

ENGLAND AND WALES / JUDGMENT

Roberts v Hook & Anor [2013] EWHC 1349 (Admin) (13 March 2013)

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Case No. CO/1526/2012

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

In the Matter of the Solicitors Act 1974

Royal Courts of Justice

Strand

London WC2A 2LL

13 March 2013

B e f o r e :

HIS HONOUR ANTHONY THORNTON QC

(sitting as a deputy judge of the High Court)

Between:

Brian Roberts

Appellant

v

(1) David John Hook

(2) Jacqueline Ann Gross

Respondents

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165 Fleet Street London EC4A 2DY

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(Official Shorthand Writers to the Court)

The Claimant appeared in person

Mr P Parker (instructed by Clyde & Co LLP) appeared on behalf of the Respondents

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THE DEPUTY JUDGE

: This is an appeal brought by Mr Brian Roberts against a determination of the Solicitors Disciplinary Tribunal in relation to a complaint he had made against the two respondents who are solicitors. The determination was made following a consideration of the papers and was promulgated in its order of 30 January 2012. I will first briefly set the scene as to what this appeal is about and how it comes about.

Procedural Questions

The Administrative Court, in this appeal, is not engaged in its judicial review function but by its function as the branch of the High Court to which are assigned the now relatively limited number of statutory appeals from tribunals. The Solicitors Disciplinary Tribunal is one such tribunal and it is not part of the tribunal arrangements which are now part of the Court Service and the jurisdiction of the Court is provided for by section 49 of the Solicitors Act 1974. The particular appeal that I am concerned with is an appeal of a type which rarely comes before this court but that does not in any way reduce the significance to Mr Roberts and possibly to the wider profession of this particular avenue of appeal.

Mr Roberts has had a very long running dispute about the quality of the service that he and his wife received from a firm of solicitors that Mr David Hook and Ms Jacqueline Goss were partners of at the material time and may, for all I know, still remain partners of. The firm is Hook & Partners and they was based on Canvey Island in Essex.

This particular aspect of the dispute was initiated by an application made by Mr Roberts to the Tribunal making a complaint against the two respondents. This was the second application against these two partners of Hook & Co, the first having been made in 2010. The Tribunal has relatively informal rules of procedure that allow the application to be made in the form of a letter setting out very the complaint being made. In this case, this was done by Mr Roberts setting out in a letter his complaint alleging very serious breaches of various provisions of the solicitors' professional rules of conduct. I say serious because if the allegations were to be found to be established, it would result in findings of dishonesty against both partners. It is now well known how serious and significant findings of dishonesty against a solicitor are, particularly when these are made in connection with their practice as solicitors under the aegis of the Law Society.

The application - as it is called when lodged with the Law Society in the informal form that I have indicated - is subject to a screening process because a significant number of complaints or applications are found to have no substance or basis and are appropriate for being knocked out at an early stage. That screening process involves the papers being put before a solicitor member of the Tribunal. In modern court parlance, that member would be described as the case or directions member. In the relevant Rules, that person is described as the solicitor member. The purpose of placing the papers before a solicitor member is to screen out applications where there is no case to answer. Rule 6 provides that the application made under Rule 5 (that is an application in respect of any allegation or complaint made in respect of a solicitor) should be considered by a solicitor member who shall certify whether there is a case to answer. If the solicitor member is minded not to certify that there is a case to answer or if, in his opinion, the case is one of doubt or difficulty, the application must be passed on for consideration by a panel of three members of the Tribunal, at least one of whom shall be a solicitor member and one a lay member. It is that second limb of the rule that applied in this case. We do not know the basis upon which the solicitor member referred the application to a panel of three but the panel of three, in the decision which is now the subject of this appeal, has determined in its order that the Tribunal found that there was no case to answer so that the application was dismissed.

