

Neutral Citation Number: [2014] EWHC 4382 (Ch)

Case No: HC14B01963

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Rolls Building, Royal Courts of Justice
7 Rolls Buildings, Fetter Lane
London, EC4A 1NL

Date: 12/01/2015

Before :

MR TIM KERR QC

(sitting as a Deputy Judge of the High Court)

Between :

THE LAW SOCIETY OF ENGLAND AND WALES

-and-

DIXIT SHAH

(also known as SANJAY SHAH)

TIMOTHY DUTTON QC (Instructed by Russell-Cooke LLP, 2 Putney Hill, London SW15 6AB) appeared
on behalf of the Claimant /Applicant

CHRISTOPHER HEATHER (Instructed under the Chancery Bar Litigant in Person Support Scheme)
appeared on behalf of the Defendant/Respondent

Hearing dates: 13-14 November 2014

Judgment

Mr Tim Kerr QC:

Introduction

1.

Can the claimant (“the Law Society” or “the Society”) invoke the court’s inherent or supervisory jurisdiction to prohibit a struck off former solicitor from holding himself out as a solicitor, or undertaking activities which would breach, or cause others to breach, the regulatory regime? Does the Society have a general power, analogous to that of the Attorney-General, to restrain breaches of the criminal law within its regulatory sphere? If not, can it do so in a private law capacity, to protect the solicitors’ profession against financial loss? Or can it only obtain relief in accordance with expressly conferred powers? If so, are those powers wide enough to ground the relief sought here?

2.

This judgment addresses those issues for the purpose of determining an application by the Law Society for a permanent injunction against the defendant ("Mr Shah"), who is a struck off former solicitor. On 22 May 2014, Proudman J granted an interim order prohibiting Mr Shah, whether directly or through others acting on his behalf, from:

(1)

holding himself out as a solicitor or

(2)

undertaking any reserved legal activities (as defined in [section 12](#) of the [Legal Services Act 2007](#)) through any body authorised by the Solicitors Regulation Authority ("SRA"), or

(3)

being employed by or remunerated by, or managing or controlling the practice of, a solicitor or any body regulated by the Law Society without the prior written permission of the Law Society being given to such solicitor or body.

3.

Proudman J also ordered Mr Shah to swear, file and serve on the Law Society an affidavit setting out all his dealings since 1 October 2013 with any solicitors or bodies regulated by the SRA, including specifically his dealings with a Ms Doe Fosuhene and her firm, Trinity & Co, whether by way of employment, remuneration, management, control, association or otherwise, and made an order for delivery up of certain computers, hard drives and discs used in the practice of Ms Fosuhene or Trinity & Co.

4.

The Law Society now applies for an injunction making the prohibitions above permanent. It also seeks an order for a further affidavit, contending that the affidavit sworn by Mr Shah in response to Proudman J's interim order fails to comply fully with that order in that it only sets out his dealings with Ms Fosuhene and Trinity & Co, and does not set out his dealings with any other solicitors or bodies regulated by the SRA, which is the independent regulatory arm of the Society.

5.

Finally, the Society seeks an order that it may take such steps as it considers appropriate to publicise the court's order, by publishing a notice in the form annexed to the draft order. The draft notice is in the form of a warning notice, giving information about Mr Shah, providing a photograph of him and notifying readers that he is struck off and restrained by injunction from holding himself out as a solicitor or otherwise breaching the prohibitions referred to above.

6.

I am very grateful to both counsel for their considerable assistance, including overnight research and cogent submissions of high quality, some of which had to be formulated and developed at short notice. Mr Heather was new to the case, being instructed under the Chancery Bar Litigant in Person Support Scheme (CLIPS) on the first day of the hearing, and was able to deploy arguments of sophistication and complexity which were none the worse for being crafted at short notice under heavy time pressure.

The Facts

7.

This was a Part 8 claim and neither party sought permission to cross-examine any witnesses. Although Mr Shah disputed some of the facts relied upon in the Law Society's evidence, he did not deny many of the essential features of the factual history relied on by the Society. He did deny any wrongdoing, and denied having held himself out as a solicitor, which would be a criminal offence.

8.

Mr Dutton QC, for the Law Society, submitted that the evidence showed Mr Shah was closely involved in the management of Trinity & Co, a practice recently operated by Ms Fosuhene, until the Law Society intervened in it and caused it to cease operations. Mr Dutton says that the evidence shows Mr Shah poses a risk to the public despite the intervention in Trinity & Co. He submits that the injunctions sought are necessary to uphold the law and protect the public. He relied on the following matters.

9.

From 1998 until September 2000 Mr Shah, then a qualified solicitor, was an active equity partner in a group of legal practices which together traded as a group, known as the Brandon group of firms (together, "Brandons"). The Law Society alleges that Mr Shah was responsible for the misappropriation of about £8 million of client funds from Brandons' client accounts. Mr Shah denies the misappropriation. He was later convicted and sentenced for mortgage fraud, separately from the alleged misappropriation of funds.

10.

The Law Society has paid out over £12 million from its statutory compensation fund in consequence of losses suffered by clients of Brandons. In September 2000, the Society intervened in the practice of Brandons on the ground of suspicion of dishonesty on Mr Shah's part and failure to comply with relevant accounting rules by other partners. Mr Shah went to India at about that time and was reported as denying any part in the misappropriations.

11.

The Law Society, exercising its subrogated rights on behalf of its compensation fund, then brought proceedings against Mr Shah and other Brandons partners. Mr Shah did not seek to defend those proceedings. In February 2002, he was struck off the roll of solicitors in proceedings before the Solicitors Disciplinary Tribunal ("the Tribunal") at which he did not appear (though he made written submissions sent from India), for having employed a Mr Nicolas Bentley as a solicitor while knowing that Mr Bentley was suspended from practice, contrary to [section 41](#) of the [Solicitors Act 1974](#).

12.

In August 2002 Mr Shah was made bankrupt (for the second time; the first time was in 1998) on the petition of the Law Society, as a result of unpaid legal and professional intervention costs of just under £865,000. He remains undischarged from his bankruptcy because of an order which became effective in 1999, suspending his discharge. Mr Shah remains jointly and severally liable for the full amount of unpaid debts owed by Brandons to the Law Society for its intervention costs, which are a statutory debt (under the [Solicitors Act 1974](#), Schedule 1, paragraph 13).

13.

The Law Society asserts that Mr Shah was apprehended at Dublin airport in 2006, but managed to remain at large while on bail. It is not disputed that he was arrested in September 2009, remanded at HMP Wandsworth and subsequently charged on counts of possession of an article with intent to commit fraud, and one count of conspiracy to defraud. He remained in custody while awaiting trial.

14.

Shortly after the start of his contested trial at Southwark Crown Court in June 2010, towards the end of the Crown's opening speech, Mr Shah entered a guilty plea to conspiracy to defraud. Then, in July 2010, he attempted to withdraw his plea of guilty. On 3 December 2010 that application was refused. On the same day, Mr Shah was sentenced to 66 months' (five and a half years') imprisonment (less credit for 431 days spent on remand in custody).

