

JERSEY / JUDGMENT

Sinel and Chiddicks -v- AG

[2015] JCA 192 (07 October 2015)

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Court of Appeal 7 October 2015 Before : John Martin, Q. C., President; Nigel Pleming, Q. C., and; Sir Hugh Bennett. Philip Cowan Sinel (1 st Appellant) Steven Michael James Chiddicks (2 nd Appellant) -v- The Attorney General (Representor) Appeal against the decision of the Royal Court on 27 th February, 2015, whereby it was ordered that the Appellants be suspended from practising as advocates for varying amounts of time and that they pay £10,000 towards the Representor's costs. Advocate J. D. Kelleher for the Appellants. Advocate H. Sharp, Q. C., for the Representor.

JUDGMENT

THE president, MARTIN JA: 1. This is the judgment of the Court.

Introduction

- On 27 February, 2015, the Royal Court (Beloff, Commissioner and Jurats) upheld a complaint of professional misconduct against two Advocates, the present appellants Messrs Sinel and Chiddicks. The misconduct alleged was deliberately misleading the Court of Appeal. The complaint had been referred to the Royal Court by the Attorney General, who is the respondent to this appeal. The Royal Court suspended both appellants from practice, Advocate Sinel for a period of four months and Advocate Chiddicks for a period of two months. They now appeal to this court.

Background

- Advocate Sinel is the principal of the firm of Sinels Advocates ("Sinels"). Advocate Chiddicks is employed by Sinels as a senior associate. At all material times, Sinels have acted as the Jersey lawyers for Leeds United FC ("Leeds") in two relevant pieces of litigation. In the first, begun in May 2005, Leeds claimed £190,400 in debt from a company called Admatch. Those proceedings were resolved in Leeds' favour on 19 May, 2011. In the meantime, on 15 December, 2010, Leeds had started the second set of proceedings. The defendants to those proceedings were Admatch's owner (a Mr Weston) and a Mr Levi. The claim against Mr Weston and Mr Levi was to recover sums of money said to have been paid to them by Admatch in breach of trust in which it was alleged they had participated dishonestly and in

breach of fiduciary duty. 4. After resolution of the first set of proceedings, Mr Weston and Mr Levi applied to the Royal Court for a stay of the second set of proceedings on the ground that England, not Jersey, was the appropriate forum. The Royal Court acceded to that application on 28 September, 2011. 5. Leeds, through Sinels, sought to appeal against the Royal Court's order. A notice of appeal was filed on 20 October, 2011, and contentions filed on 17 November, 2011. Each of these was signed by Advocate Chiddicks. Among other things, they raised a point ("the limitation point") that had not been taken before the Royal Court, namely that some of the claims made in the proceedings might be time barred in England but not in Jersey. If that were so, it would be a factor supporting the suggestion that Jersey was the more appropriate forum. 6. On 28 October, 2011, shortly after the notice of appeal was filed in Jersey, Leeds commenced - by English solicitors - new proceedings in England against Mr Weston and Mr Levi. The claim form

- known in these proceedings as "the protective writ" - was issued, but not immediately served. It stated among other things that the claims made in it were based on the facts and matters alleged in the second Jersey proceedings; and it referred to the stay of those proceedings granted by the Royal Court and the appeal against the stay, and stated that the claim form was without prejudice both to Leeds' contention that Jersey was the appropriate forum and to the appeal. 7. The purpose and effect of the protective writ was to stop time running in respect of any cause of action that was not already statute barred at the date of issue. That effect would continue until the last date for service of the claim form, which was 28 February, 2012, and thereafter if the claim form had been served on or before that date. The Royal Court held that this was known to both appellants. 8. A deliberate decision was made by Leeds to delay service of the protective writ. That was partly to avoid giving to the defendants in the second Jersey proceedings an opportunity to comment that Leeds had started proceedings in the very jurisdiction that it said was inappropriate, and partly to avoid additional expense. A deliberate decision was also made not to notify Mr Weston and Mr Levi or their lawyers of the issue of the protective writ. This was because, had Mr Weston and Mr Levi known of the existence of the new English proceedings, they could have called for service of the claim form and full particulars of the claim: Civil Procedure Rules 1988 r7.7. Again, the Royal Court decided that these matters were known to both appellants. 9. The existence of the protective writ, and the non-disclosure of its existence by the appellants, lies at the heart of the complaint. 10. At much the same time as the protective writ was issued, Sinels negotiated a standstill agreement with the Jersey lawyers acting for Mr Weston and Mr Levi - Baker & Partners. By that agreement, Mr Weston and Mr Levi agreed that the time between the commencement of the Jersey proceedings and the delivery of the Court of Appeal's judgment would be disregarded for limitation purposes. There was some doubt in the Leeds camp as to the efficacy of that agreement. Both appellants knew of that doubt. 11. Leeds' application for leave to appeal against the stay granted by the Royal Court came before McNeill JA on 22 November, 2011. He referred it to the full Court of Appeal. 12. The hearing of the application for leave before the full Court of Appeal (Dame Heather Steel, President, Jones & McNeill JJA) took place on 23 and 24 January, 2012, (some

three weeks before the last date for service of the protective writ). The case for Leeds was presented by Advocate Sinel. Although the limitation point had been raised in the notice of appeal, it was not dealt with in Advocate Sinel's oral submissions - but it was not formally abandoned. However, at the end of the submissions Advocate Sinel enquired when the Court of Appeal might be in a position to deliver its judgment. According to the transcript, the following exchanges then occurred. "ADVOCATE SINEL: There are at the back of mind some complex limitation questions, so I would only say I hope it will not be too long, I...

PRESIDENT: You want to address us on that? ADVOCATE SINEL: Well, it, we've, we've sort of done it to death in correspondence as the Court has seen in relation to, to limitation but we did, there are some complex equations in relation to whether Jersey law would apply to a process in England and so on and so forth and I'm aware that if I could put <indistinct> it's got a red flag on it from my point of view. So if there was going to be a great delay then I wouldn't.... PRESIDENT: Well we sincerely hope there won't be a great delay but Mr Redgrave, well what are, what is the time constraint? ADVOCATE REDGRAVE: There's no time restraint we, I believe that we have reached this measure of agreement that the Plaintiff will not seek to gain any advantage in relation to the time taken for this appeal. So once this appeal is concluded then time may start running again but that's the agreement we've reached and I, it's not really a matter for this Court with respect, I think what we've agreed but I can assure this Court and it's on the record if there's a delay in the issuing of judgment that will not be something that we will seek to take advantage of. PRESIDENT: Yes. JONES JA: What, what's the nature of the problem? ADVOCATE REDGRAVE: We don't really understand the problem it's been raised by the Plaintiff's they have suggest that there may be some disadvantage to them in relation to limitation. JONES JA: What in England? ADVOCATE REDGRAVE: Yes, but they haven't told us what it is and we've said that we won't seek to take advantage of any such ADVOCATE SINEL: In, in broad terms, the difference is this. In Jersey fraud is imprescriptible(sic), possible 30 year limit, contract is 10. In England there are 6 year periods for fraud and contract and it's, it's a different scenario so it's something I simply have my eye on and I'm grateful to my learned friend for his assurances. (Discussion between Judges). PRESIDENT: We're, we're considering together as you may, may have heard whether in fact we invite you both to make some submissions on the time constraint. Quite clearly if this matter is to go to England it is important that there is no limitation period which is going to affect the course of these proceedings if that were to be our decision. Can you provide us with some written contentions? How soon? ADVOCATE SINEL: Early next week I would have thought. Because, I mean my hesitation is because it involves English Law and I have to get help on that. PRESIDENT: Yes. ADVOCATE REDGRAVE: Well certainly we can assist, we have said in correspondence that we won't seek to derive any advantage from, I don't want to get the words wrong, but it's been dealt with in correspondence PRESIDENT: Yes. ADVOCATE REDGRAVE: and I'm sure it can be, if Mr Sinel will elucidate what the history specifically is we'll be able to deal with it more clearly. JONES JA: Well, just so that you understand, the, the, the possible concern that we have it is that it may be the case in English law that a party can't waive a limitation period. In other words it doesn't matter, it might not matter that one party says well more than 6 years have expired but we're

