THE HIGH COURT

[2016 No. 82 SA]

IN THE MATTER OF BARRY SHEEHAN, A SOLICITOR

AND

IN THE MATTER OF THE SOLICITORS ACTS 1954-2015

AND

IN THE MATTER OF THE SOLICITORS DISCIPLINARY TRIBUNAL

BETWEEN

BARRY SHEEHAN

PRACTISING UNDER THE STYLE OF BARRY SHEEHAN SOLICITOR

APPELLANT

AND

THE SOLICITORS DISCIPLINARY TRIBUNAL AND

BERNARD BINGHAM AND VIOLA BINGHAM

RESPONDENTS

AND

LAW SOCIETY OF IRELAND

NOTICE PARTY

JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 31st day of October, 2017

Introduction

1. On 10th October, 2017 I found in favour of the Solicitors Disciplinary Tribunal (SDT) and the Law Society of Ireland (The Law Society) in respect of preliminary objections which they raised to issues sought to be litigated by the appellant solicitor (Mr. Sheehan) as part of his appeal from an order of the SDT dated 5th July, 2016. I indicated that I would give my reasons in writing for so finding. This I now do.

Background

2. There is a long tortuous history of bitter relations between Mr. Sheehan and his former clients, Bernard Bingham and Viola Bingham (Mr. and Mrs. Bingham). The Chairman of the SDT was undoubtedly correct when he said in the course of its ruling of 23rd June, 2016 that "*both parties had been fixated about vindicating their respective positions against the other*".

3. For the purpose of this judgment it is not necessary to recite each and every episode where Mr. Sheehan and Mr. and Mrs. Bingham confronted each other whether in the SDT, the Circuit Court or this Court. I mention only those occasions which have a relevance to this ruling.

4. In 2002 Mr. and Mrs. Bingham commenced medical negligence proceedings in the High Court. They retained a number of firms of solicitors to act on their behalf parting company with each of them in turn. In March 2006 Mr. Sheehan came on record for Mr. and Mrs. Bingham in that litigation. He came off record on 17th December, 2008 following a contested hearing before Feeney J. In January 2009 Mr. and Mrs. Bingham made a complaint to the Law Society concerning Mr. Sheehan. They were unsuccessful. They appealed that decision to the independent adjudicator of the Law Society who rejected the appeal.

5. In June 2009 Mr. Sheehan decided to sue Mr. and Mrs. Bingham in the Circuit Court for costs allegedly due to him in a sum of €37,725.44. Mr. and Mrs. Bingham delivered a defence and counterclaim to that claim. They counterclaimed for damages for professional negligence and breach of contract.

6. Mr. Sheehan was refused summary judgment in respect of his claim and the case went to trial at Dundalk Circuit Court before Judge Flanagan. That Judge in an *extempore* ruling dismissed Mr. Sheehan's claim and Mr. and Mrs. Bingham's counterclaim. The reasons for these dismissals remain unclear.

7. Mr. Sheehan appealed that decision of the Circuit Court. Mr. and Mrs. Bingham did not appeal the dismissal of their counterclaim. Mr. Sheehan's appeal came on before the High Court (Hanna J.) in Dundalk in July 2012. He withdrew his appeal. Accordingly, the decision of the Circuit Court was affirmed.

8. In September 2014 Mr. and Mrs. Bingham applied for an inquiry into the conduct of Mr. Sheehan on the grounds of alleged misconduct. No fewer than 27 allegations of misconduct were made. These were considered by a division of the SDT which took the view that a *prima facie* case of misconduct had been made out in respect of just two of the allegations made by Mr. and Mrs. Bingham. They were that (i) Mr. Sheehan was "*abusing his position by threatening to destroy the entire file unless Mr. and Mrs. Bingham settled his bill of costs despite a Circuit Court order dismissing his claim*" and (ii) "*was refusing to return the file or grant*

access to it to Mr. & Mrs. Bingham".

9. These complaints proceeded before the SDT in July, October and December 2015 and May and June 2016. Mr. Sheehan was represented by counsel at the July 2015 hearing but thereafter he represented himself. He was self represented on this appeal.

