Neutral Citation Number: [2025] EWHC 1242 (Admin)

Case No: AC-2023-LON-002924

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

ON APPEAL FROM THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 May 2025

Before :

BEFORE THE HONOURABLE MR JUSTICE HENSHAW

- -

Between :

DAVID HINKEL — **Appellant**

- and –

(1) SIMMONS & SIMMONS LLP — **Respondents**
(2) MATTHEW HOOTON

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Written submissions received from parties: 10 and 24 January, 24 February 2025, 3 March 2025 and 6 March 2025
Draft judgment circulated to the parties: 30 April 2025

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APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on 20 May 2025 by Microsoft Teams, to the parties or their representatives by e-mail, and by release to the National Archives.

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Mr Justice Henshaw:

(A) INTRODUCTION

1. This is an appeal, pursuant to section 49 of the Solicitors Act 1974 ("***the Act***"), against a decision of the Solicitors Disciplinary Tribunal ("***SDT***") dated 1 August 2023 that there was no *prima facie* case in respect of certain allegations made by the Appellant ("***Mr Hinkel***") against the Respondents, and dismissing Mr Hinkel's application ("***the Decision***").

2. The background to the appeal, which is complex, is set out in my judgment dated 23 February 2024 in the related case *Hinkel v Gheissari and Hooton* [2024] EWHC 393 (Admin). I give only a brief summary below.

3. The dispute arises from a proposed transaction in 2016 in which Mr Hinkel sought to buy a property in London owned by the Islamic Republic of Iran. Those involved at the Respondents' firm, Simmons & Simmons LLP ("***Simmons***"), understood themselves to be instructed by an authorised representative of Iran, but the transaction did not proceed. It appears never to have been definitively determined whether the individual in question was authorised or not. Mr Hinkel in 2018 sued Simmons for wasted costs, alleging that they had acted fraudulently. That claim was dismissed by HHJ Dight CBE on 10 March 2020 on Simmons' summary judgment application. Adam Johnson J on 15 January 2021 refused permission to appeal from that decision. Mr Hinkel then issued a further eight applications seeking to challenge the refusal of permission to appeal on various grounds. On 17 December 2021 Adam Johnson J handed down judgment dismissing Mr Hinkel's applications. He also made an Extended Civil Restraint Order ("***the ECRO***") against Mr Hinkel on the ground that Mr Hinkel had persistently issued claims or made applications that were wholly without merit.

4. In the meantime, Mr Hinkel also pursued regulatory action. In March 2019 he applied to the SDT making wide-ranging allegations, including dishonesty, against the Respondents and two other individuals at Simmons. Following an

investigation by the Solicitors Regulatory Authority ("***SRA***"), the SDT in June 2019 decided there was no case to answer and dismissed the proceedings. Mr Hinkel appealed from that decision to the High Court (case CO/2933/2019). Robin Knowles J dismissed the appeal on the papers in March 2020.

5. In July 2021 Mr Hinkel made a further application to the SDT, which in July 2022 certified that there was a case to answer. However, following a hearing on 15 and 16 December 2022, the SDT concluded in a decision dated 18 January 2023 (amended 19 January 2023) ("***the January 2023 Decision***") that the certification of Mr Hinkel's 2021 application had proceeded on the basis of a fundamental mistake. Mr Hinkel had failed to disclose his earlier 2019 application, in the course of which materially the same allegations had already been considered and adjudicated upon. The SDT therefore revoked the certification and ordered that the proceedings be dismissed. Mr Hinkel appealed from that decision, pursuant to section 49 of the Act. I dismissed the appeal for the reasons set out in my judgment dated 23 February 2024 referred to in § 2 above.