not going to take any point. The Court may itself take the point that if the right is extinguished there's nothing it can do. So that, that's something you might want to, to apply your minds to. ADVOCATE SINEL: I, I would indeed and I did, it's a minefield in relation to a case of this complexity as to what's going to apply where. It's very complicated. Thank you for the <indistinct>, thank you very much. PRESIDENT: Well if, if we can have those contentions Advocate Sinel by early next week I anticipate Mr Redgrave that you may not do, put anything in writing for the Court. ADVOCATE REDGRAVE: Well I suppose I should wait to see what comes and then deal with it as quickly as possible. PRESIDENT: Would 7 days be appropriate for an answer? ADVOCATE REDGRAVE: Yes. PRESIDENT: Yes." It is accepted by Advocate Sinel that, as appears from that exchange, he made no mention of the protective writ. 13. Leeds' supplemental submissions were lodged on 6 February, 2012. They appeared to be primarily designed to revive the limitation point as a matter of substance. They contain three passages of relevance (emphasis added in each case):- "Thirdly, the position if fresh process were to be initiated in England is highly complex and would likely lead to the need for adduction through experts of evidence as to Jersey law both substantially and as to prescription (paragraph 13); It is not know[n] what, if any, defence by way of limitation the Respondents may seek to raise if proceedings are commenced in England (paragraph 35); If the appellant were to initiate first process in England, they may be faced with complex prescriptive issues which do not apply to the present process (paragraph 49)." There can be no question that the emphasised words unambiguously imply that there are no existing proceedings in England, and are therefore misleading. 14. The Royal Court found that both appellants had contributed to this document. We were given some information about its genesis. It appears that an early draft was sent by Sinels to English counsel for his comments. He responded on 1 February, 2012, by email to Advocate Sinel, copied to Advocate Chiddicks. The draft sent to counsel contained the quoted statement from paragraph 35, and he did not amend it. The draft did not contain either of the statements quoted above from paragraphs 13 and 49 of the final document, and counsel did not add them. We were not told how those statements came to be in the final document. 15. On 15 February, 2012, Sinels wrote a letter to the Court of Appeal asking when a decision might be expected. The letter was signed by Advocate Chiddicks. It referred to the issues on which the Court had asked for supplemental submissions, and stated " One of the issues related to matters of limitation if the Jersey proceedings were stayed and proceedings were to be commenced in England " (emphasis again added). The letter also said:- "Our client has been trying to secure its position as best it can, without prejudice to the merits of its appeal and whilst seeking to minimise the costs involved. It is concerned at the prejudice that may be suffered with respect to the expiry of limitation periods in the event that its appeal is unsuccessful if it does not take certain steps imminently in England to secure its position". As the Royal Court pointed out, the second quoted passage may refer to service of the protective writ, and so is not itself misleading; but in the context of the earlier reference to commencement of proceedings in England, it is misleading. 16. The Court of Appeal had not produced its judgment by 27 February, 2012, when the protective writ was served. On the same day, Baker and Partners informed the Court of Appeal of the existence of the

protective writ. On 28 February, 2012, Sinels wrote to the Court of Appeal in response to the letter from Baker and Partners; but on 29 February, 2012, the Court of Appeal asked the appellants to state if it was correct that a protective writ had been issued in October 2011 and, if so, why the Court of Appeal had not been informed. 17. Sinels responded at length on 7 March, 2012. For present purposes, the following are the relevant passages of their letter:- "Limitation was not pursued in oral argument save as to the possibility of delays in the Court delivering its judgment. This was an ancillary issue to the appeal. The Plaintiff apologises unreservedly if in the light of the position now reached it is felt that in its post hearing submissions in writing it did not make its position clear and/or explain the existence of the Claim Form. The Plaintiff was focussed on responding to the Court's queries, found it difficult to articulate its concerns and (as explained above) did not consider that the concerns and submissions were affected by the existence of the Claim Form. There was also an underlying perception from a Jersey perspective of the significance to be attached to service of a Claim Form as opposed to its issue. ... We hope the above is sufficiently explanatory for the court to understand why we did not deem it necessary or appropriate to inform it of the existence of the Claim Form. There was no intention to mislead the court or anyone else. It was hoped that the Claim Form would remain irrelevant and be entirely redundant, and considered that it did not affect the merits of the appeal from the Bailiff's decision. The significance of the various matters referred to above was not appreciated. This firm considered that it was acting properly in a position of difficulty and uncertainty. Insofar as the complexity and confusion of the matter, the difficulty in articulating the concerns of the Plaintiff, the impact of developments in the progress of matters and the focus on seeking to hold the ring pending the appeal have caused the Plaintiff to act in a manner of which the Court does not approve, it apologises." 18. On 23 April, 2012, the Court of Appeal dismissed the application for leave to appeal:

[2012] JCA 083 . On 3 May, 2012, it ordered Leeds to pay indemnity costs:

[2012] JCA 088 . 19. On 7 May, 2012, Jones JA wrote to the President of the Law Society, on behalf of the three members of the Court of Appeal who had heard the application for leave, asking him to investigate whether the circumstances justified disciplinary action against Sinels or any individual in that firm. The penultimate paragraph of his letter was in the following terms:- "It seems to us, therefore, that it was incumbent on Mr Sinel on 24 January to advise the court that the workings of the English law of limitation might be of no concern to us, because time may not have been running against the plaintiff since October of last year, and that, if so, we were under no pressure of time to issue a decision, on that account. In the whole circumstances, we find it difficult, if not impossible, to regards (sic) Sinels' letter of 7 March as a candid response to the question that was asked, following our email of 28 February." The complaint 20. The Law Society made a formal complaint against the appellants. The complaint, which is undated but was sent to the appellants on 28 January, 2013, was signed by Lord Jones (as Jones JA had by then become). The opening paragraphs of the complaint are in the following terms:- "COMPLAINT It is alleged that Advocates Philip Sinel and Steven Chiddicks have each

breached Rule 2 of the Law Society Code of Conduct. Rule 2 states: "It is the duty of every member at all times to uphold the dignity and high ethical and technical standards of the legal profession, and to adhere to the terms of the oath sworn before the Royal Court. A member has an overriding duty to the Court to ensure in the public interest that proper and efficient administration of justice is achieved. A member must assist the Court in the administration of justice and must not deceive or knowingly or recklessly mislead the Court." SUMMARY OF THE COMPLAINT 1. It is alleged that Advocates Sinel and Chiddicks each (i) deceived or (ii) knowingly or recklessly misled the Court of Appeal during the course of the appeal of Leeds United Football Club Limited -v- Robert Lawrence Weston and Melvyn Stuart Levi

[2012] JCA 088 ("the appeal") by failing to inform the Court of Appeal in the documents that they submitted to it or during oral submissions on behalf of Leeds United Football Club Ltd ("their client") that a protective writ had been issued on behalf of their client in England on or about 28th October, 2011, and when such fact was material and ought reasonably to have been considered to be material to the task that the Court of Appeal had to perform." 21. The Disciplinary Committee of the Law Society conducted hearings into the complaint in August and September 2013, and then referred the complaint to the Attorney General without making a finding, pursuant to Article 23(1)(c) of The Law Society of Jersey Law 2005 ("the 2005 Law"). 22. By Representation dated 13 March, 2014, the Attorney General referred the complaint to the Royal Court pursuant to Article 25(b) of the 2005 Law. Judgment of the Royal Court 23. The judgment of the Royal Court was delivered on 27 February, 2015. It recorded (in paragraph 38) that hearings had taken place on 25 and 26 November, 2014, and 19 January, 2015, in the course of which each of the appellants had given oral evidence to supplement their witness statements and had been cross examined on their evidence. 24. In paragraph 34 the court analysed the complaint and identified what it described as "the narrower element" and "the broader element". The broader element was said to relate to the possible effect of the limitation issue on the substantive question of whether proceedings should be in Jersey or in England. The narrower element, which the court said was the gravamen of the complaint, was identified as being the misleading of the Court of Appeal "into a concerned belief that there might be a need for them to accelerate their judgment if the standstill agreement were not effective" which they would not have held had they known the true position, with the consequence that they would not have sought further submissions on the limitation question. Paragraph 43 of the judgment stated that, whatever might have been the initial thrust of the Attorney General's representations, the misleading relied on now related only to the issue of whether there was any need for an accelerated judgment (i.e. the narrower element) and not to the substance of such judgment (i.e. the broader element). The narrower element has been referred to in this appeal as "the timing issue". 25. Between paragraphs 48 and 58 the court considered whether the Court of Appeal had been misled, and concluded that it had. Paragraphs 46 and 58 were in the following terms (references throughout the judgment to the Respondents being to the present appellants): "46. This Court has no

doubt at all that the Court of Appeal was misled in that way and for the reasons set out in the Complaint itself. They were given only half of and not the full picture as to matters which bore on the need or otherwise for them to give an accelerated judgment. They knew about the standstill agreement, as to whose efficacy from the perspective of the English Courts, they were uncertain; hence they made the Request. They did not know about the issue of the protective writ, whose efficacy up to 28th February 2012 was indisputable, and the protraction of which beyond that date by service lay entirely in Leeds' hands. The lack of knowledge was attributable solely to the fact that the Respondents did not tell them about it.

58. The Court notes further that the misleading of the Court of Appeal did not consist of a single occurrence on 24th January 2012, but of a course of conduct embracing subsequent submissions and correspondence from the Respondents. Not only did the Respondents not correct the false impression necessarily created by the First Respondent's omission to refer to the protective writ on that date, but they aggravated it by referring repeatedly to the inception of proceedings in England as [if] it were something which would take place, if at all, in the future, whereas it had in fact already taken place by issue of that writ. This was a professional sin of commission as well as of omission." 26. Between paragraphs 59 and 67, the court considered whether the misleading had been deliberate. In the opening sentence of paragraph 59, the court stated that it was satisfied that the appellants deliberately misled the Court of Appeal; and in paragraph 67 it expressed its conclusions in the following terms:- "The Court had the opportunity of sight and sound of the Respondents. In its view the Respondents were, taking the most charitable interpretation of their evidence, imposing with the benefit of hindsight a construction of the material events which was at odds with their acts and words at the time. In the Court's view too, the Respondents knew what they were doing and saying and to the extent that they considered those acts and words to be justified, they were wrong." We deal with the significance of this finding later in this judgment. 27. Between paragraphs 68 and 78, the court considered what was the appropriate sanction. It reviewed the available sanctions under the 2005 Law, which were a private rebuke, a public reprimand, a fine, suspension from practice as an advocate for a period not exceeding six months, and striking off. In paragraph 70 the court said: "The misconduct here in play is misleading the Court. Its importance cannot be gainsaid" ; and in paragraph 71 it set out the following quotations from English and Jersey authority:- "In Brett , (Brett v SRA

- [2014] EWHC 2974) the Lord Chief Justice said: The reason why that is so important is that misleading the court is regarded by the court and must be regarded by any disciplinary tribunal as one of the most serious offences that an advocate or litigator can commit. It is not simply a breach of a rule of a game, but a fundamental affront to a rule designed to safeguard the fairness and justice of proceedings. Such conduct will normally attract an exemplary and deterrent sentence. That is in part because our system for the administration of justice relies so heavily upon the integrity of the profession and the full discharge of the profession's duties and in part because the privilege of conducting

litigation or appearing in court is granted on terms that the rules are observed not merely in their letter but in their spirit. Indeed, the reputation of the system of the administration of justice in England and Wales and the standing of the profession depends particularly upon the discharge of the duties owed to the court. No less does it do so in Jersey. As Sir Philip Bailhache Commissioner (as he then was) said pithily in *AG -v- Michel*

