

‘Moral Remainders: What Is The Price of Professional Integrity?’

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given on behalf of Master Sarah de Gay¹**

Let me begin by telling you a story and asking you a question.

I was at Freshfields for my training contract. When it came to qualification as a solicitor, I found myself needing to decide if I would qualify into the Real Estate team or into the Environment team. I liked both, very much, but was leaning towards Environment. The work was more varied; the people kind and supportive. There was, however, a problem. As well as doing environment-related work for a whole range of clients, the team also did a lot of work for an international tobacco company. My mother had died of lung cancer from smoking when I was 9, and I just couldn’t bring myself to do that sort of work. I spoke to the partners who said I could join the Environment team, but wouldn’t have to work on tobacco matters if I didn’t want to. And that’s what happened. Over time, I was then asked on occasion if I might have changed my mind; if I might now be interested in doing some of the tobacco work. To be clear, the asks were never inappropriate or pushy. And the work was legally interesting and innovative. But I felt I couldn’t do it; and so I left Freshfields and went to work at Latham.

Here is the question: do you think, in the story I have just told, that I acted with integrity?

I would suggest you can tell this story in at least two ways. The first telling says that I was acting with moral courage, both in raising with the partner the fact that I didn’t want to act for a tobacco client and then leaving when I felt that was the right thing to do. That I stayed true to my what mattered to me as an individual.²

The second telling of the story might instead say that my professional integrity as a solicitor was compromised; that I should have realised that in acting for a tobacco company at a magic circle law firm I would simply be helping them with whatever rights the law had granted to them – that such was simple a consequence of living in a democratic society where we disagree about some things and agree about others; where the law is often a matter of compromise. Or perhaps I should have told myself that, in choosing to work at Freshfields, I had impliedly already chosen to act for any clients the firm decided to take on.³ In not working for tobacco and in leaving, the second telling goes, I was putting my own personal values ahead of my professional commitments.

Let me tell you a different story.

¹ It was an honour to be asked to give this talk on behalf of the Master Solicitor. This paper is a slightly expanded version of that delivered on 3 June 2024, with (copious) footnotes for those who want to delve deeper. I am grateful to Sarah de Gay, Iain Miller, and Isra Black for comments on a previous draft. Any remaining errors are, sadly, my own. Slaughter and May kindly hosted the Master’s Lecture and the reception that followed. I am grateful to them for so doing.

² A related but different account might suggest that I saw an ‘own interest’ conflict: a worry that I might not be a very good tobacco lawyer because my heart would not be in the work. This was, in fact, not the issue in my own case, but it might be relevant to other lawyers in other contexts.

³ See: Stephen Pepper, "The lawyer's amoral ethical role: a defense, a problem, and some possibilities." *American Bar Foundation Research Journal* 11.4 (1986): 613-635.

One of the last big deals I did at Latham was on the sale of Harrods where Latham acted for the purchaser, the Qatari royal family. We did the deal and I moved on to the next. I never really thought about the purchase of Harrods, or the other work I did at the firm for that client. Which was funny because I had also set up the LGBT+ group of the London Latham office. And because I knew (because who didn't know) of the physical and other persecution of LGBT+ people in Qatar, and the lack of rights there for people like me.

Is it not a bit hypocritical that I left one law firm because of one of set of moral views, but did not act in a second situation in a way that aligned with one important aspect of my identity? In other work, I have called these very personal preferences and redlines examples of 'Meatloaf Lawyering' (i.e. 'I would do anything for my clients, but I won't do that').⁴ Why did my mother's death appear to have a stronger moral claim in relation to my actions as a lawyer than my sexuality?⁵

I share these stories with you because I think they highlight *some* interesting things about integrity.

To précis what I will argue tonight, thinking about integrity can be hard. We struggle because integrity is trying to do lots of different things at the same time; because integrity in many ways gets to the heart of what it means to 'be' a solicitor.

Integrity speaks to the stories I have shared, but is also so much more.

Having integrity as a solicitor means, on the one hand, being able to justify *to the wider world* things that would seem wrong or bad or immoral if done by other people. That's what role morality in particular is concerned with – rights, obligations, and acts whose ethical status might be different if done by one person in one role compared with someone else: 'After all, there is a big difference between wielding a knife in a street fight and an operating room: one is maiming, the other is surgery.'⁶ What some might call in one context dishonesty, prevarication, and a lack of moral courage others might call – in some legal professional contexts - the consequences of client confidentiality and professional privilege.

