IN THE CROWN COURT AT LINCOLN

T20200174

The Castle
Castle Hill
Lincoln
Lincolnshire
LN1 3GA

Friday, 25 September 2020

Before:
HIS PINI HONOUR JUDGE QC

R E G I N A
-v-
MIHAI ADRIAN BIRTU

MR M CRANMER BROWN appeared on behalf of the Prosecution

MR HARDY appeared on behalf of the Defendant (for Rustem Guardian Solicitors)
MR GRATTAGE appeared on behalf of the Defendant (for Bird & Company Solicitors)

APPLICATION TO TRANSFER LEGAL AID
(2.47 pm to 4.34 pm)

Digital transcript of Epiq Europe Ltd
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A

PROCEEDINGS

(2.47 pm)

(The interpreter was affirmed, appearing via videolink)

(The defendant was identified over the videolink)

B JUDGE PINI: Right. Now, let's have a look. Mr Cranmer Brown, you prosecute.

MR CRANMER BROWN: Yes.

JUDGE PINI: Mr Grattage and/or Mr Hardy represent the defendant.

MR HARDY: Yes.

JUDGE PINI: It is an application to transfer legal aid.

C MR CRANMER BROWN: Yes.

JUDGE PINI: I have spent a considerable amount of time, Mr Hardy and Mr Grattage, reading the papers and the bundles that have been uploaded. I want to discuss with counsel what this court can do and what it can't do and what are the limitations of this

D hearing.

I am, effectively, being asked -- it seems to me, at any rate -- to act as a disciplinary court. Well, you shrug your shoulders, Mr Hardy.

Submissions by MR HARDY

MR HARDY: When one says "with respect" it invariably means with no respect. With

E respect, your Honour, that is something that I disagree with because, in my respectful submission, the determination today, whilst it could be couched in those terms, is a very simple decision --

JUDGE PINI: Oh, I know what you are going to say. What you are going to say is: it is

F obvious, because Mr Birtu has signed an authority saying he wants Rustem Guardian to represent him and that really is an end of it.

MR HARDY: No.

JUDGE PINI: All right.

MR HARDY: I wouldn't say that either.

G JUDGE PINI: All right.

MR HARDY: In fact, I would, first of all, like to thank your Honour as someone who is new to this case -- this is I -- for even giving me a locus. Might I also add that I am acutely aware of -- I notice there is nothing being translated. If Mr Birtu is to be in the

H proceedings, I am addressing the court arguably on his behalf, then he ought to know what I am saying.

JUDGE PINI: Interpreters work in different ways, particularly with CVP it becomes even

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more difficult. Where we have a hearing in court, my experience is the interpreters will whisper at the back as we go along. Here, it is much more difficult.

Madam interpreter, would it be agreeable to you if counsel addressed me for, let's say, three or four minutes and then we paused and you then interpret it to Mr Birtu? Or would you prefer to interpret sentence by sentence, as we go along?

THE INTERPRETER: Your Honour, I don't mind if we do it simultaneously. It would not be a problem. I thought it would be a problem for the court, because my voice would be heard in the room all the time.

JUDGE PINI: That's the point. We can't do that, for the reasons I just mentioned. If we have an open court hearing, interpreters, I know, will whisper at the back and I am quite content that they do that. But I think what we are going to do is this, otherwise the proceedings will become too disjunctive. I will pause every three or four minutes and ask you to give Mr Birtu a summary of what has been said, all right?

THE INTERPRETER: All right. Are you happy for me, your Honour, to summarise what has been said?

JUDGE PINI: Yes, please.

THE INTERPRETER: And then it go ahead?

JUDGE PINI: Yes, please.

(The interpreter interprets the proceedings)

THE DEFENDANT: (Through the interpreter). All right. So (inaudible) I understand your English and I am aware of what was being said up until now. I shall ask for clarification from the interpreter when I don't understand what is being said, if this is convenient for you, sir.

JUDGE PINI: That would be more than convenient, it would be ideal.

MR HARDY: Thank you.

JUDGE PINI: So, we will not pause unless you ask me to. Right. Thank you.

MR HARDY: Thank you. Your Honour, because of that polite and helpful interruption, I hope you will forgive me if I quickly repeat the points.

Number one, I am most grateful that your Honour is allowing me on behalf of Rustem Guardian Solicitors to attend as counsel to, in my determination of why we are here, simply ask that your Honour considers this case on its own merits and allows a transfer of legal aid.

I might add that I am acutely aware that up and down the length and breadth of this country, and across it, in every court there are solicitors who are seeking to poach cases and are quite possibly not focused on justice, but focused on remuneration. I am also

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aware that is something which your Honour is alive to in this district.

I also take into account the fact that very often, but not always, a defendant in custody at an embryonic stage will take the first solicitor available and whether or not that solicitor is competent, can strike up a good rapport and is going to maintain a good client relationship, there are those that will come in and try and spoil it. That is unfair on the defendant, any other party connected and clearly unfair to the public purse. I am alive to that, your Honour.

This case, however, I urge your Honour to see outside of that rather murky pond. This sits, regardless of the names, most uncomfortably in my role as counsel, because I would wish to draw your Honour's attention to documentation that strikes at the very heart of these proceedings, but moreover the role any lawyer has when attending a police station at that embryonic stage. A stage when many defendants have not even had their feet touch the ground and place significant reliance on the trust and the reputation and the general complexion, attitude, profile, whatever one wants to call it, of that firm.

I also understand, because I wasn't born yesterday, that there are very strong competing market forces. But I go back to fundamentals and, in fact, I go back to the very beginning of this case and arrest. On that occasion, this particular defendant did not hesitate to contact his twin brother, who in turn contacted the solicitor known to them.

JUDGE PINI: Well, can we pause there?

MR HARDY: Yes.

JUDGE PINI: If we are looking at the detail of it. I just really need your help.

MR HARDY: Thank you.

JUDGE PINI: I have done my very best, I hope accurately, to work my way through the entries in the custody record.

MR HARDY: Yes.

JUDGE PINI: Because the way the custody record is divided into rights section, bail section, charge section --

MR HARDY: Yes.

JUDGE PINI: -- interview section. One sees elements of repetition. This is the area -- there are two areas in particular where I need your help, that I don't want us to lose sight of, Mr Hardy.

MR HARDY: No.

JUDGE PINI: I do have concerns -- and I will hear Mr Grattage in a moment on this, before we go much further -- as to whether I am, in fact, being invited to come to a conclusion that one firm or another has not acted properly. You know full well, you have seen, I have

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never seen it before. But we have now got in Bird & Co's response the most trenchant observations that I certainly have ever seen made by one solicitor against another, where they say in terms this is nothing short of touting and --

MR HARDY: It is unseemly.

JUDGE PINI: Well, let me just finish, please. The assertion that there is no retrievable breakdown is, at least, fanciful and, at worst, untruthful and fabricated. They plainly suspect Eva Predics has tipped off Rustem Guardian and the whole thing concludes, as you will know, with the Facebook post by Mr Wild.

Well, the point is I have to decide: has there been an irretrievable breakdown in the relationship? Why there has been, if there has been, is not for me to determine. But it does seem -- well, unless you want to submit to the contrary.

What I don't think is right is this: that it is not for this court, it seems to me, to hear evidence and to act as the SRA, effectively, and make disciplinary findings of a highly serious nature.

MR HARDY: Quite right.

JUDGE PINI: And I am not aware, unless you are, of any case in which, on an application to transfer legal aid, a court has been asked to make a finding of fact as to whether the firm seeking the transfer was acting dishonestly or fabricating or being untruthful, or whatever phrase you want to use.

MR HARDY: Fact finding is not sought by me.

JUDGE PINI: No. But the difficulty is that it is raised plainly on the face of these papers.

MR HARDY: I can deal with it in a more Delphic -- not Delphic, but I can certainly deal with it --

JUDGE PINI: Well, I am not having Delphic submissions. I want clear submissions.

MR HARDY: Yes. Certainly.

JUDGE PINI: That is my concern. The other aspect to it is this. If the view is that the court has got to look into all aspects of this, the witness statements from Mr Konash(?) the former client, from Madelina, from the brother, Florian, are noticeably silent on timings when they were contacted. That is quite noticeable.

We would need witness statements from Rachel Newcombe, Stuart Wild, Sergeant Jones, Sergeant Robinson and Eva Predics and we would need a mobile phone printout of Eva Predics' phone, if we are going to go down that route.

So, just before we do, let me raise this with you which is a concern --

MR HARDY: I don't think that is necessary, your Honour. I interceded to allay your Honour's fears.

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JUDGE PINI: Well, I will hear from Mr Grattage on that point in a moment. Because I want to know, from the parties, what form this hearing is taking.

MR HARDY: Your Honour, I certainly do not want to be Delphic. That is probably the wrong word to use. I don't want to even encourage a final determination of fact where there is a winner and a loser; there is someone at fault and there is someone who is holier than thou. That is not --

JUDGE PINI: There is a prior question. On a transfer of legal aid, or application of the transfer of legal aid, is it the court's -- this court or any court's -- function to make findings of fact on --

MR HARDY: Yes.

JUDGE PINI: Sorry, I had not finished the sentence. Of course, the court has to make a finding of fact on whether there has been an irretrievable breakdown. That is the issue.

