

The Respondent appealed to the High Court (Administrative Court, Divisional Court) against the Tribunal's decision dated 13 September 2017 in respect of its findings. The appeal was heard by Lord Justice Hickinbottom and Mr Justice Haddon-Cave on 19 April 2018 (Judgment handed down on 23 May 2018). The appeal was dismissed. Hayes v Solicitors Regulation Authority [2018] EWHC 1248 (Admin.)

## SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11514-2016

### BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

CHRISTOPHER CHARLES EDWARD HAYES

Respondent

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Before:

Mr J. A. Astle (in the chair)

Mr G. Sydenham

Mr S. Marquez

Dates of Hearing: 10-14 July 2017

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### Appearances

Richard Coleman QC, barrister of Fountain Court Chambers, Temple, London EC4Y 9DH, instructed by Suzanne Jackson, solicitor of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

Gregory Treverton-Jones QC, barrister of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by Stephen Gentle, solicitor of Simmons and Simmons, CityPoint, 1 Ropemaker Street, London, EC2Y 9SS, for the Respondent.

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## JUDGMENT

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## Allegations

1. The Allegations contained in the Rule 5 statement, as amended, were that:
  - 1.1. Allegation 1: In order to induce the [public body] to pay the Respondent for legal services supplied to [the Client], the Respondent entered into a contract dated 26 August 2005 with [the Client] which, as the Respondent knew, did not state the true agreement between the Respondent and [the Client]. In so doing the Respondent acted in a way that compromised or impaired, or was likely to compromise or impair, his integrity and his good repute, and the good repute of the profession, in breach of paragraphs 1(a) and (d) of the Solicitors' Practice Rules 1990 ("SPR 1990").
  - 1.2. Allegation 2: In order to induce the [the public body] to pay the Respondent for legal services supplied to [the Client], in 2008 the Respondent agreed with [the Client] an annex to the contract referred to under Allegation 1, and provided [the Client] with an invoice, which, as the Respondent knew, did not correctly describe the legal services to which the annex and invoice related. In so doing the Respondent failed to act with integrity, and behaved in a way that was likely to diminish the trust the public placed in him and in the profession, in breach of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007").
  - 1.3. Allegation 3: The Respondent permitted his firm to use money which had been provided by the [public body] to fund the provision of legal services under the contract referred to in Allegation 1 for purposes that were not authorised by that contract. The Respondent knew or suspected that the purposes were not so authorised and thereby:
    - 1.3.1. (as regards conduct prior to 1 July 2007) acted in a way that compromised or impaired, or was likely to compromise or impair, his integrity and his good repute, and the good repute of the profession, in breach paragraphs 1(a) and (d) of the SPR 1990; and
    - 1.3.2. (as regards conduct from 1 July 2007) failed to act with integrity, and behaved in a way that was likely to diminish the trust the public placed in him and in the profession, in breach of Rules 1.02 and 1.06 of the SCC 2007; and
    - 1.3.3. breached Rule 22 of the Solicitors Accounts Rules 1998.
  - 1.4. Allegation 4: The Respondent intentionally made false statements regarding the amounts invoiced to [the Client] under the contract referred to under Allegation 1, intending that the statements be provided to the [public body] to support [the Client's] expenses claims. The Respondent thereby:
    - 1.4.1. (as regards conduct prior to 1 July 2007) acted in a way that compromised or impaired, or was likely to compromise or impair, his integrity and his good repute, and the good repute of the profession, in breach of paragraphs 1(a) and (d) of the SPR 1990; and

- 1.4.2. (as regards conduct from 1 July 2007) failed to act with integrity, and behaved in a way that was likely to diminish the trust the public placed in him and in the profession, in breach of Rules 1.02 and 1.06 of the SCC 2007.
2. In respect of Allegations 1-4 it was alleged that the Respondent acted dishonestly. However, proving dishonesty was not essential to proving the Allegations.
3. The Allegations contained in the Rule 7 statement, as amended, were that:

Allegation 5: [Withdrawn]

Allegation 6: This Allegation was made in the alternative to Allegation 3 above, as regards the use of the monies provided by the [public body] to fund the legal services identified in paragraph 37 to 41 of the Rule 5 Statement. If, as the Respondent alleged in paragraphs 5(ii) and 17 of his Amended Response to the Rule 5 statement, the Respondent believed that the Contract permitted the monies provided by the [public body] to be used to fund the legal services identified in paragraphs 37 to 41 of the Rule 5 Statement, then he exhibited manifest incompetence (i) as regards the period prior to 1 July 2007 acted in a way that compromised or impaired or was likely to compromise or impair the good repute of the Respondent or the solicitor's profession in breach of paragraph 1(d) of the SPR 1990, and (ii) as regards the period from 1 July 2007 behaved in a way that was likely to diminish the trust the public places in him and in the profession in breach of Rule 1.06 of the SCC 2007, in that:

- i. The Respondent's alleged belief was not reasonably supported by the terms of the Contract; and/or
- ii. The Respondent took no steps to confirm with the [public body] that the monies provided by the [public body] in respect of the Contract could be used to fund the legal services identified in paragraphs 37 to 41 of the Rule 5 Statement.

Allegation 7: This Allegation was made in the alternative to Allegation 3 in the Amended Rule 5 Statement, as regards the use of the monies provided by the [public body] to fund [the Client's] Council Tax. If, as the Respondent alleged in paragraphs 30 to 31 of his Amended Response to the Rule 5 statement, money provided by the [public body] in respect of the Contract was used to pay [the Client's] Council Tax as a result of an error, then he exhibited manifest incompetence and behaved in a way that was likely to diminish the trust the public places in him as a solicitor and in the profession in breach of Rule 1.06 of the SCC 2007 in failing to ensure that money provided by the [public body] was not used to pay [the Client's] Council Tax.

Allegation 8: This Allegation was made in the alternative to Allegation 4. If, as the Respondent alleged in paragraphs 32 to 34 of his Amended Response to the Amended Rule 5 statement, he did not realise that the documents signed by him contained false statements about the amounts invoiced to [the Client] under the Contract then, in signing the documents without properly reviewing them or (to the extent he did review them) without appreciating that their contents were untrue, he exhibited manifest incompetence and (i) as regards the period prior to 1 July 2007 acted in a way that compromised or impaired or was likely to compromise or impair the good repute of the Respondent or the solicitor's profession in breach of paragraph 1(d) of

the SPR 1990, and (ii) as regards the period from 1 July 2007 behaved in a way that was likely to diminish the trust the public places in him and in the profession in breach of Rule 1.06 of the SCC 2007.

## **Documents**

4. The parties had agreed a hearing bundle, the contents of which the Tribunal considered fully. The Tribunal considered all the documents placed before it by both parties including:

### Applicant

- Amended Rule 7 Statement (final version) dated 11 July 2017
- Skeleton Argument dated 3 July 2017
- Applicant's Chronology
- Hearing Bundle
- Joint Authorities Bundle

### Respondent

- Skeleton Argument dated 3 July 2017
- Respondent's Chronology
- Witness Statement of Mark Trafford QC dated 4 July 2017
- Witness Statement of Mark Richardson dated 5 July 2017
- Character References

## **Factual Background**

5. The Respondent was born in May 1966 and was admitted to the Roll on 2 December 1991. At the material times he was a partner of Edward Hayes solicitors ("the Firm"). At the time of the hearing the Respondent remained on the Roll holding a Practising Certificate free of conditions.
6. The Allegations arose out of an investigation into the use of funds received by the Firm from a public body to fund legal services supplied by the Respondent to his Client ("the Client"), who was, at the material times an elected representative to that public body. The services were provided under a document entitled 'Contract for the Provision of Services' dated 26 August 2005 ("the Contract"). An Annex to the Contract ("the Annex") was produced in October 2008.
7. The Client had subsequently been sentenced to a term of imprisonment following his conviction for obtaining a money transfer by deception (in relation to the Contract), contrary to section 15A of the Theft Act 1968 and fraud (in relation to the Annex) contrary to section 1 of the Fraud Act 2006.

### The Contract

8. At all material times elected representatives were entitled to an assistance allowance to cover the expenses arising from the employment or engagement of assistants in

connection with the performance of their duties in accordance with the rules. On or about 26 August 2005 the Respondent and the Client signed the Contract. The following Articles were relevant to the Allegations;

9. Article 2 of the Contract under the heading "Service Provider's area of responsibilities and activities" stated:
 

"The service provider's duties shall consist in particular of legal and constitutional advise [sic] on matters relating to my activities as an [elected representative]."
10. Article 3 provided that the Respondent's fees would be £7,000 per month from 1 September to 31 October 2005 and £1,900 per month from 1 November 2005.
11. Article 4 provided for the fees to be paid directly into the Firm's bank account.
12. Article 5 provided that the Contract entered into force on 1 September 2005 and was for a maximum duration of 46 months, ending no later than June 2009.
13. Between 13 December 2005 and 12 June 2009, the Firm received £114,568.92 from the public body in relation to the Contract and Annex.

#### The Annex

14. In 2008, the Respondent and the Client agreed an Annex to the Contract which purported to provide for the Respondent to be paid £14,500 plus VAT for "professional charges in connection with advice on matters relating to legal and constitutional issues..."
15. The Respondent provided the Client with an invoice dated 16 October 2008 to submit to the public body together with the Annex. The invoice was in the amount of £17,037.50, and falsely described the professional charges as follows:
 

"TO PROFESSIONAL CHARGES in connection with advising on matters relating to legal and constitutional issues..."
16. On 11 December 2008, the Firm received £17,037.50 from the public body in relation to the Annex and the invoice.
17. The Respondent had utilised monies received from the public body in the following relevant instances:

#### Social Security Proceedings - Engagement Letter (for the appeal): 11 January 2005 (£20,147.88)

18. At a hearing on 3 September 2004, a Social Security Tribunal had ruled that the Client had been paid benefits to which he was not entitled. On 8 March 2006 a Social Security Commissioner upheld the Social Security Tribunal's decision. On 14 December 2007, the Court of Appeal (Civil Division) dismissed the Client's appeal

against the decision of the Social Security Commissioner upholding the decision of the Tribunal.

Challenge to the waiver of immunity from criminal proceedings relating to benefit fraud prior to the commencement of the Contract - Engagement letter: 11 May 2005 (£15,129.43)

19. The Respondent started acting for the Client in late 2003 or early 2004 in the defence of criminal charges of benefit fraud. In April 2004, the Magistrates Court committed the case to the Crown Court for trial. On 25 November 2004 the Crown Court stayed the criminal proceedings on the grounds that they constituted a restriction on the Client's right to move freely as part of his role as an elected representative. On 5 July 2005, the public body granted a waiver of immunity ("the waiver"), meaning that the prosecution could resume. The Respondent acted for the Client in a challenge to that waiver, before and after the date of the Contract. The challenge was unsuccessful and the criminal proceedings resumed, resulting in the Client being convicted of benefit fraud in 2007. He was sentenced to nine months imprisonment.

