

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12123-2020

BETWEEN:

CRAIG GARRETT

Applicant

and

SOLICITORS REGULATION AUTHORITY LTD

Respondent

Before:

Ms A Kellett (in the Chair)

Mrs A Sprawson

Ms J Rowe

Date of Hearing: 23 February 2024

Appearances

Craig Garrett represented himself.

Victoria Sheppard-Jones, counsel in the employ of Capsticks LLP, for the Respondent.

JUDGMENT

Application

1. By an application dated 1 September 2020, Mr Garrett applied to the Tribunal for a review of a section 43 order made by an SRA Adjudicator of the Respondent on 12 April 2016 (“the Order”).
2. The Order, made pursuant to section 43(2) of the Solicitors Act 1974 (“the Act”) stated:
 - (i) *“No solicitor shall employ or remunerate Mr Garrett in connection with his/her practice as a solicitor;*
 - (ii) *No employee of a solicitor shall employ or remunerate him in connection with the solicitor’s practice;*
 - (iii) *No recognised body shall employ or remunerate him;*
 - (iv) *No manager or employee of a recognised body shall employ or remunerate hm in connection with the business of that body;*
 - (v) *No recognised body or manager or employee of such a body shall permit him to be a manager of the body; and*
 - (vi) *No recognised body or manager or employee of such a body shall permit him to have an interest in the body except in accordance with a Society permission.”*

Background & Chronology

3. Mr Garrett commenced his employment at Louise Stephens & Co (“the Firm”) in August 1999. During his employment he was promoted. The promotion included assisting the Firm’s bookkeeper with banking matters, such that he had access to the Firm’s finances and accounts.
4. In October 2013, Mr Garrett told Ms Stephens that he had misappropriated approximately £80,000 from the Firm’s office account. An investigation was conducted, and a list of client files was produced where false claims for payment had been made. The investigation established that £89,842.73 had been misappropriated from the Firm’s office account. There were no funds missing from the client account.
5. On 31 October 2013, Mr Garrett’s parents visited Ms Stephens at the Firm. On 15 November 2013, Mr Garrett’s parents signed a deed granting a charge over the family home to be enforced on their passing in the sum of £89,842.73 with an interest rate of 4.5% per annum. The charge was registered with the Land Registry on 23 December 2013.
6. Mr Garrett retained his job at the Firm. In March 2014, Ms Stephens alleged that Mr Garrett had fraudulently cashed two office account cheques in the total sum of £820, and that he had two further cheques in his possession for the total sum of £810 made out to cash. Ms Stephens alleged that these sums were for Mr Garrett’s personal benefit.

7. On 21 March 2014 (although the document was dated 20 March 2014) Mr Garrett signed a statement stating:

“I Craig David Garrett confirm that I misled Sue Colbourne and Charlotte Willis into withdrawing cash from the office account of Louise Stephens and Co for my own benefit and without the permission of Louise Stephens and Co.

I confirm that neither Sue Colbourne or Charlotte Willis were involved in my dishonestly retaining money from the office account of Louise Stephens and Co and nor did they know that I was being dishonest and retaining the cash for my own benefit rather than using it for office payments.”

8. On 24 March 2014, Ms Stephens discovered that Mr Garrett had been misappropriating money from the Firm’s client account. Ms Stephens stated that Mr Garrett attended the Firm’s offices on 25 March 2014 and explained that he had misappropriated monies from the Firm’s client account. Following that meeting, Ms Stephens conducted an investigation and engaged the Firm’s accountant.
9. On 1 April 2014, Ms Stephens made a report to the SRA alleging that Mr Garrett had misappropriated funds from the Firm’s office account and that there were concerns about the client account. Ms Stephens stated that she had suspended Mr Garrett on 21 March 2014 and dismissed him for gross misconduct on 28 March 2014.
10. Ms Stephens reported the matter to the Gwent police. Following an investigation, Mr Garrett was sent a postal requisition detailing 29 offences under the Theft Act 1968 and the Fraud Act 2006.
11. On 12 April 2016, an Adjudicator of the SRA found that during the course of his employment with the Firm, Mr Garrett had misappropriated £89,842.73 for his own use from the Firm’s office account. In arriving at that conclusion, the Adjudicator relied on the following:

“6.1.1. The signed witness statement from Ms Stephens, the firm’s recognised sole practitioner. In her statement Ms Stephens states that Mr Garrett admitted to her on 30 October 2013 that he had misappropriated approximately £80,000.00 from the firm’s office account. In her statement she sets out the process that she and her colleagues went through in order to ascertain the precise sum misappropriated being £89,842.73.

6.1.2. Mr Garrett’s admission, and the sum which he is alleged to have misappropriated, is supported by the charge which his parents gave to Ms Stephens on 15 November 2013. This charge secured the sum of £89,842.73 against their home being the exact figure which it is alleged Mr Garrett misappropriated from the firm’s office account. Furthermore, the charge agreement made it clear that this was granted to Ms Stephens for the benefit of their son, Mr Garrett, If Mr Garrett denied misappropriating this sum then it is reasonable to conclude that his parents would not have granted this charge. The charge was subsequently registered by Land Registry on 23 December 2013. In order for this to be registered the Land Registry would have undertaken appropriate checks to ensure that the charge was genuine and

had been executed by Mr Garrett's parents. I therefore have no reason to question the validity of this charge, which for the above reasons, supports Ms Stephens' statement that Mr Garrett misappropriated the sum of £89,842.73 from the firm's office account and had admitted the same.

