Neutral Citation [2016] IEHC 667

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 410 J.R.]

BETWEEN

OWEN SWAINE

APPLICANT

AND

THE SOLICITORS DISCIPLINARY TRIBUNAL

FIRST NAMED RESPONDENT

AND

THE LAW SOCIETY OF IRELAND

SECOND NAMED RESPONDENT

AND

HENRY GREALLY

NOTICE PARTY

JUDGMENT of Mr. Justice Noonan delivered on the 15th day of November, 2016.

1. In these proceedings, the applicant, a solicitor, seeks an order quashing the order and report dated the 23rd of June, 2015, of the first named respondent ("the Tribunal"). These resulted in a number of findings of misconduct by the applicant.

Background Facts.

2. The notice party herein ("Mr. Greally") was a client of the applicant as was a company called Tambark Ltd which was effectively owned and controlled by Mr. Greally. Tambark Ltd owned a premises which was damaged by fire which resulted in a claim against Tambark's fire insurers, Quinn Insurance.

3. Mr. Greally had originally instructed another firm of solicitors in relation to this matter but subsequently instructed the applicant. Negotiations ensued between the applicant and the solicitors for Quinn Insurance which ultimately resulted in an offer of €200,000 and Mr. Greally's costs in settlement of the claim. This offer was made on the 9th of March, 2010. There is a factual dispute between the applicant and Mr. Greally as regards what Mr. Greally was actually told about this offer and when he was told it. On the 11th of March, 2010, the applicant agreed with the solicitors for Quinn Insurance a figure of €60,000 to include VAT in respect of his costs. On the same date, a cheque for €200,000 payable to Tambark Ltd was issued by Quinn Insurance. On the 22nd of March, 2010, a cheque for €60,000 payable to the applicant was issued by Quinn Insurance. On the 24th of March, 2010, the applicant issued a bill of costs addressed, not to Mr. Greally, but to Quinn Insurance.

4. Mr. Greally claims not to have had any knowledge of this arrangement between the applicant and Quinn Insurance until he found out about it sometime in June 2010, as a result of contact he had with the loss adjuster he had retained in the case who was seeking payment of his fees and informed him of these facts.

5. It is clear that from on or before this time, the professional relationship between the applicant and Mr. Greally had broken down. On the 23rd of July, 2010, the applicant made a complaint to the second respondent ("the Law Society") about the applicant.

6. Subsequent to that, the applicant on the 12th of August, 2010, wrote to Mr. Greally about a number of matters. At the beginning of this letter, the applicant wrote "Further, we note from your telephone call that we no longer act for you and/or Tambark." The applicant went on to deal with a number of matters concerning Mr. Greally including the claim against Quinn Insurance and referred to the fact that his professional fee of €60,000 to include VAT and outlay had been agreed and discharged by Quinn Insurance. It is clear therefore that at the time this letter was written, the applicant no longer represented Mr. Greally in a professional capacity.

The Complaint.

7. On the 19th of April, 2012, Mr. Greally made a formal complaint to the Tribunal by completing a form described as "DT1(b)" initiating an application for an inquiry. This application was supported by another document described as "DT2(b)" which is a sworn affidavit setting out the nature of the complaint. In the narrative para. 3 of this affidavit, Mr. Greally made a number of statements, subsequently contested by the applicant, including the following:

> "I told him that I would be happy with the settlement of €200,000. However, Owen Swaine never at any stage told me that in fact the case settled for €260,000 and that he had agreed with the solicitor for Quinn Insurance that two cheques would be issued, one for €200,000 in favour of my company Tambark Ltd and another for €60,000 payable to Owen Swaine."

8. Mr. Greally went on to swear:

> "In fact, it was through enquiries made by [*the loss adjustor*] directly with Quinn Insurance that I found out, for the first time, in June 2010, that in fact the case settled for €260,000 and not €200,000."