15.

The basis of his guilty plea, read together with the sentencing remarks of His Honour Judge Testar, show that the guilty plea was based on 10 or 11 mortgage transactions in which mortgage loans totalling just over £3.061 million were applied for, resulting in the obtaining of about £2.7 million, though the actual loss to the victims of the conspiracy was considerably less, at just over £360,500. Mr Shah appealed or attempted to appeal against his conviction and sentence, without success. He was released from prison on 28 June 2012.

16.

Mr Shah's links with Ms Fosuhene go back at least to June 2010, and probably earlier. She qualified as a solicitor in 2007. In June 2010, while Mr Shah was in custody awaiting trial, she applied for cancellation of a caution in respect of a property in north west London, citing Mr Shah as the registered proprietor. She gave her address as 18 Gill Close, Hertfordshire, which was one of the properties listed in Mr Shah's subsequent basis of guilty plea, in respect of which he admitted conspiring to obtain a mortgage by fraud.

17.

In June 2013, Ms Fosuhene established her practice, Trinity & Co ("Trinity"). It was a small practice without large quantities of work. Ms Fosuhene was the only practising solicitor working there. On 28 October 2013, Mr Shah rented a desk at Suite 215, 1 Olympic Way, Wembley in north west London. From 4 November 2013, Trinity entered into an agreement to occupy Suite 219. Mr Shah contributed £1,000 to Trinity's client account on 11 November 2013 and a further £1,000 on 11 December 2013.

18.

On 28 January 2014, Mr Shah moved into Suite 219, occupied by Trinity. He acquired a telephone extension number (extension 8465) within Suite 219. In or about March 2014, Trinity moved to the larger Suite 220, eventually relinquishing Suite 219. In mid-March 2014, a Mr Mansoori made a written complaint to Trinity about the conduct of a Mr Naveed, who had allegedly tricked Mr Mansoori into handing over £7,000 for immigration advice and representation, which was never given.

19.

Mr Shah actively counselled and assisted Ms Fosuhene and Trinity in responding to that complaint. Mr Shah helped her to draft a response to the complaint, denying that Trinity bore responsibility for the conduct of Mr Naveed. As the SRA's intervention agents later reported, Mr Shah told one of them, Mr Esney, that he, Mr Shah, had counselled Ms Fosuhene against involvement with Mr Naveed. The letter of complaint dated 13 March 2014 also refers to a meeting at Trinity's offices attended by Ms Fosuhene and "Sanjay", who is, I am satisfied, Mr Shah.

20.

On 17 March 2014, the Law Society, acting through the SRA, opened an investigation into Trinity. Officers of the SRA attended unannounced at Trinity's offices that day, at Suite 220, 1 Olympic Way, Wembley. They were greeted by none other than Mr Shah. Ms Fosuhene confirmed his identity. In

Suite 220, they found four desks. A briefcase clearly attributable to Mr Shah was beneath one of them. The office manager was a Mr Akondan. Mr Shah had advised Ms Fosuhene to recruit him.

21.

The SRA officers returned the next day, 18 March 2014. In their presence, Mr Akondan asked Ms Fosuhene if she knew where Mr Shah was. The officers noted that two computers they had seen the previous day were missing. Later that morning, Mr Shah arrived. He said he was there to “help around the firm” as he was friends with those who worked there. It was then that Mr Shah said he had advised against having any involvement with a man he called “Mohammad Ali Shah”, also referred to as Mr Naveed in the letter of complaint already mentioned.

22.

On 25 March 2014, Mr Shah moved out of Suite 220 and occupied Suites 214 and 215. At the time, he and Ms Fosuhene were both directors of companies called Global Accountants London Limited and Global Film Production (UK) Limited. Ms Fosuhene resigned her directorships of those companies on 2 April 2014. Later that month, on 24 April 2014, the SRA served a notice on Ms Fosuhene under [section 44B](#) of the [Solicitors Act 1974](#), requiring her to produce information or documents. She responded to the notice by doing so on 29 April 2014.

23.

The SRA's officers then produced two forensic investigation reports on Trinity, dated 1 and 9 May 2014. On 13 May, the Law Society resolved to intervene in the practice of Trinity. The same day, it commenced the present proceedings against Mr Shah. The intervention took place on 14 May 2014. Mr Shah was present at Trinity's offices and remained throughout, offering Ms Fosuhene advice and, at her request, attending part of her interview with the SRA's intervention agents.

24.

His advice was that Ms Fosuhene should provide the documents sought by the SRA and challenge the intervention in court. She followed that advice. Among the documents unearthed by the SRA were documents relating to Sunrise Radio (London) Limited and Global Accountancy Limited, both companies with which Mr Shah is associated. Her challenge to the intervention notice came on 22 May 2014, in the High Court.

25.

The same day, the present claim against Mr Shah came before Proudman J, who made the interim order mentioned above. The judge was not willing to include a direction permitting her interim order to be publicised, because Mr Shah indicated at the hearing that he wished to contest the claim at a subsequent hearing. As already noted, she included in her order a direction that Mr Shah should produce an affidavit setting out all his dealings since 1 October 2013 with any solicitors or bodies regulated by the SRA, including Trinity.

26.

Mr Shah swore his affidavit on 27 May 2014. He denied being involved with the management of Trinity or employed or remunerated by it, saying he was only a client of Trinity and an introducer of other clients. He said he has “a tendency to volunteer advice” and accepted that he had offered Ms Fosuhene advice on office premises, personnel, training in accountancy skills and tuition in the Hindi language. He accepted making payments to Trinity totalling £2,810, but said this was for work done for him as a client.

27.

He also said in his affidavit that misunderstandings had occurred and that people sometimes think he is a solicitor working at Trinity, “working as a lawyer or marketing manager” or as a “lawyer cum marketing manager”. He said he was careful to clarify at the first opportunity that these impressions are mistaken. He denied that it was wrong for him to offer teaching on a pro bono basis or to have the use of an office desk. At paragraphs 44 and 45 of his affidavit he denied having used or possessed any computers belonging to Trinity.

28.

In the affidavit, he denied having dealings with any other solicitors in England and Wales, but said he is “acquainted” with solicitors and “may discuss legal issues with them and even give my opinions”, albeit “on a highly informal basis”, not involving remuneration. He said he sometimes introduces clients, suppliers of goods or services, or potential recruits to solicitors, and that he socialises with them. He denied carrying out any prohibited activity and submitted that the activities he had carried out were in the nature of supplying goods and services to solicitors and as such were not prohibited.

29.

On 9 June 2014, Mr Shah served a defence to the claim. In it he said the order sought was disproportionate and unfair and violated his human rights and natural justice. He pointed to [sections 41, 42 and 43 of the Solicitors Act 1974](#), saying these were the comprehensive provisions dealing with employment of solicitors who were suspended or had been struck off. He likened the application to one by a suspicious wife who suspects her husband of philandering and seeks an injunction to prevent him committing the crime of bigamy, an injunction the court would refuse as unnecessary.

30.

