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CO/5060/2015

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

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 20 May 2016

B e f o r e:

MR JUSTICE BLAKE

Between:

WILLIAMS

Appellant

v

ARCHITECTS REGISTRATION BOARD

Respondent

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The **Appellant** appeared in person

Mr A Tabachnik (instructed by Russell-Cooke Solicitors) appeared on behalf of the **Respondent**

J U D G M E N T

MR JUSTICE BLAKE: 1. This is an appeal against a decision of the Professional Conduct Committee ("PCC") of the Architects Registration Board ("ARB") given on 20 July 2015. By that decision it found (1) the claimant's criminal conviction for an offence of dishonesty had material relevance to his fitness to practice as an architect and constituted therefore misconduct; (2) the appropriate sanction was erasure from the Register of Architects with a prohibition for applying for reregistration for a period of 5 years.

2. The Architects Act itself requires publication of the sanction and says by section 15.4:

> "The Professional Conduct Committee shall, at appropriate intervals and in such manner as it considers appropriate, publish—
>
> (a) the names of persons whom it has found guilty of unacceptable professional conduct or serious professional incompetence or in relation to whom it has made a disciplinary order... and
>
> (b) in the case of each person a description of the conduct, incompetence or offence concerned and the nature of any disciplinary order made."

3. Pursuant to its policy made the ARB has decided that in a case of a sanction of erasure that such a sanction and the reasons for it be published for a period of 5 years.

4. The appeal is pursuant to section 22 of the Architects Act and it is against the sanction of erasure. It takes the form of an appeal by way of rehearing but the rehearing has regard to the facts proved below and where the exercise of discretion is concerned, the expertise of the panel and the relevant factors in the case as it had developed as it was before the panel making the decision at the time.

5. The relevant background to this appeal is as follows. In July 2001, the claimant first registered with the ARB as an architect. In February 2010 he made a statement to the Department for Work and Pensions about the assets that were available to him when he was applying for Job Seeker's Allowance through a period of economic difficulty that he encountered. He made a similar statement about his assets to the London Borough of Lambeth, his local authority, who administered the parallel scheme of housing benefit. The statements as to capital assets were subsequently found to be false and it was concluded that he had assets that were his that took him over the threshold for eligibility for the benefits that he actually received. The consequence was that he received Job Seeker's Allowance over a 2 year period from 2010 to 2012 to which he was not entitled.

When the misstatement was discovered by the London Borough of Lambeth, it appears that the claimant made arrangements to repay the housing benefit in question. He was nevertheless prosecuted on 2 counts of dishonestly making false statements to the Department and Pensions and the London Borough of Lambeth.

6. The prosecution took place at the Inner London Crown Court. On 23 September 2013, there was a pre-trial hearing at that court conducted by His Honour Judge Chapple. The claimant sought to stay the prosecution as an abuse of process. Information as to the nature of that argument has been obtained from documents that the respondent has recently obtained from the CPS who recognised that information about the prosecution was relevant to the respondent's functions as a regulatory authority. It seems from his skeleton argument and witness statement, lodged on his behalf, that the claimant contended that he believed that the civil repayment to the London Borough of Lambeth was a conclusive settlement in respect of the claim to housing benefit and the claim to Job Seeker's Allowance.

7. The application was unsuccessful in that the judge declined to stay the proceedings as an abuse of process, although, in the course of giving his explanation for that decision, the judge commented that having heard the evidence of the claimant, it was honest on the issues that he was dealing with, and he also expressed the view that it may be that the prosecuting authority could accept a plea of guilty to a simple offence of making a false statement without the additional innuendo as to dishonesty.

8. Following this ruling, the prosecuting authority sought trial on the two charges of making a false statement dishonestly. On 17 July 2014, the jury unanimously convicted the claimant on the first count relating to Job Seeker's Allowance of which the Department of Work and Pensions was the loser but they could not agree on the second count relating to housing benefit connected with the London Borough of Lambeth. By direction of the judge they were discharged from reaching a verdict on that count, and as it was not considered in the public interest to have a further trial on that count, a verdict of not guilty was recorded.

9. The claimant was then sentenced that same day by the trial judge who, it turns out from the information recently obtained from the CPS was Recorder Khamisa QC. He said this in passing sentence:

> "Mr Williams. You have been convicted unanimously by the jury of one count of dishonest representation for obtaining benefit. You were charged

with having obtained the benefit dishonestly on 4 February 2010. The amount of benefit that you obtained over a period of time was £7,926.14.

