Neutral Citation Number: [2019] EWHC 817 (Admin)

Case No: CO/3859/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/04/2019

Before:

LORD JUSTICE FLAUX

-and-

MRS JUSTICE CARR

- -

Between:

SOLICITORS REGULATION AUTHORITY	**Appellant**
- and –	
ANDREW MARK CYRIL GOOD	**Respondent**

- -
- -

Mark Cunningham QC (instructed by **Capsticks Solicitors LLP**) for the **Appellant**
Paul Greaney QC and Nicholas de la Poer (instructed by **Irwin Mitchell LLP**) for the **Respondent**

Hearing date: 19 March 2019

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Approved Judgment

Lord Justice Flaux:

Introduction

1. In this appeal under section 49 of the Solicitors Act 1974, the Solicitors Regulation Authority ("SRA") appeals against the finding by the Solicitors Disciplinary Tribunal ("SDT") in its judgment dated 10 September 2018 that the conduct of the respondent, Mr Good, was not dishonest. The SRA also contends that, in any event, the sanction imposed by the SDT of a £30,000 fine was excessively lenient and clearly inappropriate.

2. There was originally an appeal by the SRA against the finding by the SDT that allegations against another respondent solicitor employed by the same firm, Ms Park, were not proved. That appeal was settled by a Consent Order before the hearing of this appeal began, so that it is unnecessary to consider it further.

The factual background and the judgment of the SDT

3. There is no challenge by the SRA on this appeal to the findings of fact of the SDT, so that the factual background can be taken from the judgment. The respondent, Mr Good, was admitted to the Roll as a solicitor in 1998. He founded Rapid Response ("the Firm") in 2003. The Firm converted to a Legal Disciplinary Practice in 2009 and became a limited company in March 2013, registering with the SRA as an Alternative Business Structure. On 24 October 2014 the business of the Firm was transferred to Neil Hudgell Solicitors and it ceased to exist as an independent entity.

4. The proceedings before the SDT concerned the charging of fees for clinical negligence cases conducted by the Firm. Following a complaint to the SRA by the NHS Litigation Authority ("NHS LA") in November 2013 about the Firm and in particular its charging, the SRA commenced an investigation into the Firm, which included an investigation by its Forensic Investigation Unit which produced a Report in April 2016.

5. In the SDT proceedings commenced in July 2017, the SRA alleged, so far as relevant, that: (1.1) Mr Good and Ms Park caused the Firm to routinely overcharge by rendering Bills of Costs which were and which they knew to be excessive and often grossly excessive as regards (a) hourly rates and (b) success fees and thereby acted without integrity, contrary to Principle 2 of the SRA Principles 2011 as regards the period between 6 October 2011 and 24 October 2014; (1.2) by that conduct Mr Good and Ms Park breached Principle 6 of the SRA Principles 2011 as regards that period, in that the conduct was not such as maintained the trust the public placed in the respondents and in the provision of legal services; (2) the conduct of Mr Good and Ms Park was dishonest. There was also an allegation by the SRA against the Firm's Compliance Officer for Legal Practice, Ms Fear, that she had failed to take sufficient steps to investigate whether the hourly rates and success fees were reasonable, proportionate and recoverable and thereby breached Principle 6. Ms Fear admitted the allegation against her. She received a reprimand and conditions were imposed by the SDT. She has not appealed against that sanction.

6. The SDT found, at the outset of its findings at [20.58] of its judgment, that Mr Good had set the hourly rate of £400 and a 100% success fee in clinical negligence cases

and had done so as a matter of policy until at least September 2013 and on some matters thereafter. It accepted Ms Park's evidence that she had no authority to change the rates. The SDT went on to find beyond reasonable doubt that any decisions as regards amending the hourly rates and/or success fees prior to April 2014 were made only after authorisation by Mr Good. At [20.59], the SDT rejected the submission that Mr Good had not signed off the Bills and not caused the rates to be charged. He had set the policy and only he could change the rates, so that he had caused the Bills with the hourly rates and success fees complained of to be rendered.

7. At [20.61] the SDT found that the £400 hourly rate was excessive, which the respondents accepted with the benefit of hindsight. It also found that the rate of £250 per hour when charged for a Grade D fee earner [i.e. a trainee or paralegal] was excessive. It was more than double the Guideline rates [for Hull (City)] and produced Bills that were unreasonable and disproportionate. At [20.62] the SDT found that Mr Good and Ms Park knew this to be the case at the time.

8. It went on to reject Mr Good's various explanations for charging these rates. The relevant findings at [20.62] are sufficiently significant for the determination of this appeal that they merit quotation in full:

> "The Tribunal found that charging at £400.00 an hour, a rate that was almost four times that which would be charged for a Grade D fee earner under the Guideline rates, was grossly excessive. This rate could not be justified on the basis that fee earners at the Firm, by virtue of their training, were more experienced than fee earners in other firms. The First Respondent's argument in that regard was not credible. Nor could it be justified by the First Respondent's desire to "test" the rate. That rate was said to be justified due to the complex nature of the work. Indeed, that was explicitly stated in the Bills. The Tribunal noted that on a number of occasions, Judges had found that the cases were not complex. Whilst it was accepted that neither the First nor Third Respondents were experienced in clinical negligence work, the Tribunal did not accept that they did not recognise that within that area, there would be cases that were complex, and others that were far more straightforward. The simplicity of the Humphrey case was outlined on more than one occasion by the District Judge. Neither the First nor the Third Respondent recognised or acted upon that. The First Respondent may well have believed that the District Judge's findings as regards costs were wrong, however it was at no point suggested that his evaluation of the complexity of the issues in that matter were wrong. The Tribunal did not accept that either Respondent believed that all clinical negligence cases were complex. Even if that had been their opinion prior to Humphrey, such an opinion was not sustainable and could not be reasonably held thereafter. The Tribunal found that to the extent that such a belief was maintained, it was solely for the purpose of justifying the continued charging at such rates."

9. The reference to the Humphrey case was to one of the cases where the NHS LA as paying party had challenged the Bill of Costs presented by the Firm and the matter had proceeded to detailed assessment before a District Judge as costs judge. The original Bill in that case, which claimed an hourly rate of £400 for all fee earners and a success fee of 100% was for £37,298. Following the detailed assessment on 17 April 2013, the Bill was reduced by DJ McIlwaine to £3,330.35, a 91% reduction. At [20.29] the SDT had cited his observation during the detailed assessment that it was a relatively straightforward matter and there was nothing complex about the case. At [20.30] the SDT had recorded what the District Judge had said in relation to the 100% success fee that it was: "with the greatest of respect, shall we say ambitious. I think the man on the Clapham Omnibus might put it slightly differently." He reduced the success fee to 25%. The SDT also recorded that having awarded £3,330.36 in costs, the District Judge remarked "Blimey" when he was reminded that the original amount claimed by the Firm was £37,928.

10. Returning to [20.62] of the judgment in the present case, having referred to some of the expert evidence, the SDT continued:

> "The Tribunal accepted that with the £400.00 hourly rate being contained in the CFA [i.e. the Conditional Fee Agreement between the Firm and its client], there was no breach of the costs rules in including that rate in the Bills. However, the costs rules also required Bills to be proportionate. This was not a question of technical costs rules breaches; that had been conceded by the Applicant. The question was, as described by Mr James, an ethical one. The Tribunal agreed with DJ Besford's assessment that this was not a commercially negotiated rate. In fact, the rate was one which the clients knew they would never be required to pay given the system operated by the Firm. The Tribunal found that the First Respondent had set the rate at an artificially high level in the knowledge that the clients would not object, so that he could maximise costs without regard for the need for those costs to be reasonable and proportionate."

