



Neutral Citation Number: [2016] EWHC 2884 (QB)

Case No: A90CF105

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

Cardiff Civil Justice Centre  
2 Park Street, Cardiff, CF10 1ET

Date: 14/11/2016

**Before :**

**MR JUSTICE PHILLIPS**

-----  
**Between :**

**PHILLIP RUDALL**

**- and -**

**Claimant**

**(1) THE CROWN PROSECUTION SERVICE**  
**(2) THE CHIEF CONSTABLE OF SOUTH WALES POLICE**

**Defendants**

-----  
**The Claimant appeared In Person**

**Jonathan Kinnear QC and Claire Palmer (instructed by Government Legal Service ) for the First Defendant**

**Jason Beer QC and Georgina Wolfe (instructed by Weightmans LLP) for the Second Defendant**

Hearing dates: 9 October 2015 and 26 January 2016  
-----

**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
**THE HONOURABLE MR JUSTICE PHILLIPS**

**Mr Justice Phillips :**

1. Between about 2001 and 2013 the claimant (“Mr Rudall”), a solicitor, was the subject of investigation by the second defendant (“the SWP”) and prosecution by the first defendant (“the CPS”) in respect of his alleged involvement in money-laundering and other criminal offences. A search warrant was executed at Mr Rudall’s offices in June 2002. In 2004 he was charged with conspiracy to defraud and perverting the course of justice, but in May 2005, after a Crown Court trial, he was acquitted on all counts. Thereafter the investigation of the suspected money-laundering offences resumed. Mr Rudall was eventually charged with nine such offences in 2010, but those charges were dismissed in 2013 (following transfer to Cardiff Crown Court but before arraignment) for lack of evidence. In July 2013 the CPS notified Mr Rudall that it would not be seeking a voluntary bill of indictment against him.
2. Mr Rudall issued these proceedings on 25 April 2014, contending that, during the above period, the defendants were engaged in an improper operation designed to prevent him practising as a solicitor. His pleaded claims include “misuse of process” (in respect of the search warrant, interpreted by the SWP as an allegation of malicious procurement of that warrant), malicious prosecution (in respect of both the 2004 and 2010 charges), misfeasance in public office and breach of s.6 of the Human Rights Act. Mr Rudall claims damages, including (i) for loss of earnings as a solicitor (his practice diminishing as a result of the first prosecution and ceasing altogether in July 2004) and subsequently as a legal consultant and (ii) for personal injury, including psychological and psychiatric damage.
3. By application notices issued on 11 and 14 September 2015 respectively, the CPS and the SWP each applied to strike out the claims against them or for summary judgment in their favour, each contending that certain of Mr Rudall’s claims are statute-barred and that all of them are legally or factually defective and/or have no real prospect of success.
4. During the initial hearing of the defendants’ applications I raised the question (bearing in mind that Mr Rudall was representing himself and, although a solicitor by qualification, had not practised for several years) of whether Mr Rudall’s factual allegations gave rise to an arguable claim in conspiracy to injure and whether such a plea would meet at least some of the defendants’ objections. I granted Mr Rudall an adjournment to enable him to provide a draft amended pleading and for the parties to consider and address an application for permission to make such an amendment. Mr Rudall duly issued such an application, which was opposed by both defendants at the resumed hearing.

The background facts and essential chronology

(a) Mr Rudall

5. Until he ceased practice as a solicitor in July 2004, Mr Rudall was a sole practitioner, specialising in conveyancing, with an office at 8-10 Caer Street, Swansea.

(b) Martin Royston Evans and Michael Richards

6. Mr Rudall's clients included Martin Roydon Evans ("MRE") and Michael Richards ("MR"), professional criminals who had met each other in Swansea prison in about 1993 when MRE (then known as Martin Wayne Evans) was serving 15 months for conspiracy to obtain property by deception and MR was serving 30 months for counterfeiting bank notes.
7. From about 1997, MRE and MR were suspected of being at the centre of fraudulent Ponzi or pyramid selling schemes, the investigation into their activities being named "Operation Wolfram". It appears that the first fraudulent scheme, operated through the Ostrich Centre Ltd ("OCL") between 1995 and 1996, involved only MRE. Thereafter both MRE and MR were involved in schemes operated by Aurum Marketing Ltd ("Aurum") from 1997 to 1998, Life Club from 2000 to 2001 and the Pocket Money Club in 2000. MRE was also under investigation by the National Crime Squad for involvement in a major drugs and money-laundering conspiracy, the investigation being known as Operation Darwin.
8. In 1999 MR was convicted at Cardiff Crown Court of trading standards offences in relation to Aurum and fined £30,000. Aurum was wound up in May 1999 on the petition of the Secretary of State for Trade and Industry. The question of MR's liability for the cost of the petition went to the Court of Appeal. The Court of Appeal held MR liable for costs of the Secretary of State and of the company, Mummery LJ referring to the finding that the scheme operated by Aurum was a "swindle" and that MR was the controlling force behind it<sup>1</sup>. On 5 August 2000 MR died in a jet-ski accident, leaving a widow, Natalie Richards.
9. MRE and his wife Esther Evans were due to stand trial on 6 March 2000 at Swansea Crown Court on charges of theft and fraudulent trading relating to OCL. In February 2000 MRE absconded to Marbella, Spain, his wife being convicted of the offences in April 2000. MRE was subsequently arrested in France and extradited to this jurisdiction. In 2004 he was convicted of charges arising out of Operation Darwin and sentenced to 21 years' imprisonment for conspiracy to supply cocaine. In 2005 and 2006 he pleaded guilty to the OCL charges and was sentenced to 4 years' imprisonment. In November 2006 MRE agreed to confiscation of £4.8m.