It is a very sad day, Mr Williams, when a man of hitherto previous good character is losing his good name. I cannot think of a greater punishment than the loss of good character for a professional man. So, bearing in mind your age; your previous good character; the fact that you have repaid by way of a consent order the larger amount in relation to the housing benefit, and bearing in mind that you have not been in any trouble since you were arrested and charged for these matters; bearing in mind also the history of this case, that the allegations go back some four years and appear to have taken two years to come to court I am persuaded by you Mr Carrs, just, that I should not send you to prison and should not impose a custodial sentence even if it is a suspended sentence. It seems to me that the appropriate way to deal with you is by the imposition of a community order for a period of twelve months.

You have a number of skills and you have expressed a desire in your evidence to serve the community by working with non-profit organisations. Well this will be your chance. You will do unpaid work within the community for one hundred and fifty hours subject to your fitness to do so."

10. On 30 September, the claimant made disclosure of his conviction to the ARB by an email in which he said:

"I understand that you deal with ARB professional standard matters, and write to inform you in respect of a recent minor conviction. Unfortunately I have been unable to provide further details of the matter due to ongoing delay in receiving the court judgment, in addition to unconnected housing issues."

11. This disclosure alerted the ARB to the fact of conviction and in due course the details of the charges and the convictions were provided to it in October, and later that month the claimant was invited to submit his comments on the matter by the Board. He did so within the timescale provided by way of an email sent on 7 November in which he says:

"Please note that I have been unable to provide written confirmation of this

matter earlier due to residential and other personal issues and failure of counsel to notify ARB with copy of the full judgment contrary to my understanding.

I sent details of the conviction as soon as it came to my knowledge that the Council had provided the necessary notification, as agreed."

12. There were further communications and he supplemented that by an email on 10 November in which he stated:

> "I have not worked as an architect for the past 6 years. As to conviction, unfortunately neither such certificate nor further documentation has been received to date. Hence the delay in providing further details of the matter. However, I will endeavour to advise the ARB as soon as the certificate or other relevant document has been received."

13. He answered queries about his professional engagements and insurance certificates.

14. On 6 February 2015, a solicitor instructed by the Board to enquire into the matter sent out a report noting the conviction and sentence with a number of appendices. On 17 February 2015, notice of a hearing for 30 April was sent by post to the claimant's correct residential address, although it was subsequently returned by the Post Office as "not called for". A further copy of the notice of the hearing for 30 April was sent on 30 March. The claimant responded to that notice on 13 April by a lengthy letter disputing proper service and stating that a hearing was inapplicable in any event. That letter raised the proposition that the disciplinary proceedings, the code of conduct, and the pre-1998 case law relating to disciplinary proceedings against professionals, whether legal, medical or others, was inconsistent with the emerging jurisprudence on the right to respect for private life within the meaning of article 8 of the European Convention on Human Rights brought into law by the Human Rights Act.

15. The PCC convened on 30 April and the applicant was not present. They took advice as to what they should do and the requirements of fairness, and they concluded, at paragraphs 8-11, that since he had been given a reduced period of notice of hearing, out of an abundance of caution the matter should be adjourned:

> "Taking all this into account, exceptionally the Committee has decided to grant Mr Williams' request for an adjournment in the particular

circumstances of this case, especially acknowledging the fact that despite accordance with the Rules, the Act and service requirements, Mr Williams did not actually receive notice until barely three weeks before the hearing. Up until then, through correspondence, and indeed by his presence here today, Mr Williams has engaged in the proceedings.

Therefore, despite the Board's compliance with the Rules and the Act, the Panel accepts that Mr Williams did not receive notice until relatively shortly before this hearing. The Panel has taken particular account of the fact that no witnesses are required for this hearing, nor is there a Complainant, nor does the risk of fading recollection of facts apply. The Panel notes too that Mr Williams is unrepresented and that this is the first adjournment request in this case. In the Panel's view, the possible risk of unfairness to Mr Williams in presenting his case, just - but only barely - tips the balance in favour of Mr Williams' request.

However, the Panel stresses that it is Mr Williams' own responsibility to obtain any representation that he wishes (if he is able to obtain such), and to obtain any further evidence he requires, if indeed such evidence exists, for himself and without delay.