6.1.3. The alleged misappropriation from office account is not under investigation by the Police. Their Investigation is limited to consideration of whether he misappropriated money from the firm's client account. I therefore consider that it would have been open to Mr Garrett to respond to the allegations relating to his misappropriation of office money as this would not have prejudiced the Police's Investigation. I note and attach weight to the fact that in these circumstances Mr Garrett has not sought to deny the alleged misappropriation of £89,842.73 from the firm's office account despite having an opportunity to do so."

12. On 1 September 2020, Mr Garrett applied to the Tribunal for it to review the Order. In October and November 2020, following the Tribunal's refusal of Mr Garrett's applications for the cause list to be anonymised, for the proceedings to take place in private and for the Judgment not to be published, Mr Garrett sent pre-action protocol letters, informing of his intention to judicially review those decisions.
13. On 3 December 2020, Mr Garrett sent a 3rd pre-action protocol letter informing of his intention to judicially review the Tribunal's refusal to prevent individuals from attending any hearing.
14. On 6 May 2021, the Crown Prosecution Service offered no evidence in relation to all charges and formal not guilty verdicts were recorded by HHJ Williams at the Cardiff Crown Court. In a letter from Blackfords LLP to Mr Garrett, the reasons for the Prosecution's decision were recorded as relating to the conclusions of expert Mr Barry Draper and discovery of further digital material located in Ms Stephens' lock up garages and the difficulty of the Prosecution in being able to review and meet its disclosure duties in respect of the same.
15. Following his acquittal, Mr Garrett applied to discontinue the Judicial Review applications made in October and November 2020. That application was granted in July 2021.
16. On 14 September 2021, permission to judicially review the Tribunal's refusal to exclude individuals from the hearing was refused. Mr Garrett filed a notice of renewal the following day. On 27 May 2022, the application for judicial review was heard by Mr Justice Fordham. Permission for judicial review was refused. In his decision Fordham J stated:

"9. To this picture of SRA revocation (whether presently necessary) and SDT review (whether necessary when imposed), there must be added a "hybrid" scenario. The New Guidance at \$16 says that where the SRA is asked to revoke and refuses to do so, on the basis that the Control Order remains presently necessary, the SDT can in those circumstances then "review" the Control Order but "in light of the facts and circumstances which were before the SRA on the

application to revoke” asking whether the SRA was “wrong to keep the Order in place”.

10. The upshot of all of this, as clarified in a flurry of recent materials belatedly put before this Court, is that the Claimant has a flowchart of remedies - so far as the Control Order is concerned - other than by judicial review.

- (i) His next step could be to communicate with the SRA, making clear that he is applying for revocation (the “not presently necessary” question), relying in particular on his May 2021 acquittal: his “no longer justified” point. Mr Mulchrone accepted that such an application would need to be considered by the SRA. It would either be granted or refused.*
- (ii) Having received the SRA’s decision as to revocation he could decide whether to maintain his application to the SDT for review. That includes questions whether the Control Order was “necessary when imposed”: the Claimant’s “unjustified when imposed” point. However, if the SRA has refused revocation, it would also constitute the “hybrid” scenario (New Guidance §16) and would mean examination of the SRA’s decision on non-revocation: including “not presently necessary” (and “no longer justified”).”*

17. Following this decision, on 31 October 2022, Mr Garrett applied to the SRA for revocation of the Order. That application was refused on 29 June 2023. The Adjudicator determined that (amongst other things):

- The Order remained necessary for regulatory control.
- The finding that Mr Garrett had misappropriated money for his own benefit was serious.
- The essential issue was maintaining public confidence in the profession.
- There was no need for Mr Garrett to give oral evidence as Mr Garrett had provided a cogent and coherent statement in support of his application together with other documentary evidence.
- The Adjudicator’s role was to consider whether the Order remained necessary, not to consider whether there was any material flaw when the Order was made – that was for the Tribunal to consider.
- The Adjudicator was satisfied that Mr Garrett’s acquittal was a significant change in circumstances, however the acquittal did not mean that the Order was automatically unnecessary.

18. The Adjudicator found that the Order remained necessary as:

- The making of the Order was not reliant on any criminal conviction.