Equally, having integrity is one way of trying – as best we can – to justify *to ourselves* some of the choices we make as solicitors: trying to make sense to ourselves of what we do, trying to live a life well-led. Now we might not feel comfortable with all the things that we do as a solicitor, but we tell ourselves that acting as a lawyer with professional integrity is meaningful and important.

Having integrity also means – in a connected but different way - that we expect 'more' somehow of those given the title of solicitor, even if we are not super sure what that is, or indeed how we draw the line between what lawyers do in their private lives and what lawyers do in their legal lives.

Integrity goes to both the fundamental nature of the role of the lawyer, and also to how we justify what we claim as distinctive or important about that role.

I will start tonight by talking about the legal requirement on solicitors to act with integrity. I'll then do a bit of standing back to ask how well the law explains to those in practice what it means to act with integrity. Dear reader, it does a poor job. But, as I'll come on to say, I am not so sure that this

⁴ Steven Vaughan, "Existential Ethics: Thinking Hard About Lawyer Responsibility for Clients' Environmental Harms." *Current Legal Problems* 76.1 (2023): 1-34.

⁵ For a fuller discussion of these sorts of moral claims, see: David B. Wilkins "Race, ethics, and the first amendment: should a black lawyer represent the Ku Klux Klan." *Geo. Wash. L. Rev.* 63 (1994): 1030, p1043ff.

⁶ David Luban and W. Bradley Wendel, "Philosophical legal ethics: an affectionate history." *Geo. J. Legal Ethics* 30 (2017): 337, p349.

lack of deep explanation is such a bad thing. I will then talk about integrity generally. In the final part of my talk, I want to cover different examples of lawyer conduct that might relate to integrity: some cases about the limits of the law; some cases about what we say versus what we do, and some cases that go to the heart of the personal/professional intermix.

Because this is the Master's Lecture for the City of London Solicitors' Company, I will focus on solicitors and, where I can, examples from City practice. But integrity and its associated issues have greater purchase: both in other legal services arenas (for barristers,⁷ legal executives,⁸ conveyancers,⁹ notaries,¹⁰ etc), in other arenas of professional regulation (health, insurance, banking etc), for politics and further afield. These are also concerns not confined to England & Wales. Integrity is, for example, also part of the law of lawyering and a professional principle for lawyers in Australia,¹¹ and Canada.¹² As the Master has written in her own work in this area, integrity is 'in vogue' in regulatory terms.¹³

The Law on Integrity

The Legal Services Act 2007 (LSA) is the overarching piece of regulation on, as the name suggests, legal services.

S1(3)(a) of the LSA says that one of the professional principles is, 'that authorised persons should act with independence and integrity'. Legal services regulators are required to promote and maintain adherence to the professional principles.¹⁴ That's all that is really said in the Act about those principles.

The history of integrity as a professional principle is, however, much greater than the last 17 years and the LSA.

⁷ BSB. Core Duty 3 – 'You must act with honesty and integrity'. The BSB Handbook then gives examples of what this duty includes. Interestingly, these are all 'you must not' examples. I speak to this below in relation to solicitors.

⁸ CILEX Regulation – Core Principle 3 – 'Behave with honesty and integrity'.

⁹ CLC Overriding Principle 1 – 'Act with independence and integrity'. Costs Lawyers – Principle 1 – 'Act with honesty and integrity and maintain your independence.'

¹⁰ Notaries - 'A notary shall act with integrity'

¹¹ Australian Conduct Rules 2011 – 4.1.4 – 'A solicitor must...avoid any compromise to their integrity and professional independence'.