The Panel observes that it would be open to Mr Williams to present to the Panel at the adjourned hearing his mitigation and any other relevant features from his trial and pre-trial hearings without the need for any Court transcript. The Panel would therefore not expect, nor should Mr Williams expect, that adjournment of this hearing will be a lengthy one."

16. On 8 May a notice of a new hearing date was given, and that was to take place on 20 July 2015. On 29 May, the claimant wrote seeking an adjournment, stating:

> "It will not be possible to provide documents within 14 days prior to the hearing date due to existing court cases."

17. This application for an adjournment was refused on 2 June. A renewed application on essentially the same grounds was made and refused on 16 June. On 6 July, the claimant wrote again, stating, amongst other things, that he was unable to attend to these proceedings because of other commitments, and he repeated his submissions that there was an absence of transparency about the process which was being brought against him.

He invited the adjournment to October 2015. That application was again refused.

18. There was further correspondence about other matters, and he wrote again on 13 July saying that due to a conflict with existing court cases he was unable to prepare his case. He also sought a direction that the hearing, whenever it was to be convened, should take place in private. He wrote, again on that day, another lengthy letter raising a number of issues about the compatibility with the whole statutory regime of the Architects Disciplinary Proceedings with the ECHR and, in particular, Article 8. That theme was repeated in a further letter he wrote on 16 July. On that last date, a letter was written by the advocate for the Board to the claimant, indicating that if he did not attend the hearing on 20 July, an application would be made to proceed in his absence.

19. The claimant responded to that on 17 July repeating what he said previously and saying:

> "I am eager to argue my case but hampered by existing Court of Appeal and High Court cases in which I have no option but to act as litigant in person, and that the PCC hearing date on 20 July coincides with the required filing date in the court proceedings."

20. Although no specific reference was made in that correspondence to court proceedings, at the hearing of this appeal in the bundle that he has helpfully prepared, the claimant had drawn attention to two notices of appeal that were filed respectively in March 2015 and on 20 July 2015. The notice of appeal that was filed on 20 July 2015 was a notice in unrelated litigation seeking permission to appeal from a decision of the registrar, dated 20 June 2015. It has not suggested that the claimant was due to appear in any court on 20 July and to some extent the date in which files a notice of appeal within the 21 day period normally allowed by the Civil Procedure Rules is a matter of some choice once the decision on 30 June had been taken. That could hardly have been the issue that was in his mind before that date as the decision had not yet come into existence.

21. On 20 July the Board refused to adjourn. There is available to me a transcript of that decision. It is perfectly apparent that before doing so they were advised by their clerk on relevant law, and he drew their attention to the decision of the House of Lords in the case of Jones [2001] UKHL 5 that deals with how a criminal court should decide whether to exercise its powers to proceed in the absence of an absconding defendant but nevertheless still comply with the duty to hold a fair trial. The principles in Jones which included a requirement to take all relevant considerations into account including a checklist. Although this decision was concerned with criminal proceedings, the checklist

was said to be of assistance to disciplinary hearings in the case of the Privy Council decision in Tate [2003] UKPC 34.

22. Having looked at the reasons advanced for a further adjournment, and conscious of what the previous separate panel had said when reluctantly granting the adjournment on 30 April and the warning that had been to as to the consequences of non-appearance, the Board concluded that there was no good reason to grant a further adjournment. It noted that the claimant had been able to use the period from April to July to write very many letters, some of which were quite lengthy, and contained detailed submissions about article 8 and compatibility of the regime with his rights to private life. As these were the topics that he was ventilating in the appeal, it could see no reason why he could not prepare any observations or comments or documentation that he wanted to be drawn to the Board's attention in time for that hearing.

23. The PPC then, having refused the adjournment, found misconduct based upon the certificate of conviction and the sentencing remarks to which reference has already been made, and applying the guidance from the code of conduct for architects, dealing with cases of criminal convictions for dishonesty or other impairment of integrity concluded that erasure was the only appropriate sanction. Nothing less would do.

24. As I have already indicated, the consequence was that that decision, held in public because there was no reason in the PCC's judgment to depart from the normal practice, was publicised, and the policy is that that publication should subsist for a period of 5 years. It is to be noted that a further decision was made in this case, that the claimant should not be able to apply for restoration to the register of 5 years. So publication and its duration happen to coincide with the period of prohibition for reapplication for reregistration which was within the powers available to the PCC.

The appeal

25. The appellant now appeals to this court. Summarising his grounds of appeal and the lengthy skeleton argument that he has served detailing those grounds, I detect 5 principal heads of argument. They are as follows.

