The Applicant appealed the Tribunal's decision dated 6 September 2019. The appeal was heard by Popplewell LJ and Garnham J on 24 November 2020 and Judgment handed down on 12 January 2021. The appeal was allowed and the Tribunal's decision to strike-out the application was set aside. Davies v Greene [2021] EWHC 38 (Admin)

The Respondent appealed the Divisional Court's decision. The appeal was heard by Dame Sharp, President of the Queen's Bench Division, Thirlwall LJ and Newey LJ on 2 March 2022 and Judgment handed down on 29 March 2022. The appeal was allowed in part and the proceedings against Mr Greene in so far as Mr Davies' complaint suggests that District Judge Stewart would have made a different decision in 2012 had the 2008-2009 email correspondence been available to him were struck out. Otherwise, the appeal was dismissed. Greene v Davies [2022] EWCA Civ 414.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11934-2019

BETWEEN:

DAVID DAVIES — Applicant

and

DAVID GREENE — Respondent

Before:

Mr C. Chesterton (in the chair)
Ms T. Cullen
Mr S. Hill

Date of Hearing: 13 August 2019

Appearances

David Barton, solicitor, of David Barton Solicitor Advocate Limited of Flagstones, High Halden Road, Biddenden, Ashford, Kent TN27 8JG, for the Applicant.

Ben Hubble QC, counsel, of 4 New Square, Lincoln's Inn, London, WC2A 3RJ, Instructed by Iain Miller of Kingsley Napley LLP, for the Respondent.

JUDGMENT
STRIKING OUT THE APPLICATION

Background

1. The Lay Application made by the Applicant was dated 16 March 2019. The Application pertained to allegations of fraud and dishonesty on the part of the Respondent, a senior partner at Edwin Coe LLP ("the Firm") and Vice President of the Law Society.

2. The Solicitors Regulation Authority ("the SRA") had declined to adopt the Applicant's complaint.

3. On 20 March 2019 the Application was considered by a Division of the Tribunal pursuant to Rule 6(3) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"). The Tribunal considered that the material provided appeared to raise prima facie serious allegations predicated on the allegedly dishonest conduct of the Respondent, supported by substantial documentary evidence. The Tribunal concluded that the complaint warranted further investigation. As the Tribunal fulfils an adjudicative rather than investigatory function, it referred the Application to the SRA pursuant to Rule 20 of the SDPR to enable it to carry out its own investigation. Rule 20 provides that following such investigation the SRA may, if it thinks fit, initiate its own application or may, by agreement with the Applicant, undertake the extant application. The Tribunal accordingly adjourned the Application for 3 months. By letter dated 13 June 2019 the SRA confirmed that it had investigated the allegations made but did not intend to initiate its own application or seek the Applicant's agreement to undertake the existing application.

4. On 21 June 2019 a differently constituted Division of the Tribunal considered the Application, the correspondence from the SRA and the Applicant's own correspondence of 19 June 2019 in which he contended that the SRA had not given proper consideration to his complaint. The thrust of the allegations was that the Respondent had lied in a witness statement, provided a misleading chronology to the court, and made false statements during cross-examination. The backdrop to the allegations was disputed legal fees incurred in a claim for damages in which the Firm had acted for the claimant Eco-Power.co.uk Limited ("Eco-Power"). . The crux of the dispute, which resulted in the Firm successfully claiming against the Applicant personally for unpaid legal fees, was whether or not the client for the relevant claim was the Applicant personally (as maintained by the Firm) or the Applicant's company, Eco-Power, as he maintained.

5. The Tribunal determined that there was a case to answer pursuant to Rule 6(3) of the SDPR. The memorandum summarising the Tribunal's decision stated:

> "The Tribunal noted that it had been maintained by the Respondent that the Applicant personally was the client in the Damages Claim and by the Applicant that the client was in fact Eco Power. On the information available the Tribunal could not determine one way or the other the contractual arrangement relating to the fees. The Tribunal noted that the Damages Claim was issued in the name of Eco Power, and not the Applicant. On the face of it this suggested that the Firm had been acting for and instructed by Eco Power. Further, the supporting documents indicated there had been continuing correspondence during the period that it appeared the Respondent had

indicated he had not heard from the Applicant. For these reasons, the Tribunal determined that there was a case to answer."

6. The Tribunal duly made directions requiring the Respondent to file and serve an Answer to the Application and any documents on which he wished to rely by Friday 26 July 2019.

Application to strike out the Application

7. On 17 July 2019 an application was made for the case certified by the Tribunal to be struck out. The basis of the strike out application was that the Applicant's Lay Application was an abuse of process. This was put on three bases:

   (i) that the Applicant had failed to disclose to the Tribunal the terms of the Judgment of District Judge Stewart sitting in the Winchester County Court dated 9 February 2016 ("the 2016 Judgment");

   (ii) that in the light of the 2016 Judgment there was no merit in the application and no conceivable basis on which the Lay Application could be successful; and

   (iii) the Tribunal proceedings amounted to a collateral attack on the 2016 Judgment.

8. Mr Barton, on behalf of the Applicant, responded opposing the strike out application on 23 July 2019.

9. The Tribunal listed a Case Management Hearing ("CMH") for the strike out application to be considered and for any consequential orders or directions necessary. The Tribunal considered that the direction sought by the Respondent, that the requirement to file and serve an Answer to the Application should be stayed pending the outcome of the strike out application, was appropriate in all the circumstances and this direction was duly made on 26 July 2019.

Documents

10. The Tribunal had before it the following documents:

- The Lay Application dated 16 March 2019
- A CMH bundle dated 7 August 2019
- An authorities bundle
- The Respondent's statement of costs dated 8 August 2019
- The Applicant's original and amended costs schedules dated 8 and 12 August 2019 respectively
- The Respondent's skeleton argument dated 12 August 2019
- A witness statement from the Applicant dated 12 August 2019
- The Applicant's statement of costs dated 12 August 2019

The Respondent's Strike Out Application

The Respondent's Case

11 Mr Hubble, for the Respondent, summarised the separate grounds of the strike-out application as:

11.1 *Lack of Candour*
It was submitted that the case was only certified because the Tribunal was misled and/or because of a lack of candour and full and frank disclosure by the Applicant. In particular it was submitted that had the Tribunal been made aware of the terms of the 2016 Judgment the Tribunal would not (alternatively, could not properly) have certified the case. It was further submitted that this ground was reinforced by the fact that this was a private prosecution in circumstances where (i) there were enforcement proceedings still on foot by the Firm against the Applicant and (ii) the Applicant believed himself to have been wronged against the Respondent; thus, it was submitted, the Applicant had a strong personal motive to pursue the case. It was submitted that it was in just this sort of situation that complete candour was required and that it did not happen here.