MR HARDY: That is the issue.

JUDGE PINI: But is it, on what I have got here, the allegation of a highly serious nature from one solicitor flowing to another. Is it suggested that I should look into all of that and make findings of fact as to all of these?

MR HARDY: First, I don't regard the material to which I wish to refer your Honour as or entirely necessary to determine the truth or otherwise of. What I submit without even referring to the truth of the contents of any statement, is something much more fundamental. It is this: there are clear entries on the custody record that show at page 27 that the brother was called by the defendant --

JUDGE PINI: What time? I can tell you the time: 8.20.

MR HARDY: The time was 13.01.

JUDGE PINI: Oh, no. That is on the 30th.

MR HARDY: Yes.

JUDGE PINI: You will find it is 1.06 pm, actually. Here is my puzzle, Mr Hardy, here is my puzzle.

MR HARDY: Yes.

JUDGE PINI: Here is my puzzle. On the 29th at 7.06 pm, Mr Birtu went to the custody desk where he tried to call his brother, but the number provided did not connect. One and a half hours later at 8.11 pm, Sergeant Jones received direct to his personal email, Robert Jones, an email from Mr Rustem:

> "We have been instructed to assist Mr Mihai Adrian by his family. I understand he has been charged, remanded to appear at magistrates' court. I would be grateful if you could call me."

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Then he gives a number. Now, the first successful call, as far as I can judge from the custody record, that this defendant made to the outside world was after that email at 8.20. 9 pm, Sergeant Robinson was informed by Sergeant Jones of the email from Mr Rustem. The defendant, and it appears Bird & Co, were informed of that. The defendant made clear at that point that he wished to continue to be represented by Bird & Co while he was in custody. He, again, asked to speak to his brother and Sergeant Robinson, as you will have seen, there is an extract from an email -- sorry, not an extract, the whole email that Craig Robinson sent to Rachel Newcombe.

So, there is my first puzzle. If I have the custody record right -- and I may not have done -- but if the first call that this defendant made to the outside world was 8.20, the question is clearly posed: how was contact made by Mr Rustem at 8.11? Which is why I am concerned about how this connection came about.

Now, I appreciate you have the statements from the three witnesses and I have looked at those in some detail. Mr Birtu, in the reasons given in the notice of application, says as soon as he was arrested, he asked his family to find him a lawyer. In fact, that is not quite right. The first contact appears to be 8.20 in the evening. He came into the police station at 9.00-odd in the morning.

We then have the statements of the three witnesses, but none of them make clear when it was on the 29th they were contacted. The connection would have to have been the defendant to Florian, his twin brother, at 8.20. Florian then contacts Madelina. Madelina then contacts Marchous Konash, who was a former client. The recommendation is made by Mr Konash back to Madelina, back to Florian, back to the defendant. But Mr Rustem has been in contact by email before all of that happened.

That is my puzzle and that is why I raise the issue, if I have it right -- and I am quite happy to be told, no, you have got the times wrong -- if I have got it wrong, it leaves wide open that this may turn into a disciplinary hearing and we would need statements, proper statements, from the parties I have named.

If we just pause there. Mr Grattage, can I ask you. I am very concerned about this case and about the form this hearing should take and is taking.

MR GRATTAGE: Yes.

JUDGE PINI: You have heard what I have said.

MR GRATTAGE: Yes.

JUDGE PINI: Is there anything you want to say, at this relatively preliminary stage?

Submissions by MR GRATTAGE

MR GRATTAGE: Your Honour, the issues are as is set out in the regulations. They are that

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your Honour must determine whether there has been a breakdown in the relationship between (inaudible) and the original provider, A. Or, B, that there is some other compelling reason. The application itself, as your Honour has already indicated, was on a basis that Mr Rustem had been requested -- well, the family members had been requested to get a lawyer for the defendant and they got Mr Rustem and somehow that wasn't what happened: Bird & Co were instructed instead.

Therefore, there needs to be a determination by your Honour as to, of course, whether Bird & Co were properly instructed by the authority that your Honour has seen signed by the defendant at the police station, with the good grasp of English that he has had, by the fact that he said to the custody sergeant that he was happy with Bird & Co, to understand whether there is any merit in the application made by Rustem Guardian.

JUDGE PINI: Yes. But Bird & Co's position is, if I understand it correctly -- and correct me, please, if I have this wrong -- the only way Rustem Guardian, or Timor Rustem, could have been introduced in this case is through the offices of Eva Predics, the interpreter. Because Mr Rustem's email is at 8.11 and, as far as I can judge from the custody record -- and I have looked at it exhaustively, if I have missed an entry will someone please tell me -- but the first call that this defendant made to the outside world was at 8.20.

MR GRATTAGE: Yes.

JUDGE PINI: And that --

MR GRATTAGE: Yes [overspeaking]

JUDGE PINI: That was an attempt. It is clear from the custody record that call did not get through. Now, if the first successful contact with the outside world was 8.20, how was it, I ask myself, that Mr Rustem is able to email Sergeant Jones on his personal email directly at 8.11?

MR GRATTAGE: Your Honour, if I can phrase in this way. Your Honour correctly identifies the reason for Bird & Co being suspicious about how Mr Rustem became involved in this case, which they have articulated very strongly and your Honour is right to indicate that. But that is why that suspicion has come about and your Honour can see that from the custody record.

Your Honour, it is right to say that nothing so far as Mr Rustem in his statement or any of the applications has explained that.

JUDGE PINI: He hasn't.

MR GRATTAGE: Indeed, as Mr Hardy just attended to, their submission seems to be focused on the next day when the legal aid order, of course, had already been granted on 13 July. Your Honour, that is the reason for a suspicion, but suspicion is not part of your Honour's

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determination. The determination your Honour is here to make is whether there is a right breakdown in communication between the solicitors and the defendant.

Your Honour will note that the defendant has ticked the box to say he is content for me to interview with him and I am very grateful for that (several inaudible words) our conversations. But your Honour also notes what he agreed with me to (several inaudible words) which was that he had been instructed not to speak to me by his new solicitors.

Your Honour, for those reasons, and your Honour must determine whether there is any valid reason why this solicitor cannot carry on a relationship with this defendant or whether that relationship has broken down, sorry. So far, in our submission, there has been no semblance of that, other than the fact that the defendant refuses to speak to me on instructions by his new solicitor.

JUDGE PINI: Do I have to determine the issue? This is my concern.

MR GRATTAGE: Yes.

JUDGE PINI: Bearing upon the issue of has there been a breakdown, an irretrievable breakdown, in relations, that that has been engineered -- because that is the suggestion -- by Rustems.

MR GRATTAGE: My submission, your Honour, would be that if Rustem Guardian Solicitors persist in this suggestion that there has been a breakdown, on the facts as they are presented before your court, your Honour would be bound to (inaudible) how that breakdown (inaudible) has come about on the facts which are before you.

JUDGE PINI: Then, coming back to right where I started, I am in effect being asked to make a finding of fact as to Rustem Guardian's conduct in this case, aren't I?

MR GRATTAGE: If (several inaudible words) I don't see a way, the request is (several inaudible words).

JUDGE PINI: Well, let me hear Mr Hardy on that.

Mr Hardy, I am very -- I am sorry. Madam interpreter, I am reminded quite rightly, is Mr Birtu able to follow?

THE INTERPRETER: Yes. All right. Mr Birtu is requiring me, sir, to explain to him briefly what you are talking about.

JUDGE PINI: Yes. Please do.

(The interpreter interprets the proceedings)

THE INTERPRETER: Your Honour, are you happy, sir, for me to (several inaudible words) at the police station or --

JUDGE PINI: No, I don't want Mr Birtu to start giving evidence, please. I am sure he is very anxious to, but we are proceeding very cautiously.

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Now, Mr Hardy, what Mr Grattage is saying is that the court does have to determine how the breakdown came about: was it engineered by Rustem Guardian. Because, I suppose, if it was engineered it is not a genuine breakdown.

So, I come back to where I started. Much as one would like to avoid this turning into a full-scale disciplinary hearing, I am very concerned of it being dealt with in that way.

Reply submissions by MR HARDY

MR HARDY: I hear *novus interveniens* now a new point, a new matter, has come about because until I heard from my learned friend, that was not a point that featured in this case.

JUDGE PINI: Well, it screams out from the papers, Mr Hardy, which is why I raised it right at the off.

MR HARDY: That he has been told now, today, on instruction not to speak. That point.

JUDGE PINI: Oh.

MR HARDY: It seems to me, your Honour, that the case -- if it is to be determined on the facts -- will require all of the facts that your Honour alluded to earlier. That means computer print outs, telephone logs, emails, witness statements, possibly video footage from the custody suite.

JUDGE PINI: All to determine a transfer of legal aid?

MR HARDY: If it is to be dealt with fairly and properly.

JUDGE PINI: It is going to take --

MR HARDY: And the suggestion being made is a grave one.

JUDGE PINI: Well, Mr Hardy, please. Can we cut to the chase? If the suggestion being made is a grave one, Bird & Co have said in terms this is touting. It is unprofessional. It is, at best, untruthful and fabricated. That is what it said in their response, their written response, to this application to transfer.

MR HARDY: May I respond to that?