Appeal against Conviction Proceedings - Engagement letter: 16 October 2007; (£17,710.68)

20. On 5 December 2007 the Court of Appeal (Criminal Division) dismissed the Client's appeal against conviction.

Advice on Application to Criminal Cases Review Commission (CCRC) (£1,150)

21. In 2009 the Respondent sought advice from Counsel in connection with an application to the CCRC. By letter dated 26 September 2011, the Commission informed the Client that there were no grounds for reviewing the conviction.

Civil Proceedings brought by 'R' - Engagement letter: 26 March 2009 (£25,030.12)

22. In 2008, R, who had a business relationship with the Client, brought proceedings against him in respect of a private commercial dispute.

Council Tax Payment (£2,492.56)

23. In addition the Firm had paid from those funds an outstanding Council Tax bill in the sum of £2,492.56 owed by the Client.
24. On 31 December 2007, the Respondent completed a document entitled "Statement of amounts invoiced..." declaring that the Respondent, representing the Firm, had invoiced £22,800 to the Client for the period from 1 January 2007 to 31 December 2007. This equalled the 12 monthly payments of £1,900 received by the Firm in respect of the Contract in 2007. The Respondent had not invoiced the Client for the amount stated. The amount invoiced in 2007 was £18,565.75.
25. On 16 February 2009, the Respondent completed a similar document declaring that the Respondent had invoiced £39,837.50 to the Client for the period from 1 January 2008 to 31 December 2008. This equalled the sum of the 12 monthly payments of £1,900 received by the Firm in respect of the Contract in 2008 plus the

sum of £17,037.50 received under the Annex. The Respondent had not invoiced the Respondent for the amount stated. The amounts invoiced in 2008 were:

- £3,154.88 less monies held on account in the same sum, resulting in a nil balance due (invoice dated 15 May 2008);
- £17,719.68 less monies held on account in the same sum, resulting in a nil balance due (invoice dated 15 May 2008);
- £13,895.01 less £3,849.89 held on account, resulting in a balance due of £10,045.12 (invoice dated 25 September 2008);
- £10,620.89 less monies held on account in the same sum, resulting in a nil balance due (invoice dated 25 September 2008);
- £17,037.50 (invoice dated 16 October 2008);
- £6,433.94 less monies held on account in the same sum, resulting in a nil balance due (invoice dated 14 January 2009); and
- £7,854.93 less monies held on account in the same sum, resulting in a nil balance due (invoice dated 14 January 2009).

## **Witnesses**

### 26. Cary Whitmarsh

- 26.1 Mr Whitmarsh confirmed that the contents of the Forensic Investigation Report (“FIR”) were true to the best of his knowledge and belief.
- 26.2 Mr Whitmarsh had attended the Respondent’s offices for a total of approximately 23 hours. There was no evidence to suggest that it was not a well-run Firm. Throughout the investigation the Respondent was very cooperative, open and transparent. The Respondent had made it clear to Mr Whitmarsh that he believed that it was the Client’s responsibility to use the expenses system appropriately.
- 26.3 The files relating to the Client represented a huge amount of paperwork comprising at least five lever arch files per matter and around 30,000 pages. Mr Whitmarsh confirmed that all of this was made available to him and he decided what he wished to inspect. He agreed that there was a fair amount left unread by him and his colleagues. He was asked in cross-examination what enquiry he made as to what elected representatives were entitled to by way of expenses. Mr Whitmarsh stated that there was information contained within the files that the Firm held and so he examined that information and he also did off-site investigation including looking at the website of the public body. It was difficult to find the relevant rules as they had been at that particular time. They were eventually provided to him by the Respondent. He had tried to make enquiries of the public body directly but received no substantive response.

- 26.4 Mr Whitmarsh, when listing the matters that were the subject of alleged improper use of funds, had not included the Council Tax matter. He told the Tribunal that he had not included that as the Respondent had told him it was an oversight. He had been prepared to accept the Respondent's explanation of that.
- 26.5 Mr Whitmarsh told the Tribunal that the issue of dishonesty only arose after the interview with the Respondent and after discussions with the legal department at the SRA. In that interview the Respondent had been fully co-operative and answered all questions put to him. At that time Mr Whitmarsh was considering an integrity issue.
- 26.6 Mr Whitmarsh was asked in cross-examination why there was a delay between the visit to the office, the interview and the FIR being completed. Mr Whitmarsh explained that he had spoken to the legal department and Counsel's advice was sought. This had then been considered and he had to review the material in order to prepare a report that he was satisfied with.
- 26.7 In response to questions from the Tribunal, Mr Whitmarsh confirmed that his investigation and the police investigation were running in parallel although the police were further ahead. He had held one meeting with the police at which he had explained what he would be doing in terms of his investigation. He was asked whether he was aware that the police had decided not to prosecute the Respondent. Mr Whitmarsh stated that he was not sure when that decision was made but he believed that it was in 2015.
27. The Respondent
- 27.1 The Respondent had made a detailed witness statement dated 12 January 2017 in which he denied the Allegations. The Respondent confirmed that the contents of his witness statement were true to the best of his knowledge and belief as at that date.
- 27.2 The Respondent told the Tribunal that the total of profit costs arising from these matters between 2005 and 2009 was in the region of £45,000 which represented a "drop in the ocean" in relation to the Firm's income.
- 27.3 The Respondent described the Police investigation as "horrific". It had started in March 2013 and his home had been raided in November 2013. He was the subject of the investigation until October 2014. He was interviewed under caution on four occasions for a total of 26 hours. He cooperated with the police as far as he was able to, answering every question they had asked him. He similarly cooperated with the SRA and had written to them on numerous occasions in connection with the investigation.
- 27.4 By 26 August 2005 the Respondent was acting for the Client in respect of criminal proceedings in respect of the benefit fraud. Those proceedings were funded by legal aid. The challenge to the waiver was being funded privately by the Client as were the Social Security proceedings. The retainers were between the Client and the Firm and while the Client may have been obtaining third-party funding from the public body, the responsibility to pay the Firm's fees lay solely with the Client. At no time did the Respondent have direct dealings with the public body. The Client told the Respondent that all of the proceedings that he was facing were related to his role as an elected



representative and the Respondent accepted those instructions. At no stage during the relationship did the Respondent see any risk that the Client's application for funding might not be honest. The Client was an elected representative and the Respondent was clear that he was doing genuine and honest work for him. It was put to the Respondent that after the Client had received a prison sentence in late 2007 that should have raised suspicions. The Respondent stated that the Client maintained his denial of those offences and any issue as to expenses fraud was not on his radar at the time. He was alert to issues such as money laundering and no flags were raised in that regard. It was suggested to the Respondent that by the time of the Client's conviction the Respondent knew that he could not trust the Client and that he had no basis for relying on any assurances provided by the Client. The Respondent denied this.

### The Contract

- 27.5 The Contract was dated 26 August 2005, the date he had seen the Client, with a commencement date of 1 September 2005. It was the Client who had filled the date in when he brought the document to the Respondent.
- 27.6 The Respondent confirmed that the intention was that the public body would fund the work done under the contract in relation to the challenge to the waiver proceedings and the Social Security proceedings. There was no discussion at that stage about other civil or criminal matters. The Client had presented the draft Contract as a fait accompli. He was a very convincing individual and the Respondent did not see the documents as fraudulent at the time. If he had had any suspicions he would have raised concerns. The Respondent was asked if the initial figure of £7,000 a month came from him or the Client. The Respondent stated that he could not remember but believed that the figures came from the Client. He was asked if there was any basis for charging £7,000 a month for the work undertaken. The Respondent stated that at that point there was a substantial amount of work to be done but it was not envisaged that the Firm would be receiving that every month for the duration of the agreement.
- 27.7 The initial draft Contract been amended to make clear that the work being funded by the public body had to relate to the Client's role as an elected representative. The amendment also reduced the fees to £1900 per month from the third month onwards. The Respondent had not been concerned about this as he had no notion that there was anything wrong. The amendments appeared to have been made in order to satisfy the requirements of the public body.
- 27.8 The Contract stated that it came into force on 1 September 2005. It was put to the Respondent in cross-examination that the Contract did not cover work done before that date and that the Respondent knew that at the time. The Respondent did not accept this and stated that subject to the appropriate scrutiny the Client could have used this Contract to cover expenses going back to when he and the Respondent first met. The Respondent was asked why, if the Contract was going to apply to work done previously, this was not made clear in the Contract. The Respondent stated that the reason for the date on the agreement was that the Client was going to be attending the public body in a few days' time and therefore this seemed to be a sensible date. It was put to the Respondent that there was nothing in the Contract which indicated that it would apply to work undertaken prior to 1 September 2005. The Respondent agreed that there was nothing in the Contract saying that it allowed that. The Respondent was

asked if he thought that Article 2 of the Contract contained a transparent description of the Social Security proceedings. The Respondent accepted that the Contract was not detailed but stated that the bills which accompanied it were clear. It was put to the Respondent that if an accurate and transparent description had been provided it would have been rejected and that he had known this. The Respondent denied that. It was put to the Respondent that not a single invoice issued by the Firm had referred to the Contract. The Respondent confirmed this was correct but explained that they referred to the work done. It was suggested that the reason he had not referred to the Contract in the invoices was because he did not believe that the Contract gave rise to any entitlement for funds to be claimed from the public body. The Respondent rejected the suggestion, stating that the opposite was true. The entitlement to payment came from the agreement that the Respondent had with the Client. The Respondent had not entered into a Contract with the public body. Rather he had considered there was a third-party funding arrangement in place. If he had simply raised an invoice each month in the sum of £1,900 this would have been artificial as it would not have reflected the actual work done on the files. The Respondent had not seen the Contract as artificial and the suggestion that he had been dishonest did not “make an ounce of sense”.

- 27.9 It was put to the Respondent that if Articles 2 and 3 were genuine, there was no reason for money to accumulate on the Client account. The Respondent stated that he had limited involvement in the billing process.
- 27.10 It was suggested that the true position was that the Contract was not a genuine statement of rights and obligations but rather a device to obtain money from the public body to fund the Client matters. The Respondent stated that the public body was funding work that the Firm was doing and the Firm had been giving details in order to enable scrutiny of the claim. It was not right to suggest that the Respondent had signed in order to induce the public body to pay the Firm’s fees. If the Contract was indeed false then the Respondent had been an innocent dupe. The Respondent denied acting dishonestly, or acting in a way that compromised or impaired, or was likely to compromise or impair his integrity and his good repute and the good repute of the profession.