11.2 *Lack of Merits*
In light of the terms of the 2016 Judgment (stated to be one of four civil decisions against the Applicant) and/or once the contractual relationship between the parties was understood, it was submitted that the case certified was hopeless and bound to fail. Mr Hubble stated that this ground was reinforced by the higher standard of proof required by the Tribunal (i.e. the criminal standard) and what he described as the unhappy history of delay in this matter (the material events were in 2008-2010 and 2012).

11.3 *Abusive Collateral Attack*
The case certified was submitted to be an abusive collateral attack on the 2016 Judgment (and the other 3 civil decisions). It was stated to be a collateral attack because it was said to be an inevitable part of the case against the Respondent that he intended to and/or did mislead District Judge Stewart in 2012 (when in fact District Judge Stewart in 2016 was said to have expressly found, having considered an application on materially the same basis as the present case, that the Court had not been misled). The present case was stated to be abusive because it would undermine the administration of justice to have one tribunal investigating and being invited to usurp the decision of a court of competent jurisdiction.

Background Events

11.4 Mr Hubble summarised the background events relied upon in the Respondent's strike out application. In March 2008 the Firm was retained, in the first instance, by the Applicant's company Eco-Power to act on a judicial review against Transport for London and the Pubic Carriage Office. This first retainer was between the Firm and Eco-Power and the Respondent was the partner with conduct of the matter. That judicial review was unsuccessful with permission to appeal refused on 29 July 2008. However, the ultimate terms of the dismissal left open the possibility that Eco Power might have a claim in damages against Transport for London.

11.5 Mr Hubble stated that after some correspondence sent by the Firm on Eco-Power's behalf, and also some toing and froing by email in 2009, the Applicant confirmed in November 2009 that he wished to pursue Eco-Power's damages claim. The Respondent was said to have been concerned that Eco-Power would not be able to pay the Firm's legal fees and that they would not be paid if Eco-Power became insolvent. Accordingly, the Respondent's case was that on 16 November 2009 the Firm opened a new file for the damages claim in the name of the Applicant personally (rather than the company, Eco-Power) and sent a new set of Terms and Conditions to the Applicant in his name (rather than the name of the company). The commercial rationale for this new retainer was stated to be that the Applicant became personally liable for the fees thereafter, even though the damages claim was that of the company. There was said to be nothing surprising about the fact that (i) the Firm was on the record for and acting for Eco-Power in presenting the damages claim thereafter but (ii) the retainer and so the obligation to pay fees was with the Applicant. The contractual relationship (as found by District Judge Stewart) was submitted to have been and to have remained clear. In the event, the claim by Eco-Power for damages was unsuccessful.

11.6 On 3 December 2010, the Firm issued an invoice to the Applicant for the net sum of £7,218.74 (the fees of acting on Eco-Power's unsuccessful claim for damages). The Applicant refused to pay the invoice and in March 2012 the Firm then sued him for outstanding fees. The Applicant maintained that he was not the client and asserted that the client at all times had been Eco-Power. The Firm's claim came on for trial before District Judge Stewart in Winchester County Court on 12 December 2012. The Respondent had provided a five page witness statement dated 2 November 2012 explaining the history of the judicial review proceedings and his account of the two retainers (one between the Firm and Eco-Power and one between the Firm and the Applicant personally). In paragraphs 9 and 10 of that witness statement the Respondent stated that, prior to November 2009, he had not been in contact with the Applicant for some time.

11.7 The Respondent gave evidence at the trial on 12 December 2012 and was cross-examined by the Applicant acting in person. In the course of cross-examination, the Respondent referred to the fact that after the judicial review had failed (in 2008) the Applicant "came back to us a year, or some time later, in relation to a potential damages claim". The Applicant queried why there was no letter from the Firm in late 2009 expressly stating that the new retainer would be with him personally rather than with Eco-Power to which the Respondent replied that matters might have been different "if there had been continuous instructions and we had been continuously instructed with Eco-Power ... but the fact is that we had finished the Eco- Power file some time considerably earlier and, as I say in my statement, you approached us again I think 12 months later saying could we do a damages claim". Mr Hubble stated that at this stage, the various emails that had passed between the Respondent and the Applicant from Autumn 2008 to Autumn 2009 were not before the Court. Mr Hubble stated that they were not disclosed by Firm who had disclosed correspondence pursuant to the second retainer the Firm was suing upon, i.e. from November 2009 onwards. The Applicant was stated not to have disclosed the Autumn 2008/Autumn 2009 emails himself either.

11.8 District Judge Stewart gave an oral judgment on 12 December 2012 in favour of the Firm ("the 2012 Judgment"). Mr Hubble stated that he found, in effect, that there was a new retainer entered between the Firm and the Applicant in November 2009 in respect of Eco-Power's damages claim and accordingly the Applicant was personally liable for the fees claimed.

11.9 The Applicant sought to appeal the 2012 Judgment. On 7 January 2013 the application for permission to appeal was dismissed on the papers. The Applicant renewed his application orally on 11 March 2013 and Mr Hubble stated that it seemed that the Applicant sought on that occasion to rely on the fact that there was email correspondence between himself and the Respondent between Autumn 2008 and Autumn 2009. The Judge's view was that such emails made no difference and permission to appeal was refused. Subsequently, charging orders were made by District Judge Stewart against Mr Davies' home in respect of the judgment debt.

11.10 In September 2015, the Applicant issued a claim form against the Firm seeking to set aside the 2012 Judgment on the basis that, in light of the Autumn 2008/Autumn 2009 emails, the Respondent had dishonestly misled the Court in 2012 by wrongly maintaining that there was a break in representation of a year and that he had not heard from the Applicant when that was not in fact the case. The Grounds of Appeal in the Set Aside Claim included:

> "2. The District Judge was deliberately misled by the evidence of Mr David Greene in that Mr Greene stated that there had been a break in representation where he had not heard from the Appellant for a year.
>
> 3. There was no break in the chain of representation as asserted by Mr Greene. This is shown by emails produced at appendix 1 to these grounds.
>
> 4. This was material to the District Judge's reasoning."