¹² Canada: Chapter I of the Code states: "The lawyer must discharge with integrity all duties owed to clients, the court, other members of the profession and the public." The chapter's commentary and notes go on to stress that integrity is "the fundamental quality of any person who seeks to practise as a member of the legal profession" and they define integrity as "soundness of moral principles ... especially in relation to truth and fair dealing; uprightness, honesty, sincerity." The Code's interpretive provision states that this principle of integrity "underlies the entire code" of professional responsibility. Alice Woolley comments that, "What the CBA Code is saying in effect is that a Canadian lawyer who acts in accordance with her obligations under the formal rules of professional responsibility cannot also act solely in zealous pursuit of her client's interests. Any such pursuit must instead be qualified so as to accord with what is required in order for the lawyer to maintain her own integrity; the lawyer cannot enter the role of lawyer and follow its dictates without question. The lawyer must integrate what the professional role demands into her own "moral principles." – see: Alice Woolley "Integrity in zealousness: Comparing the standard conceptions of the Canadian and American Lawyer." Canadian Journal of Law & Jurisprudence 9.1 (1996): 61-100, p74. This is what the SRA Code of Conduct is also saying, as discussed later on in this paper.

¹³ <https://www.brunswickgroup.com/solicitors-integrity-regulation-lawyers-i11985/>

¹⁴ s1(1)(h) of the LSA.

When we look back, while ‘integrity’ does not feature in the Solicitors Practice Rules 1936 to 1972 (set out in the Law Society's Guide to the Professional Conduct of Solicitors 1975) it is to be found in the Solicitors Practice Rules (SPR) by 1987.¹⁵

Practice Rule 1 of the SPR in 1987 stated that:

‘a solicitor shall not directly or indirectly obtain instructions for professional work or permit another person to do so on his behalf, or do anything in the course of practising as a solicitor, in any manner which compromises or impairs or is likely to compromise or impair any of the following: (a) the solicitor's independence or integrity’.¹⁶

The later Solicitors’ Practice Rules 1990 removed the words “A solicitor shall not directly or indirectly obtain or attempt to obtain instructions for professional work”,¹⁷ but otherwise the rule remained the same.¹⁸

Reforms in the early 2000s lead to the Solicitors Code of Conduct in 2007. This involved the separation of independence from integrity.¹⁹ The SCC 2007 contained six ‘core duties’. The second was the requirement to ‘act with integrity’. The official Solicitors Regulation Authority Guidance to Rule 1.02 of the SCC 2007 (the obligation to act with integrity) set out that: “Personal integrity is central to your role as the client's trusted adviser and must characterise all your professional dealings – with clients, the court, other lawyers and the public.”²⁰ It is interesting here that the

¹⁵ I am grateful to Sarah de Gay for her support with this part of the talk in particular.

¹⁶ Donald Nicholson, writing in 1998 on Law Society's Guide to the Professional Conduct of Solicitors says this about Practice Rule 1: “loyalty to clients can be said to comprise three further duties: that of zeal, independence and integrity... The duty of integrity is designed to prevent lawyers taking advantage of their clients financially or otherwise. In the LSG it receives far more attention than the other two duties, but in the CCB it is confined to a paragraph doing little more than prohibiting barristers from acting for clients whose interests conflict with their own. While the LSG leaves the general notion of taking advantage of clients rather vague and states no more on “culpable overcharging” than that it is “a question of fact in each case”, there are numerous rules relating to the charging of fees and providing other forms of financial protection to clients, including 60 pages of detailed rules on the keeping of solicitor accounts.” – see Donald Nicholson, “Mapping Professional Legal Ethics: The Form and Focus of the Codes.” *Legal Ethics* 1.1 (1998): 51-69, pp59-60

¹⁷ The SPR 1988 had a provision in the same terms as the SPR 1987.

¹⁸ Andy Boon has written extensively on the history of the professional principles. He says, “The appearance of integrity and independence on the same line illustrates the proposition that the interpretation of such standards is not always obvious. Items in lists can be discontinuous, with each unit maintaining its individuality as a particular instance, and accretive, with each unit contributing to collective meaning. With any list, unanticipated dynamics develop when apparent ‘strangers’, such as integrity and independence, are held together. Without an appreciation of context the reason for the juxtaposition is unclear. One possible interpretation is that integrity refers to honesty, or a standard slightly less demanding than honesty, a reading supported by the fact that solicitors are often charged with lack of integrity in disciplinary proceedings. Another is that integrity is distinct from honesty and refers to ‘wholeness’; conformity with the ethics of role. This reading is also consistent with the approach in recent professional disciplinary case”. See: Andrew Boon, “The legal professions’ new handbooks: narratives, standards and values’ *Legal Ethics* (2016) 19(2), pp207-233.