Nowadays, it is unusual for a judge or tribunal, particularly when subject to the supervision of the Administrative Court exercising an appellate or a review function, to make any decision without giving any reasons. However, it is evidently the practice of a panel making a Rule 5 determination to do so without giving any reasons even though it is a panel which, given its statutory foundation, is capable of being regarded as one to which Article 6 applies. It may be, this was not investigated at the hearing, that by virtue of its status as a panel of a domestic professional tribunal, its deliberations do not engage Article 6 with the consequence that there is an unlimited right of appeal to the Administrative Court.

Even if in strict law the panel is not required to give reasons - and even if Article 6 is not applicable, the common law requirement of fairness would usually require brief reasons, it is these days ordinarily the practice that any decision-making body gives brief reasons for the result it has arrived at. It is to be hoped that the Tribunal will look again at its practice when dismissing an application on the grounds of no case to answer and for the future consider giving in all but the most vexatious of cases, brief reasons for dismissing the application.

I consider that Mr Roberts is entitled to have from this court a concise summary of the reasons for the decision that I am about to give.

Mr Roberts is dissatisfied with the Tribunal's decision hence his appeal to this court and his appeal is brought under section 49 of the Solicitors Act. Two further questions, or possibly three, arise as a result of that statutory appeal process. The first arises out the section 49(1) which provides that an appeal from a tribunal shall lie to the High Court. I raise the question as to what is the width of that apparently unlimited right of appeal from any decision of the tribunal to the High Court. Important as this case is to Mr Roberts, and to Mrs Roberts who was also present today at the hearing of this appeal, it is a procedural appeal involving the exercise of discretion and for which, for the reasons I have already given, the current practice appears to be that no reasons shall be provided. I can think of no other tribunal where there is an unlimited right of appeal on fact in law on any question whether concerned with the merits or with procedure without the need to obtain permission even though the decision under appeal is of a purely procedural character. I should have thought that the Rules Committee would be entitled - and if not the Rules Committee, the body responsible for making the relevant disciplinary rules - would be entitled to reconsider the absence of any screening process and to impose a filter as is now common practice in the tribunal system and in the statutory appeal system whereby an appeal may only be brought with permission of the tribunal below or as a result of permission being granted on paper in this court.

However, there seems to be no such filter at present and therefore Mr Roberts is entitled to bring his appeal. What is the basis upon which he can appeal? Again, that is not entirely clear. Section 49(4) provides that the High Court shall have power to make such order on an appeal under this section as it may think fit. I ask rhetorically, does that mean, in 2013, what it may have meant in 1974 when the Solicitors Act was promulgated, namely an unfettered right to reverse the order below and to make such order as I see fit? Is there not possibly a margin of appreciation that should be considered as being applicable to discretionary procedural decision of the tribunal below, as would be ordinarily the case in procedural appeals in the court and tribunal system generally. Ought not an expert body making determinations that relate to matters of fact and of professional judgment and professional conduct be granted a high degree of appreciation? These are rhetorical questions because it does not seem to me that under the present rule provided for by section 49(4), it is open to me to impose any

limitations on the right of appeal. But it does seem to me that that, too, is a matter that could be usefully considered by the appropriate rule-making body.

This is a statutory appeal and CPR part 52 applies to the procedure that I must follow in this court. It does seem to me that in those circumstances the appeal powers that I am provided with must be applied in accordance with the overriding objective and the general principle. In those circumstances, a court on an appeal from the Tribunal should make such order as it sees fit and should only make such order as it sees meets the justice of the case, taking account of the various factors such as economy, speed and the appropriate use of court resources that apply as identified by the overriding objective.

A further possibly rather less significant matter arises from what I am informed by the court lawyer who prepared the conventional lawyers note for the judge hearing this court that the ordinary practice as provided for by section 49(5)(a) is that the court is not required to hear the appeal and may dispose of it after a paper consideration at which presumably the parties are entitled to provide written submissions for similar written arguments.