11.11 Mr Hubble submitted that the thrust of this set aside claim was the same as that of the present private prosecution brought by the Applicant against the Respondent, namely that the Respondent deliberately misled the Court when giving evidence at the hearing on 12 December 2012 which resulted in an order against the Applicant that he pay fees to the Firm. The Applicant's application came on before the same District Judge Stewart on 9 February 2016 i.e. the same Judge who heard the Respondent give evidence on 12 December 2012 and who delivered the 2012 Judgment. Both the Applicant and the Firm were represented at the hearing on 9 February 2016 by Counsel. Counsel for the Applicant was said to have advanced the contention on 9 February 2016 that the Respondent had acted dishonestly and lied to the Court and asserted that in light of the Autumn 2008/Autumn 2009 emails the Court had been misled. It was said to be clear as a result that the Applicant's application before District Judge Stewart in February 2016 covered the same ground as that which now formed the case certified by the Tribunal.

11.12 District Judge Stewart's Judgment, handed down on 9 February 2016, was not in the bundle before the Tribunals in March and June 2019. Had it been and had the Tribunal's attention being drawn to it, it was submitted that the Tribunal would not and could not have certified a case to answer. This was stated to be because, in the

2016 Judgment, the Court could not have been clearer in dismissing the suggestions that the Court (i.e. the same District Judge Stewart) had been misled by the Respondent or that there had been false evidence or some dishonesty on the part of the Respondent in 2012. Mr Hubble also stated that the terms of the 2016 Judgment would also have made plain to the Tribunal in June 2019 the nature of the contractual relationship between the Firm and the Applicant. As to the contention advanced on behalf of the Applicant that the Respondent had misled the Court and/or given false evidence in 2012, District Judge Stewart found as follows in the 2016 Judgment:

> "9. What [the Applicant] is saying is that [the Respondent], who gave evidence on behalf of the Claimants in the original action, [the Firm], had misled the Court and it is said that so material was the misleading that it was really, effectively, tantamount to giving fraudulent representations to the Court as to what exactly was going on between the parties in the widest sense, that is [the Applicant], Eco Power and [the Firm], between 2008 and 2009.
>
> 10. That does seem to be the pivotal date and I am asked, should the Court of its own initiative set aside this judgment in the light of the fact that [the Applicant] has now put before the Court some very important, he says, emails that exist between the period July 2008 and November 2009 ... what he says is, that there is significant dialogue between [the Firm], notably [the Respondent] and himself when the tenor of the evidence of [the Respondent] seemed to be suggesting that they had not heard, [the Firm], that is, from [the Applicant], or for that matter Eco Power for some significant time. The time period being about July 2008 to November 2009...
>
> 11. ... even if these emails were before me, that does not dislodge the second agreement, the terms and conditions of which reach [the Applicant], clearly citing he was to be the client and he was then at his election to accept those terms and conditions or to reject them.
>
> 12. By virtue of his conduct, he decided to accept them, Nothing in these emails displaces that. All it shows is there was some dialogue. But that is a million miles away from suggesting that [the Respondent] had actually misled the Court. I cannot find anything in those emails that, (a) would have made any difference if they had been before me and secondly, anything in them that suggests that the evidence that [the Respondent] gave me, either in writing or in the witness box, any way shows him to be anything other than truthful and I have to say that they do not displace the primary evidence that he gave me...
>
> 16. … I cannot be satisfied or even begin to allow a plane to leave the runway, so to speak, that there had been any allegation of fraud. In other words, deliberately misleading this Court by [the Respondent]. In my judgment, [the Respondent] did nothing of the sort...
>
> 17. ... this is a million miles from any fraudulent activity or deliberate misleading of the Court..."

The Certification of a Case to Answer

11.13 Mr Hubble stated that the Tribunal's essential reasoning, in finding that there was a case to answer, was set out in paragraph 9 of the Memorandum dated 26 June 2019. He summarised it thus: a) On the information available, the Tribunal could not determine one way or the other the contractual arrangements relating to the fees; the fact that the damages claim was in the name of Eco-Power rather than the Applicant suggesting that the Firm had been acting for and instructed by Eco-Power; and b) The supporting documents indicated that there had been correspondence during the period that the Respondent had said he had not heard from the Applicant. Mr Hubble submitted that that reasoning could not stand in light of the 2016 Judgment and he noted that the certification process took place without the Respondent being able to make representations or to provide documentation to the Tribunal.

Strike Out Ground 1 – Lack of Candour

11.14 It was submitted that the Applicant as a private prosecutor was under the same obligation to act fairly and properly as the SRA would be. All proceedings before the Tribunal whether brought by the SRA or by way of a private prosecution were submitted to be brought in the public interest for the purpose of upholding public confidence in solicitors. As such the obligations on prosecutors were said to be akin to those that apply in criminal proceedings. The Respondent's case was that a prosecutor must act with candour particularly when applying for a case to be certified when a respondent had not been afforded any opportunity to make representations. The prosecutor must disclose all information that is material to what the Tribunal must decide, including that which is potentially adverse to the application or which would militate against it.

11.15 There was said to have been a failure to act with candour and the Tribunal was misled because the Applicant did not bring the terms of the 2016 Judgment to the Tribunal's attention. The 2016 Judgment was stated to be of key importance because (i) District Judge Stewart summarised again the nature of the contractual relationship between the Firm and the Applicant (as to which the Tribunal professed uncertainty in its June 2019 Memo) and (ii) District Judge Stewart, having heard submissions about and having been referred to the emails in question as well as the prior evidence of the Respondent, expressly ruled that there was no intent to mislead and there was no question of the Respondent having acted dishonestly when giving evidence in 2012.

11.16 It was submitted that any fair-minded prosecutor would have had to draw the terms of the 2016 Judgment expressly to the attention of the Tribunal. The 2016 Judgment was described as fundamental because it recorded the relevant Judge, who heard the Respondent give evidence, ruling on an informed basis that there was no intent to mislead and no dishonesty. It was stated to be plainly insufficient for the Applicant to contend that the Tribunal could have worked out for itself in June 2019 that there was a Judgment in 2016 and that the set aside claim was dismissed. Mr Hubble submitted that what was of crucial significance was not just the fact that the set aside claim was dismissed but also the clear and robust way in which the District Judge dismissed the allegations that Mr Hubble stated were now raised again by the Applicant. It was also said to be insufficient for the Applicant to assert that he did not have a copy of the 2016 Judgment at the time in June 2019. He was present at the hearing in 2016 and so

he must know the terms of the Judgment. The Respondent's case was that he should have obtained a copy of the 2016 Judgment and that he should not have applied for certification without it. Mr Hubble stated that the Applicant did not draw what he must have known were the terms of the 2016 Judgment to the attention of the Tribunal; rather he sought to dismiss the outcome in 2016 as being another example of Distract Judge Stewart being misled or somehow under the improper influence of the Respondent. It was submitted that such an approach was an abuse.