(1) The Board was wrong to proceed in his absence and did not give the matter the anxious consideration and regard to all relevant factors as indicated in the case of R v Jones.

(2) There was no material evidence of unfitness to practise as an architect.

(3) The PCC erred in describing the dishonesty conviction as a lengthy course of conduct as it only involved a single conviction.

(4) It was wrong to refuse the application for proceedings to be heard in private, as it related to aspects of his private life and there was insufficient justification for it to be heard in public.
(5) Generally, the Board and the PCC acted incompatibly with his human rights, by which he means his right to respect for private life, in a number of respects, including the sanction of erasure and publication of that sanction.

26. In the skeleton argument, he developed that latter submission by reference to the rehabilitation periods applicable to a community sentence to which he was sentenced, under the Rehabilitation of Offenders Act 1974. He has submitted in that skeleton and in oral submissions today, that it is irrational or otherwise wrong for a 2-year period before rehabilitation is achieved under the Rehabilitation of Offenders Act as it were to be frustrated by a 5 year period of publication of the sanction under the policy adopted by the Board to give effect to its duty under section 15 of the Act.

27. A significant part of the submission that has been developed before me today relies on the decision of the Supreme Court in the case of T v Chief Constable of Greater Manchester and Others, and B v Secretary of State for the Home Department [2014] UKSC 35 reported at [2014] 3 WLR 96. That case concerned compatibility of regulations made under the Rehabilitation of Offenders Act and the exercise of individual decisions by its Chief Constable to disclose to prospective future employers cautions given to the applicants when they were juveniles some years previously and when those convictions were long spent.

28. The claimant has drawn my attention to passages in the judgments of the Supreme Court, citing the Strasbourg jurisprudence about compatibility of disclosure of spent convictions retained in the Chief Constable's database, with the right to respect to private life, as developed in the case law of the ECHR. He, in particular, points out that the Strasbourg Court has held that even information that related to what were once public events can be said to be aspects of the private life, where the activity in question is storing information relating to an individual's private life and the release of such information. He cites paragraph 105 of the judgment in T for that proposition.

29. He has also drawn to my attention at paragraph 114 and 115 of the case of T, where the Supreme Court cited Strasbourg jurisprudence that if there are insufficient regimes to govern disclosure of such retained information, then the legal provisions as a whole do not have the quality of in accordance with the law, and thus are incapable of justification under article 8.2 of the ECHR, and that what was needed was a regime that enabled legal

authority to justify and ensured that proportionality was assessed. The case led to amendments of the relevant regulations made under the Rehabilitation of Offenders Act, although Parliament and the maker of the regulations has still operated by reference to classes of offence and period of time, rather than any individually nuanced assessment in each case. That has given rise to further litigation which is pending before the higher courts at present.

30. Mr Williams has placed at the forefront of the submissions today the criticism that the regime for sanctions and publication of sanctions did not allow for individualised assessment of proportionality. He contended that it was arbitrary, it was not in accordance with the law, it was incompatible with his rights to private life, and therefore individual decisions made in respect of such a flawed regime were themselves unlawful.

31. It was apparent that, in the oral submissions that he made today, the true focus of his complaint, on the article 8 issue at least, turned out to be the publication of the sanction rather than that sanction of erasure itself. Mr Williams nevertheless contended that since the duration of the publication is linked under the guidance to the nature of the sanction, that is the question.

Conclusions

32. In my judgment, none of the grounds that Mr Williams has developed in his grounds of appeal, his skeleton argument, or his oral submissions today, have merit.

33. I deal first with the decision to proceed in his absence. In my judgment, the PCC plainly directed itself in accordance with the criteria with the criminal case of Jones, even though this was not a criminal case where more exacting standards of fairness would apply. This is a case of disciplinary proceedings in which there is an expectation of cooperation from the registered professional with the Board reviewing his fitness to continue on the register, a point made more recently since that decision by the Court of Appeal in the case of Adeogba [2016] EWCA Civ 162.

