The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2015/0043/D5

Mr Timothy Raggatt QC

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of Inner Temple

Disciplinary Tribunal

Mr Timothy Raggatt QC

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 25th June 2021, I sat as Chairman of a Disciplinary Tribunal on 23rd, 26th-30th of July 2021, 7th – 11th, 14th, 15th, 30th and 31st of March 2022 and 2nd June 2022 to hear and determine five charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Mr Timothy Raggatt QC, barrister of the Honourable Society of the Inner Temple.

Panel Members

2. The other members of the Tribunal were:

   Tracey Stephenson (Lay Member)
   Sadia Zouq (Barrister Member)

   John Walsh (Lay Member) (for the July 2021 dates only – Mr Walsh became unavoidably unavailable and played no part in the reconvened dates, or the Panel's deliberations and final decision).

   Due to availability issues, there was no second barrister member.

Charges

3. Charges 2 and 5 were found proven.

4. Charge 2 was a charge of professional misconduct contrary to paragraph 301(a)(ii) and pursuant to paragraph 901.7 of the Code of Conduct of the Bar of England and Wales (8th edition) ("the Code of Conduct"). The Particulars were that Timothy Raggatt QC, a barrister, engaged in conduct which was prejudicial to the administration of justice in that Mr Raggatt QC, when instructed as leading prosecution counsel in the prosecution of Mr Conrad Jones:

   i. decided (together with others in the prosecution team); and/or
   ii. advised the Crown Prosecution Service, both prior to and during Mr Jones' trial in August 2007 not to make:

      a. a PII (Public Interest Immunity) application in relation to sensitive material relating to events and Mr Jones' location on 1 and 2 June 2006; and/or

      b. an admission in relation to that sensitive material to the effect of that eventually made by the prosecution on 27 June 2013.

5. Charge 5 was a charge of professional misconduct contrary to paragraph 302 and pursuant to paragraph 901.7 of the Code of Conduct of the Bar of England and Wales (8th edition) ("the Code of Conduct"). The particulars of the charge are that Timothy Raggatt QC, a barrister, failed to assist the Court in the administration of justice in that Mr Raggatt (on behalf of the prosecution):

   i. stated to the Court at the trial of Mr Conrad Jones in August 2007 that a meeting could have taken place in Nottingham between Mr Jones and Ms Maria Vervoot on 2 June 2006 between 1.30pm and 3pm; and/or

   ii. refused to concede that such a meeting could not have taken place at that time.

   In fact, Mr Raggatt QC knew, or ought to have known, the prosecution had in its possession sensitive material which showed Mr Jones was in Coventry on 2 June 2006 until 2.25pm and therefore, given it is approximately 53 miles between Nottingham and Coventry, the meeting could not have taken place in Nottingham on 2 June 2006 between 1.30pm and 3pm.

Parties Present and Representation

6. The Respondent was present and was represented by Mr John Beggs QC, leading Mr Aaron Rathmell, instructed by Plexus Law through the BMIF on the July 2021 dates. When the hearing resumed in March 2022, he was represented by Mr Graeme McPherson QC, instructed by James Preece of Clyde & Co through the BMIF. The Bar Standards Board ("BSB") was represented by Mr Oliver Campbell QC, instructed by Mr Michael Carter of the BSB throughout.

Preliminary Matters

7. The case began on Friday 23rd July. There were two preliminary matters. Firstly, that Mr Raggatt QC was not present. His counsel explained that he was in a trial that was overrunning, and due to vulnerabilities of his client and the seriousness of the charge his solicitor would not release him. A letter to that effect was provided to the Panel. Mr Beggs QC indicated that Mr Raggatt QC was content for the opening to proceed without him. However, the Panel indicated that this should not be undertaken lightly in a serious case.

8. The second preliminary issue was that Mr Beggs QC was instructed to apply for an adjournment on the basis that it was not fair for the case to be heard by a 4-person Panel. The Panel had been convened as a 5-person Panel, but due to subsequent unavailability of the second barrister member, was reduced to four.

9. It was agreed that Mr Raggatt QC would use the afternoon to seek to make arrangements to join the hearing remotely from the Crown Court where he was part-heard on Monday, and that the Panel would hear submissions concerning the adjournment application

10. The Panel refused the application to adjourn, and provided written reasons, which were read into the record, when the hearing recommenced on Monday 26th July.

11. On Monday 26th July Mr Raggatt QC was not present initially, as his jury were being sent out to continue considering their verdict at 11:00. When Mr Beggs QC spoke to him, he was in court, and could provide no time line for Mr Raggatt QC's availability.

12. The Chair indicated that as Mr Raggatt QC's absence was due to his professional commitments, it could not be described as 'voluntary' absence. After some significant delays, as matters progressed at the Crown Court where Mr Raggatt QC was, the Panel reconvened at 13:00.

13. At 14:00 Mr Raggatt QC had successfully joined the hearing remotely, and the charges were put to him.

Pleas

14. Mr Raggatt QC denied all charges. Charges 1-3 are alternatives, with charge 4 as a freestanding additional charge.

Evidence

15. Mr Campbell QC opened the BSB's case in accordance with the note that he had circulated to the parties in advance. The BSB did not call any live evidence, relying solely on an extensive bundle of documentary evidence running to 726 pages, and the bundle of sensitive documentation provided to the parties.

16. He explained the Prosecution's disclosure obligations under the Criminal Procedure and Investigations Act 1996 [CPIA], and then took the Panel through the evidence in the case of Conrad Jones, on the basis of which he invited them to conclude that Mr Raggatt QC must have known that the PII material was capable of undermining the Prosecution case and/or assisting the defence, on the basis that it precluded a meeting between Conrad Jones ('CJ') and Maria Vervoort ('MV') at the time that MV claimed it had happened. This threw her credibility into question and therefore undermined the prosecution case more generally as it was predicated upon MV being an honest and reliable witness.

17. The public observers had to be excluded from parts of Mr Campbell QC's opening due to references being made to the contents of the sensitive bundle. Just before 16:00 Mr Raggatt QC gave his consent for the opening to continue in his absence as he had to go into court for his jury to be sent home for the night.

18. On Tuesday morning Mr Raggatt QC was in attendance in person at the Tribunal Suite. Michael Carter was not present, but Lindsay Young of the BSB joined the hearing via Zoom.

19. Overnight, the BSB amended charge 4 to split it into two charges – 4 and 5. Charge 4 was on the basis that Mr Raggatt QC knowingly or recklessly misled the court, whilst charge 5 was now the same construction as charge 4 but on the basis that he failed to assist the court.

20. Mr Campbell QC continued his opening. As he was still referring to sensitive documents, the hearing continued to be in private with the public excluded. Mr Beggs QC noted that the BSB could not speculate about what sensitive material had been provided to Mr Raggatt QC at the time that he was asked to advise.

21. Mr Campbell QC's opening continued in public once the sensitive material had been dealt with. He continued to take the Panel through the evidence, setting out how it was that the BSB said that the knowledge Mr Raggatt QC had should have led him to conclude that there was sensitive material that was clearly disclosable on the basis of the evidence of both Maria Vervoort and Conrad Jones, by reference to the trial transcripts provided in the bundles. Therefore, the BSB submitted that Mr Raggatt QC should have either made a PII application before the Judge, or, if he was not willing to do so, should have offered no evidence in the case. That he did neither made out any of the alternative charges 1-3. Charges 4 and 5 were, the BSB submitted, made out by the comments that Mr Raggatt QC made to the Judge in the absence of the jury after Maria Vervoort's evidence, in which he did not adopt her concession about the possibility of being mistaken about the meeting on 1st/2nd June occurring, when he knew that there was such a short window in which it could have occurred as to be almost a physical impossibility. Neither, in light of the Judge's questioning, did he seek to further review the case or deal in any other way with disclosure.

22. Mr Campbell QC's opening took the case to lunchtime on Wednesday. After the lunch adjournment Mr Beggs QC requested an adjournment until Thursday morning. This was unopposed by Mr Campbell QC and after a short deliberation the Panel granted the application.

23. On Thursday morning a short matter was dealt with in Mr Raggatt QC's absence: a Goodyear indication was requested on his behalf by Mr Beggs QC. Mr Raggatt QC has no substantial means; no private pension, one relatively modest asset, he is in debt not least due to a Govt bounce back loan due to Covid that he has not started to repay, and he has to continue practice, at least if permitted to, as currently going through a hand to mouth existence where bankruptcy will otherwise beckon. Secondly, it may be observed that his testimonials can fairly be described as exceptional and contain 24 judicial references. The Chair indicated that he had never seen such good references in his experience. If this Tribunal felt able to indicate whether a a declaratory judgment, in combination with a fine and costs liability to the BSB (i.e., no interruption to Mr Raggatt's ability to practise), then it was indicated that the case might conclude.

24. The Panel indicated that they did not feel able to give an indication that Mr Raggatt QC would be able to continue to practice without interruption, meaning that a suspension was not ruled out.

25. The Panel indicated that Charge 4 is more serious. If after a contested hearing or as a result of admission, they had to deal with charge 4 then the following would not apply. But if charges 2 and 5, as postulated by Mr Beggs QC, were the charges admitted, then the maximum they had in mind, bearing in mind references already seen, would be a suspension for a period of a year.

26. Mr Beggs QC took further instructions, and when the parties returned, he made a submission under Rule E195 – Respondent entitled to submit that there is no case to answer. This submission was made in relation to all charges and focussed on the amount of material that was missing, that a number of the notes and documents were of unclear provenance, their accuracy had never been confirmed at the time and could not now be confirmed due to the time that had passed. At times the public had to be excluded from the half time submission as there was reference being made to documents in the sensitive bundle.

27. A brief break was taken at 11:45. In this time news was received that a Panel member had tested positive for coronavirus by way of a PCR test. That Panel member had been

isolating since Wednesday lunchtime and had taken a PCR test on Thursday evening. Applying the Government guidelines, it was established that no member of the Panel or party had had face to face contact with that Panel member, and therefore there was no need for anyone else to self-isolate. Both parties made representations that they wished to continue, and Mr Beggs QC continued with his submission. After the lunch adjournment the public were re-admitted as Mr Beggs QC had concluded his review of sensitive material for the time being. Mr Beggs QC' submission concluded around 16:00 and the Panel retired to consider the submission. They did not hear from Mr Campbell QC before they did so, as they decided that they would not have been assisted.

28. The Panel returned at 16:35, explained that they had had discussions as the submission had progressed and gave their ruling as follows. They unanimously ruled that there is sufficient evidence such that there is a case to answer on all of the charges. The reasons will be given at the resumed hearing.

29. The following directions were made:

1) A reasoned ruling on the submission of no case to answer to be provided by 7th January 2022
2) Any new defence statement to be served by 14th February 2022
3) The hearing to resume, with a time estimate of 7 sitting days, on 7th March 2022.

30. In the interim period between the conclusion of the hearing in July 2021, and the reconvening on 7th March 2022, that reasoned ruling was handed down as agreed. Mr Raggatt QC changed his legal representation shortly after this, and there was a quantity of correspondence between Mr Raggatt QC's representatives, the BSB and the Panel, seeking an adjournment for further time for the new team to be instructed. The BSB opposed this application. This was refused on the papers, with the option for it to be renewed on the first day of the resumed hearing.

31. During the intervening period, Panel member Mr John Walsh became unable to sit on the reconvened date. This was notified to the parties, along with reference to the Rule that allows such a hearing to continue providing that the Panel does not fall below 3 members.

32. When the hearing reconvened on 7th March 2022, there was no renewed application for an adjournment, though Mr Raggett QC did give evidence at the beginning of his evidence about the consequences for his preparation of a number of professional commitments that he characterised as outside of his control, his having attempted to keep his diary clear from the 14th February onwards to prepare for the disciplinary hearing.

33. Around 10:45, Mr Raggatt QC [TRQC] was sworn, and commenced his evidence. TRQC confirmed that the 31st May 2021 statement has his signature and is correct. Para 108-110 was picked out in detail in the BSB's statement – and he was asked to address these. Subject to that clarification he said that the witness statement is true to the best of TRQC's knowledge and belief. He added that there is a supplementary witness statement of 27 pages.

34. TRQC was asked by his own counsel, where in 2006/7 was the test for whether evidence was disclosable? TRQC explained that it was in Lord Bingham's speech in (the case of) H, the A-G's Guidelines, and the CPIA in s3 onwards.

35. TRQC then gave evidence regarding the matters that had come into this diary. On 22nd February 2022 CACD sent out a listing notice for the application for leave to appeal conviction. That was out of the blue, wholly unexpected and unplanned for. The Chair indicated that they would release TRQC to attend to that commitment.

36. TRQC then began his evidence on the substantive matters. By way of amplification, he was asked by Mr McPherson QC to clarify an issue from his original statement. TRQC confirmed that he is familiar with CPIA obligations and confirmed that following those obligations is an important part of ensuring a fair trial, and proper administration of justice.

37. No discretion was afforded around matters of disclosure. The judgement to be made by the Prosecution is whether the material assists/undermines, and if so, whether to disclose or make a PII application. Regarding timing of any disclosure, in s3 is the initial duty of the Prosecution to disclose – so if it forms the view at the outset, when serving

the case on the defence, that it has such material, it must disclose but factual circumstances are infinitely variable.

38. But if the Prosecution hold material it knows, at the point it serves the case on the defence, which might assist or undermine, it must at that stage disclose or make a PII application. If there is more than one counsel, the duties can be shared. Prosecution counsel take the role seriously, even if the police are reluctant to disclose material. There are Guidelines from A-G regarding disclosure obligations – TRQC agrees and has abided by them.

39. Asked about the document prepared by the appellant's team at p.592, TRQC notes that neither Joel Bennathan QC nor Danielle Cooper were involved in the original trial, though he accepts that Joel Bennathan QC was a senior member of the Bar and now a High Court Judge.