11.17 It was submitted that if the Tribunal had had the terms of the 2016 Judgment brought to its attention in March and/or June 2019, it would not (or should not) have certified a case to answer. This was because District Judge Stewart, who was the very judge who was alleged to have been misled, made it entirely clear that (i) he was not misled and (ii) there was no fraudulent activity or deliberate misleading by the Respondent. He also confirmed again the nature of the contractual relations between the parties.

11.18 Mr Hubble stated that there had been some suggestion by or on behalf of the Applicant that the 2016 Judgment either added nothing to what was before the Tribunal and/or the present case was somehow not based on District Judge Stewart being misled but on Mr Greene giving "untrue evidence". It was said to be clear from the history of the litigation that these submissions were wrong and made no sense. Mr Hubble submitted that the whole thrust of the present case was that the Respondent was trying to mislead the Court; absent such alleged intent there could not be any misconduct. It was said to be clear from reading the complaint and the supporting documents the overlap between the set aside claim, the 2016 Judgment and the present Tribunal application. It was noted that in any event in the 2016 Judgment, District Judge Stewart not only dismissed the suggestion that he had been misled, but he also dismissed the suggestion that the Respondent had been culpable of any fraudulent activity: it was submitted that thus the Judge dismissed the suggestion that the Respondent had given (deliberately) untrue evidence: "... this is a million miles from any fraudulent activity or deliberate misleading of the Court".

11.19 It was submitted that the Tribunal's processes had been abused and that there had been a lack of candour and failure to provide disclosure by the Applicant. The Tribunal had been misled. It was suggested that the concern was even greater where the Applicant had a personal axe to grind against the Respondent and was also still attempting at the date of the Tribunal hearing to defend the enforcement proceedings against him. It was submitted on the Respondent's behalf that had the Applicant complied with his obligations, the case would not (or should not) have been certified and that accordingly, the case should now be struck out.

Strike Out Ground 2 – Lack of Merits

11.20 It was submitted that the case certified had no merit and no prospect of success and that the case should be struck out on a summary basis pursuant to the jurisdiction confirmed in Law Society v Adcock and Another [2006] EWHC 3212 (Admin) at [30-32]. The Lay Application was described as being brought against an individual alleging that he failed to disclose communications and misled the Court when the Court itself, when asked the very question having been provided with the further communications, confirmed unequivocally that it was not misled and there was no dishonesty. It was submitted to be nonsensical to have disciplinary proceedings

brought against an individual alleging that he misled the Court when the Court itself confirmed that it was not. Mr Hubble stated that was an end to the matter and that the proceedings were incoherent.

11.21 Mr Hubble submitted that this was even more the case where: (i) The Court in question was applying the lower standard of balance of probabilities when considering whether the Respondent had been culpable of some intent to mislead, whereas this Tribunal would be applying the higher criminal standard of beyond reasonable doubt; (ii). The Court in question (District Judge Stewart) was the very judge who heard the original evidence from the Respondent; and (iii). There had been what was described as a highly unsatisfactory and unexplained delay in the prosecution of this case; the material events took place in 2008 to 2010 and 2012 and it was said to be unrealistic to expect such matters to be investigated fairly now.

11.22 It was further submitted that even standing back from the 2016 Judgment, the position was straightforward. Mr Hubble stated that once it was understood that a new file was opened by the Firm in November 2009 in the name of the Applicant personally and that he was sent new Terms and Conditions in his own name, there was no confusion about the contractual position; the Firm understandably wanted the Applicant's personal covenant to pay its fees (rather than the covenant of a company with limited liability), so the Applicant became the paying client even though the damages claim was in the name of Eco-Power. The fact that the Autumn 2008 / Autumn 2009 emails did not feature in the Firm's disclosure, the high-level Chronology or the Respondent's witness statement was described as unsurprising as the emails were not pertinent in circumstances where it was the second retainer which was sued upon and it was noted that the Applicant did not disclose them at the time either.

11.23 Similarly, the fact that the Respondent spoke in his evidence about the Applicant coming back a year later in respect of the damages claim was described as understandable: the Respondent was being asked in December 2012 about events three to four years earlier in 2008 to 2009; he was not shown the emails themselves by the Applicant when giving evidence (who had not disclosed them either); and whilst there was correspondence between and involving the Respondent and the Applicant between Autumn 2008 / Autumn 2009, there was in effect a gap of about a year in the taking of active steps in the underlying litigation with the decision to press ahead with the damages claim being taken in November 2009.

Strike Out Ground 3 – Abusive Collateral Attack on 2016 Judgment

11.24 It was submitted that the doctrine of abusive collateral attack applied to disciplinary proceedings and Mr Hubble referred the Tribunal to the judgment of Supperstone J in Baxendale-Walker v Middleton & Others [2011] EWHC 998 (QB) at [96-100]. The initiation of proceedings in a Tribunal for the purpose of mounting a collateral attack upon a final decision made by another court of competent jurisdiction in previous proceedings is abusive. The present case was described as involving a collateral attack upon the 2016 Judgment (and indeed the 2012 Judgment). It was submitted that as with Baxendale-Walker, the present case against the Respondent could not succeed if the Applicant failed to show that those earlier decisions were wrong. The suggestions now made by the Applicant that the present case did not involve an attack on District Judge Stewart's Judgments or that the present case was not based on the contention

that District Judge Stewart was misled were dismissed as nonsensical. This was on the basis that:

a. The complaint in the present Tribunal case included as a central plank the assertion that: "... the Judicial System has failed by holding the belief and trust that a solicitor is being truthful regardless of the evidence to the contrary and ruling in the solicitor's favour ...";

b. The Applicant's document submitted to the Tribunal "3. Evidence of Mr Greene" quoted at length from and relied upon the grounds advanced by the Applicant in Counsel's skeleton argument in the set aside claim;

c. The Applicant's letter dated 13 June 2019 when dealing with the 2016 Judgment asserted that District Judge Stewart "... has either been misled or improperly influenced";

d. The Applicant's letter dated 13 June 2019 when dealing with the 2016 Judgment asserted:

> "... It is again not valid to state the fact that the Judge has dismissed the Appeal because he has done son [sic] based on the false written statements and statements under oath made by [the Respondent]. The fact that the Judge has ruled in [the Respondent's] favour in the initial case and the Appeal does not confirm that [the Respondent's] statements must therefore be true; it merely confirms that the Judge has chosen to believe the statements of [the Respondent], presumably because he is a high profile solicitor and therefore there is an assumption that he would not be dishonest."

e. In the 2016 Judgment, District Judge Stewart not only found that the Respondent "did nothing of the sort" in relation to the allegation that he had deliberately misled the Court in 2012 but the Judge also found that the events in 2012 were "a million miles from any fraudulent activity or deliberate misleading of the Court". It was submitted that the Judge thus dismissed in terms the allegation that the Respondent had given false evidence.

