R (on the application of Camacho) v Law Society

[2004] EWHC 1675 (Admin)

QUEEN'S BENCH DIVISION (DIVISIONAL COURT)
THOMAS LJ, SILBER AND GOLDRING JJ
19 MAY, 12 JULY 2004

Solicitor – Disciplinary proceedings – Solicitors Disciplinary Tribunal – Power of tribunal to impose conditions on practice – Whether tribunal should exercise power – Solicitors' Act 1974, s 47.

A solicitor appealed against a decision of the Solicitors Disciplinary Tribunal by which he had been suspended indefinitely. The court allowed the appeal and reduced the period of suspension to a fixed period. It also considered that certain conditions should be imposed upon him in relation to his practice. The court was told that it was the practice of the tribunal to suspend either for a fixed or indefinite period, but that it did not impose conditions; it made recommendations to the Law Society as to the conditions it thought appropriate and left it to the Society to implement those recommendations by imposing conditions on practising certificates. The court subsequently heard further representations on the imposition of practising conditions. It was accepted that the terms of s 47[a] of the Solicitors' Act 1974, under which the tribunal had the power to make such orders as it thought fit, were sufficiently wide to give the tribunal itself power to impose conditions under which a solicitor might practice. It was submitted, however, (i) that for reasons of subsequent policing and enforcement; and (ii) in order to allow the Law Society to exercise its discretion over the issue of practising certificates on the basis of the facts available at the time of application for a new certificate, that a tribunal ought not to exercise its power to impose practising conditions, but should continue its existing practice. It was further submitted that if the period for which terms would be imposed were an indefinite one, with permission to apply to the court or to the tribunal to vary conditions, that the tribunal should never exercise its power to vary because of resource implications for the Law Society in keeping files open for an indefinite period. The solicitor submitted the conditions should be imposed for a finite period.

Held – (1) It was the duty of the tribunal in each case where it considered that restrictions were required to consider imposing those restrictions itself. If a tribunal considered that a period of complete suspension followed by a period of restricted practice was the appropriate sanction to protect the public then it was the tribunal which should impose that penalty. The jurisdiction of the Law Society to impose conditions on practising certificates was derived from its regulatory powers under the 1974 Act which were quite distinct from the disciplinary powers. The Law Society in the exercise of its regulatory powers could not bind itself to accept a recommendation from the tribunal exercising its disciplinary functions. Neither the court nor the tribunal had any means of being certain that the penalty that was determined to be in the public interest would be

a Section 47, so far as material, is set out at [12], below

imposed. Accordingly, in each case the tribunal should address the question as to whether the public interest was best served by imposing a condition which it could be certain would be put into effect or by leaving the matter entirely to the Law Society. Unless there were exceptional reasons the tribunal should itself impose the conditions it considered appropriate. In the instant case, the public interest demanded that the conditions which the court considered necessary to protect the public had the necessary certainty of imposition and it would have been an abdication of the court's responsibility not to have imposed them (see [16], below).

(2) There was no impediment to the tribunal, if it thought fit, imposing conditions for an indefinite period with permission to apply to it, so that it could reconsider the conditions and vary them. There was no evidence that any significant resource would be required. However, in the instant case, conditions would be imposed for a fixed period (see [19], [20], below).

Per curiam. The court trusts that the Law Society will ensure that orders of the tribunal will be vigilantly policed by the Society and any breach made the subject of disciplinary proceedings (see [16], below).

Notes

For the jurisdiction of the Solicitors Disciplinary Tribunal, its penalties, orders and findings, see 44(1) *Halsbury's Laws* (4th edn reissue) paras 421, 442, 458.

For the Solicitors' Act 1974, s 47, see 41 *Halsbury's Statutes* (4th edn) (2004 reissue) 77.

Cases referred to in judgment

Solicitor No 6 of 1993, Re a (23 July 1993, unreported).
Solicitor No 5 of 1999, Re a (2 July 1999, unreported).
Solicitor No 9 of 1993, Re a (9 December 1993, unreported).