11. The reference to DJ Besford was to one of the other District Judges sitting in Hull who had conducted detailed assessments of the Firm's costs, in particular Scott, in relation to which the SDT had cited at [20.36] his judgment dated 28 July 2014 which was highly critical of the Firm's conduct and Johnson, in relation to which the SDT had cited at length at [20.37] his judgment dated 23 September 2015, which was also highly critical of the Firm's conduct. In particular DJ Besford had said:

> "…over a number of years I have assessed a significant number of [the Firm's] bills. My comments are based on that experience. … The bills often show that a number of fee earners have been involved. The fee earners are usually described as being 'Fee Earner X (assisted by his/her team)' or 'Supervisor X'. Their status, using the guideline descriptions are inevitably grade C or higher. The fee earner's actual experience/status is often ambiguous or not addressed until replies are served. The majority of the fee earners are not

> qualified solicitors, but are ascribed their grade by reference to their 'relevant experience' … The rate set out within the CFA would appear to be a rate that has been set by [the Firm] without reference to the appropriate commercial rate to charge the client … Further, the rate of £400.00 is not a rate particular to this case. In the vast majority of claims, [the Firm] has used this rate. It is furthermore a rate used without any reference to the value of the claim. It appears to be a rate used across the board, from a certain point in time. In no proceedings to date has [the Firm] produced any evidence that the rate reflects the commercial costs of acting for that particular client. To the contrary, when challenged as in this case the rate inevitably reduces. The suspicion is that the rate used reflects a rate well in excess of the range of rates that they may or may not be capable of justifying on a subsequent assessment…"

12. At [20.64] the SDT rejected Mr Good's case that, having stepped back from the Firm, he had been unaware of the rates charged, Bills claimed and reductions made. He was receiving regular updates from Ms Park. The SDT regarded as "incredible" that he did not recall a meeting he had with her at his home in relation to the outcome in Humphrey. The SDT then found:

> "The Tribunal also accepted that the Third Respondent told the First Respondent of the outcome in North, and that she discussed the Acumension withdrawal of offers letter of 7 October 2013 with him. It was significant that the First Respondent had set the Firm up in such a way as to ensure that the Fee Earners had no sight of, or knowledge, of the Bill of Costs upon completion of a case. The costs department was kept separate, and information about costs was deliberately kept away from Fee Earners and other staff."

13. North was another case where the Bill (of which we were provided with a copy by the SRA as an example of the Bills rendered by Mr Good) was subject to substantial reduction. The SDT had dealt with this case at [20.31] of its judgment. Following provisional assessment on 6 June 2013, DJ Neaves reduced the costs recoverable from £48,962 to £8,026.41, an 83.5% reduction. He reduced the rate claimed across the board of £400 per hour to £111 or £146, the relevant Guideline rate, depending on the fee earner. He reduced the success fee to 62.5%. He found that: "although this was a clinical negligence claim it was not complex. Liability was admitted within 3 months of [the Claimant's] initial letter." He also found that "the costs claimed are disproportionate" and "the success fee claimed is not reasonable".

14. Acumension were costs specialists who had acted for the NHS LA against the Firm. The SDT had referred at [20.6] to their letter of 7 October 2013 withdrawing all offers of settlement of claims for costs by the Firm against the NHS LA. The SDT also referred in that paragraph to a telephone call on 21 October 2014 between Ms Park and Acumension where the Acumension representative described the Firm's Bills as "beyond obscene".

15. At [20.66] the SDT concluded in relation to hourly rates that they were excessive/grossly excessive and that both Mr Good and Ms Park knew that to be the case. The SDT then went on to consider the issue of success fees. It noted that the Firm had not carried out specific risk assessments in each individual case in setting the 100% success fee, but only a generic risk assessment applicable to all clinical negligence cases. It did not consider this appropriate, but accepted that they were not uncommon in the industry. The SDT continued at [20.67]:

> "The issue was that the Firm had a policy of a 100% success fee in place. This led to the Firm automatically applying that rate without any consideration of the merits of the case. This policy led to a pre-determination that was not appropriate. This was clearly demonstrated in the matter of Green. In that case, the Firm knew from the outset that there was a letter of apology. Notwithstanding that, the Firm applied a success fee of 100% in accordance with its policy. The Tribunal accepted that the letter of apology was not the equivalent of an admission of liability, however it was the policy that meant that no independent thought was given to the effect that letter may have had on the prospects of success. The policy was simply to apply the highest possible success fee to every case, and thereafter to attempt to justify that when costs were claimed."

16. At [20.68] the SDT was highly critical of Mr Good's conduct in this regard:

> "The Tribunal determined that it was improper conduct to instigate a policy which was for the sole purpose of claiming the maximum amount of costs without having even a cursory regard for the merits of the case itself. The generic assessment employed by the Firm was, in fact, no assessment at all, and was treated as a tick box exercise so as to enable the Firm to be compliant with the letter, if not the spirit, or the rules. The policy, as was accepted, was devised by the First Respondent. The Tribunal considered that the First Respondent had specifically designed the policy so as to deliberately ensure a lack of any meaningful risk assessment so as to justify the charging of a 100% success fee. The Tribunal found that he knew that applying a 48 100% uplift on all cases would lead to Bills being rendered that were excessive/grossly excessive."

17. Having considered the position of Ms Park, the SDT then considered the position of Mr Good. At [20.76] it said that, having found the factual basis of allegation 1.1 proved against him, it had to consider whether his conduct was in breach of the SRA Principles and dishonest as alleged. It found beyond reasonable doubt that his conduct lacked integrity in breach of Principle 2. In [20.77] the SDT summarised its reasons for reaching that conclusion. As with [20.62], the relevant findings are again sufficiently significant for the determination of this appeal that they merit quotation in full:

> "The Tribunal considered that the First Respondent had deliberately insulated the costs department from the rest of the

> Firm so as to prevent it from seeking knowledge/information from fee earners that might have led to questions being raised as regards the Firm's costs practices. He had created guidance documents that were designed to restrict independent thought and to maintain a charging process he knew to be producing inflated and unjustifiable bills of costs. He had demonstrated a calculated disregard for Practice Directions so as to create a lack of transparency intended to obscure from the paying party the true level of experience and ability of fee earners in order to attempt to charge wholly unwarranted excessive and preposterous costs. He displayed a continuing disregard of received comment from a number of sources questioning the justification, proportionality and reasonableness of Bills whish were drafted in a way designed simply to maximise profits which he was the direct beneficiary of receiving. The hourly rates charged at his direction were entirely unfounded and, in the circumstances, excessive and often grossly excessive per se. That position was made all the more egregious when the unmeritorious 100% success fee was applied. The Tribunal found that the costs practices he introduced were an unmeritorious and unwarranted planned attempt to seek inflated and unjustifiable costs. That such conduct lacked integrity was plain."