(c) Suspicion falling on Mr Rudall

10. Mr Rudall acted for MRE and MR and/or their companies in a number of transactions related to the schemes, as well as acting for MR in relation to the winding up of Aurum. It also appeared that he was personally close to MRE and MR, the defendants understanding that Mr Rudall had at one point agreed to go to work for MRE in Spain (a suggestion disputed by Mr Rudall) and that he had spoken at MR's funeral. The defendants also understood that, in about June 2001, Mr Rudall and Mrs Richards had commenced a sexual relationship.
11. In July 2001 a meeting took place at the Swansea fraud squad in relation to Aurum, attended by DS Critchley and DC Richard Jones of the SWP, Lawrence Sherrington and David Lyons of the CPS and junior counsel, David Essex Williams. Mr Sherrington's notes record DC Jones' belief that Mr Rudall was assisting MRE in

---

<sup>1</sup> *Re Aurum Marketing Ltd. (In liquidation)* [2000] 2 BCLC 645.

converting cash into assets and that DS Critchley would consider whether to authorise an investigation into Mr Rudall.

12. On 8 January 2002, following a meeting with DS Critchley and DC Jones, Mr Sherrington noted that:

*“Investigations into other people regarding OCL, Aurum, Darwin, eg. Natalie Richards, [MRE], [MR], all seem to lead back to the involvement of Rudall at some point.*

*From what I have been told Rudall appears to be too close to them and it seems to me that an investigation would be justified ...”*

13. In a letter to DS Critchley dated 4 April 2002, Mr Sherrington noted that SWP was now committed to investigating Mr Rudall. The letter further pointed out the issues of legal professional privilege which would arise on the execution of any search warrant and of the manpower which would be needed properly to consider the large amount of material which would be produced.

(d) The search warrant

14. On 30 April 2002 Gregg Taylor QC and Mr Essex Williams provided written advice to the CPS on the appropriate search warrant procedure in relation to Mr Rudall. They advised that:

- i) an application for a warrant should be made to a Justice of the Peace under s.8 of the Police and Criminal Evidence Act 1984 (“PACE”) rather than to a Circuit Judge under s.9;
- ii) although s.8(1)(d) provides that the magistrate issuing the warrant must be satisfied that the material sought does not consist of or include items subject to legal professional privilege, all of the material sought in Mr Rudall’s case related to individuals or companies he was assisting in criminal activities: all the material therefore consisted of *“items held with the intention of furthering a criminal purpose”* within s.10(2) of PACE, which provides that such items are not the subject of privilege.

15. In an internal note dated 8 May 2002 Mr Sherrington expressed doubts about counsel’s advice. He recorded his view that (i) the files to be seized from Mr Rudall’s office might include honest work carried out for the suspects and (ii) peripheral files might well include legally privileged material. He concluded that it could reasonably be anticipated that there might be legally privileged material in the material to be seized, which created a problem for an application under s.8.

16. It appears that Mr Sherrington had a change of mind by 17 May 2002. Following a meeting at Clydach Police Station that day with DS Critchley, DC Jones and Mr Essex Williams, he recorded that an application under s.8 was not only appropriate but was the only route available.

17. On 6 June 2002 DC Jones applied to a Justice at the Swansea Magistrates Court for warrants under s.8 to search (i) Mr Rudall's offices, (ii) a tanning and beauty centre owned by Mrs Richards and (iii) a house where they were believed to live together, all three properties located in Swansea. The warrants were duly issued by a magistrate and executed by the SWP over the course of 7 and 8 June 2002.
18. One of the files seized during the search of Mr Rudall's offices related to a claim which Mrs Richards had brought in the Swansea County Court against John Howard Clarke on 18 July 2001. Mr Rudall was at that point Mrs Richards' solicitor in the proceedings and the file was his firm's litigation file.

(e) Richards v Clarke

19. The file relating to these proceedings was not in evidence before me, but detailed accounts of its contents are set out in numerous notes prepared by the CPS and/or prosecuting counsel. The following history of the proceedings is drawn from those documents.
20. Mrs Richards alleged, in the Particulars of Claim, that in October 2000 she had engaged Mr Clarke, an architectural designer, to undertake a refurbishment of property at 6 Hillcrest, Llangland, Swansea. She claimed to have paid him £34,000 in advance, asserting that it being agreed that the refurbishment would be completed by July 2001. The claim was for the return of £34,000 and interest on the basis that Mr Clarke had failed to perform the contract and was obliged to return the advance payment. Reference was made to a meeting on 30 May 2001 at Mr Rudall's offices at which Mr Clarke was alleged to have admitted receiving the funds and to have undertaken to return them.
21. Mr Clarke, in his Defence, denied that he had agreed to carry out any specific works at 6 Hillcrest or to a set timetable and further denied that he had received £34,000. His case was that he had received only £6,250 from Mrs Richards, that sum being part payment in respect of work previously carried out for her and MR prior to his death. He explained that Mrs Richards had asked Mr Clarke to sell her daughter's car for her and to obtain a cheque for the proceeds (£6,250) payable to himself, in lieu of a cheque for £10,000 she had previously given him on 16 December 2000, but asked him not to cash. Mrs Richards had also given Mr Clarke a locked safety-deposit box to keep for her. Mr Clarke admitted attending the meeting on 30 May 2001, but denied making the admissions alleged.
22. On 31 August 2001 Mr Rudall wrote to the Chief Inspector of the CID at Swansea making a formal complaint of theft and/or obtaining by deception against Mr Clarke and inviting criminal proceedings against him.
23. A few days later, Mrs Richards applied for a freezing order against Mr Clarke. In her affidavit in support, dated 4 September 2001, she maintained that she had paid Mr Clarke about £34,000 in the first week of December 2000, comprising the £6,250 cheque and a further sum in cash in US dollars. The latter, she explained, was brought back by MR from America before his death. Mrs Richards made no mention of the cheque.