Appeal

Ronald Anthony Camacho, a solicitor, appealed from the decision of the Solicitors Disciplinary Tribunal made on 10 April 2003 by which he was suspended indefinitely. On 1 April the court reduced the period of suspension to 18 months and recommended certain practising conditions should be imposed on the appellant by the Law Society (see [2004] EWHC 1042 (Admin)). The Law Society and the tribunal wished to make further representations to the court in relation to the power to impose conditions and the matter was relisted for hearing. The facts are set out in the judgment of the court.

Jeremy Hyam (instructed by *Shah Solicitors*, Harrow) for the appellant.
Geoffrey Williams QC and *George Marriott* (solicitor advocate) (instructed by *Gorvins Solicitors*, Stockport) for the Law Society.
Andrew Hopper QC (solicitor advocate) (instructed by the *Solicitors Disciplinary Tribunal*) for the tribunal.

Cur adv vult

12 July 2004. The following judgment was delivered.

THOMAS LJ.

[1] This is the judgment of the court.

[2] On 1 April 2004, we heard an appeal by Mr Ronald Anthony Camacho, a solicitor, (the appellant) against a decision of the Solicitors Disciplinary Tribunal (the tribunal) made on 10 April 2003 by which he was suspended indefinitely. We allowed the appeal and reduced the period of suspension to one of 18 months. [2004] EWHC 1042 (Admin).

[3] For the reasons set out at [32]–[35] of the judgment of Silber J, we considered that certain conditions should be imposed upon him in relation to his practice.

[4] We also set out in our judgments various observations in relation to: (i) the need for the Law Society to consider revised procedures for its disciplinary hearings, including the introduction of case management (see [4]–[5] and [42]–[49]); (ii) the scope of the powers of the tribunal to impose conditions (see [34]–[36] and [50]–[53]); (iii) the scope of the powers on costs (see [54]–[57]).[b]

[5] We were told at that hearing that it was uncertain whether the tribunal had power to impose conditions in relation to the suspension of a solicitor; the practice had been for the tribunal to suspend either for a finite or indefinite period, but it did not impose conditions; it made recommendations to the Law Society as to the conditions it thought appropriate and left it to them to impose the conditions. As we considered that conditions were appropriate, we proposed that the Law Society should agree to impose the five conditions that we considered should be imposed on the applicant and gave the Law Society until 22 April to agree to impose those conditions.

[6] We were told that the Law Society wished to make further representations to the court in relation to our judgments and the order we had imposed.

THE PROCEDURES OF THE TRIBUNAL AND THE SCOPE OF THE POWERS ON COSTS.

[7] The first matter on which the advocates instructed by the tribunal and the Law Society wished to address us were our observations in relation to the procedures of the tribunal and the scope of the powers in relation to costs. We were told that the observations we had made in relation to the procedures of the tribunal and in particular the need for the tribunal to adopt a system of case management had been carefully considered by those responsible for the rules and procedures of the tribunal; they had considered that the failures in the proceedings of the tribunal in this matter were very much 'one-off' and due entirely to the conduct of those then representing the appellant. Case management would not assist, as the tribunal would never prevent a defendant from putting his case as he chose, within reasonable bounds, even if this represented a substantial departure from a previously adopted position; the extremely grave consequences for solicitors found guilty of serious misconduct required a more flexible, if not a generous approach. As the tribunal lacked any power to compel compliance with its procedural directions, it had necessarily to a degree to regulate by consensus. Moreover it was said that the procedures of the tribunal had been in existence in their current form for many decades and were well tested, worked well and did not need a case management approach. We were invited to withdraw our observations.

[8] As we made clear in our judgments on 1 April 2004, our observations were made to assist the tribunal. We made it clear in the argument before us in the further hearing, that as the tribunal had considered our observations and they did

b Editor's note: [2004] EWHC 1042 (Admin) [4], [5], [32] [36] and [42] [57] are reproduced as an appendix to this judgment

not wish to make any changes, that was, as matters presently stand, entirely a matter for them. We also made clear, despite the arguments presented attractively to us on behalf of the tribunal and Law Society, that we saw no reason whatsoever to doubt or alter the views we had expressed about the current procedures and the real need for a proper system of case management, but there was no more we could, or would, say about the matter.