JUDGE PINI: The point is if this is an engineered transfer, then it is not a genuine breakdown in relations. That is the nub of this.

MR HARDY: Yes.

JUDGE PINI: If, on the other hand -- let me just put the other side of the penny -- as Mr Birtu says in his application, to use his exact words so I don't misquote him, he is "unhappy with the whole firm" because one of the questions, as always, is asked, "Is it just the individual, could another person represent you"? "I'm unhappy with the whole firm", says Mr Birtu.

Now, that comes about within a very, very short space of the last of his three interviews, where he has clearly been quite happy with Bird & Co. He is suddenly unhappy with the whole firm.

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So, all my instincts tell me that to turn this into a full-scale disciplinary hearing, which is what I am being asked to do, is not appropriate. But how do I avoid it?

MR HARDY: Well, first and foremost, if one is to deal with the principle then it would be unfair not to deal with all the matters now referred to. All the matters.

JUDGE PINI: All right.

MR HARDY: For it to be fair.

JUDGE PINI: When we started this hearing, that was the very question I posed to you.

MR HARDY: Yes.

JUDGE PINI: Isn't this really a disciplinary hearing where I have to make serious findings of fact about the integrity, potentially, of Rustem Guardian? You said no. Now you are saying we do.

MR HARDY: The consequences of the findings, the consequences of the findings of any fact, will assist your Honour in reaching a decision as to the determination of the transfer of legal aid.

JUDGE PINI: Because you agree with my proposition -- there was the question: do you agree with my proposition if this is an engineered breakdown, then it is not a genuine one?

MR HARDY: That is one of several possible outcomes or findings.

JUDGE PINI: Yes. Another outcome is that it is not an engineered one at all, it is a perfectly genuine and proper one, and that is a wholly different scenario.

MR HARDY: If I may be so bold as to say -- and forgive me, your Honour, because I tread very lightly now and with some trepidation -- your Honour's focus has been so much on the disciplinary aspects, I can only hope, and I say this gently, that your Honour will also consider the more bold and stark approach that could be taken to this -- and I will make the points -- and not get lost too much in the principle and turn this into a wholesale, almost state trial. I don't say that offensively.

JUDGE PINI: No.

MR HARDY: But there is also, my phrase, a need to keep my feet on the ground and have a sense of proportion.

JUDGE PINI: Yes.

MR HARDY: This is still in the early stages, insofar as any wasted costs, time spent on the case, time engaged, amount of hearings, real consideration of the public purse and, most of all, uppermost in my submission today, that there should not be a delay to the proceedings -- or an undue delay to the proceedings -- and that, whilst in some cases there are victims, I would submit, more so in this case, there has to be a sense of justice delayed is justice denied, to this defendant.

JUDGE PINI: Mr Hardy, how do you invite me --

MR HARDY: Yes.

JUDGE PINI: How do you invite me to resolve the issue on the papers? How?

MR HARDY: In this way. To take a broad-brush approach --

JUDGE PINI: No, I don't like broad-brush approaches.

MR HARDY: Well, I cannot, with a fine pen, identify emails, timings, phone calls and the missing parts of the jigsaw.

All I can submit to your Honour is that there came a point when, insofar as Rustem Guardian was concerned, that only emergency, temporary, at the police station assistance was given and that in the custody record on the 30th, there were clear attempts to make contact whilst it was still very much open to the defendant and Rustem Guardian to form a relationship.

I am going to turn the tables, if I may. This was not so much a case of poaching, moreover a case where the preferred solicitor, Rustem Guardian, was quite improperly denied to this defendant. In the application to transfer there is an unsavoury remark, which was then played out in social media. If this defendant is to have faith and confidence in this particular firm -- which I submit he can't -- he can't, for this reason. Because who would want to be represented by a firm of solicitors that take the law, the libel law, into their own hands. Start disparaging police accredited interpreters -- who, I submit, have no relationship to Rustem Guardian -- and in the custody record that was sent to this court left out at the bottom of one page such remark. That is engineering, your Honour. And left out page 18.

JUDGE PINI: What is it that appears on page 18? Is that the email from --

MR HARDY: There are two pages. There is page 27 --

JUDGE PINI: Well, the numbering didn't come out very clearly on mine. It is the comment.

MR HARDY: The comment.

JUDGE PINI: Is the email from Mr Wild about --

MR HARDY: Yes. That is left out.

JUDGE PINI: Could I just pause there?

MR HARDY: Yes. Yes.

JUDGE PINI: Can I just say, so it is on the record, because it has just reminded me. The comment by Mr Wild in his email that Rustem Guardian had been banned from Lincoln Crown Court by Judge Heath. Can I put that one to bed straightaway: that is not correct. I have been in email contact with Judge Heath overnight. Judge Heath made it clear to me, he did not do so. If, for no other reason, he has no power to do so.

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So, that puts that to bed. I don't want there to be any more discussion of that. That is the end of it.

MR HARDY: Well --

JUDGE PINI: But the other side of that penny, Mr Hardy, is this.

MR HARDY: Forgive me, your Honour, and I am terribly sorry.

JUDGE PINI: All right. Go on.

MR HARDY: To flip the coin.

JUDGE PINI: All right.

MR HARDY: But at the moment, I don't feel on behalf of the defendant and Rustem Guardian that that point -- that a solicitor should make what is now a factually incorrect statement, an unprofessional statement, an offensive statement, and still be considered by the defendant to have reputable solicitors representing him. That is the point I came here to make today. Who would want to be represented, or how can this defendant be represented, when this war of words is being played out on the custody record? It is simple wrong.

JUDGE PINI: Well, the other side of that penny, I suppose, Mr Grattage might say, is: well, who would want to be represented by a firm that goes around breaching the SRA's rules and poaching clients? That is the other side of the penny. I am not saying --

MR HARDY: It is much easier to determine the point I have just made on the face of the papers, without a state trial.

JUDGE PINI: Right.

MR HARDY: Much easier to determine that. I do feel that your Honour is possibly keen to dismiss that point. I respectfully submit it is a significant point.

JUDGE PINI: Mr Hardy, I am not keen to dismiss any point. I have spent a lot of time in detail reading these papers. I am very, very concerned by what I have read. I am still unclear at the moment as to what form this hearing should take: whether I should hear it on the face of the papers or whether -- as you said a moment or two ago, although you appear to be resiling from it -- that there ought to be further evidence from various parties and I should go into the very minutia of what happened. Or not.

MR GRATTAGE: Your Honour, if I can assist, to this extent. I don't know if I do or not.

JUDGE PINI: Yes.

MR GRATTAGE: Your Honour could certainly make a determination as to whether taking the application by Mr (inaudible)'s solicitors on its face, without any further consideration, would be sufficient to indicate evidence of more than simply a defendant who would prefer a different set of solicitors, rather than, as the regulations indicate, one for whom

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a -- I think the relationship has broken down or the existing solicitors (inaudible) and it reads that if your Honour is not satisfied (several inaudible words) then that would finalise the matter. I say that to assist.

JUDGE PINI: How do I avoid, Mr Grattage, confronting the problem that if this is an engineered transfer by Rustem Guardian, then there is not a genuine breakdown? The whole thrust of this, from Bird & Co's response to the application to transfer, they use the words, "This is fabricated". They implicate, right from the -- I hate the expression but let's use it -- get-go. They implicate Eva Predics, who has not made a statement in these proceedings. They suggest that she is affiliated to Rustem Guardian, which Mr Timor Rustem, in his witness statement, emphatically rejects.

As you appreciate, in a sense it gets worse because one then has Mr Brostum(?) with these three witnesses purporting to explain how the contact was made. Then I am thrown back to the point I made a few moments ago.

MR GRATTAGE: Yes.

JUDGE PINI: That if the defendant's first call to the outside world was 8.20, how on earth did Mr Rustem come to be emailing Sergeant Jones at 8.11?

MR GRATTAGE: In a way which is not explained --

JUDGE PINI: No, it is not explained by Mr Rustem's statement or, indeed, any of the witness statements filed on the applicant's behalf. I feel a sense of enormous unease, as I am sure is apparent to you and to Mr Hardy, without considering it further or perhaps even speaking with the SRA about proceeding and making potentially findings where we have not got the full picture.

MR GRATTAGE: Yes.

JUDGE PINI: Which they may have serious implications for one or more firms of solicitors. But it seems to me --

MR GRATTAGE: And, your Honour --

JUDGE PINI: Wait, let me just finish this. It just seems to me, on the basis of what I have been presented with in these bundles, that is effectively what I am being asked to do.

MR GRATTAGE: Your Honour is quite right to have that view to this extent as well, because the confusion that your Honour has clearly was the basis for the suspicion and allegations made by Bird & Co. If there is some other phone call that took place or some other explanation that the custody sergeant or someone else could put forward, that would be (inaudible). As it is, there is an unexplained gap in the application which is filled, unfortunately, with the allegations made by Bird & Co. So, I certainly understand your Honour wishing to get to the bottom of that.

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JUDGE PINI: Let me turn to Mr Cranmer Brown. As an independent, to that extent, in an amicus function. I am concerned about what form this hearing is taking, the way it is set out on the papers. Am I compelled to treat it as, in effect, a disciplinary hearing where I have to make potentially serious findings of fact about the conduct of one or more firms?