24. Mr Rudall also swore an affidavit in support of the application for a freezing order, confirming that at the meeting on 30 May 2001 Mr Clarke had made “clear and open admissions” that he had received about £34,000 partly by cheque and partly by cash.
25. On 6 September 2001 Michelle Valerio, an assistant solicitor employed by Mr Rudall, prepared a further draft affidavit for Mrs Richards based on her instructions. The draft gave a drastically revised account of how and when Mrs Richards had paid monies to Mr Clarke, based on a record Mrs Richards claimed to have kept contemporaneously in a diary. The diary, in which only one page contained writing, listed sterling payments of £5,000 and £8,000 in October 2000, a payment of £6,500 by cheque in December 2000, a payment in dollars equivalent to £13,500 in January 2001 and a further payment in dollars equivalent to £7,000 in February. The total came to £40,000 rather than the £34,000 sought in the Particulars of Claim and set out in her earlier affidavit. Mrs Richards explained in the draft affidavit that the additional sum represented the cost of removing her household effects from Spain to Swansea.
26. It appears that the same day Mr Rudall revised the draft, deleting the paragraphs (13 to 21) which set out the revised account of payments to Mr Clarke and contained references to the diary.
27. On 7 September 2001 the proceedings were transferred to the Chancery Division of the High Court. The same day HHJ Moseley QC, sitting as a Deputy Judge of the High Court, granted an order freezing Mr Clarke’s assets up to £50,000, but also ordering Mrs Richards to place £30,000 with Mr Rudall as security for her undertaking in damages.
28. On 11 September 2001 Ms Valerio signed a witness statement in support of an application for summary judgment against Mr Clarke. I have not seen an account of how that application was resolved, but it is clear that it did not result in judgment being granted as the case was listed for trial on 23 September 2002.
29. The diary was not disclosed to Mr Clarke in the context of the freezing order, the summary judgment application or otherwise.
30. On 10 August 2002 Mr Rudall wrote to Mr Clarke’s solicitors withdrawing the claim for the amount paid by cheque (£6,250), limiting the claim to the £27,750 alleged to have been paid to Mr Clarke in cash.
31. On 12 August 2002 Mr Clarke signed a witness statement in support of an application for the claim to be stayed, relying on the execution of the search warrant at Mr Rudall’s premises on 7 June, the criminal convictions of MR and the fact that Mr Rudall and Mrs Richards appeared to be in a relationship. Mr Clarke also explained that the safety-deposit box given to him by Mrs Richards had been opened by the police and found to contain only an empty jewellery box and a paper receipt. The receipt evidenced the exchange of US\$8,000 into sterling and, on the back, noted “24/11/00 £5,000 HOWA”. The suggestion was that this demonstrated that Mr Rudall and Mrs Richards had set out to “frame” Mr Clarke from the outset and that Mrs Richards would in due course have “recollected” the safety-deposit box and receipt.
32. At that point Mr Rudall ceased to act for Mrs Richards, the case being passed to another firm and handled by a solicitor named Andrew Stephens. The application for

a stay was resisted at a hearing on 19 August 2002 and was dismissed on the basis of the contention that Mr Rudall was not himself under investigation.

33. However, a subsequent application by Mr Clarke to adjourn the trial was supported by a statement from DS Critchley and was successful. A stay of the claim was granted in October 2003. At some point thereafter Mr Rudall came back on the record for Mrs Richards.
34. The remainder of the claim against Mr Clarke was withdrawn in about April 2004, subject to argument about costs.

(f) The Wolfram II investigation and prosecution

35. It appears that, following the execution of the search warrants, the SWP and the CPS switched their primary focus from suspected money-laundering by Mr Rudall and Mrs Richards to the ongoing civil case against Mr Clarke, naming this investigation “Wolfram II”.
36. Initially the prosecution team was sceptical as to the prospects of proving that Mrs Richards’ claim against Mr Clarke was fraudulent, focusing primarily on Mr Rudall’s allegedly false statement to the court on 19 August 2002 that he was not personally under investigation. In a note of a meeting of the prosecution team on 13 May 2003, Mr Sherrington recorded the following:

*“It was generally agreed that the case against Ruddall in respect of an alleged attempt to mislead the court appeared to be increasing in strength. The officers would not be ready to deal with Wolfram 1 until at least Christmas time. Therefore a decision had to be made as to what to do with this particular incident, bearing in mind the court hearing was last year and that the longer they waited to interview Ruddall and the Solicitor acting on behalf of him and Natalie Richards, the unfairer it became because of lapse of time. It was generally agreed by everyone present that there would be serious difficulties caused by any attempt on behalf of the prosecution to prosecute Richards/Ruddall for attempting to defraud John Clarke. There were many holes in the story presented and in effect, any prosecution would have to adopt Clarke’s position, turn the case on its head and turn his defence case into the prosecution case. In itself, the civil proceedings do not actually affect what appears to be Ruddall’s attempt along with his solicitor Andrew Stephens to misrepresent the position relating to the Wolfram investigation, to the County Court.”*