40. Mr McPherson QC notes that assertions made by those representing Mr Jones are serious in nature against the Prosecution, and TRQC agrees. The Prosecution must have been aware there were very serious criticisms of the 2007 trial requiring answers. There was an appeal, which TRQC conducted, so of course he was aware of that. He could not recall whether the papers were complete, nor who was assisting him; he has no confidence whether he had all the papers available to the Tribunal now, or all the papers available to the CACD in 2006.

41. The July 2013 note prepared by Mr Bennathan QC shows that serious criticisms were being made of the Prosecution team. It is a reasonable assumption that TRQC must have read that before he made the September note being looked at, but he could not remember.

42. Also, it was a perfectly reasonable inference that he took steps to ensure that what he was writing in a note to the CACD was factually accurate before it was submitted but TRQC cannot recall what papers he had. He was hampered by not having in 2013 access to any of the people that he had in the earlier trials and is not confident that he had all the relevant material. He would have done it in good faith. At the time he wrote it he must have believed it to be true, though now he has no recollection of his thoughts

at that time. He would never knowingly or recklessly mislead anyone, especially not the Court. With hindsight and now much more documentation, it may have been wrong, but at that time he had a lot less information. He accepted on the information now available that it was not right – he made that clear in the supplemental witness statement.

43. Asked whether he accepted the sensitive should have been disclosed he said that it looks disclosable on the information we now have – looking back it was a distinct possibility. He maintains the view he took in 2006 was tenable and honest. Looking back, he accepts the observations of Pitchford LJ in that case and he agrees. He doesn't quarrel with the conclusion that the CACD came to.

44. That the conviction was unsafe is different – it's not for TRQC to determine whether the conviction is unsafe or not.

45. By the time of the 3rd trial in the summer of 2007, he accepted it ought to have been disclosed, looking back, but that is not the same as saying what he did or didn't know or had in his possession at the given time. He doesn't know what he had in 2007 physically. He has no memory at all – he is dependent entirely upon documents.

46. Returning to Sept 2013 note to CACD – p.597 – the position maintained at that time was that no disclosure had been made. He doesn't know what the position was – he was making an assumption on the basis of whatever material he had then in September 2013.

47. Whether he was right or not he doesn't know. He did not mislead the Court and it has never been suggested that he did. Most likely by a long way is that there was no disclosure – it was a mistake but not a lying or dishonest one. All he can say is that he would not have knowingly said anything that he didn't think was accurate.

48. Pg 5 of BSB bundle – CACD judgment – ref to para 31 and 32 at p14 of the BSB Bundle. The court sought an explanation for why it had taken 6 years for the admission to be made. It was told he knew about the material in late 2006 after a conference with

junior counsel and the police. He took the view that as witness was imprecise about the time of her meeting, the sensitive material was not relevant.

49. It's apparent he must have said that. He is far from confident that he had all the material that he should have had in conducting this appeal. What he said was based on what he had which was substantially incomplete, having now seen the extent of the papers here.

50. He didn't have assistance of Ms Hancox in the CACD, and it has always troubled him that he was denied that assistance. He doesn't know why – possibly money. He has always regarded that as problematic.

51. It seemed most likely the whole thing was overlooked. It is regrettable, but none of it was deliberate, malign, or in any way dishonest. The lack of completeness of the papers at the CACD is hard to comment on. TRQC has never been provided with a copy of the brief that he had at the time. TRQC identifies the note containing Ms Hancox's assertion that she knew that it had all been disclosed, though he has no way of knowing whether she was right. He did not have that and only wishes that he had had it. It was never provided to him.

52. Pg 2784 of defence bundle – note of conference on 27.11.13. Note shows TRQC present, though he says that he has no memory of the conference, and is entirely dependent on the note, which he had not seen until provided in these proceedings. Conference to discuss the criticism of the Prosecution by Joel Bennathan QC in his document.

53. p.2785 – Ms Hancox found a note of what was disclosed… draft admissions prepared by Ms Hancox. She's recorded as saying 'there was an intention to send it out and I believe that it did go out'. Fact is did disclose it. All relevant info served in November 2006 by disclosure note by junior counsel around 27th November 2006. Everything known of CJ movements disclosed. No PII as disclosed (effectively).'

54. That flies in the face of the advice that we know he gave in November 2006 that it didn't need to be disclosed? TRQC cannot comment – doesn't know whether he had the

notes from conferences in 2006 at this conference – doesn't believe that he did as he doesn't think he ever had those notes.

55. TRQC cannot say whether anything had been disclosed. After meeting in Nov 2013, that showed the possibility of disclosure in late 2006, position stated to the CACD a few months later was that no disclosure had been given. TRQC doesn't know whether he could still recall this meeting those months on – he didn't have the assistance of Sally Hancox and doesn't think that any of the other people from the conference were present.

56. TRQC is referred to the defence statement.

57. Defence bundle at p.1872: various documents. Response from DC Hunt to the defence case statement; in body of instructions at 873 – counsel asked to defence supplemental defence case statement forward to counsel on 21.11. still can't be sure whether TRQC saw the def case statement as it doesn't say whether sent to him or Ms Hancox, as junior counsel she had day to day management of disclosure. TRQC doesn't think he had seen these attachments until these proceedings in BTAS. Had TRQC not received the defence case statement he would have asked for it, but he cannot say whether he had seen it as at specific dates. Likely he had seen it but cannot accept or assert that he did as he does not know.

58. Chair – this XX is intended to understand the reason why this was not disclosed. Question of credibility – Prosecution don't mind very much whether it happened on 1st, 2nd or any other date in June, but witness says was 1st or 2nd June. Would it then not assist the defence as it goes to the credibility of the witness? TRQC agrees and says he has not suggested anything to the contrary and does not intend to do so.

59. Questions about when and how Prosecution's disclosure obligations were triggered as regards MV's statement. Reference to supplemental witness statement: ''MV' by and large came up to proof on each occasion she was called, that a meeting had taken place with Mr Jones on 2nd June…' TRQC accepts that at the point that she came up to proof the material was disclosable, and he has never suggested otherwise. Put to him that he

had suggested otherwise to the CACD. TRQC says that he was in an inadequate position before the CACD and he was very troubled by what had happened in 2013/14.

60. Had he had more info he would have approached it very differently. Chair challenges and notes that TRQC moved to justify the non-disclosure. TRQC blames this on the lack of assistance that he had, and this is why he is unhappy that he did not do himself or the case justice. He soldiered on, with hindsight, should not have done, should have said someone else should do the case or he would not tackle it without more material.

61. In light of that it was wrong to make the submission in 2013 that it didn't matter. TRQC accepts – it was a mistake borne of misinformation or inadequate information, but not malign. If he had had all the material he has now he is confident he would have conceded the point. The material that he did not have in 2013 that would have allowed him to make the correct concession to the CACD in 2013 is unknown as he doesn't know what papers or instructions he did have then. As this Tribunal has unfolded, he has seen conference notes that he is very clear he didn't have, and he didn't have the assistance of Ms Hancox and a senior member of the team.

62. Issue as to when the sensitive evidence became disclosable. TRQC does not accept it was automatically disclosable. He notes that there is mention somewhere of a timeline, but he has never seen such a document.

63. Chair asks whether TRQC was usurping function of the jury by assessing whether material is credible or not. He says not – refers to the timeline referred to in one of the conference notes. This was a sensitive area. Disclosure that required a PII hearing, and that is where it appears that things did not happen as they might have done. This series of trials had all sorts of side issues.

64. Further cross examination – Crown's principal witness saying event on either 1st or 2nd June at Nottingham Train Station and was back by late afternoon – evidence showing Mr Jones in elsewhere clearly highly relevant and disclosable.

65. Reference to supplemental statement – that is TRQC's best evidence on the topic. He accepts it became disclosable. It wasn't disclosed, TRQC does not accept it was done for

some oblique reason. There were lots of complications – accuracy of phone material, who had what phone; it all needed analysis.

66. XX continued – p.846 – DS Ashton to Angela Trotter. At p.850. TRQC accepts that the email says that the material was sent to TRQC and Ms Hancox to consider. He has read it in these proceedings – he cannot say whether he was sent it in October as part of the instructions he was sent – he has no recollection of it and cannot say one way or the other. A written advice is mentioned – he has never seen that either. It would be remarkable if it failed to emerge for whatever reason, so he doesn't know.

67. OiC's email at p846: He says nothing to corroborate MV's account and a lot to doubt it. Has asked her for further details but she is firm in her evidence. OiC asks for this to be passed to counsel. TRQC has no recollection of seeing the email at the time. Not specified as being disclosure and a written advice is mentioned; don't know where it is, but he thinks that not aware of any relevant sensitive material at that time either. Accepts would have needed to have regard to OiC's concerns and asked for clarity. OiC's reciting CJ's defence and citing phone evidence it isn't clear anyone had at that time.

68. At this point the hearing went into camera as a result of sensitive material.

69. TRQC does not accept that as leading counsel his say would be final. Positions are collective – primary duty is on the CPS who act on advice. Police officer interpreting matters his own way. CPS would ask for advice, and he would give it. If agreed, would follow it, if not, would debate it.

70. Mr Atherley SIO raised an issue. There are no notes from 2007 conferences. The trials were not easy or seamless. Sensitivity and security meant not that it wasn't disclosable, just that it was a different animal. A different species of potential disclosure. In deciding not to make PII app or disclosure TRQC did not take into account sensitivity – the way it's handled is a different thing to the principle.

71. Issue was taken with the content of the paragraphs of the witness statement referred to at the beginning of TRQC's evidence that he clarified. TRQC observes that the witness statement was written with his previous legal team, and there has since been

further application in these proceedings. He explains that the public risk etc was not a relevant consideration. A PII application should have been made ex parte. TRQC does not say the principle of law is altered.

72. Chair notes that in a PII application the Prosecution may be ordered to disclose, and that may force the Prosecution's hand to drop the case if they are not willing to disclose. TRQC accepts this and says that he has had to do that in other big cases. He denies that it was any part of his reasoning in not seeking a PII hearing in this case. Para 114 of the original w/s on page 31.

73. The hearing was then adjourned to Tuesday at 10:00.

74. Resume at 10:00 on Tuesday – Mr Campbell QC still cross-examining on sensitive material, so hearing still in camera. TRQC reiterates that the May 2021 statement was written before the BSB had provided their opening note and how they put the case. Therefore, there is an ambiguity within it, concerning TRQC's approach to disclosure. He says this is clarified in the supplemental statement at Section 3 – paras 9-32 (inclusive) and that is his position as he now understands the case. Time was taken by the Panel to read this carefully. Mr McPherson QC noted that the Panel had been aware of these clarifications at the beginning of the hearing on 7th March 2022. The Chair observed that the justifications given for non-disclosure were important as they had varied during life of the proceedings (including the trial and the CACD proceedings). Mr McPherson QC did not accept that there were justifications for non-disclosure, rather there were justifications for non-disclosure AND not seeking a PII. Mr McPherson QC emphasised that no issue regarding PII arose until the material was decided to pass the disclosure test. The Chair did not accept this as an absolute proposition. Mr McPherson QC characterised disclosure/PII as a 2-step test, and not 2 parallel strands. He maintained that even if the practitioner was in doubt they would not go to the Judge, apart from in the very smallest number of borderline cases.

75. TRQC explains that at the time of this he can't say one way or the other whether he was shown his first statement before it was filed with the Tribunal. He was fully involved defending a young person accused of murder in Reading and his full attention was on that case.

76. Suggested to TRQC that his case prior to supplemental statement was that sensitive nature of material was relevant to his decision whether disclosable. TRQC notes that he didn't have the advantage of BSB's skeleton argument when first statement provided. Sought to clarify in light of how BSB has put its case which might be thought to be ambiguous. BSB's counsel suggests that there has been a change of position by TRQC, which he denies.

77. TRQC has no memory of what he meant by describing the material as not disclosable 'at that time' in December 2006. He was asked whether that referred to the time before MV gave evidence and provided the dates to which the sensitive material related. He said that he could not help with that as he was reliant on notes of cons, incomplete papers, and he had no independent recollection of the events. He said that his working style was of teamwork and consultation. Delegated almost invariably to his juniors the disclosure – he was the head of the team; like being in any organisation, as the head there were others doing tasks. He was not necessarily deferred to if his view was different to others – in some cases he changed his mind. He was not a dictator and never had been.

78. Many cases where difficult issues led to an eventual consensus as TRQC's style is one of seeking consensus.

79. TRQC emphasised that the document relating to 14.12.06 were not minutes and that was a misleading term. 'TR will review after her evidence – no need for PII at this time, review after evidence in chief' says note. TRQC does not know who said what, who made the note, or how accurate it was. It is a summary of a discussion. Next to his initials are the words will review after her evidence – don't know whether they were his words or whether that was the product of consensus discussion.

80. The obvious time for PII would have been on 20.12 on the date set up with listings. TRQC unsure whether HHJ Ross was available – it eventually went before another Judge as HHJ Ross was ill. There were a number of possible reasons why the hearing didn't proceed.

81. The Act says, 'as soon as reasonably practicable' and that assumes that they are in a fit state to be done. One doesn't make a premature application of this nature. The case went before a Judge who was not the designated trial Judge and so it would not have been appropriate for them to hear the PII app. There was a hearing before HHJ Faber in November, and no hearing before HHJ Ross in December, but TRQC cannot say why that hearing didn't happen.

82. Page 84, para 7.3 in BSB bundle – Para 7.3 was not written in the terms it was to dodge a potential bullet. It was to tie in with the indictment. It is not possible to know exactly what was said to the jury as TRQC would not read it out – the document is more accurately to be described as a case summary. Not overly precise as some opposing counsel would try to read it as restricting the Crown's case. TRQC's practice was never to read out from a document when he opened, as that was not his advocacy style, so he cannot recall exactly what he said to the jury in opening.