18. At [20.78] the SDT found beyond reasonable doubt that Mr Good had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6 of the SRA Principles. The SDT noted that the NHS LA and Acumension had grave concerns regarding his billing practices. It continued:

> "Members of the public, whilst they viewed solicitors' bills as expensive, would not expect a solicitor to institute a policy that led to charges being levied at almost four times the acceptable rate and to then charge a 100% uplift to what were already grossly excessive charges. Further less would they expect such charging practices to be levied against the NHS."

19. Accordingly, the SDT found allegations 1.1 and 1.2 proved against Mr Good beyond reasonable doubt. It then went on to consider dishonesty. It agreed that the appropriate test was that set out by the Supreme Court in *Ivey v Genting Casinos Ltd* [2017] UKSC 67; [2018] AC 391. Earlier in its judgment at [20.47] the SDT had set out the important passage from the judgment of Lord Hughes JSC in that case at [74]:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is

> established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

20. Having referred to the *Ivey* test, at [20.80] the SDT purported to apply it and dealt with the issue of dishonesty relatively shortly, in these terms:

> "The Tribunal firstly considered the First Respondent's belief at the time. The Tribunal determined that although the First Respondent's conduct did not adhere to the ethical standards of the profession, it determined that the First Respondent believed that he was entitled to "test the rate", and that the Bills would be subject to the scrutiny of the Courts/costs experts. The Tribunal noted that although the allegations were about the rendering of the Bills and not the costs received, there was no suggestion that the Firm had ever received costs that were otherwise than reasonable and proportionate. The Tribunal also considered, and commended the First Respondent for his approval in the reduction of the rates, and the application of the principles in G to clinical negligence matters. The Tribunal determined that whilst members of the public would disapprove of the charging practices initiated by the Firm, they would not find his conduct to be dishonest. There were processes and procedures in place to ensure that notwithstanding those practices, the Firm would not recover excessive/grossly excessive costs. In the circumstances, the Tribunal did not find that the First Respondent's conduct was dishonest and accordingly dismissed allegation 3."

21. The SDT then set out at [23] the matters relied upon in mitigation by Mr Good. It was submitted that his misconduct was limited to the period between April and September 2013. It was said that he had taken actions to reduce rates after the judgment of HHJ Jeremy Richardson QC (sitting with assessors, one of whom was DJ Neaves) in *G v Kingston upon Hull City Council* on 28 June 2013. That was an appeal in effect by the Firm against an assessment by DJ Besford (not in a clinical negligence case but in a claim against the Council for negligence by a girl who was raped whilst in care). The appeal concerned the relevance of the Guideline rates on detailed assessment. The Firm employed specialist costs counsel, Mr Nicholas Bacon QC, who argued, amongst other things, that Guideline rates were only relevant on a summary assessment of costs, not on a detailed assessment. Perhaps unsurprisingly, that argument was rejected at [39]-[40] of the judgment.

22. The SDT recorded the argument that no financial loss had been caused to any party as a result of the hourly rates or the 100% success fee. All costs paid had either been assessed by the Court or agreed with the other party, so it could not be said the costs recovered were excessive or improper. Mr Good had not gained a financial advantage. The clinical negligence department had not made a profit. In terms of culpability, it was accepted that he was a senior lawyer with lengthy experience of personal injury matters, but his experience of clinical negligence remained limited. It was contended

that his real culpability was his failure to react quickly enough when changing the rates.

23. The SDT then set out Mr Good's personal mitigation such as ill-health and that he had left school early and taken 8 years to qualify as a solicitor. He was proud of being a solicitor and placed huge regard in the profession and his integrity. The length of the proceedings had had an impact on his ability to move forwards as he felt unable to resume his career until the proceedings were determined. It was submitted that there was no risk of repetition of the misconduct. The practice of overcharging had ceased well before the transfer of the Firm and the introduction of the Jackson reforms meant such practices could no longer occur. When we enquired, Mr Greaney QC on behalf of Mr Good said that this was a reference to the introduction of costs budgeting.

24. In determining the appropriate sanction, the SDT had regard to the Guidance Note on Sanctions 5th edition. The overriding objective when considering sanction was the need to maintain public confidence in the profession. At [26] the SDT said:

> "The Tribunal found the First Respondent's conduct was motivated by his desire for the clinical negligence department to be profitable, and his assessment of the self-importance of his own opinion over and above that of no fewer than six different costs Judges assessing the cases. The desire for profitability itself was not a reason for criticism, however, in pursuit of that desire he lost sight of his professional obligations. His actions were planned and were part of a policy that he instigated and only he had the power to alter. As the senior partner and the person who initiated the policy, the First Respondent had direct control of the circumstances. He was an experienced solicitor, although he was not experienced in conducting clinical negligence work. He had caused harm to the reputation of the profession. Acumension had refused to continue to negotiate with the Firm as regards costs, finding their Bills to be "beyond obscene". It was to the First Respondent's credit that, from September 2013 onwards, he authorised a reduction in the rates, eventually settling at rates that were realistic, reasonable and proportionate. Further, his misconduct had caused no financial loss to clients. The Tribunal accepted that the Bills paid were reasonable and proportionate as assessed by the Courts or agreed with defendants."

25. Later in the same paragraph the SDT said:

> "The Tribunal found that the First Respondent's conduct lacked objective integrity, in that no solicitor acting with integrity would have conducted himself in the way that the First Respondent had. It had also found that the First Respondent's conduct was not dishonest. Although he deliberately charged as he had, he had a strongly held belief that he was entitled to charge at the rates he had. The Tribunal found that whilst

> members of the public may have disapproved of his charging regime, they would not consider his conduct to be dishonest."

26. The SDT considered and rejected the lesser sanctions of no order or a reprimand on the basis that his misconduct was too serious. However, it did not consider that he posed a future risk to the public of the reputation of the profession that necessitated the imposition of restrictions. His misconduct had been limited to the costs claimed in clinical negligence cases and was unlikely to be repeated. In deciding that a fine was the appropriate sanction the SDT said:

> "The Tribunal considered that given the limited extent of the First Respondent's lack of integrity, a fine was an appropriate and proportionate sanction; his misconduct was not such that the protection of the public and public confidence in the profession required his immediate removal from practice."

The misconduct was very serious so it fell midway within the Indicative Fine Band Level 4 (a reference to the table on page 12 of the Guidance Note) so that the appropriate and proportionate fine was £30,000.

The grounds of appeal

27. There were two grounds of appeal advanced by the SRA:

(1) That the SDT was wrong, in the light of its findings of fact, to have dismissed the allegation of dishonesty against Mr Good;

(2) That, even if Ground 1 failed, having found allegations 1.1 and 1.2 proved against Mr Good, the SDT was wrong and too lenient only to have fined him £30,000 and should have ordered a sanction that resulted in his immediate removal from practice.

The applicable legal principles

28. The applicable legal principles as to the approach to be adopted by this court to an appeal against the decision of a specialist disciplinary tribunal such as the SDT, both as regards reversal of a finding of honesty or dishonesty and as regards interference with the sanction imposed, were essentially not in issue between the parties. Those principles can be summarised relatively briefly.