[9] We were also asked to re-visit the issue we had recorded as being raised in relation to the question as to whether the tribunal was obliged to take into account the means of a defendant to disciplinary proceedings when making an award of costs against the defendant. We made it clear during the course of argument that we saw no reason to answer the questions raised by the appellant's argument, as it had been unnecessary for us to decide them on the facts of this appeal. It was far better to leave the important issue for argument on an occasion, either before the tribunal or in this court, when the ability of the defendant to disciplinary proceedings to pay the costs claimed by the Law Society was directly in issue.

THE POWER TO IMPOSE CONDITIONS

[10] We therefore turn to the only issue that it is apposite for us to decide—the power to impose conditions.

[11] Although, as we have said, there had been some uncertainty at the hearing on 1 April 2004 as to whether the tribunal had power to impose conditions in relation to the way in which a solicitor might practice, it was accepted by all those represented before us that the terms of s 47 of the Solicitors Act 1974 were sufficiently wide to give the tribunal itself power to impose conditions under which a solicitor might practice.

[12] We are sure that all the parties were right in their view. Section 47 is in very wide terms:

> '(2) Subject to subsection (3) and to section 54, on the hearing of any application or complaint made to the Tribunal under this Act, other than an application under section 43, the Tribunal shall have power to make such order as it may think fit, and any such order may include provision for any of the following matters ... (b) the suspension of that solicitor from practice indefinitely or for a specified period ... (d) in the circumstances referred to in subsection (2A) the exclusion of that solicitor from legal aid work (either permanently or for a specified period) ... (e) the termination of that solicitor's unspecified period of suspension from practice ... (g) in the case of a former solicitor whose name has been removed from the roll, a direction prohibiting the restoration of his name to the roll except by order of the Tribunal ...'

[13] As can be seen from the width of the statutory provisions, the tribunal has a broad discretion to make such orders as it thinks fit; indeed it is its duty to make orders that are seen to preserve the trust that the public is entitled to place in solicitors.

[14] It was submitted, however, that a tribunal ought not to exercise such power and the practice of making a recommendation to the Law Society as to the conditions on which a person should be permitted to practice should continue so that the Law Society could implement the recommendations by imposing conditions on practising certificates. In exercising those powers, the Law Society acted in accordance with the guidance given by successive Masters of the Rolls.

For example, in *Re a Solicitor No 6 of 1993* (23 July 1993, unreported), the then Master of the Rolls (Bingham MR) stated:

> 'The purpose of a condition on a practising certificate is not punitive, but is intended to ensure that a solicitor who has run into trouble in a professional capacity is subject to a degree of oversight in the conduct of his professional life at least until he has demonstrated over a period that he is not in need of any such supervision to protect the public.'

The powers to impose conditions were exercised by the Law Society following disciplinary hearings (see *Re a Solicitor No 9 of 1993* (9 December 1993, unreported) and *Re a Solicitor No 5 of 1999* (2 July 1999, unreported).

[15] There were two principal reasons, it was submitted, why the tribunal should not exercise its power to impose terms. (i) **Reasons of subsequent policing and enforcement.** It was submitted that the tribunal had no power to act on its own motion or to enforce its orders. Orders for suspension and striking off were policed by the Law Society, primarily through the power to intervene in practices. The only means of enforcement would otherwise be through separate disciplinary proceedings or for injunctive relief; the responsibility for these would fall on the Law Society. (ii) **Role of practising certificates.** It was submitted that the better practice was for the tribunal to confine itself to a recommendation as to the terms on which a solicitor might practice after a period of suspension. The order for suspension made by the tribunal would suspend the defendant's practising certificate and he would have to give notice of his intention to apply for a new certificate (s 12 of the 1974 Act). When that application was made, the Law Society would exercise its discretion on the basis of the facts available at that time; the decision would be made by an adjudicator (to whom the Law Society had delegated its powers) who would not be bound to follow the recommendations. None the less, it was virtually inevitable, after a period of suspension, that the Law Society would impose conditions on the practising certificate as to the terms on which the solicitor could resume practice. Recommendations by the tribunal were (and would be) accorded the utmost respect by the Law Society, as those of the court would be in this case. The imposition of conditions was an onerous responsibility that the Law Society was experienced in exercising; currently about 600 solicitors were subject to Conditional Practising Certificates.