- Mr Garrett had provided a signed admission to misappropriating monies from the Firm.
 - Whilst the forensic expert did not discount the possibility that money was used for the business; this did not equate to a finding that Mr Garrett had not misappropriated the monies.
 - Given the period of time that had elapsed, it was neither proportionate nor necessary to await further evidence from Mr Garrett.
 - The fact of the acquittal was insufficient to render all of the evidence in the case irrelevant. Mr Garrett's explanations as regards Ms Stephens blackmailing him was not persuasive
 - Considerable weight was placed on the charge over Mr Garret's parents' property. There was seemingly no challenge to the validity of the charge.
 - It was unclear why Ms Stephens would go to such extreme lengths to hide taking money from the office account which, as a sole practitioner, was money to which she was entitled.
 - There was no evidence of rehabilitation.
19. On 26 July 2023, Mr Garrett applied to the SRA for a review of the refusal to revoke the Order. On 19 October 2023, the SRA Adjudication panel refused the application for review. The Adjudication panel found (amongst other things) that:
- It did not need to hear oral representation from Mr Garrett. He had made written representations raising the issues that he considered to be material flaws in the decision made. Nor had he explained what he wanted to make oral representations about.
 - The panel was limited to a consideration of whether the decision made was flawed. It had no power to hear the application afresh.
 - The Adjudicator's decision not to consider whether there was a material flaw with the first instance decision was not materially flawed.
 - There was no discrimination as a result of the decision not to allow Mr Garrett to make oral representations. There was no right for him to do so. His request to make oral representations was considered and refused. There was no flaw in the Adjudicator's reasons for the refusal.
 - The Adjudicator's decision was not flawed for being contradictory. Whilst Mr Garrett stated that he intended to produce additional evidence, he had failed to do so. As he had provided no independent evidence to cast doubt on the findings in Mr Draper's report or his assertions regarding Ms Stephens' conduct, the decision that there was sufficient information on which to make a finding was not inconsistent.

- It was not perverse for the Adjudicator to consider the matter without considering the further documentation sought by Mr Garrett. He had had over a year to obtain and produce that evidence, but he had not done so. Mr Garrett still had not produced the evidence, nor had he explained how his health conditions had prevented him from doing so.
 - The Adjudicator was entitled to draw the inferences that she did from Mr Draper's report and the evidence of the charge on Mr Garrett's parents' property.
20. The Adjudication panel found no material flaw with the Adjudicator's reasoning and the decision that the Order remained necessary. Accordingly, his application was dismissed.
21. Given the length of time since the original application was submitted, the Tribunal determined that it was appropriate for Mr Garrett to provide an amended application, taking into account the matters that had occurred since September 2020. The Tribunal also considered it appropriate for the SRA to respond to the amended application.

Mr Garrett's Case

22. In his statement in support of the application dated 1 September 2020 Mr Garrett explained that he had been unable to make substantive representations at the time the SRA was considering the imposition of the Order, due to the ongoing criminal investigation. To have done so would have compromised his defence in those proceedings. Mr Garrett had provided correspondence from his criminal solicitors reinforcing that this was the case.
23. However, despite those representations and the ongoing investigation and criminal proceedings, the Adjudicator proceeded to endorse the issue of the S43 Order and its publication, based upon the completely erroneous suggestion that Mr Garrett was in a position to make substantive submissions and play an active role. The Adjudicator considered that the police investigation was limited to misappropriation of monies from the client account only, and thus determined that Mr Garrett was able to substantively respond.
24. As outlined in Mr Garrett's representative's communications to the SRA at the time, and as was later evidenced by the postal charge and requisition supplied to the SRA, this was incorrect.
25. Mr Garrett had informed the SRA that he was not in a position to lodge his opposition to the matter, as to have done so might have impacted upon and compromised his position in the criminal proceedings. For the SRA to proceed to make an adjudication and register and, indeed, publicise an Employee Related Decision (albeit redacted) being fully aware that there were ongoing proceedings within which his position could be jeopardised, and which could have impacted upon evidential matters, had Mr Garrett provided comments within the adjudication, was grossly prejudicial and raised fundamental right's issues.
26. Until December 2018, Mr Garrett had no documentation to support his assertion that alleged office account thefts were being pursued. The position was made clear when he received the postal charge and requisition, although the position, it was submitted, had

been made entirely clear multiple times by those representing him in the criminal proceedings. Further, it had been open to the SRA to verify the position with the Police or the CPS.

27. The SRA Adjudicator had clearly based their decision with such a factual inaccuracy in mind, and therefore without the ability for Mr Garrett to fully contribute and make substantive representations and play an active role within that matter, as clearly asserted to by him at the time, and which it would appear was completely erroneously disregarded by the Adjudicator. Despite being fully on notice as to the gross misrepresentation by the Adjudicator, the SRA had failed to adequately remedy matters and refer the matter back for redress.
28. Mr Garrett submitted that no decision should have been made in relation to the S.43 application, (and thereafter its publication) until such time as he was in the position to substantively respond. In proceeding as it had, the SRA had compromised Mr Garrett's human rights.
29. In his Supplemental Statement dated 9 January 2024, Mr Garrett confirmed that he wished to continue with his application for review before the Tribunal.
30. The criminal proceedings were concluded, with Mr Garrett having been acquitted of all charges. He had made repeated requests, on the basis of his health, to make oral submissions. Those requests had been refused. His application for revocation was refused, as was his application for a review of the refusal.
31. Mr Garrett submitted that insufficient material consideration had been given to the discontinuation of the criminal proceedings. Further, too much weight had been placed on what were "entirely incredible sources and material".
32. There were factual inaccuracies contained within the review and the Adjudication panel outcome.
33. Further, there was material information which would be "entirely beneficial (and indeed crucial) to support an application to the SRA and indeed the Tribunal which arose out of the criminal proceedings, but which contain specific disclosure restrictions". Mr Garrett explained that he continued to attempt to secure consent to the disclosure of that material. The SRA, it was submitted, appeared to be taking "a bewildering approach" to the timeframe for this, and had shown little regard to Mr Garrett's unilateral lack of control.
34. In his oral submissions, Mr Garrett reiterated his inability to make substantive representations at the time that the Order was being considered. The inaccuracy, in believing that he was able to make substantive representations when to so do might have prejudiced his criminal case, might have been determinative of the application. It was impossible to know what was in the mind of the Adjudicator at the time. It was clearly a significant matter that the Adjudicator, wrongly, placed weight on. Further, it was incorrect to say that Mr Garrett had not commented on the evidence. He had provided his Defence Case Statement to the SRA which detailed his position in full.

