Neutral Citation Number: [2015] EWHC 2302 (Ch)

Case No: HC2014-001063

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
IN THE MATTER OF THE SOLICITORS ACT 1974

Royal Courts of Justice
Strand, London. WC2A 2LL

Date: 30/07/2015

Before:
SIR WILLIAM BLACKBURNE

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Between:

ANDREW ROY WILLIAMS	Claimant
- and -	
THE LAW SOCIETY OF ENGLAND AND WALES (SOLICITORS REGULATION AUTHORITY)	Defendant

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Gregory Treverton-Jones QC and Richard Alomo (instructed by **RadcliffesLeBrasseur**) for the Claimant
Timothy Dutton QC (instructed by **Russell-Cooke LLP**) for the Defendant Hearing dates: 12 May and 17 June 2015

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Judgment

Sir William Blackburne:

Introduction

1. The claimant, Andrew Williams, brings this application to enforce the terms of a consent order in the Tomlin form made by me on 16 December 2014. He does so pursuant to a liberty to apply contained in the order.

2. Mr Williams is a solicitor. At the relevant time he was working as a solicitor in a practice carried on under the name Lillywhite Williams LLP ("the LLP"). This practice had been previously conducted in the name of and for the benefit of the partners in Lillywhite Williams & Co ("the Partnership") of which Mr Williams and Ian Lillywhite had been the sole partners. With effect from 1 February 2014, the practice had converted from the Partnership to the LLP with Mr Williams and Mr Lillywhite registered as sole members of the LLP (and with others registered as either consultants or in other capacities). From that date the Partnership ceased to hold professional indemnity insurance cover and Mr Williams and Mr Lillywhite were no longer authorised to practise as a partnership.

3. On 28 October 2014 the Solicitors Regulation Authority ("the SRA") resolved to intervene into the practice of the LLP and, separately, into the practice of Nationwide Solicitors LLP ("Nationwide"). In the case of the LLP it did so on three separate grounds: (1) under paragraph 32(1)(a) of Schedule 2 to the Administration of Justice Act 1985 (as amended) ("the 1985 Act") on the ground that a recognised body or manager of such a body had failed to comply with Rules applicable to the body or manager by virtue of section 9 of that Act, (2) under paragraph 32(1)(d) on the ground that there was reason to suspect dishonesty on the part of a manger or employee of a recognised body in connection with that body's business and (3) under paragraph 32(1)(e) on the ground that it was necessary to exercise powers of intervention to protect the interests of clients. As part of the same decision the SRA also resolved to intervene into the individual practices of Mr Williams and Ian Lillywhite and into those of Naresh Chopra and Rehana Saeed as well. It did so pursuant to powers conferred by Part II of Schedule I to the Solicitors Act 1974 (as amended) ("the 1974 Act"). In the case of Mr Williams and Mr Lillywhite it did so under paragraph 1(1)(c) of Schedule 1 on the ground that a solicitor had failed to comply with the Rules made under sections 31 and 32 of the 1974 Act (namely, the SRA Code of Conduct 2011 and the SRA Accounts Rules 2011) and under paragraph 1(1)(m) on the ground that it was necessary to intervene into a solicitor's practice to protect the interests of clients or former clients. Those and the other powers set out in the Schedules to the two Acts, although conferred upon the Law Society of England and Wales ("the Society"), are exercised by the SRA on behalf of but wholly independently of the Society. It is for that reason that the defendant to this application is as shown in the title to these proceedings.

4. On 4 November 2014 Mr Williams issued an application for an order that the intervention be withdrawn. It resulted in the making of the consent order dated 16 December 2014. By that order, so far as relevant, it was agreed that the intervention should be withdrawn as regards Mr Williams' practice. This agreement had no effect on the intervention into the other practices. Another term of the order was that the suspension of Mr Williams' practising certificate should be set aside. (It had been automatically suspended as a result of the earlier intervention.) Mr Williams wished to

be free to carry on in practice again, either on his own account or with another or others or, if that was not possible, in an employed capacity. He could not legally do so for so long as his practising certificate remained suspended.