Submissions by MR CRANMER BROWN

MR CRANMER BROWN: Well, I would submit that your Honour does not need to go that far.

JUDGE PINI: Well, I certainly don't want to.

MR CRANMER BROWN: I am sure your Honour doesn't want to and I would submit does not need to. The fundamental question for your Honour to resolve is whether or not there has genuinely been a breakdown between the solicitor and the defendant, such that would make it appropriate to change his representation.

JUDGE PINI: It is the word "genuine" which is the trouble, isn't it?

MR CRANMER BROWN: Yes. Your Honour, obviously what happened and how it came to be the case that he wanted Rustem Guardian to be his solicitors is a factor, but whether one needs to go into the minute detail of what happened is another point. I submit it would not be necessary, for this reason, your Honour.

JUDGE PINI: Yes.

MR CRANMER BROWN: It may well be, however it came about, that the defendant came to learn that his brother and family thought it was very much in his best interest to be represented by that firm. Maybe his opinion now and he has said, I think, in court on one occasion he wishes to be represented by that firm. That was the phrase he used. He set out in his application that, fundamentally, he simply wants to transfer solicitor.

It is often the case that somebody represented by incredibly competent solicitors in fact, for one reason or another, comes to the view that he or she would rather have another firm represent him or her. That is not a good reason for transferring legal aid, even if it is a very strong belief on the part of the defendant who then does not want to cooperate with his original solicitors because he wishes to change solicitors.

The issue, in my submission, that your Honour needs to perhaps consider rather more closely is what happened in terms of what the defendant was saying at the police station, in terms of being happy to be represented by Bird & Co, indicating that he was content even after speaking on the telephone to Timor Rustem, that he was content for Bird to continue to represent him. If he was not happy with the advice that he had been given, one might have expected him to have been explaining to this other sister, "I want to give answers and they are stopping me from giving my account", or whatever his complaint might be. It

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would be fanciful to imagine that he would then, after a conversation like that, say, "I am happy for them to continue to represent me."

Indeed, I think there is a signed document where he has said, "If I am charged, I am happy for Bird & Co to represent me." So, he cannot have been unhappy at the time with the advice that he has been given, which is after all the fundamental question. It may be that --

JUDGE PINI: I follow all of that, that is helpful and I have all those points in mind. Can I avoid, however, dealing with the fundamental question how was it that Rustem Guardian came to be involved with Mr Birtu's case? I go back to the 8.11 email.

MR HARDY: Your Honour, I might be able to assist. I am sorry to interrupt. Mr Rustem is stuck in traffic and he had made every effort to be here. He still might get here yet. I have been, I hope it is not frowned upon, trying to -- well, I have been listening and making no (inaudible) and texts. I am going to read this so nothing is distorted:

> "We received the instructions on the 29th from the client's family and then direct instructions --"

JUDGE PINI: What time on the 29th, please?

MR HARDY: No time given:

> "... all of which evidence via section (several inaudible words) they can investigate what they like: I don't know the interpreter."

JUDGE PINI: No, no. I have all of those points, Mr Hardy. That does not take me any further forward, unless there is any more?

MR HARDY: I don't have all the records, of course.

JUDGE PINI: That does not take me any further forward, but thank you for your attempt to assist.

Mr Cranmer Brown, how can I avoid confronting head on the issue of was this a genuine breakdown between Mr Birtu and Bird & Co, which we know periodically happens, particularly when solicitors give clients advice they don't want to hear and there is a genuine real breakdown between the defendant and the firm. Can I avoid determining whether it is that or whether this is an engineered breakdown, brought about by third party interference? That is the question. You said earlier: is it a genuine breakdown?

MR CRANMER BROWN: Yes. When one looks at what happened, the question raises itself: at what point did the defendant decide that he no longer wanted Bird & Co and wanted Rustem Guardian?

JUDGE PINI: Mr Hardy would say the clearest we have of that, I think I am right in saying, is 1.06 pm on 30 July.

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MR HARDY: Well --

JUDGE PINI: Well, that is on the record.

MR HARDY: That is on the record. But the family, as I understand it, knew about him there. What is going on -- to place reliance on just the records of what steps are being taken by a young man as evidenced by a custody record is one thing, but there will always be, or there are often, family members and friends who know someone is in custody and are making their own efforts and acting on their behalf, with their best interests.

JUDGE PINI: That I follow, Mr Hardy. That is why we have the statements from Mr Konash, Madelina and Florian. But those statements don't help me, because they have no timings in them and the timings here are quite critical. Because the question is: when? When was it that Rustem Guardian were first asked to act? That is what is unclear with all of this. So, while I, to some extent, follow what you say, it does not help the question.

Going back to Mr Cranmer Brown. On the face of the papers, on the face of what we actually have here, 1.06 pm on the 30th appears to be the first time -- I think, I will just check my notes -- that we have got Mr Birtu -- yes. Mr Wild emails in at 9.16 pm and we have got at 1.06 pm on the 30th, where Mr Birtu speaks directly with Mr Rustem and informs the police officer that he wants them to act for him. I think that is right. That is on the face of what we have got, the bundles we have all got. I think that is the position.

Mr Rustem is first indicating he acts for Mr Birtu in the very first email at 8.11 and that is the one where if there was -- if there was, I am not suggesting there was for a moment -- foul play by Eva Predics, that is around about when it happened.

How do I avoid confronting that issue? Well, I have to consider is it a genuine or an engineered breakdown.

MR HARDY: I would make this submission and I am going to try and be simplistic about this.

JUDGE PINI: Yes.

MR HARDY: The defendant had a choice and, as is often the case, had support outside of the police station when wanting someone to deal with this matter, before it got to court at that early stage. There is, on the face of the papers, a wish to have Rustem Guardian, but there is also the duty solicitor who is handling it there and then. Simply put, that was by agreement, by all parties: you are there, emergency cover, we will be taking over.

JUDGE PINI: That's not what it says though. He signed the statement and the custody record, "Even after I am charged, I want Bird & Co."

MR HARDY: And that is the point I was just getting to. If there is a kernel to this case, then that kernel is the point at which that form was signed. I can tell your Honour, as

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your Honour knows, how easy it is for a defendant under stress, under pressure, to sign something he does not fully understand. Therefore, in order to get to the heart of the matter and to do justice to this case, is not the best person to speak to the defendant?

JUDGE PINI: No.

MR HARDY: Well, in my submission --

JUDGE PINI: I want to know how the professionals came to be involved, because --

MR HARDY: Well, that would appear, your Honour --

JUDGE PINI: Mr Hardy, this is the third application by Rustem Guardian.

MR HARDY: It is my fault. I am sorry.

JUDGE PINI: No. No. This is the third application I have had to deal with. Rustem Guardian in that sense, and probably in other senses too, are unique. One firm of solicitors in Lincoln, Wilkin Chapman: well respected firm; application to transfer. Second firm, CDA: a respected firm; application to transfer. This is number three. There are patterns. What happened in number two was that I was asked to speak to the defendant to ascertain the defendant's views, just as you are doing now.

MR HARDY: I knew not --

JUDGE PINI: I know. But you understand my concerns, why I am taking the matter very cautiously and I am not saying anything by way of criticism of anybody. I have been endeavouring to seek assistance from all three counsel as to what is the appropriate way of approaching this, because I am loathe to make findings and I don't think it is proper without hearing full evidence, oral evidence, to make findings against solicitors.

MR HARDY: I feel hamstrung -- and I don't say this offensively at all, please, your Honour -- but I feel hamstrung that I am before a learned judge who clearly is aware of a history, a history I am not aware of. I can only approach, as I daresay your Honour will try to, without any knowledge of a history of this type of behaviour by a firm of solicitors.

JUDGE PINI: Yes.

MR HARDY: So, I must underscore, I must underscore, the invitation to your Honour to see this as a young man in a difficult situation who had a duty solicitor and did not know exactly what he was doing. Soon, and soon, with all the efforts being made by Rustem Guardian, makes it very clear he wants a transfer. Surely the best person to say why and how he wants Rustem Guardian, and how he came to sign the legal aid application, is the defendant.

JUDGE PINI: Well, the difficulty there is this. First of all, Mr Birtu has had his opportunity to set out his reasons. It is fairly detailed, typed in the application itself. Secondly, it may

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be that Mr Grattage wants to cross-examine him and I don't quite know how he would do that over a link. Thirdly, if we allow one person to give oral evidence -- Mr Grattage has his hand up to indicate he wants to speak and I will hear him in a moment -- arguably, he may well say, "Well, if Mr Birtu is going to be allowed to give oral evidence, so should other parties."

Mr Grattage?

MR GRATTAGE: Your Honour, I only wanted, and I would have been stood in court if I could, your Honour (several inaudible words) witness statement, this issue is dealt with because he tells you, your Honour, in his signed statement that on 29 July he subsequently contacted Grantham Police Station and was notified that Mr Birtu was happy for the time being with the duty solicitor and I am informed he said that (inaudible).

JUDGE PINI: I have read that.

MR GRATTAGE: Discussions in relation to any breakdown in relationship came (several inaudible words) --

JUDGE PINI: Mr Grattage, I do assure you, I have read these papers. I have virtually memorised them. The issues raised here are very serious and I have prepared this case in some detail. I really want to see if there is a consensus amongst all three of you, and I include Mr Cranmer Brown in that, because although he is not directly a party to this application, he is counsel of great experience. This is a difficult area.