Mr Garrett submitted that too little weight had been attached to his acquittal. There were no different levels of acquittal, and he would have happily gone to trial relying on his own expert witnesses.

35. Mr Garrett submitted that the SRA had relied heavily on the findings of Mr Draper's report. However, there were addendums to that report which the SRA had not seen and could be crucial. To ignore those reports was perverse. Mr Draper might have revised his opinion.
36. It was noted that the SRA had relied on the evidence of Ms Stephens, however Ms Stephens had herself been the subject of disciplinary proceedings before the Tribunal. This might affect the credibility of her evidence and was a matter that should have been taken into account.
37. Mr Garrett submitted that the SRA relied upon the alleged confession and the legal charge, however the validity of these matters had never been tested. The legality of the legal charge being challenged was possible. Further, Mr Garrett was not prepared to ask his parents to give evidence in these proceedings, as it may prejudice their position.
38. As regards evidence of rehabilitation, Mr Garrett submitted that he had no intention of ever working in the legal profession again. He was seeking the quashing of the Order for his own peace of mind. In any event, as he had not done anything wrong, Mr Garrett had nothing to prove.

The SRA's Case

39. Ms Sheppard-Jones set out the SRA's power to make the Order. Pursuant to section 43(1), (1A) and (2) of the Solicitors Act 1974, the SRA may make an Order prohibiting a solicitor from employing a person other than with the SRA's permission:

“(1) Where a person who is or was involved in a legal practice but is not a solicitor—

(a) has been convicted of a criminal offence which is such that in the opinion of the Society it would be undesirable for the person to be involved in a legal practice in one or more of the ways mentioned in subsection (1A), or

(b) has, in the opinion of the Society, occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in subsection (1A),

the Society may either make or make an application to the Tribunal for it to make, an order under subsection (2) with respect to that person.

(1A) A person is involved in a legal practice for the purposes of this section if the person—

- (a) *is employed or remunerated by a solicitor in connection with the solicitor's practice;*
 - (b) *is undertaking work in the name of, or under the direction or supervision of, a solicitor;*
 - (c) *is employed or remunerated by a recognised body;*
 - (d) *is employed or remunerated by a manager or employee of a recognised body in connection with that body's business;*
 - (e) *is a manager of a recognised body;*
 - (f) *has or intends to acquire an interest in such a body.*
- (2) *An order made by the Society or the Tribunal under this subsection is an order which states one or more of the following—*
- (a) *that as from the specified date—*
 - (i) *no solicitor shall employ or remunerate, in connection with his practice as a solicitor, the person with respect to whom the order is made,*
 - (ii) *no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice, the person with respect to whom the order is made,*
 - (iii) *no recognised body shall employ or remunerate that person, and*
 - (iv) *no manager or employee of a recognised body shall employ or remunerate that person in connection with the business of that body, except in accordance with a Society permission;*
 - (b) *that as from the specified date no recognised body or manager or employee of such a body shall, except in accordance with a Society permission, permit the person with respect to whom the order is made to be a manager of the body;*
 - (c) *that as from the specified date no recognised body or manager or employee of such a body shall, except in accordance with a Society permission, permit the person with respect to whom the order is made to have an interest in the body.*

40. The standard of proof is on the balance of probabilities.

41. Ms Sheppard-Jones submitted that the Tribunal's consideration of the application should be in the terms set out by Fordham J, in light of the SRA's decision to refuse the application for revocation.

42. Mr Garrett's Original application for Review of the Order was advanced on the basis that the Order should never have been made because he had been unable to make representations in respect of the same due to the ongoing criminal investigation. Furthermore, that the SRA had been wrong to conclude that as the criminal investigation was only in relation to the client account and not the office account, Mr Garrett could have made representations on the proposed Order regarding the office account.
43. In respect of his application to the SRA for Revocation of the Order, the Adjudicator's decision stated that Mr Garrett provided a personal statement and a transcript of the Court hearing at which he was acquitted. The Adjudicator had also received a copy of the Defence Statement from the criminal proceedings.
44. In considering the application for revocation, the Adjudicator determined that there had been a material change in circumstances on the basis of the acquittal. However, the Adjudicator considered that the Order remained necessary. In summary, the Adjudicator provided the following reasons:
- The original decision to impose the Order did not rely on there being a criminal conviction. At the point the Order was made, the criminal investigation was still ongoing.
 - The fact that the criminal standard had not been met, did not rebut the original Adjudicator's findings that on the balance of probabilities, Mr Garrett had misappropriated money from the Firm's office account.
 - The evidence of Ms Stephens included a signed admission from Mr Garrett and the charge over Mr Garrett's parents' house.
 - Mr Garrett's assertion that Ms Stephens was responsible for the misappropriation of funds and was blackmailing him, was not supported by any evidence and did not appear consistent with the facts.
 - Although the forensic report of Mr Draper dated 2 January 2018 concluded that he could not discount the possibility that some of the misappropriated money was used to fund the Firm's business expenditure, Mr Draper also concluded that funds were extracted from the office account as cash and that Mr Garrett was well placed to have manipulated financial information. Furthermore, that his lifestyle did not match his income.
 - Mr Garrett did not produce any further copies of forensic reports despite stating that he wished to rely on the same.
 - Mr Garrett could not demonstrate rehabilitation through evidence of approved employment since the date of the Order.
45. Ms Sheppard-Jones submitted that the Adjudicator had applied the correct legal test to the consideration of the application, namely:

(i) whether there had been a material change of circumstances to justify making the application for revocation, and if so

(ii) whether it remained necessary for the level of regulatory control to remain imposed.

46. Ms Sheppard-Jones submitted that the Adjudicator, having considered the application determined that whilst the acquittal was a material change, it established that the application could be made. There was no material flaw either procedurally, or in the Adjudicator's reasoning and decision. As detailed in the background and chronology above, Mr Garrett sought a review of the refusal to revoke the Order. The Adjudication panel (for the reasons detailed above) upheld the refusal to revoke the Order. That decision, it was submitted, was not materially flawed.
47. Ms Sheppard-Jones submitted that the basis of Mr Garrett's Amended Application appeared to be that:
- The Order should never have been made.
 - Mr Garrett had been unable to provide representations at the time due to the ongoing criminal investigation. To do so would have risked prejudicing his position in that investigation.
 - His failure to provide representations was wrongly relied upon by the Adjudicator. The Adjudicator considered that Mr Garrett could provide a substantive response as the criminal investigation related solely to the client account and not the office account. This was incorrect.
 - He has been acquitted of the criminal charges.
 - The Adjudicator and Adjudication Panel refused to provide him with the opportunity to provide oral submissions.
 - The Adjudicator and Adjudication Panel refused to permit him to rely on documentation held by the SRA, which was highly relevant and could have been "contextualised and relevance expanded via oral information".
 - Too little weight has been given to the acquittal and too much weight has been placed on "entirely incredible sources and material."
 - There were factual inaccuracies in the SRA's Review Outcome and Panel Outcome.
 - There was information which would be beneficial and crucial. This material was held by third parties, or by Mr Garrett and he was still seeking its disclosure or permission for the materials to be disclosed. The SRA had given insufficient time to obtain this material.
48. Ms Sheppard-Jones confirmed that the application was opposed. As a review was not a re-hearing, the Tribunal should not generally receive new evidence that was not before

the decision maker, nor should the Tribunal embark on an exercise of finding the relevant facts afresh.

49. Mr Garrett, it was noted, did not appear to be seeking to rely on fresh evidence. However, he stated that there was evidence which would assist his case. Mr Garrett had been provided with numerous opportunities to provide all the material upon which he relied. During this process, the SRA had considered a wealth of further material, including but not limited to:
- Witness statement of Mr Garrett;
 - Transcripts of the Crown Court hearing;
 - Defence Statement;
 - Forensic report of Mr Draper dated 2 January 2018; and
 - Medical evidence.
50. It was unclear what further material Mr Garrett considered that the SRA held which would have a material impact on the decision to uphold the Order. Ms Sheppard-Jones noted that whilst Mr Garrett referred to documentation that he considered it was crucial for the Tribunal to see, and which he had in his possession, he did not seek to adjourn the proceedings, or to withdraw his application until such time as he had permission to disclose those documents. Accordingly, the Tribunal could not speculate as to the content of documents that had not been disclosed. Further, and in any event, it was unclear how those documents were relevant to the SRA's decision to impose the Order or its refusal to revoke the Order.
51. In relation to the original ground of Mr Garrett, that the Order was imposed in circumstances where he was unable to provide representations, the SRA now accepted, having seen the indictment, that the criminal matter was ultimately advanced in relation to both the office and client accounts. Nevertheless, Mr Garrett had since been given the opportunity to provide representations. Ms Sheppard-Jones submitted that the Order was properly made and should remain in effect as:
- The Order was not made on the basis of a criminal conviction. The Order was imposed by the SRA during the police investigation. It was therefore clear that the Order was made pursuant to the SRA's powers under S.43(1)(b).
 - The fact of the acquittal did not automatically mean the Order should not have been made. The acquittal was based on disclosure issues and comments in Mr Draper's report. The acquittal did not equate to a finding that Mr Garrett's version of events was true. Nor did it mean that the findings of the Adjudicator were materially flawed.
 - The threshold for conviction is higher than that for the making of a section 43 Order. Accordingly, an acquittal in criminal proceedings did not mean that there would be an acquittal in civil proceedings.