6. Meanwhile, in August 2022 the SRA decided to make an application to the SDT in respect of the present Respondents' conduct in connection with the original transaction. The Respondents applied for judicial review of that decision, on the basis that the proposed allegations were materially the same as ones that the SRA had previously investigated in 2019 and determined should not be pursued (case CO/4128/2022). In February 2023, Mr Hinkel applied to be joined as an Interested Party, but Lang J dismissed that application on 3 March 2023. Mr Hinkel on 3 April 2023 applied to the Court of Appeal for permission to appeal. Warby LJ on 16 May 2023 refused permission to appeal, certifying Mr Hinkel's permission application as being totally without merit. The SRA decided not to take the matter further and the judicial review was terminated by consent.

7. The present appeal arises from two offshoots of the proceedings summarised above, namely submissions made in:

   i) a respondent's notice dated 28 March 2023 and a skeleton argument dated 6 April 2023 in response to Mr Hinkel's appellant's notice dated 8 February 2023 appealing against the January 2023 Decision; and

   ii) a respondent's statement dated 28 April 2023, pursuant to PD 52C § 19, setting out reasons why permission should not be given to appeal against Lang J's decision not to join Mr Hinkel as an Interested Party to the judicial review claim referred to in § 6 above.

8. Each of the submissions was to the effect that a certain application by Mr Hinkel was caught by the ECRO. The submissions were incorrect, and were promptly corrected when the errors came to light. However, Mr Hinkel complained to the SRA that the Respondents had committed misconduct by making knowingly false statements. The SRA decided to take no action. Mr Hinkel then applied to the SDT, which by the Decision held that Mr Hinkel's application did not raise an arguable case. Mr Hinkel now appeals from that Decision.

9. The appeal was listed for hearing on 26 March 2025, but the Respondents submitted that I could and should dispose of it on the papers. Mr Hinkel sought an oral hearing, and also sought permission to issue subpoenas requiring various persons to attend the hearing for cross-examination. I asked the parties to provide short written submissions on whether the appeal should be dealt with on the papers, and these were provided on 24 January 2025 (in the form of a witness statement in Mr Hinkel's case).

10. Having considered these submissions, and the submissions and evidence on the substantive appeal, I sent a message to the parties on 6 March 2025 saying:

> "I have considered the case papers relating to this appeal, including the parties' substantive skeleton arguments for the appeal, the parties' submissions on the question of whether the appeal should be dealt with on the papers or at a hearing, the parties' letters regarding Mr Hinkel's request under the ECROs for permission to subpoena witnesses, and related correspondence up to and including the parties' letters of today (6 March 2025).
>
> I have concluded that:-
>
> 1) the request for permission to issue subpoenas (or witness summonses) should be refused; and
>
> 2) the appeal will be dealt with on the papers, without a hearing. The hearing listed for 26 March 2025 will therefore be vacated.
>
> I shall issue a written ruling in the near future setting out my decision, with reasons, on the substantive appeal and indicating my reasons for the decisions set out at points 1 and 2 above."

11. This judgment is the written ruling envisaged by that message.

(B) PROCEDURE

12. Section 46(9)(b) of the Act gives the SDT a power to make rules about the procedure and practice to be followed in relation to the making, hearing and determination of applications and complaints. Section 46(10)(c) provides that such rules can "*provide, in relation to any application or complaint relating to a solicitor, that, where in the opinion of the Tribunal no prima facie case in favour of the applicant or complainant is shown in the application or complaint, the Tribunal may make an order refusing the application or dismissing the complaint without requiring the solicitor to whom it relates to answer the allegations and without hearing the applicant or complainant*".

13. The Solicitors' (Disciplinary Proceedings) Rules 2019 were made under the section 46 rule-making power. Rule 13 provides that applications that do not raise a prima facie case can be dismissed without requiring the respondent to

answer the allegations and without hearing the applicant. The Decision was made pursuant to that rule.

14. Section 49(5) of Act provides that:

> "Subject to any rules of court, on an appeal against an order made by virtue of rules under section 46(10)(c) without hearing the applicant or complainant, the court (a) shall not be obliged to hear the appellant, and (b) may remit the matter to the Tribunal instead of dismissing the appeal".