10. The SDT found Mr. Sheehan not guilty of misconduct in respect of the second allegation. However in respect of the first it found him guilty of misconduct. In this respect it said:-

> *"In the Tribunal's view the respondent solicitor, having been frustrated by his claim for costs being dismissed by the Circuit Court, being reported on two occasions to the Law Society and knowing that the threat to destroy the files would cause the applicants considerable anguish, wrongly threatened the applicants with the destruction of their files. This was a deliberate act to try to force the applicants to give him some money for the work he did on their behalf even though the Circuit Court had dismissed his claim for costs. The Tribunal also infers from the fact that the respondent solicitor, despite his threat to destroy the file, did not actually do so because he knew perfectly well that the file, other than the working papers, belonged to the applicant. As such the respondent solicitor's conduct was morally culpable or otherwise of a disgraceful kind which tended to bring the solicitors profession into disrepute and therefore he was guilty of professional misconduct".*

11. In June 2016 the SDT made its decision on sanction. It directed that Mr. Sheehan be censured and that he pay a sum of €5,000 to the Solicitors Compensation Fund together with a sum not exceeding €750 to Mr. and Mrs. Bingham in respect of their attendance before that tribunal.

12. It is from that decision of the SDT that Mr. Sheehan brought the instant appeal.

13. The above is an outline of the confrontations that have taken place between Mr. Sheehan and his former clients in a variety of different venues. I have only mentioned those which are relevant for the purposes of this ruling. There is a much fuller recitation of these matters in the decision of the SDT under appeal.

The appeal
14. As is clear from the title to these proceedings Mr. Sheehan exercised his statutory entitlement under the relevant provisions of the Solicitors Acts in order to bring this appeal.

15. The notice of motion grounding the appeal was dated 28th July, 2016 and the appeal came before me in October and December 2016.

16. Mr. Sheehan named the SDT as a respondent and Mr. and Mrs. Bingham as mere notice parties.

The notice of motion
17. The motion grounding the appeal seeks the following reliefs:-

> *"(i) An order pursuant to Order 53, rule 12(i) of the Rules of the Superior Courts 1986 (as amended), and section 11(b)(i) of the Solicitors (Amendment) Act 1960 (as amended), rescinding the order of the Solicitors Disciplinary Tribunal dated the 5th day of July, 2016 and the finding of misconduct made that the appellant had 'abused his position by threatening to destroy the entire files unless the notice parties settled his bill of costs despite a Circuit Court order dismissing his claim' and thereby engaged in 'conduct tending to bring the solicitors profession into disrepute' for the purpose of the definition of misconduct under section 3 of the Solicitors (Amendment) Act 1960 (as amended);*
>
> *(ii) such further or other order as to this honourable court seems fit;*
>
> *(iii) an order for the costs of and incidental to this appeal."*

18. Mr. Sheehan then set out grounds upon which he relied in support of the appeal. Those grounds read as follows:-

> *"(i) The respondent acted ultra vires the statutory powers conferred upon it by the applicable provisions of the Solicitors Acts 1954-2011 and/or the various orders and regulations made thereunder in proceeding to embark upon the Inquiry;*
>
> *(ii) The respondent breached the twin precepts of constitutional and natural justice namo iudex in sua causa and audi alteram partem during the course of the Inquiry;*
>
> *(iii) The respondent abused the discretionary powers conferred upon it by the Solicitors Acts 1954-2011 and/or the various orders and regulations made thereunder;*
>
> *(iv) The respondent failed to vindicate, or properly vindicate, the appellant's unenumerated personal right to fair procedures in decision making under Article 40.3 of the Constitution of Ireland 1937;*
>
> *(v) The respondent failed to vindicate, or properly vindicate, the appellant's right to a fair trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on 4th November, 1950 and ratified in this jurisdiction by the European Convention on Human Rights Act 2003;*
>
> *(vi) The appellant reserves the right to plead further grounds of appeal and to amend the within notice of motion."*

19. It is to be noted that not a single ground of appeal contained in the notice of motion addresses the merits of the matters upon which Mr. Sheehan was found guilty.

20. The notice of motion was addressed by Mr. Sheehan to Mr. and Mrs. Bingham, the Registrar of Solicitors at the Law Society and the Registrar of the SDT.

The appeal hearing
21. When Mr. Sheehan's appeal came on for hearing before me in December 2016 only Mr. and Mrs. Bingham were represented. However, it was clear that if Mr. Sheehan were to pursue the grounds of appeal as enumerated in his notice of motion it would be necessary that the SDT and the Law Society should be before the court in order to deal with those issues touching upon the

jurisdiction of the SDT. On that occasion I joined Mr. and Mrs. Bingham as respondents since they ought to have been joined in that capacity by Mr. Sheehan at the outset. I also reinstated the SDT to the proceedings (they having previously been struck out) and joined the Law Society as a notice party and directed that it and the SDT be given notice of the proceedings.

