SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12558-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

SIMON JAMES PRICE Respondent

Before:

Mr M N Millin (in the chair)
Mr E Nally
Mr G Gracey

Date of Hearing: 18 September 2024

Appearances

There were no appearances as the matter was considered on the papers, which included detailed written submissions by Rory Dunlop KC for the Applicant and Tim Dutton KC, Andrew Tabachnik KC, and Heather Emmerson instructed by Russell-Cooke LLP for the Respondent.

MEMORANDUM OF AN APPLICATION TO WITHDRAW THE PROCEEDINGS

---

1. Background

1. Proceedings were issued on 19 February 2024, following the Tribunal's certification of a case to answer. Mr Price filed and served his Answer dated 10 May 2024, in which the allegation he faced was denied. On 5 June 2024, the Applicant filed and served its Reply to Mr Price's Answer in which it took issue with a number of matters raised by Mr Price in his Answer.

2. Applicant's Application to Withdraw

2.1 On 17 June 2024, the Applicant applied for permission to withdraw the allegation principally on the basis of the diminished public interest in pursuing the proceedings and further, the diminished prospect of obtaining an order against Mr Price.

The Diminished Public Interest

2.2 The Applicant submitted that it was best placed to assess whether it was in the public interest to bring and continue proceedings. Following its review of Mr Price's Answer, the Applicant determined that it was no longer in the public interest or proportionate to continue proceedings.

2.3 The Applicant had in mind at all material times, the question of whether bringing proceedings against the Firm or Mr Price was proportionate or in the public interest. At the time of the Referral Decisions, the Applicant concluded that as Mr Price had not shared information with the Firm in relation to Client A's source of wealth and funds, the only person likely to be sanctioned was Mr Price. Accordingly, it was appropriate only to bring proceedings against Mr Price - the Firm was unlikely to be sanctioned separately for failures that were solely the responsibility of Mr Price. The referral decision detailed the reasons why it was then considered to be in the public interest to bring proceedings against Mr Price.

2.4 The Applicant submitted that the circumstances were now materially different such that it was no longer in the public interest to continue the proceedings. The following material changes had occurred since the decision was taken to refer Mr Price (and not the Firm) to the Tribunal:

(i) Mr Price had now filed a lengthy and detailed Answer which raised a number of new points not raised in the Joint 2023 Representations.

(ii) The Answer provided new information suggesting that others in the Firm shared the responsibility with him for the failures in due diligence in this case.

(iii) In particular, Mr Price now claimed that he orally discussed the information he had obtained on the source of funds and source of wealth with a team leader in the CAT. There was no suggestion from that team leader that further enquiries were necessary.

(iv) More than a year has passed since the Referral Decisions. Given that the events in question occurred 10 years ago, and given Mr Price's reliance on his memory of oral conversations, of which no handwritten notes were still available, this

was significant.

(v) There had been judgments of the SDT which either had or would clarify the law in relation to anti-money laundering legislation - in particular, the SDT's decision in SRA v Dentons (which also concerned the application of Regulation 14 of the MLRs 2007 to [REDACTED], although the knowledge of the firm and the due diligence undertaken in that case was different). In that case, the SDT found a breach of the anti-money laundering legislation but found that none of the 2011 Principles was breached and there was no failure to achieve Outcome 7.5 of the 2011 Code of Conduct. As a result, the SDT made no order. The SRA has appealed the SDT's judgment in that case on the ground (inter alia) that the SDT misdirected itself - a breach of money laundering legislation is a breach (at least) Principle 7 of the 2011 Principles and a failure to achieve Outcome 7.5 of the 2011 Code of Conduct. The appeal will likely bring clarity on the extent to which breaches of the MLRs 2007 are to be regarded as breaches of the 2011 Principles and 2011 Code of Conduct. The current proceedings are unlikely to add any further clarity to the relevant law.

(vi) The proceedings were likely to consume a large amount of costs and Tribunal time - the Answer contained no material admissions and was drafted by three senior counsel, including two KCs, and was 71 pages in length (without exhibits) and 422 pages in length (including exhibits).

<u>The Diminished Prospect of obtaining an Order against Mr Price</u>

2.5 The Applicant submitted that if the Tribunal agreed that it was no longer in the public interests to continue the proceedings, it would not then be necessary for the Tribunal to consider whether there was any prospect of Mr Price being made subject to any sanction were the proceedings to succeed.

2.6 Whilst sanction was a matter for the Tribunal, the following pointed to the likelihood that even if the proceedings were successful, no sanction was likely to be imposed:

(i) It now appeared that the responsibility for any failures in due diligence were shared between Mr Price and other members of the Firm. [REDACTED]. The Firm was the responsible person for the purposes of the MLR's and there appeared to have been several individuals at the Firm responsible for any failures of due diligence in relation to Client A.

(ii) A decision was taken, based on earlier information, not to refer the Firm. In the circumstances of this particular case, it would be unfair now to withdraw that decision and refer the Firm.

(iii) The events in question were over 10 years ago and there has been no repetition by Mr Price.

2.7 The Respondent submitted that the Applicant's concession that there was no public interest in continuing with the proceedings and no realistic prospect of there being any

order against him was properly made.

The Tribunal's Decision

2.8 Given the submissions of the parties, the Tribunal concluded that it was no longer in the public interest to continue with the proceedings and that there was no realistic prospect of an order being made against Mr Price in all the circumstances. Accordingly, the application to withdraw the allegation, and thus the proceedings, was granted.

3. Costs

The Respondent's Application for Costs

3.1 Mr Dutton KC submitted that in order properly to consider the costs application, the Tribunal would need to consider the chronology of events. During the course of the investigation, the Applicant was provided with detailed explanations and documents in relation to the enquiries made to establish Client A's source of funds and source of wealth. Despite this, in July 2022 the SRA's specialist AML Investigation Officer ("the IO") recommended the referral of both the Firm and Mr Price to the Tribunal.

3.2 Both the Firm and Mr Price provided detailed written responses to the notices on 3 March 2023 denying all allegations and setting out the lines of defence. In documents referred to as a Statement Following Representations ("the SFR") the IO concluded that there was no proper basis for referring either the Firm or Mr Price to the Tribunal. This document was dated 5 May 2023, but was not disclosed by the SRA to Mr Price until 16 August 2024. Nor was it referred to by the SRA in its application to withdraw the proceedings.

3.3 In September 2023, the Applicant determined not to refer the Firm but to refer Mr Price. This, it was submitted, was striking in circumstances where it was the Firm that was the relevant person for the purposes of any liability under the MLR's.