- The evidence relied upon by the original decision maker and the Adjudicator demonstrated that the original decision and the decision refusing to revoke the Order have not been undermined either by the acquittal or any representations that Mr Garrett has made. These were:
 - (i) the signed confession;
 - (ii) the charge over Mr Garrett's parents' house; and
 - (iii) the statement of Ms Stephens.
 - The report of Mr Draper did not conclude that Mr Garrett did not misappropriate funds. In fact, it concluded that he was well placed to manipulate the Firm's finances and that his lifestyle did not match his stated income.
 - The Order was not punitive. Its purpose was to ensure the protection of the public and to maintain confidence in the profession.
 - Both the Adjudicator and the Panel considered Mr Garrett's application for a verbal hearing and did not consider it was necessary. In any event, Mr Garrett had the opportunity to make such oral submissions as he considered appropriate before the Tribunal.
 - As to Ms Stephens' appearance before the Tribunal, that was for failing to properly manage Mr Garrett. It did not impinge on the credibility of her evidence.
52. Ms Sheppard-Jones submitted that the Order was properly imposed and remained necessary for the protection of the public and to maintain the reputation of the profession.
53. For completeness, there was no evidence upon which the Tribunal could be satisfied that Mr Garrett has been rehabilitated. He had not undertaken any periods of approved employment from which rehabilitation could be judged.
54. For the reasons set out above, it was submitted that the Order should be upheld. It was necessary at the time it was made and remained necessary.

The Tribunal's Decision

55. The Tribunal agreed that the correct approach was that detailed by Fordham J.
56. The Tribunal firstly considered whether the Order was necessary when imposed. The Tribunal examined the decision to impose the Order with care, noting as detailed in SRA v Arslan [2016] EWHC 2862 (Admin) that:

“... it should interfere with a decision under review only if satisfied that the decision was wrong or that the decision was unjust because of a serious procedural or other irregularity in the proceedings.

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

Imposition of the Order

57. As detailed above, the Adjudicator found that Mr Garrett had misappropriated £89,842.73 from the Firm’s office account for his own use. In arriving at that decision, the Adjudicator relied on:

(i) The evidence of Ms Stephens

58. Mr Garrett submitted that Ms Stephens’ evidence could not be relied upon. The Tribunal found that there was no evidence before the Adjudicator that would suggest that Ms Stephens’ evidence was unreliable. Indeed, Mr Garrett had produced no evidence to date to support his assertion that Ms Stephens was responsible for taking those monies and that she had blackmailed him. The Tribunal noted that, as the sole principal of the Firm, the monies in the office account belonged to Ms Stephens. Accordingly, the Tribunal did not find that the Adjudicator’s decision was wrong or unjust due to a procedural error or other irregularity. The Adjudicator’s decision was not materially flawed.

(ii) The charge

59. Mr Garrett had submitted that there had been no investigation into the basis of the charge, and that the charge was potentially subject to challenge. The Tribunal found that the evidence before the Adjudicator was that shortly after the Firm had investigated the misappropriation, Mr Garrett’s parents had been to see Ms Stephens. Mr Garrett’s parents signed a deed giving Ms Stephens a legal charge over their house. This charge was in the exact amount of the monies said to have been misappropriated by him from the office account. The Tribunal found that the Adjudicator was entitled to conclude that the charge related to the monies said to have been misappropriated by Mr Garrett. Accordingly, the Tribunal did not find that the Adjudicator’s decision was wrong or unjust due to a procedural error or other irregularity. The Adjudicator’s decision was not materially flawed.

(iii) Mr Garrett’s admission

60. Mr Garrett had submitted that the veracity of his alleged confession had not been tested in Court. The Tribunal found that the evidence before the Adjudicator was that Mr Garrett had confessed to the misappropriation of funds from the Firm’s office account. That this was the case was supported by the charge given by his parents. The Tribunal found that the Adjudicator was entitled to make those findings based on the evidence considered at that time. Accordingly, the Tribunal did not find that the Adjudicator’s decision was wrong or unjust due to a procedural error or other irregularity. The Adjudicator’s decision was not materially flawed.

(iv) Mr Garrett's failure to provide a substantive response

61. Mr Garrett had submitted that weight had been given to his failure to provide a substantive response in circumstances where it had been explained that the criminal investigation was not limited to the misappropriation of monies from the client account. Had that error not occurred, this might have been determinative of the decision. The Tribunal agreed that the Adjudicators assessment of the matters that were being considered in the criminal investigation was incorrect. Indeed, the charges faced by Mr Garrett included monies taken from the client account. Given the Adjudicator's findings, and whilst recognising that the Adjudicator had been wrong about the matters being investigated, the Tribunal did not find that the error of fact was such that it amounted to a procedural irregularity, rendering the imposition of the Order unfair or unjust.
62. Accordingly, the Tribunal found no reason to interfere with the Adjudicator's decision. The Tribunal determined that the Order had been necessary when imposed.