11.25 It was further submitted that the present case was not just an abusive collateral attack on the 2012 and 2016 Judgments as a whole but it is also on the express findings (i) in the 2012 Judgment that there was a contract of retainer entered into by the Firm and the Applicant in November 2009 and (ii) in the 2016 Judgment that far from deliberately misleading the Court: "… [the Respondent] did nothing of the sort" and was not culpable of any "fraudulent activity". The civil courts were said to have ruled definitively on these matters.

11.26 Finally, Mr Hubble queried if it was not said by the Applicant that the 2012 and 2016 Judgments were wrong, what the Respondent was said to have been culpable of by way of misconduct? Mr Hubble submitted that there was nothing left to accuse the Respondent of if the 2012 and 2016 Judgments were right. The Respondent's case was that the present case was inconsistent with, and an attack on, the outcome of the two sets of civil proceedings and that the Applicant's remedy was to appeal in those

proceedings, which he attempted to do unsuccessfully in relation to the 2012 Judgment. Mr Hubble stated that it would bring the administration of justice into disrepute to allow the Applicant to argue matters again years after the event before the Tribunal and to seek to go behind the 2012 and 2016 Judgments.

The Applicant's Response

11.27 The Respondent's strike out application rested on the allegation that the Applicant misled the Tribunal by not supplying a copy of the 2016 Judgment of District Judge Stewart. The Applicant's case was that he did not mislead the Tribunal when he filed his Lay Application, either deliberately or inadvertently. When he filed his application in March 2019 he included a transcript of the "Whole Hearing" dated 9 February 2016 which was before the Tribunal on 21 June 2019 when the case was certified. The "Whole Hearing" transcript concluded with the Judge awarding further costs against the Applicant to the Firm and it was submitted it will have been clear to the Tribunal that the Judge had dismissed the application to set aside. It was noted that this was confirmed by the SRA response to the Tribunal dated 13 June 2019.

11.28 The Applicant stated that when he received the whole hearing transcript he did not notice that it did not include the transcript of the 2016 Judgement itself, but that even if he had done so he considered it obvious that as his application to set aside had been dismissed with costs the judgment added nothing to what he had already provided. The Applicant provided copy emails to support his contention that the 2016 Judgment was not in his possession when he filed his application to the Tribunal. The relevant court, Winchester County Court, had confirmed to the Applicant that the transcript of the 2016 Judgement was not approved until 3 June 2019 and sent out by post on the 24 June 2019. It was submitted that this dealt with the assertions that the Applicant actively misled the Tribunal. It was submitted that the experienced Tribunal sitting on 21 June 2019 would have seen the position with clarity.

11.29 The SRA's letter to the Tribunal dated 13 June 2019 contained the following:

> "The Applicant's claim against the Firm, Case No: BOOWC127
>
> In 2016, the Applicant again sought permission to appeal the order of District Judge Stewart. dated 12 December 2012 (Claim No. 2YJ09713 above).
>
> The grounds of appeal (detailed at Appendix 11 of the Application, pages 458 to 484) included (in summary):
>
> - that the Judge was deliberately misled by the evidence of Mr Greene, in that he stated that there had been a break in representation where he had not heard from the Applicant for a year.
>
> - that there was no such break in representation as asserted by Mr Greene and that this was demonstrated by emails between them and correspondence (both between the parties and from third parties
>
> On 9 February 2016 District Judge Stewart, sitting at Winchester County Court, dismissed the Application."

11.30 It was submitted that the Tribunal was therefore fully aware before the hearing on 21 June 2019 (at which the Lay Application was certified) that the basis of the previous application to set aside including an allegation that the Judge had been misled and that this had been dismissed by the Judge in question. It was also clear that the 2016 Judgment reiterated the Judge's view that he believed that the representation for Eco-Power had ended in July 2008 and that new representation was started for the Applicant personally for a damages claim in 2009. Mr Barton submitted that the Tribunal was therefore not misled about District Judge Stewart's decision before making its decision to certify a case to answer and so the absence of the 2016 Judgment was an irrelevance. The Tribunal had before it extensive documentation, as listed in paragraph 3 of the Memorandum dated 21 June 2019, and it was submitted the Tribunal correctly applied the test for certification as set out in Rule 6 of the SDPR.

11.31 The Lay Application was stated not to rely on District Judge Stewart being misled and so the 2016 Judgment did not represent a complete answer for the Respondent in any event. The allegation made was summarised as the Respondent having given untrue evidence that he had stopped acting for the Applicant's company in about July 2008 and thereafter acted for the Applicant in person. The Respondent further said in evidence that he had no dealings with the Applicant's company after 2008. It was submitted that the Applicant had provided a body of communications which were before the Tribunal on 21 June 2019 upon which the decision to certify a case to answer was based. The Applicant did not need to mount a collateral attack on the Judgment, and his application was not an abuse of process.

11.32 The Respondent had made submissions about the role of a legal adviser to a Lay Applicant, likening it to that of a representative in private criminal prosecution. The Tribunal was shown "The Code for Private Prosecutors" prepared by the Private Prosecutors Association which gives guidance to private prosecutors and those who act on their behalf in criminal proceedings. Mr Barton submitted that it had no application to the instant civil proceedings where members of the public had access to the Tribunal subject to the Tribunal certifying a case to answer. Criminal courts were said not to have a comparable procedure.

11.33 Mr Barton noted that prior to the hearing six Tribunal members had already considered the Applicant's application. The application was supported by 612 pages of documentation. Whilst the matter had been referred to the SRA for investigation, it was submitted that their assessment of the allegations was not determinative. It was suggested that on some occasions they may pursue allegations such as those brought by the Applicant whereas in others they may not. Mr Barton stated that the SRA's reply to the Tribunal had contained a factual error (contrary to what was stated in the letter the Respondent did make it clear when he did not speak to the Applicant). Mr Barton submitted that it was not surprising that the Applicant took up this inaccuracy when replying. Mr Barton further submitted that the SRA had misunderstood the application. They had made reference to two previous applications made by the Applicant which Mr Barton stated had led the Applicant to conclude that the SRA regarded him as vexatious and someone to be 'got rid of'.