3.4 On 13 February 2024, detailed written representations were sent to the Applicant explaining why it was not proportionate or in the public interest to proceed against Mr Price, particularly in light of the Tribunal's previous decisions. The SRA was invited to review and reconsider its position.

3.5 On 14 February 2024, the Applicant filed its Rule 12 Statement at the Tribunal. The exhibits to the Rule 12 Statement included the original recommendation of the IO, but did not include the revised opinion contained in the SFR indicating the recommendation of the IO that there was no proper basis for referring Mr Price to the Tribunal. Accordingly, the Tribunal, when certifying a case to answer, was not aware that the IO had changed her opinion.

3.6 A detailed Answer denying the allegation with supporting documentation was filed and served on 10 May 2024. On 5 June 2024, the Applicant served its Reply to the Respondent Answer. 12 days later, the Applicant applied to withdraw the proceedings.

3.7 On 16 August 2024, shortly before the deadline for submissions on costs of 21 August 2024, the Applicant disclosed the SFR to the Respondent for the first time.

3.8 Mr Dutton KC submitted that the consideration of the SFR by the Authorised Decision Maker ("ADM") had been the subject of inconsistent accounts by the Applicant. In a letter dated 16 August 2024 it was stated that the SFR *"was not seen by the ADM as it had not been disclosed to the Respondent."* However, in the Applicant's submissions as regards the application for costs it was stated that the SFR, whilst seen by the ADM, had been disregarded on the basis that it did not form part of the Applicant's usual processes. This, it was submitted, raised a number of serious issues:

- No satisfactory explanation had been received from the Applicant as to why either (i) the SFR was not put before the ADM or if it was (ii) why it was disregarded. Nor had it been explained why the Applicant had not mentioned the SFR when it applied to withdraw the proceedings, only providing the SFR two months later when written submissions on the question of withdrawal and costs were to be exchanged. Basic fairness, it was submitted, required the Applicant to disclose the SFR prior to the referral decision being made.

- The SFR was highly significant as (i) it evidenced serious flaws in the decision-making process and justified criticism of the Applicant's conduct and (ii) it undermined the Applicant's submissions that it only realised the weakness in its case upon receipt of the Answer.

- The ADM's failure to take account of the IO's revised view led to the following:

    (i) The ADM did not take account of a relevant consideration, namely the clear view that there was no basis for referring MR Price to the Tribunal. In failing to do so, the referral decision was rendered legally defective and unlawful.

    (ii) The Tribunal was not provided with the SFR. The SFR was a document that was material to the Tribunal's certification decision; the Tribunal may not have certified the matter as showing a case to answer if it knew that the IO no longer considered that the matter should be referred.

    (iii) Mr Price was not aware of the change in the IO's view and was therefore unable to rely on her analysis in his Answer.

3.9 The application for costs, it was submitted, arose in the unusual circumstances where the Applicant had unilaterally applied to withdraw the proceedings following a flawed and unlawful decision-making process that had led to Mr Price being referred to the Tribunal. The application for costs was made on three grounds as detailed below.

<u>Ground 1 – The prosecution was not reasonably brought as by 5 May 2023, it was (or should have been) clear to the Applicant that the allegation against Mr Price had no realistic prospect of success</u>

3.10 The concession by the Applicant that there was no realistic prospect of the Tribunal making an order against Mr Price was one that should have been made by the Applicant by no later than May 2023 following receipt of the representations sent to it and in light of the IO's changed view.

3.11 The obvious and fundamental flaws in the Applicant's case against Mr Price and the urgent need for the Applicant to review the position were pointed out to the Applicant in written representations, including in a without prejudice save as to costs letter of 13 February 2024, which referred to the costs implications of the course which the was pursuing in the following terms: "*If the SRA continues to pursue the proceedings before the Tribunal, our client reserves the right to draw this letter to the Tribunal's attention on the question of costs in due course.*"

3.12 Accordingly, the Applicant was put on notice in respect of the need to revisit the prosecution against Mr Price but failed properly to engage with that correspondence or the underlying request for a review.

3.13 Mr Dutton KC submitted that the Applicant's submission that it was only on a full and careful review of the Answer (which it was said contained substantial additional submissions not previously made) was without merit. Of the thirteen matters which the Applicant submitted had first been raised in the Answer, almost all of them had been raised previously by the Respondent. No new evidence had been adduced with the Answer that fundamentally changed the position from that set out in the representations already submitted to the Applicant.

<u>Ground 2 –The prosecution was not properly brought as it was not in the public interest to bring the proceedings. This was (or should have been) apparent from May 2023</u>

3.14 Mr Dutton KC submitted that it should have been apparent to the Applicant that it was not in the public interest to bring proceedings against Mr Price as it was disproportionate to do so when the alleged misconduct was at the lowest end of the spectrum and was plainly capable of being dealt with by the Applicant using its internal powers. The Applicant's case, at its highest, was that Mr Price failed to conduct adequate source of wealth and source of funds enquiries in respect of a single client for a single transaction which took place over a decade ago. This was in circumstances where there was no evidence of harm nor were there grounds to suspect that Client A was involved in money laundering during the relevant period. Further, the Applicant did not say that any breach gave rise to any loss or harm to the public or anyone else or that the reputation of the profession had been diminished in any way.

3.15 It was noted that none of the Firm's other lawyers or employees who were involved at the material time, questioned or raised any concerns about Client A's source of wealth and/or funds or the enquiries made in that regard; they had not been criticised by the Applicant. Further, Mr Price had acted in accordance with the Firm's policies which (save for in one immaterial respect), had not been criticised by the Applicant.

3.16 The applicant's position that the nature and seriousness of the alleged misconduct was *"likely to result in a substantial fine"* was plainly wrong and also inconsistent with the position it had adopted in relation to the Firm. Having decided that that Firm was not guilty of professional misconduct and that any MLR breach by the Firm was nonserious, it was not reasonable or proper for the SRA to bring proceedings against Mr Price on the basis that his conduct was serious and reprehensible in allegedly causing or contributing to a non-serious breach (at most) by the Firm (which was denied).

3.17 Mr Dutton KC submitted that in light of the above, it should have been apparent to the Applicant from at least May 2023 that the conduct of Mr Price was, at worst, a one-off error of judgement as to the extent of the enquiries required to establish source of wealth and/or funds, and inevitably fell within the Applicant's own sanctioning powers. That this was the position was clear from the Tribunal's Judgment dated 8 February 2024 in SRA v Clyde & Co and Edward Henry Mills-Webb (Case no 12481 2023). In that case, Mr Mills-Webb was fined £11,900 for his admission that he *"materially contributed"* to serious failures by Clyde & Co to comply with the MLR's over a protracted period. This decision was expressly brought to the attention of the Applicant in a letter to the Applicant dated 13 February 2024.