How should the hearing proceed, Mr Grattage? On the face of the papers or in another way?

MR GRATTAGE: The point I wanted to make, your Honour, was that having considered all of the papers, including the statement of -- for example, the other statements, and the limits to which they go to. If that application or the emphasis on the (several inaudible words) to satisfy your Honour of these matters, if the application falls short of (inaudible) that there is more than simply a wish for a different set of solicitors, then the application fails before any further consideration is given to it.

Of course, if more consideration does need to be given to it, then I (several inaudible words). I believe that is the order that Mr Cranmer Brown has helped --

JUDGE PINI: Well, I think that was the point he was making. It is to simply focus upon has the relationship broken down and look at what happened at the police station.

MR CRANMER BROWN: Yes, your Honour. I did not really quite finish. I am not criticising him, but my learned friend sought to intercede.

JUDGE PINI: No. I really want to see if there is a consensus on how we proceed.

MR CRANMER BROWN: Can I just finish very, hopefully, briefly what I wanted to say?

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JUDGE PINI: Yes, please.

MR CRANMER BROWN: The fundamental question is whether there was this breakdown. Now, there is a breakdown that has been created in the sense that there is no contact between the defendant and solicitors and counsel by the defendant. He is refusing to see his solicitor and counsel, although in fact he says he would be content with the same counsel.

So, the question is why is there a breakdown? That he might prefer another firm of solicitors because it is strongly recommended to him by his family is not a good reason to refuse to cooperate with the solicitors, in fact, who have benefited from the legal aid order, particularly where he was aware of the presence of this new solicitor potentially in the proceedings and went on to be represented by Bird & Co at the magistrates' court and, indeed, told the custody sergeant he was content for them to continue to represent him.

JUDGE PINI: Yes.

MR CRANMER BROWN: He appears to be suggesting that he is not happy with the firm because of the advice that he was given in interview. That is the nub, really, of his complaint about Bird & Co. It is no good simply saying, "I prefer to be represented by Rustem Guardian." What he is actually saying is, "Bird & Co have given me bad advice and that is why our relationship has broken down."

Now, to that extent, when one looks at the case and the evidence as appears on the papers, there does not seem to be any proper support for that contention.

JUDGE PINI: He did answer some questions, didn't he? Because he did accept links, if I remember correctly, to telephones and cars. At least that is what appears in the police summary.

MR CRANMER BROWN: Yes, he did. Plainly, he signed the -- because that has been exhibited -- part of the form that the solicitors complete where they ask the defendant whether or not he is content to follow the advice. It is always the case when advice is given that the fundamental decision is that of the person who is detained. He may come to regret that he followed that advice, but to say that it is advice that was inappropriate would be something that he would have to establish.

If it is, in fact, the case that he was desperate to answer the questions and gave the solicitors a full account in their consultation, that they said to him don't answer any questions and go "no comment" on our advice, then presumably he would be content to waive privilege and for that part of the solicitor's file to be before the court, to see whether or not that is established. Indeed, that would have happened in any trial, were he to assert the same thing: I went no comment because they told me but, in fact, I told the solicitors

everything I'm telling you now.

There, there would be an irretrievable breakdown of relationship if that were genuine. But it is, on the face of it, potentially a non-genuine excuse for the breakdown in relationship, because absent that there seems to be no reason whatsoever for the defendant not to be happy with the representations he has received from Bird & Co. It is not as if they have left him languishing in custody, not arranged any conference with him, as sometimes people complain. No bail application made and the rest, and when there is a perhaps justified criticism of the solicitors. That is not the case here.

JUDGE PINI: All right. So, at all events -- I don't want, as it were, you to be seen to be making Mr Grattage's points because you are prosecuting the case -- I was really looking for guidance and you have given it to me, I think, on the form of the hearing.

MR CRANMER BROWN: I do have an interest over and above an amicus, because obviously if your Honour improperly, according to the higher court -- wrongly, should I say, as it were -- refuses to transfer the legal aid and that somehow rebounds in an unfair conviction, if that were to happen, then that is the last thing that the prosecution would want to happen. So, of course I want to assist the court, if I may.

JUDGE PINI: Of course. Yes.

MR CRANMER BROWN: Those are really my observations.

JUDGE PINI: Thank you.

Right. Now, Mr Hardy?

Reply submissions by MR HARDY

MR HARDY: Your Honour, can I say, I have had instructions from the solicitor who arguably is an important component in this case. It is simply --

JUDGE PINI: Well, everybody is an important component, Mr Hardy. Can we stick, for the moment, just to finalise: are you content for me to deal with this on the face of the papers?

MR HARDY: No. The solicitor, and I am instructed by the solicitor, would very much like a further formal hearing to give evidence, call witnesses, provide telephone records and suggest that this matter will be going to the SRA because of what has been said.

JUDGE PINI: Well, that is a matter for him. That is nothing to do with us.

MR HARDY: Yes. I understand.

JUDGE PINI: It is nothing to do with me at all.

MR HARDY: But it might help your Honour to know the force of feeling.

JUDGE PINI: Mr Hardy --

MR HARDY: And the willingness to give evidence.

JUDGE PINI: Mr Hardy, the force of feeling glows from these papers, which is precisely why

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I have been approaching it, I hope, with considerable caution.

MR HARDY: Yes. Well, it hasn't dimmed, is what I am submitting.

JUDGE PINI: Sorry?

MR HARDY: It hasn't dimmed as a result of any submissions that have been made. It would seem that the solicitor wishes to counter the speculation and comments made so far and certainly wants to plug the gap insofar as any admissions are concerned. Because clearly, it had not been appreciated until now the extent to which this would be pored over and I am pleased. But given what has been said in court, he is not resiling from his position. Far from it.

JUDGE PINI: Well, then we are right back to where we started.

MR HARDY: We are.

JUDGE PINI: That, effectively, what Mr Rustem is asking the court to do through you is to use an application to transfer legal aid -- which in 99.9 per cent of cases is utterly straightforward, I deal with quite a few every month on paper and they are uncontroversial -- but they are effectively seeking to use this hearing to ventilate the issues between Rustem Guardian and Bird & Co in terms of their professional propriety or competency, whatever you want to call it, on each side.

I have serious reservations as to whether that is appropriate. You use the expression -- I am sure it is, because I made a note of it -- Mr Rustem wants to counter the comments made so far. He wants to use the application to transfer legal aid as a forum for vindicating criticisms made, levelled against his firm. That can't be right.

MR HARDY: Your Honour, I think another way of putting it -- and I would prefer this to be the overriding submission -- is that he wants there to be a fair hearing in order to determine whether or not legal aid should be transferred. Forgive me, but it was your Honour that introduced the fact that there has been history with this firm. It was what your Honour introduced that I was alive to when stating that perhaps there are bigger issues at play and perhaps it is the history that your Honour is aware of that is not necessarily permitting focus on this one case.

JUDGE PINI: No, Mr Hardy, I am sorry. I don't accept any of that. I am surprised, I have to say, when you said you had no idea about the earlier transfers to Rustem Guardian. I would have thought that would be one of the first things Mr Rustem would have told you. But he didn't, particularly because he asked for and got a transcript of the entire hearing on the last occasion before me.

I mentioned the history because it is unusual. In fact, it is unprecedented in my six years here as resident judge. What has concerned me is not the fact that there have been

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two previous applications to transfer to Rustem Guardian, but it is the issues which I see raised here on the face of the papers. I have never seen it before.

MR HARDY: It is ugly.

JUDGE PINI: It is very ugly. That is an understatement. When I see issues like this raised, any court treads very, very cautiously.

My first -- and I am still concerned -- is what format this hearing should take, like with a public inquiry. What is its remit? What are its limits? What sort of findings do I have to make?

Now, Mr Grattage and Mr Cranmer Brown submit I can deal with it simply on the face of the papers, because one can look at what was said by Mr Birtu at the time in the police station and what documentation, if anything, that he signed and so forth. You initially took the view that it could be dealt with on the face of the papers and then you seemed to resile from that and say the court should hear oral evidence. Then we were back to hearing it on the face of the papers. Now, Mr Rustem is saying he wants to counter comments made so far.

MR HARDY: Well, it has been a fluid hearing.

JUDGE PINI: Indeed.

MR HARDY: And there has been complexion that was, certainly as far as I am concerned, not noticed by me. For example, I have not had access to the DCS, so I was not aware of the interview and what comments had been made about the interview. So, the direction that this case has taken today --

JUDGE PINI: Well, just pause there, Mr Hardy. All that has been said about the interviews is that he replied "no comment". That does not change the complexion of the case.

MR HARDY: Well, I thought the point, your Honour, was if he is upset with the advice that was given, then there may be some relevance to the advice that was given and that may have some basis for his breakdown in communication and confidence in his solicitor.

JUDGE PINI: Yes. But the trouble is when Mr Birtu put down his reasons which he did, I have to say, he set out his reasons for wanting a transfer in some considerable detail. They are set out in six typed paragraphs. That was his opportunity to set out what you are adumbrating and he didn't. That is why we are back to where we started, with Mr Grattage and Mr Cranmer Brown saying the court should deal with it on the face of the papers.