83. At 10.1 (page 88). It was suggested to TRQC that this para was because if the sensitive material was adduced, it would be clear that MV's evidence was not consistent with it.

84. Page 685 in BSB bundle, to 686. TRQC does not agree that he encouraged MV's uncertainty in her evidence. TRQC was never sent this skeleton for observations as would have been a matter of courtesy. He denies that he ever was vague about details because he had the sensitive material on his mind and knew that it conflicted (e.g. the make of car being driven by Conrad Jones).

85. Cross-examination on MV's answers, and why TRQC had asked her specific questions about the car available to Conrad Jones. He said that he had no independent memory of why he had asked any specific questions and was reliant solely on the transcript. MV gave evidence that she met Conrad Jones on 2nd June.

86. TRQC observes that it might have been better if someone else had conducted the appeal, and he wishes that someone else had done.

87. Pg 5 BSB bundle – Pitchford LJ summarising what was said. Unknown what was available to TRQC at that time, but not conference notes or transcripts. TRQC now

knows much more than he did before the CACD, and he wishes he had known when making submissions to the CACD what he knows now.

88. TRQC thinks that he was never given the documentary sensitive material during the trial. So, he was not misleading as he did not know that the meeting could not have happened. He cannot recall what happened at that time. Doesn't know who was there at the time, other than his junior, who would have been there. Unknown whether a CPS representative would have been there. TRQC does not accept that the decision he made was controversial.

89. Questions on second trial – defence bundle p1348. XX of MV about the 2nd June meeting and where her phone was being used at that time.

90. Questions put to MV in XX at the second trial by Mr Smith, and what they were aiming to adduce. Then moves to MV's re-examination. TRQC clear that he cannot recall and is reliant on the transcript which he says is not a full transcript. Suggested questions aimed to counter suggestion by Mr Smith in XX that the meeting could not have been on 2nd June. TRQC says he cannot remember now why he asked certain questions. He has no independent memory, and he and BSB's counsel disagree on the possible readings of the transcript. Denies that the second trial was 'going badly wrong' as MV was giving evidence about her movements on 2nd June.

91. No independent memory, transcript incomplete, and nothing available on the earlier part of trial 3 as far as TRQC recalls. So, everything has to be seen in that context. Pg 227 – evidence of MV in XX about meeting in Nottingham is 'between Thurs and Fri but think it was Friday'.

92. TRQC can't recall who was in court and when; but the transcript shows that the sensitive material wasn't in his mind, and he didn't appreciate that there was a point to make.

93. Page 396 of transcript onwards – Re-X of MV by TRQC in the first instance trial about who 'Peaches' was. TRQC cannot recall why the questions were being asked or what was in his mind at the time.

94. BSB bundle at p584 – MV in relation to James Dunne's conviction. TRQC is not sure whether he is the author of this document as he said it did not read like him. He thinks junior may have written it.

95. Described the events as the last thing in the world that he would knowingly have allowed to happen. At the time he believed that Mr Jones had had a fair trial.

96. Re-X by Mr McPherson QC: When asked about mistakes, TRQC said 'mistakes by everyone'. Mr Jones sued the CPS – Mr Jones has never sued TRQC himself.

97. Short adjournment for TRQC to check listings for tomorrow. Agreed that if his case in the High Court is listed last minute on Weds 9th, he gives permission for the hearing to continue in his absence. Chair emphasises that that would not be forced on TRQC if he did not want.

98. The word 'knowingly' is removed from Charge 4 on the application of the BSB, unopposed, with the permission of the Panel for the amendment. Adjourned to 10:30 on Wednesday.

99. Resume at 10:30 on 9.3.22 – TRQC is remote as he needs to prepare for his CACD hearing, but he can see and hear proceedings. Chair clarifies that this is not the result of any ruling by the Panel, and a choice made by TRQC and his legal representatives.

100. BSB's counsel begins his closing submissions. Chair asks about issue of weight to be put on the conference notes for example that were not written by TRQC and which he says he had not seen or approved the accuracy of at the time and could not know remember whether he saw them at the time.

101. Emphasised BSB do not allege that the decision was taken in bad faith, but that the consideration of the sensitivity of the police operation was not a factor that could properly have been taken into consideration and in that respect, it was an improper, though not malign, consideration.

102. Chair asks about the status of the witness statement from Mr Atherley. BSB counsel explains that the plan of the original respondent's legal team was to call Mr Atherley, but the new legal team have not called him. Mr McPherson QC observes that he had assumed that those statements had been removed from the bundles as the witnesses weren't called.

103. Mr McPherson QC reminds Panel that bundles were delivered last June with witness statements and testimonials. BSB had confirmed none of the testimonial witnesses were required. SH and MH gave statements – BSB confirmed during July hearing that they did not require either of those witnesses to attend to give evidence. So, their evidence is taken as read. BSB's counsel explains that the basis of that is at para 6 BSB's skeleton – don't agree content but accept they can be adduced as hearsay evidence – this is a pragmatic approach as SH's evidence is minimal and MH's health means that he doesn't want to attend. Respondent's counsel says they can be disregarded.

104. Mr Atherley and Mr Ashton's evidence not being relied on – this communicated by saying that TRQC would be the only witness called. Mr McPherson QC highlights that the decision to rely on Atherley and Ashton was made by the previous legal team – if Mr Campbell QC is content for them to remain in the bundle, then Mr McPherson QC is too – question is simply one of weight. Panel therefore take time to read those statements. Observations invited.

105. BSB's counsel observes that there is material in the statement of Mr Atherley which supports both sides. The statement and exhibited documents are both evidence, albeit hearsay evidence.

106. Discussion about which 27.7 – pg 28 of the transcript there was discussion between BSB and Panel – passage in absence of the jury is the focus of the charge. Mr Campbell QC said at that time the passage expressly relying on for charges 4 and 5 is that in the absence of the jury. This is maintained, but refusal to make concession at that stage, had continuing ramifications as the case continued.

107. Mr Campbell QC highlights the relevant law on what amounts to misconduct, utilising *Walker v BSB.* Noted that Charge 2 is a continuing failing, Charge 5 relates to a specific date and occasion.

108. Hearing then moves to closing submission by Mr McPherson QC. Speaking note and authorities provided by him to the Panel in electronic and hard copy format. Section 1 – four reminders, Section 2 – principles of Pros disclosure obligations, Section 3 – wider relevant legal principles, Section 4 analyses the facts and applies the legal principles to them.

109. Mr McPherson QC makes closing submissions in line with his note, though omitting the sections on the 'knowingly' aspect of charge 4, which has been removed.

110. He addresses the Panel on what would need to be shown by the BSB to the requisite standard to show that Mr Raggatt QC had committed serious professional misconduct, as opposed to negligence, mistake, or poor judgment.

111. He draws specific attention to the fact that what was in Mr Raggatt QC's possession at the time that decisions might have been made is not known. There are inconsistencies in documents regarding who was present at conferences, and no contemporaneous record of decision-making in respect of significant matters. He reminded the Panel that although Mr Jones had sued the CPS, no claim had ever been brought against Mr Raggatt QC personally, despite his being insured, meaning that a lack of personal means would not militate against a civil claim being brought against him.

112. No evidence of positive advice not to disclose, make a PII, or make admissions prior to trial – planning to make the decision later once he knew more (after 30th October).

113. 9th November – 865-6 – no evidence of a request to advise at this stage.

114. Pg 841 - No suggestion of issues relating to sensitive evidence at this stage. Backsheet shows 30.10 conference, and 1 hour consultation on 9.11. On right hand side,

bottom right-hand corner – just below his name/prof address/Ms Hancox – records a matter on 23.11.06 which seems to have been a hearing before HHJ Ross. Says any PII/s8 to be listed 30.11.06 which suggests that PII hearing is contemplated at this stage, as it says 'any' PII or s8 application.

115. Seems no decision taken yet and so no advice positive or otherwise on that aspect at this stage.

116. Takes us to 27.11 – two documents. First is at pg. 880. At 881, backsheet to instructions at 882 and 833. No decision that a PII app will not be made. No advice given NOT to make it. Decision whether to provide material to trial judge in advance of PII hearing. So, no criticism can yet bite of TRQC's conduct.

117. 30.11 – email communications between CPS and Birmingham CC list office about arranging a PII app. Q is PII about what? Sensitive material, or something else? TRQC thinks it was something else. As after hearing on 30.11 arranged there is discussion about the sensitive material. If anticipated is PII app on 30.11 on the sensitive it would have needed discussing earlier. Cannot now know what the PII was about, as there were a number of difficult issues in the case.

118. The Backsheet shows conference lasting around 2 hours on 30.11 (p.869 – top LH – hearing before HHJ Faber – no time for him to hear it, efforts still to be made to list somewhere on 4.12). Looking at TRQC's diary, ref is p2652 – hearing before HHJ Faber is listed in the AM. Then looking at conference note, going to see that was in the PM. Sally Hancox later hypothesises that a document was sent to the defence

119. Highlighted that one cannot do something without having decided not to do it (i.e. an omission through forgetfulness, or negligence, or simply accidental).

120. PC Hunt's mental health issues may have impacted on the reliability of his evidence, which is in some aspects is inconsistent with other evidence available.

121. Not every conference could involve advice on all aspects of the case, so it cannot be assumed that sensitive evidence was always discussed.

122. At 10:00 on Monday the Tribunal reconvened. Ms Stephenson was remote due to a positive Covid test, that she had taken on Thursday but only received the result over the weekend. She felt well and had not been affected by symptoms whilst hearing the case on Friday. This was explained to the parties.

123. Mr McPherson QC raised the issue of her hard copy papers being at the Tribunal Suite, as he was concerned that she could not follow the submissions without her papers. She confirmed that she had her papers electronically, and that she also had access to Mr McPherson QC's submissions in electronic form.

124. Mr McPherson QC returns to his submissions at page 48. Docs for 2006 completed. Nothing to suggest that during 2007 the position as at 14.12.06 had changed. He accepts as leader of the team; he had a responsibility to return to the issue of disclosure and did not do so. At worst, this could be Charge 3, but it isn't specifically the issue that is charged in charged 1-3, which are offences of commission and not omission. Evidence in Chief in Jones 1 and 2 entirely appropriate, but no transcript of Jones 3 so will have to take TRQC's word that that Evidence in Chief of MV was appropriate. No evidence of any return to thoughts about the sensitive material.

125. Picture stops developing in December 2006, so no evidence of positive decision-making not to deal with disclosure after that, which is relevant for charges 1-3.

126. Concession only arises if there is a positive requirement to do something.

127. BSB have to satisfy to the requisite standard that TRQC had the sensitive material AND knew that Mr Jones was in Coventry until such a time as to mean that the meeting with MV at Nottingham Train Station could not have happened. The evidence falls well short of showing that TRQC had that level of detail, and therefore could not have known. Even if you look at charge 5 'ought to have' – you would need to be satisfied that he had known it having been told it. You can be satisfied that he was sent some sensitive material, but not pages 5-9 that the BSB opened this case on the basis of, as the majority of them post-dated instructions.

128. This is not a case of TRQC being under any pressure to suppress the sensitive evidence. West Midlands Police were content to discontinue the prosecution if necessary (if HHJ ordered disclosure of PII material) on the basis that the sensitive operation was more significant and that was what they wanted to maintain.

129. Mr McPherson QC concluded his submissions and the Chair invited Mr Campbell QC to reply. Mr McPherson QC objected to this on the basis that the Regulations do not provide for such a right of reply, rather they envisage the order of proceeding concluding with submissions on behalf of the respondent (see rE198). However, Mr McPherson QC explained to the Panel that they have a discretion to vary the procedure under rE188, providing it is fair to all parties and in the interests of justice, and read this Regulation to the Panel. The Clerk confirmed that these two Regulations were the appropriate ones for the Panel to consider when deciding whether they would hear a reply to the Respondent's submissions from the BSB's counsel. The Panel rose to allow the advocates to discuss what had been anticipated within the right of reply and whether it was correction of any errors, or further substantive submissions.

130. Mr Campbell QC wishes to reply on:

a. Legal tests
b. Issue of commission vs omission
c. Factual error relating to sensitive material
d. Relevance of CPS decision not to bring proceedings against TRQC.

131. Mr Campbell QC says that b-d are controversial as they are not purely legal submissions.

132. Mr McPherson QC does not object to a reply that is solely on legal tests, but objects to the BSB covering any ground that they have already covered, as they have already said a lot about the legal tests.

133. BSB has presented case on charges – BSB says commission required. TRQC invites you to infer commission and evidence shows omission, so no justification to reply on there.

134. Factual issue on whether TRQC received any sensitive material. Evidence there was an enclosure, but it wasn't what the BSB said it was when they presented the case, so any submission on that is another bite at the cherry. Fourth issue is ok on the basis of what it is understood to be. Second and third issues are those that are contested.

135. Mr Campbell QC – discretion on the Rules – difference here from most cases is that no note from Mr McPherson QC before his submissions, on which no criticism, and changes from the skeleton (by Mr Beggs QC paras 16-19) on how the TRQC puts his case.

136. Said was aware of sensitive material in late 2006. Sets out why despite his awareness not relevant to disclosure. How it is now put on behalf of TRQC is different. Therefore, there should be more latitude than in other cases.

137. The thrust of the Rules is that D should have last say, and therefore Mr Campbell QC is content for Mr McPherson QC to be able to have a final reply to his position.