There is no provision in the CPR which specifically qualifies section 49(5) of the Act, including in Practice Direction 52D § 27.1 which deals with appeals under the Act. There is, for example, no equivalent to PD 52D § 19.1, which states that appeals of decisions affecting healthcare professionals and architects are to be determined by way of a re-hearing.

15. A statutory appeal under section 49 of the Act is by way of review not rehearing: see, e.g., *Zulfiqar Ali v. Solicitors Regulation Authority Limited* [2021] EWHC 2709 at [92]. In principle, this means that the court exercises a supervisory role over the Tribunal's decisions: cf. *Sastry & Okpara v General Medical Council* [2021] EWCA Civ 623. That is, as the Respondents point out, also consistent with the wording of section 46(10)(c) *("… where in the opinion of the Tribunal …"*).

16. In deciding how to deal with the present appeal, I have had regard to the overriding objective of dealing with cases justly and at proportionate cost, including the considerations referred to in CPR 1.1(2) of ensuring that the parties are on an equal footing and can participate fully in proceedings, saving expense, ensuring that cases are dealt with expeditiously and fairly, and allotting to cases an appropriate share of the court's resources.

17. The framework for appeals in the present circumstances may be compared to that for applications for permission to appeal to the Court of Appeal. CPR 52.5 provides that such an application can be determined by the Court of Appeal on paper without an oral hearing, unless the judge considers that it "*cannot be fairly determined on paper without an oral hearing*". In *R. (on the application of Goring-on-Thames Parish Council) v South Oxfordshire DC* [2018] EWCA Civ 860 at [34], the Court of Appeal noted that that procedure has considerable advantages in the saving of time, cost and uncertainty for the parties and in relieving pressure on the court's resources, whilst ensuring that applications continue to be fairly and justly determined.

18. I concluded that the present appeal could fairly be disposed of on the papers, for the following reasons.

19. The issue on the appeal is whether the Decision was wrong (CPR 52.21). The Decision was an evaluative one, namely whether Mr Hinkel's allegations were arguable on the materials submitted to the SDT, such that the Respondents should be required to answer them at a hearing. An appeal court will not interfere with an evaluative decision of the Tribunal unless it falls outside the

bounds of what the expert tribunal could properly and reasonably decide, giving due weight to the Tribunal's expertise in assessing professional conduct: see *SRA v Leigh Day* [2018] EWHC 2726 (Admin) (Div. Ct.) at [61]-[79].

20. Whether the Decision was wrong, in that sense, can be determined by reference to the documentary record which was before the SDT about the underlying events and allegations. The background to the matter is already set out in my February 2024 judgment. As set out in section (C) below, the grounds on which Mr Hinkel has appealed from the Decision can be addressed without the need for oral submissions, particularly in circumstances where the parties have already set out their cases fully in writing.

21. Further, there is no need for the court to hear oral evidence, and it would not be appropriate for it to do so. Mr Hinkel by a letter of 24 February 2025 indicated that he wished to seek *"[p]ermission to subpoena the following Witnesses to the hearing"*:-

> "a. Mr Matthew John Hooton, Equity Partner of Simmons & Simmon LLP
>
> b. Mr Ian Hammond, General Counsel of Simmons & Simmons LLP
>
> c. Mrs Niya Phiri, Clyde & Co LLP
>
> d. Mr Jonathan Lawrence, Clyde & Co LLP
>
> e. Mr Ollie Owolabi, Clyde & Co LLP
>
> f. Mr Richard Coleman KC, Partner of Fountain Court Chambers
>
> g. Ms Nathalie Koh, Fountain Court Chambers
>
> h. Mrs Angela Horne, Solicitors Disciplinary Tribunal
>
> i. Mr Jeremy Hoyland, Partner of Simmons & Simmons LLP
>
> j. Mr Colin Passmore, Partner of Simmons & Simmons LLP"

Mr Hinkel considered this to be necessary because (as he put it in an earlier letter to the Respondents' solicitors, Clyde & Co, dated 4 November 2024):-