Mr. Greally went on to conclude his narrative statement by saying "I never received a bill of costs from Owen Swaine either for the €60,000 …"

9. Paragraph 4 of the affidavit form DT2(b) provides a pro forma statement at the start of para. 4 in the following terms:

> "It is submitted that the respondent solicitor(s) is/are guilty of misconduct as a solicitor in that he/she/they"

with the following blank space to be completed by the deponent. In this blank space, Mr. Greally set out ten separate allegations of misconduct, the relevant ones for the purposes of these proceedings being as follows:

> "[1.] I was never at any stage told by Owen Swaine that the case settled for €260,000. I was always told that the case settled for €200,000 and that all of the costs would have to be paid out of that €200,000;…
>
> [3.] I have never got any bill of costs in relation to the €60,000 that Owen Swaine got from the solicitor for Quinn Insurance. That €60,000 is not mentioned anywhere in Owen Swaine's correspondence to the Law Society;
>
> [4.] The €60,000 was never lodged to the client account of Owen Swaine as it should have been;…
>
> [7.] I sent a letter to Owen Swaine on 6th of February 2012 saying that I wanted to avail of the right to have the Bill of Costs taxed but he has ignored that letter;…
>
> [9.] I have never seen the Bill of Costs that Owen Swaine sent to the solicitor for Quinn Insurance;…"

The Proceedings Before the Tribunal.

10. An oral hearing of Mr. Greally's complaint took place before the Tribunal on three days, the 21st of October 2014, the 13th of November 2014 and the 31st of March 2015. On the latter date, the Tribunal reached a conclusion and read out its determination to the parties. This was subsequently formalised in three documents all dated the 23rd of June, 2015, being respectively an order, a report and a decision. The Tribunal's order states as follows:

> "NOW The Tribunal FINDS the Respondent Solicitor is guilty of misconduct in respect of the following complaints as set out in para. 4 (1), (3) and (4) of the affidavit of Henry Greally, sworn the 19th April 2012:-
>
> [1.] "[The Applicant] was never at any stage told by [the Respondent Solicitor] that the case settled for €260,000. [The Applicant] was always told that the case settled for €200,000";
>
> [3.] "[The Applicant] [has] never got any Bill of Costs in relation to the €60,000 that [the Respondent Solicitor] got from the solicitor for Quinn Insurance. That €60,000 is not mentioned anywhere in [the Respondent Solicitor's] correspondence to the Law Society";
>
> [4.] "The €60,000 was never lodged in the client account of [the Respondent Solicitor] as it should have been".

11. The order then went on to direct the Law Society to bring the findings of the Tribunal before the High Court.

12. The Tribunal's report sets out the procedural history of the matter in summary form and notes at para. 9 that it had found that there was no misconduct on the part of the applicant in respect of complaints including that set out at para. 4.7. However, at para. 10, the Tribunal went on to state:

> "[10.] The Tribunal found on 31 March 2015 that there had been misconduct on the part of the Respondent Solicitor in respect of complaints as set out in para. 3. 4.1; 4.3; 4.7; and 4.4 (above) for the reason set out in the written decision of the Tribunal attached to this report."

13. Plainly therefore, there is an obvious contradiction between paras. 9 and 10 of the report in that one records in respect of charge 4.7 that there was no misconduct and the other records the opposite. Arising from these determinations, the conclusion of the Tribunal as to penalty was in the following terms:

> "AND the opinion of the Tribunal as to the fitness or otherwise of the Respondent Solicitor to be a member of the solicitors' profession and their recommendations as to the sanction which, in their opinion, should be imposed, are as follows:
>
> (a) That the Respondent Solicitor be censured;
>
> (b) That the Respondent Solicitor pay the sum of €1,000 to the Compensation Fund;
>
> (c) That the Respondent Solicitor pay the sum of €17,500 as restitution to the application [*sic*];
>
> (d) That the Respondent Solicitor pay the whole of the costs of the Applicant to be taxed by a Taxing Master of the High Court in default of agreement."

14. The third document being the decision of the Tribunal sets out in summary form the evidence given, the documents put before the Tribunal, the submissions made and its findings. Each of the allegations set out at para. 4 of Mr. Greally's affidavit are recited with the applicable finding and the reason for that finding. The relevant findings challenged in these proceedings are as follows:

"Allegation 4.1

> [The Applicant] was never at any stage told by "[the Respondent Solicitor] that the case settled for €260,000. [The Applicant] was always told that the case settled for €200,000 and that all of the costs would have to be paid out of the €200,000";
>
> **Finding**: The Respondent Solicitor is guilty of misconduct.