37. In a note of a conference held on 21 July 2003, Mr Essex Williams referred to the fact that consideration had been given to disclosing papers relating to Mr Rudall to the Law Society, stating “As has been said on many occasions, he must be stopped practising”.
38. In a review note dated 23 June 2004 Mr Sherrington recognised concerns that a prosecution of Mr Rudall and Mrs Richards in relation to the civil claim depended on

Mr Clarke's version of events being proved and that there were concerns that Mr Clarke might not be a reliable witness. It was noted that his business dealings were "*eccentric and haphazard*" and that he had been in dispute with two other clients concerning fees. It was nevertheless considered that Mr Clarke was honest. Mr Sherrington noted that the case would not even have been investigated or submitted for consideration of a prosecution if it had just been a dispute as to credibility between Mrs Richards and Mr Clarke: it was the existence of the diary and the way it had been used (or not used) that made all the difference.

39. Based on the above review, the CPS brought the following charges against Mr Rudall and Mrs Richards in June 2004:
- i) conspiracy to defraud, alleging that they dishonestly pursued a false claim against Mr Clarke in the civil courts;
  - ii) conspiracy to pervert the course of justice, alleging that they, together with Ms Valerio, concealed the contents of Mrs Richards' diary;
  - iii) perverting the course of justice, namely, in making the criminal complaint filed by Mr Rudall on 31 August 2001.

No charge was brought in relation to the allegation that Mr Rudall misled the court on 19 August 2002.

40. All three defendants were arraigned on 19 November 2004 and entered Not Guilty pleas. Mr Taylor noted that, out of court, the defence had asked whether there were documents which might indicate an "animus" towards Mr Rudall, stating "*The implication is that the officers have been over-zealous in chasing after [Mr Rudall] and have developed Wolfram II in an excess of enthusiasm*".
41. The trial commenced on 11 April 2005 with a time estimate of 4 to 5 weeks. A week before, the defence had applied to exclude all material recovered by the SWP in executing the search warrant at Mr Rudall's offices on the grounds that the search warrant was unlawful. The application was determined on the first day of the trial. The primary argument was that the application for the warrant should not have been made to a magistrate pursuant to s. 8 of PACE, but should have been made under section 9 to a Circuit Judge.
42. HHJ Denyer QC rejected the application, noting that no challenge had been made to the warrant at the time, whether by judicial review or a civil action for damages and that there was no evidence that the magistrate failed to bend his mind to the problem of whether the material to be searched included privileged material. The Judge accepted that the *Richards v Clarke* file did contain material which was subject to legal professional privilege, but held that the fact that it was wrongly seized did not make the whole search illegal. He concluded that the search was lawful, albeit that the police should probably not have seized the *Richards v Clarke* file: once the file was seized, a court would have been entitled to look at the file to see whether the fraud exception applied so as to remove legal professional privilege. Even if the search had been unlawful, HHJ Denyer QC would not have excluded the material under section 78 of PACE.



43. At the conclusion of the trial on 20 May 2005 Mr Rudall and the other defendants were unanimously acquitted of all charges by the jury.

(g) The resumption of the Wolfram I investigation

44. It seems that, having failed to obtain a conviction in respect of Wolfram II, the SWP and the CPS returned to consider money-laundering allegations against Mr Rudall and Mrs Richards in 2006, some four years after the search warrant was executed. At some point two of the police officers involved in the investigation retired from the SWP, but continued to work on the case as consultants.
45. In a 1<sup>st</sup> Case Management Plan dated 7 August 2006, Mr Taylor QC expressed the view that the Wolfram II prosecution had been unsuccessful in the end because Mr Clarke *“the main prosecution witness, proved to be as shady as the defendants and the evidence became too tainted for a conviction.”* Mr Taylor went on to say that, as a result of his involvement in that case and Operation Darwin, *“I have no doubt whatsoever that Phillip Rudall is a bent solicitor who should not be in practice”*.
46. Mr Rudall was interviewed over a number of days in 2007 in relation to the money-laundering allegations. According to Mr Rudall (and not denied by the defendants), Life Club was only mentioned once, in passing.
47. On 22 June 2009 the case was discussed by the DPP’s Case Management Panel, chaired by the DPP. The panel recommended that the counsel team should consider restricting the case to allegations in relation to proceeds alleged to be derived from fraudulent activities of Life Club. Reference was made to the fact that banking material had been received from Latvia pursuant to letters of request sent in 2002<sup>2</sup> (and that leading counsel had advised that expert evidence be obtained to trace the movements of money disclosed in that material). The panel also referred to the fact that a letter had been sent to Mr Rudall’s and Mrs Richards’ solicitors under the Attorney-General’s Guidelines, inviting discussion on pleas, but that a further letter should be sent setting a deadline of 14 days for response.
48. On 12 August 2009 Mr Taylor and Mr Essex Williams wrote a joint advice, referring to an Indictment containing 13 counts (12 of which related to Life Club) and a Prosecution Statement, both of which they had prepared with a view to being sent to Mr Rudall’s and Mrs Richards’ solicitors. Counsel expressed doubt that the defence would contemplate entering pleas on the basis of this material as follows:

*“No solicitor would advise his clients to plead guilty to any of these Counts without having proof that Aurum and Lifecub were frauds. It is true that AML was described as a “swindle” in a different context by the Court of Appeal and that may (with the other evidence available) go some way to prove a fraud. However, Lifecub is a very different entity and we are submitting papers on which 12/13 Counts depend on Lifecub being a fraud without that proof. We have no idea when expert*

---

<sup>2</sup> In fact the relevant of request was sent by the CPS to the Latvian authorities on 18 February 2003, asking for enquiries to be made as to accounts of Life Club at Paritate Bank and for copies of relevant mandates, correspondence and statements.