- [2011] JRC 093 : "At the very core of the relationship between an advocate and this Court is the virtue of truthfulness and her first cousin trust. If an advocate cannot be truthful with the Court there cannot be trust, and without trust between Counsel and the Bench, the process of justice is undermined." Although their roles differ, bench and bar are engaged in a joint enterprise to uphold the rule of law." In paragraph 73 the court set out various factors that had been referred to in mitigation: the misconduct involved no personal gain; the appellants had shown loyalty to each other rather than sought to blame each other; "the length of the shadow cast by the complaint which had taken already some years to resolve, and the expense incurred in contesting it as well as the earnings lost as a result of that diversion from their ordinary practice"; the appellants had apologised promptly; the misleading had not affected the outcome of the appeal; suspension or a large fine could put in jeopardy the future of the firm, which had already been affected by the recession and the disciplinary proceedings, as well as the livelihoods of its three other legally trained staff; and certain personal problems affecting Advocate Sinel. At paragraph 74, the court referred to character references that had been produced in relation to both appellants. At paragraph 75, the court said that it had taken account of all these matters; but it pointed out that the misconduct in the present case touched upon a key aspect of the lawyer's professional duty, to be honest with the Court. In paragraph 76 the court described the most significant feature of the misconduct found as being that it was not capable of influencing the substance of the Court of Appeal's judgment, but only the timing of its delivery; and in paragraph 77 it was said that "while it is never acceptable for an advocate deliberately to mislead a Court, it would be wrong not to take account of the degree of harm which would be occasioned by that misleading; in this case at the lower end of any scale". Also in that paragraph, the court recognised that the appellants had gained no personal benefit from the misconduct, and said that it need not be entirely oblivious to the fact that a draconian sanction could put the livelihood of innocent people within the firm at risk. Finally, in paragraph 78 the court ordered suspension of four months for Advocate Sinel and two months for Advocate Chiddicks "to reflect the differences in seniority and the fact that it was [Advocate Sinel] who initiated the misconduct". 28. As to costs, the court ordered each of the appellants to pay £5000 - that being the sum sought by the Attorney General, which the court recognised was modest having regard to the time and effort necessarily and properly spent in pursuit of the complaint. The grounds of appeal 29. The notices of appeal filed by each of the appellants are in substantially the same terms. They seek the reversal of the order of the Royal Court on the substance of the complaint and on costs, on the following eight grounds (of which number 5 applies only to Advocate Chiddicks):- (i) The Court did not determine the complaint but determined a different

allegation that was not part of the complaint; (ii) The Court should have dismissed the proceedings after the complaint was abandoned by the Attorney General at the hearing; (iii) The Court erred because no act or omission "misled" the Court of Appeal in any material sense; (iv) The Court erred in its approach to legal professional privilege, litigation privilege and the correct balance to be struck between the Advocate's duty to the Court and his duty to his client; (v) The Court erred in its approach as to the different roles and involvement of Advocate Sinel and Advocate Chiddicks and in particular the reliance the latter could reasonably place on more experienced and senior lawyers; (vi) The Court erred in its approach as to the reliance to be placed on assistance from English Counsel on matters of English legal process; (vii) The penalties were disproportionate; (viii) The Court erred in its approach to costs. The appellants adopted the approach of providing a full notice of appeal, cross-referenced to the documents, which was intended also to stand as the appellants' contentions. Advocate Kelleher's submissions to us on behalf of the appellants addressed the eight grounds we have identified. 30. One notable feature of the appeals by both appellants is the complete absence of any challenge to the finding of the Royal Court that both appellants misled the Court of Appeal deliberately. Such a challenge does not appear in either of the appellants' grounds of appeal, and it did not feature in the oral submissions of Advocate Kelleher. It nevertheless seemed to us that many of the grounds of appeal involved an implicit challenge to the finding of deliberate misleading. This is not to imply that there were grounds for such a challenge by either appellant; for the finding of the Royal Court that both the appellants did mislead the Court of Appeal and that such misleading was deliberate were findings of fact by a court consisting of the Commissioner and Jurats who had seen and heard the witnesses. Such findings are notoriously difficult to upset. In any event, we are of the opinion that had such a challenge been expressly made by either of the appellants it would have failed. 31. As we have said, the findings of the Royal Court that both appellants deliberately misled the Court of Appeal are to be found in its judgment between paras 59 and 67 inclusive. Although all that is said there is important we highlight the following. 32. Paragraph 59 is critical. It is in the following terms:- "The Court is satisfied that the Respondents deliberately misled the Court of Appeal. First despite occasional remarks in their written and oral testimony to the effect that they were Jersey not English lawyers, and in the case of the Second Respondent in particular inexperienced in the niceties of English procedural law, they cannot, and do not, ultimately contend that they were unaware of the effect of such issue. The clear explanation of the desirability of issue of such a writ voiced by English Counsel, which they had heard or seen would give the lie to any such contention. Secondly they knew full well that Leeds did not wish them to disclose the issue of the writ to the Defendants, which disclosure to the Court would necessarily entail. Thirdly since to act in accordance with their clients instructions would inevitably inhibit such disclosure they chose to act in accordance with those instructions while ignoring that this involved a breach of their duty to the Court." 33. So far as Advocate Sinel is concerned, we set out paras 62 and 63 in full. "62. The Court was regrettably unconvinced by the First Respondent's oral evidence that he did not even have the protective writ in mind at all when he raised concerns with the Court

of Appeal about any delay in their judgment. Given his awareness of the flow of e-mails between Leeds' English lawyers and his firm which emphasised the function of such writ this seemed unlikely, if not actually incredible.

63. In an answer to the Commissioner, the First Respondent now accepted (though he claimed with hindsight only) that saying to the Court of Appeal that there was a protective writ would have brought any debate on limitation to an end, and the Request for supplemental submissions would not have been necessary. The Court considers that not only ought he to have appreciated that on 24th January 2012 but that he must have done." What is said in paras 62 and 63 is the Royal Court's rejection of Advocate Sinel's evidence in those respects. Furthermore, para 65 of the Royal Court's judgment makes it plain that Advocate Sinel, in his submissions to the Court of Appeal of 6 February (see para 23 of its judgment) used language that "was necessary to distract the Court of Appeal from appreciating that such writ had been issued. To have written in terms of proceedings in England being continued rather than commenced would have given the game away and revealed, or run the risk of revealing, the misleading omission by reference to the issue of the writ which occurred on 24th January 2012. The die was cast on that date." 34. Although Advocate Sharp QC in his oral submissions to us conceded that he could not attribute, on the evidence before the Royal Court, any responsibility for the final draft of the submissions of 6 February to Advocate Chiddicks, nevertheless the finding of the Royal Court in relation to him that the misleading of the Court of Appeal was deliberate encompasses his letter of 15 February. At para 65 of its judgment the Royal Court said that it did not accept that the "references by both Respondents in communications with the Court in February 2012 to future institution of English proceedings, when they had already been instituted, was the consequence of the absence of such adjectival animal as a protective writ in Jersey or of the fact that in Jersey the start of any legal process is marked by service of the relevant court document." The remainder of para 65 (set out above) is also relevant to Advocate Chiddicks deliberately misleading the Court of Appeal in his letter of 15 February. 35. Finally, in relation to both appellants, the Royal Court, having in paragraph 66 said that it was unimpressed by suggestions that "the vocabulary used in those communications was vouched by English Counsel", concluded with paragraph 67, which for convenience we here set out again:- "The Court had the opportunity of sight and sound of the Respondents. In its view the Respondents were, taking the most charitable interpretation of their evidence, imposing with the benefit of hindsight a construction of the material events which was at odds with their acts and words at the time. In the Court's view too, the Respondents knew what they were doing and saying and to the extent that they considered those acts and words to be justified, they were wrong." 36. In our judgment, these findings of the Royal Court are clear and cogent, based as they are upon the documents and the written and oral evidence before it. They are findings of fact by Jurats (albeit by a majority), a body of persons experienced in the assessment of factual disputes. As was recorded by the European Court of Human Rights in *Snooks v United Kingdom*

