Neutral Citation Number: [2016] EWHC 947 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Held at Manchester Civil Justice Centre
Bridge Street West, Manchester, M60 9DJ

Date: 27/04/2016

Before :

MR JUSTICE FRASER

- -

Between :

Dr Alan Blacker (The Lord Harley)	**Claimant**
- and -	
The Law Society	**Defendant**

- -
- -

Dr Alan Blacker for the **Claimant**
Edward Levey (instructed by **Bevan Brittan LLP**) for the **Defendant**

Hearing date: 23/04/2016

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Judgment

Mr Justice Fraser:

1. This judgment constitutes my ruling on two applications in these proceedings, one by the Claimant for injunctive relief, and the other by the Defendant seeking to strike out the Claimant's claim, alternatively seeking summary judgment upon its defence. It is to be hoped that the terms of this judgment may save future judicial time on either this, or associated, proceedings between these parties should they arise in the future. Due to the nature of the Claimant's application, which sought to restrain publication of certain material by the Law Society, the hearing was held in private. I reserved judgment on both applications.

2. The Claimant has a variety of titles. His name is Alan Blacker and he also goes by the name Lord Harley. In various places in his correspondence, he is described as Dr Alan Blacker of Alan Blacker & Co, Dr The Rt. Hon. The Lord Harley of Counsel KGCStJ, DPhil, Senior Counsel of The Senior Courts, and Alan the Lord Harley. On the Claim Form commencing these proceedings issued on 14 September 2015, he chose Dr Alan Blacker The Lord Harley. His emails are identified as coming from "The Chambers of The Rt. Hon Lord Harley of Counsel". The prefix "The Rt. Hon" is conventionally used to refer to some peers and members of the House of Lords. "Rt. Hon" is used for members of the Privy Council, although the Claimant does not appear on the current list of members of that body, either under Blacker or Harley. He is a solicitor, and again in a variety of styles, he uses "Dr Alan Blacker & Co", which is described as an "in-house law firm where the partners and directors are regulated by the SRA and Dr Blacker is authorised and regulated by the FCA", and also "Joint Armed Forces Legal Advocacy Service" or "JAFLAS". The JAFLAS website, at www.jaflas.co.uk, refers to itself as "JAFLAS - Dr Alan Blacker & Co Solicitors" and "JAFLAS Dr Alan Blacker & Co.". It also refers to "Dr Alan Blacker and Company, Solicitor Advocates of the Supreme Court". I shall refer to the Claimant as Dr Blacker.

3. The Defendant is the representative body for solicitors in England and Wales. Although the Law Society has been named as defendant in these proceedings, the substance of the proceedings concerns the activities of the Solicitors Regulation Authority ("SRA"). The SRA is an independent body created by the Law Society which exercises the regulatory powers of the Law Society. The SRA regulates law firms, solicitors and others who provide legal services under statutory powers provided for in the Solicitors Act 1974, the Administration of Justice Act 1985, the Legal Services Act 2007, and the various Codes and Rules made under those Acts. The SRA's regulatory work is independent from the Law Society and it is overseen by the Legal Services Board.

4. JAFLAS does not, so far as I can tell, have any official connection with HM Armed Forces, although the name may suggest otherwise. JAFLAS is a registered charity. The evidence of Mr Johal, who is employed by the SRA as a Senior Legal Advisor and who provided a statement on behalf of the Defendant dated 4 November 2015, explains that the Claimant is a solicitor who provides in-house legal services to JAFLAS ("the Charity") through a company trading as "Dr A Blacker & Co. JAFLAS" ("the Company"). This is a company limited by guarantee. Neither the Charity nor the Company are directly regulated by the SRA, although the Charity has been given an SRA identification number because it employs a regulated solicitor,

namely Dr Blacker. Neither the Charity nor the Company are parties to these proceedings.

