity's funds. As, by his own admission, he had primary control of the key, we find that Mr Mustafa Musa was responsible for this mismanagement, and more responsible than other Trustees, just as his son was more responsible (see our decision in Mr Yusuf Musa's appeal).

38. Turning now to the Ofsted findings:

- 38.1. When we dealt with Mr Yusuf Musa, we said we “do not consider that we can go behind their findings that the School was to continue and be enabled/encouraged to improve”.
 - 38.2. At this hearing, Mr Rechtman explained that the legal structure is that Ofsted merely inspect and report, any action is taken by the Department for Education.
 - 38.3. According to its inspecting body, the School’s overall rating in February 2013 was Inadequate, and Regulations were still not met in September 2013. In June 2014 and December 2015, the School required improvement. In March 2017 and in February 2018 Ofsted found the School “does not meet all of the independent school standards that were checked during [the] inspection”. In May 2017 Ofsted gave the School an overall outcome of Inadequate.
 - 38.4. It is fair to record that in March 2008, the School received “good” at the Standard Inspection, that in May and November 2011 it received “satisfactory” and that in June 2019 (one year after Mr Mustafa Musa had resigned as Principal and as a Trustee) the overall effectiveness of the School was still recorded as “Requires Improvement”.
 - 38.5. Mr Mustafa Musa’s evidence was that the School should not be judged on the overall performance rating – there were good comments in the reports. Further, he said that there were constantly changing Regulations and that meant that all schools, and not just his, were struggling and getting worse ratings than they should have done. We are not experts in this field and Mr Mustafa Musa chose not to provide any evidence (e.g. Ofsted reports) from other schools who were, according to him, also struggling. It is, therefore, difficult to put much weight on his assertions.
 - 38.6. As Mr Mustafa Musa was the Principal, overall responsibility for the curriculum, the quality of teaching and the overall learning experience lay, ultimately, with him. He had more responsibility than the other Trustees for enabling and ensuring the School met the proper educational standards.
39. In principle, we consider that questions of education standards need to stay with the appropriate expert body (the Department of Education). However, as Mr Mustafa Musa was the Principal of the School we find that the Ofsted ratings are evidence of further lack of competence of the Trustee and Principal Mr Mustafa Musa in running this Charity in the way in which it needed to be run.

40. Turning now to the Charity Commission's assertion that conflicts of interest not being properly managed was mismanagement of the Charity. The Charity Commission's case is that Mr Mustafa Musa was conducting appraisals on his sons, Mr Yusuf Musa and Mr Ahmed Musa which was a conflict of interest. They also initially sought to make out a case that there was a conflict of interest due to him being the Chair of the Trustees when his sons were appointed as Trustees:

40.1. Mr Mustafa Musa says that, once his sons were appointed to posts at the School and in the Charity, he resigned as Chair of the Trustees. His evidence was not entirely clear about whether he took part in appointing them as teachers and/or trustees; he could not recall if his resignation as Chair was made in writing or verbally. We note that it is not recorded in the minutes of the meeting which took place on 25 May 2012 (see Bundle page A120). It seems that, on balance, he may not have been directly involved in their recruitment to the Board of Trustees; we accept that, once they were Trustees, he did resign as the Chair.

40.2. Mr Mustafa Musa accepts that he did appraise his sons' teaching. From his evidence, it is clear that he still does not see that this could be a problem. He explained that he believes appraisal is about teaching someone and asked whether it was the law that a Principal cannot appraise his son.

40.3. We find that Mr Mustafa Musa did have a conflict of interest in being the formal appraiser for his sons. A person unconnected to the Charity would find it difficult to believe that Mr Mustafa Musa would be able to be objective and give robust feedback to his sons on their performance as teachers because of his primary role as Father to them. This is not a matter of whether he broke a law, it is a matter of recognizing how things may look to an outsider and ensuring that a Charity runs in a way in which a properly informed outsider would understand that matters were fair and appropriate.

41. We find that when appraising his sons, Mr Mustafa Musa was acting on behalf of the Charity. Further, we find that, not recognizing the conflict of interest in appraising his sons and ensuring that an appraiser was an independent person unrelated to the appraisee, amounts to mismanagement by Mr Mustafa Musa.

Conclusion

42. We have considered the statutory test:

42.1. Is Condition D met?

42.1.1. We find the answer is yes. Mr Mustafa Musa was personally responsible for keeping the Cash in a locked box and not depositing it in the Bank. He was also primarily responsible because, as the person who usually held the key, cash could only be added with his assistance. Further, we find that as Principal, Mr Mustafa Musa failed to recognize that there was a conflict of interest in him doing the appraisals of his sons. As he failed to recognize it, he did not manage it properly or, indeed, at all.

42.2. Is Mr Mustafa Musa unfit to be a charity trustee or trustee for a charity?

42.2.1. We find that the answer is yes. Mr Mustafa Musa's conduct of being primarily responsible for keeping the Cash in an uninsured locked box rather than in the Bank, resulted in the Cash being lost to the Charity for a period of 2 years. We find this means that Mr Mustafa Musa is unfit to act in a similar office.