29. The appeal is by way of review not rehearing: CPR 52.21(1), so that the Court will only allow an appeal where the decision is shown to be "wrong": CPR 52.21(3)(a). This can connote an error of law, an error of fact or an error in the exercise of discretion. That an appellate court should exercise particular caution and restraint in interfering with the findings of fact of a lower court or tribunal, particularly where that court or tribunal has reached those findings after seeing and evaluating the witnesses, has been emphasised time and again in the authorities, most recently in the case of the SDT by the Divisional Court (Davis LJ and Foskett and Holgate JJ) in *Solicitors Regulation Authority v Day* [2018] EWHC 2726 (Admin), where many of the authorities are usefully cited at [64] to [68] of the judgment, culminating in citation of what was said by Lord Reed in *Henderson v Foxworth Investments Ltd*

[2014] UKSC 41; [2014] 1 WLR 2600 as to the correct approach, at [62] and [67] of his judgment:

> "The adverb "plainly" [qualifying "wrong"] does not refer to the degree of confidence felt by the appellate court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached….
>
> It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."

30. As the Divisional Court went on to say at [69], the appropriate restraint on the part of an appellate court is still called for where the conclusion of the lower court or tribunal is not just as to the primary facts, but as to the evaluation of those facts. The appellate court should only interfere if there was an error of principle in carrying out the evaluation or for any other reason the evaluation was "wrong", in other words, was an evaluative decision which fell outside the bounds of what the court or tribunal could properly and reasonably have decided. The particular caution and restraint to be exercised before interfering with an evaluative judgment by a specialist tribunal, where that tribunal has made an assessment having seen and heard the witnesses, was emphasised in the context of the SDT by the Divisional Court in *Day* at [71] and in the context of the Medical Practitioners Tribunal ("MPT") by the Court of Appeal in the recent cases of *General Medical Council v Bawa-Garba* [2018] EWCA Civ 1879; [2019] 1 All ER 500 at [67] of the judgment of the Court (Lord Burnett CJ, Sir Terence Etherton MR and Rafferty LJ) and *General Medical Council v Raychaudhuri* [2018] EWCA Civ 2027; [2019] 1 WLR 324 at [57] per Sales LJ (as he then was) and at [74] per Bean LJ.

31. Similar restraint should be exercised by an appellate court before interfering with the sanction imposed by a specialist disciplinary tribunal for professional misconduct. That involves a multi-factorial exercise of discretion and evaluative judgment by the relevant tribunal, which is particularly well-placed to assess what sanction is required in the interest of the profession and to protect the public. It is well-established that the court will only interfere if the sanction passed was "in error of law or clearly inappropriate": see the authorities cited and summarised by Carr J at [69] and [70] of her judgment in *Shaw v Solicitors Regulation Authority* [2017] EWHC 2076 (Admin); [2017] 4 WLR 143; and see also my judgment in the Divisional Court in *Solicitors Regulation Authority v James* [2018] EWHC 3058 (Admin); [2018] 4 WLR 163 at [53]-[55].

32. Applying those principles to the present appeal, this Court should only interfere with the decision of the SDT that the respondent was not dishonest and as to the appropriate sanction if we are satisfied that in reaching the particular decision the SDT committed an error of principle or its evaluation was wrong in the sense of falling outside the bounds of what the SDT could properly and reasonably decide.

The parties' submissions

33. On behalf of the SRA, Mr Mark Cunningham QC emphasised in relation to Ground 1 that the applicable test in determining dishonesty was that set out by Lord Hughes JSC in *Ivey* at [74], in the passage cited by the SDT at [20.47] of its judgment. This involved a two stage exercise: (i) that the fact-finding court or tribunal should ascertain the actual state of the individual's subjective knowledge and belief; and (ii) once that actual state of mind as to knowledge or belief is established, the court or tribunal should answer the objective question whether his conduct was honest or dishonest applying the objective standards of ordinary decent people.

34. He submitted that the SDT had made a number of material findings as to the knowledge of Mr Good which were relevant to the application to this case of this two stage exercise:

(1) The finding at [20.62] which I quoted at [10] above that Mr Good had "set the rate at an artificially high level in the knowledge that the clients would not object, so that he could maximise costs without regard for the need for those costs to be reasonable and proportionate." Mr Cunningham QC emphasised the use of the word "artificially" which he submitted was inconsistent with Mr Good having any genuine belief that he was entitled to charge the rates he did.

(2) The finding at [20.68] which I quoted at [16] above that "it was improper conduct to instigate a policy which was for the sole purpose of claiming the maximum amount of costs without having even a cursory regard for the merits."

(3) The finding in the same paragraph that Mr Good "had specifically designed the policy so as to deliberately ensure a lack of any meaningful risk assessment." He had known that the 100% uplift would lead to the Bills rendered being excessive.

(4) The finding at [20.75] and [20.76] that Mr Good knew the Bills were excessive both as regards hourly rates and as regards success fees.

(5) The findings in [20.77] which I quoted at [17] above, where there were six respects in which the SDT was highly critical of Mr Good: (i) his deliberate insulation of the costs department; (ii) his creation of guidance documents designed to restrict independent thought and maintain a charging process he knew was inflated; (iii) his calculated disregard for Practice Directions in order to charge preposterous costs; (iv) his continuing disregard of received comment questioning the justification, proportionality and reasonableness of the Bills. This included the various criticisms from District Judges; (v) the fact that the hourly rates charged at his direction were entirely unfounded and excessive and often grossly excessive per se, a position made all the more egregious by the application of the unmeritorious 100% success fee. Mr Cunningham QC emphasised the strength of the word "egregious" in terms of disapproval; and (vi) the costs

practices he introduced were an unmeritorious and unwarranted planned attempt to seek inflated and unjustifiable costs. Mr Cunningham QC submitted that the SDT's finding at [26] when dealing with sanction, as to the limited extent of Mr Good's lack of integrity was just not compatible with these critical findings at [20.77].

(6) The finding in [26] itself as to Mr Good's assessment of the self-importance of his own opinion over and above that of no fewer than six costs judges assessing the Bills.

35. Mr Cunningham QC submitted that the evaluative exercise as to whether Mr Good was dishonest in [20.80] of the judgment was defective, deficient and insufficient for a number of reasons. First and foremost, there was a resounding absence at the first stage of the exercise of any reference to these findings as to the knowledge of Mr Good and his deliberate misconduct. The SDT proceeded in the second sentence of [20.80] to consider only Mr Good's belief. Although Lord Hughes JSC refers to "knowledge or belief" it is necessary to evaluate both where there is evidence of both, not least because the genuineness of a person's belief may be informed by the state of his knowledge.

36. The second deficiency in the evaluative exercise was the SDT's assessment seems to have been that, because the allegations were about the rendering of the Bills and not the costs received, and that there was no suggestion that the costs actually received were anything other than reasonable and proportionate and because there were procedures in place to ensure that, notwithstanding his practices, the Firm would not recover excessive costs, Mr Good was not dishonest. Mr Cunningham QC submitted that the fact that the deliberate and planned overcharging was not successful does not make Mr Good's conduct honest. He gave the example of the pickpocket who picks an empty pocket, who is still guilty of attempted theft. He was also critical of the SDT's commendation of Mr Good for reducing the fees after the judgment in *G*, as somehow exonerating him from any dishonesty. That point went to mitigation but could not render dishonest conduct honest.

37. Mr Cunningham QC submitted that the third deficiency in the evaluative exercise was that the SDT's conclusion that the public would have disapproved of Mr Good's charging practices, but would not have found his conduct dishonest cried out for an explanation, particularly in the light of the finding at the end of [20.78] which we quoted at [18] above, with which this conclusion was inconsistent.