*Arthur Haverd (if he has been instructed yet) will complete his task but (i) until he does and (ii) assuming he finds evidence of fraud, the Defence will deny that Lifeclub was anything more than a money game or speculation and will always deny that NTR and PR knew it was a fraud ...”*

(h) The Wolfram I Prosecution

49. In the event Mr Rudall and Mrs Richards did not agree to enter any guilty pleas. In due course they were charged with a total of 12 offences of dealing with the proceeds of crime contrary to s.93A(1)(a) and s.93B(1) of the Criminal Justice Act 1988. Two charges were levelled against Mr Rudall alone, three against Mrs Richards alone and seven were brought against them both. All of the proceeds in question were alleged to be traceable to the fraudulent activities of Life Club: no charges were included in respect of Aurum. All the alleged dealings occurred in the period 1999 to 2002.
50. On 30 April 2010 Mr Rudall and Mrs Richards appeared before the Cardiff Magistrates Court and were remanded on bail. On 7 May 2010 Mr Sherrington gave notice of transfer of the case to the Cardiff Crown Court. It was anticipated that the trial of the case would last about six months.
51. The defence indicated that they intended to apply to dismiss the charges on the grounds that they were an abuse. In October 2012 the decision was taken that Mr Sherrington would cease to be the reviewing lawyer on the case and that Mr Taylor would be replaced as leading counsel. Both thereafter provided witness statements explaining the history of the case and the prosecution disclosed its papers, waiving privilege.
52. On 8 April 2013 Mr Rudall and Mrs Richards, who had not yet been arraigned, gave written notice under s.6(2) of the Criminal Justice Act 1987 that they intended to make an application for the charges against them to be dismissed. After reciting that the prosecution accepted that it had to prove, as a starting point, that Life Club was a fraudulent Ponzi scheme, the application submitted:
  - i) that the sole evidence relied upon to prove that Life Club was a fraud was an expert accountant report by a Mr Djanogly, expressing opinions on the contents of a CD-Rom identified as exhibit TE/91;
  - ii) that, although the prosecution asserted that TE/91 contained records maintained by Paritate Bank in Latvia, there was no evidence to establish that fact. All that was in evidence was that a disc had been given to DC Eynon in about 2004, but there was no evidence as to its provenance, the subsequent chain of custody or how it had been used or interrogated;<sup>3</sup>
  - iii) that analysis on which Mr Djanogly relied had in fact been performed by a previous expert, Mr Luscombe, who had “restructured” the data on the CD-Rom.

---

<sup>3</sup> In fact it is clear that DC Eynon travelled to Latvia in November 2003 and was given material on that occasion.

53. The defendants also referred to the fact that the CD-Rom was labelled “VIBORKA”, meaning “excerpt”.
54. On 2 May 2013 HHJ Parry upheld Mr Rudall’s and Mrs Richards’ application. The Judge held that, even on the prosecution’s case, exhibit TE/91 was an item:
- “a. recovered from a bank that was itself the subject of an investigation by the country’s prosecuting authorities without any explanation as to the nature of that investigation or the personnel involved – indeed whether they played a role in the creation of what is relied upon as TE/91.*
  - b. was obtained, whether at the bank or at the prosecutor’s office, without any enquiry being made or examination made as to how it was created, by whom and on what basis*
  - c. bore the description of being an extract – of what or how extensive, there is no evidence*
  - d. bore no identifying label nor was one given to it and no contemporaneous statement was made as to its transmission and subsequent secure keeping.*
  - e. was eventually attributed an exhibit label in 2010*
  - f. had been handled/worked upon by various people, most certainly in 2004 and then again following 2005. No contemporaneous note was made; no audit trail was kept of its use, what exactly was done*
  - g. was most certainly used by one witness instructed by another defendant in quite separate proceedings to generate information that was intended to be supportive of a particular aim which could have included a desire to create the impression that Life Club was a fraudulent enterprise*
  - h. was most certainly used by a second witness instructed by the Crown before the instruction of the witness now relied upon – no contemporaneous note was made or statement taken as to what exactly was “handled” by these witnesses and to what extent*
  - i. the material generated by one of those activities/interrogation is the material upon which the expert upon which the Crown’s case now rely was based.”*
55. The Judge therefore found that, as TE/91 was not admissible, there was insufficient evidence for a jury, properly directed, to conclude that Life Club was a fraudulent Ponzi scheme. There was therefore no case for Mr Rudall and Mrs Richards to answer and the charges against them were dismissed.

56. On 9 July 2013 the DPP's Case Management Panel decided that the prosecution should not seek a voluntary bill of indictment. Mr Rudall and Mrs Richards were duly informed of that decision.

The applications in relation to the existing causes of action

(i) Misuse of process/malicious procurement of the search warrant

57. Mr Rudall's contention in paragraphs 14 and 15 of the Particulars of Claim is that the search warrant in respect of his offices was "unlawful". The particulars he provides are, in essence:

- i) that the Information laid before the magistrate on 6 June 2002 contained untrue statements, in particular (a) that it was suspected that Mr Rudall was linked with conspiracy to traffic drugs and (b) that Mrs Richards was to be part of the case against MRE and she was named on the 24 count indictment against him. Mr Taylor QC acknowledged that the latter assertion was not correct in an Advice he wrote on 21 September 2012 in relation to the abuse application;
- ii) that the material specified in the warrant inevitably contained privileged material, so an application under s.8 of PACE was improper.