34. Looking at the matter entirely from the point of view of the jurisprudence as it was at the time of the decision, the PCC clearly had regard to the fact that there was not a broad and untrammelled discretion. It had to look at the relevant factors and, in my judgment, it did.I pressed Mr Williams as to what factor it failed to take into account that they contended was relevant, and he identified two. The first was that the PCC did not have the transcript of His Honour Judge Chapple's remarks referring to his impression of

Mr Williams' evidence in the September 2013 abuse of process argument. The short argument to that is it was never suggested that that was needed as a reason for an adjournment. The second was that it failed to engage with the points made in his previous submissions about the compatibility of article 8 for the whole procedure. In my judgment, that does not relate to whether to adjourn or not and, in any event, for reasons I am about to give, there is no substance in those criticisms.

35. I next consider the challenge to the decision to hold the proceedings in public. This point was not really dealt with in any oral submissions this morning. In my judgment, the PCC was bound to hear these proceedings in public. That is an aspect of the right to a fair trial which engages these proceedings under article 6 of the ECHR: that there was no information about intimate details of very intimate aspects of the private life of a third party or indeed the claimant; the criminal trial itself was recent and public; and, of course, the sanction of erasure was to be a public document. There is an important public interest in members of the public knowing how the PCC conducts its own investigations into these matters, however professionally embarrassing that may be for the registrant.

36. Equally, taking the point generically, in my judgment, the claimant's reliance upon the Rehabilitation of Offenders Act, the case law under the Police Act, the decision in T and article 8 of the ECHR is misconceived. First, the conviction was not spent and is not spent; secondly, as is plain, the Rehabilitation of Offenders Act does not bind courts or tribunals, of which the PCC was one. The PCC was dealing with the question whether by reason of the conviction, fitness to register as an architect was appropriate. Third, for reasons I have already explained, the public sanction of professions is an important aspect of the public interest. This is both to protect the public from people who are unqualified in the view of the PCC to continue to be registered as architects, and an element of public deterrence by disciplinary proceedings and publication of the results to prevent anybody else straying from the standards of good professional conduct that the reputation of the architect profession needs.

37. I recognise that the PCC proceeded throughout its deliberations on the proposition that private life was engaged. Such a conclusion, of course, does not necessarily mean that all decisions are an interference with it, but even if that assumption is made in the favour of the claimant, in agreement with the decision of Simon J, to which I will make reference in one moment, in my judgment it is abundantly clear that the statutory scheme for disciplinary professionals serves a legitimate public purpose. It is provided for by law, namely the Architects Act and subordinate measures. It is necessary to protect the

public interest and the vindication of the reputation of the profession. It is amply justified. In so far as it interferes with the private life of the individual registrant, that justification is necessary and proportionate, and none of the arguments derived from a different context about over generous disclosure of information held in the databases of police constables really begin to engage upon the nature of the present issue which is the system of disciplinary proceedings against professions.

38. The authority that has recently dealt with the matter is the decision of Simon J in John Dowland v Architects Registration Board [2013] EWHC 893 (Admin) where the matter is dealt with summarily at paragraph 45, and I agree with that conclusion. The developing principles of human rights when brought into professional disciplinary proceedings, in my judgment, make no difference to the longstanding principle that dishonest conduct is inconsistent with the standards to be expected of a professional. Architects, like solicitors, handle client money and are trusted to sign off on important events such as a building contract. Any suspicion that dishonesty is acceptable amongst the ranks of architects would be disastrous for the professional standing and reputation of the profession as a whole in the eyes of the public and it is for that reason that just as the trial judge expected on sentencing the claimant, and the professional code of conduct indicates, the sanction of erasure was likely and, indeed in this particular case, inevitable on the facts as known to the Committee. It may be that in very exceptional individual circumstances, a lesser sentence could conceivably have sufficed but, as a minimum, that would have required insight and an unconditional display of contrition from the claimant, wholly absent here, both from his absence from the proceedings, which was entirely a matter of his own choice, with full knowledge of the consequences, and anything that he put into those proceedings in his absence, by way of written information that dealt with his reflection upon the consequences of his conduct.

39. In truth, this is an unhappy case but the claimant's conduct occurred over a two year period and therefore it was not simply a one off error of judgment. It did result in a conviction for dishonest misrepresentation of which the jury were satisfied. That is conclusive of the nature of the conviction. The fact that Judge Chapple had expressed the views he has earlier in these proceedings cannot gainsay the finding of dishonesty that is material to this charge, and accordingly I take the view that that erasure was appropriate and inevitable. In truth, nothing that the claimant has said during the process of investigation or by way of submission to the PCC, whether by writing or oral attendance, or anything that he has raised in the grounds of appeal and skeleton argument that he has developed with some skill before me today, really focuses upon that.