Despite Mr Shah’s denial of having used or possessed any computers of Trinity, when images were taken of the drives of its computers, Mr Shah is identifiable, using the name Sanjay Shah, as the author of several documents on those computers concerning what appear to be Trinity client matters, as well as the response to Mr Mansoori’s complaint, mentioned above. Another author of documents relating to what appear to be Trinity client matters, is “Geeta”, which refers to Mr Shah’s ex-wife, Geeta (sometimes written as Gita) Shah.

31.

Hard copy documents recovered from Trinity as a result of the SRA’s intervention also indicate involvement of Mr Shah in the firm. Certain emails about an immigration matter were printed out by “Shah at Bradwell”, as the heading shows. Bradwell & Partners is a firm providing accounting services, in which Mr Shah has an interest. The same entity is stated to be the employer of Ms Fosuhene, in certain payslips covering periods in February and March 2014, providing a national insurance number for her, gross pay at an hourly rate of £9, with the net pay being the same as there is no indication of tax or national insurance contributions having been deducted.

32.

The hearing of Ms Fosuhene’s challenge to the intervention into the practice of Trinity was listed on 4 November 2014, before Mr Timothy Fancourt QC sitting as a deputy judge of the High Court. Ms Fosuhene withdrew her challenge to the Law Society’s resolution to intervene in the practice of Trinity. She submitted to a consent order that her claim be dismissed and that she contribute £10,000 towards the Law Society’s costs.

The Statutory Provisions

33.

I will refer to the relevant statutory provisions in their current, amended form where there have been amendments, omitting as much of the detail as I can. The regulatory regime governing the exercise of the solicitors' profession is a patchwork quilt of provisions rather than a seamless code. The starting point is the [Solicitors Act 1974](#) ("the 1974 Act"), which consolidated earlier legislation.

34.

A person may not practise as a solicitor unless he has been admitted, is on the roll of solicitors and has a practising certificate (section 1). It is a criminal offence to do so (section 20). There are provisions enabling the Society to direct that a practising certificate shall have effect subject to conditions (section 13A) and suspension of practising certificates where a solicitor is convicted of an offence of dishonesty or an indictable offence (section 13B). A solicitor may be suspended from practice on various grounds (section 15).

35.

The Society is given a power to make regulations on matters such as admission to the roll and practising certificates (section 28); a power to make rules as to professional practice, conduct and discipline (section 31) and a duty to make rules about holding clients' money (section 32).

36.

By section 35 of, and Schedule 1 Part I to [the 1974 Act](#), where the Law Society has reason to suspect dishonesty on the part of a solicitor or employee of a solicitor in connection with the solicitor's practice, or is satisfied that a solicitor has failed to comply with the code of professional conduct or rules relating to accounting, or that a solicitor has been struck off the roll or suspended from practice, or that exercise of the powers is necessary to protect the interests of clients or former or potential clients, it may exercise the intervention powers in Part II of Schedule 1 to [the 1974 Act](#). Those powers are found in paragraphs 5-16 in Part II of Schedule 1, and include the following.

37.

The Society may apply to the High Court for an order preventing payment of monies held on behalf of the solicitor or firm (paragraph 5). The Society may (paragraphs 6, 6A and 6B) resolve that money held by or on behalf of a solicitor, or the right to receive debts, shall vest in the Society which then holds them in its public capacity on a statutory trust with a public law duty to identify beneficial owners and distribute funds exercising rational judgment, in accordance with trust law principles discussed in the decision of Lawrence Collins J in *Re Ahmed* [2006] EWHC 480 (Ch), or in accordance with rules promulgated under paragraph 6B, added (along with paragraph 6A) from 31 March 2009, after Lawrence Collins J's decision.

38.

The Society may apply to the High Court (paragraph 8 of Schedule 1) for an order that a person reasonably suspected of holding money on behalf of a solicitor, or who holds information relevant to identifying and tracing money held on the solicitor's or his firm's behalf, shall provide information about the money and accounts in which it is held. The Society may by notice to a solicitor or firm require delivery up of documents (paragraph 9(1)) or may apply to the High Court for an order for their delivery up (paragraph 9(4)).

39.

By paragraph 16 of Schedule 1 to [the 1974 Act](#), the Society "may do all things which are reasonably necessary for the purpose of facilitating the exercise of its powers under this Schedule", i.e. the exercise of its intervention powers. This is an ancillary power "which is confined to facilitating the

exercise of the express powers conferred by the Schedule” (per Lawrence Collins J in *Re Ahmed* at paragraph 8, citing earlier authority).

40.

[Sections 36](#) and 36A of [the 1974 Act](#) empower the Society to make rules about the grant of compensation from a compensation fund for those who suffer loss due to their dealings with delinquent solicitors, including provision for the Society to be subrogated to the rights and remedies of recipients of compensation. The compensation fund established pursuant to these provisions is supported financially by the profession as a whole, by means of funding obligations imposed upon practising solicitors.

41.

[Section 41](#) prohibits the employment or remuneration (except with the Society’s written permission) of a struck off or suspended solicitor disqualified from practice. By [section 41\(4\)](#) (as amended from 1 July 2009 by the [Legal Services Act 2007](#)):

(4)

If any solicitor acts in contravention of this section or of any conditions subject to which a permission has been granted under it, the Tribunal or, as the case may be, the High Court may—

(a)

order that his name be struck off the roll,

(b)

order that he be suspended from practice for such period as the Tribunal or court thinks fit, or

(c)

make such other order in the matter as it thinks fit.

42.

It is an offence under section 42 for a struck off or suspended solicitor disqualified from practice, to seek or accept such employment without previously informing the employer of the disqualification.

43.

Section 43 gives the Society a distinct power to make an order, or ask the Tribunal to make an order under section 43(2), barring non-solicitors from involvement in legal practice where the person has been convicted of a criminal offence or has been party to conduct such that the Society considers it would be undesirable for him or her to be involved in the practice in various ways, such as employment by or undertaking work for the practice. It is an offence under [section 44](#) to seek or accept employment or remuneration from the practice where such an order is in force.

44.

[Section 44B](#) of [the 1974 Act](#) gives the Law Society power to require production of information or documents from (among others) a solicitor, if satisfied that it is necessary to do so for the purpose of investigating possible professional misconduct or breach of regulatory requirements. [Section 44BA](#) adds a supplemental power to require an explanation to be provided of any document or information provided under [section 44B](#), from the provider of the information or document.

45.

[Section 50](#) of [the 1974 Act](#) in its present form provides:

(1)

Any person duly admitted as a solicitor shall be an officer of the Senior Courts;

(2)

Subject to the provisions of [this Act](#), the High Court, the Crown Court and the Court of Appeal respectively, or any division or judge of those courts, may exercise the same jurisdiction in respect of solicitors as any one of the superior courts of law or equity from which the Senior Courts were constituted might have exercised immediately before the passing of the Supreme Court of Judicature Act 1873 in respect of any solicitor, attorney or proctor admitted to practise there.