#### The Annex and the Invoice

- 27.11 The Respondent stated in his Witness Statement that he could not recall considering and signing the Annex. He had initially assumed that the Annex and invoice related to the R matter. However following a detailed analysis he had concluded that in fact it must have related to the totality of the work outstanding in the challenge to the waiver.
- 27.12 The invoice contained an account number that related to the Client’s identification number. However the matter number was missing as was a bill number. The Respondent stated that Helen Court would have been responsible for obtaining the bill number from the Accounts department. It was put to the Respondent that he had deliberately created a false document to induce the public body to make payments to the Client. The Respondent firmly rejected this.

- 27.13 The Annex covered the period from 1 June 2008 to 31 October 2008. Any work undertaken prior to 1 June would have been covered by the earlier Contract. It was put to the Respondent that he had not undertaken work to the value of £14,500 between 1 June and 31 October. The Respondent stated he would have to look at the papers on the file in order to get the specific amount. It was put to the Respondent that the Client ledger showed virtually no work being undertaken on the file during that period. The Respondent agreed that according to the ledger that appeared to be the case, but the ledger was not accurate and some work would have been done.
- 27.14 The Respondent denied that the Annex and invoice amounted to a dishonest demand for payment for services to which the Firm was not entitled. There would have been preparation for the October 2008 hearing, which was the main focus of much of these proceedings. The Respondent was taken through the work in progress (“WIP”) report for the waiver matter and it was put to him that it showed no WIP as at 7 March 2008. The Respondent explained that while the WIP report could have been better conveyed, the actual file would show the work done and therefore the amount of unbilled work on the matter. The Firm did not have a rigorous electronic time recording system at the time and the main requirement had been that work was recorded on the files.
- 27.15 It was put to the Respondent that even at the point of the hearing he had not adduced a single document that justified the invoice of 16 October 2008 and showed significant work done that was not recorded on the ledger. The Respondent referred to the chronology and stated that a large volume of his files were available to the SRA.
- 27.16 The Respondent then told the Tribunal that his understanding was that the invoice and the Annex permitted payment for unbilled work going back to 2006. There had been a very large amount of unbilled work, including approximately 100 hours of preparation, 30 hours of travel, £7,000 in Counsel’s fees and 100 letters. This had not been billed for and would have amounted to between £57,000-£60,000 of work on the file.
- 27.17 The Respondent agreed that the wording of the Annex was opaque. The Respondent told the Tribunal that it must have come from the Client. It was put to the Respondent that he went along with a deliberately misleading and opaquely worded document knowing that the public body would have refused the payment if the Annex had provided a clear description of the work to be done. The Respondent denied this. The Respondent denied acting dishonestly, or without integrity or in a way that was likely to diminish the trust the public placed in him and in the profession.

#### *The Social Security Proceedings*

- 27.18 The issues of immunity and the Client’s ability to move freely were also relevant to these proceedings. These factors brought the Social Security proceedings within the scope of the Contract and the Respondent believed that the work undertaken in respect of them related to the Client’s role as an elected representative.
- 27.19 It was put to the Respondent in cross-examination that the Social Security Appeals Tribunal had rejected the submissions that the Client had been unable to attend the first-tier Tribunal hearing due to his obligations and his role as an elected

representative. The argument had not been raised in front of the Social Security Commissioners. The Respondent stated that whilst it would seem from the judgment that the argument was not made, that did not mean that it was not considered. It was put to the Respondent that the application for leave to appeal dated 23 October 2006 did not specify this as a ground and at the appeal hearing in November 2007 it had again not been raised. The relevant paragraph from the judgement read as follows:

“Mr [L], appearing for the appellant, has advanced two main submissions. The first is that the tribunal chairman erred in deciding not to adjourn the hearing of the appeals on 3 September 2005. The second is that the substantive decision dismissing the appeals was based on an inadequate exercise of the Tribunal’s inquisitorial function and an inadequate analysis of the facts”.

- 27.20 The Respondent accepted that it did not appear to have been put by counsel but rejected the suggestion that the argument was “dead in the water”. It was always under consideration even if counsel had chosen not to rely on that material.
- 27.21 It was put to the Respondent that he had told the SRA in an interview in July 2014 that the case had “centred on his rights” in relation to that argument and that this was a deliberate untruth. The Respondent rejected this, describing the suggestion as a “twisted version of reality”.
- 27.22 As regards the belief by the Client that there was a political factor to the proceedings, it was put to the Respondent that this had been rejected as early as June 2005. The Respondent denied this and stated that this aspect was live until October 2008. It was put to him that there was no application to strike out the proceedings on the basis of an abuse of process. The Respondent stated that the Client was angling for that throughout. It was put to the Respondent that he did not honestly believe that the Social Security proceedings related to the Client’s activities as an elected representative. The Respondent disagreed with this. The Respondent rejected the suggestion that if he had gone to the public body and asked if he could use their money to fund an appeal in the Social Security proceedings that they would have refused it. The Respondent denied acting dishonestly, lacking integrity, compromising or impairing his good repute and/or the good repute of the profession, behaving in a way that was likely to diminish the trust the public placed in him and/or the profession or displaying manifest incompetence. He also denied breaching Rule 22 of the SAR.

### *Criminal Appeal Proceedings*

- 27.23 In his witness statement the Respondent had stated that the grounds of appeal raised arguments concerning the waiver together with other grounds of appeal. The grounds were dealt with as part of a single application which the Respondent regarded as work related to the Client’s role as an elected representative. It was put to the Respondent that only two of the grounds related to such matters and that the appeal against conviction was not part of the Client’s role as an elected representative. The Respondent stated that the consequences of the appeal proceedings were significant in relation to the Client’s ability to perform his functions. It was put to the Respondent that if he had gone to the public body and sought funding for an appeal that included those grounds they would have refused. The Respondent did not accept that analysis and stated that he was acting on his Client’s instructions. The Respondent denied

acting dishonestly, lacking integrity, compromising or impairing his good repute and all the good repute of the profession, behaving in a way that was likely to diminish the trust the public placed in him profession or displaying manifest incompetence. He also denied breaching Rule 22 of the SAR.

Advice on Application to CCRC

27.24 In his witness statement the Respondent stated that the application to the CCRC was supported by an Advice from MS, a barrister. That Advice raised a number of points including the issue of the waiver and the Client's ability to perform his role as an elected representative. The Respondent believed that the work fell within the scope of the Contract. The Client had wished to obtain the advice from this barrister whom he regarded as an expert in the field. The Respondent was asked whether he regarded the advice that was produced as a serious piece of work. The Respondent accepted that the advice was surprising and not what he would have expected. He did not accept that if he had gone to the public body and sought approval for payment for this advice that they would have refused. It was linked to the Client's role as an elected representative and the Respondent had been bound by the instructions he had received.

27.25 The Respondent denied acting dishonestly, lacking integrity, compromising or impairing his good repute or the good repute of the profession, behaving in a way that was likely to diminish the trust the public placed in him or the profession or displaying manifest incompetence. He also denied breaching Rule 22 of the SAR.

The R Matter

27.26 The Respondent told the Tribunal that the retainer commenced when the Client was serving his prison sentence in respect of the benefit fraud conviction. The Respondent reiterated that his Client's instructions had been that he was not guilty of the offences for which he had been convicted and therefore he did not have a reason to be suspicious about his Client's instructions in respect of his funding arrangements. The Respondent agreed that the R claim was a County Court matter in which the claimant was seeking to recover monies relating to a private business. The Respondent explained that the claimant was one of the main prosecution witnesses in the criminal proceedings. It was put to him that no points relating to a waiver arose. The Respondent confirmed that there had been no application to strike the proceedings out under those grounds. The Respondent accepted that the claim did not directly relate to the Client's work as an elected representative.

27.27 It was put to the Respondent that his response to the section 44B notice dated 12 November 2014, in which he had said that the R proceedings had a "significant impact" on the Client's position and his "ability to properly perform his functions", was "complete nonsense". The Respondent denied this and stated that the totality of the matters that were linked had led to this conclusion.

27.28 The Respondent was taken to the evidence of FA and PC, employees of the public body who were involved in the arrangements relating to expenses and allowances. Their evidence had been that the Client would not have been paid on the R matter under the terms of the Contract. The Respondent described this evidence as

inconsistent. He believed the work was covered. The Respondent denied acting dishonestly, lacking integrity, compromising or impairing his good repute and all the good repute of the profession, behaving in a way that was likely to diminish the trust the public placed in him profession or displaying manifest incompetence. He also denied breaching Rule 22 of the SAR.

### Council Tax Bill

27.29 The Respondent agreed that the payment of the council tax bill was not authorised by the Contract and did not have a dimension that related to the Client's role as an elected representative. He accepted that it was not usual for a solicitor to fund a Client's council tax bill. There was no letter seeking repayment from the Client but the Respondent had told him that the money had to be paid. The Respondent was asked why there were no documents related to this and the Respondent explained that this was because the payment had come out of the Client account rather than out of the office account, which he accepted was an error. The Respondent denied that the reality of the situation had been that there was an unspent balance left in the client account from funds from the public body and that he had been happy to oblige his client and use the balance to settle the outstanding Council tax. The Respondent was asked why he had not simply left the Client to pay his own council tax bill. He explained that bailiffs were about to be sent to the property. The Client was not at home and so the Respondent had authorised the payment. It was put to the Respondent that he had only become concerned about this in May 2013 as he realised that it may be detected as part of the police investigation. The Respondent stated that this was an unfair characterisation and that the reason he had made the notes that he had at that stage was to show a clear thought process in relation to the rectification of the error. The Respondent denied acting dishonestly, lacking integrity, compromising or impairing his good repute and/or the good repute of the profession, behaving in a way that was likely to diminish the trust the public placed in him profession or displaying manifest incompetence. He also denied breaching Rule 22 of the SAR.