3.18 Mr Dutton KC submitted that in circumstances where there had been no material changes since Mr Price sent his representations to the Applicant about its referral decision, had the Applicant acted properly it would have reached its now stated view before proceedings were issued.

3.19 Further, whilst the Applicant now appeared to accept that the delay in bringing the proceedings was material to the public interest, it should have taken that view in May 2023. The Applicant was aware of the core facts by 30 August 2019. However, it took the Applicant 6 months to serve a production notice on the Firm and 18 months to serve a production notice on Mr Price. It then took another 6 months to produce a forensic investigation report and then a further 2 years for a referral decision to be made. Mr Dutton KC submitted that not only did the Applicant's delays breach its own guidance, but by the time proceedings were commenced, the matters to which the allegation related were over 10 years old. This not only impacted on Mr Price's ability to respond to the allegation, it also inevitably undermined the public interest in bringing the proceedings.

3.20 Further, the disproportionality and lack of public interest in bringing the proceedings in the circumstances was expressly drawn to the Applicant's attention in a letter dated 13 February 2024.

3.21 Accordingly, it was submitted, the proceedings against Mr Price should never have been brought on the basis that it was not in the public interest given the considerable age of the alleged conduct in circumstances where there was never any realistic prospect that the Tribunal would make any order, let alone take any steps that the Applicant could have itself taken using its internal powers.

<u>Ground 3 –The decision to refer Mr Price to the Tribunal was fundamentally flawed in circumstances where the Firm had not been referred</u>

3.22 Given the Applicant's determination that it was not appropriate to refer the Firm to the Tribunal, there was no proper basis for the Applicant to refer Mr Price to the Tribunal. The decision not to refer the Firm was on the basis that if the Firm's conduct was found proved, it was not serious enough for the Tribunal to make an order on the basis that the Firm's conduct was in breach of its regulatory obligations. Mr Dutton KC submitted that the Applicant's case was fundamentally flawed. Having determined that the Firm was not guilty of professional misconduct, it was not reasonable or proper to advance a case that Mr Price's conduct did amount to professional misconduct.

3.23 Mr Dutton KC submitted that it was extraordinary that the Applicant in its submissions suggested that the Tribunal "*may consider, in light of the information now provided in the Answer, that the most appropriate person to impose a sanction on for any breach of the MLRs 2007 was the Firm, not the Respondent*", and "*it might be said that the Firm was fortunate not to have been referred to the SDT – the decision not to refer them was taken on the understanding that the responsibility for any failures of due diligence rested solely with Mr Price*". It was inappropriate for the Applicant to advance such baseless assertions in circumstances where:

- Such allegations had not been made against the Firm, far less determined against it enabling a sanction to be imposed.
- The allegations had not been put to the Firm and it has not had an opportunity to reply.
- The Applicant examined in detail and made no criticism of the Firm's AML policies and procedures.
- The involvement of others at the Firm was apparent to the Applicant throughout.

3.24 In any event, the Firm's position was irrelevant to the question of whether Mr Price ought to receive his costs in circumstances where the Applicant had pursued disciplinary proceedings against him which should never have been brought.

3.25 Mr Dutton KC submitted that in the circumstances, taken individually or cumulatively, the prosecution was not properly brought by the Applicant and, from at least May 2023, the Applicant had all the relevant evidence and legal submissions which should have led a reasonable and responsible public authority to conclude that no prosecution was justified and at the test for referral was not met. Accordingly, it is appropriate for Mr Price to recover his costs of defending these proceedings from at least May 2023.

Legal Principles

3.26 Pursuant to section 47(2)(i) of the Solicitors Act 1974, the Tribunal has power to make an order for the *"payment by any party of costs or contribution towards costs of such amount as the Tribunal may consider reasonable"*.

3.27 Rule 43(1) of the Solicitors (Disciplinary Proceedings) Rules 2019 ("the Rules") provide that at any stage of the proceedings the Tribunal may make such order as to costs as it thinks fit. This includes an order as to costs in circumstances where an application or allegation is withdrawn (Rule 43(3)(a)).

3.28 In deciding whether to make an order for costs, against which party, and for what amount, the Tribunal will consider all relevant matters including those set out at rule 43(4). This included the conduct of the parties and whether the allegations were reasonably pursued.

3.29 The Tribunal's Guidance Note on Sanctions (10th Edition) identified (at paragraph 74), that in considering an application for costs against the SRA the Tribunal will adopt as its starting point the judgment of the Court of Appeal in Baxendale-Walker v The Law Society [2007] EWCA Civ 233. This provided, in relevant part, as follows:

> *"Unless the complaint is improperly brought, or, for example, proceeds as it did in Gorlov, as a "shambles from start to finish", when the Law Society is discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs follow the event…For the Law Society to be exposed to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful might have a chilling effect on the exercise of its regulatory obligations, to the public disadvantage."* (emphasis added).

3.30 As was clear from the underlined passages, the Court of Appeal contemplated that the Applicant may be the subject of an award of costs where proceedings had not been properly or responsibly brought (which was contended in this case). The rationale behind the costs protection given to the Applicant was the need to encourage public bodies to exercise their functions by making reasonable and sound decisions and to prevent or limit the prospects of an adverse costs award prejudicing the reasonable exercise of their regulatory powers. However, where, as was submitted in this case, the Applicant had acted unreasonably in pursuing allegations that should never have properly been brought, that rationale fell away and it was appropriate for there to be an award of costs. The reason why costs do not necessarily follow the event in disciplinary tribunal proceedings is to avoid the potential "chilling" effect that such a costs order may have upon the regulator which is discharging a public duty when bringing proceedings. In this case no such chilling effect could possibly arise because the Applicant was clearly not acting properly or reasonably as a regulator. Indeed, Mr Dutton KC submitted, if the Tribunal made a costs order against the Applicant, the effect would be to indicate to the Applicant that it must not act in the way it had in this case again.