[16] We cannot accept these arguments. (i) If a tribunal considers that a period of complete suspension followed by a period of restricted practice is the appropriate sanction to protect the public, then as it is accepted that the tribunal has power to impose such conditions or restrictions, then it is the tribunal which should impose that penalty and not leave it to others. A body entrusted by Parliament to exercise disciplinary powers and protect the public should not, unless there are compelling reasons, delegate part of that task to others; there are no compelling reasons which apply to the jurisdiction of the tribunal. It is well able to decide the appropriate terms and it should impose those terms as part of the penalty in the public interest. (ii) It was urged upon us, and we accept, that the Law Society in the exercise of its regulatory powers cannot bind itself to accept a recommendation from the tribunal, exercising disciplinary functions, to impose a condition on a practising certificate. The jurisdiction of the Law Society to impose conditions on practising certificates is derived from its regulatory powers under ss 9–18 of the 1974 Act which are quite distinct from the disciplinary powers under ss 46–54. The Law Society has to consider the application for a practising certificate on the materials available to it when the application is made.

There is also a separate appeal procedure in respect of the imposition of terms—first to an adjudication panel and then to the Master of the Rolls. (iii) Thus, although we accept that the Law Society will accord our views or those of a tribunal the utmost respect, the Law Society does not have to follow any recommendation made by us or the tribunal. Neither we nor the tribunal has any means of being certain that the penalty that is determined to be in the public interest will be imposed. As the tribunal is an independent body, separate and apart from the Law Society (with its combined duties of regulation and representation of the profession), we consider that in each case the tribunal must address the question as to whether the public interest is best served by it imposing a condition which it can be certain will be put into effect or leaving the matter entirely to the Law Society. Unless there are exceptional reasons, we consider that the tribunal should impose itself the conditions it considers appropriate, as that is part of the decision it has made; if the defendant considers the conditions too harsh or wrong in principle, then as the imposition of the conditions is part of the penalty, the route of appeal should be that route that has been provided in respect of the penalty and not that provided in respect of the regulatory powers. (iv) In this case, we have no doubt that the public interest demands that the conditions which we consider are necessary to protect the public must have the necessary certainty of imposition; we were of the view that the penalty of indefinite suspension was far too harsh and the justice of the case and the protection of the public would be met by a period of complete suspension followed by a return to practice on conditions. As we considered that the just penalty, it would have been an abdication of our responsibility not to have imposed that penalty, as it is now accepted we had power to do so. (v) We see no reason whatsoever why the Law Society cannot police orders made by the tribunal; it may entail some cost, but that is the cost of self regulation that the Law Society must bear. We trust therefore that the Law Society will ensure that the orders of the tribunal will be vigilantly policed by the Law Society and any breach made the subject of disciplinary proceedings. Any breach of an order of the tribunal restricting the terms on which a solicitor can practice would be a disciplinary offence which would generally merit a separate penalty and not merely intervention in a practice; that penalty would be required because the solicitor would have breached an order of the tribunal which it had imposed as a penalty; there is no reason why a solicitor should be treated any differently or more leniently that any other person who breaches the terms of an order imposed by a court or disciplinary tribunal and which has been imposed as part of the penalty to protect the public. For these principal reasons, we reject the contentions advanced by the Law Society and the tribunal and make it clear that it is duty of the tribunal in each case where it considers that restrictions are required to consider imposing those restrictions itself.

