Anti-corruption

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A profession close to 'moral bankruptcy'

One entirely foreseeable consequence of Russia's brutal invasion of Ukraine has been the backlash against 'professional enablers' in London who have facilitated the activities of the Putin circle – oligarchs and others – within the UK. It was foreseeable because for around a decade, via international forums such as the Financial Action Task Force, national security strategies in the US and the UK, and academic research, the legal profession has been pinpointed as a key vulnerability in national defences against kleptocracy, grand corruption and money laundering. The profession has been in denial about the coming storm, but the storm is now breaking.

For analysts of corruption, this is quite a turn-up for the books. In the 1990s, lawyers were central to the nascent anti-corruption movement: framing national and international legislation and defending activists. So what happened?

Life became much more complicated. Law firms globalised, as did business, trade and the financial sector. Privatised state-owned enterprises from countries characterised by state capture and kleptocracy, along with their ultra-rich owners, started operating in and through London, pithily described by *The Economist* as 'newly minted billionaires and a gaggle of flunkeys to serve them'. Law firms had overseas affiliates and offices in new jurisdictions, where the wealthiest were often the most unsavoury. Funds could move quickly and secretly, and there was an explosion in the size of offshore financial centres.

This convergence of circumstances created enormous business opportunities for law firms – but also an increasingly acute conflict between commercial advantage and professional ethics. The need to know more about clients' wealth also conflicted with the desire not to know more. Those conflicts are now coming to a head. Which way will the legal profession jump?

So far, the signs have not been positive. The Law Society and major firms have been on the back foot, issuing defensive statements about the need to respect the rule of law, contesting the label of professional enabler, remaining silent on their peers' attempts to silence journalists and prevent government action, and avoiding the issues of central concern. Those that have withdrawn from Russia look to have been cornered into a reluctant decision, appearing to demonstrate more followership than leadership.

To illustrate the debate, the *Gazette* recently quoted Article 18 of the UN's Basic Principles on the Role of Lawyers, reminding us of key principles like the right to representation. There are fierce exchanges in the *Gazette*'s comment sections between those who cite legal principles, and those who are uncomfortable with obvious injustice. We need to reconcile Article 18 with the equally important Article 14: 'Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.'

In other words, there are competing rights: the right of individuals to a legal defence, and the right to justice of their victims. Rights for one party can come at the expense of someone else's rights. And there is an expectation in the Basic Principles that professional ethics will play a key role in reconciling the rights. Unfortunately, the playing field seems tilted towards those who have the funds to pay lawyers in London to help diversify and consolidate their wealth and, where necessary, defend their property and privacy. By contrast, the playing field seems heavily tilted against those who have been impoverished and imperilled by corruption and kleptocracy, who are in distant lands and have no legal representation – and in Ukraine, are being brutalised into submission.

The plain truth is that some law firms have for two decades, with gathering momentum, been acting as professional enablers.

Citing the right to representation is more often than not a straw man, because until the recent outrage and subsequent talk about government sanctions, the oligarchs and kleptocrats have not been seriously threatened with criminal action. Law firms are not required to do business with corrupt oligarchs or kleptocrats or to issue aggressive strategic lawsuits against public participation (SLAPPs) – they have a choice. In practice, Articles about the right to representation seldom come into play. Law firms have more commonly been providing standard legal services for corrupt individuals, their investment vehicles and their privatised companies, as well as reputation-laundering and finding loopholes in legislation to hide the movement of funds.

Moreover, the anti-corruption group Transparency International fairly points out that if access to justice is genuinely the key principle, those firms might be willing to defend their clients at legal aid rates, rather than using the resources that are themselves of suspicious origin. Alternatively, cost orders against law enforcement agencies could be at legal aid rates. Many campaigners take the view that the tone of moral outrage about Article 18 is a convenient excuse for wanting to maintain a lucrative status quo.

A second straw man is to claim that if parliament wants to legislate, it should do so, and meanwhile lawyers are merely upholding the law. This disregards the intense lobbying effort by law firms to water down such laws and maintain loopholes. If these loopholes exist and compromise national security, why is the profession not instead identifying them and lobbying for them to be closed?

In reality, the debate around professional enablers is not much of a threat to key legal principles, it is a very genuine concern that the balance between professional ethics and commercial advantage has moved far too far in one direction. Put simply, politicians and the public will no longer tolerate a situation in which corrupt overseas oligarchs and kleptocrats can use London law firms to consolidate their wealth and buy impunity for their crimes.

This damages the reputation of the entire profession, with the actions of a relatively small number of very large firms and

boutique specialists tainting younger lawyers and most smaller and regional firms. That damage to the profession carries its own dangers. It is important for society that we have a legal profession, and judiciary, and criminal justice system, that are respected by society. The rule of law must be self-evidently operating in the public interest. The profession needs to be on the front foot, actively proposing solutions; but to date it has been on the defensive, falling back on arguments which have served well in the past but in the current context look dangerously close to being morally bankrupt. This issue will not go away: it is Russia today, but will be somewhere else tomorrow.