MR HARDY: Ultimately, it has to be a matter for your Honour. You have heard all the submissions and, again, I come full circle. I thank your Honour for the thorough approach to this case, even within its own limitations and, if I might also say, sir, the amount of time that your Honour has given me to address the court.

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At 12.11 pm, Rachel Newcombe arrived at Grantham Police Station and at 12.18 pm had a conference with the defendant. A Romanian interpreter, Eva Predics, arrived at 12.54 pm and the custody record is endorsed with a note which says:

> "I am happy with the advice that I have received and wish to no comment the interview. If I am charged, I wish to be represented by Bird & Company solicitors."

The custody record shows that before the interviews, he had two consultations with Rachel Newcombe. Interviews were then conducted by Detective Sergeant Jones, together with Rachel Newcombe and Eva Predics present. The interview times were 1.34 to 2.56 pm, 3.46 to 5.29 pm and 5.46 to 6.29 pm. During the first interview at 2.49 pm, the interview was paused for the defendant to have further legal advice. Before the second interview, he had a further consultation. After the last interview, the defendant was moved to the consultation room to have a post-interview debrief with the solicitor.

To all of the questions, the defendant answered no comment, save to say that he did link himself to phones and vehicles. Thus, the defendant had been promptly attended upon, given advice which he acted upon and evinced an intention to stay with Bird & Co.

At 6.45 pm, the interpreter left the police station. At 6.46 pm, Rachel Newcombe also left. At 7.06 pm, the defendant went to the custody desk where he tried to call his brother, Florian, but the number provided did not connect.

Then, about one and a half hours later at 8.11 pm, Detective Sergeant Jones received direct to his personal email, Robert Jones, an email from Timor Rustem of Rustem Guardian Solicitors in London which said as follows:

> "We have been instructed to assist Mr Mihai Adrian by his family. I understand he has been charged and remanded to appear at the Lincoln Magistrates' Court tomorrow morning. I would be grateful if you would call me on..."

Then he gives his number. At 8.20 pm, the defendant spoke to his brother, Florian, on the telephone on the correct telephone number. From the records the court has seen, and it has not been suggested otherwise in the course of this short hearing, this was the first successful call to anyone.

At about 9 pm, Sergeant Craig Robinson was informed by Sergeant Jones of the email from Mr Rustem. The defendant and it appears also Bird & Co were informed of this. The defendant made clear that he wished to continue to be represented by Bird & Co while he was in custody. He, again, asked to speak to his brother. Sergeant Robinson says that the defendant had already spoken to his brother a short time earlier and in an email,

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JUDGE PINI: Not at all.

MR HARDY: For that, I am truly grateful. I can say no more because, of course, the question posed is a question that has to be answered and only your Honour can answer that question.

JUDGE PINI: Yes. Thank you very much, Mr Hardy. I don't want you to feel you have been cut off or cut short in any way.

MR HARDY: I think even I would like to sit down and hear less of myself.

JUDGE PINI: Right. Mr Grattage, anything else you want to say?

MR GRATTAGE: (Several inaudible words)

JUDGE PINI: There is no need, gentlemen, to take a note of this. I will provide a written copy. It will be on the Digital Case System, so Mr Rustem need not seek a transcript if that is what he wants.

MR HARDY: Will he have access to that, your Honour?

JUDGE PINI: I will make sure he has a copy of this.

MR HARDY: I am grateful.

RULING

JUDGE PINI: This defendant is charged with 21 counts of theft of lead from rural parish churches across a number of counties. There are two co-accused. On any view, this is a very substantial organised crime operation, systematically to strip valuable lead from many historic churches and sell it on for profit.

In total, some 43 churches have had lead stripped from them and the defendant is allegedly involved in 21 of them. The lead was sold on at metal dealers in Birmingham for substantial profit. Mr Birtu is alleged to have been the driver, involved in transporting the stripped lead from the church to onward sale point.

The defendant was arrested by Lincolnshire Police in Worcestershire on 29 July 2020, at 6.12 am. At 9.15 am, he arrived at Grantham Police Station and at 9.53 am, the same day, his detention was authorised and a copy of his custody record is before the court.

At 10.06 am, he was given a notice setting out his rights and at 10.07 am, he requested the duty solicitor. At 10.08 am, the interpreter, Eva Predics, was contacted through SINTRA. At 10.17 am, the duty solicitor call centre was contacted. The duty solicitors were Bird & Company, who are a reputable firm well-known to this court. The first contact with them was at 10.28 am, when it was indicated that Damian Sabino would attend, but then at 11.11 am the case was transferred to Rachel Newcombe, who was to attend at 12 pm.

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Sergeant Robinson says this:

> "During this call, which sounded like it was being placed on to a speakerphone because there were other voices clearly audible in the background, a male came on to the phone and was speaking to the client. I am unable to confirm the identity of this person, but he was suggesting to the client that he would await the result of the remand hearing in the morning and would then look at taking on the legal representation of him after this. The client confirmed that he wanted to continue to being represented by the duty solicitor whilst he remained in police custody."

At 9.16 pm, Stuart Wild, the head of the crime department at Bird & Co, contacted the police and raised concerns about the interpreter used that day. He said he did not want the same interpreter to attend the police station again, "As she is affiliated with a firm called Rustem Guardian solicitors in London who recently were banished from Lincoln Crown Court by Judge Heath."

I made clear during this hearing that at no stage have Rustem Guardian ever been banished by Judge Heath.

At 11.14 pm, the defendant was charged. The next day, 30 July, the defendant went before the virtual remand court and at 12.38 pm was remanded into custody. At 1 pm, he made a phone call to his brother and at 1.06 made a phone call to Mr Rustem. There is a note on the custody record that on 30 July at 1.14 pm:

> "Solicitor Tim Rustem called by DP [detained person] as he has confirmed he wishes them to take over his case and represent him."

That appears to be the first clear expression of that wish by the defendant.

The application to transfer legal aid is dated 17 August 2020. In answer to the question how and why did you choose the new solicitors, the defendant says, "Highly recommended by family." He says when asked if another member of the firm can represent him, "My problem is with the firm."

The reasons given in the notice of application for the transfer by the defendant are these. A, as soon as he was arrested, he asked his family to find him a lawyer. His brother, Florian, and his sister friend, Madelina, helped him find Rustem Guardian. Mr Rustem had represented a friend of theirs and he is a solicitor well-known in the Romanian community. He also has a media profile and deals with some of the most serious cases in the country. The custody record, in fact, shows that the defendant made no contact with his family until much later in the day.

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Secondly, he says that his friend, Madelina, contacted Rustem Guardian on 29 July and he contacted them on 30 July, asking them to represent him. As Mr Rustem was dealing with another case in Brighton, he advised the defendant to stay with Bird & Co for the time being.

C, the defendant says that he was not aware that he had, in fact, completed legal aid application forms at the police station. He says:

> "I wish to point out that I made my selection of my own solicitor very early on, following my interview at the police station. This should be evidenced through my custody record."

Finally, D, he says that he made it clear to Bird & Co from the beginning that he did not want them to represent him at court. He says:

> "I do not trust the duty solicitor in terms of the advice they provided me at the police station and fear this may have damaged my case. I should not be forced to remain with the solicitor that I clearly do not want."

Bird & Company "vehemently oppose this application". They say in terms, and I quote:

> "Bird & Co view this application as nothing short of touting, in contravention of the SRA's legislation. There has been no irretrievable breakdown in communication between solicitor and client and such assertion is at least fanciful and at worst untruthful and fabricated."

They say:

> "At the investigation stage at Grantham Police Station it became apparent that Mr Rustem had contacted the Detective Sergeant heading the investigation by his direct email address, purporting to have received third party instructions, which we suspect in hindsight was, in fact, Eva Predics, the interpreter. The present application is totally without merit."

They add that at the first remand hearing on Thursday, 30 July, the defendant engaged perfectly well with them. It was only following a legal visit via CVP on 12 August that Mr Birtu disengaged.

It is highly unusual to have solicitors expressing themselves in such trenchant terms about the conduct of other solicitors. They say that the matter, should the matter fall to be determined, they request an oral hearing with all parties to attend. I have expressed my concerns whether this court should be engaged in a fact finding against solicitors where serious allegations are made.

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MR GRATTAGE: Your Honour, I see that Mr Birtu is asking for assistance.

JUDGE PINI: I am going to upload this document in due course. I am going to carry on with it at present.

In the response section to be completes by the proposed legal representatives, Rustem Guardian say that they were, "Instructed by the defendant from the police station stage and the firm have represented many members of the Romanian community."

There are three witness statements in the bundle seeking to explain how the instructions to Rustem Guardian came about. The sequence would appear to be this. The defendant's first successful contact with the outside world was at 8.20 pm on 29 July. As I have made the point already, Rustem Guardian had already emailed Sergeant Jones at 8.11 pm, so it is not clear to the court how that link was made. The defendant makes clear it was his brother, Florian, and the defendant's friend, Madelina, who put him in touch with Rustem Guardian. He says Madelina contacted Rustem Guardian on 29 July.

In her witness statement, Madelina Maria Aniranaysi(?) does not confirm this contact on 29 July, merely that Mr Rustem was recommended to her by other members of the Romanian community. It is clear from the witness statement of Florian Birtu that he had spoken to Madelina, who had already spoken to one Marchous Konash, who had previously been represented by Mr Rustem and was pleased with the way his case was conducted. However, again, neither Mr Konash nor Florian Birtu give any timings as to when these contacts were made.