### Statements about Amounts Invoiced

27.30 The Respondent was shown the statements of amounts invoiced to be provided to the public body that he had signed on 31 December 2006 and 31 December 2007. The Respondent stated that the Client had filled in the forms, save for the Respondent's address, signature and date. The Respondent accepted that the amounts did not relate to the amounts invoiced but to the amounts received. It was put to the Respondent that it was clear that the form was seeking a statement of the amounts invoiced. The Respondent stated that it was clear now but not then. The Respondent was asked if he understood that the purpose of the form was to enable the public body to check that the expenses system was being properly operated. The Respondent agreed that he had thought that it was an acknowledgement of monies received that the public body was seeking. The Respondent stated that he had not attached any significance to the form and he had been in error in doing so. He had been asked to complete the form and that is what he had done. He believed that the form was accurate. It was suggested that if he had read the form properly he could not have believed that, to which the Respondent acknowledged that he clearly had not read it properly. It was put to the Respondent that by the time he completed the form on 31 December 2007 the Client had been convicted of benefit fraud and that he should have appreciated the need for

the utmost care. The Respondent reiterated that he believed that the form was accurate. It was put to him that by the time the form dated 16 February 2009 had been completed the Client had exhausted all his appeal avenues and was unquestionably a benefit fraudster. The Respondent agreed. He stated that he did not analyse the documents or the ledgers or the financial side of things in that much detail. The case had been ongoing for a considerable period of time and he had moved on to other things. He saw no irregularity in the forms. It was put to the Respondent that in respect of each of the three documents he had made false statements. The Respondent denied this. There had been no more than errors and he had not acted dishonestly. He further denied lacking integrity, compromising or impairing his good repute or the good repute of the profession, behaving in a way that was likely to diminish the trust the public placed in him or in the profession or displaying manifest incompetence.

27.31 In re-examination the Respondent confirmed that the stamp on the documentation looked like that of the public body and it showed it was clearly received by them. Many of the invoices attached to the statements of amounts paid contained a breakdown of the work involved. When asked to explain the discrepancy between the invoices and WIP on the computer records, the Respondent told the Tribunal that the computer time recordings were obviously wrong. The files had been available to the SRA since the start of the investigation. The Respondent was not aware of any breakdown for the invoice that was attached to the Annex.

28. Mark Trafford QC

28.1 Mr Trafford confirmed that his witness statement was true to the best of his knowledge and belief. He had worked with the Respondent on a number of occasions. He regarded him as a highly competent solicitor specialising in criminal and family work. He always acted properly and he could not fault anything the Respondent had done. He described him as one of his better instructing solicitors. Mr Trafford had also had dealings with other people in the Firm on smaller cases. The Respondent's cases were extremely well prepared and he did not cut corners. He described the Respondent as quite understated and somebody who did not blow his own trumpet.

29. Michael Richardson

29.1 Mr Richardson had worked at the Firm since 1999 having formerly been a police officer in Hampshire. He was asked whether he had any concerns that the Respondent might get too close to his clients. Mr Richardson replied "certainly not". The Respondent gave everything his full attention and he would not accept what he was told without giving it proper consideration. He had no doubts about the Respondent's integrity.

30. Helen Court

30.1 Ms Court confirmed that her witness statement was true to the best of her knowledge and belief. She had worked at the Firm for 21 years and at the material time, 2008, had been there for 12 years. She agreed that she was efficient at her job. Mr Coleman made clear that there was no criticism of her conduct made by the SRA.

- 30.2 Ms Court confirmed that she prepared invoices she would show a bill to the Respondent because it was his ultimate responsibility to make sure that it was accurate. He would then sign the bill. It was important to have a bill number allocated to it so that the accounts department knew which matter it related to. This would be recorded in a bill book. The original bill would then be sent to the client and a copy would be retained by the accounts department. Ms Court was asked what the accounts department would have done if they had received a bill without a matter number or a bill number, but she did not know. It was not a common occurrence and it did not happen that often, though mistakes could be made.
- 30.3 Ms Court confirmed that it was normal procedure to produce a breakdown of the bill as well. The purpose of this was to show how the work in respect of which the costs had been accrued and the time spent. The larger the invoice the clearer it became if there was a breakdown. In respect of the invoice with the missing bill number and matter number Ms Court confirmed that she had prepared the bill and was unable to explain the missing number. It was possible that the accounts department did not know that the bill existed as it may not have reached them.
- 30.4 In terms of the process of calculating the bill, Ms Court told the Tribunal that she would calculate this from the paper file as it was more accurate than the electronic time recording. She was asked if she regarded bills as important documents that she had to get right, to which she replied “absolutely”.
- 30.5 In respect of the council tax payment she had followed the Respondent’s instructions to make the payment. He had not said which account, office or client, the money should come from. She confirmed that she had not been aware of any other client whose council tax bill had been paid.
- 30.6 Ms Court was asked by the Tribunal whether it was possible that the bill number was simply not on the top copy as opposed to being entirely missed off. Ms Court confirmed that it had been missed off. She would print the bill, obtain a bill number from the accounts department, return to her computer and print three more copies of the bill. She was asked whether it was possible that she had sent out the original by mistake without the number on it and she confirmed this was possible.

### **Findings of Fact and Law**

31. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent’s rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal took into account all the evidence and submissions presented to it when considering the Allegations.
32. **Allegation 1 - In order to induce the [public body] to pay the Respondent for legal services supplied to [the Client], the Respondent entered into a contract dated 26 August 2005 with [the Client] which, as the Respondent knew, did not state the true agreement between the Respondent and [the Client]. In so doing the Respondent acted in a way that compromised or impaired, or was likely to compromise or impair, his integrity and his good repute, and the good repute of**



**the profession, in breach of paragraphs 1(a) and (d) of the Solicitors' Practice Rules 1990 ("SPR 1990").**

### Applicant's Submissions

- 32.1 Mr Coleman submitted that the Contract did not reflect the reality or the substance of the legal relationship. There were retainers already in place to cover all services provided, making the Contract unnecessary. Any future work could have been, and indeed was, also dealt with by separate retainers. There was no reference to the Contract in any retainer letters. There was no proper basis on which the Respondent and the Client could have agreed that payments would be received as described in the Contract. At that time the Firm was only instructed in relation to the Social Security proceedings and the criminal proceedings. The Respondent did not have expertise in the areas of law that related to the Client's role as an elected representative.
- 32.2 There was no work done or invoiced under the Contract; it was all done under the individual retainers. If the Contract had been intended to set out parties' rights then there was no reason for money to have accumulated, long-term, on the client account. Insofar as money came into the Firm in mid-month, one might expect to see that sitting in client account for a particular period but not rolling accumulations of money over a period of time. Instead, by March 2007 there was approximately £13,000 accumulating on this ledger, reaching approximately £26,000 by May 2008. If the Contract was genuine there would have been an invoice for £7,000 for the first two months and regular invoices for £1,900 each month thereafter.
- 32.3 The Respondent had tacitly accepted that the Contract was not what it purported to be. In his Amended response he had stated that the Contract contemplated services that would or might be provided, when in fact it did no such thing.
- 32.4 The Tribunal was invited to reject the Respondent's case that the Contract was a true reflection of the arrangements the Respondent and the Client had entered into. It was a device to obtain funding from the public body on his various private legal matters. The Tribunal was referred to the "casual" reduction from £7,000 to £1,900 a month.
- 32.5 The Respondent had stated in his Witness Statement that he had been assured by the Client that he had spoken to the public body about the Contract and that this sort of arrangement was common. Mr Coleman submitted that nothing the Client could have said at that meeting could have reassured a responsible solicitor. The Contract was produced at the end of the meeting and the reason for this was that it was a device. The Respondent must have known or suspected when he signed it that the Client would submit it to public body for payment of expenses.

### Dishonesty

- 32.6 Mr Coleman further submitted that the Respondent's conduct was dishonest. He would have known that and it was not part of his defence that he did not appreciate ordinary standards of honesty.

## Respondent's Submissions

### General Submissions

- 32.7 Mr Treverton-Jones made a number of submissions which applied to the totality of the case against the Respondent and, as such, were relevant to consideration of each of the Allegations. They are not set out in this part of the Judgment so as to avoid repetition but the Tribunal had them in mind throughout its deliberations.
- 32.8 Mr Treverton-Jones invited the Tribunal to ask itself why the Respondent would have behaved in the manner alleged. He was alleged to have entered into a bogus Contract to induce the public body to pay fees. He was then said to have created a bogus Annex, and knowingly submitted false statements to the public body. Dishonesty was an inherent part of each Allegation and it would be impossible to find matters proved in respect of Allegations 1, 2 and 4 without, of necessity, finding that the Respondent had acted dishonestly. The Respondent was a decent and respectable family man and it would make no sense to risk his livelihood, his reputation and potentially his liberty to help the Client in his desire to obtain monies to which he was not entitled from the public body. The Respondent had no personal attachment to the Client and the financial gain to the Firm was very small. The Client was unlikely to have terminated the retainer if the Respondent had not acted as alleged. In any event, the criminal proceedings were funded by Legal Aid and the Crown Court would have been highly unlikely to agree to a transfer of Legal Aid.
- 32.9 The Tribunal was referred to the character evidence that had been adduced on behalf of the Respondent. It was an impressive body of evidence that Mr Treverton-Jones described as "extremely important". The Respondent was an honourable and decent man in both his private and professional life. This was not consistent with the allegation that he was dishonest as this evidence went to propensity. It also meant that the Respondent's explanations were credible. Mr Whitmarsh, himself an experienced investigator, had described the complete co-operation that he received from the Respondent. The Respondent had been transparent and had made all documents available. Mr Whitmarsh had not considered dishonesty to be an issue until after legal department had become involved.
- 32.10 The Respondent had given evidence before the Tribunal for more than seven hours about events that took place up to 12 years ago, much of that had been spent being cross-examined by a highly skilled QC who had total command of the documents. The Tribunal was invited to conclude that it would be difficult for anyone to "withstand that level of ferocious forensic scrutiny and emerge fully intact". The danger of hindsight in this case was acute. Mr Treverton-Jones submitted that the Respondent was an honest and reliable witness of fact who had sought to tell the Tribunal the truth as he remembered it.
- 32.11 The test for dishonesty was not complicated. However the test for lack of integrity was slightly less clear. The Tribunal was not being invited to follow the reasoning in Malins v SRA [2017] EWHC 835 (Admin). Although recklessness would amount to a lack of integrity, carelessness or a simple mistake would not automatically equate to that. The Tribunal was referred to Scott v SRA [2016] EWHC 1256. In order to make a finding of lack of integrity, the Tribunal would have to find that the Respondent's

actions were deliberate or reckless. He could not accidentally lack integrity any more than he could be accidentally dishonest.