> "The allegation that the Respondents knowingly made a false statement with the intention of perverting the course of justice is a very serious one.
>
> As you are already aware, I informed the Court that it would, in my opinion, be impossible for the Judge to determine whether the Respondents are telling the truth from their written statements. The Respondents (Mr Hooton personally, the firm via Mr Simon Watson) have already made numerous and repeated false statements to their regulator, to the various courts,

> to me, to my solicitors, to His Majesty's Land Registrar and to multiple prospective purchasers of a land site that was not for sale. In such circumstances, any further written statements cannot be taken on trust as they have no credibility.
>
> It is imperative that the Judge hears for his or herself what the Respondents have to say. There must be an opportunity for the Respondents to be questioned. That will necessitate them being subpoenaed and being present. I also intend seeking permission to subpoena witnesses (including but not limited to the Respondents' solicitors and counsel) to the hearing. There is no other means of fairly and justly assessing the honesty of the Respondents who knowingly made false accusations against me that had consequences and for which no apology was ever intended nor received. It is in the interest of all parties that the Respondents be granted a fair hearing. They may, of course, choose to remain silent. "

Mr Hinkel's letters of 24 February, 3 March and 6 March 2025 were to similar effect. For example, in his letter of 6 March 2025 he said (among other things):

> "The Respondents, purportedly represented by Clyde & Co LLP, but without any evidence of their instruction, register an objection to themselves and their counsel and solicitors who have made false representations to the Court, to being subpoenaed to answer under oath as to those false statements made in contempt of Court. His Majesty's Treasury, the other ECRO Holder, remains silent and disrespects the Court by not answering any ECRO requests despite having supported the ECRO application it now misuses by the act of failing to respond.
>
> Only a hearing in person can achieve justice in this matter. As I have made quite clear, statements by the solicitors and counsel of the Respondents are irrelevant because they are implicated in the making of false statements and, we now discover, in making false statements on behalf of respondents they were never engaged by and had no written or verbal instructions for. That is why attendance before the Court and making statements under oath is imperative."

22. However, this is an appeal by way of review, and the court's task is to decide – giving due deference to the SDT's professional expertise – whether the SDT was wrong, on the materials presented to it, to form the opinion that there was no prima facie case. That question cannot be answered by hearing oral evidence that was not before the SDT. Indeed, such a course would subvert the statutory scheme, by subjecting to the Respondents to a full evidential hearing before the court on a complaint in circumstances where the SDT had concluded that the complaint should not proceed to such a hearing before the SDT. To hold such a hearing in order to decide whether the SDT was wrong to take the approach it did would put the cart before the horse.

23. Furthermore, in circumstances where Mr Hinkel has already put the Respondents to very considerable trouble and cost by his unmeritorious proceedings to date (some of which are summarised above but others of which are described in my February 2024 judgment), it would be unfair to the Respondents for them to have to bear the additional cost of an oral hearing of the present appeal, which in substance is no more than an attempt to continue to attack the Respondents over the same matters via another route. It is notable in this context that Mr Hinkel made clear, by a letter to the court dated 22 March 2024, that he would refuse to pay costs to the Respondents even if he had funds to do so (which it appears he does not).

24. This litigation, in its various facets, has already absorbed a large amount of the time of the court and its staff. An oral hearing of the present appeal would have drawn further such resources away from more deserving cases.

25. Finally, dealing with this appeal on paper is consistent with the policy of section 49 of the Act, namely to prevent respondents from being unnecessarily troubled by applications that do not raise a prima facie case.