Mr Paul Parker, who has appeared for the defendants, was instructed that it was the understanding of the defendant's solicitor that a procedural order had been made by a judge of this court directing an oral hearing. I asked the associate to search the log and she informs me that there is no reference in the log to such an order and neither party today actually has a copy of it and may not have had sight of it. Again, this does not affect this appeal directly, but I draw that to the attention of the profession so that, in the limited number of cases where an appeal of this kind is brought from the Tribunal, the court and the parties will be aware that the consideration of the appeal should be in conformity with the overriding objective and the appeal should be dealt with on paper and not at an oral hearing.

Appeal

Putting those procedural points to one side, I now turn to Mr Roberts' appeal. The facts are inevitably somewhat complex, both procedurally and in relation to the events that give rise to his complaints. One of the reasons for that the dispute is of some antiquity. Mr Roberts' complaints involve acts and advice-giving and alleged failures to act in the period from July to October 1999. It is Mr Roberts' belief, and he to some extent founds his complaint on this belief, that three attendance notes, which are the core basis for his current complaints, that appear to have been made on various dates in that period, have been manufactured or dishonestly produced some three years or more later for the ulterior purpose of interfering with or frustrating the resolution of his genuine complaints and possible professional negligence claims that he was contemplating bringing against the firm.

In 1999, Mr and Mrs Roberts, who had come down from Livingstone where they had been living for some years to live in the south of England, were wishing to sell a second property that they owned because it was a tenanted property and they were finding it difficult to meet financially the obligations of running two homes. Since the property was tenanted, they clearly needed to exercise the rights that they had under the lease to terminate the tenancy by serving the appropriate notice to quit on the tenant. Furthermore, since they were hoping to find a buyer, they needed a conveyancing solicitor to undertake their side of the transaction that they were

hoping would take place not long after they instructed Hook & Co in July 1999.

There is clearly still a dispute as to the width of the retainer that Mr and Mrs Roberts provided to the firm. They contend that not only were they retaining the firm to undertake conveyancing services in connection with this house, but that the firm had at least some additional obligations with regard to the obtaining of vacant possession. The firm on the other hand contends that there were two quite separate retainers, they only had the conveyancing side of it and that obtaining vacant possession of the property did not come within the conveyancing retainer that they accepted that they had. It may be that that disagreement as to the width of their retainer underlies the dispute that ultimately blew up between Mr and Mrs Roberts, their former clients by this stage, and the firm. It is a still somewhat unclear area as to precisely what it is said the firm did which gave rise to the original complaint to the Law Society's disciplinary process.

In very general terms, the present complaint arises because Mr Roberts is adamantly clear in his mind that the three attendance notes that I have referred to were manufactured. They may not have been strictly forged, but he certainly contends that there are passages in these attendance notes which were prepared long after the meetings or conversations that they purport to provide a summary of which were prepared for an ulterior motive of supporting a misleading and possibly dishonest explanation for the conduct that was being complained about. Whatever the precise analysis of the conduct Mr Roberts complains about, it involves, if established, conduct of very serious dishonesty in relation to the production and presentation of and reliance upon these attendance notes.

It seems that at least part of the complaint now against Mr Hook and possibly Ms Goss is not that they are to be regarded as having been dishonest themselves, but are being complained about as principals in the firm. In other words, they had some form of vicarious liability to take the rap, if I can use a colloquialism, for the dishonest behaviour of other members of the firm. But I do not understand Mr Roberts to be confining his complaints about their conduct to that quasi-vicarious liability basis. Certainly, he told me with regard to Mr Hook, he considers that there are elements of actual dishonesty in some of the charges that he envisaged being brought against him.

There is of course a yet further gloss, as those who practice in the civil courts in the field of professional negligence will be aware of, that there are different shades of dishonesty, particularly if misrepresentation is being alleged. Since it is alleged that these attendance notes ought to summarise statements that were made by or to both Mr and Mrs Roberts on three separate occasions, the complex myriad of grades of fraudulent misrepresentation may also feature if this case was ever to get to a hearing.