5. In summary, the SRA received a Freedom of Information Request from a member of the public which related to the activities of the Charity, the Company and Dr Blacker. This was made by someone whose identity is known only to the SRA and who is identified by the initials YZ. The passage of that Request, and the different information provided to YZ by the SRA, was not entirely smooth. YZ was not content with the responses provided by the SRA (some of the initial responses being admitted later by the SRA not to have been accurate), and YZ challenged certain aspects of the result of the application for release of information. Eventually, the request was submitted to adjudication by the Adjudicator engaged by the SRA for that purpose, namely the Freedom of Information Adjudicator for the Law Society Mr Alan Sowerbutts. He considered the matter and issued a decision dated 31 July 2015. That decision is anonymised and the applicant for information is referred to throughout as YZ, and Dr Blacker as AB. The substance of the decision is that Mr Sowerbutts upheld the points made by YZ to a limited extent and directed that six files, which are referred to as the Closed Files, should be made available to YZ in redacted form. A schedule was attached to his decision which identified the documents which were to be made available. He also redacted the documents themselves and provided these to the Law Society. Three further files existed which related to ongoing complaints, and hence altogether there are in existence nine files held by the SRA. He made no order in relation to the further three files and it is not proposed by the SRA that these be made available to YZ, or indeed to anyone.

6. Dr Blacker seeks to restrain the release of the six Closed Files to YZ (alternatively their publication), and he also seeks what he describes as delivery up of all nine of the SRA files to him (the six Closed Files, plus the three relating to ongoing matters). That is what his application concerns, and he essentially seeks to have the Law Society prevented from following the decision of the Adjudicator. The Law Society seeks firstly to strike out Dr Blacker's claim, alternatively summary judgment upon its defence. The proceedings were issued in the High Court in Manchester (and allocated to the Queen's Bench Division) by a claim form dated 14 September 2015. The form states a money amount is claimed, namely £50,000 (£52,600 including court fee and legal representative's costs) but states a preferred County Court venue for the hearing of Bury County Court. The Statement of Truth is signed by Dr Blacker as the Claimant's Legal Representative (although he is actually the Claimant) in the position or office of "Director and Trustee". I assume this means Director of the Company, and Trustee of the Charity, neither of which are parties. Although there is a money claim, the nature of the relief sought in the Particulars of Claim is injunctive relief. The Particulars of Claim are stated in the following terms:

> "*Particulars of Claim*
>
> As set out in the evidence attached hereto.
>
> This action is brought in part to protect the claimant's rights under Article six of schedule one to The Human Rights Act 1998

> Right to a fair trial under section 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
>
> Article 8 of schedule one sections one and two.
>
> Right to respect for private and family life
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of the disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.
>
> and this injunction is brought in qua timet that the defendant will not give an undertaking that no such publication shall be made nor that delivery up of the six files complained of will be given."

At the hearing before me, orally Dr Blacker explained that he does bring a claim in damages, limited to £50,000, for breach of the Data Protection Act.

7. Dr Blacker served a short witness statement in support of his claim, dated 19 August 2015. The relevant text of that statement is as follows:

> "4. On 16 August 2050 [sic] it was brought to my attention that a publication had been made on the Law Society's website concerning myself, this publication is called an adjudication following a request for information by YZ.
>
> 5. This publication concerns a Freedom of information request by an unknown person to the Law Society about records held by the society concerning the claimant.
>
> 6. This publication was made without my knowledge and the files which number six in total that are referred to in that adjudication were opened completed and clause without my knowledge.
>
> 7. This adjudication is quasi-judicial undertaking by the Law Society as to whether they should release personal and private information contained within professional records held by the Law Society, at no time was I ever consulted contacted or informed about this application despite having put the law society on notice that my intention to seek this injunction they

> have refused and still fail to provide me with copies of any information stating that they will have to look into them.
>
> 8. What I seek is a reasonable injunction requiring them to handle copies of the six files which are in the possession and readily available and furthermore to withhold any publication to the public domain until I had an opportunity to make proper representations.
>
> 9. The Law Society have been implacable in moving from a fella dogmatic position on this whole matter being completely ambivalent about my natural concerns injunctive relief is the only natural course of action open to me.
>
> 10. I therefore seek a mandatory injunction requiring them to deliver the documents and prohibitory injunction preventing publication of the documents."