THE POWER OF THE TRIBUNAL TO VARY THE CONDITIONS

[17] The question then arose as to whether the period for which terms would be imposed should be for a certain period or whether it should be for an indefinite period with permission to apply to the court or to the tribunal to vary the conditions. It was submitted on behalf of the appellant that the period should be a finite one as that would be appropriate in the circumstances; it was submitted on behalf of the tribunal that if the period was to be an indefinite one, then, although the tribunal had power to vary that at any time in the future on the

application of the defendant, it should never do so because of resource implications for the Law Society in keeping files open for an indefinite period.

[18] The position is in our view clear. The powers conferred by s 47 are very wide, as we have stated. The tribunal has, for example, power to defer sentence. It is clear to us that if the order of the tribunal imposed conditions for an indefinite period, but gave the defendant permission to apply to vary the conditions either at any time or after the elapse of a defined period, then that was an order which the tribunal had power to make. It would then be open to the defendant to apply to the tribunal in accordance with the terms of the order to vary the conditions.

[19] There is therefore, in our view, no impediment to the tribunal, if it thinks fit, imposing conditions for an indefinite period with permission to apply to it, so that it can re-consider the conditions and vary them. We do not consider the resource implications can be material. In the first place there was no evidence that any significant resource would be required and we cannot believe that any would be. Secondly, and of greater importance, if justice and the public interest require conditions to be imposed for an indefinite period, with the opportunity to review the matter at any time in the future, then the Law Society must find the resources necessary to keep open the relevant files.

CONCLUSION

[20] On the facts of this case, we considered that a finite period for the duration of the conditions would be apposite; we therefore imposed the conditions to run for a period of one year at the expiry of the period of suspension of 18 months.

Appeal allowed to the extent indicated.

James Wilson Barrister (NZ).

APPENDIX

Extract from *R (on the application of Camacho) v Law Society* [2004] EWHC 1042 (Admin)

'SILBER J.

[4] The appeal to the Solicitors Disciplinary Tribunal (the tribunal) has had an unhappy history. The initial approach of the appellant was that all allegations that had been made against him were admitted and that therefore the only issue for the tribunal was whether the appellant was dishonest as had been alleged. As the case developed in the tribunal proceedings, it became clear that other factual issues were in dispute. It is most surprising and disturbing that there is no procedure in place in the tribunal which requires a complainant to formulate a pleading alleging wrongdoing and which is then responded to by the defendant in writing. If such a procedure was in place the tribunal could then and would exercise important case management powers which would enable the parties and the tribunal to focus on the important issues in the proceedings.

[5] Another advantage of such a form of procedure would mean that the parties could and would then be able to give an accurate time estimate. In this case the original time estimate was two hours and the hearing of this case in front of the tribunal had then to be adjourned on the first day and it then came on for a second hearing almost two months later ...

[32] In my view it is unlikely that this appellant is likely to re-offend, but it is important to indicate the seriousness with which the profession and the courts regard these matters. So the appellant must suffer a period of suspension.

[33] For my part I do not think that it is necessary or appropriate in this case for that period to be unlimited. In reaching that conclusion I have borne in mind not only the four factors to which I have just referred [First, the appellant was not found to have acted dishonestly, but only recklessly. Second, in the period from his admission as a solicitor in 1990 until the commission of the present offences there is no finding recorded against the [appellant] ... Third, the amount involved ... is under £9,000. Fourth, no loss to any client has been shown and there is no evidence of any complaint having been made by any client], but also that this appellant has, we have been told, recently taken a course in solicitor's accounts which would have reminded him of his duties.

[34] Mr Hyam said that the appellant wished to resume practice, but he is prepared to have conditions imposed upon him. We consider that the appropriate course in this case would be to impose conditions so that anybody dealing with him would know first that he did not handle clients' money, second that he worked under supervision and third that he would not be responsible for training anybody working under him.