38. The fourth deficiency in the evaluative exercise was the SDT's assessment that Mr Good's belief that he was entitled to "test the rate" and that the Bills would be subject to scrutiny by the Courts and costs experts rendered his conduct honest. This finding about belief, together with the finding at [26], in the context of sanction, that he had a strongly held belief that he was entitled to charge the rates he did, seemed to be predicated upon the belief being genuine. However there is no express finding to that effect or as to the duration of the belief. In fact, those findings were wholly inconsistent with the SDT's findings at [20.62], specifically the finding that any belief that Mr Good was entitled to test the rate because it was justified by the complexity of the work was not sustainable after the assessment in Humphrey in April 2013 and that to the extent that such a belief was maintained thereafter it was solely for the purposes

of justifying continued charging of the rates. Mr Cunningham QC submitted that those findings undermined the genuineness of the belief.

39. In any event, viewing the findings in [20.62] as a whole, the SDT was finding that, no matter what Mr Good believed, his conduct could not be justified. Mr Cunningham QC submitted that what the SDT seemed to be saying in [20.62] was that it was not accepted that this belief was enough to be an honest explanation, when placed alongside his state of knowledge. The conclusions in [20.80] were inconsistent with those findings in [20.62].

40. In the circumstances, Mr Cunningham QC submitted that the evaluative exercise by the SDT was fundamentally flawed because (i) there was no evaluation at all in [20.80] of the impact of its own earlier findings about knowledge and deliberate misconduct; (ii) the evaluation was illogical and irrational and (iii) on a proper analysis of its own earlier findings, particularly at [20.62], at least post Humphrey, the alleged belief was a façade which could not exonerate Mr Good.

41. Mr Cunningham QC was critical of the reliance placed by Mr Greaney QC and Mr de la Poer in their Skeleton Argument on the decision of the Court of Appeal in *Raychaudhuri*. Having cited [56] to [60] of the judgment of Sales LJ and [74] of the judgment of Bean LJ, the Court was urged at [26] of the Skeleton to adopt the same approach in the present case. Mr Cunningham QC submitted that the *Raychaudhuri* approach simply would not hold water in the present case. The references at [57] of that judgment, on which Mr Greaney QC placed great emphasis, to an evaluative judgment regarding "the nuances of their interactions", was a reference to the interactions between doctors working under pressure in an A & E department. There were no equivalent interactions between Mr Good and his staff.

42. Likewise, the suggestion at [26] of the Skeleton that any tensions within the reasoning of the SDT demonstrated the anxious care with which the tribunal sought to weigh and evaluate the moral significance of Mr Good's conduct (the explanation for the tension in the reasoning of the MPT accepted by the Court of Appeal in *Raychaudhuri* at [60]) was simply inapplicable here. There were no difficult moral questions. The reality about the tension in the reasoning was that the finding about dishonesty in [20.80] was simply inconsistent with all the other findings about knowledge and deliberate misconduct and nothing in *Raychaudhuri* could assist Mr Good.

43. Mr Cunningham QC submitted that if the Court were in favour of the SRA on Ground 1 it should substitute its own finding that Mr Good was dishonest and not remit the case to the SDT, whether as originally constituted or under a different constitution, which was a remedy of last resort. If the Court found that Mr Good was dishonest, the sanction should be striking off the Roll, it not having been suggested on his behalf that there were any exceptional circumstances justifying a lesser sanction.

44. Ground 2 only arose if the Court was against the SRA on Ground 1. Mr Cunningham QC submitted that, in assessing the appropriate sanction for Mr Good's misconduct, the SDT had erred in its calibration of his lack of integrity and had failed to have any regard to the appropriateness of the sanction imposed in protecting the integrity of the profession. This was the point made by Sir Thomas Bingham MR in his classic judgment in *Bolton v Law Society* [1994] 1 WLR 512 at 518:

> "It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission."

45. Mr Cunningham QC placed particular reliance upon the judgment of the Divisional Court given by Moses LJ sitting with Burnett J (as he then was) in *Solicitors Regulation Authority v Emeana* [2013] EWHC 2130 (Admin), which emphasised that even in cases of lack of integrity where dishonesty was not proved, striking off may well be the appropriate sanction in order to protect the reputation of the profession. Mr Cunningham QC referred in particular to [25] and [26] of the judgment, where Moses LJ said:

> "…The profession of solicitor requires complete integrity, probity and trustworthiness. Lapses less serious than dishonesty may nonetheless require striking off, if the reputation of the solicitors' profession "to be trusted to the ends of the earth" is to be maintained.
>
> 26. The principle identified in *Bolton* means that in cases where there has been a lapse of standards of integrity, probity and trustworthiness a solicitor should expect to be struck off. Such cases will vary in severity. It is commonplace, in mitigation, either at first instance or on appeal, whether the forum is a criminal court or a disciplinary body, for the defendant to contend that his case is not as serious as others. That may well be true. But the submission is of little assistance. If a solicitor has shown lack of integrity, probity or trustworthiness, he

> cannot resist striking off by pointing out that there are others who have been struck off, who were guilty of far more serious offences. The very fact that an absence of integrity, probity or trustworthiness may well result in striking off, even though dishonesty is not proved, explains why the range of those who should be struck off will be wide. Their offences will vary in gravity. Striking off is the most serious sanction but it is not reserved for offences of dishonesty."

46. Mr Cunningham QC submitted that [26] of the judgment set the bar high and that at [28] Moses LJ had gone on to say that, in cases such as those cases, the imposition of fines seriously undermined the reputation of the profession. Mr Cunningham QC also relied upon [35], where Moses LJ said:

> "I acknowledge that the sanctions I propose in relation to all three of these respondents are the most severe which can be imposed. But I cannot see how the integrity of the profession can be upheld by the imposition of lesser sanctions. I do not believe that the public would find it acceptable that those who have behaved in this way should be allowed to act as solicitors."

Mr Cunningham QC submitted that when one had regard to the findings of the SDT at [20.78] as to what members of the public would not expect, the public would not expect those who carried on in that unacceptable way to be entitled to act as solicitors.

47. The SDT had made a raft of adverse findings as to Mr Good's conduct and his knowledge. In addition to those material findings set out at [34] above, the SDT had found:

(1) At [20.58] that the £400 hourly rate and 100% success fee were charged as a matter of policy at least until September 2013;

(2) That the rate of £250 per hour for a Grade D fee earner was excessive ([20.61]);

(3) That the system was one which only Mr Good could alter ([20.59]). This went to the control he had over setting rates.

(4) That Mr Good knew that the hourly rates were excessive/grossly excessive ([20.66]);

(5) That the policy of charging 100% success fees led to the Bills being grossly excessive ([20.67]).

48. In addition to all these adverse findings set out at [34] and [47] above, Mr Cunningham QC drew attention to the points made by the SDT itself in [26], where it dealt with sanction: (i) Mr Good's assessment of the importance of his own opinion over that of costs judges; (ii) that in pursuit of his desire for profit he had lost sight of his professional obligations; (iii) as the person who initiated the policy Mr Good had direct control of the circumstances; (iv) he had caused harm to the reputation of the

profession; (v) Acumension had refused to negotiate with the Firm in relation to costs on the basis that the Bills were "beyond obscene".