8. The Law Society defends these proceedings on a number of grounds, which so far as relevant I will deal with below. There are also many disputed points of fact between Dr Blacker and the Law Society, and it is not possible entirely to resolve these on proceedings conducted on written witness statements. However, in my judgment it is not necessary to resolve such disputed facts in order to resolve both applications. However, three important points should be made about the witness statement of Dr Blacker. Firstly, as at the date it was made, it is correct that the Law Society had published on its website the schedule of the Adjudicator's decision, in supposedly redacted form. It is also correct that as at that date, the Law Society had not sought any representations from Dr Blacker or given him advance notice of this. He came across this through a legal news website called Legal Cheek. Those who operate this online publication had discovered both the publication of the schedule, and that the redaction had been done incompetently. If anyone were to download the schedule and change the background colour, the "redacted" text could be read in the usual way. Legal Cheek informed the online community that this could be done, and this caused a degree of internet curiosity and comment.

9. Secondly, it is entirely correct that as at the date of that witness statement, Dr Blacker had not had an opportunity to make any representations to the Law Society about the content of the documents that it was proposed would be provided pursuant to the decision of Mr Sowerbutts, nor had he been invited to do so. This is because, even on the Law Society's own case, it was not until 3 September 2015 that Mr Johal of the SRA sent an email to Dr Blacker that stated:

> "Please find attached documents that the SRA intend to disclose following a FOI request and adjudication by the FOI adjudicator.
>
> Please let us have any comments that you may have within the next 48 hours."

10. None of these different matters – the publication without notice by the Law Society, the incompetent redaction of the schedule, and the giving of only 48 hours' notice to

Dr Blacker – could be said to be behaviour likely to do anything other than inflame relations between Dr Blacker and the SRA. Further, he told me that the email of 3 September 2015 did not attach any documents to it, and so even then he did not receive the relevant documents. The copy of that email in the hearing bundle does not assist in this respect. The relevant documents ("the Disputed Documents") were exhibited by Mr Johal to his witness statement. However, that exhibit was served separately from the actual witness statement (the latter being sent electronically, the former by post) and Dr Blacker states that he only received the Disputed Documents when they were provided in the application bundle the day before the hearing before me. This is disputed by the Law Society. Mr Levey for the Law Society points out that in various correspondence from the Law Society to Dr Blacker subsequent to September 2015, reference is made by the Law Society's solicitors to Dr Blacker having been sent the documents and these statements were not corrected, and that the first time non-receipt of these documents was alleged was at the hearing itself. Mr Levey also relied upon no request having been made by Dr Blacker for the exhibit to Mr Johal's statement (if in fact it had *not* arrived by post). Regardless of when he did in fact receive them, I am satisfied that by the time of the hearing before me, Dr Blacker had been in possession of the documents for a sufficient period of time to consider their contents. Indeed, he made submissions to me about them. I am also satisfied that in the interval between the hearing, 21 April 2016, and the handing down of this judgment on 27 April 2016, Dr Blacker will have had sufficient opportunity to make representations to the Law Society, should he wish to do so, concerning the redactions proposed to the Disputed Documents.

11. Mr Levey sought to argue before me that the Law Society was under no compulsion to give Dr Blacker, or any solicitor, the right to make representations before publishing information about them pursuant to Freedom of Information requests. Although that might be right – and whether it is or not concerns the Law Society's voluntary Code, and not the Freedom of Information Act itself, as the Law Society is exempt from the statute – it seems to me that demanding an answer within 48 hours from anyone in what was not a time sensitive case is wholly pointless. Further, publishing supposedly redacted material on the internet in a form which can be readily un-redacted by anyone is wholly counter-productive for obvious reasons. This latter point was rather glossed over by Mr Levey as not being of particular importance, and he submitted that "the Law Society has learned its lesson", and had withdrawn the offending schedule – but I consider it is important. Such a mistake should not have been made by the representative body of solicitors in England and Wales. There is no doubt on the papers before me that the Law Society and Dr Blacker do not seem always to have had the smoothest of relations. There are difficulties in communication and these have continued into these proceedings. The seeking of a response within 48 hours, and the "redaction" of material, have only added to that. However, this does not directly relate to the substance of the application for injunctive relief.

12. The third important point on the evidence of Dr Blacker is that even on his own case the files in question were created by the SRA as part of the exercise of the SRA's regulatory function.

13. Turning to the substantive issues on the application by Dr Blacker, it is well known that the grant of an interim injunction is governed by the principles in the case of

American Cyanamid Co v Ethicon Ltd [1975] ACT 396, 408. This authority was not cited to the court by Dr Blacker, but he accepted its principles and it is common ground that they apply to this case. Essentially, there is a two stage test, which is (1) is there a serious issue to be tried; and if so (2) to assess the balance of convenience. Within that second stage of the test is consideration of whether damages are an adequate remedy.