Reason:-

> By reason of the direct evidence of the Applicant to this effect and the admission by the Respondent Solicitor that while

he said he had told the Applicant that Quinn Insurance would pay his professional fee on top of the settlement amount of €200,000, there was no written evidence to show:

(a) that the Respondent Solicitor had advised the Applicant of the amount of the fee paid to him or

(b) that he had agreed with the Applicant the fee paid to him, prior to referring to the gross amount of €60,000 in a letter of the 12th August 2010, which was sent after the professional relationship had broken down….

Allegation 4.3 (as amended)

"[The Applicant] [has] never got any Bill of Costs in relation to the €60,000 that [the Respondent Solicitor] got from the solicitor for Quinn Insurance.

Finding: the Respondent Solicitor is guilty of misconduct.

Reason:-

By reason of the direct and credible evidence of the Applicant to this effect and the admission of the Respondent Solicitor that while the Applicant was aware that Quinn Insurance would pay the Respondent Solicitor's professional fee, there was no written evidence to show that the Respondent Solicitor had, at the relevant time, provided a Bill of Costs to the Applicant in relation to the sum of €60,000 nor was he prepared to swear that he did.

Further, the reference to the assertion by the applicant "that €60,000 was not mentioned anywhere in Owen Swaine's correspondence to the Law Society" is regarded as a comment by him and does not form part of the finding of the Tribunal.

Allegation 4.4

That the sum of €60,000 was never lodged to the client account of [the Respondent Solicitor] as it should have been.

Finding: the Respondent Solicitor is guilty of misconduct.

Reason:-

By reason of the failure of the Respondent Solicitor to rebut the evidence of the Applicant that the payment of the sum of €60,000 in gross fees was not approved of by the Applicant and that it should therefore, in the absence of such express approval, have been treated as client's money and lodged to the client's account …

Allegation 4.7

The Applicant sent a letter to [the Respondent Solicitor] on the 6th February 2012 saying that he wanted to avail of the right to have the Bill of Costs taxed but the Respondent Solicitor has ignored that letter".

Finding: the Respondent Solicitor is not guilty of misconduct.

Reason:-

The Tribunal accepts the evidence of the Respondent Solicitor that he never received such a letter. Further, a copy of the said letter was not provided by the Applicant to the Tribunal.

Allegation 4.9

The Applicant has never seen the Bill of Costs that [the Respondent Solicitor] sent to the solicitor for Quinn Insurance.

Finding. The Respondent Solicitor is not guilty of misconduct.

Reason:-

The Tribunal views this as essentially the same allegation as at para. 4.3 and has dealt with this allegation at 4.3 above…"

The Applicant's Case.

15. The applicant challenges the determination of the Tribunal on the following basis. In relation to allegation 4.1, the applicant submits that the decision records that Mr.Greally was never told that the case settled for €260,000 (at any stage) yet goes on to

expressly record that he was in fact so told in the letter of the 12th of August, 2010. Accordingly the applicant says that the decision is manifestly self contradictory, irrational on its face and is therefore liable to be set aside.

16. With regard to allegation 4.3, this allegation was unilaterally amended by the Tribunal without notice to any party prior to reaching its decision by the exclusion of the second sentence which it originally contained. Accordingly the charge of misconduct in respect of which the applicant was found guilty was not one which had ever been levied against him or in respect of which he had an opportunity to give evidence or make submissions. Accordingly there was a fundamental want of fairness in the procedure adopted by the Tribunal.

17. The applicant challenges the Tribunal's finding in respect of allegation 4.4 on the basis that this amounts to an erroneous interpretation of the relevant Solicitors Regulations and thus constitutes a error of law rendering it liable to be set aside. With regard to the Tribunal's contradictory determination in respect of allegation 4.7, the applicant says this is a clear error on the face of the record which must accordingly be quashed.

18. Finally, with regard to the penalty imposed and the award of €17,500 for "restitution", the applicant complains that there is a failure to give reasons for this finding which accordingly renders it erroneous.