### Allegation 1

- 32.12 The fact that the jury had found that the Contract was not genuine as far as the Client was concerned did not impact in any way upon the Respondent's position. He had been subjected to a lengthy Police investigation and, if the evidential test for prosecution had been passed, there would no doubt have been a prosecution against the Respondent as it would have been in the public interest. The Tribunal could infer that the Police and/or Crown Prosecution Service must have concluded that there was a less than 50% prospect of conviction. The verdict against the Client was therefore no more than background.
- 32.13 The Client was a private paying client who thought he could obtain third party funding from the public body. At the time the Contract was entered into the Client was facing criminal proceedings for benefit fraud and related waiver proceedings which were clearly in the scope of the Contract. The Tribunal was reminded that there was no contractual relationship between the public body and the Respondent and no duties were owed to the public body by him.
- 32.14 At time of entering into Contract, the Respondent was unaware of the expenses rules of the public body and he could not be criticised for that. The Respondent was entitled to trust the Client as an elected representative. The Applicant had sought to persuade the Tribunal that the money was used for purposes that were outside the scope of Contract. However the Tribunal was invited to accept that this was a bona fide Contract and asked the Tribunal to accept that.

### The Tribunal's Findings

- 32.15 The Tribunal examined carefully the wording of the Contract including the circumstances leading up to the final version of the Contract being prepared, and the alteration to the level of fees that would be paid to the Firm. The Tribunal considered this in conjunction with the matters which the monies from the public body were used to fund.
- 32.16 In considering this Allegation, the Tribunal was required to consider what was envisaged as at August 2005, the time during which the Contract was entered into. The two matters on which the Respondent was instructed at that time were the Social Security proceedings and the criminal proceedings. The Tribunal noted that the retainer letters relating to these matters made no reference to the Contract.
- 32.17 There was clearly an issue in relation to a possible waiver in respect of the criminal proceedings, and to a lesser extent the Social Security proceedings. The waiver issue had been live since the criminal proceedings had been stayed in 2004 and became particularly relevant from February 2005 when an application was made to waive the immunity which had given rise to the stay.
- 32.18 This was an unusual arrangement and the Contract was clear that the work had to relate to the Client's role as an elected representative.

- 32.19 In order for this Allegation to be proved the Tribunal would have had to find that the Respondent knew that the Contract did not state the true agreement between himself and the Client, as opposed to suspecting it or being careless to the possibility. If the Tribunal found that the Respondent knew this, that would require a finding that the Respondent had deliberately and dishonestly created a false document. The Tribunal did not find that the Respondent had devised the Contract as a means by which to defraud the public body. The Applicant had not proved beyond reasonable doubt that the agreement did not envisage matters relating to the waiver arising in the matters which the Respondent was instructed at the time. It was clearly envisaged that there would be work undertaken that related to the public body and the Respondent's role as an elected representative to that public body. The arguments made by the Client that the waiver should not be granted were based squarely on his role as an elected representative, specifically his ability to carry out that role if he was facing proceedings. The Tribunal could not be sure beyond reasonable doubt that it was not envisaged that the Respondent would be engaged in a role akin to that of 'general counsel'.
- 32.20 The Tribunal could not be sure that the Respondent knew that the Contract did not state the true agreement between the parties and was therefore not satisfied beyond reasonable doubt that he had acted in a way that compromised or impaired, or was likely to compromise or impair his integrity and his good repute and the good repute of the profession.
- 32.21 In light of that finding, the Tribunal was not required to consider the issue of dishonesty in relation to this Allegation. The Tribunal found Allegation 1 not proved.
33. **Allegation 2 - In order to induce the [the public body] to pay the Respondent for legal services supplied to [the Client], in 2008 the Respondent agreed with [the Client] an annex to the contract referred to under Allegation 1, and provided [the Client] with an invoice, which, as the Respondent knew, did not correctly describe the legal services to which the annex and invoice related. In so doing the Respondent failed to act with integrity, and behaved in a way that was likely to diminish the trust the public placed in him and in the profession, in breach of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007").**

#### Applicant's Submissions

- 33.1 Mr Coleman invited the Tribunal to consider the wording of the Annex. It was not only opaque but also nonsensical.
- 33.2 The Respondent's case was in "constant retreat". In his original response served on 30 September 2016 he had stated that it covered the R matter. He then stated in his amended response served on 21 February 2017 that it related to the waiver proceedings. In his oral evidence he had initially said that the work covered the period from 1 June 2008 – 30 October 2008. When it had been shown that the ledger showed very little work done between those dates to justify a bill of £14,500 he had accepted that and adopted his final position, which was that it covered work going back to February 2006.

- 33.3 The Tribunal was invited to find that the Annex and invoice represented a dishonest claim for £14,500. The Respondent had, on his own evidence, admitted that the document related to dates which were untrue. The narrative on bill was wholly unclear – so much so that even the Respondent had not been sure which matter it had related to. It would have been very simple for the invoice to say that it related to the waiver proceedings. There was no evidence of a schedule attached to the October 2008 invoice and no attendance notes to reflect the work done or time spent.
- 33.4 If the Respondent's account was truthful, such evidence would have been produced. The SRA had made requests of the Firm on this very point.
- 33.5 In addition to the lack of a schedule, the form of the bill was irregular in that it contained no bill number, no matter number. Mr Coleman submitted that the reason for this was that there was no matter to which this bill related. When money was received in December the proceeds had not been applied to the waiver matter ledger.

### Respondent's Submissions

- 33.6 Mr Treverton-Jones submitted that the evidence of the Respondent in re-examination and that of Helen Court destroyed much of the Applicant's case in respect of the Annex and Invoice.
- 33.7 He accepted that the Respondent's pleaded case changed but this was because he was not closely involved with accounting matters in the Firm and it was not an indication of dishonesty. On 13 October 2008 the Client had attended a hearing in the R case and two days later the waiver proceedings were determined. The Annex was prepared the following day by the Client.
- 33.8 There was no detailed breakdown with the invoice, but the Respondent had not been cross-examined on that specific point. This was not surprising as it was a one-off invoice. It was clear that no bill was issued on the waiver matter after February 2006. If the ledger was studied in detail there was approximately £23,000 of WIP by March 2008. There was plainly evidence of a substantial amount of work having been done that would justify issuing of a bill in sum of £17,000 in October 2008 and the Respondent was entitled to raise a bill on that ledger.
- 33.9 It was accepted that the WIP record was inaccurate and the Tribunal was invited to accept the evidence of the Respondent and Helen Court that the file was the most accurate way of preparing a bill.
- 33.10 Ms Court had taken responsibility for the invoice and had described the procedure involved in its production. There was room for error in that process and the explanation of that may have been the one suggested by the Tribunal, which was that it was the first version and not second version that was sent out.

### The Tribunal's Findings

- 33.11 The Tribunal examined carefully the Annex, the attached invoice and the ledger relating to the waiver matter. There were three key aspects to the issue of the Annex; the dates, the fees and the description of work undertaken.

- 33.12 The Tribunal found that the Annex was intended to relate to the waiver matter, rather than the R matter, based on the ledger and the Respondent's oral evidence, which the Tribunal accepted had changed from his initial written response, but which was consistent with his amended response.
- 33.13 The Tribunal noted that the invoice attached to the Annex did not itemise work done and did not contain a bill number or a matter number. The Tribunal also noted that the ledger showed no evidence of any significant work undertaken between 1 June 2008 and 31 October 2008, the dates to which the Annex purported to apply. The Tribunal noted the Respondent's description of the circumstances giving rise to the Annex being prepared as set out in his witness statement in which he had said "I do not recall the exact date or the circumstances in which it was completed and signed, and I have not been able to locate an attendance note of the meeting". The Respondent had accepted in his oral evidence that the work undertaken, as shown on the ledger, would not have amounted to £14,500.
- 33.14 The Tribunal found Helen Court to be a truthful witness. She had told the Tribunal in her evidence that she prepared the invoice on the Respondent's instructions. There was no evidence to the contrary and the Tribunal accepted her evidence that she had prepared the invoice by going back through the paper file to the date of the last invoice. The Tribunal considered whether Ms Court could have made an honest mistake in her recollection but the Tribunal was satisfied that she would have remembered the events clearly if she had based the bill on anything other than her perusal of the file. The Tribunal accepted that it was not uncommon for the computer system to be less complete than the paper file, particularly in the earlier days of electronic time recording. The lack of a bill number or matter number as well as the lack of a breakdown attached to the invoice was certainly unusual and Ms Court had no explanation for that. However she was adamant that she had prepared the bill and her honesty had not been questioned. The absence of these numbers and the breakdown did not persuade the Tribunal beyond reasonable doubt that the Respondent had deliberately caused Ms Court to prepare the invoice in that way. The Respondent was a step removed from the accounts process which was also reflected in the fact that he did not direct where the money was allocated in respect of each matter when it was received from the public body.
- 33.15 The Tribunal noted that the figure of £14,500 was a round figure, however this was not unusual in circumstances where the WIP was rounded down. The Respondent's case was that Helen Court had told him that the figure was £14,500 and this had not been disproved. The Tribunal could not be satisfied beyond reasonable doubt that it was in fact the Respondent who had told her that figure. The work undertaken was clearly inconsistent with the dates specified in the Annex. Therefore the wording of the Annex was not an accurate reflection of the work undertaken". The Respondent had stated that he signed the Annex but did not recall doing so and was not aware of the date on which he did. The Applicant had not disproved that. The Respondent should clearly have read the document before he signed it. In order to find this Allegation proved to the Tribunal would have had to find that the Respondent knew that the Annex did not correctly describe the legal services to which the Annex and invoice related.

- 33.16 The Respondent was busy at the time and was being pressed by the Client. He should have read the document properly, but the Tribunal accepted his evidence that he did not.
- 33.17 Although in reality the Annex did not correctly describe the legal services to which the Annex and invoice related the Tribunal could not be satisfied beyond reasonable doubt that the Respondent knew that the Annex did not do this.
- 33.18 The Tribunal was therefore not satisfied beyond reasonable doubt that the Respondent had lacked integrity or acted in a way that was likely to diminish the trust the public placed him and in the profession.
- 33.19 In light of that finding, the Tribunal was not required to consider the question of dishonesty. The Tribunal found Allegation 2 not proved.
34. **Allegation 3 - The Respondent permitted his firm to use money which had been provided by the [public body] to fund the provision of legal services under the contract referred to in Allegation 1 for purposes that were not authorised by that contract. The Respondent knew or suspected that the purposes were not so authorised and thereby:**
- 1.3.1. (as regards conduct prior to 1 July 2007) acted in a way that compromised or impaired, or was likely to compromise or impair, his integrity and his good repute, and the good repute of the profession, in breach paragraphs 1(a) and (d) of the SPR 1990; and**
- 1.3.2. (as regards conduct from 1 July 2007) failed to act with integrity, and behaved in a way that was likely to diminish the trust the public placed in him and in the profession, in breach of Rules 1.02 and 1.06 of the SCC 2007; and**
- 1.3.3. Breached Rule 22 of the Solicitors Accounts Rules 1998.**

#### Applicant's Submissions

- 34.1 Mr Coleman submitted that the Respondent's evidence that all the disputed work was covered by Contract was incredible. The litmus test of this was the R matter. That case commenced when the Client was serving a prison sentence. The Tribunal should ask itself whether the Respondent would have expected the public body to pay for such work.
- 34.2 This was a useful test if the Tribunal was unsure about what was covered. An example was the MS advice about the CCRC matter - what would the public body have said if he had shown it to them? Mr Coleman did not suggest that the Respondent should have shown the public body the actual Advice but it was a useful approach to adopt in assessing whether it would have been funded by the public body.
- 34.3 Although the Respondent had sought to distance himself from the public body in his evidence on the basis that the Contract was with the Client and not the public body, there was a direct connection as Firm received monies directly from the public body.