(C) SUBSTANCE OF THE APPEAL

(1) The First Submission

26. On 14 March 2023 Mr Hinkel served an appellant's notice appealing from the January 2023 Decision. Section 10 of the notice included applications:

    i) for "*permission for late application for an oral hearing*" in case CO/2933/2019, in which Robin Knowles J had dismissed Mr Hinkel's appeal from the 2019 decision on the papers (see § 2 above);

    ii) for his appeal from the January 2023 Decision to be heard by the same judge as the judge hearing (a) case CO/4128/2022 (see § 6 above) and (b) another judicial review claim, case CO/3918/2022, which the Respondents had commenced to challenge the SDT's decision to certify that there was a case to answer in relation to certain allegations made against them in 2021 (which claim became hypothetical following the January 2023 decision); and

    iii) an order that the Respondents, their solicitors and barristers and their professional indemnity insurers be referred to the National Crime Agency for contraventions of sanctions, Money Laundering Regulations and failure to hold necessary licences.

27. On 28 March 2023, Mr Hooton and Ms Gheissari (the other respondent to Mr Hinkel's appeal from the January 2023 Decision) filed a respondent's notice. This included the following submission:

> "While it is common ground that the exercise of Mr Hinkel's statutory right of appeal of the decision of the Tribunal dated 18 January 2023 falls outside the scope of the ECRO, it is submitted that each of his three 'Other applications' are not properly an

> exercise of that statutory right given that the applications do not relate to the appeal, and therefore they are within the scope of the ECRO and Mr Hinkel is prohibited from making them."

A similar submission was made in a skeleton argument filed on behalf of Mr Hooton and Ms Gheissari on 6 April 2023.

28. Mr Hinkel in letters dated 2 to 4 May 2023 took issue with the suggestion that his applications were subject to the ECRO, and suggested that the respondents' statements were defamatory of him.

29. The rest of the story, and the SDT's opinion about it, are set out in §§ 22-32 of the Decision:

> "22. There was, therefore, a dispute between the Applicant and the Respondents as to whether the Applicant had the Court's permission to proceed with his application for the "other Orders", or whether, if he did not have such permission, those applications should be struck out.
>
> 23. To resolve this dispute Clyde & Co (on behalf of the Respondents) wrote to HHJ Adam Johnson on 9 May 2023 … seeking clarification on whether the ruling dated 22 February 2023 applied to just the Appeal or applied also to the "Other Orders", and if it did not permit the "Other Orders", whether permission should now be granted.
>
> 24. In response the Applicant submitted a witness statement dated 10 May 2023 arguing why his Other Orders had, or did not require, permission to be pursued.
>
> 25. HHJ Adam Johnson issued an Order dated 23 June 2023 … which decided (paragraph 10) that there was ambiguity as to whether the Other Orders fell within the scope of the ECRO, because on the one hand they were clearly issues relating to the proceedings in respect of which the ECRO was granted (the original damages claim against R1), but on the other hand they arose "in the context of an appeal" which was not caught by the ECRO. He then considered whether each of the 3 Applications could be said to be properly ancillary to the appeal, and ultimately concluded the first two were, or at least that they gave rise to decisions which were best made by the Judge determining the Appeal. In relation to the third matter raised in the "Other Orders" the decision was that it was not ancillary to the Appeal, permission was required under the ECRO, and had not been granted, and that such permission would be reviewed subsequently.
>
> 26. At paragraph 12 of the Order HHJ Adam Johnson said that his email of 22 February 2023 had not constituted blanket