14. Dr Blacker's skeleton argument states the following, which is reproduced here verbatim:

> "This is predominantly a claim under the Human Rights Act and the Data Protection Act current and enforce.
>
> The defendant has published a series of documents from the claimant's personal records held by the defendant in response to a Freedom of information request. The defendant freely admits that they are not governed by the Freedom of information Act and they confirm that in the defence at paragraph 5. They claim to adopt a voluntary code of practice and detail this at paragraph 6 of the defence. However not being bound by the act the defendant cannot rely upon its voluntary called for protection from breaches of the data protection act.
>
> The defendant has published information which is personal to the records of the claimant and even if these were legitimately produced under the Freedom of information act they would still be caught by the data protection act as they are personal records.
>
> The purpose of the Freedom of information act is to allow the general public wider access to the management and overall running of public bodies and not to the extent to which this abuse has arisen.
>
> In addition the defendant has failed to comply with its own both practice guidance in that it has failed to comply with principle 16 in that it should not use to the general public personal information, which it has done in breach of the code.
>
> At no time prior to the claimant becoming aware of the publication the documents did the defendant ever communicate with the claimant and indeed no communication had been had prior to the release and so the assumptions made in the adjudication and that the mere fact that the publications taken place is all occurred without the claimant's knowledge or input.
>
> No procedure or process can be deemed to be fair on the subject of that process has not been given the opportunity to engage in it. Once court proceedings have been commenced the defendant went on to suggest that they will continue to make

> the publication unless the defendant given good reason within 48 hours not to do so.
>
> This again shows exceptional bad faith as they are in fact in breach of an injunction since granted and upon which this claim is predicated.
>
> The defendant has done nothing to ameliorate the situation since and indeed has acted belligerently and uncooperative and has acted in such a fashion as in all regards unreasonable.
>
> The defendant having failed to comply with its statutory duties under the data protection act is in breach thereof and damages are sought.
>
> The defendant has also breached a court order to deliver up an assessment of costs and is therefore not entitled to same."

15. These arguments were refined at the oral hearing and Dr Blacker made it clear to me that the serious issue to be tried, as he saw it, was the regulatory conduct of the SRA regarding compliance with the decision of the Freedom of Information Adjudicator for the Law Society. The cause of action relied upon was said by him to be one in damages for breach of the Data Protection Act and breach of Article 6 of the Human Rights Act. Article 8 was also relied upon.

16. I have seen the Disputed Documents and it is not correct to say that the information contains personal information about Dr Blacker. The Law Society proposes redactions additional to those identified by the Adjudicator. I am told by Mr Levey that these redactions will be done in a correct way, so that they cannot be "undone" by members of the public. The only information about Dr Blacker contained within the unredacted parts are his date of admission as a solicitor, his SRA number, and his involvement with JAFLAS. These are all publicly available in any event. The names of SRA staff involved in the different matters are also redacted.

17. No point was taken by the Law Society to the effect that it was the incorrect defendant and that any claim should be against the SRA. Rather, the Law Society submitted the Particulars of Claim were vague, embarrassing, and should be struck out; the action was an abuse of process; neither Article 6 nor 8 of the Human Rights Act was engaged; and there was no underlying cause of action in any event and no serious issue to be tried.

18. It is necessary, therefore, to consider firstly the background to what it is that the Law Society (or the SRA) is intending to do, and why. The Law Society is not subject to the Freedom of Information Act 2000. Rather, in 2005 it adopted a voluntary "Freedom of Information Code of Practice" which is intended to confer rights which reflect those in the Act. Paragraph 3 of the Code makes it clear that the Law Society is following the Act as though it did apply, even though it does not. Paragraph 14 states the exceptions that apply, which include at paragraph 14.5 specific investigations, disciplinary cases, or applications arising from the Law Society's regulatory role (but not including general information about procedures). Paragraphs 17 and 18 deal with the role of the Adjudicator who will determine applications if the applicant considers

the Law Society to have denied an application unreasonably. These paragraphs make it clear that the Law Society would normally accept the Adjudicator's decisions, and also that for regulatory information:

> "…the Adjudicator will consider whether the public interest requires us to give you the information, which is the test the Act uses."