[35] In my view the appropriate order in this case would be to reduce the period of suspension imposed on the appellant to one of 18 months as from 10 April 2003. I would also propose and recommend that the Law Society should impose the same conditions as were imposed upon the appellant between the time of the conclusion of the investigation and before the decision of the tribunal. Those conditions were (1) that he could only act as a solicitor in employment or partnership which had firstly been approved by the Office for the Supervision of Solicitors in connection with the imposing of the conditions; (2) that he could not be an office holder or shareholder of an incorporated solicitors practice; (3) that he could not act as a training principal or might not be responsible for the supervision of a training solicitor; (4) that he did not handle clients' money or did not become a signatory to any office or client accounts cheque; and (5) that any prospective employer or partner of the appellant be informed of those conditions.

[36] Mr Marriott told us that he would wish to take some instructions on whether or not those conditions should be imposed and whether it is appropriate for this court to make such a recommendation. Although he has made some preliminary inquiries, he did not have adequate opportunity to do so. So I propose that the Law Society be given an opportunity until 22 April 2004 to agree to those recommendations. If they do not do so, the matter can then be listed again in front of us so that I can decide whether we have the power to and whether we should make an order to that effect ...

THOMAS LJ.

(1) THE NEED FOR CONSIDERATION OF REVISED PROCEDURES

[42] The first of my observations relates to the pre-disciplinary hearing procedures of the Solicitors Disciplinary Tribunal (the tribunal). If I may say so the r 4.2 statement formulated under the Solicitors Disciplinary Tribunal's Rules was formulated clearly and with a considerable degree of specificity in relation to the facts alleged against the claimant. Under the rules, as we have been told, there is no requirement that a detailed response be made, though as happens, and

happened in this case, the respondent is entitled to make a response which may or may not deal with the specific matters alleged. In this case it did not. *a*

[43] There is, therefore, as Silber J has made clear, in place no clear procedure for determining what is in issue at the hearing. In that respect the rules do not provide for what in most jurisdictions, whether disciplinary or those of the court, are recognised to be important provisions of a modern system of justice, namely proper case management powers. Silber J has already set out the consequences of that position. *b*

[44] In this particular case, which was a matter that should have been completed within the time estimate of two hours, difficulties arose and they can be illustrated by what happened in relation to the eighth charge, as Silber J has said. [45] In the r 4.2 statement it was pleaded clearly: 'The file demonstrated: There is no evidence on the file that HD [the client] were notified of the right to have the costs taxed.' There was no specific response to that. *c*

[46] At the commencement of the hearing the advocate then appearing for the appellant (and I should make it clear that he was not the advocate who appeared before us today) told the advocate for the Law Society that the allegations that were made were admitted. The advocate for the Law Society, who has appeared before us today, and if I may say so has been of most considerable assistance to us and has answered every question we have asked him with a great deal of assistance to the court, told the chairman of the tribunal: *d*

> 'But I have been told today, sir, that all the allegations that are made, that is 1 to 12, are admitted. The only issue therefore between the parties is whether he is dishonest.' *e*

[47] The chairman said nothing. He did not seek any clarification whatsoever from the advocate for the appellant. The matter proceeded in that way. It is hardly surprising, therefore, with no firm decision having been made or required by the chairman of the tribunal as to precisely what was admitted that the issues were not clear (because, no doubt, there is no guidance for him which advises him what he should do). *f*

[48] During the course of the appellant's evidence he produced a letter which had never been seen before by the advocate for the tribunal. This showed that the facts particularised in the r 4 statement were not correct. There was indeed a letter to the client. Unfortunately, and this was one of a number of instances where matters that were apparently not in issue became in issue, the matter became more complicated. It is, therefore, not surprising that the tribunal when it came to the end of the case was placed in quite a difficult position. However, that arose because, as it seems to me, there was not in place for the procedures of this tribunal a system for identifying factual matters in dispute. *g* *h*

[49] I very much hope, therefore, particularly to enable matters to be resolved with due proportionality and in the interests of justice, that the Law Society and the tribunal will give urgent considering to what has happened in this case and to the observations made by Silber J and by me in relation to the desirability of giving consideration to a more modern form of procedure. It would seem that if there had been proper modern procedures in place for this case, I have no doubt that the matter could have been disposed of in two hours at great saving of cost. There would have been no need for an adjournment because it would have been clear how long the matter was going to last. The tribunal, in fairness to its members, would have been able to concentrate on what had been agreed as the *j*

issues prior to the hearing taking place. There would not have arisen the unfortunate events that did.