> permission to pursue any and all matters associated in any way with the pending Appeal.
>
> 27. Importantly, at paragraph 11, HHJ Adam Johnson said in the context of the Applicant's threatened defamation proceedings, that the position adopted by the Respondents (through their lawyers) was properly arguable. The Judge therefore took the view that he had not already granted permission under the ECRO for the "other Orders" to be pursued, and he did not criticise the Respondents for asserting that no such permission had been given, and should not been granted (even though he effectively gave permission for two of the three Other Orders to be pursued).
>
> 28. Accordingly, in the light of its analysis the Panel decided that there was no arguable case that the Respondents knowingly made false statements (through their lawyers) to the Administrative Court that the Applicant did not have (and needed) permission to pursue the other Orders.
>
> 29. Even if the Judge had concluded (without saying more) that the Applicant had, or did not need, permission to pursue the other Orders, that would not mean that the Respondents arguing to the contrary amounted to their making a "knowingly false' statement.
>
> 30. Being wrong about a fact is not necessarily, and without cogent evidence, a basis for asserting dishonesty and/or other matters touching upon professional misconduct. Parties to litigation frequently present arguments which the Court finds against, and it does not mean that the party making the proposition which was not accepted was trying to mislead the Court.
>
> 31. Moreover, here the Judge stated that the Respondents' submissions were properly arguable and he upheld the submissions in respect of one of the three "other Orders" by deciding that the Applicant needed, and did not have, permission to pursue it.
>
> 32. Moreover, the Applicant has presented no evidence that at the time the Respondents instructed their lawyers to make the submissions to which the Applicant takes exception, they knew those submissions to be false. Such evidence as there is suggests that the Respondents believed their submissions to be correct. As the judge expressly stated that those submissions were properly arguable, there can be no prospect of the Tribunal finding that they were improperly made, let alone that the Respondents knew them to improper or untrue. "

30. The SDT also decided, in relation to both the First Submission and the Second Submission, that there was no need for it to ask the SRA to investigate the matter

further, saying that *"[t]he SRA has already considered the matter, and without any further evidence of misconduct which it had not yet considered, the SRA was unlikely to reach a different decision to that which it had already made in relation to the Applicant's complaints"*.

31. It is relevant to add that on 7 July 2023, following the clarification provided by Adam Johnson J on 23 June 2023, Mr Hooton and Ms Gheissari served an amended respondent's notice and an amended skeleton argument in which the submission to which Mr Hinkel had taken exception was no longer advanced. On 29 July 2023, I dismissed Mr Hinkel's three applications on their merits, certifying them to be totally without merit. On 5 October 2023, the Court of Appeal (William Davis LJ) dismissed Mr Hinkel's application for permission to appeal, certifying that it was totally without merit, and ordered that an ECRO should be made against Mr Hinkel in respect of future applications to the Court of Appeal and High Court, resulting in a separate ECRO dated 11 October 2023.

(2) The Second Submission

32. After Mr Hinkel applied for permission to appeal from Lang J's order refusing to join him as an Interested Party to case CO/4128/2022 (see § 6 above), the Respondents filed a Statement of Reasons why permission to appeal should not be granted. This included a submission to the effect that Mr Hinkel's application for permission to appeal to the Court of Appeal was subject to the ECRO. That was in fact incorrect, because the ECRO applied only to proceedings in the High Court and County Court. (The ECRO subsequently ordered by William Davis LJ had not yet been made.) The error was apparent on the face of the Statement of Reasons, which quoted the ECRO.

33. Mr Hinkel took issue with the Respondents' assertion, in his letters of 2 to 4 May 2023, and on considering the matter the Respondents realised they had been wrong. Clyde & Co wrote to the Court of Appeal on 4 May 2023 to correct the error, stating that it had been inadvertent and apologising. An amended Statement of Reasons omitting the error was enclosed and filed.

34. The SDT said this about the matter:

> "33. … The Applicant complains that it was asserted by the Respondents in the original version of their Respondent's Notice and Skeleton (which he has not provided with his Application) that the Applicant required the permission of the Court, by virtue of the ECRO, to lodge his Appeal against the Order of Mrs Justice Laing (refusing to join him as an interested party to the Respondents' Judicial Review proceedings against the SRA) and that he did not have such permission.
>
> 34. It would appear that that assertion was indeed made on behalf of the Respondents as their solicitors, Clyde & Co, wrote to the Court of Appeal on 4 May 2023 …, accepting that the ECRO did not apply to proceedings in the Court of Appeal, and that the assertion in paragraph 10 of the Statement of Reasons to the effect that the Court's permission was required for the Appeal to