11.34 The Applicant's key contention was that the Firm represented Eco-Power throughout and at no stage was he personally their client or personally responsible for their fees. Mr Barton noted that when certifying a case in accordance with Rule 6 of the SDPR the Tribunal applied the relatively low threshold of the demonstration of an arguable case. He submitted that the Tribunal had rightly concluded that this threshold had been met.

11.35 Mr Barton summarised key elements of the Applicant's application to the Tribunal. The Respondent had said, in his witness statement prepared for the civil courts, that he had not heard from the Applicant for over a year. That evidence was central to the Applicant's application. That evidence was supported by a statement of truth and had been incorrect. Similarly, the Applicant had highlighted false and misleading documents (a chronology and an index) created by or on the Respondent's behalf for use in the civil proceedings. It was submitted that the provision by the Applicant of the transcript of the entire 2016 hearing was a complete answer to the suggestion that the Tribunal had been misled by the absence of the 2016 Judgment itself. Mr Barton stated that when considering certification of a case to answer the Tribunal could and would have considered these misstatements of fact, which he submitted were not addressed in the 2016 Judgment, and the false index and chronology. Mr Barton also stressed that the Tribunal considers matters of conduct whereas the civil judge was looking at other matters. Mr Barton submitted that for the Tribunal to grant the strike application, it must conclude that the previous Tribunal could not have properly certified the application as showing a case to answer in the light of the 2016 Judgment, something he submitted would not be warranted.

Strike Out Ground 1 – Lack of Candour

11.36 Responding to the submissions made about the alleged lack of candour in disclosure, Mr Barton stated that the Applicant recognised that such a duty applied to the SRA or to a Lay Applicant. The Applicant had provided a witness statement explaining the omission of the 2016 Judgment and Mr Barton invited the Tribunal to accept this evidence demonstrated that there had been no deliberate misleading of the Tribunal. When the Applicant had lodged his Lay Application he had not had the 2016 Judgment in his possession and his evidence was that he did not recognise this as a document which would so undermine his application that he needed to hold it back. Mr Barton submitted that the available evidence suggested that the Applicant did not appreciate the importance of the 2016 Judgment and that there were insufficient grounds to find that he was guilty of any misconduct or lack of candour or had otherwise abused the Tribunal process.

11.37 Mr Barton noted that the Tribunal which considered the application had seen that the Applicant had failed in his arguments before the civil court, and taking that into account had nevertheless certified the application as showing a case to answer. He also noted that it did not appear that at any stage the Respondent had been asked to explain the untrue statements which had been made in his witness statement before the civil court. Those untrue statements, combined with the substantially misleading chronology and index were sufficient to amount to misconduct. Mr Barton acknowledged that the 2016 Judgment rejected the Applicant's claim in strident terms, and that he could not now go behind that and allege that District Judge Stewart

was misled, but Mr Barton he submitted that the untrue statements themselves could nevertheless found misconduct proceedings.

11.37 The Applicant's case was that the email correspondence demonstrated a seamless and unbroken representation. All civil claims were brought on behalf of Eco-Power. The judicial proceedings had been brought to an end in July 2008 but the possibility of a damages claim had been left open. Between July 2008 and November 2009 there had been regular correspondence (some eighty or more communications). Whilst the Respondent had stated in his evidence before the civil court that he had not heard from the Applicant, quite simply, he had. The correspondence was described as going well being mere 'toing and froing' and amounting to substantive correspondence. The Applicant's contention was that the Respondent made these statements, and prepared the allegedly misleading index and chronology, precisely in order to create what Mr Barton described as 'clear blue water' between the judicial review work and the subsequent damages work undertaken for Eco-Power by the Firm. The Applicant's case was that the later damages work was just one more piece of work for his company Eco-Power. Whilst the Firm may have closed its initial file the Applicant's case was that the Firm had only ever undertaken work for his company. District Judge Stewart had stated clearly he was not misled. Mr Barton submitted that nevertheless, questions of conduct could (and did) arise from the untrue statements, including the index and chronology, allegedly made by the Respondent.

11.38 Mr Barton submitted that to grant the application and dispose of the case on the basis of a lack of candour, the Tribunal would need to find misconduct on the Applicant's part. Whilst the Tribunal may consider that the Applicant should not have issued his application without the 2016 Judgment, Mr Barton submitted that the strident terms of that judgment did not act as a bar for the Tribunal considering whether or not any misconduct on the part of the Respondent arose as a result of his statements in the earlier proceedings. The Applicant had been candid enough to acknowledge that he did not spot the absence of the 2016 Judgment transcript from the "Whole Hearing" transcript which he had submitted with his application. In those circumstances it was submitted that it was not inevitable that the Lay Application must inevitably fail.

Strike Out Ground 2 – Lack of Merits

11.39 In order to succeed on this basis, Mr Barton submitted that the strike-out application had to persuade the Tribunal that the Applicant's Lay Application was so weak that it could not succeed, relying on The Law Society *v* Adcock and another [2006] EWHC 3212 (Admin). Again relying on Adcock, Mr Barton submitted that where the Tribunal considered something needed to be answered then the Respondent should be asked to do so. He invited the Tribunal to conclude that it would be wrong to say that there was no chance that the previous Tribunal could have certified the case had they had the 2016 Judgment. He submitted that unless the Tribunal concluded that the 2016 Judgment transcript was so damaging that the certification decision was inevitably wrong, the certification should be regarded as proper and the case should go forwards. He noted that at any final hearing the Tribunal would consider the allegations on the criminal standard of proof which was a substantially higher threshold than the prima facie case to answer threshold on which certification rested.

Strike Out Ground 3 – Abusive Collateral Attack on 2016 Judgment

11.40 Taking the third ground next, Mr Barton denied that the Applicant was making any attack on the 2016 Judgment. The Applicant's application was concerned with allegations of a lack of candour on the part of the Respondent in his witness statement and court documents as set out above. These allegations, and the supporting documents, raising issues of misconduct, had been before the Tribunal when the case had originally been certified as showing a case to answer. It was consequently denied that the absence of the 2016 Judgment had any significant impact.

The Tribunal's Decision

11.41 The Tribunal had been invited to grant the application for the Applicant's Lay Application to be struck out on one or more of the bases summarised above. It was open to a Respondent to proceedings in the Tribunal to make such an application at any stage.

11.42 The Lay Application had been certified as showing a case to answer in accordance with Rule 6 of the SDPR by a differently constituted Division of the Tribunal on 21 June 2019. The Tribunal had directed that the strike out application should be determined before the Respondent was required to file an Answer to the allegations. In order for the strike out application to succeed, the Tribunal must be satisfied beyond reasonable doubt that one or more of the three bases of the strike-out application had been established. The Tribunal recognised that the 'bar' for certifying a case to answer was relatively low and that the threshold for the strike out application to succeed once a case had been certified was correspondingly high.

