

Russell-Cooke success in defending appeal brought by struck off former Law Society Council member

John Gould, Paolo Sidoli and Michael Stacey, of the [professional regulation team](#) acted for the Solicitors Regulation Authority (SRA) in disciplinary proceedings brought before the Solicitors Disciplinary Tribunal in June and July 2015 and in subsequent appeal proceedings in April 2016. The appeal was brought by a former solicitor and former Law Society Council member, Richard Barnett, against the SDT's order striking him off the Roll of Solicitors in 2015. Mr Barnett was struck off following findings of dishonesty, breaches of SRA principles 2, 3, 6, 7, 8 and 10, various SRA Accounts Rules and breaches of the SRA Code of Conduct.

The SDT's 112 page judgment in the original case of [Solicitors Regulation Authority v Richard Anthony Barnett and Anthony Augustine Swift](#) was produced after a 16 day hearing in June and July 2015 and has been the subject of extensive press coverage.

The subsequent appeal Judgment, [Richard Anthony Barnett v. Solicitors Regulation Authority \[2016\] EWHC 1160 \(Admin\)](#) was handed down on 18 May 2016.

The case

The SDT proceedings arose following an SRA investigation into Mr Barnett's solicitors and the firm's receipt and improper use of monies it had received from the Axiom Legal Finance Fund, a collapsed Cayman Islands based litigation-finance fund established by another struck-off solicitor, Timothy Schools. The fund provided litigation funding to a number of UK law firms, which collectively received in excess of £100 million from the collapsed fund amid allegations of fraud involving, *inter alia*, the Axiom fund's investment manager.

The central allegation in the Barnett proceedings concerned the receipt and misapplication of £4.8 million of monies the firm had received from Axiom and whether it was improper for Mr Barnett and his partner, Mr Swift to use the monies for general practice overheads and to discharge personal liabilities. The terms of the funding agreement entered into between Axiom and the firm did not reflect the purpose for which the firm intended to use/in fact used the monies.

Further allegations included that the firm's receipt and use of the funds was dishonest. It was alleged that the firm was involved in a £2 million bogus transaction, that the partners had failed to carry out any or sufficient due diligence to satisfy themselves that the investment fund manager was not acting fraudulently. Additionally that Mr Barnett had acted in a position of conflict between his own personal interests and those of his client and between the interests of his client and his client's investment manager. It was also alleged that false, misleading or incomplete information had been given to the firm's professional indemnity insurers.

The SDT decision

Following a 16 day hearing (including 9 days of evidence) the SDT upheld all allegations against Mr Barnett, and ordered that he be struck off the Roll. Mr Swift was suspended for six months. Mr Barnett was also ordered to pay a substantial interim costs order pending

detailed assessment, which was secured and paid by consent, following enforcement action taken by the SRA.

The appeal

In his grounds of appeal, Mr Barnett submitted that the SDT was not impartial, that he had not been afforded time to prepare his defence, that he was unable to cross-examine witnesses, that the SDT had failed to adduce expert evidence and that the evidence adduced by the SRA was insufficient to justify the SDT's findings. On this last point, Mr Barnett also advanced further oral grounds, which included that the SDT had failed to treat his case with the same level of respect as that afforded to the SRA, resulting in an imbalanced judgement and that the SDT had approached the case with a '*closed mind*'.

Finally, Mr Barnett also applied that his appeal be adjourned, sought to appeal the interim costs order and alternatively sought that the SRA be ordered to repay monies to him in order to permit him to fund his appeal.

The Court's findings

Mr Justice Garnham firmly rejected Mr Barnett's submissions, found Mr Barnett's applications for adjournment and repayment of monies as meritless, and concluded that there was '*nothing whatever*' in the first four points raised in the grounds of appeal. He noted in particular that there was absolutely no evidence of actual or apparent bias from the SDT. In his judgement, which critically analysed the structure, content and rationale behind the SDT's judgment, the Court concluded that none of Mr Barnett's arguments properly engaged with the SDT's conclusions. He noted that the SDT gave entirely adequate consideration regarding Mr Barnett's state of mind in respect of the allegations to enable it to conclude that he acted dishonestly, that there was nothing inherently wrong with the SDT's analysis and that '*the ultimate position is that Mr Barnett disagrees with the Panel's decision*', that there was '*no flaw whatsoever in the Tribunal's conclusions on dishonesty*' and that none of the grounds advanced justified interference with the SDT's decision. The Court subsequently ordered summarily assessed costs in the SRA's favour.

The appeal has received press coverage in [The Law Gazette](#) and [Legal Futures](#).

Timothy Dutton CBE QC and Tetyana Nesterchuk of Fountain Court were instructed in the SDT proceedings and subsequent appeal.

Visit our [disciplinary proceedings service page](#) to read more about the work we do.

Paolo Sidoli

Partner

+44 (0)20 8934 6547

Paolo.Sidoli@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP. © Russell-Cooke LLP. May 2016

www.russell-cooke.co.uk