5. The decision of the SRA which gave rise to the interventions contained the usual term that any sums of money to which paragraph 6 of Part II of Schedule I ("paragraph 6") applied, and the right to recover or receive them, should vest in the Society and be held by the Society on trust to exercise in relation to them the powers conferred by Part II and subject thereto and to rules under paragraph 6B upon trust for the persons beneficially entitled to them ("the statutory trust"). Those rules, the Intervention Powers (Statutory Trust) Rules 2011 ("the 2011 Rules"), contain terms which, broadly stated, require the SRA to identify and, subject to verification, distribute to all persons who have a potential beneficial interest in them the monies held in the statutory trust accounts for which they provide.

The issue

6. The issue which has arisen and given rise to this application is over the scope of the statutory trust. Does it extend to monies which can be shown to belong to the practice when it was conducted in the name of the Partnership? Mr Williams, who has appeared by Gregory Treverton-Jones QC and Richard Alomo, contends that it does not and, accordingly, that any monies belonging to the partnership which the SRA holds are held by it on bare trust for those entitled to the assets of the Partnership and should be paid over accordingly. The SRA, for whom Michael McLaren QC appeared when the matter was before me on 12 May and for whom Timothy Dutton QC appeared when it came back for further hearing on 17 June, contends that such monies are caught by the trust (including therefore the 2011 Rules) and should be administered and dealt with accordingly.

7. The practical importance of this issue has been that on Monday 13 April the SRA received payment from the Legal Aid Agency ("the LAA") of £62,826.12. It was Mr Williams' contention that the bulk of that sum was money to which the Partnership was entitled. Having been informed that the payment had been received and after attending at the offices of the SRA's solicitors on Friday 17 April to review various files held pursuant to the intervention, he asserted a claim to £41,604.84 of the sum so received. He contended that that amount represented money to which the (former) Partnership was entitled as it represented payment for work carried out by him (rather than by his then co-partner, Mr Lillywhite) while the Partnership was still in being. On Sunday 19 April he wrote to the solicitors for the SRA requesting that the sum in question be paid to him by 3pm on 22 April. They replied on Monday 20 April raising a number of issues. They invited him to respond and provide evidence to support his claims. Instead, on Thursday 23 April those acting for Mr Williams emailed the solicitors with a draft of the application which is now before me. His contention was that the money in question belonged to the (former) Partnership and was not therefore subject to the intervention powers (including in particular the statutory trust). Instead, he maintained, it was held upon a bare trust for the Partnership and should be released to him. Mr Williams said, and I have no reason to doubt, that he urgently needed the money if he was to be able to continue in practice. The SRA demurred. It contended, and continues to contend, that the money was subject to the statutory trust and, accordingly, that it fell to be dealt with by the SRA pursuant to the 2011 Rules.

8. In fact, since the matter came before me on 12 May and, in part as a result of matters which could be agreed in the course of that day, the SRA was able to agree that Mr Williams should be paid sums totalling £22,552.04 by the close of business on the Friday of that week, as duly happened. The order that I made at that hearing reflected that agreement. Since then agreement has been reached for a further payment of £22,108.74 to be released to Mr Williams. Several matters have held this up. One of them has been the SRA's concern in case the LAA should seek to recoup any part of the overall sum it had paid. The basis for this concern, as I understood it, is that in part the payment related to work which Mr Williams had carried out after the Partnership, with whom the franchise agreement with the LAA had been made, had ceased to be authorised and been replaced by the LLP and its professional indemnity insurance cover transferred to the LLP so that the Partnership no longer had cover. (Under section 37 of the 1974 Act all solicitors and the bodies through which they act must have professional indemnity insurance in accordance with the SRA Indemnity Rules 2011.) It seems that although the LAA had been informed of the change of status from the Partnership to the LLP with effect from 1 February 2014 no steps had been taken to novate the franchise agreement to the LLP. Correspondence to bring this about took place between the LAA and Mr Williams but by early May 2014, despite reminders from the LAA, the matter had ground to a halt. On 19 May 2014 Mr Williams eventually responded. He apologised for the delay, mentioned that he had had some health problems but then stated that he was not sure at the time of writing whether he wished to proceed with the matter "because I am currently reviewing my future plans." The matter was not thereafter taken up again and the franchise agreement was never transferred to the LLP. This meant that the LLP never had the benefit of the franchise agreement and the Partnership ceased from the end of January 2014 to be authorised to practise as a partnership or to have professional indemnity insurance. That state of affairs left unclear what the position was with regard to any legal aid work carried out under the franchise agreement pursuant to certificates issued after January 2014 or, as I understood it, in respect of work carried out after January 2014 under certificates issued prior to 1 February 2014.