22. I heard Mr. Sheehan's appeal on the merits against the findings of the SDT and I dismissed it. At the conclusion of that hearing he indicated that he wished to proceed with the jurisdictional issues as against the SDT and the Law Society. I therefore, in January 2017, gave directions for an exchange of submissions as between the parties. That having taken place these issues came on for hearing on 10th October, 2017.

23. As both the SDT and the Law Society raised preliminary objections to the entitlement of Mr. Sheehan to pursue these jurisdictional issues I heard those objections first. I concluded that they were well founded hence this judgment.

The preliminary objections

24. Both the SDT and the Law Society raise the same preliminary objections to Mr. Sheehan's entitlement to pursue jurisdictional issues in the context of this statutory appeal.

25. They both contend that his complaints as to jurisdiction cannot be pursued in this appeal because such matters ought to have been pursued by way of judicial review. Such jurisdictional issues cannot be accommodated in a statutory appeal which envisages a *de novo* hearing on the merits.

26. The second objection is that in any event Mr. Sheehan acquiesced and participated in the proceedings before the SDT and therefore waived his entitlement to pursue the jurisdictional complaints at this late stage. Not merely did he so acquiesce but did so in the full knowledge that judicial review was the appropriate remedy.

27. I should point out that quite apart from these preliminary objections both the SDT and the Law Society delivered submissions contesting Mr. Sheehan's entitlement to succeed on the substantive jurisdictional issues and pointed out that he appeared to proceed on a fundamental misunderstanding of his position.

The first point: jurisdiction

28. The SDT and the Law Society contend that complaints about the jurisdiction of the SDT cannot be pursued in these proceedings which constitute an appeal contemplated by the relevant provisions of the Solicitors Acts and regulated by the provisions of Order 53 of the Rules of the Superior Courts. These envisage a *de novo* hearing between complainant and respondent but do not accommodate challenges to jurisdiction of the SDT.

29. In support of this argument two cases are cited. The first is the decision of the Supreme Court in *O'Reilly v. Lee* [2008] 4 I.R. 269.

30. In that case the appellant made a complaint of misconduct to the SDT and appealed to the High Court against a finding made by it that no *prima facie* case had been made out. The High Court confirmed the finding of the SDT. An appeal was taken to the Supreme Court.

31. In the course of her judgment in the Supreme Court Macken J. (with whom Denham and Fennelly JJ. agreed) having described the statutory provisions providing for an appeal from the SDT said as follows:-

> *"5. I have set out the above statutory provision in some detail because it seems to me that the appellant is under a misapprehension as to the precise nature of an appeal from the Solicitors Disciplinary Tribunal to the High Court. He has, for example, drawn this court's attention to his concern that the Solicitors Disciplinary Tribunal is not itself the respondent to the appeal, as he believes would be the case in respect of the professional body regulating his profession. Rather it is the respondent solicitor. He submits that it is difficult to understand how the Solicitors Disciplinary Tribunal, against whose decision he has sought to appeal, is merely a notice party to the proceedings in the High Court, and that in reality this has precluded him from bringing the type of appeal which he would wish to bring. He suggests further that the members of the tribunal could, for various reasons, be thought to be biased.*
>
> *6. I am satisfied that the correct interpretation of the Solicitors Acts 1954-2002, as amended in the manner referred to above, is that the appeal from a decision of the Solicitors Disciplinary Tribunal, in this case from its decision dated 20th March, 2006, is a hearing de novo in the High Court in which the matters contended for by the appellant as constituting grounds for the holding of an inquiry into the respondent's alleged misconduct, and the respondents reply, may be exposed again and argued afresh before the High Court, which decides the appeal on the basis of the materials which were before the Disciplinary Tribunal, but having regard to the arguments made before it, the High Court, exercising an independent jurisdiction in the matter. It is for this reason that the respondent is the correct respondent, and equally, that the Solicitors Disciplinary Tribunal is a proper notice party to the proceedings, bound by any order which the High Court might make on the appeal.*
>
> *7. A different situation would of course arise if the appellant sought to challenge the Solicitors Disciplinary Tribunal in respect of matters dealt with, or failed to be dealt with in an appropriate case, such as would lend themselves to an application for judicial review. In support of his contention that the Solicitors Disciplinary Tribunal should be a respondent to his appeal and not a mere notice party, the applicant invokes the decision of this court in The State (Creedon) v. Criminal Injuries Compensation Tribunal [1988] I.R. 51, where that tribunal was the respondent to the applicant's claim. That was not however an appeal, but rather an application for judicial review, and it was both legally appropriate and in accordance with the applicable rules of court governing such proceedings, that the relevant tribunal in that case would be the named respondent. The appellant invokes the same case for an additional purpose, namely, to support his contention that a tribunal against whose decision he is appealing is obliged to provide appropriate and adequate reasons for its decision and he argues that the Solicitors Disciplinary Tribunal did not do so.*
>
> *8. Having regard to the fact that this is not a judicial review of the decision of the Solicitors Disciplinary Tribunal, the arguments and complaints of the above nature and those of an analogous type which the appellant makes on its findings, all fall, once there is a full appeal to the High Court, at which appeal both parties are heard again at oral hearing in open court, where both can make legal and other relevant submissions in all matters, with a fresh determination of the issues and where a judgment is delivered on that appeal."*