138. Panel retires, considers and then returns, ruling as follows:

'Chair notes the content of rE188 and reads it into the record – it is as set out by Mr McPherson. Panel has considered matters arising in light of that Regulation. We have two distinguished advocates before us on whom we can rely without question not to waste time and not to take points that don't properly arise as they see them. That inevitably is something that the Tribunal bears in mind. However, also know exactly the matters on which Mr Campbell wishes to address us. First is legal test applying in respect of charges 2 and 3 specifically. More specifically the issue of commission vs omission, which Mr Campbell wishes to address us on. The other matters that he wishes to raise are matters which require correction – factual issues requiring correction because someone has fallen into error. The last of the matters is the question of the CPS over proceedings against Mr Raggatt QC. Opportunity to consider and we are of the view of the opinion and satisfied that it is in the interests of justice and fairness to the parties to allow Mr Campbell QC to deal with the matters relating to the

charges, commission/omission and correcting errors made. However, we do not allow anything further to be said about the civil proceedings which the CPS were defendants and TRC was not joined, as those matters insofar as we have heard about them are not fully in evidence before us. No further submissions on point 4, but on points 1-3. In every case, if once we have the submissions made pursuant to the application, Mr McPherson wants to address us further then he will be allowed to do so without reservation, and without limit of time. This was a unanimous decision.'

139. Mr Campbell QC – addresses on legal tests for charge 1 – para 35b of Mr McPherson QC's note. Further, issues of what can be considered but is not an ingredient of the offence. 2 requires factual prejudice to administration of justice, whereas charge 3 is about the public confidence element, and could have been maintained even had Mr Jones been acquitted, for example. 'Indifferent to the truth' is sufficient – no need to establish conduct was knowing – distinct from reckless, which encompasses indifference to the truth.

140. On commission vs omission, the Respondent's position is that to extent there is a failing it was a failing of omission and not commission. That presupposes on any given fact pattern there is a distinction between commission and omission, which Mr Campbell QC suggests is unrealistic in many factual scenarios.

141. Charge 2 must have mental element as otherwise no difference between the 2 paragraphs in the Code of Conduct at the relevant time.

142. Hearing complete. Deliberations to begin this PM with Ms Stephenson remote. Tomorrow, deliberations will continue whether Ms Stephenson is in person or remote.

143. The issue of decision without reasons with reasons to follow has been canvassed, and TRQC's counsel asked for there to be a decision only once full reasons were available. 30th March is return date. On that date either deliberations will continue or a decision with reasons will be given. The Panel may meet again before the return date if they need further deliberation time. Lastly, on release of the parties: agreed parties to be released until 30th March.

144. Panel retire to deliberate at 13:00 on Monday 14th March and released parties until 10:30 on 30th March. The Panel reconvened to continue their deliberations on Saturday 26th March.

Findings

145. On 30th March 2022 the Panel delivered a unanimous decision with reasons as follows. On this occasion, Mr Raggatt QC consented to the hearing proceeding without him as he was engaged in a professional commitment. Mr Preece attended remotely, as did Mr McPherson QC, as he had tested positive for Covid. Mr Campbell QC and Mr Carter were present in person.

146. The Panel's decision was as follows:

Decision

This is our unanimous decision.

Background

On 16 January 2015 Conrad Jones made a complaint to the BSB in relation to the Respondent. The background to that complaint is as follows.

On 4 April 2005 Clinton Bailey was shot outside the 'Three Horseshoes' public house in Coventry. He died in hospital of his wounds on 16 April 2005. Maria Vervoort (MV) was in the public house at the time of the murder and was an important witness.

The murder was investigated by West Midlands Police. Five men were charged with the murder of Mr Bailey: Liam Dooley, Craig Dooley, Luke Turner, James Dunn and Gary Higgins. All 5 men were associates of Conrad Jones. Gary Higgins was, at the time of the murder, MV's partner.

The Respondent was instructed by the Crown Prosecution Service ("CPS") as leading counsel both in relation to the prosecution of the 5 men charged with murder, and of the connected prosecution of Conrad Jones.

The trial of the 5 men charged with murder took place before Underhill J (as he then was) between 7 June and 20 July 2006. MV gave evidence in the trial on 26 June 2006. The 5 men were all convicted.

On 12 June 2006 MV was interviewed by the police and gave a statement dated 12 June 2006. In that statement she sets out some of the history of Conrad Jones' attempts to interfere with her, in particular she states:

> 'another meeting was arranged by my sister [Rachel Nally] over the phone for either Thursday 1 June or Friday 2 June, again at Nottingham station. Rachel told me she was cutting her holiday short to come back from Skegness to see me at Nottingham Train station. Because of the trial starting she phoned me and wanted me to go straight away to meet her, so again I went on the train from Burton, it was early afternoon time when I met my sister at Nottingham train station on the walkway. … She was alone at the station when I arrived. … At this point she said to me someone wants to talk to you, I was not happy about this. I began to walk with her, but I was not happy, she told me it was going to be okay, and it was going to be sorted. We walked out of a side entrance on the main road and across this main road was a sort of boarded up pub. There were turnings into the street at the side of the pub and I think we went down the second turning. We walked into this street, and I saw a silver car, sat inside was Conrad. He got out and opened the back door and I was absolutely petrified, he said he knew I'd been through a lot, …, but if I gave evidence, I would be dead, likewise if someone went to prison. He told me this was my last chance, or I was dead. He said "if I went to give evidence or anyone went to prison then I was dead" these were his exact words. He never said how this would happen just basically that I would be dead, and I took it that he would do it. I was to go away with my sister, and he would give me £15,000 before the trial and £15,000 after. He wanted me to make a video saying 'SPLODGE' had paid me to give evidence against Gary Higgins, [one of those who was convicted]. Conrad was sat in the front passenger seat and the Cockney man whose name I believe is John was driving. The meeting lasted approximately 10 minutes and when it was over, I went back to the station shaking like a leaf. I was petrified. Rachel left before me to go back to Coventry I think, and I went back to Burton. I think I was at Nottingham between an hour to an hour and a half. I got back to Burton approximately 3-4pm and I left saying to Rachel we would meet in Derby. When I saw Conrad Jones at this meeting, he was wearing beige coloured shorts and a white Henry Lloyd t-shirt and trainers. The car they

were in had a distinctive circular badge on the bonnet which stood proud. Within the circle was a 'V' shape with a stick coming out of the 'V'. I did not know the make of this type of car at the time, however, now I have seen an identical badge and I now know it is a Mercedes.'

On 29 June 2006, the Respondent was instructed by the CPS in relation to the prosecution of Conrad Jones. At that point, Conrad Jones had very recently been arrested and charged with attempting to pervert the course of justice. The case against Conrad Jones was that, by threats and bribes, he had attempted to persuade MV to absent herself as a witness from the murder trial.

On 25 July 2006, MV was interviewed for a second time in relation to the allegations that Conrad Jones had sought to prevent her giving evidence. At that second interview she was questioned in more detail about the dates and timings of the second meeting at Nottingham station. She stated in interview that the second meeting (at which Conrad Jones was present) took place on either Thursday 1 June or Friday 2 June. She stated that she was in Nottingham for about an hour to an hour and a half, and that she got back to Burton on the train at about 3 or 4pm.

On 10 August 2006 MV was interviewed by the police for a third time for the purpose of reading out a draft statement and asking her to confirm it. At the conclusion of the interview, she signed a statement dated 10 August 2006. In that statement, she again states that she met with Nally at Nottingham train station on either Thursday 1 June or Friday 2 June 2006. According to MV, she was taken by Nally to meet Conrad Jones who was in a silver Mercedes car close to the station. MV asserted that she was offered £30,000 by Conrad Jones not to give evidence, and also threatened that if she gave evidence in the murder trial "she would be dead". Consistent with what is stated in her earlier interview, she stated that she got back to Burton at approximately 3 or 4pm.

Defence Statement

In this document Conrad Jones denied either directly or indirectly making any approaches to MV, denied telephone contact with her and in particular as regards 1 and 2 June, expressly denied meeting with MV on either date at or near Nottingham train station and indicated an intention to put forward and call witnesses to support alibi. As regards 1 June he asserted that he remained in Coventry all day (which appears to be consistent with the police sensitive materials for that date). As regards 2 June he gave a detailed account of his movements and associations that day

in the Coventry area, again, seemingly consistent with the sensitive material in the possession of the police, save for the 3½ hour window of opportunity on the afternoon of 2 June.

On 21 November 2006 Conrad Jones served a supplemental defence statement. It provided details of his alibi witnesses and alleged movements on 1 June 2006.

The Trials

The Crown did not disclose or make any admissions at any stage during the trial of Conrad Jones for perverting the course of justice regarding their possession of sensitive material relating to Conrad Jones's movements on 1 June confirming he was in Coventry all day and not attending a meeting with MV at Nottingham train station and that on 2 June he was in Coventry, last seen at 1424hrs driving a blue BMW and not a silver Mercedes. He was next seen in Coventry at 1801hrs, again in a blue BMW. This left a window of 3 hours 37 minutes during which Conrad Jones could have travelled from Coventry to Nottingham and back, a journey of about 53 miles each way. Moreover, MV said that she was in Nottingham for about 1-1½ hours for the meeting and had returned to Burton by about 3-4pm. As Conrad Jones was known to be in Coventry at 14:24hrs and the journey to Nottingham is about 53 miles, on MVs timings, Conrad Jones could not be at that meeting. If she was wrong about the timings, then at least conceivably Conrad Jones would have had sufficient time to make the round trip.

There were three attempts at trying Conrad Jones for perverting the course of justice, prosecuted by Mr Raggatt QC and Ms Hancox. The first, in January 2007, was aborted when Conrad Jones sacked his counsel. The second, in March 2007, ended when the jury could not reach a verdict. The third occurred in July / August 2007 resulting in Conrad Jones' conviction, and ultimately his sentence of 12 years imprisonment. At no stage during the pretrial and trial processes was there either disclosure to the defence in raw form, edited form or by an admission of the sensitive material on 1 and 2 June 2006, nor was there any PII application to the trial judge in relation to that material.

At the third trial, on 30 July 2007, MV gave evidence in chief at the trial of Conrad Jones for perverting the course of justice. There was no direct mention of the 1 or 2 June 2006.

On 30 -31 July and 1 August 2007, MV was cross examined and responded as follows:

i) Q: The first time that you saw him [Conrad Jones] in relation to the complaints that you made that he threatened you, either directly or indirectly, was on 2 June, which

was the Friday before you went to Newcastle, when you met him at Nottingham train station. Is that correct?

A: After I left Coventry, yes.

Q: So, in the whole history of this case, you have been in his company twice: once on 4 April and once on 2 June 2006?

A: Yes.

ii) Defence counsel took MV through her telephone and cell site evidence relating to 1 and 2 June 2006. MV repeated that she couldn't be sure on which of those two dates she met Conrad Jones at Nottingham train station. The undisclosed prosecution material was unequivocal that it could not be 1 June, leaving only the 3½ hour window of opportunity on the afternoon of 2 June. Defence counsel explored the timings of her journey to and from Burton/Nottingham and the duration of her meeting.

Ultimately, defence counsel sought to demonstrate that MV's telephone did not travel to Nottingham at all on 2 June, certainly not with sufficient time for the alleged meeting in Nottingham to support the contention that no such meeting occurred at all.

After that exchange, Mr Raggatt QC asked for the jury to leave the court room saying, "there's a matter I want to mention that's been put to her about which she has given answers and I think I ought to make one thing clear". Mr Raggatt QC went on to say:

> A moment ago, my learned friend put a proposition to this witness which she appeared to acknowledge, maybe in an effort to help, but I want to make it that it's not acknowledged by us as being a valid proposition. It is this. On the assumption (and of course we have to take her evidence as it is) that MVs telephone #991 was in her possession on 2 June at all, but on the assumption that it was … [interruption]… A moment or two ago my learned friend put a proposition to the witness in relation to 991 that the witness might be thought to acknowledge. Even if she is actually acknowledging it because she understands it fully, which I beg to doubt, the fact is we don't accept that it's a valid proposition. The proposition concerns the following: a gap in time on 2nd June between just after half-past-one and just after three o'clock when 991 neither makes nor receives any call or message of any description. The proposition was that there wasn't

> time then for 991 to travel to or from Nottingham. I don't accept that that's a valid proposition for a number of reasons … [Mr Raggatt sets out his reasons]. I don't want the witness to be thought to be acknowledging something which I would respectfully submit is frankly based upon highly doubtful supposition, and I think that ought to be made clear to her at some point.

The judge then sought clarification of the defence case regarding 2 June 2006, and Mr Benson QC made clear that the defence case is that absolutely no second meeting at all occurred between Conrad Jones and MV on 1 or 2 June or any other date.

From service of the defence case statement forward, it was clear to Mr Raggatt QC and the prosecution that the defence case was that there was no second meeting between MV and Conrad Jones at all on any date, but in particular on 1 and 2 June for which dates alibi was relied upon.

Disclosure of MVs telephone records/cell site material allowed defence counsel to properly explore the inconsistency of her phone movements to put before the jury the suggestion that MV could not have been in Nottingham on that date, a proposition positively challenged as false by Mr Raggatt QC. The defence were focussing on MVs telephone movements simply because that was the sole material on the point available to them. In the end at the conviction appeal, it subsequently emerged that MV's evidence on her use of telephone number 991 on 2 June was untruthful. The defence did not have the opportunity to cross examine MV more fully because the sensitive material was not made available to them.

What in fact Mr Raggatt QC did at this point was to concentrate exclusively on whether the MV phone material supported the defence proposition that it was inconsistent with the 2 June meeting taking place without ever conceding the existence of the Conrad Jones sensitive material insofar as it may have assisted the defence point.

At the third trial in 2007 Conrad Jones was convicted and sentenced to 12 years imprisonment. He was re-arrested, after release, and charged with perverting the course of justice in respect of inquiries he had conducted with his solicitor.