9. The fact that by mid-May 2014 Mr Williams was reviewing his future plans highlights the wider background to these proceedings to which I now briefly turn.

The wider picture

10. Mr Williams had been admitted as a solicitor in 1976 and, until the events which have given rise to these proceedings, had practised with an unblemished regulatory and disciplinary record. He specialised exclusively in matrimonial and family work. Much of that work was for clients in receipt of legal aid funding. He became a member of the Law Society's Children's panel in 1992. For many years he had practised in partnership with Mr Lillywhite. They did so as sole partners of the Partnership. Mr Lillywhite's practice was in non-contentious conveyancing, and in wills and probate work. By internal partnership arrangement Mr Lillywhite was the firm's Compliance Officer for Finance and Administration and had been in charge of running the firm's accounts and ensuring compliance with the regulatory requirements in that regard.

11. By mid-2013 Mr Lillywhite wished to retire from practice and he and Mr Williams agreed that they would look for someone to take his place within the firm. Several local firms were approached. They included Nationwide Solicitors LLP run by Mr Naresh Chopra. He seemed to fit the bill. Negotiations between the three of them led to the making of an agreement dated 29 August 2013 ("the August agreement").

Under this it was agreed that, with effect from 1 October 2013, a new LLP would be established to be called Lillywhite Williams LLP (namely, the LLP), that Mr Lillywhite and Mr Williams would be the new members of the LLP "for such period as may be required and agreed between the parties" and that Mr Chopra might require that he or persons nominated by him be included as members of the LLP. It was further agreed that Mr Williams would continue to carry out all legal aid work and duties in connection with the matrimonial legal aid franchise and would retain any net income derived from that work subject to payment of any staff wages, VAT, taxes, expenses and disbursements relating to it and that he would do so for at least six weeks from 1 October 2013 but would have an option to extend this period. Mr Chopra was to procure the operation of the remainder of the LLP, including the firm's conveyancing, litigation and probate work, retaining any net income and profits derived from it and, correspondingly, save for the expenses etc relating to Mr Williams' work (for which, as agreed, Mr Williams would be responsible), undertaking responsibility for all of the expenses, costs, disbursements and liabilities with effect from 1 October 2013. Other provisions included an agreement that Mr Lillywhite and Mr Williams would each give the LLP at least 28 days' written notice before resigning as a member of the LLP and that all current work in progress should be retained by and belong to the Partnership.

12. To this end, on 25 September 2013, Mr Williams signed a printed SRA form (headed 'Application for initial authorisation of a limited liability partnership') in which he stated that 'an existing authorised body' (i.e. identifiable from the form as the Partnership) would be converting to LLP status. He confirmed the 'closure' of the Partnership once authorisation had been granted.

13. The new arrangements, embodied in the August agreement, came into operation in early October 2013. It led to what was in effect a merger of the activities of the two firms. It was not a success. In February or March 2014 Mr Williams was shown a letter from a well known banking group stating that the LLP had been taken off the group's panel of solicitors. In due course Mr Williams' was given to understand that the reason for this had to do with the signing by Mr Chopra of a (conveyancing) certificate of title on behalf of the LLP. It emerged that Mr Chopra and Nationwide had been removed from the group's panel in the past. Shortly thereafter the LLP was removed from other lenders' panels. The conveyancing department was being brought to its knees as a result. When confronted with what had happened Mr Chopra, according to Mr Williams, "simply shrugged his shoulders and brushed off all criticisms." Relations became very strained. Matters came to a head when Mr Williams concluded that it was not safe to allow Mr Chopra unattended into the LLP's offices. The locks to the front door were changed. Mr Chopra responded by turning up in the afternoon of 15 May 2014 to say that Mr Williams and Mr Lillywhite were no longer members of the LLP and that he, Mr Chopra, now owned the LLP. It appears that on 1 May 2014 Mr Chopra had filed a return at Companies House removing them as members. How Mr Chopra had achieved this was not clear. The evidence before me was that this happened without his or Mr Lillywhite's knowledge, much less approval. The disclosure led to a stand-off. The police were called. Eventually the matter was resolved by everyone leaving the building. Mr Chopra made no attempt to return. Other facts about Mr Chopra's past regulatory record then emerged. At about this time SRA began its investigations into the LLP's activities. It was already investigating Nationwide's. All of this was happening at the very time that Mr Williams was being pressed by the LAA to complete the formalities needed to transfer the legal aid