32. These observations appear to me to support the view that the appeal provided for under the relevant statutory provisions of the Solicitors Acts is not to be regarded as one which provides a forum for dealing with issues which are appropriate for judicial review.

The appeal contemplated under the Solicitors Acts is not a substitute for, nor does it provide a parallel jurisdiction to deal with issues such as jurisdiction which properly fall to be litigated in, judicial review proceedings.

33. The second case relied upon is my own decision in *Mallon v. Law Society of Ireland* [2017] IEHC 547.

34. In that case I struck out *in limine* a purported appeal brought by Mr. Mallon, a solicitor. The appeal was brought in circumstances where none of the necessary statutory preconditions for the bringing of such an appeal had been satisfied. No consideration had been given by the SDT to the allegations made against him nor had any findings been made by it. No report had been prepared by the SDT. It was argued by Mr. Mallon that notwithstanding these shortcomings, there was still an entitlement to bring such appeal because of the existence of a jurisdiction vested in the President of the High Court to entertain "unenumerated" appeals. I rejected that contention and said:-

> *"49. I do not accept that s.7 creates an appellate jurisdiction concerning what he describes as 'unenumerated appeals'. The only appeals that are created by the Act are those which arise on foot of the steps prescribed by the Act namely the completion by the SDT of its statutory obligation to consider each allegation of misconduct and to make findings and prepare a report or order in respect of them. There is, in my view, nothing to be found in the statutory provisions which supports the notion of a species of appeals being created which do not comply with those statutory provisions.*
>
> *50. I already quoted from paragraph 14 of Mr. Mallon's written submissions. There is no doubt a jurisdiction in the High Court (not confined to the President of the Court) to regularise the conduct of an ongoing inquiry if there is a breach of natural justice or some misbehaviour on the part of the SDT. But such remedy lies within the purview of the judicial review jurisdiction of the High Court. It is not one arising under the structure of the appellate mechanism of the Solicitors Acts.*
>
> *51. I also reject the contention that the provisions of R.S.C., Order 15, rule 12(b) support the notion of an unenumerated "appellate jurisdiction". First, I can find nothing to support what is contained in paragraph 17 of Mr. Mallon's written submissions to the effect that the rule directs an appeal to me in substitution for an application for judicial review. There simply is no such direction. Furthermore, I do not find anything in the wording of Order 53, rule 12 which supports the notion of an appellate jurisdiction in excess of that prescribed by section 7. Even if there was, such a provision of the rules of court would be ultra vires since rules of court could not create a jurisdiction in excess of that permitted by the primary legislation.*
>
> *52. Neither does the approach taken by Finnegan P. in Stephen's case support the notion of the existence of some overarching appellate jurisdiction being exercised by the President of the High Court and accommodated as an appeal under s.7 of the legislation."*

35. Later in the judgment I said as follows:-

> *"57. A challenge to the jurisdiction, behaviour or conduct of the SDT prior to the completion of its statutory mandate cannot be made by means of a purported appeal under s.7 but only by way of judicial review."*

36. Whilst that decision dealt with a purported appeal brought prior to the SDT completing its task (unlike the present case) it is nonetheless supportive of the view that a statutory appeal provided for under the Solicitors Acts does not accommodate issues which properly fall to be dealt with by way of judicial review.