- [2002] JLR 475 at [19]]:- "Jurats are ...elected by a special electoral college whose members include the Bailiff, the Jurats, advocates and solicitors of the Royal Court and members of Jersey's legislature, the States Assembly. Jurats do not necessarily have a legal qualification but are usually individuals with a known history of sound judgment and integrity, which has been consistently demonstrated throughout a lengthy professional, business or civic life." 37. This court in *Bhojwani v Attorney General*
- [2011] (1) JLR 249 emphasised, albeit in a criminal appeal against conviction as opposed to a civil appeal, that, when considering whether a verdict could not be supported having regard to the evidence, the Court of Appeal had to be careful not to usurp the function of the Jurats, and that fact-finding was the function of the Jurats who were experienced in so doing and who had had the advantage of seeing and hearing the witnesses. It further said that thus it would be very difficult to establish that the Jurats' verdict was unreasonable. See in particular paras 148, 150 and 153 of the judgment in that case. 38. In the context of civil appeals we draw attention to paras 11 to 18 inclusive of the judgment of the Privy Council, delivered by Lord Hodge, in *Beacon Insurance Co Ltd v Maharaj Bookstore Ltd*
- [2014] UKPC 21 , headed "The role of an appeal court". Lord Hodge there reviewed a number of authorities, including of the House of Lords, the Supreme Court and the Privy Council, which emphasised the caution to be adopted by an appellate court when asked to overturn findings of fact of a judge at first instance who had seen and heard the witnesses. 39. In the instant case the credibility of the appellants was very much in issue, including on the matter of whether either or both deliberately misled the Court of Appeal. The Royal Court in its judgment, albeit using moderate language, plainly found that it did not believe either appellant in important parts of their evidence, including that relating to whether either or both deliberately misled the Court of Appeal. In our judgment it was entitled so to find, and any challenge thereto would have failed. 40. In the light of that general point, we now turn to consider the grounds of appeal separately. Grounds 1 and 2: scope of the complaint 41. Grounds 1 and 2 go together. The appellants' contention was that the complaint related and related only to what the Royal Court described as the broader element, namely the substantive question whether proceedings should proceed in Jersey or in England; whereas the basis on which the Attorney General put the case to the Royal Court, and on which the Royal Court decided the matter, was the narrower element, namely the question of the time available to the Court of Appeal for preparation and delivery of its judgment. As articulated in the notice of appeal, and in oral submissions to us, the argument ran thus. The Royal Court was charged with determining the Law Society's formal complaint, as formulated before and by the Law Society Disciplinary Committee, and as further detailed in the Attorney-General's representation. The complaint was that the appellants failed to disclose to the Court of Appeal the existence of the protective writ "when such fact was material and ought reasonably to have been considered material to the task that the Court had to perform". The task that the Court of Appeal had to perform was to decide whether the Royal Court had erred in concluding that England rather than Jersey was the most appropriate forum for the proceedings between Leeds and Mr Weston and Mr Levi.

Resolution of the complaint therefore required the Royal Court to determine whether non-disclosure of the protective writ was material to the Court of Appeal's resolution of that issue. Both the Law Society's complaint and the Attorney General's representation asserted that the non-disclosure was material to the Court of Appeal's resolution of the forum issue. At an earlier stage in the proceedings, when refusing to recuse himself, the Commissioner appeared to have understood the complaint to be that the appellants had failed to draw the attention of the Court of Appeal to a fact which was germane to the "very issue" which the Court had to decide. When the Royal Court came to consider the complaint, however, it dealt with a quite different issue, namely whether the failure to disclose the protective writ was relevant to the Court of Appeal's decision as to when to deliver its judgment - the timing issue. This shift, which the appellants categorised as an error, was attributable to excessive reliance on Jones JA's original letter of 7 May 2012 and to the Royal Court's interpretation of the exchanges before the Court of Appeal; but neither constituted the complaint that was in fact made against the appellants. The documents that did constitute that complaint, namely the Law Society's complaint (and, possibly, the Attorney General's representation), did not suggest that the Court of Appeal had been misled as to the time available for the preparation and delivery of its judgment. That was not surprising, it was submitted: it was unlikely that a Court of Appeal judge, or the Law Society, or the Attorney General, would make a complaint of professional misconduct when the only consequence of that misconduct was that the Court of Appeal might have believed it necessary to produce a judgment more quickly than might otherwise have been the case. The Royal Court nevertheless determined the matter on that basis. That was obviously unfair: indeed, the Royal Court commented on the fact that the appellants' submissions did not engage with the key issue or deal adequately with the narrow element. It was not open to the Royal Court to consider a new complaint on the basis of a submission made by the Attorney General; indeed, as the Royal Court noted, the basis on which the Attorney General asked it to determine the complaint made much of the transcript of the proceedings before the Law Society Disciplinary Committee redundant. 42. In summary, the appellants contended that the complaint decided was not the complaint made; it was not open to the Attorney General to change a complaint referred to him by the Law Society Disciplinary Committee; and it was not in any event open to the Attorney General to change the complaint at a late stage and without the opportunity being given to the appellants to provide full written argument and explanation. Accordingly, the Royal Court determined a complaint that had not been made; and for that reason alone the judgment must be set aside. Alternatively, the Attorney General having abandoned the original complaint, the only course open to the Royal Court was to dismiss it with costs. 43. In our judgment, these contentions are misconceived. The "task that the Court had to perform" was not confined to determining the substantive issue of whether or not leave to appeal against the Bailiff's decision should be given, although that was of course much the most important part of it. The court's function was to resolve that issue in an efficient and timely manner. The task encompassed every aspect of dealing with the case, from pre-reading to delivery of judgment on substance and costs. The discussion about limitation