49. Mr Cunningham QC submitted that, on the basis of all these adverse findings, the SDT should have concluded that Mr Good's lack of integrity was very grave indeed. Although the SDT had identified a number of points in mitigation, which I have set out at [21] to [23] above, when they were weighed in the scale against the very grave lack of integrity, they did not justify a conclusion that this was misconduct of a "limited extent". Even if Mr Greaney QC was right that the "limited extent" was a reference back to the fact that the overcharging was limited to clinical negligence cases, this was a fundamental miscalibration of the seriousness of the lack of integrity and misconduct which was perverse. Given that this was a grave lack of integrity such as Moses LJ had to deal with in *Emeana*, the SDT should have concluded that, in view of its gravity and the fundamental need to protect the reputation of the profession, the only appropriate sanction was striking off the Roll.

50. On behalf of Mr Good, Mr Paul Greaney QC began his submissions by focusing on the North Bill of costs with which the Court had been provided by way of example. He made the point that the cases in issue were all clinical negligence cases where the defendants were NHS trusts, so that the NHS LA was involved which was not a naïve litigator. Whilst the Bill did not identify the grade of each named fee earner, the NHS LA could have ascertained the grade by going on to the Roll of Solicitors. If they required further information they could issue points of dispute as indeed they had done in all these cases. Accordingly, he submitted that there was no substance to the suggestion that Mr Good was hiding any of this. I note that that submission is contrary to the express finding in [20.77] that Mr Good "had demonstrated a calculated disregard for Practice Directions so as to create a lack of transparency intended to obscure from the paying party the true level of experience and ability of fee earners in order to attempt to charge wholly unwarranted excessive and preposterous costs."

51. In his oral submissions, Mr Greaney QC placed less emphasis on the decision of the Court of Appeal in *Raychaudhuri* than he had in his written Skeleton. He eschewed any suggestion that the case was a template for the present case, but relied upon it as a recent authoritative restatement of the approach which an appellate Court should adopt, where the specialist tribunal had made a finding that the defendant was not dishonest. He relied in particular upon the following passages in the judgment of Sales LJ:

> "57. In my view, the evaluative judgment made by the MPT in this regard should be given great weight. That is both because it had the advantage of seeing the appellant and the witnesses, so that it was well placed to make an evaluative judgment regarding the nuances of their interactions and the nature and seriousness of what the appellant did, and because of the practical expertise of a MPT in being able to understand the precise context in which and pressures under which a doctor is acting in a case such as this.
>
> 58. It can fairly be said that the reasoning of the MPT is not easy to understand in all respects and that there are points of

> tension between different parts of its reasoning. Both sides have sought to exploit this in different ways…
>
> 60. However, reading the various parts of the MPT's decision as a whole, I consider that the basic thrust of its findings of fact is tolerably clear and that its conclusion on the question of dishonesty as regards the appellant's conversations with Dr De Halpert was defensible and legitimate…"

52. Mr Greaney QC emphasised that the SDT had had the advantage of seeing the witnesses and, specifically, Mr Good who gave evidence over three days. He had been pressed hard in cross-examination by Mr Cunningham QC. The SDT had had many hours to make an assessment of Mr Good and his motivation and were best placed to determine whether or not he was dishonest. Mr Greaney QC also emphasised the experience as solicitors or SDT members of the particular members of this SDT. He submitted that even if there are inconsistencies between the different parts of the judgment, looking at it as a whole, the basic thrust that Mr Good was not dishonest is tolerably clear.

53. In relation to the test of dishonesty set out in *Ivey* Mr Greaney QC referred the Court to [60] of the judgment of Lord Hughes JSC where the Supreme Court dealt with the test previously propounded by the Court of Appeal Criminal Division in *R v Ghosh* [1982] QB 1053, which the Supreme Court disapproved:

> "It is plain that in *Ghosh* the court concluded that its compromise second leg test was necessary in order to preserve the principle that criminal responsibility for dishonesty must depend on the actual state of mind of the defendant. It asked the question whether "dishonestly", where that word appears in the Theft Act, was intended to characterise a course of conduct or to describe a state of mind. The court gave the following example, at p 1063, which was clearly central to its reasoning:
>
> > "Take for example a man who comes from a country where public transport is free. On his first day here he travels on a bus. He gets off without paying. He never had any intention of paying. His mind is clearly honest; but his conduct, judged objectively by what he has done, is dishonest. It seems to us that in using the word 'dishonestly' in the Theft Act 1968, Parliament cannot have intended to catch dishonest conduct in that sense, that is to say conduct to which no moral obloquy could possibly attach."
>
> But the man in this example would inevitably escape conviction by the application of the (objective) first leg of the *Ghosh* test. That is because, in order to determine the honesty or otherwise of a person's conduct, one must ask what he knew or believed about the facts affecting the area of activity in which he was engaging. In order to decide whether this visitor was dishonest by the standards of ordinary people, it would be necessary to establish his own actual state of knowledge of how

> public transport works. Because he genuinely believes that public transport is free, there is nothing objectively dishonest about his not paying on the bus. The same would be true of a child who did not know the rules, or of a person who had innocently misread the bus pass sent to him and did not realise that it did not operate until after 10.00 in the morning. The answer to the court's question is that "dishonestly", where it appears, is indeed intended to characterise what the defendant did, but in characterising it one must first ascertain his actual state of mind as to the facts in which he did it. It was not correct to postulate that the conventional objective test of dishonesty involves judging only the actions and not the state of knowledge or belief as to the facts in which they were performed. What is objectively judged is the standard of behaviour, given any known actual state of mind of the actor as to the facts."

54. Mr Greaney QC submitted that knowledge describes a state of mind as to facts and belief a state of mind as to opinion and that what was important here was belief, although, importantly, in answer to a question from the Court he accepted that knowledge is relevant to the genuineness of belief. He drew attention to the important difference between the reasonableness of Mr Good's belief and its genuineness. The fact that his belief that he was entitled to charge the fees he had was unreasonable was an important part of why he was found in breach of the SRA Principles, but in relation to dishonesty the critical question is not whether the belief is reasonable but whether it is genuine as Lord Hughes JSC said at [74] of *Ivey*, in the passage which the SDT quoted at [20.47].

55. He submitted that in [20.80] the SDT had applied the *Ivey* test correctly. It had first considered belief and found that Mr Good believed that (i) he was entitled to "test the rate" and (ii) that the Bills would be subject to scrutiny so that nothing was hidden. The SDT had then gone on later in the paragraph to explain why they had concluded he had that belief. Mr Good had tested the rate up until the point where his analysis was found untenable by HHJ Jeremy Richardson QC in *G* after which he no longer charged £400 an hour. This was a factor that went towards what he believed. A lot of the adverse comment about the Firm's charging was occurring as the *G* litigation was taking place.

56. The SDT had then gone on to say that whilst members of the public would disapprove of Mr Good's charging they would not find it dishonest. In other words, having considered the subjective state of mind of Mr Good, the SDT had gone on to apply the objective *Ivey* test. Both in [20.80] and [26] the SDT had made clear and unequivocal findings as to the belief of Mr Good and this was the general thrust of its findings, with which this Court should not interfere.