Discussion.
19. Central to the issues that arise in this case is the fact that the applicant has a statutory right of appeal from the findings of the Tribunal to the President of the High Court. This is a full appeal in every sense of the word. Order 53 rule 9 of the Rules of the Superior Courts provides that the President of the High Court shall direct that an appeal shall proceed as a full rehearing of the evidence laid before the Tribunal unless all the parties consent to a less than full rehearing. On the hearing of such appeal, the President has very wide powers under the rule which include remitting the matter to the Tribunal for further evidence to be taken and that a supplementary report be made thereon and at the conclusion of the matter to give any decision or make any order as the President thinks fit. It is thus clear that all of the matters of which complaint is made by the applicant in these proceedings are capable of being dealt with by way of appeal. Furthermore, the applicant has in fact served a notice of appeal which is in suspense pending the outcome of these proceedings.

20. Not only therefore will the court on appeal have the benefit of all of the evidence that was given before the Tribunal but the applicant is free to seek to have further evidence adduced and make any additional arguments he wishes to make before the court. The availability of such an appeal to the applicant is highly material to his right to claim the remedies he seeks in these proceedings. In *EMI Records (Ireland) Ltd v. Data Protection Commissioner* [2013] 2 I.R. 669 Clarke J. summarised the position in this respect (at 727):

> "Thus the overall approach is clear. The default position is that a party should pursue a statutory appeal rather than initiate judicial review proceedings. The reason for this approach is, as pointed out by Hogan J. in *Koczan v. Financial Services Ombudsman* [2010] IEHC 407 , (Unreported, High Court, Hogan J., 1st November, 2010), that it must be presumed that the Oireachtas, in establishing a form of statutory appeal, intended that such an appeal was to be the means by which, ordinarily, those dissatisfied with an initial decision might be entitled to have the initial decision questioned."

21. The same judge revisited the issue in *Sweeney v. District Judge Fahy* [2014] IESC 50 where he said (at para. 3.16):

> "While there may not be complete consistency between all of the authorities, the balance of the case law suggests that the following principles apply. First, judicial review is concerned with the lawfulness rather than the correctness of the decision sought to be challenged. Second, where the jurisdiction of the relevant decision maker to embark on the process of making the relevant decision is either not challenged or is established, an error by the decision maker in reaching the necessary conclusions to determine the appropriate decision to be made does not, of itself, necessarily render the decision unlawful. At a minimum, it requires a fundamental error to raise the prospect that the decision is not merely incorrect but also unlawful. It is unnecessary, for the purposes of this case, to attempt any exhaustive examination of what might be said to be the type of error which is sufficiently fundamental to render a decision unlawful in all types of cases. For present purposes, it can at least be said that issues concerning the adequacy of evidence before a decision maker (as opposed to a complete absence of evidence of a necessary matter) will not render a decision unlawful. Third, even if judicial review might otherwise lie, a court will not exercise its jurisdiction where the law allows for an appeal and where an appeal would be an appropriate remedy to deal with the complaint made. Thus, there may be circumstances where judicial review will not lie against a first instance or initial decision but where it might lie against a similar decision of a body from which no appeal or no further appeal lay."

22. In the same case, Clarke J. emphasised that arguments about conclusions by the inferior Tribunal on the weight to be attached to evidence have, in general, no place in judicial review (at para. 3.8):

> "There are very significant limitations on the extent to which it is appropriate for the superior courts to exercise their judicial review jurisdiction arising out of allegations that the evidence before a lower court or other decision maker was insufficient to justify the conclusions reached rather than insufficient to establish that the decision maker had any lawful capability to make the relevant decision in the first place. Absence of a lawful power to make the decision would render the decision unlawful. Save in an extreme case, absence of sufficient evidence as to the merits would only render the decision incorrect and, thus, not amenable to judicial review."

23. As has been repeatedly emphasised by the courts over the years, judicial review is not concerned with the merits of a case or the correctness of a decision, rather whether it was arrived at lawfully.

24. I turn now to consider the applicant's specific complaints. With regard to complaint 4.1, the applicant in effect seems to be saying that the Tribunal failed in reaching its conclusion to have regard to the terms of his letter of the 12th of August, 2010. Of course that cannot be so because the letter is expressly adverted to by the Tribunal. That seems to me at best to be an argument about the manner in which the evidence was interpreted by the Tribunal and whether any or any sufficient weight was given to the content of the letter in question. Although the determination is said to be self contradictory, it is only such when viewed in a literal sense. It has to be borne in mind that the charges of misconduct here were not framed by a lawyer but were lifted directly from the affidavit of Mr. Greally, a litigant in person.