that occurred at the end of the oral submissions caused the introduction into the proceedings of a number of expensive and time-consuming steps - the preparation of supplemental submissions on both sides, and consideration of those submissions by the parties and the court itself - that would have been seen to be wholly unnecessary, and so would not have occurred (or would have been severely curtailed), had the existence of the protective writ been revealed. To that extent, the court's ability to deal with the appeal efficiently was prejudiced, and its task impeded. 44. It also appears to us that the formal statement of complaint made by the Law Society in December 2012 comprehends both what the Royal Court described as the broader element and the narrower element. It includes not only the complaint and summary, set out in paragraph 20 above, but also a neutral statement of the background and a section headed "Particulars". Paragraph 23 to 26 of the particulars refer to the discussion about limitation at the end of the Court of Appeal hearing, the request for further submissions and their provision, and the chasing letter of 15 February 2012, all of which had been triggered by the discussion about, or were to do with, the timing of the Court of Appeal's judgment. 45. Further, the statement of complaint was fully investigated by the Law Society Disciplinary Committee during the August 2013 hearing. Advocate Kelleher took us to several passages in the transcript, seeking to demonstrate that the central focus at all times was on the substantive, limitation issue, rather than on the concerns expressed to the Court of Appeal about the possible consequences of any delay in the delivery of their judgment - the timing issue. A fair reading of that transcript shows that the overall concern was in relation to the appellants' conduct after the issue of the protective writ in October 2011 through to the correspondence with the Court of Appeal in February 2012. It is correct that an important part of that conduct related to the relevance of the protective writ to the substantive issue, the appropriate forum for the proceedings. This is not in dispute. But it is also clear that the complaint covered the fact that the limitation issue was also being raised before the Court of Appeal by reference to the timing issue. This is illustrated by several passages from the transcript. We here mention 3 extracts:- (i) The first (taken from pages 18-19 of the transcript) covers concerns relating to the exchange between the president of the Court of Appeal, JA Jones, and Advocate Sinel on 24 th January 2012. "MOC" is Advocate Michael O'Connell, a member of the Disciplinary Committee , and "RMK " is Advocate Rebecca Morley-Kirk presenting the complaint for the Law Society. "MOC: Now it there anything in Mr Sinel's submissions to the Court of Appeal at that stage which clarifies, or corrects, the Court of Appeal in its impression that by implication nothing has yet happened in England? RMK: No, we say not no. MOC: So RMK: ... And we say ... MOC: What do you say, in terms of the duties of Mr Sinel, is wrong with this exchange? RMK: Well first of all we say that the issue of limitation is before the Court of Appeal in three ways at this point. First, of all substantively, if you remember I showed you the two Notices of Appeal. Second, of all in relation to the concern about the length of time that the Judgment would take to be issued which came from Advocate Sinel, and thirdly, from the President of the Court of Appeal which raised the specific concern. Now we say that the full and frank approach would have been to say this: 'Yes, we are concerned that limitation

on at least some of the potential causes of action may have expired, or may be about to expire, but (a) we are trying to negotiate a standstill agreement, and (b) we have taken out a Protective Writ so time stops running, if we go ahead and serve it'. That's what, we say, should have been said. That would have been a full and frank approach." (ii) The second (taken from page 40) deals with the continuing obligation to disclose - "RMK: The but Advocate Sinel has said, that as it wasn't mentioned, in the first instance, the Court were not seized of it in relation to the Appeal and therefore it becomes irrelevant. Now we say to that well first of all, okay it wasn't mentioned in the first instance, it was mentioned substantively in the Appeal, so he chose to make a substantive argument and therefore should have disclosed, but then it came up in relation to the delay in the Judgment, when the Protective Writ should have been disclosed, and in any event the Court asked a specific question about it." (iii) Finally, from page 42 of the transcript, again dealing with the two-fold nature of the complaint - "RMK: but that aside the Advocate Sinel mentioned, chose to bring in limitation, in the Notice of Appeal, so he chose to focus the Court's mind on it, then he chose to bring it in in relation to the Judgment, and then they asked a question, because they were concerned about it, so it's two-fold really." 46. In those proceedings (see page 28 of the Transcript) it was also made clear, notwithstanding the terms of the complaint verified by Lord Jones, that the Law Society also relied on the letter he wrote to the President of the Law Society in May 2012, which included the following (part of which we have already quoted, but again repeat for convenience):- "It seemed plain enough to us on 24 January that Mr Sinel was anxious lest any undue delay in the issuing of our decision on the application for leave to appeal might cause his client prejudice if it had to raise fresh proceedings in England. ... It seems to us, therefore, that it was incumbent on Mr Sinel on 24 January to advise the court that the workings of the English law of limitation might be of no concern to us, because time may not have been running against the plaintiff since October of last year; and that, if so, we were under no pressure of time to issue a decision, on that account." The second extract of this letter is also included, correctly in our view, in the judgment of the Royal Court. 47. We consider that anyone with knowledge of the circumstances, as the appellants had, would have understood from the terms of the Statement of Complaint, and from the Law Society Disciplinary Committee proceedings, that the complaint related to the appellants' attempt to influence the Court of Appeal either as to substance or as to timing. 48. If there had been any doubt as to the matters covered by the complaint (and we do not accept that there could have been any real doubt), it would have been removed by the Attorney General's Representation which was accepted by Advocate Kelleher during the course of oral argument as the, or at least a, key document. Paragraph 7 formulates the charge in a general way:- "During the course of the appeal the First and Second Respondents each (a) deceived or (b) knowingly or recklessly misled the Court of Appeal by failing to disclose a material fact namely that on 28th October, 2011, a protective claim form ('the protective writ') had been issued by their client in England with their knowledge." The particulars, at paragraphs 24 to 26, make it clear that the complaint extended to cover the events of January and February 2012. The same appears also from paragraphs 33 and 34, the latter

ending as follows:- "The [appellants] would be aware that the Court can be misled by conduct and omission as well as positive assertions and in this case it would have become clear to them that the Court were acting under the misapprehension that English proceedings had not started when the Court requested further submissions on the issue of limitation." 49. The response by the appellants in their pleaded reply to the Representation clearly shows that they, and Advocate Kelleher who has represented them throughout, must have understood that the complaint included both the broader and the narrower element. This appears most clearly from paragraphs 56 and 57 of the reply, which so far as material are in the following terms:- "56. Allegation : Without revealing the existence of the Protective Writ, it was improper to run an argument that any delay by the Court of Appeal in determining the Appeal may prejudice Leeds if limitation periods expired. 57. Response : ... If the decision were to be due to be delivered after the expiry of the date of the Protective Writ, Leeds faced a difficult choice: to serve the proceedings in England and thereby take the risk that notwithstanding the protection afforded by the Protective Writ limitation had already expired; or not to serve them, and take the risk that if the decision went against Leeds, they would have to start afresh in England without a possible advantage that may have been gained by the filing of the Protective Writ. The prejudice that Leeds might suffer is obvious and it was perfectly proper to encourage the Court of Appeal to indicate when it might reach a decision." 50. Accordingly, in our view the Royal Court was entitled to deal with the complaint on the basis that it related to timing rather than substance. Ground 3: materiality 51. Ground 3 asserts that nothing done or omitted by the appellants misled the Court of Appeal in any material respect. It is said that Advocate Sinel stated merely that he hoped the delivery of judgment would not be too long, and that nothing said by him or by Advocate Chiddicks in the supplemental submissions or in the chasing letter gave any indication to the Court of Appeal that the judgment was needed by 28 February 2012 or by any other date. In consequence, the omission to mention the protective writ was immaterial to the Court of Appeal's decision as to when to issue its judgment. 52. In our view, this argument misses the point. The failure to mention the existence of the protective writ caused the Court of Appeal to believe that there was an issue about limitation when in fact there was none - or if there was any such issue it related only to possible causes of action predating the protective writ. In turn, that led the court to ask for written submissions, and to understand that there was an urgency about the production of its judgment that in fact did not exist. The fact that the court did not know the degree of the supposed urgency is irrelevant: it was misled into believing that something was required of it that in fact was not. Ground 4: conflict of duties 53. Ground 4 relates to the balance between an advocate's duty to the court and his duty to his client. It is said that, whilst the Royal Court recognised that there was a tension between these two duties, it failed to tackle the difficult question of how that tension could properly be resolved. In circumstances where the failure to disclose the existence of the protective writ had no material effect on the Court of Appeal's actions, the appellants' duty to comply with the client's instructions not to reveal the existence of the protective writ and the effect of legal professional privilege overrode their duty to the