3.31 The recent judgment of Eyre J in SRA Ltd v Tsang [2024] EWHC 1150, upholding the Tribunal's award of costs against the Applicant in that case, reasoned that the key question was whether there was a "good reason" to displace a starting point of no order as to costs. At [57] Eyre J concluded, after discussing Baxendale-Walker and the Supreme Court's comments on it in CMA v Flynn-Pharma [2022] 1 WLR 2972:

> *"As a consequence my understanding of the state of the law is that there is a substantial restriction on the award of costs against the SRA but the Tribunal's power was not as narrowly constrained as the SRA now contends it was. The principle that costs follow the event is displaced in cases of this kind and, instead, when an allegation is dismissed the starting point is that there should be no order as to costs. For costs to be awarded against the SRA there must be a good reason justifying the departure from that starting point. In considering whether there is such a good reason the fact that the proceedings were brought in exercise of the SRA's regulatory function is to be seen as a crucial factor and regard is to be had to the risk that the making of adverse costs orders will have a chilling effect on the exercise of the regulatory jurisdiction. However, those factors are not conclusive. Good reasons are not confined to those cases where the proceedings have been improperly brought or so badly conducted as to have amounted to "a shambles from start to finish". However, those examples are to be seen as indicating the kind of matters which can amount to a good reason and for other matters to amount to a good reason they must be of a comparable gravity."*

3.32 This was not a case where costs against the Applicant were being sought on the basis that costs should follow the event. On the contrary, this was an unusual case where the Applicant had belatedly accepted that there was no proper basis for pursing the allegation against Mr Price. By the time of the application to withdraw, Mr Price had incurred extensive costs in defending proceedings which should never have been brought. This was reinforced by the fact that the Applicant's own specialist AML Investigation Officer herself concluded on 5 May 2023 that the allegation against Mr Price had no realistic prospect of success, but her recommendation not to pursue a referral was not taken into account by the ADM who made the referral decision. Neither was it disclosed to the Tribunal, in circumstances where it was material to the Tribunal's certification of a case to answer. Significantly the proposed abandonment is not as a result of new information or a change of circumstances, it was essentially a belated acceptance that a series of decisions each with a substantial effect on Mr Price were wrong.

3.33 In SRA v Ahmud (11955-2019), the Applicant applied for permission to withdraw all allegations against the Respondent and the Respondent applied for costs. The Tribunal rejected a submission by the Applicant that to award costs against it in those circumstances would have a "chilling effect" and found that:

> *"76…[the SRA] had not acted reasonably in the way in which it had brought and pursued the proceedings. The Tribunal therefore found that there was "good reason" to depart from the starting point and make an order for costs in the Respondent's favour.*
>
> *77. The Tribunal did not consider that making such an order would have a 'chilling effect'; on the contrary, it may make it more likely that prosecutions would be undertaken and pursued in a more diligent manner than this one had."*

The Applicant's Submissions

3.34 Mr Dunlop KC submitted that, in summary, Mr Price had not identified a proper basis to make a costs order against the Applicant. Such an order would have a chilling effect on the Applicant's ability and willingness to bring prosecutions when the factors for and against prosecution were finely balanced. It was, at all times, a finely balanced judgment for the Applicant whether to pursue proceedings against Mr Price. When the SRA received the Answer there was enough new material in it to tip the balance against proceeding further.

3.35 Mr Dutton KC submitted, in essence that: (i) the Answer added nothing to earlier representations; and (ii) the SRA should pay over £400,000 in costs for the work done on an Answer that added nothing to earlier representations. This, it was submitted, was a bold and unattractive submission, which did not reflect the evidence.

The Legal Principles

3.36 Mr Dunlop KC submitted that there was no material dispute between the parties as to the legal principles the Tribunal should apply in relation to costs. The parties agreed that the starting point, when proceedings against a respondent did not succeed, was no order as to costs. It was also agreed that there needed to be a good reason to depart

from that starting point. Success by a respondent was not enough because the principle of costs following the event did not apply in disciplinary tribunal proceedings when the losing party was the regulator.

3.37 Given that agreed position, Mr Dunlop KC submitted that it was not necessary or proportionate for the Tribunal to adjudicate on all the arguments Mr Price made in relation to the merits. Even if the arguments would have prevailed at a substantive hearing, that would not be a good reason to make a costs order.

3.38 For the application for costs to be successful, Mr Price had to go further than demonstrating that he would have successfully defended the proceedings; he had to demonstrate that the Applicant had acted unreasonably in referring the allegations to the Tribunal. The submission in that regard rested on the premises that: (i) it was clear, by the time of referral to the Tribunal, that the case against Mr Price was bound to fail; and (ii) that was the real reason why the Applicant was applying to withdraw proceedings, not any change in circumstances tipping the balance. However, there were two fatal flaws in these submissions:

3.38.1 Firstly, the case against Mr Price was not bound to fail, at the point when it was referred. That was evidenced by the fact that the Tribunal certified that there was a case to answer.

3.38.2 Secondly, there was new information and/or changes of circumstance between the date of referral and the receipt of the Answer. Two particularly important changes were that the Answer included new evidence on the key issues in the case, namely:

(1) whether adequate enquiries were made into what [a third party] meant, when they said on 25 April 2013 that the source of Client A's wealth and funds was *"mainly entrepreneurial activities..."*; and

(2) who was responsible for the decision not to make further enquiries.

3.39 At the time of the Referral Decisions, the Applicant's understanding from the materials available to it was that: (i) Mr Price did not share, with anyone else in the Firm, the 25 April 2013 response where it was said the source of Client A's funds and wealth was *"mainly entrepreneurial activities"*, and (ii) Mr Price did not ask any follow up questions as to what the *"mainly entrepreneurial activities"* consisted of.

3.40 The SRA considered that this failure to make further enquiries was a breach of regulation 14(4)(b) of the MLR's. This was the key failure highlighted in the Referral Decisions. Thus, in the decision to refer Mr Price, the ADM said that the assertion that the source of funds for the transaction was *"mainly [the] entrepreneurial activities"* of Client A was *"vague"* and *"should have prompted further enquiries, and adequate answers"* but *"Despite this, no further enquiries were made into what the "entrepreneurial activities" were."*

3.41 Further, on the information available to the Applicant at the time of the referral decisions the only person responsible for this decision, not to enquire further into the entrepreneurial activities, was Mr Price. No one else at the Firm was even told of this

vague assertion of wealth from "mainly entrepreneurial activities". That was the essential reason why the Applicant decided not to refer the Firm but only to refer Mr Price.

3.42 The referral decision in relation to the Firm stated:

> *"There is no evidence that anyone at the Firm other than Mr Price was sent or was otherwise privy to the email received on 25 April 2013 …In particular there is no evidence that these were given to the CAT and they are not present on the CAT's KYC file.*
>
> *- Mr Price in interview did state that he forwarded everything he got … to the Firm's KYC team. However it is apparent from the timing of the email traffic … that this did not include the above documents."*(emphasis added)

3.43 Mr Dunlop KC submitted that in his Answer, Mr Price provided significant new evidence on this issue:

- His *"understanding of the reference to entrepreneurial activities was informed by oral discussions with [a third party]"* and was that Client A had *"accrued significant wealth through… share-holding/options"* at the bank of which he was principal. This implied that Mr Price did make further enquiries about what was meant by "entrepreneurial activities".