(2) THE SCOPE OF THE POWER TO IMPOSE CONDITIONS

[50] The second matter of which I would make a brief observation relates to the issues that have arisen in relation to penalties. It was submitted on behalf of the appellant, as Silber J has said, that he should be entitled to work as a solicitor, subject to certain conditions. And it was submitted on his behalf that the very broad powers under s 47(2) of the Solicitors Act 1974 gave the tribunal power to impose a suspension on certain conditions.

[51] We were told very helpfully by Mr Marriott, that the tribunal's practice was to take the view it could either suspend totally either for an indefinite period or for a specific period, or make no order of suspension; it could not suspend on conditions. What it did, if it thought it apposite, was to make a recommendation to the Law Society in respect of any restriction or condition it thought should be imposed, but did not believe it had power to impose such a condition.

[52] As this point arose before us we raised with Mr Marriott the practice of the tribunal. At first sight and having only had the benefit of a brief submission from Mr Hyam, who has appeared on behalf of the appellant, it would appear to us that the statute may be susceptible of a broad construction, particularly, as Mr Hyam urged, in the light of the Human Rights Act 1998. Moreover there are considerations of the public interest from which it would seem that the power to impose a penalty should rest entirely with the tribunal and not be confined to making a recommendation to the Law Society. However this is an important point of principle and it seems to us that as no real notice of this had been given to Mr Marriott we should not hear full argument on it today, in particular in the light of the way in which Silber J has said this matter can be dealt with.

[53] No doubt the Law Society and the tribunal in particular will consider this practice and give urgent consideration to whether the public interest does not demand that where a penalty is to be imposed, it is for the independent tribunal and not the Law Society to be the final and ultimate arbiter of the scope of that penalty. There is an important question of public perception and, as Silber J has observed by his citation from the judgment of Bingham MR (*Bolton v Law Society* [1994] 2 All ER 486 at 491–492, [1994] 1 WLR 512 at 518), public confidence is at the core of disciplinary procedure.

(3) THE SCOPE OF THE POWERS ON COSTS

[54] The third matter that arises relates to costs. My Lord has already set out the quantum of the costs in this case; the costs were substantial. In evidence put before us today the appellant stated that he is on jobseeker's allowance and has child tax credit. He has a substantial mortgage on his home. We inquired whether it was the practice of the tribunal to take into account the means of a person against whom an order for costs was to be made. We were told that it is the practice of the tribunal that they do not take into account means at all when imposing an order as to costs. They make the award and leave it to the Law Society to decide as to whether it should be enforced and, if so, to what extent.

[55] Again a very important question arises in relation to the public interest. Is it in the public interest and is it fair to the appellant that the question as to the extent of what is a significant financial liability should not properly be considered by the independent tribunal but should rather rest with the Law Society? We were told, and I, for my part, accept entirely, that the Law Society acts in an

entirely responsible and reasonable way in deciding whether to enforce such orders, but that is not the point. The point is what is properly in the public interest and what properly is in the interests of justice for a respondent to disciplinary tribunals? a

[56] Again no notice of this particular point which arose on the appellant's argument was given to Mr Marriott. Again this is an important question and again we have only heard briefly one side of the argument. b

[57] We consider, in the circumstances, that we ought not to reach any decision on the matter because the order which is set out in Silber J's judgment deals with the matter without us needing to decide this particular, though important, point of practice. Again we trust that both the Law Society and the tribunal will give careful consideration to this third area of practice which has arisen in this appeal.' c