He should not be involved in misuse of monies and he had accepted that in cross-examination.

- 34.4 In relation to the payment of the council tax bill, if that was the only matter where something had gone wrong then it might be reasonable to give the Respondent the benefit of the doubt. However it was highly unusual to make such a payment and the Tribunal was invited to consider the totality of the evidence.
- 34.5 In relation to the pre-1 September 2005 waiver work relating to the criminal proceedings for benefit fraud, the appeal against conviction, the R matter and the CCRC advice, the Respondent had accepted that he knew the Contract only covered work that was related to the Client's role as an elected representative and that the funds should not have been used to pay for legal expenses related purely to his private legal affairs. The fact that the Client believed that the proceedings all had a political dimension could not bring private litigation within the scope of the contract and, as an experienced solicitor, the Respondent must have known that. The opaque nature of the Contract and Annex amounted to compelling evidence that the Respondent at least suspected that the services did not fall within the Contract. If he had a genuine belief that this could all properly be claimed then he would have had no trouble inserting that description into both documents. The fact that the Respondent had stated that the Client would be submitting the invoices to the public body was not an answer. He had no confirmation of this and even if the Tribunal accepted that the Respondent believed that they were being received, that did not change the fact that he was using the funds when the work was not covered by the Contract.
- 34.6 Mr Coleman submitted that the withdrawals amounted to a breach of Rule 22 of the SAR. The monies were either client monies or trust monies. If the monies were held for a particular purpose then they were held on trust for the public body. If the Tribunal found it was trust money then it was invited to find that it was improperly withdrawn.

#### Respondent's Submissions

- 34.7 Mr Treverton-Jones submitted that it was incumbent on the Applicant to prove that in one or more of six matters, the Respondent had permitted the Firm to use monies outside the agreement. The Applicant had not called anyone from the public body to explain how the system operated, choosing instead to serve Civil Evidence Act Notices to adduce the evidence of FA and PC, who had given evidence in the criminal trial. The expenses rules had been updated twice in 2006 and twice in early 2007. The rules allowed expenses to be claimed for the entirety of an elected representative's term of office. In his evidence in the criminal trial, PC had confirmed that it was up to the elected representative to make the decision as to what could be claimed. He had described the procedures as "light" and the system as "very light touch". He had confirmed that the contracts were between the elected representative and their assistants.
- 34.8 In terms of legal expenses the procedure became very unclear. The evidence of FA and PC was inconsistent. FA had said that an elected representative could make a claim if the services corresponded to their role. PC had said that the legal services had to relate to disputes between the elected representative and his assistant but that



general expenses may be claimable for other legal fees as long as they did not involve private matters or actions against the public body. However that was inconsistent with the practice adopted in relation to the waiver matter.

- 34.9 Mr Treverton-Jones submitted that the Applicant had been unable to show that the amounts paid to the Firm were used for payment for unauthorised legal fees, and if they were then it had also not proved that the Respondent knew or suspected this.
- 34.10 In relation to the social security proceedings, the waiver issue was clearly live for a considerable period, even if it was less prominent towards the end. There was ample material to find that matter not proved. The waiver matter, which was relevant to the criminal proceedings for benefit fraud was a “hopeless part of the case”. It was clearly fundamental to the Client’s ability to work as an elected representative. The issue of work pre-dating the Contract, may be relevant to contractual law but not professional misconduct. The Client was entitled to expenses for whole term. The invoice which must have been submitted to the public body was dated 12 July 2005. There could be no professional misconduct in accepting money on this matter.
- 34.11 The appeal against conviction matter clearly fell within the Contract. It was not disputed that two of the five grounds of appeal were related to the waiver matter. The suggestion that the Respondent should have apportioned his time was “absurd” and artificial. The Respondent had believed he was entitled to the money.
- 34.12 In respect of the R matters, the Respondent had accepted and acted in good faith on the instructions of the Client that the case had relevance to his role as an elected representative.
- 34.13 The MS advice made direct reference to matters that related to the Client’s role and therefore again, clearly fell within the scope of the Contract.
- 34.14 The council tax matter was clearly a mistake as Helen Court had confirmed. The Respondent had authorised it as an “act of humanity” as the bailiffs had become involved.
- 34.15 The alleged breach of Rule 22 was not made out. There was no lending contract and no trust arose. This was an unconditional payment of expenses with no restriction on use of monies by the Firm.

### The Tribunal’s Findings

- 34.16 The Tribunal considered each of the six matters to which the funds of the public body had been applied. The first stage was to consider whether or not the Applicant had proved that matters were outside the scope of the Contract.

### Social Security Proceedings

- 34.17 The Tribunal noted that the grounds of appeal and the submissions made as reflected in the Court of Appeal judgment did not raise issues that related to the Client’s role as an elected representative. Whilst that had been an issue to a limited extent earlier in the proceedings, by the stage that the matter was reaching the Court of Appeal it was

no longer a live issue. The Tribunal therefore found that the Social Security proceedings were outside the scope of the Contract.

- 34.18 The Tribunal then considered whether the Respondent knew or suspected that the use of funds for this purpose was not authorised. The Tribunal noted that the narratives on the bills relating to this matter made no mention of the Client's role as an elected representative. The invoices did not refer to the Contract. Although the Client was no doubt of the view that there was a political dimension to the proceedings, no strike out application was made on that basis and the reason for this was that the proceedings did not relate to the Client's role as an elected representative and the use of funds for this purpose was therefore not authorised. The Tribunal found that the Respondent had dissembled in his evidence on this point. However, whilst the Tribunal was not satisfied beyond reasonable doubt that the Respondent knew that such use of the funds was not authorised, it was satisfied beyond reasonable doubt that he suspected that it was not.
- 34.19 The Tribunal considered the allegation of dishonesty in respect of the social security proceedings by applying the combined test laid down in Twinsectra v Yardley and Others [2002] UKHL 12 which requires that the person a) acted dishonestly by the ordinary standards of reasonable and honest people and b) knew that by those standards he was acting dishonestly. The Tribunal took into account the character evidence that had been provided on behalf the Respondent, both in writing and oral evidence.
- 34.20 The Tribunal considered the objective test and was satisfied beyond reasonable doubt that it was dishonest by the ordinary standards of reasonable and honest people to use third-party funding, suspecting that the cost of the work to which the third party funding was applied was not work covered by the terms of the Contract and therefore the claim from the public body in respect of the work which the Respondent suspected that the Client would make would be improper.
- 34.21 The Tribunal then considered the subjective test. The Tribunal had already found that while the Respondent suspected the money should not be used for that purpose, it could not be satisfied that he knew it could not. On the basis of that finding the Tribunal could not be satisfied that the Respondent knew that by the ordinary standards of reasonable and honest people his actions were dishonest. The Tribunal therefore did not find dishonesty proved in relation to the Social Security proceedings.
- 34.22 The Tribunal considered whether, in the period until 1 July 2007 the Respondent had acted in a way that compromised or impaired or was likely to compromise or impair his integrity and his good repute and the good repute of the profession. In considering the issue of integrity the Tribunal followed the line of authorities that included Newell-Austin v SRA [2017] EWHC 411 (Admin) and had most recently been considered in Williams v SRA [2017] EWHC 1478 (Admin) where Carr J stated: "Want of integrity arises when, objectively judged, a solicitor fails to meet the high professional standards to be expected of a solicitor". The test to be applied when considering the issue of integrity was an objective one based on the definition as set out in Hoodless and Anor v FSA [2003] UKFTT FSM007, namely that "integrity connotes moral soundness, rectitude and a steady adherence to an ethical code". The Tribunal was satisfied that to claim payment in the circumstances set out above,

suspecting that it was not within the scope of the Contract, lacked integrity and was likely to impair the Respondent's good repute and that of the profession. The public's perception of the profession would inevitably be damaged by public funds being misused in this way by the Respondent. The Social Security proceedings did not conclude until December 2007 and the Tribunal therefore considered whether Rule 1.02 and rule 1.06 of the SCC 2007 had also been breached. The Tribunal, having found that the Respondent had compromised his integrity in the period prior to 1 July 2007, found that this conduct had continued after that date and he had lacked integrity at all material times until the end of the proceedings. Similarly, having found that the Respondent had compromised the good repute of the profession, the Tribunal also found that the Respondent behaved in a way that was likely to diminish the trust the public placed in him and in the profession.

- 34.23 The Tribunal considered whether there had been a breach of Rule 22 of the SAR 1998. The third-party funding was not a loan and there was no contract between the Respondent and the public body. The Tribunal was not satisfied beyond reasonable doubt that a trust arose or that the funds needed to be treated as client monies. The Tribunal was therefore not satisfied that Rule 22 had been breached in the circumstances.
- 34.24 In respect of the Social Security proceedings, the Tribunal therefore found the Allegation proved save for the allegation of dishonesty and the breach of Rule 22 of SAR 1998.
- 34.25 In view of these findings, it was not necessary for the Tribunal to consider Allegation 6 in respect of the Social Security proceedings.

*Challenge to the Waiver Proceedings prior to commencement of the Contract*

- 34.26 The Tribunal noted that the Contract contained a commencement date of 1 September 2005. The question was whether it was arguable that the Contract permitted payment for the entirety of the period that the Client was an elected representative, regardless of the commencement date. The Tribunal found that the reality of the situation was that if it was intended to do that it would have said so and that therefore the Contract did not permit the use of the funds to cover work undertaken prior to 1 September 2005. The Tribunal was therefore satisfied that this work was outside the scope of the Contract.
- 34.27 The Respondent was an experienced solicitor who had handled fraud cases and understood the importance of the wording of contracts. The Tribunal was satisfied beyond reasonable doubt that the Respondent at the very least suspected that work done prior to 1 September 2005 was not covered. The Tribunal could not be sure that he knew this however and proceeded on the basis that he suspected.
- 34.28 The Tribunal again considered the objective test for dishonesty and was satisfied beyond reasonable doubt that it was dishonest by the ordinary standards of reasonable and honest people to use third-party funding suspecting that it was not covered by the terms of the Contract under which that third-party funding was provided.