58. Mr Rudall also contends, in the same paragraphs, that the seizure of the *Richards v Clarke* file fell outside its scope of the warrant and so was unlawful.

59. The immediate obstacle confronting Mr Rudall is that any cause of action in respect of the search warrant would have accrued, on the face of matters, in June 2002 and so became statute-barred in 2008, almost 6 years before the claim form in these proceedings was issued. The defendants therefore appear to have a clear limitation defence.

60. Mr Rudall's first response to the limitation defence is a contention that the unlawful acts of which he complains were part of a "continuing operation" against him, in some unexplained way preventing the limitation period from running until the "operation" ceased in 2013. I accept the submissions of the defendants that the causes of action alleged by Mr Rudall in respect of the search warrant, to the extent that they are arguable, must have fully accrued in June 2002 and in no sense were "continuing" thereafter.

61. Mr Rudall's second response is that the running of the limitation period was postponed pursuant to s.32 of the Limitation Act 1980, which provides that:

***"Postponement of limitation period in case of fraud, concealment or mistake***

(1) [...] where in the case of any action for which a period of limitation is prescribed by this Act, either ...

- (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or ...

*the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment, or mistake (as the case may be) or could with reasonable diligence have discovered it.”*

62. Mr Rudall contends (in paragraph 40 of his Reply) that the Information, and thereby its falsity, was deliberately concealed from him by the defendants until it was provided in 2012 or 2013. However, it is not clear how or by whom the Information (or any other document) was allegedly concealed, let alone deliberately. On 3 March 2005 the clerk to the Swansea Justices confirmed to Mr Rudall’s solicitors that he held the Information and all other documentation in respect of the search warrant, but would not release it without court order. At a hearing on 11 March 2005 at Cardiff Crown Court, Mr Taylor informed HHJ Denyer QC that the prosecution did not consider that the Information was disclosable. The defence indicated that they would consider making an application, but in the event did not do so, proceeding with the application to exclude the *Richard v Clarke* file on 11 April 2005 without sight of the Information. It is therefore apparent that the Information was not concealed: Mr Rudall and his advisers knew where a copy of the Information was located and how it could be obtained, but chose not to take steps to obtain it.
63. Mr Rudall makes a further complaint as to the alleged non-disclosure of Mr Taylor’s Advice of 21 September 2012, but it is difficult to understand how that can improve his position given that the limitation period had long expired before it was written and, in any event, the point made by Mr Taylor would have been apparent to Mr Rudall had he obtained the Information.
64. No question of extending the limitation period can arise in relation to the seizure of the *Richards v Clarke* file: Mr Rudall knew all the facts in relation to that aspect of the matter, as demonstrated by his argument before HHJ Denyer QC in April 2005.
65. It follows that the defendants have an unanswerable limitation defence to the claims relating to the search warrant, and so are entitled to summary judgment in their favour in relation to those claims, or an order striking them out, on that ground alone. But in any event, those claims, as pleaded, are seriously and substantively defective for reasons advanced by Mr Beer QC, counsel for the SWP, and adopted by the CPS. Given my conclusion on the question of limitation above, I can summarise those reasons briefly as follows:
  - i) As Mr Rudall himself pleads in paragraph 13 of the Particulars of Claim, the elements of the tort of malicious procurement of a search warrant include (a) that there was a lack of reasonable or probable cause for making the application (namely, “*that the defendant lacked any bona fide belief that he or she was placing before the issuing judge material sufficient to meet the conditions for the issue of the warrant sought*”: *Gibbs v Rea* [1998] AC 786 HL) and (b) that the application was made maliciously. However, Mr Rudall simply does not plead either element in his Particulars of Claim, even as a matter of inference.
  - ii) The claim in relation to the execution of the search warrant is barred by s.6 of the Constables’ Protection Act 1750, Mr Rudall having failed to comply with the procedural requirements of that section.

66. Mr Kinnear QC, counsel for the CPS, argued that his client had a further complete answer to Mr Rudall's claims in relation to the search warrant as it was the SWP alone which applied for the search warrant and provided the information on which the application was based. If it had remained relevant, I would have rejected that contention. The CPS was closely involved in advising on and preparing the application and, further, the clerk to the Swansea Justices confirmed that it was Mr Sherrington who made the application on behalf of the SWP. If Mr Rudall had a viable claim against the SWP, I would have found that the CPS was properly joined to the claim as a joint tortfeasor.

(ii) Malicious prosecution 2004-2005

67. As Mr Rudall was acquitted of the Wolfram II charges on 20 May 2005, any cause of action in respect of that prosecution accrued, on the face of matters, on that date and the limitation period expired in May 20011, almost three years before the issue of the claim form in these proceedings. Both defendants advance a limitation defence as the primary ground on which they seek summary disposal of this claim.

68. In response Mr Rudall first argues that the alleged tort was part of a continuing operation, an argument I have already rejected in relation to the search warrant claims.

69. Mr Rudall further asserts that the defendants deliberately concealed facts relevant to his claim, referring in particular (in paragraph 38 of the Reply) to the contemporaneous documents which recorded what Mr Rudall alleges was the malicious purpose of the prosecution, namely, preventing him continuing in practice as a solicitor. He asserts that the failure to disclose those documents until 2013 was deliberate and amounted to concealment. However, the documents in question were advices from counsel, plainly covered by legal professional privilege and therefore not documents which would be considered as disclosable in the ordinary course. There is no basis for the allegation that the CPS was conscious of the potential relevance of the statements, let alone made a deliberate decision to conceal them. Further, there is no reason to believe that the SWP held copies of the relevant documents or was otherwise party to any consideration which may have taken place as to their disclosure.