40. He has, in my judgment, sought by one means or another, either to defer the inevitable date of decision or to divert attention away from what the real issues are.

41. I should finally deal with the point as it emerged today about the duration of the publication of the sanction. That is indeed a matter for the PCC. It is not something which they were bound to state under section 15, and no issue as to statutory incompatibility with article 8 arises. It is not in fact a separate decision which is capable of challenge in these proceedings. If it was concluded that it was unlawful for some reason there could also be the possibility of either an individual request to disapply the policy or to challenge those policy statement by judicial review.I see no basis upon the general principles that the claimant has sought to bring to my attention as to why the duration of the sanction of publication is unlawful, disproportionate, not in accordance with the law, or incompatible with article 8. It is important for the public to know who is entitled to be registered as an architect and who is not. As the primary statute makes plain, the reasons why a person is not entitled to be registered as an architect must also be brought to public attention.

42. For these reasons, each of the grounds of appeal advanced in the documentation and in the oral submission of the claimant are rejected. This appeal is accordingly, dismissed.

MR TEBACHNIK: My Lord, I am very much obliged. There is an application for costs. There is a schedule which I am going to invite my Lord summarily to assess.

MR JUSTICE BLAKE: Yes. Has that been provided to Mr Williams?

MR TEBACHNIK: It was sent to Mr Williams on Tuesday of this week and I have furnished him with another copy just before my Lord gave judgment. I will hand a copy up for my Lord.

MR JUSTICE BLAKE: I have it in my file. Yes.

MR TEBACHNIK: I am going to make one adjustment in the claimant's favour, if I may. Because we have been in court less time than anticipated when the schedule was put together, what I propose to do is take 2 hours off attendance at time of hearing, which is one of the categories on the second page of the schedule, for those behind me, and then, without going through all the mathematics, the grand total is reduced to £27,173.30.

MR JUSTICE BLAKE: Yes. Right. Well, Mr Williams, as a matter of principle, you having brought the appeal which unfortunately has failed, costs are payable. Do you have anything to say about the quantum of costs or the principle or any order I should make.

MR WILLIAMS: Your Lordship, obviously I haven't had time to look at the costs schedule. It does seem to be a quite detailed costs schedule, so I haven't had time, essentially, to

consider all their costs.

MR JUSTICE BLAKE: I gather you received it on Wednesday by email, I am told, and I appreciate you have had another copy put before you this morning. I can tell you that I am proposing to make an order as to costs. I appreciate that these sums of money will seem very large to you, and no doubt would be extremely unwelcome. I am, in the interests of an overall assessment of proportionality, going to make some reduction, even from the levels which have been sought today. I am aware of what the issues are, but it is going to be comparatively modest reduction.

MR WILLIAMS: Your Lordship, if I am to raise the issue of any possibility for an appeal, would that be allowed within the court process?

MR JUSTICE BLAKE: You are seeking to appeal my decision?

MR WILLIAMS: That's right.

MR JUSTICE BLAKE: Well, that is something else. We will come to that in a moment. Let's just deal with costs first, and then I will entertain it.

MR WILLIAMS: Your Lordship, the problem I have with costs really is that I haven't had time to really assess the costs properly, and obviously --

MR JUSTICE BLAKE: The expectation is that in a case which is of this direction that I should assess costs summarily, because otherwise detailed assessment costs more money, and it will end up costing you more money.

MR WILLIAMS: It is not detailed assessment.

MR JUSTICE BLAKE: No, no. It is summary assessment, and summary assessment is done by these means.

MR WILLIAMS: Yes, what I meant was assessment from my point of view.

MR JUSTICE BLAKE: A line by line assessment. I am going to make some reduction, as I have indicated, not because I doubt that this work has been done, but I am looking at the issues as a whole and trying to reach something which I think is just and fair. I will make some reduction, but I don't think I am going to be able to do that with the benefit of any line by line input from you. But I have to do that now.

MR WILLIAMS: Your Lordship, for instance, the number of letters. I am not aware that there were 13 letters. Those are issues that I need to really consider properly.

MR JUSTICE BLAKE: I am afraid I am not going to give you further time because we are going to have to conclude this hearing in the next few minutes. What I am going to say is that I am looking at the matter as a whole. Of course, I am not aware of everything that may have been communicated. I have only seen what is in the bundle and the schedules work here. I am going to award the respondent's costs in the sum of £17,500 plus VAT if VAT is payable. Whatever the calculation is on that is the total award for costs. You will have to discuss with them how you can pay and whether you can pay. That seems to be an overall proportionate assessment given the nature of the case and the assistance

I have been given. That is my decision on that one.