37. The jurisdictional issues now raised ought to have been litigated by means of judicial review and are not accommodated in the statutory mechanism invoked by Mr. Sheehan when he was dissatisfied with the finding of the SDT. Accordingly I conclude that the SDT and the Law Society are correct in their argument that there is no jurisdiction on this appeal to entertain Mr. Sheehan's contention as to a lack of jurisdiction on the part of the SDT to have dealt with Mr. and Mrs. Bingham's complaints.

Acquiescence and waiver

38. The complaint which Mr. Sheehan seeks to make concerning an absence of jurisdiction on the part of the SDT to entertain the complaint of Mr. and Mrs. Bingham is not new. As far back as October 2014 at the very outset of the complaints he wrote to the registrar of the SDT indicating that Mr. and Mrs. Bingham were "statutorily precluded" from making the application which they did. (See para. 36 of Mr. Sheehan's affidavit of 25th July, 2016).

39. His complaint in respect of jurisdiction was renewed in an affidavit sworn on 13th November, 2014 and placed before the SDT in which he voiced his objection to its jurisdiction to embark upon the inquiry.

40. On 1st April, 2015 a division of the SDT reached the conclusion that there was a *prima facie* case of misconduct against Mr. Sheehan. Notwithstanding his contention that there was no jurisdiction on the part of the SDT he made no application for judicial review then.

41. On 20th July, 2015 Mr. Sheehan sent an email to the SDT in which he stated *inter alia* as follows:-

> *"Please also note that I hereby reserve the right to proceed by way of judicial review in respect of the extempore decision of the tribunal to reject my preliminary objection to its jurisdiction to hear and determine the applicant's direct application. In the circumstances, I hereby request to be furnished with a transcript of the first day of the inquiry so that I might be in a position to appraise (sic) myself of the precise reasons for such refusal in addition to considering the oral evidence tendered by the applicants in support of their direct application.*
>
> *Please note this email will be relied upon, if ultimately necessary, in support of an application to extend the period within which to make an application for judicial review pursuant to the provisions of Order 84, rule 21(3) of the Rules of the Superior Courts 1986 (as amended)."*

42. Whilst the applicant objected to the SDT's jurisdiction at the commencement of the hearing as described at para. 44 of his affidavit sworn on 25th July, 2016 he took no steps to seek judicial review.

43. It is clear that at no stage did Mr. Sheehan commence judicial review proceedings to question the jurisdiction of the tribunal. Rather he participated fully in the hearings of many days duration on the merits. When a decision was reached adverse to him he exercised his statutory right of appeal to this court. In these circumstances the SDT and the Law Society contend that his conduct is

such as to amount to an acquiescence and waiver of any entitlement which he might have to question the jurisdiction of the SDT.

44. In *R. (Kildare County Council) v. Commissioner of Valuation* [1901] 2 I.R. 215 the County Council appealed to the County Court from a valuation revision decision of the Commissioner of Valuation. The County Court Judge affirmed the valuation subject to a variation. The County Council then applied for a writ of *certiorari* to quash the revised valuation lists on the basis that they were made without jurisdiction. The County Council was successful at first instance in the Queen's Bench Division, that court taking the view that the valuation revision was made without jurisdiction.

45. On appeal, the Court of Appeal held that "*assuming the revision list was without jurisdiction, nonetheless Kildare County Council was estopped by conduct from raising the question*" and accordingly the decision of the High Court was overturned.

46. In the course of his judgment Holmes L.J. said:-

> *"… the right to question such an adjudication can be lost by the conduct of the parties. I cannot conceive a stronger case of estoppel by conduct than the present. The appeal that was taken, so far from raising the point now relied on, asked for relief that could only be granted on the assumption that there was jurisdiction to revise the valuation; and the appellant now seeks to quash the order of the court whose assistance he invoked, because, although it was to a certain extent in his favour, it was not so favourable as he expected, or desired."*

47. The case is instructive because it appears to have been accepted that there was no doubt but that the valuation revision was *ultra vires* the Commissioner's statutory powers. Nonetheless *certiorari* was refused because of the conduct of the Kildare County Council.

48. Other decisions in a similar vein were cited such as *State (Byrne) v. Frawley* [1978] I.R. 326 where an applicant's failure to raise the unconstitutionality of the jury which tried him when appealing to the Court of Criminal Appeal was found to be evidence of acquiescence. Despite the constitutional issue raised, the majority of the Supreme Court found that the failure to object had created "*an insuperable barrier against a successful challenge*".