70. It follows that the defendants have an unanswerable limitation defence to this claim and are accordingly entitled to summary judgment or an order striking it out.

71. Mr Beer further submits that the Particulars of Claim does not even allege two of the essential elements of the cause of action for malicious prosecution namely, (i) a lack of reasonable or probable cause and (ii) malice (see for example *Martin v Watson* [1996] AC 74). I do not accept that contention: paragraph 21 of the Particulars of Claim expressly asserts both of those elements, alleged to be drawn from the detailed particulars and the conclusion sought to be drawn by Mr Rudall that the defendants had manufactured a claim against him.

72. However, whilst Mr Rudall has asserted those essential elements, I accept Mr Kinnear QC's submission on behalf of the CPS (adopted by the SWP) that Mr Rudall has no real prospect of establishing that there was no reasonable or probable cause in relation to the Wolfram II prosecution. In particular:

- i) there was ample evidence, fully considered in Mr Sherrington's review note of 23 June 2004, to give rise to reasonable and probable cause to prosecute Mr Rudall in relation to his undoubtedly dubious conduct of Mrs Richards' claim against Mr Clarke;
- ii) in the event, HHJ Denyer QC allowed the case to go to the jury, demonstrating that it more than passed the reasonable and probable cause test.

73. Mr Beer submitted that his client had a further complete answer to the claim because the CPS (and not the SWP) was the prosecutor and therefore the first element of a claim for malicious prosecution is therefore not made out against the SWP. However, it is clear that the SWP was closely involved, if not the driving force, in the Wolfram II prosecution, not least because meetings of the entire prosecution team, including officers of the SWP, were held at Clydach police station. If Mr Rudall had a viable claim against the CPS, I would have found that the SWP was properly joined to that claim as a joint tortfeasor.

(c) Malicious prosecution 2010-2013

74. The defendants accept that there is no limitation defence to the claim advanced by Mr Rudall in relation to the Wolfram I prosecution.

75. Mr Kinnear submitted that the claim should be summarily dismissed, arguing that Mr Rudall has no real prospect of establishing either a lack of reasonable or probable cause for the prosecution or malice on the part of the CPS (or the SWP). In particular, he pointed to:

- i) the high hurdle a claimant faces in succeeding in a claim for malicious prosecution in a case where the decision to prosecute has been taken by the CPS: see *Clerk & Lindsell* 21<sup>st</sup> ed. para 16-03;
- ii) the fact that the prosecution of Mr Rudall was the subject of detailed consideration by Mr Sherrington in a review note dated 23 January 2009, including a careful review of the evidential test (which resulted in certain charges not being pursued) and recognition of the need to prove that Life Club was a fraud;
- iii) the fact that the prosecution was subject to regular review at the highest level, namely, by the DPP and his Case Management Panel;
- iv) the fact that, after Mr Taylor stood down as leading counsel for the prosecution in 2012, new leading counsel, Brendan Kelly QC, considered it proper to pursue the case and advised, both before and after HHJ Parry's ruling, that the evidence of the provenance of exhibit TE/91 was sufficient to establish a case for Mr Rudall to answer.

76. Those points are no doubt powerful and will present Mr Rudall with significant obstacles in succeeding in his claim at trial. However, in my judgment that claim cannot be dismissed at this stage as having no real prospect of success given the following:

Lack of reasonable or probable cause:

- i) The prosecution ultimately failed by reason of HHJ Parry's finding that there was no evidence to support the basic factual premise of the case against Mr Rudall;
- ii) That lack of evidence was not a last minute problem. The prosecution were relying entirely on material, the CD-Rom, obtained almost 10 years earlier. That material was, on its face, incomplete and of uncertain origin;
- iii) Mr Taylor had advised on 20 May 2008 as follows:  
  
*"The prosecution is acutely aware that what is admissible in the confiscation procedure [against MRE] may not be sufficient to establish guilt of any criminal charges laid against [Mrs Richards] or [Mr Rudall]. We make a fresh start and look to what must be proved under the present criminal evidence rules to the criminal standard of proof. "*
- iv) As HHJ Parry found in his ruling, there was no such fresh start. He further recorded Mr Kelly's concession on behalf of the prosecution that the situation was "a mess" and that "bad practices" had been employed;
- v) It follows that, on the face of the documents, the CPS was acutely aware that the evidence it had might not be sufficient to prosecute Mr Rudall, but proceeded to do so anyway. It took no steps to obtain fresh evidence, but instead proceeded towards a six month trial;
- vi) Not only was the prosecution proceeding on the basis of the evidence that it knew might not be sufficient, but it was also facing an abuse argument, which Mr Kelly advised was a "stronger argument";
- vii) The above factors clearly give rise to an arguable case that the prosecution lacked reasonable and probable cause from the outset and that the CPS knew or suspected that was the case, having been so advised. It may be that the CPS will be able to explain how it came to ignore concerns as to the lack of evidence to prove Life Club fraud, but that is certainly a matter in dispute and an issue suitable for trial;

Bad faith or malice

- viii) The mere fact that the prosecution proceeded for several years without the CPS taking steps to obtain the vital and central evidence it was clearly advised to seek may, in itself, be sufficient to give rise to an arguable inference of bad faith and/or malice;
- ix) Further support for such an inference may be drawn from the fact that the CPS did not consider pursuing Mr Rudall for money-laundering offences until 2006, after he had been acquitted in respect of Wolfram II in May 2005. Mr Rudall's contention is that the CPS's primary and improper motive was to continue to prevent him practising as a solicitor by keeping him under



investigation and subject to prosecution, a contention which may draw some support from the rather unfortunate expressions of opinion in counsel's advices;

- x) Mr Rudall may draw further support from the fact that he was interviewed in 2007 for five days, but not in relation to Life Club, but was subsequently prosecuted solely in relation to allegations that he knew or suspected that monies he dealt with were the proceeds of that scheme and that it was fraudulent;
- xi) Overall, the determination of the CPS, certain counsel and certain officers of the SWP (including those who returned to work on the case after retirement) to pursue Mr Rudall over so many years gives rise to legitimate questions of their motivation, questions which can only be resolved at trial.