25. On one view of the matter, the Tribunal was simply saying, as had Mr. Greally, that he had not been told that the case was settled for €260,000 at any material time while the applicant was acting as his solicitor. Of course, as the letter of the 12th of

August, 2010, itself makes clear, by the time it was written the applicant was no longer so acting. Even if there were any substance to this complaint, and I do not believe there is, the appeal available to the applicant is a far more appropriate means of ventilating it. If there is any real ambiguity about this finding, a de novo appeal is the ideal means of clarifying and resolving it.

26. In relation to complaint 4.3, the applicant in his statement of grounds makes the stark assertion that he was found liable on a charge that had never been put to him. Even a cursory perusal of the transcript demonstrates this to be manifestly incorrect. The charge was always considered by the Tribunal and the applicant himself as one of failing to deliver a Bill of Costs. This is repeatedly mentioned in the transcript even to the point where the applicant himself under cross examination complains that he was asked on at least six separate occasions about his failure to deliver a Bill of Costs to Mr. Greally. Indeed the applicant through his counsel at the hearing before the Tribunal expressly treated complaint 4.3 as essentially the same complaint as 4.9 as did the Tribunal in its final determination. There is therefore no conceivable basis for the suggestion that the applicant was in some way mislead or taken by surprise as a result of the purported amendment of the complaint.

27. The second sentence of the complaint "that €60,000 is not mentioned anywhere in Owen Swaine's correspondence to the Law Society" never arose for consideration not only because it was treated as being of no relevance but because the applicant in any event explicitly admitted in his written submissions to the Tribunal (at p. 6) that this was in fact correct. Accordingly, no issue arose at any stage with regard to this part of the complaint. It was simply immaterial and was treated by all parties as such.

28. For any challenge to the amendment of a charge on jurisdictional grounds to succeed, the applicant has to demonstrate that he has suffered prejudice as a result of such amendment. In *DPP (King) v Tallon* [2007] 2 I.R. 230, McMenamin J. said (at 245):

> "In *Director of Public Prosecutions v Corbett (No. 2)* [1992] I.L.R.M. 674, Lynch J. stated as follows at pp. 678 to 679:-
>
> > 'The day is long past when justice could be defeated by mere technicalities which did not materially prejudice the other party. While courts have a discretion as to amendment that discretion must be exercised judicially and where an amendment can be made without prejudice to the other party and thus enable the real issues to be tried the amendment should be made. If there might be prejudice which could be overcome by an adjournment then the amendment should be made and an adjournment also granted to overcome the possible prejudice and if the amendment might put the other party to extra expense that can be regulated by a suitable order as to costs or by the imposition of a condition that the amending party shall indemnify the other party against such expenses.'
>
> This passage was approved by the Supreme Court on appeal as being 'most comprehensive and entirely correct' in *Director of Public Prosecutions v Corbett* (Unreported, Supreme Court, 16th October, 1992) at p.4 of the judgment. However the community's right to have criminal offences prosecuted cannot be interpreted or applied so as to constitute an abrogation of the rights of an accused, if real prejudice can be shown. The power of amendment invested in the courts by rule must be exercised judicially and fairly. It cannot be seen as a *carte blanche* to defeat fairness or established legal rights, or so as to entirely reconstitute a case in form or substance in a manner fundamentally prejudicial to an accused."

I am satisfied that no prejudice of any kind has been shown by the applicant in respect of the deletion of the sentence in question. As the Tribunal records, it was simply a matter of comment which, as I have said, was already admitted in any event.

29. The applicant complains in respect of allegation 4.4 that the Tribunal arrived at its finding by an error of law as to the correct interpretation of Regulation 10 of the Solicitors Regulations. If there was any error here, and I am far from satisfied that there was, it was patently an error within jurisdiction not amenable to judicial review and more appropriate for the appeal which the applicant is pursuing.