However the precise complaints that are being made are put, it can be seen that these complaints raise matters which, if made out, would have very serious consequences to both Mr Hook and Ms Goss. No solicitor would be allowed to practice after a finding of dishonesty that involved the manufacturing of evidence and a deliberate course of conduct intending to deceive former clients. Such professional misconduct is at the top end of the types of dishonesty that the Tribunal regrettably has at times to be concerned with.

I do regard it as of some significance that it is not possible, as I see it at the moment, to identify clearly precisely what it is that Mr Hook and Ms Goss are said to have done or failed to do and the state of mind with which it is said that they did those things. Equally, it is not clear what evidence, if any, is available to seek to establish the relevant states of mind of Mr Hook and Ms Goss. As is well known, a person's state of mind is one of the hardest things to establish since only circumstantial evidence is ordinarily available in order to persuade a Tribunal that a dishonest state of mind prevailed.

The problems in this case however are further compounded very significantly by two further matters. The first is that a very appreciable period of time has elapsed since the events in question took place. There were a number of different proceedings before other elements of the solicitors' practice standards process. It would appear that Mr Roberts' early skirmishes in the Solicitors' complaints process, which were not successful so far as he was concerned, allied to what he described as unsuccessful attempts to bring a professional negligence claim for the financial loss that he and Mrs Roberts allegedly suffered as a result of the delayed sale of their property, had been concluded in about 2002. For reasons that were not explained, the first of the two disciplinary complaints made by Mr Roberts did not surface until 2010, nearly eight years later. In the first set of complaints, it is clear that very similar factual allegations of dishonesty, of tampering with attendance notes and of attempts to miscarry Tribunal justice, were made against Mr Hook and Ms Goss. The same procedure occurred on that occasion. The Tribunal, by a panel of three and without an oral hearing or reasons, found that there was no case to answer. Clearly, we do not know precisely why the panel found there was no case to answer. Was it because the complaints were not fully or adequately particularised? Was it because the panel concluded that there was no evidence available that it had seen which could enable the tribunal fairly to make a finding of dishonesty? Was it because of the length of time that had occurred? Was it because there was no evidence of professional misconduct or of a dishonest state of mind? Or was it a combination of all or some of those matters? We will only be speculating if we seek to answer that question.

However, the matter then went on appeal and Calvert-Smith J, on paper, heard, in a technical sense, and dismissed, the appeal. As is to be expected from that Judge, his reasons were clear and succinct. He essentially found that there was no evidence that he had seen that could found, let alone establish, any dishonesty whether of the kind being put forward or of any other kind. He also dismissed the appeal on the ground that, despite Mr Hook's contentions, there was no obligation to hold a hearing and to require the respondents to attend to be cross-examined although he did not go so far as to say that the rules and practice had the effect that there never could be a hearing.

In the case that Calvert-Smith J was concerned with, it would appear that Mr Roberts had not applied for a hearing and therefore it was no longer open for him to contend that he should have had a hearing. But the Judge also found:

"The appellant's real ground for now wanting witnesses called is in the hope that one of them may incriminate themselves in such fabrication. It is not a good reason for calling witness that you hope that one of them will create a case for you."

One reason for Calvert-Smith J dismissing Mr Hook's appeal was that there was no evidence before him that any fabrication had taken place. The judge concluded that, in those circumstances, it was not an appropriate or fair way to proceed as Mr Hook contended the Tribunal should have proceeded, namely to hold an oral hearing and require the two respondents to attend to be cross-examined. The judge does not use the expression abuse of process to describe that proposed procedure but I read that particular element of his decision as getting pretty close to a finding that it would be an abuse, or at any rate an injustice and an unfairness, in hearing Mr Hook's disciplinary complaint of fraudulent and dishonest behaviour to create a case by a procedural manoeuvre which required the solicitors concerned giving evidence at a procedural hearing with the possible effect that they, to put it crudely, shot themselves.