franchise agreement into the name of the LLP. It helps explain his statement to the LAA that he was reviewing what was to happen in the future and why, in the event, the transfer was never completed.

The material provisions

14. The material provisions are contained in paragraphs 6(1) and (2)(a) of 1974 Act and are as follows:

> "6(1) Without prejudice to paragraph 5, if the Society passes a resolution to the effect that any sums of money to which this paragraph applies, and the right to recover or receive them, shall vest in the Society, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Society's resolution) and shall be held by the Society on trust to exercise in relation to them the powers conferred by this Part of this Schedule and subject thereto and to rules made under paragraph 6B upon trust for the persons beneficially entitled to them.
>
> (2) This paragraph applies - (a) where the powers conferred by this paragraph are exercisable by virtue of paragraph I to all sums on money held by or on behalf of the solicitor or his firm in connection with - (i) his practice or former practice, (ii) any trust of which he is or formerly was a trustee, or (iii) any trust of which a person who is or was an employee of the solicitor is or was a trustee in the person's capacity as such an employee;..."

15. Paragraph 5 is irrelevant. So also is the remainder of paragraph 6. The reference in paragraph 6(1) to paragraph 6B is to the 2011 Rules. I have already summarised their broad effect. Beyond the fact that they set out what the SRA's obligations are in respect of the monies which are held in the statutory account, and the limit on the extent of those obligations, there is nothing in those Rules which calls for comment or to which either side referred me.

16. The powers conferred by Part II of Schedule I to the 1974 Act (including therefore the powers conferred by paragraph 6) are applicable also to interventions into a recognised body (such as the LLP) to which the 1985 Act applies. See section 32(1) of the 1985 Act.

The submissions

17. Mr Treverton-Jones submitted that as there had been no resolution to intervene into the practice of the Partnership the interventions into the other practices (whether of the LLP or of the individuals or for that matter of Nationwide) had no effect on any monies which could be shown to belong to the Partnership. Those monies, in so far as they came to be held by the SRA (or by the SRA's intervention agents on its behalf), were and (so far as they have not yet been paid over) remain held on a bare trust for the benefit of the Partnership. The 2011 Rules simply do not reach and are therefore irrelevant to those monies. Such monies included the £41,604.84 which Mr Williams identified as belonging exclusively to the Partnership (and to any further monies since identified as due to the Partnership). The evidence before the court was that Mr

Lillywhite, as Mr Williams' sole co-partner in the Partnership, laid no claim to them and was content that they should be paid to Mr Williams. Nor did Mr Chopra assert any claim to them. Although he had worked in the Partnership from about the beginning of October 2013 and had been sent a letter asking if he made any claim to them he had not replied. It was fair therefore to assume that he had no claim. In any event it was for Mr Williams and Mr Lillywhite, as the sole partners at the time the Partnership ceased to operate as such, to satisfy any claims that Mr Chopra (who was never a partner of the Partnership) or any others might have.

18. Mr Treverton-Jones pointed to the draconian consequences of an intervention for the solicitor in question: he loses control of the practice monies and documents, his practising certificate is suspended so that he becomes instantly unemployable in the profession and, by paragraph 13 of the Schedule, subject only to any order that the court may make, the SRA's costs of the intervention (including the costs of its intervention agents) are to be paid by the solicitor in question and are recoverable as a debt. In these circumstances, he submitted, the court should give a restricted rather than a wide or unrestricted interpretation to the statutory powers. He drew my attention to passages in Bennion on Statutory Interpretation, 6 edition, in particular Part XVII (entitled 'Principle against doubtful penalisation') to the effect that where there are potentially penal (in the sense of detrimental) consequences flowing from adopting a particular interpretation of a statutory provision, any obscurity in the provision should be construed narrowly or restrictively.