30. The applicant's complaint about charge 4.7 is little short of extraordinary. It is absolutely plain on any view of the matter that a typographical error was made here. The Tribunal has full jurisdiction under r. 45 of its own rules to correct such errors. The uncontroverted evidence is that had it been asked, it would have done so. Instead, the applicant chose to institute judicial review proceedings to correct this obvious mistake. Indeed even after the institution of proceedings, the applicant was invited by the Tribunal to apply to rectify the error. He declined to do so but instead, continues to insist on his right to judicial review. This to my mind can only be characterised as an abuse of process and is, it has to be said, characteristic of the applicant's approach to this case as a whole.

31. Finally, the applicant complains that there was a failure to give reasons for the award of €17,500 to Mr. Greally. However, the fact of the matter is that this award was characterised by the Tribunal as "restitution". That supplies the reason. What the applicant is really complaining about is that there was no sufficient evidence to warrant this finding, a complaint echoed throughout his evidence in this application. As the authorities clearly demonstrate, save in wholly exceptional cases, of which this is not one, arguments about absence or weight of evidence are not matters for judicial review.

The Position of The Law Society.

32. By Letter of 17th April, 2015, the applicant, through his own firm of solicitors, wrote to the Law Society noting that pursuant to Article 8 of Regulation 701 of 2004 the Law Society brings a report of the Tribunal before the President of the High Court to seek such order as may be appropriate and reasonable having regard to the opinion of the Tribunal. In the letter, the applicant's solicitors set out the complaints about the determination of the Tribunal which are the subject matter of these proceedings. The letter continued in the following terms:-

> "In the circumstances of the case we intend lodging a grounds of appeal simply in order to stop time running. However it is our intention to proceed by judicial review to quash the said decision should such a step prove necessary. We are however of the view that such a step may be obviated if the Society uses its discretion to recommend that the original decision inter alia be quashed/set aside.
>
> In the premises, it is our submission that the Law Society cannot with propriety and right reason pursuant to Article 8 of Regulation 701 of 2004 bring the matter before the President of the High Court in its present form.
>
> If the Society proceeds to recommend that the decision be upheld and that the recommendations of the Tribunal be given effect to by the President of High Court we will have no choice but to proceed with the judicial review proceedings, with the Society as a respondent".

33. The Law Society responded on the 23rd April, 2015, drawing attention to the fact that it had not at that stage even received a copy of the Tribunal's order and reports and could make no comment on the matters set out by the applicant. The letter went onto to

say:

> "However as a preliminary observation it appears to the Society that any criticism as outlined in your letter are classically matters that would be encompassed in the grounds of an appeal to be ultimately adjudicated upon by the High Court which you will note can be by way of a full re-hearing of the evidence. It would be our view that the High Court has full unfettered powers to cure any procedural or substantive defects if so found by the High Court.
>
> At present the Society sees no basis for the intimation let alone instigation of judicial review proceedings as referred to in your letter".

34. This letter was replied to by the applicant's solicitors reiterating their earlier position.

35. The Law Society replied on 5th May, 2015, saying:

> "It seems to me that the clear meaning of r.8 and (particularly in the context of a respondent appealing to the court against any finding of misconduct) is that that appeal must be concluded in its entirety before any activity is required of the Society by way of notice of motion of seeking an order under r.8."

The Society was accordingly making it clear to the applicant that it was of the view that no steps could be taken by it until the applicant's appeal to the President of High Court had concluded.

36. On the 13th July, 2015, the applicant applied ex parte to this court for leave to seek judicial review against both respondents. Specifically, the following relief was sought against the Law Society:

> "[3.] Further a direction that the second respondent is precluded from bringing this matter before the President of the High Court pending the outcome of the hearing by the alternate division of the first respondent as per para. 2 above."

37. The ex parte application to the court was grounded upon an affidavit of the applicant which, inter alia, referred to, correspondence with the Law Society and exhibited same. However, the respondent exhibited only the letter of 23rd April, 2015, to which I have already referred. He did not exhibit the subsequent letter of the 5th May, 2015, which made absolutely clear that the Law Society had no intention of taking any steps in relation to the applicant prior to the disposal of his appeal. This letter demonstrates clearly that the joinder of the Law Society in this matter was not only premature and unwarranted but entirely improper. Had that letter been in evidence before the court at the leave stage, it is perfectly possible, if not indeed likely, that the court would not have granted leave to the applicant to seek judicial review against the Law Society.