Mr Roberts has now returned to the fray. He tells me that in the intervening period between 3 February 2011 - the date of Calvert-Smith J's dismissal order and a year later when he relaunched the case with this second complaint - he had done significant research on the internet and had discovered at least 50 relevant decisions of the disciplinary Tribunal which are now placed on its website for the edification and instruction of the public as to how it goes about his work. In the light of that and further research into the rules of conduct, Mr Roberts returned to the fray. We are now in the 13th year since the dispute arose and, based on the same allegations of dishonesty, he now seeks to remake his case against Mr Hook and Ms Goss. It is clearly a more extensive case because it does involve, as I have already indicated, elements of what I had called quasi-vicarious liability arising from various rules associated with the obligations of a partner to take responsibility for the actions and omissions of salaried solicitors and other employed members of the firm.

To that extent, and maybe with regard to other detail, Mr Roberts would contend that these new proceedings are not mirror images of the old. I accept that that is the case and indeed so does Mr Parker, although much of his acceptance was based on the fact that some allegations in the first set of proceedings have been dropped.

But of course an objection of what I might loosely call double jeopardy, that is to say bringing a second action or claim in circumstances where its subject matter could and should or has been resolved in earlier proceedings, does not require there to be a minute investigation followed by a finding of twinning between the old and the new proceedings. In this case, the twins are not identical but they are certainly twins as I see it because, as I have already stated, the foundation of the claim that I am concerned with is the same dishonesty and the same attendance notes being allegedly fabricated as appears to have formed the foundation of the first set of proceedings.

As I have also stated, the fate of the second set of proceedings mirrored the fate of the earlier set: they were referred to the panel, a panel of three was assembled at a meeting and not a hearing, the panel concluded that there was no case to answer, they therefore declined to certify that there was a case and they gave no reasons to support the order that they made. Mr Roberts again has exercised his unlimited right of appeal and for the first time changed it to an oral hearing rather than it being done on paper.

I regret to say, so far as Mr and Mrs Roberts are concerned, that I see no alternative but to dismiss the appeal. Briefly for these four interlocking reasons which, overall, seem to me to quite clearly, indeed, overwhelmingly, render this appeal and the underlying proceedings as hopeless and an misuse of the Tribunal's procedure. I am not going to use the Victorian language of abuse of process. There is no abuse in what Mr and Mrs Roberts have done. They feel genuinely aggrieved at the treatment that they received and that they have suffered. Had these circumstances that I am about to summarise not pertained to their case, it may well be that they would have had a full and fair hearing, but I do not propose to speculate in fairness to all parties, including Mr Hook and Ms Goss, what might have happened in that hypothetical situation ten or more years ago had it taken place then.

I approach the case, as I have indicated, on the basis of what is fair and just with the overriding objective and the general principle governing and shaping that overall conclusion. I conclude that it is not fair, and it is certainly unjust, if these proceedings are allowed to continue.

The four interlocking reasons why I have reached this conclusion, I have already covered, but I will summarise them. First of all, the general allegations of dishonesty are far too vague to allow a fair trial of those allegations involving professional solicitors of apparently high standing whose livelihood would be genuinely at stake if the proceedings were to continue to a decision.

Secondly, such evidence as I have seen, which is almost the same as the evidence that Calvert-Smith J saw, satisfies me that at present Mr Roberts does not have the basis of establishing any form of state of mind which is anywhere near being dishonest. I can only go, as Calvert-Smith J could only go, by the evidence that is before us on the day. It is not for us to speculate on what evidence might turn up and it is certainly not fair or just to speculate as to what might turn up if what I can only describe as impermissible procedural manoeuvres were adopted which involved the summoning of the respondents to a procedural hearing in the nature of inquisition aimed at trying to tease out a case of dishonesty by cross-examination.