The solutions may not yet be clear, but here the legal profession is well served. It contains some of the finest brains in the country. A solution can emerge, if one important pre-condition is served: admit there is a problem. We need to see the Law Society accept this simple proposition: London has become a centre of professional enabling; and society, the legal profession, and the wider world, will be best served by placing some reasonable restraints around such activity.

Other sectors have convened multi-stakeholder taskforces or commissions to seek a solution. That would allow some of the fundamental questions to be addressed in a reflective setting: which activities count as professional enabling? What ethical considerations should there be during client take-on, especially when there are well-founded allegations of corruption but seldom proof? Can we expect law firms to exit from tricky relationships? How do we regulate the ethics around SLAPPs? And so on. But without the basic admission that there is a problem, change and reform cannot take place from within. However, change will come: and if necessary, it will be imposed from the outside.

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Decisions and interventions

Decisions filed recently with the Law Society (which may be subject to appeal)

Gladstones Limited

Application 12265-2021

Hearing 8 December 2021

Reasons 14 December 2021

The SDT ordered that the respondent should pay a fine of £15,000.

The respondent firm used a client account suspense ledger to record the receipt of payments from third party debtors that it was unable to allocate to specific client matters. As at 30 June 2020, the client account suspense ledger recorded receipts totalling £106,003.41 which related to payments made by third-party debtors to the respondent's automated payment line. The respondent subsequently delayed in investigating the unallocated payments in the suspense ledger which resulted in: the respondent issuing proceedings and obtaining a county court judgment against at least one third-party debtor who had already settled their debt with it, and the respondent being unable to refund third-party debtors in the total sum of £35,582.22, that sum ultimately being paid to a charity.

As a result of the above the respondent had acted in breach of any or all of the following: up to 25 November 2019, principles 6 and 8 of the SRA Principles 2011 and from 25 November 2019, principle 2 of the SRA Principles 2019; up to 25 November 2019, rule 29.25 of the SRA Accounts Rules 2011; and from 25 November 2019, rule 2.1 of the 2019 SRA Code of Conduct for firms.

The parties invited the SDT to deal with the allegations against the respondent in accordance with a statement of agreed facts and outcome.

The SDT was satisfied that the misconduct fell at the top end of level 3 in that it was 'more serious'. In those circumstances, the proposed sanction of a fine of £15,000 was appropriate.

The respondent was ordered to pay costs of £15,000.

Michael Vaughan

Application 12257-2021

Admitted 1975

Hearing 10-11 January 2022

Reasons 2 February 2022

The SDT ordered that the respondent should pay a fine of £3,000.

While in practice as a solicitor for Kingsley Berney Limited, the respondent had provided banking facilities through a client account, in that he had allowed payments into, and transfers and withdrawals from, a client account that were not in respect of instructions relating to an underlying transaction or to a service forming part of his normal regulated activities, contrary to rule 14.5 of the Solicitors Accounts Rules 2011 and principle 6 of the SRA Principles 2011.

He had become involved in dubious financial arrangements, thereby breaching principles 2 and 6. He had acted recklessly.

His motivation was to take advantage of an opportunity to generate business and fees for the firm from a new area of work which was not complex. The failing was characterised more as a failure to carry out his obligations diligently rather than a breach of trust.

The respondent was not experienced in the relevant areas of law, but he was a COLP and COFA and so had an obligation to inform himself about and be alert to signs indicating the potential for fraud and to respond appropriately. He had not misled the regulator, but his culpability was high.

While it seemed that the client money had been recovered in full, the fact that it had required proceedings to recover it in some cases had involved harm, and the harm to the reputation of the profession caused by an experienced solicitor failing to take necessary steps to ensure client money was safeguarded against possible fraud was significant.

The misconduct was very serious. The SDT had found that the respondent's actions had lacked integrity. A substantial fine of £15,000 was appropriate. However in view of the statement of the respondent's means, the SDT had applied an 80% reduction to the fine of £15,000 and determined that a fine of £3,000 should be imposed on the respondent.

The respondent was ordered to pay costs of £6,160.

James S Barnett

On 3 March 2022, a single adjudicator resolved to intervene into the remnants of the above-named former sole practice of the late Dr James Snowdon Barnett, formerly at The Pavilion, 10 Inkpen Road, Kintbury, Hungerford RG17 9TU.

The firm closed on 30 September 2014.

Dr Barnett died on 28 September 2019.

The grounds of intervention were: it was necessary to intervene to protect the interests of clients or former clients and any beneficiaries of any trust of which Dr Barnett was a trustee – paragraph 1(1)(m) of Schedule 1 to the Solicitors Act 1974 (as amended).

No intervention agent has been appointed. The SRA will be making the necessary arrangements to collect the remaining practice papers.