- He asserted for the first time that:

  (i). he recalled speaking on 25 April 2013 and in the period from then until 15 May 2013 with Employee A, a Team Leader in the CAT, about the information he had obtained about Client A's source of wealth and funds. This must have included the information from the third party that it came mainly from entrepreneurial activities; and

  (ii). Employee A did not suggest that further enquiries were necessary.

3.44 This new evidence in the Answer, it was submitted, changed the picture as to the extent to which the vague assertion that Client A amassed his wealth from "mainly entrepreneurial activities" was probed. It also changed the picture as to who, in the Firm, was responsible for not probing this issue further. Accordingly, the evidential picture was different to what it had been at the time of referral. The shift in the evidential picture was very important to the prospects of obtaining a sanction against Mr Price in a context where the "relevant person" owing obligations under the MLR's was the Firm, not Mr Price. A responsible partner is likely to be liable for their firm's breach of the MLRs where they were primarily responsible for that breach. The prospects of their being so liable diminished where they had shared the information they were aware of with a team in the firm, responsible for due diligence, and the team leader had effectively told them they did not need to do more.

3.45 Mr Price, in the submissions made, attempted to minimise these changes by referring to passages in Mr Price's interview, suggesting that there had been no material change from the answers given in interview, the subsequent representations made and the

Answer. This was not accepted. By way of example, Mr Dunlop KC noted that in his interview, there were vague references to conversations with the CAT, without dates or specifics of what was discussed. Nothing in the interview contradicted the Applicant's view, at the time of the Referral Decisions, that there was *"no evidence"* that anyone at the Firm other than Mr Price was made aware of the suggestion that Client A's wealth and funds came mainly from *"entrepreneurial activities"*. By contrast, in his Answer, Mr Price explicitly asserted that (a) he had had oral conversations with a team leader in the CAT on and after 25 April 2013, (b) in those conversations, he informed the CAT team leader of the information he had gathered (which implicitly included the information received from the third party), and (c) the CAT team leader did not suggest any more inquiries were necessary.

3.46 Mr Dunlop KC submitted that the Applicant could, in theory, have pursued the proceedings and sought to challenge the reliability and accuracy of the important new evidence, contained in the Answer. However, it had chosen not to do so in light of several factors, including (but not limited to) the fact that no allegation of dishonesty or lack of integrity was ever made against Mr Price. Mr Price could not (and did not) criticise the SRA for taking at face value the new evidence he put forward in his Answer and reassessing the prospects in light of it. That new evidence, it was submitted, tipped the balance in his favour.

<u>Ground 1 – The prosecution was not reasonably brought as by 5 May 2023, it was (or should have been) clear to the Applicant that the allegation against Mr Price had no realistic prospect of success</u>

3.47 In the written submissions, Mr Dutton KC purported to set out the *"fundamental flaws"* which, it had been submitted, should have been clear from the representations made. Mr Dunlop KC submitted that it was neither necessary nor proportionate for the Tribunal to act as if it were the substantive panel and to decide whether it accepted those submissions. For the purposes of obtaining a costs order, it was not enough for one or more of those submissions to have merit. To obtain a costs order, it was necessary to reach the much higher threshold of showing that the referral was unreasonable because it was clear beyond argument, even in May 2023, that the prosecution of Mr Price would fail. None of the submissions made reached that high threshold. It had been asserted that almost all of the allegedly new matters contained in the Answer had been raised previously. This was not accepted. The most important new points had already been detailed above. As to the other 11 points, they were also new.

<u>Ground 2 – The prosecution was not properly brought as it was not in the public interest to bring the proceedings. This was (or should have been) apparent from May 2023</u>

3.48 Mr Dunlop KC submitted that Ground 2 was inconsistent with Ground 1. Ground 1 was that the case against him was misconceived, and it was clear, by May 2023, that there was no prospect of findings that he breached any of the relevant 2011 Principles or failed to achieve any of the outcomes in the 2011 Code. It followed that no sanction could have been imposed on him. Ground 2 was that the Applicant should have taken it upon themselves to sanction Mr Price, rather than referring the matter to the Tribunal.

3.49 Even if the premise of Ground 2 was correct, that did not begin to suggest that the referral of Mr Price was unreasonable or that a costs order should be made against the Applicant. It was sometimes appropriate to refer a matter to the Tribunal even when the ultimate sanction may be one that the Applicant could have imposed under its own powers – e.g. (a) to send a message to the profession or (b) to obtain clarification on an important legal issue. The referral of Mr Price particularly identified both of those factors – i.e. (a) that proceedings before the Tribunal would be a 'proportionate regulatory response' that would help maintain standards and public confidence, and (b) that there was a 'public interest' in the legal disputes between the parties being 'openly considered by the Tribunal' – i.e. the dispute as to what constitutes adequate measures and whether expert evidence could be admitted on that point. However, the public interest in these legal disputes being openly considered by the Tribunal was now less than it was as a result of the Dentons litigation.

3.50 Whilst not all of the submissions made were accepted, cumulatively, those submissions put forward a strong case as to why it was now unlikely that Mr Price would receive a substantial fine if the proceedings went to trial. However, it was submitted, some of the best arguments put forward relied on the new material put forward for the first time in the Answer. Points made were now valid in circumstances where they would not have been valid at the time of the decision to refer Mr Price.

3.51 Mr Dunlop KC submitted that it was legitimate for the Applicant to have regard to the passage of time and the connected issue of proportionality. This was not, as had been asserted, a factor in favour of making a costs order - the time which had passed since the key events was greater now than it was at the time of the referral decision. Further, it took on a greater significance, given the new evidence in the Answer about lost handwritten notes. The passage of time alone might not have been enough to tip the balance against prosecution, but it was a relevant factor which it was reasonable for the Applicant to bear in mind.

<u>Ground 3 – The decision to refer Mr Price to the Tribunal was fundamentally flawed in circumstances where the Firm had not been referred</u>

3.52 Ground 3, it was submitted, relied on a mischaracterisation of the referral decision in relation to the Firm. Contrary to what had been asserted, the Applicant did not decide that the Firm was *"not guilty of professional misconduct"*. In the referral decision in relation to the Firm, the ADM stated that he was satisfied that the evidence could prove the misconduct alleged – i.e. breaches of Principes 6, 7 and 9 of the 2011 Principles and failure to achieve Outcome 7.5 of the 2011 Code.