On 27 June 2013, at the trial of Conrad Jones and his solicitor on the 2013 charges, the prosecution made a PII application to HHJ Inman QC, who directed the prosecution to make an admission in the following terms:

> "As far as the meeting at Nottingham railway is concerned, the Crown accepts that Conrad Jones did not go to Nottingham on 1 June 2006. On 2 June 2006, Conrad Jones is known to have been in Coventry until 14:25 where he was driving a blue BMW. He is known to have been in Coventry at 18:00 when he was driving a blue BMW. His whereabouts between those times is not known".

Conrad Jones was acquitted on this occasion.

The disclosure made during this last trial led to an appeal against Conrad Jones's original conviction. At that appeal Mr Raggatt QC appeared for the Crown alone.

The Appeal

On 18 September 2013, Mr Raggatt QC settled a skeleton argument for the CPS to respond to Conrad Jones's renewed application for leave to appeal conviction, stating at paragraph 12:

> "… the fact that Conrad Jones was under sensitive at the time of his original trial was known to the Prosecution team but, in the light of MVs evidence and her fluidity in terms of timings, it was the considered view of all concerned that this material did not ultimately assist the defence or undermine the prosecution case so as to allow for its disclosure. That is a decision that was entirely appropriately taken in the circumstances and given the fact that he was under sensitive in circumstances which were clearly not disclosable in any event, the overall picture was such that a public interest immunity hearing was neither necessary nor justified by the material available which was, it is submitted obviously, not sufficiently powerful to warrant its disclosure".

Thereafter the appeals process took its course with the prosecution position essentially being that there was plenty of evidence against Conrad Jones and that the events of 1 and 2 June 2006 were 'in no sense central to [Conrad Jones's] conviction as is asserted on his behalf.'

In June 2014, the appeal hearing took place (Lord Justice Pitchford, Mr Justice Turner, Mrs Justice Carr).

On the 4 July 2014, the appeal judgment was issued. The Court criticised Mr Raggatt QC personally and the prosecution generally regarding non-disclosure of the Conrad Jones sensitive material. As regards Mr Raggatt QC's specific intervention at trial resisting the defence point arising from the movements of MVs 991telephone (see above), Pitchford LJ observed 'Mr

Raggatt's observation to the judge should have been but, to our knowledge, was never withdrawn. Pitchford LJ noted:

> "We sought from Mr Raggatt QC an explanation as to the reason why it had taken six years for the appropriate admission to be made. We were informed that Mr Raggatt was aware of the sensitive material in late 2006 as a result of a consultation with junior counsel and the disclosure officer. He cannot now recall the extent of the detail known to him. He took the view that since the witness was imprecise in her recollection of the date and time of the meeting between herself, Rachel Nally and the appellant [Conrad Jones] the sensitive material was not relevant. We disagree profoundly. Following the trial for murder, in which Mr Raggatt and Miss Hancox were counsel for the prosecution, on 25 July 2006 MV took part in a recorded significant witness interview from which it is clear the purpose was to explore with her, among other things, the dates and times of her meetings with Rachel Nally. On 10 August 2006 she signed a witness statement based upon her answers in interview. If there had been any earlier doubt, there must have been none by 25 July 2006 that the meeting to which MV referred must have occurred, if it occurred at all, on Thursday 1 June or Friday 2 June 2006. We fail to understand how the prosecution could have distributed an Opening Note for the 2007 trial in which it was suggested that the precise date and time of the second meeting with Rachel "may not matter". The Prosecution were in possession of sensitive material the effect of which was altogether to exclude 1 June 2006 as the date of the second meeting and to cast considerable doubt upon 2 June 2006 as the alternative if, as MV maintained, she met Rachel Nally and Conrad Jones early that afternoon. Furthermore, the prosecution knew that the defendant was putting forward an alibi for both days supported by other witnesses. Doing the best we can to avoid the temptation of hindsight we can only regard the failure to make the disclosure in early 2007 that was subsequently made in June 2013 as a lamentable failure of the prosecutor's obligations. Had it not been for the appellant's arrest on 16 November 2012 and his subsequent prosecution these matters may never have come to light.

Duty to disclose

The Prosecutor's initial duty to disclose is set out in the Criminal Procedure and Investigations Act 1996, section 3.

The prosecutor must - disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused.

For the purposes of this section prosecution material is material - which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the accused. Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.

The Prosecutor's Continuing Duty to Disclose is set out in the Criminal Procedure and Investigations Act 1996, section 7A. It provides as follows:

> After the prosecutor has complied with section 3 or purported to comply with it, and before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned. The prosecutor must keep under review the question whether at any given time (and, in particular, following the giving of a defence statement) there is prosecution material which - might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused, which has not been disclosed to the accused. If at any time, there is any such material the prosecutor must disclose it to the accused as soon as is reasonably practicable.

For the purposes of this section prosecution material is material - which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the accused. Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.

Evidence relating to the sensitive material (in camera only)

On or about 27 November 2006 a draft PII application was prepared in relation to the sensitive material, for potential hearing by HHJ Faber on 30 November 2006. The draft proposed admitting that Conrad Jones was at his home address (747 Sewell Highway in Coventry) for most of 1 June, and that he was at his home address on 2 June "at the following times: 0.01am – 1.04pm; 2.23pm – 2.24pm; 6.01pm – 6.03pm; 10.58pm – 0.00pm." [D884]. It is clear from later

events, and from the Respondent's back sheet for 30 November [D869] that no such PII application was made.

[redacted]

Police communications and Conferences

Detective Sergeant Neil Ashton sent an email on 21 September 2006 alerting the CPS to his concerns relating to the second meeting alleged by MV which was said to have taken place at Nottingham Railway station. He sets out that the meeting was alleged to have taken place at Nottingham Railway station on Thursday/Friday 1 and 2 June 2006, that the meeting was stated to have been in the early afternoon and MV returned to Burton, arriving back at 3 to 4pm. DS Ashton goes on to say that that meeting is problematic because the *"movements of Conrad Jones on the 2 days in question are known"* (because Conrad Jones was under sensitive at the time). He goes on to say that the meeting could not have taken place on Thursday 1 June and could only have taken place on Friday the 2 of June between 14:24 hours and 18:01 hours. He makes clear that Conrad Jones could not have left Coventry until 14:24 hours. There is evidence that the journey from Coventry is 53 miles and one can reasonably assume that it would have taken about an hour. That obviously meant that the meeting between Conrad Jones and MV would not have started before approximately 15:24 hours at the earliest. MV would have had to take part in the meeting, and then travelled back to Burton. She would not have arrived between 3 and 4pm. Clearly this material is difficult to reconcile with her evidence. It is even more difficult if one takes into account, as DS Ashton points out, that at no time during those two days does MV's phone cell site in Nottingham. During the available window on the Friday MV continues to cell site in the Derby/Burton area. He also points out that there is no contact at all between MV and RN on Friday 2 June, which would be unusual if they were meeting. He continues by pointing out that Conrad Jones has vehemently maintained that he has not been to Nottingham and demanded that CCTV be scrutinised to verify his claim (in fact the CCTV seized was for the wrong dates). His email continues "In conclusion, there is nothing to corroborate the second meeting and plenty to cast doubt upon it. MV could be mistaken about the date and/or place, but despite having been asked about it again, she maintains the allegation. She may have met Conrad Jones during the first meeting but if that is so why doesn't she say that? It is difficult to question her about it again without appearing to be disbelieving of her".

DS Ashton then states" I would like my concerns to be passed to Counsel so that they are fully aware of the strength or otherwise of the case".

DS Ashton has provided two witness statements. He has not been called before us, but the parties agree that his statements are admissible as hearsay with the usual limitations, namely that we could not assess his demeanour and he has not been subject to cross examination. In his first witness statement dated 21 July 2020 DS Ashton refers to his email of 21 September 2006. He says that he was aware that the sensitive material precluded the meeting between Conrad Jones and MV having taken place on the 1 of June 2006 but provided a window for the 2 of June between 14:24 hours and 18:01 hours. At paragraph 7 of his witness statement DS Ashton states as follows "I can confirm that the subject of the sensitive (and the limited opportunity it allowed for the meeting with Conrad Jones to take place) was discussed at meetings with Mr Raggatt but I cannot now give the dates of those meetings. Mr Raggatt QC initially took the view that "the sensitive did not rule out the possibility of the meeting having occurred, and I was left with the impression that he did not consider that it should be disclosed but would further assess it". At paragraph 8 DS Ashton goes on to say, "it was my view that the sensitive material did not itself undermine the prosecution case but the narrow opportunity it allowed for the alleged meeting should be further assessed as it may assist the defence".

In DS Ashton's second witness statement dated 9 February 2021, he states at paragraphs 3, 4 and 6 as follows:

> 3. When I made that statement (his first witness statement), I believe I was under the impression that my 21 September 2006 email had been written after the evidence had been discussed in conference with Mr Raggatt and he had advised that it did not need to be disclosed. Having been shown redacted notes of conferences which I attended on 30 November, 11 December and 14 December 2006 I now realise these all took place after my email was sent and that the concerns I had raised appear to have been considered in some depth over those three conferences. There may have been other conferences as well, but I cannot now recall whether or not there were.
>
> 4. As I said in my earlier statement it is difficult to recall what was said in meetings which took place such a long time ago, and it is also difficult to recall the sequence of events. Having refreshed my memory from these partial notes, I recall Mr Raggatt advising that the material did not need to be disclosed, or a PII application made, at that stage because at that time the prosecution case did not rest on the meeting having taken place at a particular time, and there was time for Jones to have got to Nottingham and back between the sensitive sightings. He advised that the position should be reviewed if MV gave a particular time for the meeting in her evidence at trial.

> 6. I see that the concerns I raised were considered in conference after my email was sent. Although Mr Raggatt took a different view to me over whether the sensitive material might undermine the prosecution or assist the defence, clearly the issue was addressed, and I do not recall Angela Trotter or any of the other lawyers present disagreeing with Mr Raggatt's advice that the issue should be kept under review.

With the benefit of hindsight no one can doubt that DS Ashton was absolutely right to raise the matter in the way he did. It also seems very clear that if the sensitive material did preclude the meeting having taken place on the 1 June 2006 and provided only a very narrow window on the 2 June, that material should have been disclosed because it both undermined the prosecution case and assisted the defence case. Having regard to the sensitive nature of the sensitive material, Mr Raggatt should have advised the prosecution to proceed with a PII application and it seems likely that if he had done so at that application the Judge might well have ordered an admission to be made in relation to the sensitive material to the effect of that eventually made by the prosecution on the 27 June 2013.

We bear in mind of course that the witness statements of DS Ashton are hearsay evidence. However, the statements are accompanied by a contemporaneous email which is, without doubt, highly significant.

We also considered Detective Chief Inspector Atherley's witness statement. He was the Senior Investigating Office in the prosecution of various defendants involved in the murder of Clinton Bailey. He was also the SIO for the case of Conrad Jones for attempting to pervert the course of justice. His witness statement dated the 12 February 2021 falls into the same category as that of DS Ashton and is admissible before us as hearsay evidence with the usual limitations. We noted paragraphs 15, 19 and 20 to 23 of DCI Atherley's witness statement, which read as follows:

> 15. I recall attending several conferences with Mr Raggatt QC and his junior barrister, Sally Hancox. I can no longer recall, after this length of time, precisely what was discussed at each conference and my notes are a snapshot of some key points. I do recall however the issues of the sensitive material and telephone material being discussed at a sensitive conference and minutes were kept by Sally Hancox. I do not recall the date.
>
> 19. Having read all of these entries I recall that we discussed the sensitive material. I was concerned because some of this material supported the prosecution case and cast doubt on alibis that had been put forward by the defendants, I can't recall if this was specific to Jones or the other Mallard suspects. We also discussed the timings of Jones movements

(as shown by the sensitive material) against Vervoort's account and whether the sensitive material could undermine or assist. Mr Raggatt's view was that the way the indictment and prosecution case was to be put, Conrad Jones has been leading events aimed at disrupting the investigation and prosecution of murder; this has not required him to be at any specific location to prove the offence, but the situation would be kept under review.

20. I think that it was during this conference that we also discussed the question of whether to make a PII application with regards to the sensitive material; however as the view was that the sensitive material was not being relied upon by the prosecution as evidence and did not undermine the prosecution or assist the defence then a PII application was not necessary at that time, but the situation should be kept under review.

21. I can also state that my recollection is that all present including John Davies and Angela Trotter from CPS and Sally Hancox were satisfied with the advice that was being provided by Mr Raggatt and to my knowledge they did not raise any objections or concerns. John Davies as the lead CPS lawyer is a very experienced and capable lawyer in my view, fair and thoughtful, based on my previous dealings with him on various serious cases. Like me he is not someone who would sit in awe of a QC and not raise concerns if he disagreed with the advice being given. He was very much a leader in the prosecution team and if he had had any reservations about the advice I have absolutely no doubt that he would have voiced them, as would I.

22. In preparing for any trial there are always matters that need to be addressed and from my recollection and notes the sensitive and phone work were matters that were regularly discussed in detail at case conferences between the Police, CPS and Counsel.

23. As an experienced SIO, who attended many case conferences and regularly discussed issues of disclosure. I can state that I do not recall having any concerns about Mr Raggatt's advice re disclosure and PII and I agreed that given what we all knew the ROCU sensitive material did not appear to undermine the prosecution or assist the defence at that point in time. In fact, from memory and looking at my notes I believed that it tended to support the prosecution case regarding the rebuttal of alibi's. Overall, I do not recall having any concerns about the way in which the disclosure matters were resolved. I can also state that I do not recall the CPS expressing any concerns.