11.43 The Tribunal accepted the submission made by Mr Barton that the decision taken by the SRA on pursuing the allegations was an entirely separate matter and not something which was determinative of the Tribunal's decision. Various factors may properly influence the SRA's decision on whether to prosecute specific allegations which may not feature in the Tribunal's narrow consideration of whether the material presented established a prima facie case to answer.

11.44 At the hearing, the Tribunal had the benefit of material not before the Division of the Tribunal which had previously certified the case. Principally, this was the transcript of the 2016 Judgment. This document was central to the three bases of the strike out application. In this judgment District Judge Stewart restated his conclusions about the contractual relationships between the Firm and Eco-Power, and subsequently the Firm and the Applicant personally, in very clear terms. District Judge Stewart had before him the emails that it was said had previously been improperly omitted from the material before the civil court. He also heard detailed submissions about the allegation that he had been misled about a lack of contact between the Applicant and the Respondent and, as noted above, he squarely rejected this submission. District Judge Stewart found in unequivocal terms that he did not consider there had been any dishonest or fraudulent conduct on the part of the Respondent. To restate the section of his judgment quoted above in which he addressed the emails said to demonstrate contact during the period which the Respondent had indicated in his witness statement, oral evidence, chronology and index that there had been none:

> "11. ... even if these emails were before me, that does not dislodge the second agreement, the terms and conditions of which reach [the Applicant], clearly citing he was to be the client and he was then at his election to accept those terms and conditions or to reject them.
>
> 12. By virtue of his conduct, he decided to accept them, Nothing in these emails displaces that. All it shows is there was some dialogue. **But that is a million miles away from suggesting that [the Respondent] had actually misled the Court**. **I cannot find anything in those emails that, (a) would have made any difference if they had been before me and secondly, anything in them that suggests that the evidence that [the Respondent] gave me, either in writing or in the witness box, any way shows him to be anything other than truthful** and I have to say that they do not displace the primary evidence that he gave me...
>
> 16. … **I cannot be satisfied or even begin to allow a plane to leave the runway, so to speak, that there had been any allegation of fraud. In other words, deliberately misleading this Court by [the Respondent]. In my judgment, [the Respondent] did nothing of the sort...**".
>
> Emphasis added.

11.45 The Tribunal carefully reviewed all of the documentary evidence and written submissions supplied and listened carefully to the oral representations made at the hearing. The Tribunal had been invited by both parties to consider whether certification of the case would or could properly now be made in the light of the 2016 Judgment; inevitably the parties themselves took different positions on this question. Whilst the submissions on this point raised issues of obvious relevance when a party sought to strike out a case which had been certified on the strength of a document not present at the point of certification, the Tribunal was clear that it was not reviewing the earlier certification decision nor undertaking a fresh certification exercise. The Tribunal was assessing the Respondent's strike-out application on its own merits on the strength of the material available and the submissions made.

11.46 The Division of the Tribunal which heard the strike out application, and which had this additional information available, considered that the 2016 Judgment provided a clear, comprehensive and direct answer to the matters complained of by the Applicant in his Lay Application. It had been suggested by the Applicant and on his behalf that the essential elements of the 2016 Judgment were clear from the other documentation available to the certifying Division of the Tribunal. Whilst the "whole hearing" transcript was included within the material supplied by the Applicant with his Lay Application, and it was clear from this document that the Applicant's set aside application had failed and costs had been awarded against him, the extent to which District Judge Stewart addressed directly and made clear findings on precisely the matters complained of in the Applicant's Lay Application was not.

11.47 The Tribunal considered that the narrow and specific allegations made by the Applicant in his Lay Application (that the Respondent had lied in a witness statement, provided a misleading chronology to the court, and made false statements during cross-examination) were answered by the 2016 Judgment. Submissions were made on

behalf of the Applicant that the 2016 Judgment was essentially irrelevant because it was not alleged that District Judge Stewart had been misled, but instead that the Respondent had made false statements in those proceedings (demonstrated by documentary evidence of correspondence during a period when the Respondent had said there had been none) which raised conduct issues. The Tribunal rejected this submission. The Tribunal considered that the terms of the 2016 Judgment made it clear that precisely the matters said to raise conduct issues had been considered, in the light of the supporting documentation, and had been comprehensively rejected.

Lack of Candour

11.48 As indicated above, the Tribunal considered that the terms of the 2016 Judgment made a material difference to the position presented to the previous Tribunal which considered certification on 21 June 2019. Without the 2016 Judgment, the material presented by the Applicant in support of his Lay Application was deficient. The Applicant had accepted that there was a duty of candour which applied to him as a lay applicant. However, the Tribunal noted the Applicant's written evidence that he had not noticed the absence of the judgment from the "whole hearing" transcript or appreciated its significance. The Applicant produced copy correspondence from Ubiqus UK and Winchester Combined Court confirming that District Judge Stewart approved the judgment transcript on 3 June 2019 and that this was sent to the parties on 24 June 2019 (after the previous Division of the Tribunal had certified the case). In the light of this unchallenged evidence the Tribunal did not find that the Applicant had deliberately displayed any lack of candour, but did consider that in the absence of the 2016 Judgment the material supporting the Lay Application was nevertheless deficient.

Lack of Merits

11.49 As summarised above, in paragraphs [11.44] to [11.47], the Tribunal found that the 2016 Judgment made a material difference to the position presented to the previous Tribunal which considered certification on 21 June 2019. The judgment made it clear that the precise matters said to constitute misconduct had been considered by District Judge Stewart and, following consideration of the relevant supporting material adduced by the Applicant in support of his Lay Application to the Tribunal, and were roundly rejected. The Tribunal considered that not only did District Judge Stewart conclude that he had not been misled, he provided informed and authoritative findings that the Respondent had not been untruthful or in any way fraudulent in his evidence before the civil court. In the light of that finding, which engaged directly with the allegations made by the Applicant, the Tribunal did not consider there was any remote possibility that the Lay Application may succeed. Accordingly, the Tribunal was satisfied beyond reasonable doubt that the strike out application should be upheld on the basis that the Lay Application had no reasonable or realistic prospects of success. The Tribunal determined that the Applicant's Lay Application should be struck out on that basis. Whilst it was not the Tribunal's role to reconsider the certification of the Lay Application, having been invited by both parties to consider this question, the Tribunal considered that had the 2016 Judgment been available on 21 June 2019 the original Tribunal would not have certified the application as showing a case to answer.