3.53 Nor did the Applicant decide that *'any MLR breach by the Firm was non-serious'*. Rather, the ADM decided that he was not satisfied that the Firm's conduct was serious enough to make an order. In explaining his reasons for that decision, the ADM drew a contrast between the Firm's conduct and Mr Price's conduct. The Applicant's understanding was that the Firm was not to blame, only Mr Price was, because Mr Price had withheld the key information from the rest of the Firm. It was the Applicant's view at the time of the referral decisions that there had been a serious breach of the MLR's but that Mr Price was primarily responsible for that breach and no one else at the Firm was. In the circumstances the ADM concluded that the only person who would be likely to receive a sanction would be Mr Price and not the Firm.

3.54 The Applicant submitted that in contrast, it now appeared, as a result of the new evidence contained in the Answer, that the referral decisions were taken on an incorrect factual basis. The Applicant submitted that responsibility for any failure to make adequate enquiries into Client A's source of wealth and/or funds did not rest solely, or even principally, with Mr Price. It rested also with the Firm's CAT team leader.

3.55 Mr Dunlop KC submitted that, for the avoidance of doubt, the Applicant did not seek to withdraw the referral decision in relation to the Firm or to revive the possibility of bringing proceedings against the Firm as the Applicant did not consider this to be either fair or proportionate at this stage. Nor was this the aim of the submissions criticised by Mr Price. The point being made by the Applicant was that if the reasons for not referring the Firm to the Tribunal were properly understood, they did not advance Mr Price's case that it was unreasonable for the Applicant to have referred him to the Tribunal in circumstances where it had not referred the Firm to the Tribunal.

3.56 In his submissions, Mr Dutton KC had relied heavily on the views expressed by the IO in the SFR. The SFR was provided to the ADM who suspected that it had not been disclosed to Mr Price and which he could not take into account. The ADM opened it to check and saw enough to confirm that it was an undisclosed memo and thus it would not be appropriate to take it into account. As a result, the ADM did not, at the time of making his referral decisions, read all of the contents of the SFR. Instead, he wrote to the IO explaining that he would not be taking the contents into account and the reasons why. Mr Dunlop KC noted that the IO did not raise any objection to this course.

3.57 Mr Dutton KC submitted that the ADM should have shared the SFR with Mr Price and invited his submissions on its contents before making a decision on referral. Mr Dunlop KC submitted that whilst that might have been a course of action open to the Applicant, it was not the only reasonable course of action. It would have led to further delay. In a context where the relevant events occurred a relatively long time ago, and Mr Price was objecting to how long after the events it now was, it was reasonable for the ADM to take the course which would create less delay – by doing what he did (i.e. taking a decision on the basis of the materials which had followed the Applicant's processes, and not inviting another round of submissions) he was able to take a prompter decision. If he had shared the SFR, and invited another round of submissions, it would have delayed matters substantially.

3.58 Mr Dunlop KC submitted that the submission of *"inconsistent accounts"* as regards the SFR was unfair. The account given now was the same as that previously given. This was consistent with what was said in correspondence. When properly understood the statement that the SFR was not seen by the ADM meant that the SFR was not fully read or taken into account by the ADM.

3.59 It was submitted that the ADM's decision to proceed expeditiously with the decision-making, rather than sharing the SFR and inviting another round of submissions, was reasonable. It was certainly no reason to order the Applicant to pay costs. The submission that the ADM might have reached a different decision had he read and considered the SFR was unfounded. The ADM expressly reached different views to the IO on matters of law, e.g. the weight to be given to expert evidence on interpretation of statute law and the possibility of holding an individual other than the "relevant person" to account for breaches of the MLR's. Those were views which the Applicant

still held. The Applicant was only persuaded to withdraw the proceedings on receipt and consideration of the Answer which, as detailed, contained new evidence.

3.60 Similarly, the submission that the Tribunal might not have certified the case if it had been provided with the SFR was speculative and without foundation. The reality was that, in certifying the case, the Tribunal would have reached its own decision on whether there was a case to answer. It would not have deferred to the views of an IO making an internal recommendation to an ADM within the SRA as to whether that ADM should decide to refer the case to the Tribunal.

3.61 The Tribunal, it was submitted, had the arguments for the prosecution in the Rule 12 statement, and the arguments for the defence in the Joint 2023 Representations and decided that the arguments of the prosecution were strong enough to certify the case, notwithstanding the arguments of the defence. There was no basis for suggesting that the Tribunal would have reached a different conclusion if it had known that an IO, who had made an internal recommendation for referral, later changed her position and agreed with some of the arguments for the defence. It was not as if the SFR contained a new argument, or a new piece of evidence, of which the Tribunal was unaware.

3.62 For the same reasons, it was denied that the Tribunal was misled. In making its decision on whether to certify the case, the Tribunal would look to the Rule 12 statement for the arguments for the prosecution. In that Rule 12 statement, the IO's original decision was only referred to once at the end as part of a chronological history of the investigation. That chronology simply set out how and when the Applicant followed its investigative processes. It was understandable that an internal memo, which was not part of those processes and not taken into account by the ADM, would not be included in this section. There was no basis for suggesting that that omission had any impact on the Tribunal.

<u>The Respondent's Submissions in Reply</u>

3.63 Mr Dutton KC submitted that the Applicant, whilst stating that there was no material dispute as to the law, then proceeded to set a threshold for the aware of costs that was not justified by the authorities. The Applicant had stated:

> *"to obtain a costs order, Mr Price must go much further than demonstrating he would have won if the matter had gone to a substantive hearing. He must cross the much higher threshold of demonstrating that the SRA acted unreasonably in referring the allegations to the SDT….this submission rests on the premises that (a) it was clear, by the time of referral to the SDT, the case against Mr Price was bound to fail; and (b) that is the real reason why the SRA is applying the withdrawal proceedings, not only change in circumstances tipping the balance…".*

3.64 Additionally, it had been submitted that: *"to obtain a costs order, it is necessary to reach the much higher threshold of showing that the … Referral Decision was unreasonable because it was clear beyond argument, even in May 2023, that the prosecution of Mr Price would fail.* Mr Dunlop KC opined that the submissions on behalf of Mr Price had not reached that high threshold.

3.65 Mr Dutton KC submitted that if the Applicant was correct and such a threshold applied (which was not accepted), then for the reasons detailed, such a threshold had been crossed. However, it is not necessary for Mr Price to cross such a threshold when what was required was a "good reason" for departing from the starting point of no order as to costs (Tsang). The fact that a case was withdrawn on provision of an Answer and before any substantive hearing had taken place, or any evidence has been tested by cross examination, was highly relevant to whether there was good reason to award costs.