- 34.29 The Tribunal then considered the subjective test. On the same basis as the finding in relation to the Social Security proceedings, the Tribunal could not be satisfied that the Respondent knew that by the ordinary standards of reasonable and honest people his actions were dishonest unless he had known that the use of the funds was not permitted. The Tribunal therefore did not find dishonesty proved in relation to the work undertaken in respect of the waiver proceedings that pre-dated 1 September 2005.
- 34.30 The Tribunal considered whether the Respondent had acted in a way that compromised or impaired or was likely to compromise or impair his integrity and his good repute and the good repute of the profession. The Tribunal found that he had so acted, for the same reasons as set out in relation to the Social Security Proceedings.
- 34.31 The Tribunal did not find Rule 22 of SAR 1998 breached for the same reasons as in relation to the Social Security proceedings.
- 34.32 In respect of the pre-1 September 2005 waiver proceedings, the Tribunal therefore found the Allegation proved save for the allegation of dishonesty and the breach of Rule 22 of SAR 1998.
- 34.33 In view of these findings, it was not necessary for the Tribunal to consider Allegation 6 in respect of the pre-1 September 2005 waiver proceedings.

#### Appeal against Criminal Conviction Proceedings

- 34.34 The Tribunal considered the grounds of appeal that were lodged in respect of this matter. There had been five principle grounds of appeal, two of which related to matters related to his role as an elected representative. The issue of the waiver was not fully resolved until October 2008, the Client's final appeal to the House of Lords having been rejected in February 2008. The Tribunal accepted the submission of Mr Treverton-Jones that it would not be realistic to separate of the grounds of appeal into those which related to the Client's role as an elected representative and those that did not. While it might have been possible to apportion the time spent preparing the bill, the Tribunal was not satisfied beyond reasonable doubt that these proceedings were outside the scope of the Contract. It was therefore not necessary to consider the Respondent's knowledge or suspicion in relation to this part of the Allegation.
- 34.35 For the sake of completeness, the Tribunal found no breach of Rule 22 of SAR 1998.
- 34.36 In view of these findings, it was also not necessary for the Tribunal to consider Allegation 6 in relation to the appeal against criminal conviction proceedings.

#### R Proceedings

- 34.37 The Tribunal considered the evidence of FA and PC given before the Crown Court.
- 34.38 PC had been asked in his oral evidence before the Crown Court whether the public body would have paid for civil proceedings taken against the Client in a personal capacity that related to matters that pre-dated his election. PC had replied "clearly not". In the investigative interview, FA had been asked if the R case would have been

within the scope of the Contract. He replied “In the [R] case I have already replied that it would not be covered by this allowance”. The Applicant had served the evidence of FA and PC by way of a Civil Evidence Act notice. The Respondent had not served a counter-notice and had not required the Applicant to call either of them for cross-examination. The Tribunal was therefore entitled to accept their evidence and did so. The evidence they had given on this point was consistent and clear – the proceedings were not within the scope of the Contract and would not have been funded had the public body known of the nature of the proceedings.

- 34.39 The Tribunal did not see anything in the Contract which could, on any reading, bring this type of work within its scope. The mere fact of the Client’s views on the reason behind the litigation did not bring it within scope and it did not form the basis of any application to strike-out for abuse of process, nor did such issues feature in the defence of the case. The Tribunal was satisfied beyond reasonable doubt that the R proceedings were not within the scope of the Contract.
- 34.40 The Tribunal considered whether the Respondent knew or suspected that the work was out of scope. This was a new case that post-dated the Contract by approximately two years. The Respondent would therefore have been familiar with the arrangements under the Contract by that time. No waiver issue arose in respect of these proceedings and the only link made between the proceedings and the Client’s role as an elected representative was by the Client’s belief that the proceedings related to his role. If the Respondent had considered this to be a serious suggestion that had any merit to it then the Tribunal would have expected to see an application for the matter to be struck out or stayed as an abuse of process based on that ground. No such application was made and this was because there was no proper basis for concluding that the proceedings in any way related to the Client’s role as an elected representative. The Tribunal was satisfied beyond reasonable doubt that the Respondent knew that the proceedings were not in the scope of the Contract.
- 34.41 The Tribunal considered whether the Respondent’s actions had been dishonest, again applying the test in Twinsectra and again keeping in mind the positive character testimony adduced on behalf the Respondent. In considering the objective test the Tribunal had no doubt that it would be regarded as dishonest by the ordinary standards of reasonable and honest people to use the funds from the public body when the Respondent knew that the work that it was funding was outside the scope of the Contract.
- 34.42 The Tribunal considered the subjective test. The civil proceedings related to a matter that pre-dated the Client’s election and were completely unrelated to his role as an elected representative or even as a candidate. The Respondent was a knowledgeable and experienced solicitor and it was so blindingly obvious that these matters were outside the scope of the Contract that his evidence that he believed otherwise was incredible. It was clear from the character evidence that the Respondent was somebody who understood what would be regarded as honest or dishonest by the ordinary standards of reasonable and honest people. The Tribunal did not regard the Respondent as a fundamentally dishonest individual. However in this particular instance the Tribunal was driven to the unavoidable conclusion that in applying the public body funds to the R matter he knew that he was acting dishonestly by the ordinary standards of reasonable and honest people. The Tribunal was therefore

satisfied beyond reasonable doubt that the allegation of dishonesty was proved in respect of the R matter.

- 34.43 In view of the Tribunal's finding that the Respondent had been dishonest, it followed from that as a matter of logic that he had lacked integrity. By acting dishonestly and with a lack of integrity, with the result that public funds had been spent on defending private civil proceedings brought against an elected representative, the Respondent had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services.
- 34.44 The Tribunal did not find a breach of rule 22 of the SAR 1998 for the same reasons as set out above.
- 34.45 In respect of the R matter, the Tribunal therefore found the Allegation proved in full save for the breach of Rule 22 of SAR 1998.
- 34.46 In view of these findings, it was not necessary for the Tribunal to consider Allegation 6 in respect of this matter.

#### CCRC Advice

- 34.47 The Tribunal considered the wording of the advice provided by MS. Although the nature of the advice provided was unusual to say the least, it clearly did relate to matters including the Client's role as an elected representative. It was fair to say that the majority of the advice touched on those issues to varying degrees. The Tribunal was therefore not satisfied beyond reasonable doubt that it fell outside the scope of the Contract. It was therefore not necessary to consider the Respondent's knowledge or suspicion in relation to this part of the Allegation. For the sake of completeness, the Tribunal did not find a breach of Rule 22 of SAR 1998.
- 34.48 In view of these findings, it was also not necessary for the Tribunal to consider Allegation 6 in relation to the CCRC advice.

#### Council Tax Payment

- 34.49 The Respondent had accepted that the payment of a council tax bill could clearly not fall within the scope of the Contract. The Tribunal took the same view and was satisfied beyond reasonable doubt that this was indeed the case.
- 34.50 The Tribunal therefore considered whether the Respondent at the time knew or suspected that it was outside the scope of the Contract. The Respondent's evidence had been that this was an accounting error that was not discovered until some years later and Helen Court had confirmed this. The Tribunal accepted that the Respondent did not have a high level of involvement in the accounting process in the Firm at the time. The Tribunal was not satisfied beyond reasonable doubt that the Respondent had any knowledge at all that the council tax had been paid from the client account using the funds supplied by the public body. This was because he was simply not close enough to the transaction to have known. In the circumstances the Tribunal could not be satisfied that he knew or suspected that the monies had been used from the public body funding.

- 34.51 The Tribunal was therefore not required to consider the question of lack of integrity or whether the Respondent had behaved in a way that was likely to diminish the trust the public placed in him and in the profession as the basis of this part of the allegation had not been proved, namely that he had not known or suspected that the funds were outside the scope of the Contract due to his limited knowledge of the details of the transaction and the first place. The Tribunal also found the alleged breach of Rule 22 of SAR 1998 not proved to the same reasons as above.
- 34.52 The Tribunal was required to consider Allegation 7 as an alternative to this part of Allegation 3 and the Tribunal's findings in respect of that allegation are set out below.
- 34.53 The Tribunal did not find this part of the allegation proved.
35. **Allegation 4 - The Respondent intentionally made false statements regarding the amounts invoiced to [the Client] under the contract referred to under Allegation 1, intending that the statements be provided to the [public body] to support [the Client's] expenses claims. The Respondent thereby:**
- 1.4.1. (as regards conduct prior to 1 July 2007) acted in a way that compromised or impaired, or was likely to compromise or impair, his integrity and his good repute, and the good repute of the profession, in breach of paragraphs 1(a) and (d) of the SPR 1990; and**
- 1.4.2. (as regards conduct from 1 July 2007) failed to act with integrity, and behaved in a way that was likely to diminish the trust the public placed in him and in the profession, in breach of Rules 1.02 and 1.06 of the SCC 2007.**

#### Applicant's Submissions

- 35.1 Mr Coleman submitted that the public body, in requesting this information, was seeking to verify the amounts invoiced. They referred to statements of amounts paid. The public body wanted to know how much invoiced, not how much paid.
- 35.2 The documents contained a declaration from the Respondent. The key word was "invoiced". They were obviously important auditing documents and any solicitor would appreciate that. No solicitor would sign such a document without paying attention to it. If the Respondent had correctly completed the document it would have revealed the fact that the invoices would not match up with amounts received.
- 35.3 Had the public body known the true position it would not have made the payments. It was obvious that such a system would not fund private litigation or the payment of a Council Tax bill.
- 35.4 The Tribunal was referred to the evidence of FA and PC. Mr Coleman submitted that it was hard to see why the Respondent disputed their evidence, as even if the public body would have paid the sums in question it would not excuse the Respondent's conduct.

### Respondent's Submissions

35.5 Mr Treverton-Jones agreed that forms sent in by the Respondent were erroneous in that they stated the amounts paid and not amount invoiced. However included with those forms were documents which showed exactly what the Client had paid and so there was no deception. The form, as completed, made very clear the public body was being told what had been paid and not what had been invoiced. If it was part of an attempt to deceive the public body it would have referred to being a statement of sums invoiced – a point which fundamentally undermined the Applicant's case.