Mr Roberts understood incorrectly, and I think he accepts that his understanding must have been incorrect, but he perfectly fairly reached an understanding from his internet researches that it would be possible to make good a claim for, and a finding of, dishonesty by two related means. The first by serving a civil evidence act notice under the two civil evidence acts in relation to three attendance notes. Allied to that, serving a notice to admit facts on Mr Hook and Ms Goss. It is not necessary to analyse why, both procedurally and in relation to the substantive law of evidence, either or both of those procedural steps are misconceived in relation to an attempt to obtain evidence or further evidence to support a claim for dishonesty. What I am able to do

unhesitatingly is to find that, insofar as those steps have any procedural effect at all, they actually have the reverse effect to that contended for by Mr Roberts. Certainly, so far as the civil evidence act notices are concerned, they have potentially created a situation where the contents of the attendance notes will prove themselves as a result of the service of the attendance notes which is of course not what Mr Roberts is contending. He is contending that these attendance notes were not, as they seem to be, a genuine work product following meetings and telephone conversations in the 1999 period, but were manufactured to appear as if what they were from that period although they were actually created in about 2002. That does show that there is at the moment inadequate evidence to even establish that a pleading of dishonesty is present in this case.

The third ground is the delay that I have referred to. There may be, I am sure there are, very good and understandable reasons for this very lengthy period of delay. But it is not in conformity with the overriding objective to decide a case on the basis that allegations of fraud may go to trial some 14 or 15 years after the events giving rise to the fraud took place unless there are exceptional reasons that justify the period of delay. Although Mr Roberts clearly had good personal reasons, largely it would seem health reasons for at least part of the period, that does not neutralise the incontrovertible fact that these claims are far too stale to be allowed an airing at a full hearing.

Finally, there is the fact that this action is, when all is said and done, an attempted re-run of the action that Calvert-Smith J was concerned with only two years ago. There are, again, I am sure, very good reasons why Mr Roberts' full case was not deployed at the previous hearing before Calvert-Smith J or at the previous meeting of the Tribunal, but that is not sufficient to enable a litigant to have a rerun; indeed, quite the reverse. The very object of the rules that make it very difficult for parties to re-present their cases, or to bring forward a case that could but was not brought forward previously as part of an earlier case, the very reason for that is to prevent the perceived injustice of parties being hounded, by action after action, by a disgruntled litigant who wishes by whatever means to have a replay in order to make good perceived evidential failings or other difficulties that had occurred to that litigant after the first leg had been lost.

I do not myself gradate these four strands. They seem to me, in the holistic approach that we now adopt to case management and the overriding objective, to be closely interrelated. If one or two of those strands were not present, would I still be dismissing the appeal? I do not propose to even attempt an answer to that question. What I can and should do, in justice to the case, is to stand back and look at all those reasons. Having done so, I am unhesitatingly of the view that the actions were correctly found to be ones where there was no case to answer before the tribunal, albeit regrettably, no reasons were given. Had they given reasons, particularly if the reasons were along the lines I have just elaborated on, it may be that this appeal would not have been necessary at all. But they did not and I have. The conclusion therefore is that the appeal is dismissed.

MR PARKER: My Lord, I ask you to dismiss the appeal and I ask your Lordship to do so with costs. I have an application of costs to make. A schedule has been served. I don't know whether one has been filed.

THE DEPUTY JUDGE: I have one. Has Mr Roberts been served with this?

MR PARKER: He was served with that, I am instructed, on Monday evening.

THE CLAIMANT: I have been served but I can't afford to pay it so I am protesting. I only get £50 a week. The bank want to repossess my house so I am finished in England.

THE DEPUTY JUDGE: Yes. That apart, are you asking me to summarily assess this? I suppose the appeal has lasted for less than a day. Would the Court of Appeal engage in a summary assessment if this were a second tier appeal?