3.66 Nor, it was submitted, was it an answer to a costs application that a single member of the Tribunal had certified that a prima facie case had arisen. The certification of a prima facie case was not dispositive of a costs application, as the Tribunal and the Court had recognised. In Tsang, Eyre J said at [88]:

> *"if certification were to be regarded as indicating that the proceedings had been properly brought and as being a potent factor against the making of a costs order against the SRA then the scope for such orders being made would be very limited indeed. That is not my understanding of the proper application of the Baxendale-Walker test."*

3.67 As regards the submissions in relation to the SFR, it was noted that the Applicant did not dispute that this was a relevant and disclosable document. The Applicant failed to explain why disclosure of that document was left until after it had indicated that it was withdrawing the prosecution and was facing an application for costs.

3.68 Mr Dutton KC submitted that had the Applicant behaved properly as a regulator bound by its own guidance of transparency and fairness, by section 28 of the Legal Services Act 2007, the SRA Regulatory and Disciplinary Procedure Rules rule 2.3c, and common sense, it would have recognised that a respondent needed an opportunity to comment where the recommendation which is the basis for the notice is effectively withdrawn. The Applicant would have disclosed the SFR to Mr Price before any decision for referral had been made, so that Mr Price, his solicitors and counsel could take stock of the position and respond.

3.69 The document infallibly should also have been provided to the Tribunal because a misleading impression was given in the Rule 12 Statement (which the Applicant sought to downplay) that that recommendation still prevailed.

3.70 As to the submission that because an individual might find that the measures taken were adequate, this did not mean that Mr Price would have succeeded in his defence, Mr Dutton KC submitted that this was untenable. Mr Price had not found an individual who might state the measures were adequate; it was the Applicant's own Investigating Officer, who was a specialist in money laundering matters, that had reached that view. As it was the IO that had reached that view, the Applicant could not plausibly contend that Mr Price's judgement in that regard was unreasonable and manifestly so in order to establish professional misconduct. The fact that she was not a forensic investigation officer was neither here nor there.

3.71 Secondly, the impression was undoubtedly created by the Rule 12 Statement that the original recommendation of the IO held good. That recommendation was expressly referred to in the Rule 12 Statement. The SRA attempted to minimise this reference by

saying that there was only one such reference and that it appeared towards the end of the Rule 12 Statement. But there could be no denying that the Rule 12 Statement as served on the Tribunal and Mr Price meant that the impression was given that the original recommendation still held good. Moreover, the Applicant did not appear to dispute that this could have been the impression given by it. In that respect the Rule 12 statement was misleading.

3.72 The Applicant had submitted that: *"if the IO wants to change or withdraw the proposed allegations or supporting evidence, after receipt of the respondent's representations, the process is to do a fresh notice (or withdraw it if this is approved)."* The logic of this, it was submitted, was that the referral decision was procedurally flawed because the IO had changed her recommendation to refer the allegations to the Tribunal. The Applicant did not dispute that the IO's change of recommendation would have been considered and may have been accepted by the ADM if a fresh notice had been provided to the ADM. It followed that the Applicant was hiding behind an alleged procedural error, but in circumstances where it had to recognise that the IO's recommendation of withdrawal was both relevant and would have been of weight if it had been served under cover of a fresh notice. Mr Dutton KC submitted that the Applicant's submissions in this respect were a triumph of form over substance.

3.73 The Applicant's explanations as to whether or not the ADM read the SFR were inadequate and implausible. In any event, the explanation did not alter at all the fact that the SFR was relevant and that it should have been disclosed to the Respondent.

3.74 The Applicant complained that the submissions made as regards the explanations being inconsistent was unfair and attempted to explain what was meant on a proper reading of the correspondence. Mr Dutton KC submitted that the statement in the correspondence that the SFR was not *"seen"* by the ADM meant exactly what it said, namely that he never saw the document.

3.75 The Applicant also contended that the decision by the ADM was properly made because he wished to proceed expeditiously. Proceeding with expedition, it was submitted, did not make sense: at the time of the referral decision the events in question were already nearly a decade old, and the Applicant's investigation had been underway for several years. Disclosing the SFR and allowing an opportunity for a response to be provided to its contents need only have taken a few weeks. In any event, proceeding with expedition did not permit a regulator to withhold from disclosure a plainly relevant document.

3.76 Mr Dutton KC submitted that, reduced to its essentials, this was a case where the Applicant never had a meritorious case, failed to disclose an important document which was both relevant and material, and withdrew the proceedings shortly after receipt of the Answer. Each of those factors was a good reason for a costs award to be made.

<u>The Tribunal's Decision</u>

3.77 The Tribunal considered the submissions with care. It agreed that the starting position was one of no order as to costs. The authorities on the point were clear; there needed to be a *"good reason"* to depart from the starting point of no order as to costs:

"Good reasons are not confined to those cases where the proceedings have been improperly brought or so badly conducted as to have amounted to "a shambles from start to finish". However, those examples are to be seen as indicating the kind of matters which can amount to a good reason and for other matters to amount to a good reason they must be of a comparable gravity."(Tsang)

3.78 Accordingly, in considering the application for costs, the Tribunal was required to determine whether there was any reason that was comparatively grave to the proceedings being improperly brought or a shambles from start to finish, such that it was appropriate to depart from the starting point of no order as to costs.The Tribunal agreed with the Applicant that the fact Mr Price might have successfully defended the proceedings had the matter progressed to a substantive hearing did not, in and of itself, amount to a good reason for awarding costs against the Applicant.

3.79 The Tribunal determined that when considering the application, it was important to take into account what was known by the Applicant at the time that the referral of Mr Price to the Tribunal was made. It was clear that the SFR was a document that the Applicant had in its possession at the time of the referral decision. Accordingly, the content of the SFR and its disclosure was a relevant and important factor in determining the application for costs, and in particular, whether the failure to disclose the SFR amounted to a *"good reason"*.

3.80 The Tribunal had regard to Rule 43(4) of the Rules which stated:

"(4) The Tribunal will first decide whether to make an order for costs and will identify the paying party. When deciding whether to make an order for costs, against which party, and for what amount, the Tribunal will consider all relevant matters including the following—

(a) the conduct of the parties and whether any or all of the allegations were pursued or defended reasonably;

(b) whether the Tribunal's directions and time limits imposed were complied with;

(c) whether the amount of time spent on the matter was proportionate and reasonable;

(d) whether any hourly rate and the amount of disbursements claimed is proportionate and reasonable;

(e) the paying party's means"

3.81 The Tribunal had regard to Rule 26 of the Rules which stated:

"26(4) A party to proceedings before the Tribunal is required to disclose only—

...