38. Any party moving the court on an ex parte basis has a duty of utmost good faith to the court to draw to its attention all relevant facts and material that may have a bearing on the court's consideration of the matter, whether it is favourable or unfavourable to the moving party. The failure of the applicant, a solicitor and officer of the court, to draw the court's attention to this correspondence is in my view a serious matter.

39. If that were not enough, upon receipt of the order of this court on 13th July, 2015, the Law Society again wrote to the applicant's solicitors on 28th July, 2015, drawing specific attention to the fact that the applicant had failed to exhibit this correspondence and stating:

> "The purpose of this letter is to enquire as follows:
>
> [1.] Whether or not all of these letters (we have already made reference to
>
> the letter of 23rd April) were exhibited in the grounding affidavit and
>
> if not, why not;
>
> [2.] An explanation as to why the applicant felt it necessary to take
>
> proceedings against the Law Society of Ireland for judicial review
>
> when it is abundantly clear, having read the letter from the society
>
> dated 5th May 2015 that the applicant in these judicial review
>
> proceedings required no reliefs whatsoever by way of judicial review
>
> from the Law Society.
>
> We look forward to receipt of a full reply to this matter in early course".

40. There was no response to this letter from the applicant's solicitors. A further request was sent by the Law Society on 16th September, 2015, for an answer. In this letter, the Society said:

"In respect of the above as you are no doubt aware there is an obligation in making an ex parte application for leave to apply for judicial review to make full disclosure of all relevant material information to the court. If it is the case that the applicant failed to exhibit the full chain of correspondence with the society it appears clear to us that the applicant has failed to comply with that obligation."

41. The letter went on to point out that there was no basis for the claim against the Law Society in the circumstances explained and calling upon the applicant to strike the claim out against the Law Society on the return date of 3rd November, 2015. The Society indicated that if the applicant did so, it would not seek its costs. Again, there was no reply despite yet a further reminder on 9th October, 2015. Instead, the applicant simply proceeded with the case.

42. In the light of the foregoing, I am satisfied that the applicant's claim against the Law Society in these proceedings is not only

entirely misconceived but constitutes a serious abuse of process.

43. All the matters to which I have referred are canvassed in detail in the affidavit of Eugene O'Sullivan, a solicitor and Head of Regulatory Legal Services in the Regulation Department of the Law Society. That affidavit was sworn on 29th October, 2015, and has not been replied to. At no stage since this matter was drawn to the applicant's attention as long ago as July 2015, has there been the slightest attempt at an explanation for this state of affairs. The seriousness of the matter is compounded by the failure of the applicant to offer an explanation or even apology to the court either on affidavit or through his counsel during the course of the trial of this application.

Conclusion
44. For the reasons I have given, I will refuse this application. Additionally, by virtue of the matters identified above concerning the Law Society's involvement, I would in any event exercise my discretion against granting any relief.

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HENRY GREALLY

NOTICE PARTY

Addendum of Mr. Justice Noonan delivered on the 17th of November, 2016.

1. Arising out of the judgment delivered in these proceedings on the 15th of November, 2016, counsel for the applicant has drawn to my attention the fact that the applicant's claim herein against the Law Society was in fact withdrawn on the 3rd of November, 2015. This is reflected in an order made by this court on the 15th of December, 2015, which recorded that fact and that the applicant agreed to pay a sum of €4,000 in respect of the Law Society's costs. I was not previously informed of this fact, nor was the order of the 15th of December, 2015, included in any of the documents submitted by the parties to the court during the trial. What I was told by counsel for the applicant in opening the case was that the Law Society was not participating in the matter.

2. In making submissions during the course of the hearing, counsel for the Tribunal submitted that I should have particular regard to the conduct of the applicant in exercising my discretion as to whether relief should be granted and relied specifically on the correspondence with the Law Society to which I have referred in the judgment. Counsel for the applicant in reply made no reference to this issue and certainly did not suggest that the court was in some way precluded from having regard to it because the claim against the Law Society had been compromised.

3. Having regard to these matters which have only now come to light, I wish to record that the last two sentences contained at para. 41 of the judgment are incorrect and should be viewed in the light of this addendum. I would also note that the word "respondent" in the third line of para. 37 should read "applicant".