What is clear is that the first documented call by the defendant to his brother, Florian, on 29 July at 8.20, but by then Mr Rustem had already contacted the police. We know that the defendant did speak to Mr Rustem on 30 July at 1.06 pm, apparently confirming that he wishes them to act for him. What is unclear from this is how was it that Mr Rustem was able to email the police at 8.11 pm on 29 July, before the defendant had let anyone know where he was or that he wanted a lawyer.

Rustem Guardian wrote to Bird & Company on 21 August, saying that it was clear that there had been an irretrievable breakdown in the relationship between themselves and the defendant and they were instructed by Mr Birtu while he was at the police station. They say:

> "Our instructions should be recorded on the custody record. It is our understanding that Mr Birtu was not aware and did not agree that a legal aid application should be made by Bird & Co on his behalf, as he made it clear to them from the police station that he did not wish to instruct them. Mr Birtu was advised no comment in his interviews which he

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believes was wrong and may affect his case, due to the adverse inference which may be drawn."

There is a witness statement from Mr Rustem, dated 22 September 2020. In it, he says that on 29 July he received third party instructions from friends and family of Mr Birtu and he subsequently contacted Grantham Police Station. He says he was told that the defendant was happy for the time being with the duty solicitor. He says that on 30 July:

"I received a telephone call from Grantham Police Station, from a police officer who explained that Mr Birtu wished to speak to me. I accepted the call and Mr Birtu explained that he was unhappy with the duty solicitor."

That plainly is a reference to the defendant's call to Mr Rustem at 1.06 pm.

This application has now become very heated between the parties, to a level this court has not encountered before. Mr Rustem takes serious objection to Mr Wild's comment suggesting a link between the interpreter, Eva Predics, and his firm. Mr Rustem denies that there is any such link. He is concerned about the reference to Judge Heath banishing his firm from this court. For the record, I can state -- I have said it already -- that having exchanged emails with Judge Heath overnight, he at no stage banned Rustem Guardian from the court and, in any event, had no power to do so.

Mr Rustem has drawn to the court's attention a post by Mr Wild on the Facebook page of a campaign group called Save British Justice. The entry, which looks very likely posted during the evening of 29 July, reads as follows:

"Bollocks to it. I have been running this page with others for nearly seven years, hitherto held my tongue. Time to name and shame after events this evening. Rustem Guardian Solicitors in London, you are a disgrace to our profession, as is your interpreter, tipping you off to foreign nationals in police custody. We know Bobby Van Dowl is your link and your days are numbered. The SRA have failed our profession hitherto, but from now on I and others are prepared to name and shame you charlatans."

Mr Rustem wrote to Bird & Co on 22 September, referring both to the email suggesting a link between his firm and the interpreter and to the Facebook post. In the letter, he threatens legal action against Bird & Co and/or a report to the SRA, unless those allegations are withdrawn in 48 hours.

I have expressed already my serious concerns about the way this case has developed

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and also whether the court should at all be making factual findings in relation to conduct between solicitors. The court is most reluctant to do so.

In a letter received today, 25 September, Mr Rustem makes clear that his firm were instructed by the defendant on 30 July and that followed on from the contact from the defendant's brother, Florian, on the 20th.

This court has to answer one question only and that is whether or not the relationship between Bird & Company and the defendant has irretrievably broken down. It is not for this court to hear evidence and act as the Solicitors' Regulation Authority and make disciplinary findings of a highly serious nature. I am not aware of any case in which on an application to transfer legal aid a court has been asked to make a finding of fact as to whether the firm seeking the transfer has acted dishonestly or whether assertions that that firm has made are fanciful and, at worst, untruthful and fabricated. I make no such findings, nor can I on the evidence.

MR GRATTAGE: Your Honour, Mr Birtu is raising his hand.

JUDGE PINI: Well, he will just have to wait for a moment.

MR GRATTAGE: Yes.

JUDGE PINI: On the face of the material before me, the defendant was happy on arrival at the police station. He was promptly attended to and indicated that he was happy with the advice given and if he was charged, he wished to be represented by Bird & Company. Matters only changed after the arrival of Rustem Guardian.

Bird & Company say in terms that there has been no irretrievable breakdown and that no grounds are made out under part 46 of the Criminal Procedure Rules. In fact, other than saying, "My problem is with the firm", the defendant does not descend into any other particulars as to what is the source of this problem.

In the case of *Sanjari*, it was made clear that the defendants are expected to cooperate in the preparation of their cases and that public money is not wasted. In the case of *Ashgar Khan*, His Honour Judge Wakerley said that only in extremely rare cases will a general ground of loss of competence or incompetence be entertained. Many breakdowns are imagined, rather than real.

In my judgment, having looked at all the material with great care, this application is refused.

MR HARDY: Your Honour, can I make two points, if I may?

JUDGE PINI: By all means.

MR HARDY: Most importantly, Mr Timor Rustem is in court now.

JUDGE PINI: Yes, I know. I did not say anything, but he entered very quietly during the

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course of my ruling and I am quite content that he is here.

MR HARDY: Two matters, please, and I thank your Honour in advance for your patience. One, in as much as your Honour might choose to ameliorate the situation, and bearing in mind that your Honour stated most clearly and poignantly that your brother Judge Heath had not banished this firm, but also witnessing off the face of the papers the disparaging remarks that the firm have made against Rustem Guardian, would your Honour consider it an opportune moment today -- and to seize the moment -- and encourage a formal apology?

JUDGE PINI: Absolutely not. Right from the start of this hearing, Mr Hardy, I have been at pains to say, to make clear, that the court is deeply unwilling to get involved in the issues between these two firms. I have asked all three counsel for assistance as to what form this hearing should take.

MR HARDY: Yes.

JUDGE PINI: Because I have been loathe, as I have said more than once, to be drawn into making findings of fact which are appropriate for the SRA's disciplinary tribunal, if that is --

MR HARDY: I hear your Honour --

JUDGE PINI: Just let me finish.

MR HARDY: Sorry.

JUDGE PINI: Which would be appropriate for the SRA or for another court, if there were to be a libel action. Nothing to do with me and this court.

MR HARDY: I understand.

JUDGE PINI: I am not getting drawn into that.

MR HARDY: So be it. It was only because this particular request was not based upon requiring to know the minutia of phone calls, emails, et cetera. It, in my submission, lifts from the face of the papers as something that does warrant an apology. I will not --

JUDGE PINI: That is a matter between --

MR GRATTAGE: Your Honour, your Honour, I would --

MR HARDY: I will say no more --

MR GRATTAGE: [Overspeaking]

MR HARDY: The second point --

JUDGE PINI: All right. Right. Mr Birtu, do you want a comfort break? Do you want to go to the loo?

THE INTERPRETER: Yes.

JUDGE PINI: Yes? Well, I am sure Mr Hardy won't mind if he goes.

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MR HARDY: May I say one thing, if he can just wait? The one thing I would like to say is Mr Timor Rustem of Rustem Guardian would be willing to represent this defendant pro bono, free of charge, from now on.

JUDGE PINI: Mr Hardy, just one moment.

MR HARDY: Given that we are here dealing with public funds, to some extent, there would be no further expense to the public purse and there is an offer to the defendant to be represented pro bono.

JUDGE PINI: Well, this is just -- stop there. Stop there. This is Mr Rustem, who is now in court, using these proceedings to speak to Bird & Co's client.

MR HARDY: I am addressing your Honour.

JUDGE PINI: No, you are not. No, you are not. No, you are not. No, you are not. You know full well that Mr Birtu is in court, virtually in court.

MR HARDY: He has not had any say in this court, your Honour.

JUDGE PINI: Just a moment. That was Mr Rustem addressing Bird & Co's client, wasn't it? Yes or no?

MR HARDY: It is a matter of perception, your Honour.

JUDGE PINI: Wasn't it?

MR HARDY: The defendant has been present throughout these proceedings.

JUDGE PINI: Yes, but to make the offer that you just did, because Mr Birtu indicated that he wanted to go to the loo. I said he could go.

MR HARDY: I would not wish to say anything in his absence.

JUDGE PINI: No.

MR HARDY: I would not have said anything had he gone to the loo.

JUDGE PINI: All right.

MR HARDY: The hearing today is, and I have not lost sight of it, a determination for representation with consideration for expense to the public purse. If there is --

MR GRATTAGE: Your Honour, the hearing has ended --

JUDGE PINI: I know [overspeaking] I am coming to that. I have given a ruling, Mr Hardy.

MR HARDY: I will take my seat, if I may.

JUDGE PINI: Right. Thank you very much, indeed. Now, I think the case is also listed for a PTP today, Mr Cranmer Brown.

MR CRANMER BROWN: Yes.

JUDGE PINI: It is 4.30. I think all parties will need to take stock of where we go from here. It is not appropriate, I don't think, to start a plea trial and preparation hearing now, where it may well be we have no cooperation from Mr Birtu. I just don't know.

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MR CRANMER BROWN: Well, your Honour, I was going to say he has not spoken to anybody about the case.

JUDGE PINI: No.