57. Mr Greaney QC submitted that these findings were not inconsistent with what the SDT had found in [20.62]. What the SDT had found not "credible" was that the rate could be justified on the basis that the Firm employed more experienced staff than in other firms. The SDT had not found in that paragraph that his belief that he was entitled to charge the rates he had was not genuine. Mr Greaney QC also submitted that the fact that Mr Good had received grounds of appeal in *G* from Nicholas Bacon

QC contending that Guideline rates did not apply in a detailed assessment was an important consideration in justifying Mr Good's belief. I note, however, that the SDT did not make any findings to that effect.

58. Overall, Mr Greaney QC submitted that the SDT did not fall into any error in finding that Mr Good was not dishonest, such as would entitle this Court to intervene. Ground 1 should be dismissed. However if the Court were against Mr Good on that Ground and concluded that he was dishonest, Mr Greaney QC did not address any separate submissions on sanction and did not advance any "exceptional circumstances" on behalf of Mr Good.

59. In relation to Ground 2, Mr Greaney QC emphasised, by reference to the earlier authorities summarised by Carr J at [69]-[70] of her judgment in *Shaw*, the need for the Court to pay particular regard to the evaluation of the appropriate sanction by a specialist disciplinary tribunal. The Court should only interfere if the sanction was excessively lenient or clearly inappropriate, which it was not in this case. *Emeana* was not authority for the proposition that any lack of integrity should result in striking off. In cases other than those of dishonesty a range of other sanctions might be appropriate depending on the circumstances.

60. The Court could and should only interfere if the SDT had reached a conclusion on sanction which was outside the range of reasonable decision making. Mr Greaney QC relied upon [61] and [67] of the judgment of the Court of Appeal in *Bawa-Garba*, [69] of the judgment of the Divisional Court in *Day* and [56] of my judgment in *James*.

61. He submitted that the SDT had adopted a conventional and proper approach to the issue of sanction. It had considered mitigation and then culpability. It had adopted the approach to sanction recommended by the Guidance Note, to which it had had regard, of starting with the least serious option and working upwards, considering no order or a reprimand was not appropriate but a substantial fine was. The reference to the lack of integrity being of "limited extent" was not a miscalibration of its seriousness, but a reference back to the previous sentence in [26], that the overcharging by Mr Good was limited to clinical negligence cases.

62. Mr Greaney QC submitted that the approach of the SDT to sanction was entirely lawful and rational and the Court should not interfere.

Analysis and conclusions

63. I am acutely aware of the need for considerable circumspection on the part of an appellate Court in overturning a finding by a specialist tribunal of honesty and substituting a finding of dishonesty. This has been emphasised by all the authorities to which I have referred and, in particular by the recent decision of the Court of Appeal in *Raychaudhuri*, where the decision of the judge in the Administrative Court reversing the decision of the MPT and finding dishonesty, was itself reversed by the Court of Appeal. The same points have also been made recently by the Divisional Court in *Day*.

64. However, the law is clear that where the appellate Court identifies errors of principle in the approach of the tribunal to its finding of honesty or that finding is outside the

bounds of what the tribunal could properly and reasonably decide, the Court can and should interfere.

65. In the present case, I am entirely satisfied that there are clear and obvious errors of principle in [20.80] of the decision of the SDT. First, in considering the first stage of the subjective state of mind of Mr Good, the SDT has simply overlooked the serious findings of knowledge and deliberate misconduct which it had made earlier in its judgment, in particular at [20.62], [20.64], [20.66], [20.68], [20.77] and [20.78]. The SDT has simply not brought those into the equation at all, even though, as Mr Greaney QC accepted during the course of argument, knowledge on the part of Mr Good is relevant to the genuineness of his belief. Nowhere in its analysis on this critical issue does the SDT say that, notwithstanding the level of knowledge and deliberate misconduct it had found, the belief of Mr Good that he was entitled to charge these rates was genuine. That important element of the analysis is simply missing and, on that ground alone, the SDT's evaluation at [20.80] is fundamentally flawed.

66. Second, even if Mr Good had a genuine belief that he was entitled to charge these rates, it is difficult to see how that could exonerate him from a finding of dishonesty in the light of the findings of fact as to his knowledge and deliberate misconduct. Nevertheless, even if a genuine belief could exonerate him, to the extent that at [20.80] and again at [26] the SDT is concluding by implication that his belief that he was entitled to charge these rates was genuine (and there is no express finding to that effect), that is inconsistent with its earlier findings at [20.62] which it has overlooked.

67. At [20.62], the SDT found that the overcharging could not be justified by Mr Good's desire to "test the rate", which rate was said to be justified by the alleged complexity of the work, an alleged justification which was exploded by the decision of the District Judge in Humphrey who emphasised the simplicity of the case several times. The SDT found in terms that "[It] did not accept that either Respondent believed that all clinical negligence cases were complex. Even if that had been their opinion prior to Humphrey, such an opinion was not sustainable and could not be reasonably held thereafter. The Tribunal found that to the extent that such a belief was maintained, it was solely for the purpose of justifying the continued charging at such rates."

68. That finding comes perilously close to a finding that Mr Good did not have the alleged belief at all, but in any event the finding that, at least after the decision in Humphrey, the belief was maintained solely for the purpose of justifying the continued overcharging, is wholly inconsistent with that belief being genuine.

69. Likewise, we agree with Mr Cunningham QC that the finding by the SDT at the end of [20.62] that Mr Good had "set the rate at an artificially high level in the knowledge that the clients would not object, so that he could maximise costs without regard for the need for those costs to be reasonable and proportionate" is wholly inconsistent with any belief that he was entitled to set such an artificially high rate being genuine.

70. The SDT failed to grapple with the inconsistency between the implicit finding in [20.80] and [26] that Mr Good's belief that he was entitled to charges the rates he did was genuine and those earlier findings at [20.62], which are inconsistent with any belief (as to the existence of which the SDT was clearly sceptical at that stage of its reasoning) being genuine. It may not have done so because, in assessing dishonesty, it

failed to bring into the equation its earlier findings of knowledge and deliberate misconduct. Whatever the reason for the failure though, what has resulted is not just, as Mr Greaney QC would have it, some internal tension in the judgment which is explicable in the same way as in *Raychaudhuri*, where Sales LJ said at [60]: "the tensions in its reasoning reflect the anxious care with which it sought to weigh and evaluate the moral significance of the appellant's conduct in the particular context of this case." There are no moral nuances in relation to Mr Good's conduct here which could explain any internal tension in the reasoning of the SDT. Rather the tension between the clear findings of fact in [20.62] on the one hand and the analysis in [20.80] on the other is irreconcilable.

71. The third error of principle or, at least, flaw in the evaluation of the SDT is that having asserted baldly that Mr Good had the belief that (i) he was entitled to "test the rate" and (ii) that the Bills would be subject to scrutiny so that, at least by implication, nothing was hidden, contrary to the submission made to this Court by Mr Greaney QC, the SDT had not gone on later in the paragraph to explain why they had concluded that Mr Good had such a belief, let alone why it was genuine. I note also that, to the extent that the SDT was finding by implication that he believed that nothing was hidden, as I have already said at [50] above, that is inconsistent with its earlier finding at [20.77] about the deliberate lack of transparency.