(3)

An appeal shall lie to the Court of Appeal from any order made against a solicitor by the High Court or the Crown Court in the exercise of its jurisdiction in respect of solicitors under subsection (2).

46.

Section 51 provides for the mandatory giving of notice to the Law Society where an application to the High Court is made to strike a solicitor off the roll or answer allegations, so that the Society can appear at the hearing and invite the court to make the appropriate order, including “such order as the court shall think fit” (section 51(3)(c)).

47.

There is no doubt that an application under [section 50](#) to strike off a solicitor may be made by the Society itself; see e.g. *Law Society v. Young* [2002] EWHC 2962 (Admin), DC; *Penna v. Law Society*, transcript, 18 October 2000, Neuberger J; but the application may not be made by a litigant in person: *Re solicitors, ex parte Peasegood* [1994] 1 All ER 298, DC. The Society may make the application even though it is not expressly mentioned in [section 50](#), and is expressly mentioned in other sections such as [section 44BB](#) (which enables the Society to apply to the High Court for production of documents against a person to whom [section 44B](#) does not apply).

48.

Under the [Administration of Justice Act 1985](#) (“[the 1985 Act](#)”), [section 9](#) and 9A, the Society may make rules providing for the management and control of recognised bodies which are providers of legal services. The SRA’s regulatory jurisdiction extends to the managers and employees of such bodies.

49.

The [Legal Services Act 2007](#) (“[the 2007 Act](#)”) established the Legal Services Board, which has a duty to promote the regulatory objectives of protecting and promoting the public interest, supporting the rule of law, improving access to justice, promoting the interests of consumers and competition for legal services, encouraging a strong, diverse and effective legal profession, increasing public understanding of citizens’ rights and duties and promoting and maintaining high standards in the profession (see sections 1, 2 and 3).

50.

The Law Society is an “approved regulator” under section 20 of [the 2007 Act](#) (as is the Bar Council and the Institute of Legal Executives). As such, the Society must exercise its regulatory functions, so far as is reasonably practicable, in a way that is compatible with the regulatory objectives already mentioned (sections 27 and 28).

51.

It is an offence under [section 14](#) of [the 2007 Act](#) to carry on a “reserved legal activity” (as defined in [section 12](#)) unless entitled to do so. An unqualified person, i.e. one who is not a solicitor, may not be involved in the management of a recognised body unless authorised by the SRA in accordance with its rules. The authorisation process is set out in the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 (“the 2011 Rules”), made by the Society under various rule making powers, including [section 9](#) and 9A of [the 1985 Act](#), with the approval of the Legal Services Board.

52.

The 2011 Rules include, at rule 8.6, provision that an authorised body must ensure that its managers have been approved by the SRA (rule 8.6(a)), and must not employ or remunerate a person who has been struck off the roll or suspended from practice as a solicitor or who is disqualified from being an employee of the authorised body (rule 8.6(c)(ii)).

The Issues: Reasoning and Conclusions

53.

As Mr Dutton QC pointed out, and Mr Heather rightly did not dispute, the effect of the statutory scheme is that any solicitor or authorised body which employs or remunerates Mr Shah, or allows him a management role, would be acting in breach of the regulatory regime; while Mr Shah would commit a criminal offence if he were to carry on a reserved legal activity or act as a solicitor. It was also common ground that he is not prevented from being a client of a law firm or introducing other clients to a firm, or from supplying non-legal goods or services to a law firm.

54.

The evidence obtained from the intervention in the practice of Trinity satisfies me that Mr Shah, though struck off as a solicitor, was involved in the management of Trinity without SRA approval, and that his role went beyond that of a client of the firm, an introducer of other clients or a supplier of non-legal services. Accordingly, he caused Trinity to breach its obligations under the regulatory regime, in particular under rule 8.6(a) and 8.6(c)(ii) of the 2011 Rules.

55.

To show that Mr Shah acted in a management role at Trinity, it is not enough to show that he and his ex-wife, Mrs Geeta Shah, are friends with Ms Fosuhene; nor that Trinity acted for him, as it did in various matters; nor that Ms Fosuhene rented a house from Mr Shah; nor that he provided Ms Fosuhene with tuition in the Hindi language, as he stated in his evidence; nor that Mr Shah and Ms Fosuhene were codirectors of two companies; nor that he introduced clients to Trinity. However, the evidence goes beyond that.

56.

It shows that Mr Shah advised on or influenced recruitment decisions made by Ms Fosuhene on behalf of Trinity, in the case of Mr Akondan and Mr Naveed; that he assisted Trinity in its response to Mr Mansoori’s complaint; that he “has a tendency to volunteer advice” (in his own words); that he advised on the acquisition of office premises by Trinity; that he had a telephone extension number at Trinity; that he was physically working from within the firm’s office premises from late January to March 2014; that he was party to an arrangement whereby Ms Fosuhene was shown as an employee of Bradwell; and that he was the author of legal documents prepared on behalf of Trinity.

57.

That is sufficient to demonstrate that he had a management role at Trinity and that the latter was therefore in breach of its obligation to prevent him having such a role. The same evidence also raises

a prima facie case that Mr Shah may have committed criminal acts, either by carrying on a reserved legal activity without authorisation or by holding himself out as a solicitor. However, I do not make any positive finding that Mr Shah has committed either of these crimes. Unless he admitted committing them, it would not be right for me to find that he did without him having the opportunity to deal with the criminal allegations in cross-examination.

58.

Mr Dutton QC, for the Law Society, did not ask to cross-examine Mr Shah and therefore, sensibly, did not invite me to make a positive finding that Mr Shah had committed criminal acts, a proposition Mr Shah denies. Mr Dutton described his application as being made on a quia timet basis, so far as the criminal law is concerned. I accept that the evidence shows a prima facie case that Mr Shah may have held himself out as a solicitor or carried on a reserved legal activity without authorisation, and shows that he may do so in future if not restrained.

59.

Thus, while I am sceptical about his assertion that he always corrected any impression created that he was a solicitor, I do not positively find that he held himself out as one or carried on a reserved legal activity. But I am satisfied on the evidence that unless he is restrained, there is a real danger that he may engage in activities that would either involve the commission of criminal acts by him, or breaches of the regulatory regime by others, to the detriment of those with whom he or his future associates may have dealings, and against the public interest.

60.

Mr Heather, realistically, did not strongly oppose the above propositions on the factual evidence, but he submitted that the Law Society does not have standing under the statutory scheme to obtain the injunctive relief it seeks against Mr Shah, nor a relevant cause of action against him in private law which could enable it to obtain that relief. He submitted, as a corollary, that the court lacked the power to grant that relief at the behest of the Law Society, and that the claim could only be maintained by the Attorney-General.

61.

In opposition to Mr Heather's position, Mr Dutton deployed a number of arguments. He submitted that, firstly, that the Law Society is a "front line regulator", as he put it. As such, he submitted, it had a sui generis cause of action for the relief sought against Mr Shah to protect the integrity of the solicitors' profession and thereby to protect the public. He referred to the Law Society, together with the Bar Council and the Institute of Legal Executives, as the "Attorneys-General" of the legal profession.

62.