19. YZ made certain requests for information that were, broadly, rejected by the Law Society. The information request arose from the activities of Dr Blacker and "concerned the SRA's interaction with his employer". The Adjudicator upheld the requests, but only to a limited extent, applying the public interest test. The majority of the information held on the relevant files (referred to as the "Closed Files") was between Dr Blacker as an individual and the SRA as his regulator. The Adjudicator held that these fell outside the scope of YZ's request in any event; he certainly did not decide that these should be disclosed by the Law Society. However, in paragraph 90 he considered another, limited category of correspondence which he described as "certain limited exchanges of correspondence" where the SRA had written to the Charity and/or Company to raise with them the representations made online and on the Company's note paper. He stated:

> "That correspondence, tackling issues that SRA was responsible for by virtue of its regulatory role, was addressed to and was responded to by [Dr Blacker] in his capacity as an agent or representative of those organisations."

The Adjudicator found that paragraph 14.5 of the Code was engaged but that the public interest favoured disclosure. His ultimate conclusion was as follows:

> "I therefore find that the correspondence falling within the scope of the Applicant's request should be disclosed, subject to redaction of out of scope information and any elements of [Dr Blacker's] sensitive personal data contained in the in-scope information."

20. No personal data should therefore remain in the Disputed Documents. Dr Blacker's arguments, in summary, are that the information remaining still identifies him and that he would and does find that embarrassing, and if disclosure occurs it will unleash a torrent of adverse, embarrassing and misconceived comment, and cause mischief. However, his ultimate point is that the Law Society's adoption of the Code in 2005, and behaviour as though the Act applies when it does not, is contrary to his rights in various respects. The first point may be right, but that does not grant him a cause of action in my judgment. In various public places, not least the website of JAFLAS, he is happy to be described as a solicitor and that is a regulated profession. One consequence of being a member of a regulated profession is being subject to that profession's regulator. The adoption by the Law Society of the Code in 2005 cannot be subject now to a claim for damages by a solicitor unhappy with its terms. If anything, it would be a matter of public law – but I hesitate to go further as this may be misconstrued as encouragement.

21. Further, Dr Blacker's reliance upon the Human Rights Act is misconceived. Article 6, the right to a fair trial, is not even remotely engaged as there are no civil or criminal proceedings relating to the Closed Files. The failure by the Law Society to deal with the Closed Files as Dr Blacker seeks, and/or the failure by the Law Society to deliver them up to him, does not constitute an interference with his private or family life under Article 8. There is no private information about him contained in the Closed Files.

22. Finally, the Closed Files are the property of the SRA and were created by the SRA as part of its function as the regulator of the profession. Dr Blacker has no proprietary right in them. I fail to see how in those circumstances he can have any right to delivery up of the Closed Files.

23. So far as the other three files in the ongoing matters are concerned, the Law Society and the SRA has no intention of publishing these or releasing their contents to anyone, and they do not fall within the disclosure ordered by the Adjudicator. The SRA is entitled to maintain such files as part of its regulatory function and Dr Blacker can have no claim to them whatsoever. These files too are the property of the SRA. There is also a powerful public interest in regulators of professions being entitled to keep confidential files relating to members of the profession in question.

24. In my judgment, there is no serious issue to be tried and there can be no question of where the balance of convenience would lie at the second stage of the test in ***American Cyanamid***. It is therefore unnecessary to consider the second stage point. However, I note that no undertaking in damages has been proffered by Dr Blacker either in his written evidence or in his submissions before me, nor any explanation provided as to why no such undertaking was available. Ordinarily, that would be fatal to any application for injunctive relief in any event.

25. The assertion by the Claimant in the skeleton argument of bad faith on the part of the Law Society is patently bad, and not supported in the evidence or on the face of the Particulars of Claim. Further, the same passage refers to the Law Society being "in fact in breach of an injunction since granted and upon which this claim is predicated" when no injunction has in fact been granted, so it is not possible for the Law Society to be in breach of one. Even though the wording used is curious – the term "since granted" appears to be the past tense for an assertion that an injunction had been granted – Dr Blacker is not a litigant in person, he is a qualified and practising solicitor. Such an assertion should not have been made in his skeleton argument.

26. The Claimant's application for interim relief therefore fails and it is necessary to consider the application by the Law Society.