19. Against that background, Mr Treverton-Jones drew my attention to the reference in paragraph 1(1)(a) and also paragraph 6(2)(a)(i) to 'former practice' in the composite expression 'practice or former practice'. The words were not to be construed as referring to any practice which the solicitor in question had formerly carried on. They cannot sensibly have been intended, he said, to catch all monies held by any former practice carried on by the solicitor or to any former practice he might have had. Were that not so, paragraph 6(2)(a)(i), which defines what practice monies are caught by a resolution passed for the vesting of money and is the relevant provision in the instant case, would automatically catch and vest in the SRA practice monies held in connection with other practices from which the solicitor in question had moved and, in some cases no doubt, had long moved prior to the intervention into the practice named in the resolution. Such a construction would or could cause endless complications, not least the duty to investigate and call for claims which the 2011 Rules require. Nor is it easy to discern what policy objective such a wide construction might serve. Rather, he submitted, the purpose of the statutory power to intervene into a 'former practice' must relate to the particular circumstances in which the SRA is entitled to intervene under paragraph 1 of the Schedule. He drew my attention to the specific nature of those circumstances, for example undue delay by the personal representatives of a deceased partner who immediately before his death was practising as a sole solicitor in connection with that solicitor's practice (sub-paragraph 1(b)), the solicitor's bankruptcy or composition or arrangement with his creditors (sub- paragraph 1(d)), his imprisonment (sub-paragraph 1(e)), his incapacity through mental ill-health, being struck off or suspended (sub-paragraph 1(g)) and abandonment of his practice (sub-paragraph 1(h)). In some of those cases there might be no current practice left or it might have been disposed of. In such cases it would or might be important for the SRA to have the power to intervene into the practice formerly carried on by the solicitor. The Schedule carefully sets out the circumstances in which that might happen. If the

intervention is to be into or include a former practice (i.e. a practice which is no longer in operation) the resolution must identify what that practice is.

20. If therefore, he submitted, it was the intention of the SRA to intervene into the practice of the Partnership the resolution to intervene should have so stated. It did not. By the time of the intervention the Partnership, having long ceased to be a regulated entity, was a 'former practice'. The Partnership was simply not within the purview of the interventions with the result that the statutory trust cannot apply to any money held in connection with it.

21. Coming now to the SRA's response, Mr Dutton submitted that the monies paid to the SRA by the LAA were caught by the statutory trust and that the fact that there had been no intervention into the Partnership by name failed to address two questions. The first was to understand what was meant by the use of the expression 'practice'. The second was to identify the monies which were being vested in the SRA as a result of the resolution to intervene and to which as a result the statutory trust applies. Where, as happened, the powers conferred by paragraph 6 are exercisable by virtue of paragraph 1, the vesting is, by the terms of paragraph 6(1)(a), in respect of all monies held in connection with the solicitor's 'practice or former practice'. If, as he submitted to be the case, the LLP was carrying on what had formerly been the practice of the Partnership then that practice, being at the time of the intervention the practice of the LLP, was caught by the paragraph and there was no need for the resolution to name the Partnership. If that is wrong and the true view is that the practice of the Partnership ceased when the Partnership was converted into the LLP then the practice of the Partnership was the former practice of Mr Williams and Mr Lillywhite (its sole partners), whose practices were (and in the case of Mr Lillywhite remains) the subject of intervention. Either way the intervention, and therefore the statutory trust, extended to any monies (such as the part of the LAA payment since shown to be attributable to work carried out before 1 February 2014) which could be identified as belonging to the Partnership.

Conclusion

22. Although when the matter was first ventilated in argument before me on **12** May **I** was attracted by Mr Treverton-Jones' submissions, I have come to the conclusion, having heard fuller argument, that those submissions are not correct and that the correct analysis was that advanced by Mr Dutton.