> proceed, was therefore wrong. The Respondents accordingly retracted that assertion and filed an amended Statement reflecting that retraction.
>
> 35. It was clear therefore to the Panel that the Respondents did make (through their solicitors and counsel) an assertion which was wrong (because they later accepted that it was wrong and withdrew it).
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> 36. However, the Panel did not find that the Applicant had produced any evidence upon which it could find that the incorrect assertion was known to be incorrect at the time it was made. The letter from Clyde & Co to the Court dated 4 May 2023 describes the error as "inadvertent", and the Applicant has produced nothing to counter this explanation beyond an assertion that the Respondents would have known at the time the incorrect assertion was made that it was untrue (and he attributes various motives to the Respondent's alleged dishonesty). He produces no evidence to support either the assertion of knowledge that the assertion was incorrect, or the motives he attributes to it."

(3) Mr Hinkel's challenges to the SDT's decision

35. Mr Hinkel in his skeleton argument dated 10 January 2025 (which is in the form of a witness statement) states that his grounds of appeal can be categorised as complaints of fundamental judgmental errors, serious procedural failures and bias on the part of the SDT. He elaborates on each of them, and I consider them below.

(a) Fundamental judgmental errors

36. Mr Hinkel argues that the First and Second Submissions were made as part of an attempt to prevent the release of incriminating evidence lodged in the bundle for case CO/4128/2022, i.e. the judicial review claim referred to in § 6 above by which the Respondents challenged the SRA's decision in August 2022 to make an application to the SDT. He says the evidence *"was not supposed to ever see the light of day but I obtained Office Copies …"*. He suggests that persons as eminent as the Respondents and their legal teams would never inadvertently make false statements such as the First and Second Submissions. He states:

> "56) The conclusion a reasonable person would reach is that, on the basis of probabilities, of course they knew exactly what they were doing by submitting the false statements and attesting them to be the truth, that they did so in a planned strategic move aimed at having my application dismissed to avoid the release of the documents incriminating the Respondents for criminal delicts. …"

And, as to motive,

> "58) The law does not require me to state a motive but establishing a motive can help to prove the allegation. Motive is not to be confused with mens rea or "guilty mind". Simmons & Simmons LLP and Mr Hooton had the direct intention of stopping (at any and all cost) all litigation to prevent the release of documents that we now know from the office copies are evidence of serious breaches of statutes. They knew what was in the documents; I could previously only speculate as to the contents. They had a clear foresight of the consequences of their actions, and desired those consequences to occur. It was their aim and purpose to achieve this consequence. There was also a clear oblique intention: the desired result of preventing the release of the documents was a virtually certain consequence of their actions, and they appreciated that such was the case. They made the false allegations knowingly; they knew, or should have known, that the results of their conduct were reasonably certain to occur. A certain recklessness is also evidenced as they could foresee that particular consequences may occur and proceeded, not caring whether those consequences would actually occur or not.
>
> 59) Mrs Horne [chair of the SDT who made the Decision] read in my submission that the alleged motive was to prevent at all costs my obtaining a copy of the secret bundle containing the secret documents that were unlawfully withheld from me and from the SDT Panel. Subsequent to Lord Warby's ruling and advice I did obtain office copies showing that the alleged delicts the SRA was going to refer the Respondents to the SDT for were exactly as I had said and Mrs Horne should never have revoked the certification. I am sure I know exactly what their motive was and Mrs Horne knows it too. She personally decided to let them escape from prosecution by unlawfully revoking the certification she had made."

37. However, Mr Hinkel's argument as to motive makes little sense. As he states, he was able to obtain office copies of filed documents from case CO/4128/2022. It would have been obvious to the Respondents that he could do so, making the suggested concealment accusation implausible. Further, Mr Hinkel does not explain how the documents incriminate the Respondents, and there is no evidence that they did. Mr Hinkel's case against the Respondents, before and after he obtained the office copies, has failed at almost every stage. The alleged concealment motive also does not fit the facts that (i) the Respondents proactively sought clarification from Adam Johnson J in relation to the First Submission and (ii) the error in the Second Submission was clear on the face of the Respondents' own document, which quoted the ECRO provisions from which was clear that it did not cover applications to the Court of Appeal. It is also inherently unlikely that persons in the position of the Respondents, their solicitors and their counsel team would deliberately set out to mislead the court, still less in *en masse*. Conversely, the Respondents had a clear and good motive

for seeking to close down Mr Hinkel's applications so far as they could, given his vexatious and multi-faceted pursuit of unmeritorious claims against them.