In paragraph 6 of his witness statement, DCI Atherley refers to policy book entries which were made soon after. An entry from the DCI's policy book dated 17 October 2006 states that the cell site analysis does not corroborate a second meeting on 2 June 2006 in Nottingham. The note deals with arrangements for Counsel to be briefed and consider necessary disclosure. A policy note entry dated 9 November 2006 details a discussion about MV's phone traffic records and refers to advice that Mr Raggatt QC has given that full disclosure should be made of the telephone raw data. Most importantly, there is a policy note dated 11 December 2006 headed "Alibi accounts" in which DCI Atherley notes as follows:

> I have been at conference with Mr Raggatt QC. I have the concern that some of the alibi material presented to us can be completely disproved by 'xxxxxxxxxx' *(operational name redacted)* sensitive material. Morally or legally should the prosecution allow these witnesses to give evidence knowing that doing so they would commit offences?
>
> Mr Raggatt's advice is that the way the indictment and prosecution case will be put so that Conrad Jones has been leading the events aimed at disrupting the investigation and prosecution of the murder, this has not required him to be at any specific location to prove the offence. He is aware of my concern and will deal with it in the trial process.

It is clear from this policy note entry that Mr Raggatt QC was giving advice to the prosecution on disclosure and/or a PII application. In doing so he was saying that the prosecution case will be put on a basis that did not require Conrad Jones to be at any specific location to prove the offence. This is a justification given at the time for non-disclosure of the sensitive material. In our view it was wholly wrong because, in respect of one act relied upon, namely the meeting at Nottingham Railway station, the allegation required Conrad Jones to be at that specific location in order to prove that aspect of the offence.

DCI Atherley's concern about the moral or legal issue arising from witnesses being called to give alibi evidence on behalf of Conrad Jones is not central to our considerations because the rules of disclosure to which we have referred require disclosure where the sensitive material undermines the prosecution or assists the defence case, which is a different issue.

In relation to the concluding sentence on this note, that Mr Raggatt QC is "aware of my concern and will deal with in the trial process", we note that this follows reference to Mr Raggatt QC's justification for non-disclosure. In fact, there never was disclosure and there never was a PII application either before or during Conrad Jones trials.

We were taken through a series of instructions to counsel and notes of conferences attended by Mr Raggatt QC, and these are clearly of significance, although it is not clear who wrote the instructions and conference notes.

We note with interest that on 17 of October 2006, in further instructions to counsel, Counsel is referred to the bundle of sensitive unused material enclosed and is requested to consider the contents of the email of DS Ashton dated 21 September 2006. Significantly, he is also asked to provide those instructing with a written advice setting out how counsel wishes to disclose to the defence the substance of the email and the supporting material.

[redacted]

It is clear from the Instructions to Counsel document at pages D/878-789 that it was contemplated at that time that a PII application will be heard on Thursday 30 November 2006 and Mr Raggatt QC was asked to advise in relation to material to be provided to the Judge in advance of that PII application. The point has been made that any PII application which is referred to may have related to the telephone material rather than the sensitive material. In our view, if Mr Raggatt QC had advised that the sensitive material should be the subject matter of a PII application, then such an application would have been listed either at the same time as the application relating to the telephone material or on a separate occasion prior to Conrad Jones's trial.

[redacted]

In the instructions to Counsel document at defence bundle D/890 there is a reference at item 3 to "Possible PII material". This was clearly a discussion about the sensitive material, with references being made to disclosure and PII.

We had regard to the email exchange between Angela Trotter of the CPS and Birmingham Listings on 12 December 2006 at pages D/896 and 897. The exchange shows that a PII application was still being contemplated by the prosecution, and was to be listed before the trial judge, HHJ Ross.

Mr Raggatt QC was present at the conference on 14 December 2006 [redacted]. Mr Raggatt QC has clearly made a decision not to make the PII application at this time. His duty was to either disclose the material or to make a PII application as soon as reasonably practicable. There was

of course a possibility of a review in the future of the sensitive material but that does not preclude a decision as to how to proceed at that time. We are satisfied so that we are sure that this issue was not simply forgotten thereafter - during those lengthy proceedings – and then in the Court of Appeal. Mr Raggatt QC did not advise that the sensitive material should be disclosed, nor did he make a PII application. That non-disclosure may never have come to light but for the developments that took place after Conrad Jones release from custody.

Justifications for non-disclosure

In our view it is significant that on the evidence before us Mr Raggatt QC has justified non-disclosure of the sensitive material, as well as not making a PII application, in a number of different ways at different times since 2006.

In DS Ashtons statement of 9 February 2021 at paragraph 4, he states "…I recall Mr Raggatt advising that the material need not to be disclosed, or a PII application made, at that stage because at that time the prosecution case did not rest on the meeting having taken place at a particular time and there was time for Jones to have got to Nottingham and back between the sensitive sightings. He advised that the position should be reviewed if MV gave a particular time for the meeting in her evidence at trial".

In DCI Atherley's witness statement of 12 February 2021 he states that Mr Raggatt QC's view was "…that the way the indictment and prosecution case was to be put, Conrad Jones has been leading events aimed at disrupting the investigation and prosecution of murder; this has not required him to be at any specific location to prove the offence, but the situation would be kept under review". At paragraph 20 DCI Atherley states "I think it was during this conference that we also discussed the question of whether to make a PII application with regards to the sensitive material; however as the view was that the sensitive material was not being relied upon by the prosecution as evidence and did not undermine the prosecution or assist the defence then a PII application was not necessary at that time, but the situation should be kept under review". DCI Atherley has used the same wording in his contemporaneous note of 11 December 2006.

On 18 September 2013, Mr Raggatt QC settled a skeleton argument for the CPS to respond to Conrad Jones's renewed application for leave to appeal his conviction, stating at paragraph 12:

> "… the fact that Conrad Jones was under sensitive at the time of his original trial was known to the Prosecution team but, in the light of MVs evidence and her fluidity in terms of timings,

it was the considered view of all concerned that this material did not ultimately assist the defence or undermine the prosecution case so as to allow for its disclosure. That is a decision that was entirely appropriately taken in the circumstances and given the fact that he was under sensitive in circumstances which were clearly not disclosable in any event, the overall picture was such that a public interest immunity hearing was neither necessary nor justified by the material available which was, it is submitted obviously, not sufficiently powerful to warrant its disclosure".

It is highly significant that in this skeleton argument, settled by Mr Raggatt QC, he is saying that a decision was taken in 2006 not to disclose and not to make a PII application. He states that this was entirely appropriate in the circumstances and represented the considered view of all concerned. He justified that decision not to disclose and not to make a PII application by pointing to MV's evidence "and her fluidity in terms of timings".

In June 2014, the appeal hearing took place. What Mr Raggatt QC told the Court of Appeal in relation to non-disclosure is referred to in Pitchford LJ's judgment.

> "We sought from Mr Raggatt QC an explanation as to the reason why it had taken six years for the appropriate admission to be made. We were informed that Mr Raggatt was aware of the sensitive material in late 2006 as a result of a consultation with junior counsel and the disclosure officer. He cannot now recall the extent of the detail known to him. He took the view that since the witness was imprecise in her recollection of the date and time of the meeting between herself, Rachel Nally and the appellant [Conrad Jones] the sensitive material was not relevant".

In relation to possible justifications for non disclosure there are also important passages in the first statement put forward as Mr Raggatt QC's statement in these proceedings. This begins at paragraph 108:

> The question of whether the covert material was capable of materially undermining the prosecution's case or assisting the defence case was, of course, a very important consideration. However, it was one of a number of important considerations that I would have had to weigh in the balance in forming a view on whether or not it passed the disclosure test applicable to this case and the timing of any PII application which may then have been required.
>
> On the basis of that which I believe I was told, there was a serious risk of endangering innocent members of the public if Jones was given any indication that he was being watched or was the subject of an ongoing and different police investigation. This was a particularly sensitive matter given that the consequences of any disclosure might well

have resulted in revealing to Jones - at least by inference, noting his experience as a significant Coventry criminal - the identity of individual members of the public who may have co-operated with a sensitive operation.

Even the making of an *ex parte* PII application and any resulting partial disclosure would, without more, have run the risk of informing Jones of the fact that he was the subject of another police investigation generating such covert material. That fact alone would have posed a potential danger to those who had co-operated with the police in that investigation, as well as causing the possible collapse of it.

I recall that the police officers whom I saw and who were involved in that other operation strongly believed that any such application would have blown their entire covert operation, which I was given to understand had been going on for many months and was of vital importance in the prevention and detection of serious organised crime. I need, however, to stress, that my memory is far from solid on this issue, and I am very concerned that I may well be forgetting other relevant factors or confusing matters.

I was and am still always mindful of my duty to the defence and to the Court. I believe that the partial notes which have been produced show that I gave very careful consideration to this issue over a number of conferences, and that the issue was more complex than summarised in the email of 21 September 2006 from DS Neil Ashton upon which the BSB relies and indeed those matters developed significantly from that date, with some material disclosed and other material obtained or clarified by the police and considered further. Clearly the picture developed, not only because it was discussed with other police officers in conference but because the sensitive material was reviewed and revised by the police as part of its presentation to me, with the police expressing their view in conference.

It seems clear from these partial notes that I must have considered that the issue of a possible PII application in respect of this material should be kept under review, in the light of any evidence that MV might ultimately give at Jones' trial. I have no recollection of how or the extent to which that position was kept under review, and I have no recollection of any PII application or hearing(s) which followed. My solicitors have actively sought evidence and disclosure on this topic, and I do not understand why the BSB has not.

Although the picture is incomplete and my memory far from clear, I think the material shown to me at that time did not appear, in my professional judgment, materially to undermine the prosecution case to the degree necessary to render it disclosable in all the circumstances.

MV's witness statements were not precise as to all potentially relevant times and dates. The police had tried to get her to be specific, naturally and perhaps because they wanted to look for CCTV evidence of the alleged meeting, but she appeared to be unable to ascribe a definite time or date.

There are people who live their lives in such a way that their routine, or the lack of one, makes it difficult, perhaps impossible, to remember precisely when even important events occurred. My recollection is that I was told by all the relevant officers that MV was just such a person, who rarely if ever ascribed precise dates or times to events that had nevertheless happened, and that I should treat her in that light in any assessment that

needed to be made about her evidence. I am familiar with such people who are often fundamentally honest witnesses, despite their personal organisational chaos.

Again, I believe my assessment at the time (when I would have been familiar with MV's interviews and statements and police assessments – as well as the other evidence against Jones) was that the precise date and certainly the precise timing of the second meeting at Nottingham would and should not be determinative in the case against Jones. The case against Jones was about his sustained attempts to pervert the course of justice over the course of more than one year between April 2005 and June 2006, not about the date or time of one meeting.

The covert material appeared to allow time in the afternoon of 2 June 2006 for Jones to have got from his home in Coventry to Nottingham and back (in whomsoever' s car), between 2.24pm and 6.01pm – 3 ½ hours). I believe this is reflected in the notes of what police said at the two December 2006 conferences: "*There is still gap on the Friday afternoon*", "*Don't think it undermines our case*" and "*could be anywhere*" **[D/891 & 902]**.

And later at paragraph 220:

From memory, I believe I was asked about the covert material relating to Jones' movements on 1 and 2 June 2006 and whether there was any continuing reason (i.e., as at 2013) why it should not be disclosed to the defence. I believe that the view I took in response to this query (without complete papers, in 2013 or now) was that, given the passage of time, the need to protect the secrecy of the covert operation and the safety of those who were co-operating with it may have dissipated, and that accordingly it might therefore be that there was no public interest reason to continue to withhold it, if it was thought to be relevant by those advising on that case. I certainly did not try to persuade SOCA Counsel – or anyone else for that matter – not to disclose the material if it was otherwise disclosable in their case. But I stress I was not privy to any of the detail of the 2013 prosecution.

In paragraphs 228 to 230:

On instruction from the CPS, I indicated in my skeleton and in my submissions to the Court of Appeal that the terms of the admission did not render Jones' 2007 conviction unsafe because there was still time for him to have travelled from Coventry to Nottingham and back between the two points at which he was apparently observed in Coventry **[D/2228 para 10]**. The fact that Jones was observed in a blue BMW in Coventry, and in a silver Mercedes in Nottingham, is neither here nor there and Jones was not said to have been the driver of the silver Mercedes. MV had said that he got out of the passenger side and the man identified as John (the Cockney) was driving.

I was aware that the picture looked different if MV's timings were assumed to be accurate. However, it was clear to me, supported by MV's evidence as a whole and what I had been told by officers at the time, that MV was never confident of the timings of her trips to Nottingham.

I reflected those recollections of my instructions and discussions of late 2006 when I said in paragraph 12 of my skeleton "*the fact that Conrad Jones was under sensitive at the time of the original trial was known to the Prosecution team but, in the light of Miss Vervoort's evidence and her fluidity in terms of timings, it was the considered view of all*

concerned that this material did not ultimately assist the Defence or undermine the Prosecution case so as to allow for its disclosure. That is a decision that was entirely appropriately taken in the circumstances and given the fact that he was under sensitive in circumstances which were clearly not disclosable in any event, the overall picture was such that a public interest immunity hearing was neither necessary nor justified by the material available which was, it is submitted obviously, not sufficiently powerful to warrant its disclosure" **[D/2229].**

I did not in 2013-14 oppose or advise against the disclosure of the covert material. One reason for this may have been that the sensitivity of the position had (as I believe that I was told by someone concerned with it but do not specifically remember who that was) changed markedly, in that the separate covert operation would have been over, and the original danger to those involved in it substantially reduced.

Respondent's Evidence

We have carefully considered the response of the Respondent to each of the points. He accepted that he was familiar with the obligations to disclose, and that counsel has to ensure that the prosecution comply with that duty.

The Respondent accepted that disclosure or the PII application must be made as soon as reasonably practicable.