27. The Law Society seeks to strike out the claim under CPR Part 3.4(2), alternatively summary judgment upon its defence under CPR Part 24.2. CPR Part 3.4(2) applies where a statement of case discloses no reasonable grounds for bringing or defending the claim, that it is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings, or where there has been a failure to comply with a rule, practice direction or court order. Abuse of process was not developed in oral submission by Mr Levey and would not in any event result in a different outcome to striking out under CPR Part 3.4(2)(a). CPR Part 24.2(a)(i) states that the test for

granting summary judgment upon a defence is that the claimant has no real prospect of succeeding on the claim.

28. In my judgment, the correct rule under which to proceed in respect of the claim is CPR Part 3.4(2)(a). It should be struck out as disclosing no reasonable grounds for bringing the claim. However, if I am wrong about that and the statement of case were considered to disclose reasonable grounds for bringing the claim, then I would in any event have granted the Law Society summary judgment upon its defence under CPR Part 24.2(a)(i). The application by the Law Society therefore succeeds.

Case No: HT-15-274

B90MA357

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

BEFORE THE HONOURABLE MR JUSTICE FRASER

B E T W E E N:-

DR ALAN BLACKER (THE LORD HARLEY)

Claimant

- and -

THE LAW SOCIETY

Defendant

RULING ON CONSEQUENTIAL MATTERS

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1. In a judgment of 27 April 2016 at [2016] EWHC 947 (QB) I refused Dr Blacker's application for interim relief by way of an injunction restraining publication (and also delivery up) against the Law Society. I also upheld the Law Society's application and struck out the action as disclosing no reasonable cause of action. The Law Society now seeks its costs of both applications and a summary assessment of its costs. Dr Blacker opposes that application, and also seeks permission to appeal. When I reserved judgment at the end of the oral hearing both parties agreed that for reasons of economy any further matters would be dealt with in writing. I have therefore received brief written representations from both parties on the matter of costs, and also from Dr Blacker setting out eight different reasons justifying the grant of permission to appeal.
2. Dealing with costs, there is no doubt that the Law Society has succeeded in resisting the claim for interim relief, and also in striking out the claim. CPR 44.2.2(a) makes it clear that the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; however, CPR 44.2.2(b) states that the court may make a different order.
3. Ordinarily, therefore, Dr Blacker would be ordered to pay the Law Society's costs, and a summary assessment would follow as the hearing was less than one day. In the peculiar circumstances of this case, however, I am departing from the normal rule. The reasons for this are as follows.

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4. The Law Society could be said to have provoked the action by publishing material on its website that was supposed to be redacted, yet the redaction could be undone by downloading the document and changing the background colour of the document pages. This applied both to a small part of the actual decision of the Adjudicator, and the accompanying schedule. Further, by giving Dr Blacker only 48 hours to comment on certain documents prior to publication, relations were further inflamed. I was told at the hearing that the Law Society has learned its lesson concerning redaction; so far as the 48 hours' notice is concerned, it should be remembered that not everybody in the digital age is prepared to move at breakneck speed at all times and 48 hours in most circumstances is an unreasonably short period of time in what was not a time-sensitive issue. I have taken both those factors into account.

5. Dr Blacker claims he is impecunious and any order would in any event be futile. That is not in any way a compelling reason not to make a costs order, however it is part of the background and I take it into account to a lesser degree.

6. In my judgment the correct order in all the circumstances of this case is no order as to costs.

7. However, Dr Blacker should not interpret this as either being encouragement to bring further High Court proceedings, or as being an order that is likely to be made in the future if he is unsuccessful in any further proceedings. He has, in his submissions on costs, expressed very trenchant views about the regulator and there are obviously ongoing strained relations (to put it mildly) between the parties to these proceedings. The reasons explained above are highly fact specific to the circumstances in August and September 2015, and the normal rule is that an unsuccessful party will have to pay the costs of the successful party. As CPR Part 44.2.2(a) makes clear, that will ordinarily be the case between these two parties as with all litigants.

8. Turning to the application by Dr Blacker for permission to appeal, I refuse permission. I do not consider that the appeal would have a real prospect of success, and there is no other compelling reason why the appeal should be heard. The correct course therefore is to refuse permission.

Dated 5 May 2016