You wanted to raise permission to appeal at the Court of Appeal, yes?

MR WILLIAMS: If it is feasible.

MR JUSTICE BLAKE: It is always feasible to appeal from this court to the Court of Appeal. The Court of Appeal will tend to need, before anyone grants permission, to be persuaded that there are reasonable prospects of success or some other important point of principle or issue. I will assume that you are making that application on those grounds.

MR TEBACHNIK: My Lord I hesitate to interrupt, but before you get into considering a putative application for permission to appeal, can I show you section 22(7) of the Architects Act please.

MR JUSTICE BLAKE: Yes. Does that restrict it?

MR TEBACHNIK: It says there is no appeal.

MR JUSTICE BLAKE: I am so sorry. Does it? But architects are different from doctors, are they?

MR TEBACHNIK: Well I can't tell you the up to date position on doctors.

MR JUSTICE BLAKE: Well, we know that from the decision you just referred to.

MR TEBACHNIK: Previously it used to go to the Privy Council.

MR JUSTICE BLAKE: I know. Thank you for jumping up because I didn't want to --

MR TEBACHNIK: If you have page 24 of tab 1. Section 22 deals with appeals.

MR JUSTICE BLAKE: Yes.

MR TEBACHNIK: And this is an appeal under 22(1)(e).

MR JUSTICE BLAKE: Yes.

MR TEBACHNIK: But if you look at 7 at the bottom.

MR JUSTICE BLAKE: Sorry? On an appeal under this section the court concerned may make any order which appears appropriate, and no appeal shall lie from any decision of a court on such an appeal. Is that it?

MR TEBACHNIK: Yes.

MR JUSTICE BLAKE: I am not persuaded that that cuts out an appeal from this court to the Court of Appeal, but in any event, I am going to refuse you permission to appeal to the Court of Appeal, because if there is a right of appeal, which I rather think there may still be, although I have just heard argument that there is not, I don't think it raises any issue which is fit for the Court of Appeal. You can, if you think there is a right of appeal, renew. I should tell you, you would then have to add to your reading list section 22, and you have just heard the submission that is made against you.

MR WILLIAMS: That is the issue. If there is no right of appeal then that makes my position even more necessary for me to consider the costs properly.

MR JUSTICE BLAKE: No, no, no. I am not going back over costs. My brief reading is and my understanding is that decisions in the High Court can be appealed in the Court of Appeal.

If I have that wrong, I apologise to you. You can look for yourself. But I am operating on the assumption that there may be, despite the submission I have just heard from Mr Tabachnik, but I am refusing you permission to appeal for those two reasons.

MR WILLIAMS: May I make submissions on the reasons for seeking permission to appeal?

MR JUSTICE BLAKE: No, I am dealing with that in the way that I have done, so that concludes the hearing today. If you have a right of appeal, you can always lodge it in the Court of Appeal and direct it.

MR WILLIAMS: My Lord, there is also an application with regard to the application. I understand that there are directions to the application to be adjourned to today. The application to --

MR JUSTICE BLAKE: I have refused those. And if you think I am wrong on that, you can also go to the Court of Appeal on that. I refuse you permission to appeal on my refusal of your application for an adjournment because, again, it seems to me that there are no reasonable prospects of success and that you have had an adequate opportunity to deal with the issues.

MR WILLIAMS: Well, considering the application in relation to the transcripts.

MR JUSTICE BLAKE: Transcripts, you haven't raised the application before me for the transcripts. That had been dealt with previously. And I am not renewing that.

MR WILLIAMS: No, no, my Lord, if I may explain.

MR JUSTICE BLAKE: I don't think you can, really.

MR WILLIAMS: The direction was actually made for the application to adjourn to today.

MR JUSTICE BLAKE: If you had made the application before me today as a preliminary matter, I would have listened, but as you may have gathered, (a) you didn't make it when I was trying to get out of you earlier all the preliminary applications that you wanted to make, (2) I have already explained why, in my view, that transcript was irrelevant to the issues in the case, and therefore, in agreement with the judge who refused permission, I would have refused it. But since you didn't sustain it, I didn't have a decision to make upon it. That is my decision upon it, and that brings an end to proceedings today, Mr Williams. Thank you very much.