72. The fourth error of principle in the analysis of the SDT in [20.80] is that it seems to have considered that the fact that the amounts of the Bills as rendered were never in fact recovered on detailed assessment, that procedures were in place to ensure that notwithstanding the practices instigated by Mr Good the Firm could never recover excessive costs and that Mr Good reduced the rates after the decision in *G*, were matters which demonstrated that his conduct was not dishonest. However, those were essentially matters of mitigation and the SDT has missed the point, no doubt because it failed to return to its serious findings of knowledge and deliberate misconduct, in evaluating whether Mr Good was dishonest. In the light of those clear and unequivocal findings, the only proper conclusion would have been that, in rendering the Bills which he knew to be excessive or grossly excessive and artificially high, Mr Good was dishonest in the first place. Whilst the fact that the Firm never actually recovered excessive costs and the other matters to which the SDT refers in [20.80] may mitigate the gravity of that dishonesty, they cannot eradicate it.

73. Furthermore, the fact that the Bills rendered could be challenged was not a guaranteed protection against the Firm recovering the costs, for example if no points of dispute were lodged. The rhetorical question arises which the SDT does not address in [20.80], as to why on earth Mr Good went to all the trouble to institute this policy and bill these artificially high rates, unless it was in the hope that the paying parties would, on occasion, pay the Bill without questioning it. The SDT seems to have had this point in mind in its earlier findings, for example in the last sentence of [20.62] which I have re-quoted at [69] above, in the first sentence of [20.68] quoted at [16] above and in the penultimate sentence of [20.77] quoted at [17] above, but it has lost sight of it when it comes to its analysis of dishonesty at [20.80].

74. The fifth error of principle in the analysis at [20.80] concerns the conclusion in relation to the objective test that, whilst members of the public would disapprove of the charging practices, they would not find Mr Good's conduct to be dishonest. That conclusion is inconsistent, or at least very difficult to reconcile, with the earlier

finding at [20.78] that: "Members of the public, whilst they viewed solicitors' bills as expensive, would not expect a solicitor to institute a policy that led to charges being levied at almost four times the acceptable rate and to then charge a 100% uplift to what were already grossly excessive charges. Further less would they expect such charging practices to be levied against the NHS." I agree with Mr Cunningham QC that the bald assertion in [20.80] that members of the public would not find the conduct of Mr Good dishonest cries out for further explanation or elaboration, particularly in the light of that earlier inconsistent finding.

75. Accordingly, in my judgment, the analysis in [20.80] contains those significant errors of principle which make it fundamentally flawed. The SDT has misapplied both stages of the *Ivey* test. In the highly unusual circumstances of this case, the Court can and should intervene and set aside the SDT's finding at [20.80] that Mr Good was honest. There was some debate during the course of argument as to whether, if the Court reached that conclusion, the appropriate course would be to remit the case to the same or a differently constituted SDT to re-determine the issue of honesty or dishonesty. However, I agree with Mr Cunningham QC that, whilst the Court has power to remit, that should be a remedy of last resort. This is a case where there were clear and unequivocal findings of fact as to knowledge and deliberate misconduct, which were not challenged on appeal. The Court is in as good a position as the SDT to assess that, on the basis of those findings of fact (including the findings as to belief at [20.62]), the only proper answer to the objective question is that, applying the standards of ordinary, decent people, Mr Good was dishonest. As I have said, there is no question here of moral nuance or internal tension in the circumstances of the case, such as should lead the Court to defer to an evaluation by the SDT which I have found to be fundamentally flawed.

76. I would set aside [20.80] of the judgment and substitute for it a conclusion that Mr Good was dishonest and that allegation 2 is made out beyond reasonable doubt. It follows that the sanction of a £30,000 fine must also be quashed. Since no exceptional circumstances are advanced which would justify a lesser sanction, given that finding of dishonesty, the only appropriate sanction is striking off the Roll.

77. In these circumstances, given that the appeal on Ground 1 will succeed, it is not strictly necessary to deal with Ground 2, but since it was fully argued, I will deal with it, albeit more briefly than Ground 1. In my judgment, even if Mr Good was not dishonest, but only guilty of the lack of integrity found by the SDT, the sanction of a £30,000 fine was excessively lenient and clearly inappropriate so that the Court should intervene and quash that sanction, substituting the sanction of striking off the Roll.

78. I have reached that conclusion for a number of reasons. First, even if Mr Greaney QC were right that the finding at [26] that the lack of integrity was of limited extent was a reference back to the fact that overcharging was limited to clinical negligence cases, this whole passage in the evaluation of the SDT as to the appropriate sanction does contain a miscalibration of the seriousness of the misconduct and downplays significantly its seriousness. On the basis of the strong and critical findings the SDT had made earlier in its judgment about the knowledge and deliberate misconduct of Mr Good, such as his deliberate setting of artificially high rates pursuant to a planned policy to seek inflated costs, his deliberate disregard of Practice Directions and decisions of costs judges and his knowledge that the rates and the success fee were

excessive/grossly excessive, the SDT should have concluded that the lack of integrity was particularly grave.

79. Second, whilst it is correct that *Emeana* is not authority for the proposition that whenever the SDT makes a finding of lack of integrity the appropriate sanction is striking off, it is authority for the proposition that where the lack of integrity is particularly serious, as it is in the present case, the reputation of the profession is seriously undermined by the imposition of fines and that reputation will only be properly protected in such a case by the sanction of striking off: see per Moses LJ at [28] and [35]. Accordingly the sanction imposed by the SDT here of a fine was wrong in principle and excessively lenient and the sanction should have been striking off. That conclusion is not altered by the mitigation available to Mr Good to which I referred at [21] to [23] above.

80. Third, one of the reasons why, in my judgment, Mr Good's misconduct was particularly serious, even if he was not dishonest, is that it is of paramount importance that the public and other members of the profession are able to have complete trust in a solicitor when it comes to statements or Bills of costs. Were it otherwise there would always be a risk that the paying party on a Bill, relying on the integrity of the solicitor rendering the Bill, would settle a Bill which was in fact excessive or grossly excessive, to the knowledge of the solicitor rendering the Bill. Contrary to what the SDT appears to have thought at [26], I consider that risk was always present in these cases.

81. The serious lack of integrity demonstrated by Mr Good in relation to the Bills of Costs he rendered completely undermined any such trust. In my judgment, in those circumstances, the maintenance of the reputation of the profession and public confidence in it, which Sir Thomas Bingham MR in *Bolton* described as the most fundamental purpose of the sanction for misconduct, require that the sanction imposed in the present case be the most serious one of striking off. I do not consider that the public would regard it as acceptable that someone who breached that trust in the way in which Mr Good did should be allowed to act as a solicitor.

82. In those circumstances, if it were necessary to decide Ground 2, I would allow the appeal on that Ground as well.

Conclusion

83. For the reasons given in this judgment I would allow the appeal of the SRA on Ground 1 and substitute for the finding in [20.80] that Mr Good was not dishonest a finding that he was dishonest and that Allegation 2 against him was proved beyond reasonable doubt. I would therefore quash the sanction of a £30,000 fine and substitute for it the sanction that Mr Good be struck off the Roll of Solicitors. In the circumstances, it is not necessary to decide Ground 2, but were it necessary I would allow the appeal on that ground and quash the sanction of the fine and substitute for it the sanction that Mr Good be struck off the Roll of Solicitors.

Mrs Justice Carr

84. I agree.