(b) any documents which –

(i) adversely affect that party's own case;

(ii) adversely affect another party's case; or

(iii) support another party's case; …"

3.82 Rule 26(4)(b) was not contingent on there being an application for disclosure. Indeed, it was expected that any fair and transparent regulator would disclose any documents referred to in Rule 26(4)(b) as a matter of course.

3.83 At the time of the referral decision, the Applicant knew that the IO no longer considered that the case against Mr Price could be substantiated. The Applicant had not sought to argue that the SFR was not a relevant or disclosable document. Nor had the Applicant sought to argue that it disagreed with the IO's findings or that those findings were unreliable. The Tribunal found that this document should have been disclosed to Mr Price far earlier in the process than it was. The Tribunal rejected the submission that it was an opinion from an individual. Whilst that was an accurate statement of fact, it failed to take account of the context and the role of that individual. The SFR was the revised opinion of the IO who was the Applicant's specialist in AML matters, and upon whose original decision the Applicant clearly relied.

3.84 Further, the Tribunal did not accept that the ADM could, in effect, ignore the findings contained in the SFR on the basis that it fell outside of the Applicant's processes. The representations made on Mr Price's behalf had been provided to the IO. Presumably, this had been done for the IO to consider those representations and make any comment. Having provided those representations, it was unclear to the Tribunal why any response would then be ignored whether or not the response of the IO formed part of the process. Failing to take account of the response of the IO was, the Tribunal found, unfair to Mr Price and meant that the early disclosure of the document to Mr Price was all the more imperative. Nor was it any justification for the Applicant to rely on the fact that when informed by the ADM that he would not take any account of the SFR, the IO did not object to that course.

3.85 It was no answer to state that the SFR, as it did not form part of the process, or because the arguments were already contained in the representations that formed part of the exhibit bundle, was not a document that should have been before the Tribunal for the purposes of its certification decision. The Rule 12 Statement made specific reference to the original decision of the IO and that decision was the first exhibit in the exhibit bundle. The interests of justice and fairness dictated that the revised decision should also have been included in the exhibit bundle and referred to expressly in the Rule 12 Statement, given that the Applicant was plainly relying on the original decision of the IO, in the knowledge that the IO no longer supported that decision.

3.86 The Tribunal determined that whether or not the ADM's decision might have been different had the SFR been considered (which the Tribunal found it ought to have been) made no difference to whether it ought to have been disclosed at that stage. The Applicant's contention that it was not considered so that matters could be dealt with expediently was, the Tribunal found, disingenuous. The Tribunal noted that the ADM,

in the referral decision, had given consideration as to whether to allow Mr Price to make further representations:

> *"I have also considered whether it is in the public interest to delay the progression of this matter to expressly invite the Respondent to make specific representations on the basis on which a manager or partner can be liable for the regulatory failings of their firm, before the matter is considered for referral to the Tribunal. I have concluded that on balance it is not necessary to do so, given the above analysis, and since the Respondent will have the opportunity to do so following receipt of this decision and before the case is heard at the Tribunal."*

3.87 The ADM could, and the Tribunal found, should, have applied the same consideration to the SFR. The ADM was at liberty to consider the SFR, reject its findings and make the referral decision, with Mr Price having the opportunity to make representations following receipt of the decision. However, in failing to consider, but more importantly, disclose the SFR, Mr Price was not afforded the opportunity to make any representations. Expediency, the Tribunal found, was no reason for a plainly relevant and material document not to be disclosed. A regulator acting openly, fairly and transparently would have disclosed the SFR at that time.

3.88 The Tribunal found that there was a good reason for departing from the starting point of no order as to costs. The Applicant had brought proceedings, relying in part on the decision of its specialist AML Investigating Officer in the knowledge that the IO no longer considered that the prosecution of Mr Price was tenable. Further, it had ignored that view when making its referral to the Tribunal. Further, it had failed to disclose the SFR either at that time, or at any time thereafter (including when it applied to withdraw the proceedings) until shortly before the parties were to file and serve their submissions on costs. For those reasons, the Tribunal found that the proceedings had been improperly brought. This was a case where, due to the Applicant's conduct, a costs order should be made and it would not cause a chilling effect on the regulator, rather it would ensure that the regulator acted in a fair, transparent and responsible manner when bringing proceedings.

3.89 Having determined the principle, the Tribunal then considered the quantum claimed. Mr Dutton KC had submitted that Mr Price was not seeking the entirety of the costs incurred, rather he sought the costs incurred from 5 May 2023, the date of the SFR.

3.90 The total amount of costs sought was £416,787.18. These costs were divided into 3 stages:

- Stage One: 11 May – issue of proceedings at the Tribunal on 14 February - £48,726.40
- Stage Two: 15 February – service of the Answer of 10 May 2024 - £257,592.97
- Stage 3: Post Answer costs onward £110,467.81

3.91 As regards the Stage One costs, the Tribunal determined that up until the point that the proceedings were issued, Mr Price may well have incurred those costs notwithstanding the failure of the Applicant to disclose the SFR. Indeed, had the SFR been disclosed, Mr Price was likely to have incurred further costs, none of which would have been recoverable. Accordingly, the Tribunal disallowed the stage one costs in their entirety.

3.92 The Tribunal noted that Mr Price had chosen to instruct two KC's and junior counsel. Further, not only had he instructed a firm that was highly experienced in regulatory law, he had also instructed an external expert in regulatory law. This, the Tribunal determined, was excessive.

3.93 The Tribunal examined the times claimed by the Respondent's solicitors for the work undertaken. It noted that during Stage Two, the Firm had claimed for 348 hours work over 59 working days. This meant that for each working day, the Firm had spent just shy of 6 hours every day working on this matter. The Tribunal found such an amount to be excessive.

3.94 Having dismissed the Stage One costs and taken account of the factors detailed above, the Tribunal summarily assessed costs in the sum of £184,000, and accordingly ordered that the Applicant pay costs in the summarily assessed sum.

4. Statement of Full Order

4.1 The Tribunal Ordered that the allegations against SIMON JAMES PRICE be WITHDRAWN.

4.2 The Tribunal further Ordered that the Applicant, the Solicitors Regulation Authority pay the costs of the Respondent, Simon James Price in the sum of £184,000.00.

Dated this 22nd day of October 2024
On behalf of the Tribunal

M N Millin

M N Millin
Chair

FILED WITH THE LAW SOCIETY
22 OCT 2024