42.2.2. The suggestion that the disqualification be only for the Charity is disingenuous as it fails to recognize that the Charity has given undertakings to Westminster Magistrates' Court that Mr Mustafa Musa "shall have no involvement whatsoever with the school known as Darul Uloom London...". Therefore, Mr Mustafa Musa can only be added as a Trustee of the Charity if the other Trustees are willing to breach that undertaking which is highly unlikely given the possible consequences of breaching a promise one has made to a Magistrates' Court.

42.2.3. Mr Mustafa Musa will have continued to have Trustee status in TSCS during the appeal. We do not consider it appropriate to try and carve that charity out of the disqualification because Parliament's intention in the Charities Act 2011 is that a disqualified person can apply, under s.181D "for an order varying or discharging [a disqualification order under s.181A]". Mr Mustafa Musa could have accepted the disqualification and then applied under s.181D for permission to vary the Order so that the disqualification did not apply to TSCS. That would give the Charity Commission time to consult

with the other trustees at TSCS and to consider if there needed to be any additional matters covered in any variation, such as limiting the circumstances in which Mr Mustafa Musa could handle any of TSCS's cash income. We do not have from Mr Mustafa Musa sufficient, independent, evidence to say that he is an appropriate person to be a Trustee of TSCS.

- 42.2.4. The disregard for ensuring the money could not be lost (e.g. by fire or burglary) but was kept secure in a Bank cannot be considered to only relate to this Charity but is an indication that Mr Mustafa Musa should not be a Charity Trustee for any charity or a Trustee of any Charity.
 - 42.2.5. Further, his lack of ability to recognize that appraising his sons was a conflict of interest indicates that he is unable to recognize what could constitute a conflict of interest in a charity which, again, means that he should not be a Charity Trustee for any charity or a Trustee of any Charity.
- 42.3. Is making the order desirable in the public interest in order to protect public trust and confidence in charities generally?
- 42.3.1. We find the answer is yes.
 - 42.3.2. Keeping a huge (to this Charity) sum of money in a locked box on the premises indicates to us a failure on Mr Mustafa Musa's part to understand the basic responsibilities of a trustee namely, to manage a charity's money in a prudent and sound manner. The admitted failure to put buildings and contents insurance in place (which in evidence he continued to believe unnecessary) is, to us, further evidence of his inability to understand the obligations of a trustee to protect the charity's resources and to manage them in a safe and effective way.
 - 42.3.3. Mr Mustafa Musa still has little insight into why the Charity Commission considers that his actions were wrong in relation to the money and the conflict of interest. This lack of insight would be taken into any new charity and, as he has had so many years of being a Trustee, he may be in a position to wrongly influence less experienced trustees into making

unwise and wrong decisions in relation to financial matters and matters of conflict of interest.

43. Having considered all the evidence before us we are satisfied on the balance of probabilities that there should be a Disqualification Order against Mr Mustafa Musa.
44. Mr Collins asked that that the Tribunal, if deciding still to disqualify, would specifically consider whether 5 years was too long a disqualification.
45. The Charities Act 2011 provides:

Section 319 Appeals: general

- (5) The Tribunal may-
- (a) dismiss the appeal, or
 - (b) if it allows the appeal, exercise any power specified in the corresponding entry in column 3 of Schedule 6.

46. For section 181A appeals, the Schedule 6 provisions are:
- (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission;
 - (b) substitute for all or part of the order any other order which could have been made by the Commission;
 - (c) add to the order anything which could have been contained in an order made by the Commission.

47. As set out above, Mr Rechtman (for the Charity Commission) submits that we are not, therefore, able to lengthen the period of disqualification; Mr Collins submits that a longer period could be substituted.

48. It appears to us that we are not able to lengthen the period of disqualification. Whilst that would be substituting a different order (i.e. an order for a longer period) which is permitted, section 319(5)(b) seems to require us to allow the appeal to have that power; allowing the appeal would be contrary to our findings that none of the grounds of appeal may succeed.

49. We will not reduce the length of Mr Mustafa Musa's disqualification. We considered that we would have disqualified Mr Yusuf Musa for "not less than 5 years". The same applies to Mr Mustafa Musa who arguably, was more responsible for

mismanagement as he was the person holding the key to the box and was the School's Principal.

50. We conclude that we would ourselves make a Disqualification Order for not less than 5 years. Accordingly, the Charity's appeal against the Charity Commission's Order is dismissed.
51. A right of appeal against this decision, on a point of law only, lies to the Upper Tribunal. Any person seeking permission to appeal must make application in writing to this Tribunal for permission to appeal no later than 28 days after this decision is issued, such application should identify the alleged error law and state the result the person making the application is seeking.

**DDJ Rebecca Worth, authorized to sit as a Tribunal
Judge in the GRC**

Dated: 14 June 2021