77. It follows that I am satisfied that Mr Rudall has an arguable claim for malicious prosecution against the CPS in relation to the 2010 prosecution. Mr Kinnear's arguments to the contrary, despite their force, are in effect an attempt to conduct a mini-trial of the claim on the documents, an exercise in which the court will be astute not to engage: see *Swain v Hillman* [2001] 1 AllR 91, *Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch) para 15 and *A.C. Ward Limited v Catlin Fire Limited* [2009] EWCA Civ 1098 para 24.
78. Mr Beer again submitted that the SWP stood in a different position as it was not the prosecutor. However, it is clear that the SWP remained closely involved in the Wolfram I prosecution, meetings continuing to take place at Clydach police station in at least 2007 and 2008. Further, the SWP was responsible for what HHJ Parry regarded as the possibly "reckless" handling of exhibit TE/91. It is at least arguable that the SWP played a sufficient role in the commission of any tort committed by the CPS to be liable as joint tortfeasor.

(d) Misfeasance in public office

79. The approach of the defendants was that this cause of action faced the same difficulties as those discussed above. Mr Rudall did not advance any separate arguments in relation to it. I am satisfied that the claim for misfeasance in public office should be struck out and/or the subject of summary judgment in favour of the defendants, save in so far as it relates to alleged wrongful conduct of the defendants first giving rise to alleged damage after 25 April 2008.

(e) Claim under s. 6 of the Human Rights Act

80. The approach of the defendants was, again, that this cause of action added nothing to Mr Rudall's other claims and was faced with the further difficulty that the limitation period under s.7(5) of the 1998 Act is only one year, unless the court considers a longer period is equitable in the circumstances. Mr Rudall again did not advance any separate arguments in relation to this cause of action.
81. I am satisfied that there is no basis on which the court would consider extending the limitation period in relation to this claim beyond six years, if at all. The result is that this claim should also be struck out or subject to summary judgment in favour of the

defendants, save in so far as it relates to the alleged wrongful conduct of the defendants allegedly first giving rise to damage after 25 April 2008.

The application to amend to plead claims in conspiracy

82. Mr Rudall applies to amend his Particulars of Claim (and presumably also the claim form) to plead claims against both the CPS and the SWP in (i) conspiracy to injure by unlawful means and (ii) conspiracy to injure by lawful means, requiring proof that the predominant intention was to injure him.
83. Mr Rudall alleges that the conspiracy was continuing from 1997 (although the evidence suggests that he was not under investigation until 2001/2002), but it is clear that the fact that a tort is continuing does not prevent the time running from the moment damage is suffered as a result of each fresh continuance: see *Clerk & Lindsell* 21<sup>st</sup> ed. para 32-08. It follows that the proposed amendments do not assist Mr Rudall in relation to the complaints he makes in relation to the search warrant and the Wolfram II prosecution.
84. However, having found above that Mr Rudall has an arguable case that he was the subject of malicious prosecution in 2010, in respect of which the SWP is properly joined as an alleged joint tortfeasor, I am satisfied that it is also arguable that such conduct was part of a combination between those involved, including those acting on behalf of the SWP. I therefore will permit Mr Rudall to amend his claim to plead a conspiracy to injure by unlawful means, namely, the tort of malicious prosecution, causing him actionable damage in the form of a continued loss of earning. Contrary to the submission of the defendants, it is not necessary for Mr Rudall to plead specifics of when and how the defendants conspired, but only to set out the overt acts from which a combination can be inferred. The allegation may, in the end, add little to the case that the CPS and SWP were joint tortfeasors (see *Clerk v Lindsell* 21<sup>st</sup> ed. para 4-04), but it is one Mr Rudall is entitled to advance.
85. I see no basis, however, for adding a claim that the defendants were engaged in a lawful means conspiracy. If Mr Rudall fails to prove bad faith and malice on the part of the defendants in relation to Wolfram I (and therefore does not prove that the prosecution was unlawful means), it is impossible to see how he could demonstrate that the defendants, whilst pursuing a prosecution in good faith, had a predominant intention to injure him.

Conclusion

86. For the reasons set out above:
  - i) the defendants are entitled to an order striking out and/or granting them summary judgment in respect of Mr Rudall's claims in relation to the search warrant issued in 2002 and the Wolfram II prosecution in 2004-2005;
  - ii) Mr Rudall's claim for malicious prosecution in relation to the Wolfram I prosecution should proceed to trial. He may amend his claim to add a claim of conspiracy to injure by unlawful means in that regard;

- iii) Mr Rudall's claims for misfeasance in public office and his Human Rights claim may proceed in so far as they relate to matters post-dating 25 April 2008.
87. I will hear from the parties as to consequential orders and directions, including issues as to further amendment of the pleadings to reflect and implement the above orders.