The Respondent accepted now that the sensitive material was almost certainly disclosable. He accepted that, looking back, the material should have been disclosed.
The passage in the CA judgment was put to him, namely:

> "He (Mr Raggatt QC) took the view that since the witness was imprecise in her recollection of the date and time of the meeting between herself, Rachel Nally and the appellant [Conrad Jones] the sensitive material was not relevant".

He explained in evidence that he said this in the Court of Appeal on the basis of documents that were incomplete and without having the assistance from Miss Hancox. In our view this does not explain why he sought to justify non-disclosure to the Court of Appeal in this way. There was no justification for the non-disclosure. The allegation clearly placed the prosecution under a duty to disclose or make a PII application.

The Respondent agreed in evidence that the trials proceeded without an admission that Conrad Jones was in Coventry on 1 June all day and on 2 June until 2.24pm. In our view the result was that the trial was unfair.

The Respondent did not dispute in evidence that the history of the case pointed to the conclusion that disclosure of the sensitive material was never made.

In our view the non-disclosure in these circumstances was a serious failure to comply with the disclosure obligations. It was unjust in these circumstances, and it led to a miscarriage of justice.

We are also of the view that it remained the duty of the prosecution to deal with disclosure as soon as reasonably practicable. There was nothing in the circumstances which displaced that

obligation. The sensitivity of the sensitive material clearly called for a PII application, but it could not justify any delay which would affect the fairness of the trial.

In his skeleton argument for the Court of Appeal, the Respondent had made clear both the decision which was made and the reason for it. He had stated as follows:

> "… the fact that Conrad Jones was under sensitive at the time of his original trial was known to the Prosecution team but, in the light of MVs evidence and her fluidity in terms of timings, *it was the considered view of all concerned that this material did not ultimately assist the defence or undermine the prosecution case so as to allow for its disclosure. That is a decision that was entirely appropriately taken in the circumstances* and given the fact that he was under sensitive in circumstances which were clearly not disclosable in any event, *the overall picture was such that a public interest immunity hearing was neither necessary nor justified by the material available* which was, it is submitted obviously, *not sufficiently powerful to warrant its disclosure*".

In the context of these proceedings this passage is highly significant. In it Mr Raggatt QC states the view that was taken, the decision which was made and gives his justification for it. This undermines the submission made before us that no decision was ever made. In our view the approach of the prosecution team was wholly wrong. We strongly disagree with it and with the decision which was then made.

In the course of his evidence, Mr Raggatt QC made it clear that he had no recollection of some of the material due to the fact that the events took place very long ago. For example, he had no recollection of the email from DS Ashton.

We are satisfied on the evidence before us that he had knowledge of DS Ashton's email at the time and gave advice on the issues it raised. That is because DS Ashton said in his email that he wished for his concerns to be brought to the attention of Counsel. This was then followed by instructions to Mr Raggatt QC to provide written advice "setting out how Counsel wishes to disclose to the defence the substance of the E-Mail…".

Similarly, Mr Raggatt QC had no recollection of the advice attributed to him by DCI Atherley. We accept the evidence of DCI Atherley, who wrote his note soon after the advice was given.

When asked what the difference was between the phone evidence and the sensitive evidence, Mr Raggatt QC said it was the sensitivity and security of it which made it a different species of disclosure – that made the process more complex. That was relevant to the context and the management, though not the principle.

In our view, the sensitivity and security of the sensitive material may well have necessitated a PII application, but they should not have affected the obligations of disclosure or the way in which they were complied with.

When asked about paragraphs 108-111 of his first statement, Mr Raggatt QC said that these were drafted by those who were then advising him and signed by him before he knew how the BSB put its case.

We find this part of Mr Raggatt QC's evidence both surprising and implausible. We conclude that these paragraphs were approved by Mr Raggatt QC and written on his instructions. He signed the statement.

In his evidence Mr Raggatt QC went on to explain the non-disclosure at that time as follows:

> "I don't think I ever got to a final position. The decision was 'for the time being' because of various competing factors. The most important was the timing of that disclosure because of the sensitive circumstances in which the disclosure had to be managed. The circumstances were sensitive because of the ongoing operation which was highly sensitive. The decision to postpone a decision may have been influenced by the ongoing operation.
>
> I was given the impression that lives could be endangered if a wrong step was taken which affected the ongoing operation. That is the impression I now have based on the material we now have, which is obviously incomplete.
>
> He later added that this was a "reconstruction and speculation at best". It was "teamwork and consultation". "You have to take into account ongoing police operations". "I advised the CPS. I was the head of the team. I hope I was respected. I am keen on consensus."

In our view Mr Raggatt QC was not entitled to reach that decision nor to give the advice that he did. He departed from the rules which govern disclosure when he was not entitled to do so.

When it was put to Mr Raggatt QC that the obligation was to deal with disclosure as soon as reasonably practicable, he said:

> "A premature application would be folly because there may not have been a complete picture. It may impact on all sorts of things, of which the ongoing operation is only one".

Mr Raggatt QC made it clear that the sensitive evidence would not be ever-present in his mind because there are other cases and "things happen in one's life".

However, he did not disagree with the proposition that, assuming that MV was right about the times, the jury were entitled to know that Conrad Jones could not have been at the meeting before 3.30pm.

In the context of trial 1 Mr Raggatt QC did not agree that it was incumbent on him to undertake a review after MV came up to proof. He said the state of things was chaotic once defence counsel was sacked and no one could foresee what would happen next.

Later, Mr Raggatt QC did agree that "in a perfect world", if he had decided that his decision should be subject to review, it was then incumbent on him to ensure that a review does take place.

In his evidence in relation to charge 4, Mr Raggatt QC made it clear that at the time of his intervention the sensitive evidence was not in his mind. If it had been, "it is unlikely that I would have made that point". When it was then put to him that he should have had it in mind throughout the trials he did not agree.

It was put to Mr Raggatt QC that the failure to disclose or make a PII application prejudiced the administration of justice. He responded that "the conviction was quashed and that is all one can say". He later added "It resulted in a very guilty man getting away with something. It is a conviction that I believed at the time was a proper conviction that was quashed". "I don't dissent from what they found. I thought at the time that Jones had a fair trial".

We do not agree. The failure to disclose or make a PII application resulted in an unfair trial. It resulted in prejudice to the administration of justice. Conrad Jones was a victim of a miscarriage of justice in relation to that allegation.

Findings

Charge 2

We have concluded that charge 2 is proved. From the entire course of conduct of Mr Raggatt QC, which includes justifications for non-disclosure and failure to disclose or make a PII application throughout, we conclude that Mr Raggatt QC decided not to make a PII application in relation to the sensitive material relating to events and Conrad Jones's location on the 1 and 2 June 2006. There is no other conclusion that we could arrive at which is consistent with this long course of conduct. It follows that we are sure, consistent with the burden and standard of proof required in relation to charge 2 which is subject to the criminal burden and standard that charge 2 is proved, not only in respect of the advice given but also the decision which we are sure he made.

In April 2005 the Attorney General issued new guidelines on the disclosure of unused material. The Foreword to the Guidelines stated:

> Disclosure is one of the most important issues in the criminal justice system and the application of proper and fair disclosure is a vital component of a fair criminal justice system. The "golden rule" is that fairness requires full disclosure should be made of all material held by the prosecution that weakens its case or strengthens that of the defence.

In R v H [2004] 2 AC 134, the House of Lords considered the principles in relation to PII applications. Lord Bingham, giving the opinion of the Committee, stated:

> Fairness ordinarily requires that any material held by the prosecution which weakens its case or strengthens that of the defendant, if not relied on as part of its formal case against the defendant, should be disclosed to the defence. Bitter experience has shown that miscarriages of justice may occur where such material is withheld from disclosure. The golden rule is that full disclosure of such material should be made.

The failure to disclose, in this case, or adopt the alternative course of a PII application leading to an appropriate admission, led to a miscarriage of justice. The Court of Appeal, in July 2014, quashed Conrad Jones's conviction as a consequence of the non-disclosure.

In Walker v. BSB, 29 September 2013, Sir Anthony May said at paragraph 11 "…the concept of professional misconduct across the professions are not to be applied for trivial lapses and, on the

contrary, only arise if the misconduct is properly regarded as serious". Further, at paragraph 16 it is said "…the concept of professional misconduct carries resounding overtones of seriousness, reprehensible conduct which cannot extend to the trivial".

The non-disclosure in this case deprived Conrad Jones of a fair trial in relation to the allegation that there was a second meeting with MV at Nottingham Railway station. The conduct of Mr Raggatt QC was prejudicial to the administration of justice.

Charge 4

In relation to charge 4, we have concluded that Mr Raggatt QC's evidence that at the time of the intervention he did not have the sensitive material in mind is probably true.

In assessing Mr Raggatt QC's credibility, and the likelihood that he would knowingly or recklessly mislead the Court, we have borne in mind his character, as we did throughout these proceedings and in considering all the charges he faces.

His character is described in the many outstanding references before us from highly distinguished referees.

He is a man who has truly scaled the heights of the profession – as a QC, a Recorder, a Head of Chambers, a Bencher of the Inner Temple and a highly respected practitioner over many years at the Bar.

The BSB do not suggest that he knowingly misled the court but that he was reckless because he ought to have had the sensitive in mind.

In order to prove recklessness, the BSB would have to establish that at the time Mr Raggatt QC had a doubt, however slight, whether what he was saying was true but chose to say it regardless. He would have to be indifferent whether what he is saying is true.

Mr Raggatt QC said in evidence "if the sensitive material had been in my mind, it is unlikely that I would have made that point…I don't believe I had the sensitive evidence in mind at the time".

We have accepted that evidence and concluded that it is not proved that Mr Raggatt QC recklessly misled the Court at the time he made the intervention and accordingly charge 4 is dismissed.

Charge 5

We have found Charge 5 proved to the criminal burden and standard on the basis that Mr Raggatt QC ought to have had the sensitive evidence in mind because he clearly had a duty to review the decision not to disclose the sensitive material and not to make a PII application in respect of it. Mr Raggatt QC had also indicated that he would review his decision.

We had regard to the transcript when Mr Raggatt QC, in the absence of the Jury, stated to HHJ Orme:

> "A moment or two ago my learned friend put a proposition to the witness in relation to 991 that the witness might be thought to acknowledge. Even if she is actually acknowledging it because she understands it fully, which I beg to doubt, the fact is we don't accept that it's a valid proposition. The proposition concerns the following: a gap in time on 2nd June between just after half-past-one and just after three o'clock when 991 neither makes nor receives any call or message of any description. The proposition was that there wasn't time then for 991 to travel to or from Nottingham I don't accept that that's a valid proposition for a number of reasons. There's absolutely no evidence about what the train times were on that given day, that I am aware of, and I think no means of checking it. Secondly, the cell site material in relation to the particular cell itself gives no indication of its coverage and the extent of its coverage, or where within the coverage radius that might have been, even if it was. And that is of course on the assumption that the phone was in the exclusive possession of Miss Vervoort that day, but that's another matter altogether. I don't want the witness to be thought to be acknowledging something which I would respectfully submit is frankly based upon highly doubtful supposition, and I think that ought to be made clear to her at some point".

Mr Raggatt QC therefore refused to concede that there was not sufficient time for the telephone 991 to travel from Nottingham between the two telephone calls at 1:30pm and just after 3pm respectively. He also refused to concede that the meeting could not have taken place between those times in Nottingham. We have taken into account the evidence that Mr Raggatt QC has given about that, and we accept that at that time he would not have been thinking about the sensitive material. However, we have come to the conclusion so that we are sure of it that at that time he ought to have known of the fact the prosecution had in its possession sensitive material which showed that Conrad Jones was in Coventry on 2 June until 2:25pm, and therefore given that it is approximately 53 miles between Nottingham and Coventry, the meeting could not have taken place in Nottingham on 2 June between 1:30pm and 3pm.

In the context of his failure to disclose the sensitive material, this failure to assist the court becomes more significant because neither the judge he was addressing, nor defence counsel knew of the existence of the sensitive material and therefore were in no position to correct what Mr Raggatt QC had said or to remind him of any aspect of that material.

147. Having delivered their decision and reasons, the Panel indicated that they would adjourn for lunch.

148. At 14:30 the hearing resumed. Mr Campbell QC indicated that there were no previous findings against TRQC, and that there were no sanctions guidelines in place at the time to which the charges relate. Looking at the present guidance, however, is helpful.

149. Panel asks whether charge 5 could be seen as an aggravating factor to Charge 2? Mr Campbell QC says that this is possible. Noted it is important to have regard to principle of totality. Need to ensure against double counting by not considering something within both setting the category and as an aggravating factor.

150. It was discussed whether the fact that there had been a Goodyear indication on the very charges now found proved had any effect on the decision on sanction.

151. Mr McPherson QC noted that he would be submitting that a suspension would be inappropriate in any event, and therefore it was premature to consider when a period of suspension would bite. He was concerned that the Panel were progressing on the basis that there would be a suspension, and that this was inappropriate.

152. There was then protracted discussion between Mr McPherson QC and the Chair as to whether it was appropriate for the Panel to consider TRQC's ongoing commitments in considering fixing the sanction, and when that should be done.

153. Mr McPherson QC explained that TRQC was currently on day 3 of a serious trial in Teesside CC before Lavender J. Due to conclude on Friday 8th April. Next trial commitment is on Friday 13th May 2022, which is in his diary as a sentencing hearing – infer, but cannot tell you for sure, that the reason for that sentencing commitment is because TRQC has had an ongoing involvement in those matters. On Monday 16th May, 2 week trial in Reading CC in diary as a murder. On Friday 17th June, hearing in Kingston CC, there as a sentence following trial – infer but cannot tell you with certainty that he is engaged to do that sentencing hearing as he has previously done the trial. Short 2 day trial 2nd and 3rd August – relating to road traffic, but details unknown. 7 day trial in Leeds CC in September – that is in his diary as his retrial – infer but cannot be sure that he had

involvement in the first trial. That is a very serious sexual offence. Monday 26th September, he begins a murder trial in Leicester CC listed to last for just over 11 weeks.