Adjudicators refusal to revoke the Order

63. The Tribunal then considered whether the Order remained necessary, examining the facts and circumstances which were before the SRA on Mr Garrett's application to revoke the Order, and reviewing the decisions of the Adjudicator:
- (i) Material change in circumstances
64. The Adjudicator found that Mr Garrett's acquittal amounted to a significant change in circumstances and that it was relevant to the issues considered when the Order was imposed. The Adjudicator determined that the fact of the acquittal did not mean that the Order should not have been imposed in the first place, nor did it make the Order automatically unnecessary.
65. The Tribunal did not find that this decision was wrong, materially flawed or unjust because of a serious procedural or other irregularity in the proceedings. The Tribunal determined that the Adjudicator was justified in making this factual finding.
- (ii) Criminal Proceedings
66. The Adjudicator rejected Mr Garrett's assertion that the acquittal amounted to a full vindication such that the Order was not necessary when imposed and was certainly no longer necessary following his conviction. The Adjudicator noted the circumstances of the acquittal. It was also noted that the Order had not been imposed as a result of any conviction. In fact, the Order had been made without any reference to the ongoing criminal investigation. Accordingly, the Adjudicator found that the fact of the acquittal did not mean that the decision should be set aside, and it did not render the Order unnecessary.
67. The Tribunal did not find that this decision was wrong, materially flawed or unjust because of a serious procedural or other irregularity in the proceedings. The Tribunal determined that the Adjudicator was justified in making this factual finding.

(iii) Ms Stephen's evidence

68. Mr Garrett had submitted that the SRA was wrong to rely on the evidence of Ms Stephens as she was unreliable and was responsible for the misappropriation of the monies. Further, she had blackmailed him into admitting the misappropriation and into convincing his parents to give her a charge over their property. Her motive was said to be financial and to perpetrate a fraud on the Firm's insurers. The Adjudicator then considered the factors that could lend support to Mr Garrett's assertions, including the forensic accountant's inability to discount the use of monies misappropriated from the client account to fund the Firm's business expenditure. The Adjudicator concluded that this did not amount to a conclusion that Ms Stephens was responsible for the misappropriation, nor did it amount to an assertion that Mr Garrett was not responsible for the misappropriation. The additional reports on which Mr Garrett wanted to rely were not produced by him. The Adjudicator did not consider that it was necessary or proportionate to allow Mr Garrett further time to produce those reports given the amount of time that had elapsed since his acquittal.
69. The Adjudicator considered the forensic evidence that was available. It was noted that:
- The funds were taken out of the account in cash
 - Mr Garrett was well placed to manipulate the financial information
 - A number of clients stated that they had given Mr Garrett cash. That cash did not find its way into the Firm's accounts
 - Mr Garrett's lifestyle did not match his income, meaning that he likely had access to funds above his salary.
70. Having seen no other evidence to rebut the above, the Adjudicator dismissed Mr Garrett's assertions about Ms Stephens' involvement as not being credible.
71. The Adjudicator placed considerable weight on the charge over Mr Garrett's parents' house and noted that there was no evidence of any steps being taken to challenge the validity of that charge. That lent further support to the finding that Ms Stephens was not involved in the way asserted by Mr Garrett; there would be no need to obtain a charge over his parents' property if Ms Stephens was planning to defraud the insurance company. Further, and in any event, Ms Stephens had stated that she did not have a fidelity insurance policy and so could not recover monies misappropriated from the office account from her insurers. It was also unclear why, if she had been blackmailing him as asserted, Ms Stephens would have reported the matter to the police.
72. Having reviewed all of the evidence (including that which the original Adjudicator who determined that the Order was necessary did not have), the Adjudicator found that Mr Garrett had failed to rebut the finding that he had misappropriated the monies and had failed to show that the Order was no longer necessary.
73. The Tribunal did not find that this decision was wrong, materially flawed or unjust because of a serious procedural or other irregularity in the proceedings. The Tribunal determined that the Adjudicator was justified in making these factual findings.

Accordingly, the Tribunal found that there was no reason to interfere with the Adjudicator's decision.

Adjudication Panel's review of the refusal to revoke the Order

74. The Tribunal considered the Adjudication Panel's decision to uphold the refusal to revoke the Order. The Panel stated that its role was to review the decision, considering whether it was materially flawed and/or whether there was information that was unavailable when the decision was made which would have had a material influence on the decision.
- (i) Material flaw not to review the imposition of the Order
75. Mr Garrett submitted that the Adjudicator's decision was fundamentally flawed as there was no consideration of whether there was a material flaw in the decision to impose the Order. The Panel stated that it was not the role of the Adjudicator to consider whether there was a material flaw in the imposition of the Order in the first place.
76. The Tribunal found that this was an accurate reflection of the legal position. Accordingly, the Tribunal did not find that this decision was wrong, materially flawed or unjust because of a serious procedural or other irregularity in the proceedings. The Tribunal determined that the Panel was justified in making these factual findings. Accordingly, the Tribunal found that there was no reason to interfere with the Panel's decision.
- (ii) Failure to allow oral submissions
77. Mr Garrett considered that the refusal of his application to make oral submissions raised human rights and discrimination concerns. The Adjudicator, in saying that no medical evidence had been provided, was inaccurate; Mr Garrett had provided medical documentation to the Tribunal.
78. The Panel rejected the submission that there had been any discrimination or violation of Mr Garrett's human rights. It was noted that Mr Garrett had not particularised which rights had been breached. The Panel found no evidence that the Adjudicator had discriminated against Mr Garrett. The Adjudicator was satisfied that sufficient written information had been provided in order for a decision to be made. The additional documents supplied by Mr Garrett had been considered.
79. The Panel noted that Mr Garrett had no right to make oral submissions but was entitled to request that he be able to do so. The Adjudicator gave detailed reasons as to why it was not considered necessary for Mr Garrett to make oral submissions. The Panel found no material flaw in the Adjudicator's reasoning. The Panel also noted that the Adjudicator had not been provided with the medical information relating to Mr Garrett at the time of making the decision and was thus correct when stating in the report that she did not have any medical evidence in relation to Mr Garrett.
80. The Panel was in possession of the medical evidence and determined that it would not have influenced the decision of the Adjudicator.