MR CRANMER BROWN: Lawyer, that is. So, plainly, we could not have an effective plea and trial preparation hearing.

JUDGE PINI: Let us adjourn the plea and trial. The other two defendants have pleaded guilty, haven't they?

MR CRANMER BROWN: They have, your Honour. They are actually due to be sentenced, although obviously this hearing today --

JUDGE PINI: Well, just before you go on any further. I think Mr Hardy and Mr Rustem, that concludes your involvement in this application. I am just going to discuss now the further hearing that we need with Mr Cranmer Brown. I don't think that concerns you.

MR HARDY: It may not concern, but if this is still an open court are we at liberty to stay?

JUDGE PINI: Well, I can't, any more than Judge Heath could, I could not ban you. I am simply making --

MR HARDY: I will leave on instruction from my professional client. If I do so, there is no discourtesy. If I stay, likewise.

JUDGE PINI: No. No discourtesy taken.

MR CRANMER BROWN: Your Honour, does Mr Birtu still need the toilet?

JUDGE PINI: Yes. Mr Birtu, do you still need a comfort break?

THE DEFENDANT: Yes, please.

JUDGE PINI: By all means, leave --

THE DEFENDANT: Sir, I will take five minutes. I need to go to the toilet.

JUDGE PINI: Off you go. Go for five minutes. I am simply discussing technical things as to progress here.

(In the absence of the defendant)

MR GRATTAGE: Your Honour, if I can assist. I have been speaking with my instructing solicitors and apparently Lincoln Prison is quite helpful in arranging conferences more quickly than in other areas, as your Honour will know. It is right in this case that I ask that I do speak to Mr Birtu in conference. I have availability next Friday or the Wednesday after for that to take place.

Perhaps the PTPH could be adjourned to maybe three weeks. There is Friday, 16 October I am available or, after that, I am available the week of the 26th every day.

JUDGE PINI: Mr Cranmer Brown, 16 October?

MR CRANMER BROWN: Your Honour, I was simply going to bring this to your Honour's

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attention. The other defendants were due to be sentenced, are due to be sentenced, presently on the 9th, I think it is. The Friday. One of the reasons why this adjourned plea and trial preparation hearing was listed today was because if it had been the case that Mr Birtu had pleaded guilty acceptably then, of course, his case could have linked up with the others.

I don't know, no determination as been made, as to whether or not the others should be sentenced prior to Mr Birtu's case being resolved.

JUDGE PINI: Let me just make a quick note of something and I will come back to your question. **(Pause)**

I just want to make a note of the offer. The pro bono offer. **(Pause)**

Right. Sorry. Yes. Mr Birtu was a latecomer to the proceedings, was he not?

MR CRANMER BROWN: He was, yes.

JUDGE PINI: What is the Crown's position in relation to sentencing the other two without Mr Birtu?

MR CRANMER BROWN: Your Honour, I would submit it is not impossible.

JUDGE PINI: Well, I was going to say, looking at it have I got it right that Mr Birtu's role as the employee of Amazon, I think he was, he was the driver?

MR CRANMER BROWN: He has been driving and helping, is the way the prosecution put it. I don't think we are going to be in a position where others are going to be saying he was the mastermind and they were following his instructions.

JUDGE PINI: So, there is no difficulty --

MR CRANMER BROWN: What I was going to say, your Honour, is this. The ruling that your Honour has made -- it is entirely a matter for your Honour -- may or may not be a ruling that your Honour feels should mean that your Honour becomes the trial judge for Mr Birtu.

JUDGE PINI: I don't necessarily see that it does.

MR CRANMER BROWN: No. It is just that it is a somewhat unusual set of circumstances.

JUDGE PINI: Very much so. I hope never to encounter it again.

MR CRANMER BROWN: It is not the normal transfer application, which would not ordinarily trigger that. But I just raise it for a matter for your Honour to consider.

JUDGE PINI: No. I don't see that I have in any way reserved this to myself. It certainly never crossed my mind.

MR CRANMER BROWN: Very good.

JUDGE PINI: That I was doing so.

MR CRANMER BROWN: Because I was only going to mention that that sentencing hearing

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is due to be in front of Her Honour Judge (inaudible).

JUDGE PINI: As far as the Crown are concerned, the sentence hearing for the other two can go ahead on the 9th?

MR CRANMER BROWN: Yes. There are three others. I would certainly anticipate, your Honour, they will be representing that the sentence should go ahead. They have been waiting for a long time to find out what will happen to them. I don't see any reason why Mr Birtu could not be sentenced by the same judge, at a later date, plea or trial.

JUDGE PINI: I entirely agree. Just while we are on the topic, have you uploaded a sentence opening note?

MR CRANMER BROWN: I am required to do so by the 7th, your Honour.

JUDGE PINI: All right. That only gives Judge (inaudible) a couple of days to read it.

MR CRANMER BROWN: Well, she has been on the case a number of times.

JUDGE PINI: I know. She was content with that?

MR CRANMER BROWN: She ordered that.

JUDGE PINI: All right. That's fine.

MR CRANMER BROWN: It was her suggestion.

JUDGE PINI: Fine. All right. So, there will be a sentencing note from yourself and defence counsel can do the same, if they wish to. So, their sentence will take place on the 9th. The only reason I pause was I think Mr Grattage was saying he won't have had his conference with Mr Birtu by the 9th. Is that right, Mr Grattage?

MR GRATTAGE: Well, we are going to apply to the prison immediately. The only days I have available are the 2nd or the 7th for a conference and so the 9th is very soon after that.

JUDGE PINI: Well, it may be soon --

MR GRATTAGE: As I say --

JUDGE PINI: Yes, go on.

MR GRATTAGE: Well, I simply don't know how quickly the prison in Lincoln are able to make those conferences. I know that probably Mr Cranmer Brown has a better idea of how quickly Lincoln Prison is able to accommodate conferences.

JUDGE PINI: Lincoln Prison have been very cooperative with CVP links. Mr Cranmer Brown regularly defending uses them. That's right, isn't it?

MR CRANMER BROWN: Yes, your Honour. I think Ms Newcombe will know better any of us. But I would have thought that within a week, probably, would be --

JUDGE PINI: Yes. So, what I am minded to do, Mr Grattage, is to list this case for plea and trial preparation hearing on Friday, 9 October on the footing that you will have had your

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conference on the 7th. Ms Newcombe can fix up a link for the 9th. Mr Birtu can appear on the link on the 9th.

MR GRATTAGE: Your Honour, the only note I make is that I represent a 17-year old defendant in a sentence matter, but of course there are other defendants in this case and I will have to ensure that I am available.

JUDGE PINI: I am afraid so, Mr Grattage. The other three in custody, I know they have been awaiting sentence for quite some time. They can be sentenced separately and they will be. It makes a lot of sense to have all the defendants together at the same time, on the 9th.

MR CRANMER BROWN: If it helps, there is a very full case summary setting out the evidence against Mr Birtu.

JUDGE PINI: I know.

MR CRANMER BROWN: He will either say, "Yes, I did involve myself in this" or, "I did not."

When it comes to directions, the prosecution case is in large measure served and I don't have a difficulty in allowing a longer period for the defence statement, for that to be -- I appreciate there is a lot of work, if it is a trial, for the defence to do in this case.

MR GRATTAGE: I am grateful.

JUDGE PINI: Yes. We can do that, Mr Grattage. If it is to be a trial, we can set the stage dates on the 9th and allow a considerably extended period for stage two, to enable you to take instructions. So, it won't be defence statement four weeks later.

MR GRATTAGE: I am grateful.

JUDGE PINI: But I think we have to see, obviously, where we are. Is Mr Birtu back with us yet? Yes, he is. Thank you very much. We will do it in that way.

Are there any other matters from the Crown, Mr Cranmer Brown?

MR CRANMER BROWN: Your Honour, I am just checking. The custody time limit is some way off still, though I need to mention it, as your Honour knows, today. The internet is a little bit slow. If anyone can --

THE CLERK OF THE COURT: 28 January.

MR CRANMER BROWN: Thank you.

JUDGE PINI: Thank you very much. So, CTLs don't expire until 28 January, so we are all right on that score.

MR CRANMER BROWN: Yes.

JUDGE PINI: Anything else, Mr Grattage, from you?

MR GRATTAGE: No. I am grateful, thank you.

JUDGE PINI: Thank you very much, indeed. That then concludes this case.

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Mr Birtu --

MR GRATTAGE: Your Honour, there is one thing, actually. I do apologise. I wonder if your Honour would explain to Mr Birtu the decision that has been made today and the fact that I will be coming to see him in conference.

JUDGE PINI: Just about to do it.

MR GRATTAGE: I am grateful.

JUDGE PINI: Mr Birtu, you were having a very good relationship with Bird & Co. They are a very respectable and very competent, very competent, firm. You would be well advised to heed their advice.

They are remaining as your solicitors and Mr Grattage will be coming to see you on 7 October. You will appear over the link, as you are now, on 9 October so that we can progress this case. Do you understand, Mr Birtu?

THE DEFENDANT: Yes.

JUDGE PINI: Thank you very much, indeed.

THE DEFENDANT: Yes.

JUDGE PINI: Thank you very much, indeed.

Right. Thank you. That concludes this hearing.

(The hearing adjourned)

(4.34 pm)

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