154. Panel retires to consider whether they should proceed to hear mitigation today. I gave them advice on rE221, rE225-33 and also that Mr Raggatt had been entitled to continue to accept new work as he had not been under interim practising restrictions.

155. When the hearing resumed, the parties were told of the advice given in retirement. Mr Campbell QC concluded his submission by making an application for costs in the sum of £21,120, as set out in the schedule provided to the parties.

156. Version 6 of sanctions' guidance. Appropriate sanction will be a reprimand and fine. Suspension wholly inappropriate on version 6 of the guidance. Submissions on general methodology. Reminder that the sanction is not meant to be punitive as a purpose, though may be collaterally so. Argues that no words of advice are needed as there is no suggestion that TRQC is in any doubt about what the correct behaviour is going forwards. A reprimand would be appropriate, as it is not a trivial response. The fact of a finding is itself a significant sanction – it imposes reporting obligations in applications for judicial office etc.

157. Looking at fines – look at 6.18. To suspend, you need to decide that TRQC poses an ongoing risk to the public through a risk of repetition. That is not the case here. Any fine will be paid by TRQC – it will impact him directly. It will not be paid by an insurer.

158. The guidance on suspension is at pg 26. 6.35 is the most important aspect – it is a public protection sanction requiring you to find ongoing risk to the public. In 2022, 15 years later after the conduct that is the part of the charges. Due to TRQC's age (72) any suspension will be tantamount to disbarment, even a short one.

159. When Goodyear given, Version 6 of the Sanctions' Guidance was not in force – you were working from Version 5 which was the version in force last July. Pg 22 of Version 5 – heading suspension from practice (all Panel have that version available). Trigger for suspension is only pulled if you conclude that in 2022 TRQC represents an ongoing risk to the public.

160. Chair asks about pg 53 – where failing to comply with duties of disclosure is included where, subject to harm/seriousness, suspension is an indicative sanction? Mr McPherson QC accepts that there will be cases where these is an ongoing risk to the public in cases of failure to disclose but argues that this is not one of them.

161. Adjourned to 10:00 on Thursday.

162. On Thursday Mr McPherson QC continued his submissions on the sanctions' guidance. Focussing on Sanction Group G, he observed that the breadth of misconduct covered is wide. Considering seriousness, need to look at culpability and harm. Within the box can see certain factors specific to Section G identified as relevant. None apply here. Two specifics within Harm, in addition to Annex 2 factors.

163. Sanctions based on the reasons given. If found TRQC is a risk to the public in 2022, then he must have been a risk to the public since 2006, and yet has been practising unrestricted, permitted by the BSB, and that the character references provided are entirely wrong in their assessment of TRQC. Would be extraordinary to say that there was a risk to the public in 2022. Made clear in Panel's reasons that he does understand the disclosure rules. Can't extrapolate to say that he has a general disrespect for rules.

164. Explanation for the failure was introducing factors into his thinking that he shouldn't have done. He has given some explanations and also struggles to remember. He has always accepted responsibility as the leader of the team here. Role does not necessarily align with responsibility, but he has accepted that it was his.

165. The later arrest of Conrad Jones when he met his solicitor to try to investigate the issue of Peaches and the phone, could not be, in Mr McPherson QC's submission, an aggravating feature against TRQC.

166. Accepts that public confidence will be more dented by this behaviour from a senior barrister, as opposed to a very junior barrister. No impact on vulnerable people. Para 3.32 on pg 11 of sanctions' guidance warns against double counting. Duration of harm is reflected in the sentence that CJ received, which resulted in him spending 6 years

in prison, and remaining on licence until the CACD quashed the conviction on appeal. Compensation has been paid in a civil suit and that means that CJ has been compensated for his wrongful imprisonment, and thus the harm is reduced. Whilst it is not an attractive submission, it is true.

167. Pg 53 – indicative sanctions box. Submission that on the sanctions guidance it is serious, but not at top end of culpability. At best it is a limited harm case and may well conclude it is a moderate harm case. It is not significant, where that means top end.

168. Not upper range as not significant culpability or significant harm. With a massive following wind, I might persuade you that this was a lower range case, but reality is it is top end of lower, or bottom end of medium. Less than significant culpability and harm.

169. Annex 2 – worked through both aggravating and mitigating factors. Mr McPherson QC then moves onto personal mitigation – highlighting the devotion that TRQC has shown to the Bar in general as a Head of Chambers, an advocacy trainer, a Recorder etc. The character references are extensive, and from people who have been told about these proceedings and nonetheless are willing to supply references. There has been a lengthy period time between the happenings and the complaint, and the complaint and the final hearing.

170. Due to TRQC's age, he will not have much, if any opportunity, to continue with work and earn the money to pay off a fine or costs. It will also mean that he doesn't have chance to rehabilitate his image and reputation. The finding alone has been very chastening and represents a fall from a significant height.

171. Charge 5 is a separate failing. The two cohorts of charges (1, 2 and 3, and 4 and 5) were separate. Submissions on the specifics of charge 5.

172. Panel addressed on totality. If fine is the suitable penalty, then the issue of concurrent/consecutive falls away, as two fines would not be disproportionate as relating to two identifiably separate points of conduct. But if a suspension is imposed, then any period should be concurrent, or shortened if consecutive to ensure totality is respected.

173. Costs to be dealt with at the very end after sanction announced.

174. Mr Campbell QC asks to address the Panel on one specific issue: when a suspension is appropriate. Mr McPherson QC expresses reluctance for Mr Campbell QC to make further submissions, but notes that the Panel have a discretion under the regulations in the order of proceedings.

175. Mr Campbell QC addresses Panel on guidance on when suspension will be appropriate. Both parties agree version 6 is the correct one. BSB say guidance should be considered as a whole – when considering meaning of any one paragraph need to do so in context of guidance as a whole.

176. Chair asks about pg. 26 and pg. 4 cross-referencing; the purposes of sanctions are said to be protecting the public and consumers of legal services, maintaining public confidence and trust in the profession, maintaining high standards of behaviour and acting as a deterrent. Arguable that each of these is intended to prevent risk to the public?

177. Discussion about the distinction between fines and suspensions, and when each is available. Agreed between counsel that a fine does not denote misconduct as not being serious.

178. To be adjourned part heard to a new date. Chair will be turning 75 on June 5th; asks for any objections to his continuing. Any issues with the new dates to be notified by 22nd April if any point to be taken.

179. Advocates and clerk consider possible relevant legislation – seems likely that ss26 and 27 of the Judicial Pensions and Retirement Act 1993.

180. Panel return and explain that if there are to be any concerns then alternative dates will be secured to ensure that this matter can conclude before the Judge turns 75.

181. Direction made that if either party considers there to be a difficulty in the Panel, as presently constituted, continuing in these proceedings after 5th June, they shall notify BTAS by 29th April 2022.

182. After the hearing concluded, it was established that it would not be possible for the Judge to continue to sit on this case after 5th June. With the agreement of all the parties, the hearing to hand down sanction and determine costs was moved to 2nd June 2022.

Sanction and Reasons

183. On the 2nd June 2022, with all parties remote, the Panel handed down the following decision on sanction:

We note that version 6 of the Sanctions Guidance came into force on the 1st of January 2022 and is applicable to all sanction decisions on or after that date regardless of when the proved misconduct occurred or when the finding of misconduct was made.

Purpose of Sanctions

The purposes of sanctions are as follows: protecting the public and consumers of legal services, maintaining public confidence and trust in the profession, maintaining and promoting high standards of behaviour and performance, and acting as a deterrent to the individual barrister, as well as the wider profession, from engaging in the misconduct subject to sanction.

Sanctions should not be imposed to punish. They may well have a punitive effect, but they are only to be imposed to meet the purposes as set out above. Any sanction imposed should be proportionate, weighing the interests of the public with those of the practitioner. The approach to taking sanctioning decisions is set out on page 6 of the guidance under the sub-heading "methodology", and we have followed this approach. We have borne in mind throughout the purpose of any sanction that we were to impose.

Group G: Administration of Justice

For the purposes of sanction, these matters come under group G Administration of Justice.

Step 1 requires us to identify the misconduct which is failure to comply with duties of disclosure.

Under Step 2 we have to consider culpability and harm, and that is set out at page 74 of the guidance.

Culpability

In our view the misconduct was intentional and the motivation for the misconduct was that Mr Raggatt QC took into account in failing to make the necessary disclosure an ongoing police operation and the possibility of potential danger to people arising from the required disclosure.

This was undoubtedly a course of conduct in which the failure to disclose occurred repeatedly, both prior to and during three trials.

Mr Raggatt QC was the leader of the prosecution team and in that sense, he took a leading role in the decision that was made.

The harm which resulted consisted of a long sentence imposed for the offence after conviction. Accordingly, that harm could have reasonably been foreseen.

Harm

The actual harm caused in this case was a 12-year custodial sentence of which 6 years were served in custody followed by a period on licence for the remainder of the term.

The impact on the public confidence in the legal profession is very real because the entire process was unfair in relation to the trial and sentence.

It clearly follows that the misconduct resulted in an adverse impact on the administration of justice. We bear in mind the danger of double counting when the misconduct group is itself concerned with the administration of justice.

The injustice had to be remedied by a number of hearings in the Court of Appeal where convictions were quashed. The duration of the harm was clearly very extended because it last over the entire period of the sentence.

Bearing in mind the culpability and harm factors set out above we have come to the conclusion that the seriousness of the misconduct is in the upper range (significant culpability and significant harm) under Step 3, and the indicative sanctions is a suspension of over 12 months.

Aggravating and Mitigating Factors

We then move to Step 4 to consider the aggravating and mitigating factors. Under aggravating factors, we found the following present: a lack of remorse, a lack of insight shown by a barrister with a high level of experience. Throughout Mr Raggatt QC has sought to justify his conduct and even to minimise the miscarriage of justice which resulted.

In relation to mitigating factors we found the following present: co-operation with the investigation, including Mr Raggatt QC having provided substantial documentation to the BSB. The misconduct is unlikely to be repeated, and above all, Mr Raggatt QC's good character and highly exceptional references provided by senior members of the judiciary and the profession.

In respect of the character evidence, we bear in mind paragraph 4.7 of the guidance - that a person of good character and impeccable reputation can still commit breaches which are serious and therefore warrant a serious sanction.

Sanction

The conclusion we have come to is that bearing in mind the points in mitigation referred to above, and particularly the highly exceptional character references, we are able to limit the period of suspension to 12 months. Without the mitigation we would undoubtedly have imposed a period of over 12 months in accordance with the indicative sanction for the upper range of seriousness.

Charge 5 deals with an occasion during one of the trials where Mr Raggatt QC failed to assist the court when he knew or ought to have known that the prosecution had in its possession the relevant sensitive material. Bearing in mind that we found charge 5 proved on the basis that Mr Raggatt QC ought to have known about the sensitive material at that particular time, the appropriate sanction is one of 3-month suspension. In accordance with the principle of totality (Step 5) that sanction will run concurrently with the suspension of 12 months imposed on charge 2.

It was submitted before us by Mr McPherson QC that before we could order a suspension, we would have to make a finding that Mr Raggatt QC is an ongoing risk to the public. It was pointed out that Mr Raggatt QC is now 72 years of age, he has been practising for 15 years since the trials took place and there are no disciplinary findings against him. We have concluded that we have to follow the guidance in accordance with the step-by-step approach set out in version 6. The purpose of the sanction is not limited in the way that Mr McPherson QC has argued because the sanction is also intended to maintain public confidence and trust in the profession, to maintain and promote high standards of behaviour and performance at the Bar and to act as a deterrent, not only to the individual barrister but also to the wider profession, from engaging in the misconduct which is subject of the sanction.

Mr McPherson QC referred to paragraph 6.35 of the guidance where it is stated "a suspension is a public protection sanction that should only be imposed where there is ongoing risk to the public, which includes clients and/or professional colleagues". We have formed the view that this passage has to be read together with the purposes of sanctions as set out at paragraph 2.2 of the guidance and also with the indicative sanction range which is provided for this particular breach in misconduct group G: Administration of Justice.

It was also submitted that a suspension is tantamount to a disbarment in the case of someone who is now aged 72. We do not accept that. Mr Raggatt QC has a very good practice and may well return to it after the suspension. We have set out in our findings how this matter came to light and the unfortunate fact that it took many years before the particular breach was discovered. One consequence is that Mr Raggatt QC is now much older than he was at the time. We now have to deal not just with the individual but with the particular breach and its level of seriousness in the wider context, in accordance with the purpose of sanction as set out above. For the reasons we have already set out we do not accept that it is possible for us to deal with this failure to disclose in the more lenient way suggested by Mr McPherson QC.

Costs

The BSB had applied for costs in the amount of £22,320. Prior to the final day of the hearing, the parties had agreed that the Respondent would pay costs in the sum of £15,500 + VAT totalling £18,600 to the Bar Standards Board. No date was set as to when those costs should be made. It is usual to allow 28 days following the final hearing date.

Dated: 6th June 2022

RHH Judge Alan Greenwood
Chairman of the Tribunal

The Bar Tribunals & Adjudication Service
9 Gray's Inn Square,
London
WC1R 5JD
T: 020 3432 7350
E: info@tbtas.org.uk

The Council of the Inns of Court. Limited by Guarantee
Company Number: 8804708
Charity Number: 1155640
Registered Office:
9 Gray's Inn Square, London WC1R 5JD