81. The Tribunal did not find that this decision was wrong, materially flawed, or unjust because of a serious procedural or other irregularity in the proceedings. The Tribunal determined that the Panel was justified in making the findings that it did. Accordingly, the Tribunal found that there was no reason to interfere with the Panel's decision.

(iii) Contradictory reasoning

82. Mr Garrett stated that the Adjudicator's reasoning was flawed as a result of being contradictory. The Adjudicator stated that there was sufficient information to make a decision but criticised Mr Garrett for not elaborating on certain points and failing to provide additional information. The Adjudicator stated that whilst stating that he intended to produce further reports, Mr Garrett had not done so, in circumstances where he had had sufficient time to produce the same. The Adjudicator had not accepted the assertions made by Mr Garrett about Ms Stephens. The Adjudicator determined that in the absence of any independent evidence to challenge the findings of Mr Draper's report, the assertions of Mr Garrett were not sufficient to cast doubt on that evidence. The Panel did not find that this approach led to an inconsistency in the Adjudicator's findings.

83. The Tribunal did not find that this assessment was wrong, materially flawed, or unjust because of a serious procedural or other irregularity in the proceedings. The Tribunal determined that the Panel was justified in making these factual findings. Accordingly, the Tribunal found that there was no reason to interfere with the Panel's decision.

(iv) Failure to consider crucial documents

84. Mr Garrett considered that it was perverse for the Adjudicator to make a determination without considering the further evidence he was seeking. He had provided information about his health; the decision not to allow him further time was "abhorrent and discriminatory". The Panel determined that the decision not to allow further time was reasonable. The Panel noted that Mr Garrett had still not provided any further evidence and had failed to explain how his health had prevented him from doing so. The Panel found that there was no material flaw in the Adjudicator refusing to allow Mr Garrett further time.

85. The Tribunal did not find that this decision was wrong, materially flawed, or unjust because of a serious procedural or other irregularity in the proceedings. The Tribunal determined that the Panel was justified in making this factual finding. Accordingly, the Tribunal found that there was no reason to interfere with the Panel's decision.

(v) Reliance on irrelevant and/or untrue evidence

86. Mr Garrett had submitted that the Adjudicator was prejudicial, inappropriate, and perverse for assumptions to be made about the legal charge on his parents' house. Additionally, the Adjudicator had been wrong to treat Ms Stephens' witness statement as fact. Further, it was perverse and irrational to rely on the report of Mr Draper when some of the evidence contained therein was untrue. The Panel found that the Adjudicator had given reasons for the conclusions drawn. The Panel found that the inferences drawn by the Adjudicator were reasonable and were inferences that were

entitled to be drawn. There was no flaw in the Adjudicator's reasoning, the conclusions of which were reasonable and sound.

87. The Tribunal did not find that the Panel's decision was wrong, materially flawed, or unjust because of a serious procedural or other irregularity in the proceedings. The Tribunal determined that the Panel was justified in making the findings that it did. Accordingly, the Tribunal found that there was no reason to interfere with the Panel's decision.
88. The Tribunal noted that Mr Garrett had provided no evidence of rehabilitation. Accordingly, the Tribunal, having found no reason to interfere with any of the decisions made (i) when the Order was imposed; (ii) when the application to revoke was refused and (iii) when the application to review the refusal was dismissed, determined that the Order was necessary when imposed and remained presently necessary. Mr Garrett's application for the Order to be quashed or varied thus failed. The Tribunal confirmed the Order.

Costs

89. Ms Sheppard-Jones applied for costs in the sum of £19,503.84. Ms Sheppard-Jones confirmed that these costs related solely to the proceedings before the Tribunal. It was noted that Mr Garrett had not provided an updated means statement, which was unsurprising as he had not been directed to do so. Ms Sheppard-Jones submitted that the costs recovery department would liaise with Mr Garrett if a costs order was imposed and would request an up-to-date statement of means in order to establish appropriate repayment terms.
90. Mr Garrett made no submissions as to costs.
91. The Tribunal considered that the costs claimed were reasonable and proportionate given the issues to be determined, the number of hearings and the length of the proceedings. Mr Garrett had made no submissions as regards either the quantum of costs claimed, or his ability to satisfy any costs order. The Tribunal determined that it was appropriate to make a costs order in the amount claimed, given those costs were, the Tribunal found, both reasonable and proportionate. Accordingly, the Tribunal ordered that Mr Garrett pay costs in the sum of £19,503.84.

Statement of Full Order

92. Upon the application for review made by Craig David Garrett, the Tribunal confirms the S.43 Order. The Tribunal ORDERED that the application for the S.43 Order to be quashed, or varied is **REFUSED** and it further Ordered that the Applicant do pay the costs of and incidental to the response to this application fixed in the sum of £19,503.84.

Dated this 13th day of March 2024
On behalf of the Tribunal

A Kellett
A Kellett
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
13 MARCH 2024