Mr Dutton submitted that the Law Society, when acting in its regulatory capacity, was exercising a public function in coming to court for relief, and had sufficient interest to obtain the injunctions sought if it is necessary to do so to protect the public. He submitted that, according to the case law, some relief obtained by the Society from the courts reflected the exercise of an expressly conferred statutory power, while other relief, such as the exercise of powers to distribute monies vested in the Society under a statutory trust (as in *Re Ahmed*, cited above), did not.

63.

Mr Dutton submitted that the Law Society's standing to obtain the relief sought here flowed from the statutory scheme taken as a whole, which existed to protect the public. It was the Society's public function, he said, to act as guardian of the public interest and maintain standards within the solicitors'

profession, and it must be able to exercise those functions by obtaining appropriate injunctive relief in cases such as this. He said the Society's role could be viewed as analogous to that of the AttorneyGeneral acting to enforce the law and prevent public wrongs, as in a relator action.

64.

Mr Dutton also submitted that, if it were necessary to do so, there were specific statutory provisions under which the relief sought could be granted against Mr Shah. These were [section 50 of the 1974 Act](#), [section 41\(4\)\(c\) of the 1974 Act](#), paragraph 16 of Schedule 1 to [the 1974 Act](#) and, as a fallback position, section 37 of the Senior Courts Act 1981 ("the 1981 Act"). He went on to submit that if it were necessary to do so, the Society could also establish its right to the relief sought in its private law capacity, as a protector of the profession's financial interests. I shall return to these alternative submissions shortly.

65.

For Mr Shah, Mr Heather submitted that the Society had no general or overarching power to enforce the law within its regulatory sphere, and that the analogy it seeks to draw with the role of the Attorney-General is false. He submitted that the Society's position could not stand with the decision of the House of Lords in *Gouriet v. Union of Post Office Workers* [1978] AC 435. I invited counsel's observations on that authority during Mr Dutton's opening submissions on the first day of the hearing. Both counsel referred me to passages in the speeches of their Lordships in that case.

66.

Mr Heather submitted that, as is well known, *Gouriet* established that the prevention of public wrongs was the exclusive province of the Attorney-General unless and to the extent that statute provided otherwise, as in the case of the limited power given to local authorities under [section 222 of the Local Government Act 1972](#) ("the 1972 Act"). He submitted that there is no "third way" where a claim to prevent a public wrong is brought to protect the public: it must either be brought by the AttorneyGeneral (in a relator action or otherwise) or pursuant to an expressly conferred statutory power, as in the case of [section 222 of the 1972 Act](#).

67.

It was therefore, said Mr Heather, a question of statutory construction whether the court could grant the relief sought against Mr Shah in this case. He went on to submit that the statutory provisions relied upon by the Law Society as founding its case for relief did not, on their true construction, confer power on the Society to seek that relief and that the court accordingly lacked jurisdiction to accede to the Society's application.

68.

Mr Heather further submitted that while the *Gouriet* case also established that a private person could prevent a public wrong if he had suffered special damage, the Law Society had not suffered any such damage. He therefore disputed the proposition that the private law causes of action relied upon by the Law Society (to which I shall return below) were sustainable on the facts.

69.

As to section 37 of the 1981 Act, he reminded me of the well known proposition that it is procedural in nature, not jurisdictional, and thus, "the claimant must still establish some legal or equitable right or interest before he can obtain an injunction" (Snell's Equity, 32nd edition, at 18-005). He also referred me to *Bean and others on Injunctions*, 11th edition, at paragraph 1-05, quoting the words of Lord Diplock in *The Siskina* [1979] AC 210, at 254:

A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. ... It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction.

70.

Mr Dutton, on the other hand, referred me to the passage in *Bean and others* (op. cit.) at paragraph 4-65 (citing *Ex p. Island Records Ltd* [1978] Ch 122 and *Lonrho v. Shell Petroleum Co Ltd* (No. 2) [1982] AC 173, at 187) stating that where a claimant:

can show that a property interest of his is being interfered with by a criminal act, and [emphasis in original] that the statute creating the offence was passed for the benefit or protection of a particular class of individuals including the claimant, the court may grant a prohibitory injunction restraining the defendant from damaging the claimant's interest

71.

In support of Mr Heather's assertion that the Society is not endowed with any general capacity to enforce the law within its regulatory sphere, Mr Heather referred me to *Stoke-on-Trent Council v. B & Q Ltd* [1984] 1 AC 754, in which the House of Lords held that [section 222 of the 1972 Act](#) enabled a local authority to bring civil proceedings in its own name to restrain criminal breaches of the [Shops Act 1950](#) by trading on Sundays. He pointed out that Lord Templeman noted in his speech at page 770C-E that the authority could not have obtained an injunction at common law, not having suffered any interference with its private rights and not having suffered special damage.

72.

Mr Heather also took me to Lord Templeman's review (at pages 771E-773H) of the historic statutory provisions conferring powers on local authorities to bring proceedings of various kinds, and case law interpreting them; and submitted that this showed that the clearest words are required to enable a body to bring civil proceedings to restrain criminal acts by injunction, for the protection of the public and not in defence of private rights, without the fiat of the Attorney-General.

73.

I will consider first whether the Law Society can, on the facts of this case, obtain the relief it seeks against Mr Shah by invoking the inherent or supervisory jurisdiction of the court for the purpose of protecting the public, or more precisely, the class of persons who may come into contact with Mr Shah and have dealings with him and are in need of protection from the risk that he may pretend to be a solicitor or act in a management role for a solicitor or recognised body.

74.

There is no doubt that the Law Society acts in two distinct capacities, public and private (*Swain v. Law Society* [1983] 1 AC 598, per Lord Diplock at 607G-608H); and that when acting in its public capacity in the exercise of statutory functions and pursuant to rules and regulations having the effect of delegated legislation, it does so for "the protection of the public or, more specifically, that section of the public that may be in need of legal advice, assistance or representation." (ibid. at 608E-F).

75.

In my view, Mr Dutton's description of the Society as a "front line regulator" acting as guardian of the public interest and maintainer of standards within the solicitors' profession, with the function of enforcing the law within its regulatory sphere and preventing public wrongs within that sphere, is an apt description of the Society's role. The analogy with the role of the Attorney-General has some validity if it is considered to be a description of the policy of protecting the public which underpins the Law Society's role when acting in its public capacity.

76.

This conception of the Society's role is helpful when considering the correct approach to construction of the provisions comprising the statutory scheme, some of which are referred to above. But any suggestion that the Society's role not only helps the court to interpret the statutory provisions, but creates a legal principle enabling it, when acting in its public capacity, to invoke the jurisdiction of the court to restrain public wrongs within its regulatory sphere, independently of and without direct reference to any particular provision in statute or in the Society's rules and regulations, cannot stand with the authority of *Gouriet* and must be rejected.

77.

Whether it is in the public interest for the Law Society to have a general power of enforcement of the criminal law and regulatory regime must be a matter for Parliament. I cannot find authority to support its existence. I do not find support for it in the decision in *Re Ahmed*, which was an application for directions for the performance of trustee functions arising under a trust expressly created by a statutory provision (paragraph 6 of Schedule 1 to [the 1974 Act](#)).