Abusive Collateral Attack

11.50 The Tribunal fully accepted the submissions made about it being improper for it to entertain proceedings brought for the purpose of mounting a collateral attack upon a final decision made by another court of competent jurisdiction in previous proceedings. The Tribunal considered there may be circumstances where an unsuccessful litigant might properly raise issues of professional misconduct arising out of a case which had been lost notwithstanding the court's final determination. However, on the facts of the present case, this did not arise. The Tribunal accepted that the Applicant may have genuinely believed that his application raised distinct regulatory issues, but as noted above the Tribunal had rejected the submissions to this effect made on the Applicant's behalf. The Tribunal considered that in this case the potential regulatory issues were precisely those questions considered by District Judge Steward and on which he made clear findings. There was no meaningful distinction between the issues thoroughly ventilated in the Applicant's unsuccessful set-aside claim and the issues featuring in his Lay Application. Whilst he may not have intended any abuse of the Tribunal's processes, the Tribunal did not consider that his application raised any potential regulatory issues falling out-with Judgment of District Judge Stewart sitting in the Winchester County Court dated 9 February 2016. Accordingly, the Tribunal considered that to entertain the Lay Application would require it to go behind the decision of a court of competent jurisdiction which would be improper.

Costs

12. On behalf of the Respondent, Mr Hubble applied for the Respondent's costs in the sum of £35,500 as set out in a costs schedule dated 8 August 2019. He referred the Tribunal to the fact that the previous Division of the Tribunal, which had certified the case as showing a case to answer, had provided a warning to the Applicant as to the potential costs involved in the event he was unsuccessful and that he may wish to seek legal advice before proceeding.

13. Mr Hubble also referred the Tribunal to a 'without prejudice save as to costs' letter dated 12 July 2019 sent to the Applicant by the Respondent's solicitor. Mr Hubble noted that this letter was sent before the Respondent's strike out application was made but intimated that one would be made on the basis of a lack of merits in the light of the 2016 Judgment which was said to provide "a complete answer to the application". The Applicant was informed that if a strike out application was successful the Respondent would seek a costs order against him. Finally, a 'drop-hands' offer was made under which the Respondent agreed not to seek any legal costs if the Applicant applied to withdraw his Lay Application. In summary, Mr Hubble submitted that as the proceedings had been dismissed and a 'drop-hands' offer had been made prior to the strike-out application, it followed that in principle the Respondent was entitled to recover his costs of dealing with the case. Mr Hubble further submitted that the level of costs sought was reasonable taking into account the amount of material involved and also the understandable wish to instruct leading counsel given the seriousness of the allegations and the fact the case had been certified by the Tribunal.

14. In reply, Mr Barton submitted that the Tribunal had complete discretion as to the award of costs. He stated that one ground of the application had been rejected (the lack of candour) and whilst he did not have the Tribunal's detailed reasons available he stated that it was not clear that the Respondent had fully succeeded on another ground (abusive collateral attack). He submitted that accordingly it would be open to the Tribunal to reduce the costs awarded to reflect this lack of success by a third or a half. Further, notwithstanding the seriousness of the allegations, Mr Barton queried the hourly rates claimed by the Respondent which included a £575 hourly partner rate in addition to the costs of leading counsel. He queried whether it was necessary for the instructing solicitor to attend the hearing alongside leading counsel.

15. Mr Barton submitted that a reduction should be made to take account of an application for a private hearing that had been made on the Respondent's behalf. Whilst the application had been withdrawn before the hearing it had required a response. Mr Barton stated that some correspondence, around 22 July 2019, was entirely attributable to this issue. He stated that it was difficult to establish how much time overall was attributable to this issue and informed the Tribunal that he had undertaken work on this issue, and had charged the Applicant for work which was ultimately wasted. Mr Barton confirmed that the Applicant was content for the Tribunal to deal with costs with a 'broad brush' approach. In summary, he submitted that not all elements of the strike-out application had succeeded, the solicitor rates were excessive and some attendance was unnecessary and realistic account should be taken of the wasted work undertaken by both parties on the abortive privacy application.

16. The Tribunal assessed the costs for the hearing. The Respondent's strike-out application had succeeded. Whilst accepting that it was not deliberate, the information provided by the Applicant in support of his application was deficient. In the light of the 2016 Judgment the Lay Application had no reasonable or realistic prospects of success. The terms of the 2016 Judgment meant that the Lay Application, had the supporting material originally presented in its support not been deficient, was unsustainable from the outset. The Tribunal did not agree that in those circumstances any reduction based on the Respondent's failure to establish every element of the three bases of the strike out application was appropriate.

17. As a lay applicant, the Applicant was in a different position to the SRA. He did not, of course, have the responsibilities as a regulator of the profession which afforded the SRA some measure of protection against costs orders (Baxendale-Walker v The Law Society [2007] EWCA Civ 233). The significance of the 2016 Judgment had been drawn to the Applicant's attention, he had been invited to take legal advice, and a 'drop-hands' offer had been made before the Respondent made his strike out application. The Tribunal accepted that the Respondent should in principle recover the costs not attributable to the withdrawn privacy application.

18. The Tribunal did not consider it unreasonable for leading counsel to be instructed and similarly, given that the allegations were of conduct which could have career ending implications, did not consider that engagement of a senior regulatory specialist was unreasonable. In the context of the Lay Application, the applicable hourly rates and Instructing Solicitor's attendance at the CMH was reasonable. From the available information the Tribunal assessed that the costs attributable to the privacy application

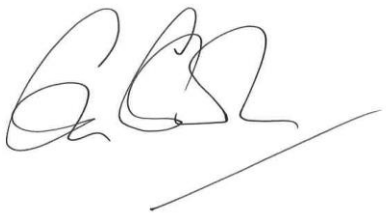
were approximately £5,000. Accordingly, the Applicant was ordered to pay the costs of and incidental to the Respondent's successful strike out application fixed in the sum of £30,000.

Statement of Full Order

19. Following an Application that the proceedings against the Respondent, DAVID GREENE of Edwin Coe LLP, 2 Stone Buildings, Lincolns Inn, London, WC2A 3TH, solicitor, be struck out, the Tribunal **GRANTED** the Application and Ordered that the proceedings against the Respondent be **DISMISSED**.

The Tribunal further ORDERED that the Applicant, Mr David Davies do pay the Respondent's costs incidental to this application fixed in the sum of £30,000.00.

Dated this 6th day of September 2019
On behalf of the Tribunal



J. C. Chesterton
Chairman