23. The key to the matter, to my mind, is to understand what is meant by the expression 'practice'? Mr Dutton submitted, and I agree, that it means the activities of the solicitor or authorised body so far as carried out in that capacity. It is in contrast to the named organisation or structure (for example, Lillywhite Williams & Co or Lillywhite Williams LLP) through which the members of the organisation practise. This explains why an intervention can be, as the interventions were in the instant case, into the LLP and also into the practices of Mr Lillywhite and Mr Williams. The latter two did not practise separately from the LLP (or for that matter from the Partnership while it lasted) but as members of it. But each nonetheless had a practice within the LLP in the sense that he carried on the activities of a solicitor. That this is the correct way to understand what is meant by 'practice' is supported by the definition of 'practice' as it appears in the Glossary to the SRA Code 2011. Paragraph 1.1 of the 2011 Rules refers in terms to the Glossary for the meaning of terms used in those rules. The Glossary defines 'practice' as "...the activities, in that capacity, of: (i) a solicitor..." What then

was the practice or former practice of Mr Williams and Mr Lillywhite? It included their practices while partners of the Partnership in that those practices, namely the activities which they had carried on as solicitors while members of that entity, were on any view their respective former practices. I am also of the view that the practice of the LLP included the practice previously carried on by the Partnership. This is because, as the evidence amply demonstrated, that practice, namely the activities carried on in the name of the Partnership by its members and other staff, did not suddenly come to an end at the close of business on 31 January 2014. Those activities were continued the next day, exactly as before but thenceforth for the benefit and (save as to the legally-aided work) in the name of the LLP into which, when it ceased to be recognised by the SRA, the Partnership had converted.

24. In my judgment, therefore, the LAA monies, in so far as they were attributable to the activities of Mr Williams (as deriving from his 'practice') while a member of the Partnership fell within the scope of the statutory trust imposed by paragraph 6(1) as being sums held by or on behalf of the solicitor or his firm (or the recognised body) in connection with his (or its) practice or former practice.

25. When the matter was before me on 12 May I expressed a concern to the effect that the construction of 'former practice' advanced by the SRA might mean that the statutory trust could cause to be vested in the SRA monies held by a firm or firms in which the solicitor in question once practised but which he had long since left by the time of the intervention into his practice and, if so, that such an automatic vesting could potentially cause all manner of practical problems. In answer to this Mr Dutton pointed out that the statutory trust only operates in respect of monies held by the solicitor or his firm in connection with that solicitor's practice or former practice. All other monies held by the former firm are untouched. I am inclined therefore to think that the concern which I raised is more theoretical than real.

26. This conclusion makes it unnecessary to deal with Mr Dutton's alternative submissions which I need only briefly mention. The first was that even if the statutory trust does not apply and the true analysis is that the SRA held the LAA monies (or so much of them as could be attributed to work done during the Partnership) on a bare trust, the SRA nevertheless needed to conduct appropriate enquiries to be satisfied that it was accounting for them to the correct recipient. In view of the circumstances, which were far from clear, of Mr Chopra's involvement in the activities of the Partnership and, later, in those of the LLP, and not least the disputes that later arose, it was appropriate for the SRA to carry out enquiries both of Mr Chopra and of Mr Lillywhite in order to establish that Mr Williams was indeed the correct recipient. Time was needed to do this. By starting proceedings after so little time had passed - a matter of only four days after he had first told the SRA of the amount he was claiming - Mr Williams acted prematurely. I see much force in this. I also see force in a related point made by Mr Dutton. This was that it scarcely lay in Mr Williams' mouth to allege that the SRA was bound, almost without further ado after he had made his request for payment, to pay to him the monies received from the LAA in the amount which he claimed, where, the facts suggested, he had sought and obtained conversion of the Partnership to the LLP and had represented to the SRA that the LLP had taken over the practice of the Partnership but where, as it emerged, although he had notified the LAA of the change of status of the practice, he continued to use the Partnership letterhead and did not notify the LAA that the Partnership had ceased to be authorised or insured. Nor, it seems, were clients of Mr Williams' told of the status change. Such

matters plainly called for investigation. They justified a concern that the LAA might seek to recoup any monies paid by it to the SRA especially if payment related to work undertaken after 31 January 2014. This concern was justified notwithstanding that, in the event, no recoupment has been sought.

Result

27. Agreement having been reached on the application of the LAA monies, and payment made to Mr Williams of the amount agreed to be due to him, no substantive relief, whether by way of declaration or otherwise, is now needed. If further monies come to hand which are said to belong to the Partnership it is to be hoped that this judgment will assist in their correct disposal. There remains only the question of costs.