court. Alternatively, the position was one of uncertainty where reasonable people could disagree. 54. It does not seem to us that the suggestion that the Royal Court failed to deal adequately with the question of the tension between the differing duties is justified. In paragraph 53 of the judgment, it recognised that, faithful to his duty to Leeds, Advocate Sinel had no option but to raise the issue of the timing of the Court of Appeal judgment; but, if faithful only to his duty to his client, he could not tell the Court of Appeal of the existence of the protective writ. In paragraph 54, the court commented that "it is in those circumstances [where] there is a tension between these two duties where the advocate is truly tested"; but then stated that it was common ground that, in a collision of duty to court and a duty to client, "the duty to the Court is paramount and predominates". In paragraph 56 it was said that "the duty to the client cannot justify misleading the Court"; and in paragraph 57 the court said this:- "If the First Respondent wished to suggest to the Court of Appeal that there was a need for an accelerated judgment he should have asked Leeds for permission to disclose the issue of the protected writ, or if Leeds refused permission, to have declined to seek an accelerated judgment, (or, in the extreme circumstances that Leeds insisted that he make such suggestion but without such disclosure, have declined to act further for them.)" 55. It is well known, and was accepted by the appellants below, that the duty to the court overrides the duty to the client. So much is made explicit in rule 2 of the Law Society Code of Conduct, set out at the beginning of the formal complaint. Whatever the requirements of Leeds as to secrecy about the existence of the protective writ, and whatever the privileged status of Leeds' instructions to Sinels, the appellants had a paramount duty not to mislead the court. In our view, the Royal Court's handling of this issue cannot be criticised. Grounds 5 and 6: the position of Advocate Chiddicks, and reliance by both appellants on English counsel 56. Having regard to the Royal Court's finding that both appellants deliberately misled the Court of Appeal, these grounds of appeal cannot - even if otherwise justified - provide a reason for acquitting either of the appellants of misconduct. At most, they are relevant to the penalties imposed, and we deal with them in that context. Ground 7: sanctions 57. Ground 7 in both appeals relates to penalty or sanction. This is thought to be the first occasion on which this Court has had to consider an appeal against a sanction imposed in a disciplinary case brought under the 2005 Law, and we requested submissions from the parties as to our powers to interfere with a sanction imposed by the Royal Court. It was common ground that the appeal is a civil appeal, and therefore falls to be dealt with under either Article 12(2) or Article 12(4) of the Court of Appeal (Jersey) Law 1961 ("the 1961 Law"). Although it makes little difference, we consider that the relevant Article is 12(4): that Article provides that "the Court of Appeal shall exercise such additional appellate jurisdiction as may be conferred upon the Court by any enactment passed by the States and confirmed by Order of Her Majesty in Council", and in our view the right of appeal given to the practitioner and the Attorney General, but not the complainant, by Article 26(10) of the 2005 Law is such an additional appellate jurisdiction. It was also common ground that Article 15 of the 1961 Law applied to the exercise of our jurisdiction, so that - in the absence of any special provision in the Law or rules of court as to the practice or

procedure we should adopt - we are to exercise it "in such manner as the Court of Appeal considers just and convenient". There the common ground ended: it was the appellants' basic position that the court could interfere if satisfied that the sanction was inappropriate in all the circumstances, and the Attorney General's position (by analogy with the grounds for interfering with a sentence in a criminal case) that we should interfere only if the sanction were wrong in principle or manifestly excessive. We consider that the appellants' position is correct: it seems to us that it would be wrong in principle to import the criminal test into an appeal about a civil sanction. In our view, we may interfere with the sanction if it is appropriate in all the circumstances to do so. In considering whether or not it is appropriate to interfere, however, proper respect must be paid to the decision of the Royal Court, particularly in light of the special experience of the Jurats to which we have referred above. It is not, though, necessary to give the Royal Court's decision the special degree of respect given in England to decisions of the Solicitors' Disciplinary Tribunal (see *Salsbury v Law Society*

[2009] 1 WLR 1296 at [38]), since that tribunal has a particular degree of experience in this area that the Royal Court must necessarily lack. 58. Although the point was not specifically taken in relation to sanctions, we have considered whether or not the narrowing of the complaint before the Royal Court, so that it became solely concerned with the timing issue, is a matter that was sufficiently taken into account by the Royal Court. The disciplinary hearing before the Law Society had focused also, perhaps primarily, on the substantive issue, so that the appellants had spent time and money dealing with an element of the complaint against them that ultimately became irrelevant. It is also possible that the disciplinary process would have been completed earlier had the focus from the outset been only on the timing issue, reducing the inevitable stress to the appellants of the proceedings. However, it seems to us that the Royal Court did have firmly in mind the difference between a complaint based on the timing or narrower issue and one based on the substantive or broader issue. In paragraph 76 of its judgment it said this:- "The Court notes that a suspension cannot exceed six months. (It is not suggested that striking off would be appropriate). The most significant feature of the misconduct alleged and found is that it was not capable of influencing the substance of the Court of Appeal's judgment, but only the timing of its delivery. Had the case been pursued (and succeeded) on the basis that the Respondents misled the Court into allowing the appeal and designating Jersey as the proper forum because it had been misled as to the adverse effect of English laws on limitation on Leeds' prospects of success in England, the consequences would have been far more serious and the sanction by the same token more severe than is in the Court's view warranted by the circumstances of the case as actually and finally advanced and (by a majority) found proven." The length of the proceedings and the "shadow" cast by them were specifically taken into account by the court (paragraphs 73 and 75 of the judgment); and we are satisfied that the Royal Court properly took into account when deciding on the appropriate penalty the narrowing of the complaint and the effects of the proceedings on the appellants. 59. On behalf of Advocate Sinel it is said that