MR PARKER: Sometimes they do and sometimes they do not, there's no hard and fast rule, but I do ask your Lordship to do so. This is an appeal which has been going on for a while in as much as the bulk of the work was done for the first three or so months of last year and although there has been correspondence between the parties until we bring ourselves to this date. My Lord sees that, in fact, the reality is that, notwithstanding that there's a fairly hefty bundle and some detailed facts in this appeal and your Lordship will have seen that my skeleton argument was, for better or for worse not short, the sums are not exorbitant. The rates being applied by the solicitors are very modest for matters of this type. My work, your Lordship sees, which accounts for about half the schedule, reflects the fact that there was a chunk of work done last year and then a fair bit of work to get the matter back up with a year's break between for this hearing. So, my Lord, that in essence is an explanation of the figures and how they break.

I do ask your Lordship to make an assessment today. Not only because this is a less than a day case but also the reality is that all parties would I am sure dearly like at this stage to see finality and for all disputes in between Mr Roberts and my clients of whatever nature to come to an end once and for all.

There was one other matter which I should have asked your Lordship to record but I will come back to that after the matter of costs.

THE DEPUTY JUDGE: Yes. Mr Roberts, you have brought this, as you are entitled to, but regrettably I am sure from your point of view you have lost it. The ordinary consequences are that the respondents are entitled to their costs. If you cannot afford to pay them that is not a matter that I can deal with. If the claimants want to enforce an order for costs and you cannot afford to pay well then they must take whatever remedies they want in other courts in order to try and charge property or whatever other means. If you cannot afford to pay you can ask to pay in instalments. If you cannot afford to pay those, well, that is a feature nothing to do with me. But the bottom line is, you have come here with your appeal, it has not succeeded. Subject to assessing a reasonable figure they are entitled to their costs. You will no doubt feel that it does seem a very large sum. A figure of £13,067 excluding VAT. So presumably the overall bill is another £4,000.

MR PARKER: No, it won't be. The VAT has been excluded because it is not claimed as part of this application for costs. The reason for that is that, of course, the costs bill is funded by an insurance company who defray the defence costs. They are not subject to the VAT rules. My solicitors and I, of course, are obliged to charge VAT. The lay clients pick up that VAT bill but reclaim it as a business expense so it disappears.

THE DEPUTY JUDGE: Yes, I understand. Mr Roberts is not himself having to contemplate VAT on top of whatever.

MR PARKER: That is right, my Lord.

THE DEPUTY JUDGE: I do have a number of options open to me. I do not feel in the time available and in view of the complexity of this that I really have the means to undertake a fair assessment of costs. What I am minded to do is to direct that the costs, if they cannot be agreed out of court, must be the subject of detailed assessment and to make an interim payment order in the sum of £5,000.

MR PARKER: My Lord, I am obliged. I did say that there was one other matter that I wanted to ask your Lordship to record and your Lordship will have noted from the final paragraph in my skeleton argument what that was.

THE DEPUTY JUDGE: What was the form of words?

MR PARKER: Totally without merit.

THE DEPUTY JUDGE: Totally without merit. Mr Roberts, this is a procedural order that is made. If the court considers that there was no basis for the claim that was brought, and in view of the fact that this was the second claim which you have brought within a period of two years, I am really obliged to certify that your claim today was totally without merit for the procedural reasons that I have given you, or the order would simply say totally without merit.

There are not any practical consequences of that unless you decided you wanted to have a third go in the future because if that is the case it would be open to the solicitors to apply for a civil restraint order which would mean that you could not start further proceedings unless you got the express permission of the court to do it. But if you do not contemplate yet further proceedings against these solicitors, then the fact that I have certified that this claim was totally without merit will simply be a historical accident.

MR PARKER: My Lord, in fact, the CPR do require your Lordship to consider whether a civil restraint order should be made now, having declared the matter totally without merit, but I don't ask your Lordship to --

THE DEPUTY JUDGE: I do not think you would, I am grateful. I may have slightly misstated the rule but it is not difficult today. Do you want the papers back?

THE CLAIMANT: Yes please.

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