78.

Nor is the existence of such a general power shown by the fact that only some provisions in the statutory scheme expressly confer standing on the Law Society to make an application to the court (e.g. an application for a freezing order under paragraph 5 of Schedule 1 to [the 1974 Act](#)), yet the Society is recognised as having standing to apply under others (notably [section 50](#) of [the 1974 Act](#)) which do not.

79.

It is true that of the three bodies approved as regulators under [section 20](#) of [the 2007 Act](#), only the Law Society (not the Bar Council or the Institute of Legal Executives) exercises public functions in respect of solicitors, who alone are officers of the court amenable to the summary punitive jurisdiction of the court, recently discussed in paragraphs 28-45 of Christopher Clarke LJ's judgment in *Assaubayev v. Michael*

Wilson & Partners Ltd [[2014\] EWCA Civ 1491](#), reviewing the main cases on the subject. The court enforces discipline in respect of solicitors by exercising that supervisory jurisdiction.

80.

The Law Society's public powers to discipline solicitors, on the other hand, are statutory. At common law, only the Attorney-General can enforce the law by obtaining an injunction to protect the public against a public wrong or criminal act: *Stoke-on-Trent Council v. B & Q Ltd* (cited above) per Lord Templeman at 770C-E. Mr Heather is correct in his submission that there is no "third way" open to the Law Society here, and that (subject to any private law right it may be able to assert) the question whether it can obtain the relief sought is one of statutory construction.

81.

So I turn to consider whether any of the statutory provisions relied on by the Society provide the necessary foundation for the relief it seeks against Mr Shah. The first candidate I shall consider is [section 50 of the 1974 Act](#), discussed in *Assaubayev*, which was decided in the Court of Appeal after the hearing before me and helpfully drawn to my attention by Mr Dutton, resulting in counsel sending in written submissions on its impact, at my invitation.

82.

The factual context in *Assaubayev* was different but there was an interesting discussion in Christopher Clarke LJ's judgment (with which Lady Justice Black and Lord Justice Aikens concurred) about whether the supervisory jurisdiction, referred to in [section 50 of the 1974 Act](#), extends to (among others) persons who are not solicitors but pretend to be solicitors. Plainly it does not extend to non-solicitors who do not hold themselves out as such: see Christopher Clarke LJ's judgment at paragraph 46.

83.

Christopher Clarke LJ inclined to the view that those who are not solicitors but act as solicitors or pretend to be solicitors are amenable to the inherent jurisdiction of the court exercisable over officers thereof, because they are not in a position to deny that they are officers of the court, having sought and obtained the privileges of being an officer of the court: see paragraphs 61 and 62. Aikens LJ agreed with Christopher Clarke LJ's judgment, while Black LJ preferred to express no view on this point (paragraph 89).

84.

Mr Dutton submitted that these passages in the judgments supported the view that relief against a non-solicitor who has been struck off, such as Mr Shah, could be obtained under [section 50 of the 1974 Act](#) on a quia timet basis, the jurisdiction being wide enough to embrace those who pretend to be solicitors, which is what the Law Society seeks to restrain Mr Shah from doing.

85.

Mr Heather submitted that the nature of the jurisdiction over non-solicitors who pretend to be solicitors is founded on a notion of estoppel, as is apparent from the discussion of the issue in *Assaubayev*. He contended that no such estoppel arose here because it had not been shown that Mr Shah had held himself out as a solicitor and obtained the privileges enjoyed by an officer of the court. Moreover, submitted Mr Heather, the dispute in *Assaubayev* was between private entities and had nothing to do with the standing of a regulatory body such as the Law Society to invoke the court's supervisory jurisdiction.

86.

After careful reflection, I have come to the conclusion that the Society cannot, on the facts here, invoke the court's supervisory jurisdiction over Mr Shah, embodied in [section 50 of the 1974 Act](#), to obtain the relief it seeks in this case. The reason is that it has not been shown on the facts, convincingly, that Mr Shah has held himself out as a solicitor or pretended to be one. As I have already stated, the factual position is that the evidence shows a prima facie case that he may have done so and a real risk that he may do so in future, but not proof to the civil standard that he has done so in the past.

87.

I do not think the obiter words of Christopher Clarke LJ (on which Black LJ preferred to express no view) provide sufficiently strong support for the proposition that the supervisory jurisdiction embodied in [section 50 of the 1974 Act](#) can be invoked by the Law Society in the case of a solicitor

who may have pretended to be one, but who has not necessarily done so, who denies doing so, and has not been cross-examined on the issue.

88.

To hold that the jurisdiction can be invoked by the Law Society in such a case would extend the scope of the jurisdiction further than, as I read his judgment, Christopher Clarke LJ had in mind. I would be going further than he did if I were to hold that [section 50](#) and the supervisory jurisdiction extends to a quia timet case where the defendant may have pretended to be a solicitor but the Law Society itself does not positively assert that he has done so in the past, only that he is likely to do in the future unless restrained.

89.

I do not, however, accept Mr Heather's point that it matters whether the parties to the dispute are private entities, as in *Assaubayev*, or where one of them is the regulator, as in this case. Although *Assaubayev* is not a case about standing, it is plain that the Law Society has standing in cases where it seeks to strike off a solicitor in an application made under [section 50](#) (see *Law Society v. Young and Penna v. Law Society*, cited above). There is no good reason why the notion of estoppel which brings a fake solicitor within the ambit of [section 50](#) should not apply equally where the claimant is the Law Society.

90.

I turn next to consider whether the Society can obtain the relief it seeks in reliance on [section 41\(4\)](#) of [the 1974 Act](#), which enables the Tribunal or the High Court, where a solicitor contravenes the section by employing or remunerating a struck off or suspended solicitor, to strike off or suspend the solicitor who has contravened the section or, by [section 41\(4\)\(c\)](#), or to "make such other order in the matter as it thinks fit". The question is whether the power thereby conferred is wide enough to embrace the injunctions sought by the Law Society in this case.

91.

Mr Heather submitted that the power in [section 41\(4\)\(c\)](#) is directed only to the defaulting solicitor who has employed or remunerated a struck off former solicitor or one who is suspended from practice. He submitted succinctly that the power is directed to the employer not the employee. Alternatively, he contended by analogy with local authority cases (such as those examined by Lord Templeman in *Stoke-on-Trent Council v. B & Q Ltd*), that a power to obtain relief so as to restrain an illegal act by the employed or remunerated person and not the employer, would have to be expressly conferred by clear words.

92.

Mr Heather went on to submit that it is wrong and unnecessary to interpret the [section 41\(4\)\(c\)](#) power in the broad manner advocated by the Society, since section 43 confers on it and on the Tribunal the power to make a barring order against persons such as Mr Shah, who have been struck off or suspended, and it is a criminal offence under [section 44](#) to breach such a barring order. Thus, said Mr Heather, the relief sought against Mr Shah here occupies the territory of section 43, not [section 41](#), and no barring order has been sought or made in respect of Mr Shah.