the sanction of suspension for four months was wholly disproportionate, because the Royal Court failed adequately to consider the many mitigating factors, and also failed to take into account or give sufficient weight to four relevant matters: (a) the fact that the failure, even if deliberate, to mention the protective writ had no material impact on the timing of the judgment of the Court of Appeal; (b) the fact that Advocate Sinel's conduct had no effect on the substance of the judgment, which was to uphold the Royal Court's determination that the appropriate jurisdiction was England; (c) The invidious position of Advocate Sinel in terms of his duty to his Client, Leeds, which conflicted with his duty to the Court to inform it of the protective writ; and (d) The fact that the protective writ was governed by English law, and Advocate Sinel properly deferred to the expertise and instructions of the English legal team. 60. We are satisfied from reading the judgment and the transcript of the Royal Court hearing that all of these matters were taken into account and considered. We cannot see any basis for this Court interfering with the sanction imposed. However, we recognise that it will be necessary for Advocate Sinel to make arrangements to safeguard Sinels' practice during his suspension, and we will defer the start of that suspension for a period of two months from the date of the act of court embodying our decision to enable him to do so. 61. It is also said on behalf of Advocate Chiddicks that the penalty imposed is wholly disproportionate. It was pointed out that at the relevant time he had been qualified only for one year; that many of the criticisms relate not to his conduct but to that of Advocate Sinel; that it was Advocate Sinel who had the detailed knowledge of the case; and that Advocate Chiddicks' involvement was limited to the chaser letter, which had been checked by English counsel before being sent. Advocate Chiddicks had "acted responsibly and honestly and in the best way he could to discharge his duties". The Royal Court should have had regard to the relative roles, positions and experience of Advocate Chiddicks and Advocate Sinel, and should have concluded that Advocate Chiddicks had a defence on the basis that he reasonably and properly deferred to those with more expertise and experience. An overarching submission was also made by Advocate Kelleher that if both the appellants were suspended from practice there would be no qualified lawyer within Sinels, making it impossible for its clients' needs to be serviced. 62. In our view, the problem with the argument that Advocate Chiddick's conduct should in some way be excused is that it disregards the clear finding of the Royal Court that he deliberately misled the Court of Appeal. As we have said, there is no direct challenge to that finding, reached by the Royal Court with the advantages of seeing and hearing the appellants give their evidence; and any challenge would be bound to fail. The finding makes it impossible to argue that Advocate Chiddicks acted responsibly and honestly and in the best way he could to discharge his duties. 63. However, we do consider that the Royal Court failed to recognise and take into account Advocate Chiddicks' limited role and involvement in the preparation and presentation of any misleading information to the Court of Appeal. This differential can be seen in the wording of the Attorney General's Representation when the broader element is removed. The relevant particulars focusing only on the timing issue are paragraphs 24-26, here set out in full:- "24. On 23rd and 24th January, 2012 the First

Respondent [Advocate Sinel] conducted the appeal before the full Court. During the hearing he did not inform the Court that protective proceedings had been commenced in England. The appeal was based on the written contentions that had been filed by the Second Respondent [Advocate Chiddicks]. The Court of Appeal requested further written submissions on the issue of limitation because of concerns raised by the First Respondent that the Plaintiffs might be outside the relevant limitation periods if proceedings had to be commenced in England. The misleading representations made by both the First and Second Respondents in relation to limitation caused the Court to form the false impression that limitation was a live issue.

25. On 6th February, 2012 contentions were signed by an unidentified Advocate for the Plaintiff at Sinels. As senior partner, the First Respondent is ultimately responsible for the contents of such document. The written contentions in essence amounted to a discussion of hypothetical problems that their client might face in the event if they were obliged to commence proceedings in England. Such contentions were immaterial and misleading because protective proceedings had already been issued in England.
26. On 15 th February, 2012, the Second Respondent wrote to the Court of Appeal chasing it for a decision. He raised his concerns that the Plaintiff would be prejudiced if limitation periods expired. At the time of writing, he would have been aware that protective proceedings had already been issued and therefore misrepresented the true position to the Court." 64. On analysis, and as accepted by Advocate Sharp in the course of his oral submissions, Advocate Chiddicks' role in relation to the narrower element is limited to drafting and sending the 15 th February 2012 letter. Although he had signed the initial contentions filed on 17 November 2011, that document had no relevance to the narrower issue. It also became clear in the course of oral argument that although Advocate Chiddicks accepted responsibility for writing (at least in part) an early draft of the 6 th February 2012 supplementary contentions, there was no evidence before the Royal Court to establish that he was responsible for the document as finalised and submitted to the Court of Appeal. When this is combined with the mitigating factors summarised above, we are satisfied that the Royal Court erred when imposing a sanction of suspension on Advocate Chiddicks. The seriousness of the deliberate misleading for which he can properly be held responsible can be marked by a public reprimand as provided for in Article 26(8) of the 2005 Law. That public reprimand is administered by the publication of this judgment, without the need for any further sanction. Ground 8: costs 65. The grounds of appeal complained that in dealing with costs the Royal Court failed to give proper weight to the narrowing of the issues and the time it had taken for the proceedings to be heard, with hearings twice going part heard (before the Disciplinary Committee and the Court); and gave improper weight to unfair criticisms of the presentation of the appellants' case and the extent of any misleading. These contentions were not amplified in oral submissions. 66. The Royal Court dealt with the question of costs briefly, in the following terms (paragraph 79):- "The Attorney General moves for costs to be granted in his favour of £5,000 by each Respondent. The Court accepts that these are modest sums given the time and effort necessarily and properly spent in pursuit of this complaint.

Advocate Kelleher's revelation of his own charges supported that conclusion. The costs will be so ordered." 67. We cannot see any ground for interfering with the Royal Court's conclusion. All the matters relied on by the appellants - narrowing of the issues, delay, how the appellants had dealt with the complaint, the extent of misleading

- were plainly known to the Court, and did not need to be mentioned in relation to costs. The simple fact was that the complaint against both appellants had been upheld, and the Royal Court was entitled to regard that as determinative on the question of costs. We have had no submissions related to quantum, but see no reason to disagree with the Royal Court's assessment that they were modest. The costs order will stand.

Disposition

68. For the reasons we have given, we dismiss the appeal in relation to Advocate Sinel, but direct that the four months' suspension imposed on him will commence on the day that is two calendar months after the date of the act of court embodying this decision. In relation to Advocate Chiddicks, we allow the appeal to the extent only of substituting for the two months' suspension imposed on him by the Royal Court the sanction of a public reprimand, that reprimand being constituted by the publication of this judgment. The appellants will pay the costs of the appeal: although Advocate Chiddicks has succeeded in reducing the sanction imposed on him by the Royal Court, we do not consider that this should be reflected in a reduced costs order, or an order imposing any costs burden on the respondent. Authorities Civil Procedure Rules 1988 r7.7. *Leeds United Football Club Limited v Weston & Levi*

[2012] JCA 083 . *Leeds United Football Club Limited v Weston & Levi*

[2012] JCA 088 . *The Law Society of Jersey Law 2005. Brett v SRA*

[2014] EWHC 2974). *Snooks V United Kingdom* [2002] JLR 475 . *Bhojwani V Attorney General* [2011] 1 JLR 249. *Beacon Insurance Co Ltd V Maharaj Bookstore Ltd*

[2014] UKPC 21 . *Court Of Appeal (Jersey) Law 1961. Salisbury V Law Society*

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