### The Tribunal's Findings

35.6 The forms completed by the Respondent were clearly headed "statement of the amounts invoiced..." and the sums contained within those documents were clearly the sums paid. The statements were therefore not true in the sense that they were wrong. The wording of the Allegation required the Tribunal to find not only that the statements were false but that the Respondent had made them intentionally, as opposed to accidentally or carelessly for example. The Tribunal noted that the documents that had been attached to these statements had described themselves as referring to amounts paid. The Tribunal found it difficult to see how, if the intention of the Respondent was to mislead the public body, submitting a document which accurately described its contents would assist that deception. It would not have been difficult for the public body to have identified the fact that the Respondent had provided the wrong information on the form based on those attachments. The Respondent had stated in his evidence that the completion of the forms in this way was an error based on his misunderstanding as to what the form required.

35.7 On the basis that there was a plausible explanation for the form being completed in this way other than the Respondent having done it intentionally, the Tribunal could not be satisfied beyond reasonable doubt that the Respondent had intentionally made false statements. The Tribunal was therefore not satisfied that the Respondent had compromised or impaired or had been likely to compromise or impair his integrity or his good repute, or the good repute of the profession or that he had behaved in a way that was likely to diminish the trust the public placed in him and in the profession.

35.8 The Tribunal found Allegation 4 not proved.

35.9 In light of the Tribunal's findings in respect of this allegation, the Tribunal was required to consider Allegation 8. Its findings in respect of that Allegation are set out below.

### Alternative Allegations (6, 7 and 8)

#### Applicant's Submissions

35.10 Mr Coleman submitted that given strength of evidence in respect of Allegations 1-4, the alternatives would not fully reflect the reality in this case. However if the Tribunal did find that the Respondent believed that his actions were justified, a finding of manifest incompetence would have to follow. This level of incompetence would compromise the good repute of the Respondent or the profession (when applying



Rule 1(d) SPR 1990) and would have meant that he behaved in way that was likely to diminish the trust the public placed in him or the profession (when applying Rule 1.06 SCC 2007).

### Respondent's Submissions

35.11 Mr Treverton-Jones submitted that in respect of the alternative Allegations, the Tribunal would have to find that the Respondent had made serious and reprehensible mistake before finding any of the allegations of manifest incompetence proved. The Respondent had accepted that he had made mistakes, such as the council tax payment and the form about the invoices. These mistakes did not amount to professional misconduct. They would have to be of a high level of seriousness to be regarded as such.

### Allegation 6

35.12 In light of the Tribunal's findings in respect of Allegation 3, the Tribunal had not been required to consider Allegation 6.

### Allegation 7

35.13 The Tribunal considered Allegation 7 based on its findings in respect of the payment of the council tax bill referred to in Allegation 3. The circumstances of that payment are set out above. The question for the Tribunal in considering Allegation 7 was whether the Respondent had exhibited manifest incompetence in failing to ensure that the money provided by the public body was not used to pay the council tax and whether that diminished the trust the public placed in the Respondent or in the provision of legal services. In SRA v Libby [2017] EWHC 973 (Admin) at [42] the Court held "Whether incompetence amounts to a breach of the Principles and Principle 6 in particular, and what the appropriate sanction would be for any such breach, will depend upon all the circumstances of the case". In that case the solicitor had himself borrowed hundreds of thousands of pounds from a third party and had "failed, through carelessness, to ensure that the monies were properly used".

35.14 The situation in this case was that there had clearly been incompetence in that the council tax bill should never been paid from the public body's funds in the client account. However the proximity of the Respondent to that incompetence could be distinguished from that in Libby as the Respondent in this case had entered into a Contract with the Client but not with the third party and he had not been personally involved in the mechanics of the withdrawal from the client account.

35.15 The Tribunal was not satisfied beyond reasonable doubt that the error that was made in paying the council tax bill was so serious and reprehensible as to amount to manifest incompetence or professional misconduct. The Tribunal therefore found Allegation 7 not proved.

Allegation 8

- 35.16 The Tribunal considered Allegation 8 based on its findings in respect of the forms that were the basis of Allegation 4. The circumstances in which the Respondent erroneously completed the forms are set out above. The question for the Tribunal in considering Allegation 8 was a) whether the Respondent had exhibited manifest incompetence in not properly completing the forms and therefore providing the wrong information to the public body and b) whether, if it did amount to manifest incompetence that compromised or impaired or was likely to compromise or impair the good repute of the Respondent or the solicitor's profession (when applying the SPR 1990) or whether it diminished the trust the public placed in the Respondent or in the provision of legal services (when applying the SCC 2007).
- 35.17 The Tribunal approached the question of manifest incompetence by applying the same test as it had done in relation to Allegation 7. The Respondent should clearly have taken greater care to ensure the forms were completely accurate and that they complied with what was being required of him, particularly in circumstances where a declaration had to be signed. However in circumstances where the error was clear on the face of the attached documents and could therefore be easily spotted, the Tribunal was not satisfied beyond reasonable doubt that the mistakes amounted to serious or reprehensible conduct or that the Respondent had been manifestly incompetent.
- 35.18 The Tribunal found Allegation 8 not proved.

**Previous Disciplinary Matters**

36. None.

**Mitigation**

37. Mr Treverton-Jones submitted that although in normal circumstances any finding of dishonesty would usually result in a strike off, in this case there were exceptional circumstances that would enable the Tribunal not to impose such a sanction.
38. The finding of dishonesty was very limited and was restricted to one part of one file for one client. The misconduct had been completely isolated and took place in the context of acting for a client who was difficult, unpleasant and strong minded. The level of fees on the R matter represented a small percentage of the overall fees received from the public body. That matter had commenced in 2008 and concluded by 2009, some eight years ago.
39. The Tribunal had heard about the Respondent's character both professionally and in every other aspect of his life and was referred again to the character evidence.
40. The Respondent had endured the ordeal of police investigations as well as these proceedings. He had been the subject of a dawn raid and Police interviews under caution. He had therefore suffered to an even greater extent than many Respondents who appeared before the Tribunal.

41. Since these matters the Respondent had operated with no restrictions on his Practising Certificate and no regulatory concerns of any sort. The Tribunal was invited not to strike the Respondent from the Roll and to impose a lesser sanction.

### **Sanction**

42. The Tribunal referred to its Guidance Note on Sanctions (December 2016) when considering sanction and took account of all that had been said in mitigation on the Respondent's behalf.
43. The Tribunal assessed the seriousness of the misconduct with reference to the level of culpability and the harm caused, together with any aggravating and mitigating factors.
44. The Respondent's primary motivation was to satisfy the demands of his client, who the Tribunal accepted was intimidating and difficult. However a solicitor of the Respondent's experience should have been able to stand up to that. The fees received by the Firm over the period in question were not negligible and to that extent there was some financial motive. The Respondent's actions were not part of a sophisticated plan but it could not be said that his actions were entirely spontaneous.
45. There was always a significant harm caused to the reputation of the profession when a solicitor acted dishonestly. This case involved the misuse of public money and while the sums were not vast the level of harm caused remained significant.
46. Matters were aggravated by the fact that the conduct as a whole was deliberate and repeated albeit arising out of the same nexus. It took place over a period of time and the Respondent ought to have known that he was in material breach of his obligations.
47. In mitigation, the Tribunal recognised that the Respondent had been dealing with an unusually difficult client. There been a degree of cooperation with the SRA as confirmed by Mr Whitmarsh in his evidence. The level of insight displayed by the Respondent was low. The fact that he had denied all the Allegations was indicative of this.
48. In light of the Tribunal's finding of dishonesty there was no basis on which to make no order or deal with the matter by way of a reprimand. The matters were too serious to be dealt with by way of a financial penalty. The imposition of a restriction order would not be sufficient to protect the public from future harm and the Tribunal therefore had to consider removing the Respondent from practice. Where there had been a finding of dishonesty the normal sanction was that the Respondent would be struck from the roll. The Tribunal considered whether there are any exceptional circumstances that would enable it to step back from such a sanction. The Tribunal had taken careful regard of the character evidence submitted on the Respondent's behalf both orally and in writing. The Respondent was clearly held in very high regard by senior and well-respected members of the both legal professions. The Tribunal recognised that the likelihood of further misconduct arising was low and had in mind the fact that the Respondent had been dealing with a manipulative fraudster. However as a result of his misconduct the Firm had acquired substantial sums of public money to which it was not entitled, some of it dishonestly and some of it the result of a lack of integrity. The reputation of the profession would be significantly harmed by not

striking the Respondent off and whilst the circumstances referred to above were undoubtedly difficult circumstances they were not exceptional. The Tribunal recognised the significant and difficult personal consequences to the Respondent of being struck off the roll, but the protection of the public and of the reputation of the profession took precedence and in the absence of any exceptional circumstances, the only appropriate sanction was that the Respondent be struck off.

### **Costs**

49. Mr Coleman applied for the Applicant's costs in the sum of £90,224.44. He submitted that the Tribunal should award the full amount of costs. The Tribunal's findings had upheld the substance of the Allegations. The way in which the Respondent had conducted the proceedings was a factor that the Tribunal should take into account.
50. Mr Treverton-Jones told the Tribunal that no part of the Cost Schedule was excessive in any way. The Tribunal was invited to bear in mind that the Respondent had already incurred considerable expense in defending the Police investigation. There was no evidence as to means put before the Tribunal.
51. The Tribunal considered the cost schedule carefully and noted that no issue was taken by the Respondent in relation to the level of costs. The Tribunal was satisfied that they were properly incurred, reasonable and proportionate. The Tribunal duly ordered costs in the sum claimed.
52. Following the conclusion of the hearing the Applicant informed the Tribunal that the level of costs presented to the Tribunal had inadvertently been incorrect. The correct figure should have been £86,792.44 and the Tribunal was invited to amend its Order accordingly, which it agreed to do.

### **Statement of Full Orders**

53. The Tribunal Ordered that the Respondent, CHRISTOPHER CHARLES EDWARD HAYES, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £90,224.44.
54. The Tribunal Amended its Order of 14 July 2017, in respect of costs only, by deleting the figure of £90,224.44 and substituting it with the figure of £86,792.44. The Tribunal therefore Ordered that the Respondent, CHRISTOPHER CHARLES EDWARD HAYES, do pay the costs of and incidental to this application and enquiry fixed in the sum of £86,792.44. No other part of the Order of 14 July 2017 is amended.

Dated this 13<sup>th</sup> day of September 2017

On behalf of the Tribunal



J. A. Astle  
Chairman