93.

Mr Heather reminded me that the question whether a criminal penalty for wrongdoing excludes the availability of a civil remedy such as an injunction, has been considered in other statutory contexts. He referred me to the Court of Appeal's recent decision in *Morshead Mansions Ltd v. Di Marco* (No. 2) [2014] 1 WLR 1799, [\[2014\] EWCA Civ 96](#). A tenant was sued for service charge in respect of his

privately rented accommodation, and counterclaimed for an injunction requiring the landlord to comply with its duties under provisions in the [Landlord and Tenant Act 1985](#).

94.

A landlord's breach of those duties was a criminal offence, committed where the landlord fails without reasonable excuse to provide to the tenant certain information related to service charge or to afford reasonable facilities for inspection of relevant documents; but the statute makes no provision for any civil remedy. The issue was whether the statutory regime creating the criminal offence of breaching the duties, excluded enforcement by the tenant of those same duties by an injunction in civil proceedings.

95.

Lewison LJ (with whom Patten and Sharp LJJs agreed), at paragraph 25, described the issue as one of construction, and referred to a presumption that "where an Act creates an obligation, and enforces the performance in a specified manner, performance cannot be enforced in any other manner". He went on to say that where performance is enforced only through the criminal law, there are exceptions.

96.

Those exceptions arise, as he explained, firstly where the legislation in question is passed to protect a particular class of persons of which the claimant is a member, as in the case of some health and safety legislation; and, secondly, where the legislation creates a public right and a particular individual "suffers particular, direct, and substantial damage other and different from that which was common to all the rest of the public".

97.

He cited as authority for that proposition the speech of Lord Diplock in *Lonrho Ltd v. Shell Petroleum Ltd* (No. 2) [1982] AC 173, per Lord Diplock at 185. Referring me to the same passage, Mr Heather said that Lord Diplock's words at 186C were applicable here: "[a] mere prohibition upon members of the public generally from doing what it would otherwise be lawful for them to do, is not enough."

98.

Mr Heather submitted that the Law Society had not suffered special damage in the sense referred to by Lewison LJ, and that there was no reason not to apply the presumption that the regime under sections 43 and 44, providing for a barring order and a criminal offence of breaching it, was the appropriate and only remedy to address Mr Shah's conduct in this case.

99.

Mr Dutton, on the other hand, urged on me a broad interpretation of the court's power under [section 41\(4\)\(c\)](#) to make "such other order in the matter as it thinks fit". The starting point, he submitted, is that there has been a contravention of [section 41](#) by a solicitor; and there is no good reason to limit the scope of [section 41\(4\)\(c\)](#) to an order made against the solicitor who had contravened the obligation by employing or remunerating a struck off or suspended solicitor.

100.

Mr Dutton submitted that the appropriate applicant for an order of the court under [section 41](#) was incontestably the Law Society; that an order made against the employer solicitor would, in the normal way, also bind the wrongfully employed solicitor if he had knowledge of it; and that it would accord with the policy underpinning the legislation – the protection of the public – to interpret [section 41\(4\)](#)

(c) as allowing the claim to be brought directly against the employee solicitor, and conversely would undermine that policy to interpret the provision narrowly in the manner contended for by Mr Shah.

101.

Mr Dutton submitted that section 43 is not designed to catch struck off and suspended solicitors, but rather, persons involved in a legal practice such as managers and clerks who have never been solicitors but whose involvement in legal practice is contrary to the public interest because of a criminal conviction or other conduct making them unsuitable to be involved in the practice of law.

102.

He accepted that Mr Shah could have been barred under section 43, but submitted that [section 41](#) is the primary provision intended to deal with the case where a struck off or suspended solicitor becomes involved in legal practice; and provides a remedy in the High Court which ought not to be denied in cases where the court's coercive powers are needed to protect the public or where, for example, the Society had not been able to find the time to make or ask the Tribunal to make a barring order under section 43. Accordingly, Mr Dutton invited me not to apply the presumption referred to by Lewison LJ in the Morshead Mansions Ltd case, where the context was very different.

103.

On balance, and despite Mr Heather's able submissions to the contrary, I agree with the Law Society that [section 41\(4\)\(c\)](#) should be interpreted as wide enough to encompass the relief sought in this case. I think I should construe the power in a broad and purposive manner so as to give effect to the policy of protecting the public. It does not seem to me that it would be in the public interest to adopt the narrow construction advocated by Mr Shah.

104.

I accept that [section 41\(4\)\(c\)](#) follows on from the predecessor subparagraphs (a) and (b), which empower the court to strike off or suspend the defaulting employer solicitor; that those powers clearly cannot be exercised against anyone else; and that one might expect the residual power in (c) to be construed *eiusdem generis* with the powers conferred at (a) and (b).

105.

But in the present context I decline to apply that canon of construction, both for the policy reasons advanced by Mr Dutton and because I am not compelled to do so by the language of [section 41\(4\)\(c\)](#), which refers to an order made "in the matter" but not, unlike in (a) and (b), to an order necessarily made against the solicitor who has contravened the section.

106.

I appreciate that the Law Society's broad construction enables the court to grant an order against a person such as Mr Shah, which can be framed so as to restrain him from committing criminal acts, namely that of acting as a solicitor when disqualified, or carrying on a reserved legal activity without entitlement to do so. To that extent, I accept that this puts the Society on a par with a local authority acting under [section 222](#) of [the 1972 Act](#). But I do not think that means the *Gouriet* principle is infringed. The power of the Society to enforce the criminal law by injunction is statutory; the principle would only be infringed if the power were held to arise at common law.

107.

In the light of that interpretation of [section 41\(4\)\(c\)](#) of [the 1974 Act](#), and my assessment of the evidence, I am prepared to grant the relief sought by the Law Society in the exercise of the court's power under [section 41\(4\)\(c\)](#). I include in that relief the order that Mr Shah should swear a further

affidavit. I accept Mr Dutton's point that his affidavit sworn in response to Proudman J's order was incomplete and economical in that it did not disclose Mr Shah's dealings with entities such as Bradwell & Partners which apparently employed Ms Fosuhene, nor with any other solicitors or bodies regulated by the SRA.

108.

In view of that conclusion, it is not necessary to decide all the other points that were made by the parties. But as they were diligently argued before me, I shall say a little about them in case it assists the parties. The first is that Mr Dutton relied also on the ancillary power conferred by paragraph 16 of Schedule 1 to [the 1974 Act](#), which appears in Part II of that Schedule, under the heading "Powers Exercisable on Intervention", and empowers the Society to "do all things which are reasonably necessary for the purpose of facilitating the exercise of its powers under this Schedule".

109.

Mr Heather submitted that this power related squarely to interventions and that the relief sought in the present case was not needed to assist in making the intervention effective but was part of the fruits of the intervention, because it was founded on evidence unearthed in the course of effecting the intervention, not during the course of the intervention with the object of protecting the integrity of the intervention and securing the effective exercise of the Society's intervention powers.