49. To similar effect was the decision of the Supreme Court in *A. v. Governor of Arbour Hill Prison* [2006] 4 I.R. 88 where an applicant's failure to raise an issue concerning the constitutionality of the offence with which he was charged prior to a plea of guilty precluded him from challenging the validity of that conviction. Hardiman J. said that the applicant had "*… by his conduct led the courts, the prosecution (who were acting for the public at large) and the prison authorities*" to proceed on the basis that he accepted the validity of the charge against him.

50. I am of opinion that the conduct of Mr. Sheehan in the present case bars him from proceeding to seek to question the jurisdiction of the tribunal. That ought to have been done at the outset and by means of judicial review. By failing to timeously apply for relief by way of judicial review Mr. Sheehan effectively waived his entitlement to raise these jurisdictional issues. In my opinion the observations of both Henchy and Griffin JJ. in the case of *Corrigan v. Irish Land Commission* [1977] I.R. 317 are apposite.

51. In that case the appellant sought to raise an issue of bias on the part of the lay commissioners who had certified that his land was required for the relief of congestion. No objection to the membership of the tribunal was made when the matter was before it. Such an issue was sought to be raised thereafter. Henchy J. identified this question of waiver as an issue of public policy. He said:-

> *"The rule that a litigant will be held estopped from raising a complaint as to bias when, with knowledge of all the relevant circumstances, he expressly or impliedly abandoned it at the hearing, is founded, I believe, on public policy. It would be obviously inconsistent with the due administration of justice if a litigant were to be allowed to conceal a complaint of that nature in the hope that the tribunal will decide in his favour, while reserving to himself the right, if the tribunal gives an adverse decision, to raise the complaint of disqualification. That is something the law will not and should not allow. The complainant cannot blow hot and blow cold; he cannot approbate and then reprobate; he cannot have it both ways."*

52. Henchy J. identified this rule of estoppel by waiver of an objection as but one aspect of a broader rule which had been stated in Spencer Bower on *Estoppel by Representation* (2nd Ed.) and which was to the effect that:-

> *"So, too, when a party litigant, being in a position to object that the matter in difference is outside the local, pecuniary, or other limits of jurisdiction of the tribunal to which his adversary has resorted, deliberately elects to waive the objection, and to proceed to the end as if no such objection existed, in the expectation of obtaining a decision in his favour, he cannot be allowed, when this expectation is not realised, to set up that the tribunal had no jurisdiction over the cause or parties, except in that class of case, already noticed, where the allowance of the estoppel would result in a totally new jurisdiction being created."*

53. Griffin J. in the course of his judgment in *Corrigan's* case relied on a further passage from Spencer Bower when he said:-

> *"… And, whenever the party applying to set aside any proceeding for irregularity has been shown to have so conducted himself in the litigation subsequent to the date of his being in full possession of the facts as to lead his adversary to proceed on the footing that the irregularity, if any, is waived, … he has always been held precluded from afterwards raising in the same litigation the objection which he is deemed to have thus deliberately abandoned."*

54. In the instant case there can be no doubt but that from the very outset Mr. Sheehan was alive to the argument which he now seeks to make concerning an alleged lack of jurisdiction on the part of the SDT. He first adumbrated that proposition in correspondence going back to October 2014 when he suggested that the complaint was "statutorily precluded". The same theme appeared in his affidavit in November 2014 and most particularly in his email of 20th July, 2015. He there made it clear that he fully realised that judicial review was the appropriate way to ventilate his complaint. He took no steps at any stage to seek judicial review but rather allowed the tribunal and Mr. and Mrs. Bingham to proceed to a full hearing on the merits over many days and when that gave rise to an adverse finding he then exercised his right of appeal to this court on the merits but also sought to include the jurisdictional argument. That jurisdictional argument is and was at all material times *par excellence* an issue to be tested by judicial review. Having failed to embark upon the course which he self-identified in his email of July 2015 he cannot now be heard on that topic.

55. It was for these reasons that I held that the preliminary objections of both the SDT and the Law Society were well founded. There is no jurisdiction to accommodate judicial review type jurisdictional arguments in the context of the statutory appeal created by

the Solicitors Acts. In any event even if there is such jurisdiction Mr. Sheehan has precluded himself by acquiescence and waiver from raising such issues now.