38. In these circumstances, and having regard to the cogent reasons given by the SDT for its decision as quoted earlier, there is no arguable basis for concluding that the SDT was wrong, in the sense indicated earlier (or indeed in any sense), in forming the opinion that no *prima facie* case had been shown. On the contrary, the SDT was clearly right.

(b) Serious procedural failures

39. Mr Hinkel complains that he was not invited to use the SDT's CaseLines document filing system, was unaware what was placed on it and could not verify whether the members of the SDT panel read what was on CaseLines. He refers to his complaint in relation to his appeal from the January 2023 Decision (which I rejected as part of my February 2024 judgment). In addition, Mr Hinkel says he does not know the name of the single SDT member who would initially have considered his complaint pursuant to the SDT's rules.

40. However, the Decision shows that the SDT read the relevant documents carefully, and § 7 of the Decision said that the panel had reviewed all the material (set out in the bundle on CaseLines) provided by Mr Hinkel to see whether it demonstrated a case for the Respondents to answer at the Tribunal. The rules do not require disclosure of the name of the individual who initially considers the file, and the names of the members of the SDT panel who took the decision are stated in the Decision.

(c) Bias

41. Mr Hinkel alleges that the panel chair, Mrs Horne, showed bias against him during the hearing in December 2022 leading to the January 2023 Decision, and that she was formerly an employee at Clyde & Co. Mr Hinkel also submits that it was inappropriate for Mrs Horne to hear the case given that he was appealing from the January 2023 Decision, in which she participated as panel chair. He suggests that the present Decision is *"riddled with the usual bias expected of her"*, and cites as an example the criticism in Decision § 9 that:

> "[Mr Hinkel's] statement and supporting material was riven with a substantial amount of irrelevant information/documents, and contained complaints against persons and bodies who were not the subject of the Application. It therefore fell to the Panel sift through the material provided to determine their relevance and indeed determine the core issue of the Application itself. The Panel disregarded the complaints made against persons and organisations other than R1 and R2, as those complaints could not establish a case to answer by R1 and R2."

This, Mr Hinkel says, showed Mrs Horne's palpable anger that her January 2023 Decision was being appealed.

42. Mr Hinkel did indeed place a large volume of materials, including much irrelevant material, before the SDT. Nonethless, the SDT sifted through it and applied its mind properly to the real issues. Nothing in the Decision or the evidence before me supports the view that Mrs Horne was biassed. Nor does the fact that she chaired the panel which took the January 2023 Decision: cf the observations in *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 that ordinarily objection cannot be soundly based on previous judicial decisions, and that *"[t]he mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection"* [25].

(d) Other matters

43. At some places in his submissions, Mr Hinkel seeks to raise again allegations which have already been rejected at earlier stages in this litigation. In particular, his allegations that the Respondents acted dishonestly in relation to the underlying transaction have been rejected by the court in Mr Hinkel's civil claim, and by the SDT in its 2019 decision and the January 2023 Decision, from both of which decisions the court dismissed Mr Hinkel's appeals. I also rejected in my February 2024 judgment Mr Hinkel's allegation that the Respondents lied to the SRA and, later, breached a duty of candour (see §§ 56 and 73 of that judgment). None of those allegations can properly be revived in support of the present appeal.

(D) CONCLUSION

44. There is no merit in this appeal. The SDT's Decision that no *prima facie* case had been put forward against the Respondents was correct. The appeal must be dismissed.