110.

I agree with Mr Heather and would not have been prepared to grant the relief sought if the Society's only power to seek that relief were the power under paragraph 16 of Schedule 1. I do not accept the proposition that the seeking of relief in this case was the doing of a thing that was "reasonably necessary for the purpose of facilitating the exercise of" the Law Society's intervention powers. They had already been effectively exercised when the present application was brought against Mr Shah.

111.

Nor would I be prepared to accept Mr Dutton's argument that section 37 of the 1981 Act could provide the foundation for the relief sought in this case. Mr Heather is plainly correct in his submission that section 37 does not confer a free standing right to an injunction amounting to a cause of action in its own right, and can only be invoked where a cause of action exists arising from the infringement of a private legal or equitable right of the claimant. In short, section 37 of the 1981 Act prompts the question whether the Law Society can obtain the relief it seeks, but does not answer that question.

112.

Although the Law Society primarily brought its claim for the avowed purpose of protecting the public, Mr Dutton also sought to rely, if it were necessary for him to do so, on two other bases on which he asserted that the court had power to grant the relief sought by the Society, discarding for this purpose its public capacity and advancing its claims instead in its private law capacity. He submitted, in the alternative, that the Society could obtain the relief it sought against Mr Shah in its capacity as the protector of the solicitors' profession against financial loss.

113.

Mr Dutton pointed out that the Law Society, through the SRA, has two specific financial interests which it is charged with protecting: its interest in the maintenance of the statutory trust fund created on the passing of a vesting resolution under paragraph 6 of Schedule 1 to [the 1974 Act](#) during an intervention into a solicitor's practice; and its interest in maintaining the compensation fund used to

compensate victims of improper conduct by rogue solicitors (pursuant to rules made under [section 36 of the 1974 Act](#)), without undue loss to the profession as a whole.

114.

I accept that the Law Society is charged with protecting these two interests and that it is part of its role, acting in its private capacity, to do so. As Mr Dutton pointed out, the Society is the trustee of those funds and it is the solicitors' profession as a whole which must ultimately bear the cost of depletion of those funds, and of regulatory interventions, in so far as the costs are not recovered against defaulting solicitors.

115.

Mr Dutton went on to submit that these financial interests were sufficient to qualify as particular loss or special damage for the purpose of the second of the two exceptions identified by Lewison LJ in the *Morshead Mansions Ltd* case, also explained by their Lordships in *Gouriet* and other reported cases. As noted above, at paragraph 25 of his judgment, Lewison LJ characterised this right of action as arising where a public wrong is committed as a result of which the claimant "suffers particular, direct, and substantial damage other and different from that which was common to all the rest of the public".

116.

Mr Dutton submitted that if the Society needed to rely on a private law cause of action, it was entitled to invoke the two financial interests it was charged with protecting, and was not required to go further and show that it had suffered special damage directly recoverable in tort by the Society itself. It was not accurate, he argued, to say that the loss is not that of the Society itself, since the Society exercises subrogated rights (under [sections 36 and 36A of the 1974 Act](#), and associated rules) to recover from defaulting solicitors compensation paid out from the fund to their victims. The Society is the legal owner of the fund and any loss to the fund is the Society's loss, even though the fund is held on trust.

117.

Mr Heather submitted that the types of loss referred to by Mr Dutton did not amount to special damage. He reiterated his submission already mentioned: that the only proper claimant here was the Attorney-General, that the Law Society could not bring itself within either of the exceptions to that proposition and could only obtain the relief sought if empowered to do so by the statutory provisions in question. He submitted that loss from a statutory trust created on intervention, or loss occasioned by depletion of the compensation fund, is not loss suffered by the Society, but by the profession as a whole, and cannot properly be described as a form of special damage of the type envisaged in the authorities.

118.

If I had not been of the view that [section 41\(4\)\(c\) of the 1974 Act](#) confers jurisdiction on the court to make the orders sought by Mr Dutton in this case, I would have wished to consider the arguments more closely before accepting his submission that the Society is in any event entitled to the relief he seeks in its private capacity, as the protector of the profession's financial interests. The nature of the right or the kind of damage that would be sufficient, would need to be considered more fully than was practicable in the time available during the hearing before me.

119.

I accept that the trustee of a private law trust would not be prevented from asserting that he has suffered special damage occasioned by a public wrong, merely because the fruits of his claim are held on trust for someone else. I also accept that the Society acting in its private capacity, provided it is

acting consistently with its general purposes of “promoting professional improvement and facilitating the acquisition of legal knowledge”, may (see *Swain v. Law Society*, cit. sup., per Lord Diplock at 608B-C):

do anything that a natural person could lawfully do, with all the consequences that flow in private law from doing it; and in deciding how to act on behalf of the Society in this capacity the Council's only duty is one owed to the Society's members to do what it believes to be in the best interest of those members; and for the way in which it performs that duty the Council is answerable to those members alone.

120.

It may be that this is sufficient as a foundation for the pursuit of a private law based claim of the type envisaged by Mr Dutton. But the basis of the Society's status as trustee of the funds of which it is the custodian is, as Mr Heather pointed out, statutory; and no case was cited in which a statutory trustee has been held entitled to ask the court for an injunction to right a public wrong, deriving its standing from its capacity as a statutory trustee.

121.

In such a case, it is difficult to see how one can avoid the conclusion that the applicable statutory provisions must be construed in order to ascertain whether they provide the necessary foundation for the claim advanced. If that is the correct approach, it is the same exercise as is required in order to determine whether the Society can advance its claim in its public capacity, to protect the public.

122.

Finally, Mr Dutton submitted that if it were necessary to do so, he would be entitled to the relief sought on the basis that the Society has a good cause of action against Mr Shah for the tort of conspiracy, because on the evidence Mr Shah had plainly conspired with others to commit unlawful acts that would necessarily injure the financial interests of the Society by depleting its funds in the two ways already explained.

123.

I would not have been prepared to grant relief against Mr Shah on this basis, if I had found it necessary to consider the issue. As Mr Heather pointed out, there is no pleaded claim alleging the tort of conspiracy. I agree that a properly pleaded claim would be required. It is unusual, to put it no higher, to bring a conspiracy claim against only one of the alleged conspirators, without specifying the others. Mr Shah would be entitled to particulars of these matters. The nature of the Society's alleged loss would have to be considered, as would questions of causation.

124.

It seems to me somewhat far fetched to propose that Mr Shah has conspired to injure the financial interests of solicitors generally and that the Law Society is entitled, acting on their behalf, to maintain a conspiracy action against him and recover damages in tort, and thus by extension, an injunction to restrain a repetition of his wrongful conduct. Mr Shah's sins may be many, but although I do not exclude the possibility that he might be liable as a conspirator, I am far from persuaded that he is on the material before me.

Conclusion

125.

Subject to the question of publicity, I therefore propose to grant the relief sought. I invite the parties to agree the precise terms of the order, for my approval. I will hear the parties on the issue of publicity, which due to time constraints was not fully argued before me at the hearing. I will also hear the parties on any other consequential matters.