¹⁹ Here, Andy Boon surveys reviews and reforms to the SPR in the early 2000s – those which led to the SCC 2007 – commenting: “The working party proposal to separate principles relating to integrity and independence survived. Integrity was said to refer to duties towards clients, the courts, lawyers and others, including not knowingly giving false or misleading information and honouring professional undertakings. Independence meant avoiding ‘pressure from clients, the courts, or any other source’. This suggested that the original conjoining of the now separated items was no accident; solicitors’ integrity was the goal and maintaining formal independence was the means to that end. The decision to separate independence and integrity afforded flexibility to argue, for example, that employed solicitor advocates would be sufficiently independent to prioritise the duty to the court.” See: Boon (ibid) drawing on E Nally ‘Regulation: Rules Review -- The Closing Stages’ (2003) *Law Society Gazette*, 10 Apr, 34.

²⁰ <https://www.sra.org.uk/solicitors/guidance-old/change-tracker/code-of-conduct/rule1/>

focus was on personal integrity as being integral to the professional role. I will come back to this later on.

The next major regulatory reform saw the introduction of the SRA Handbook in 2011. As part of a shift towards greater principles-based regulation, the 2011 Handbook contained 10 principles instead of the former six core duties. The SRA said that the 10 principles were, ‘the fundamental ethical and professional standards that we expect of all firms ... and individuals when providing legal services’. Principle 2 in 2011, like Core Duty 2 in 2007, was the requirement to ‘act with integrity’.²¹

The SRA’s regulatory toolkit shifted once again in November 2019 with the introduction of the STARs, the new Standards and Regulations. Much changed with these reforms. For present purposes, these changes included: the Principles reducing in number from 10 to 7 (though the requirement to act with integrity remained); and a new principle of acting with honesty was introduced (there having been, as Mostyn J framed it, different judicial ‘schools of thought’ as to whether integrity and honesty were synonymous).²²

I want to talk about what the SRA says in its current guidance on the STARs about the meaning of integrity. But to do that I need to sidestep and talk first about the relevant case law. This is because the SRA guidance speaks about that case law.

The meaning of integrity in the SRA’s regulatory toolkit was said by Jackson LJ to be a ‘central issue’ in 2018 in the leading case of *Wingate and Evans v the SRA*.²³

The facts of *Wingate* are not useful for today’s conversation. Instead, I want to focus on how Jackson LJ framed integrity. Having surveyed earlier case law, he went on to say that:²⁴

“As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty. ...

Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.

In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. ... The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

²¹ The SRA 2011 Handbook Guidance on Principle 2 continued to focus on personal integrity: “Personal integrity is central to your role as the client's trusted adviser and should characterise all your professional dealings with clients, the court, other lawyers and the public.” – see para 2.6 of the 2011 Handbook. Despite the 2019 STAR changes and revised associated guidance, the SRA continues to reference ‘personal morality’ in 3 live Warning Notices: on holiday sickness claims, payment protection insurance claims, and referral fees/LASPO. This is because, I think, those Notices reference the former Code of Conduct; although it is probably worth the SRA looking into this.

²² See the discussion in: *Wingate and Evans v SRA* [2018] EWCA Civ 366 (para 52 ff, para 74 ff); para 8 of *Adetoye v SRA* [2019] EWHC 707 per Mostyn J; and para 56 of *Kwame Adyekum Siaw* [2019] EWHC 2737 (Admin) per Flaux LJ. This has now gone away with the changes in November 2019 to the SRA’s Codes of Conduct and the introduction of honesty as a stand-alone principle.

²³ [2018] EWCA Civ 366, para 3.

²⁴ *Wingate*, paras 95 to 100.

I agree with Davis LJ in *Chan* that it is not possible to formulate an all-purpose, comprehensive definition of integrity. On the other hand, it is a counsel of despair to say: "Well you can always recognise it, but you can never describe it."

The broad contours of what integrity means, at least in the context of professional conduct, are now becoming clearer. The observations of the Financial Services and Markets Tribunal in *Hoodless* have met with general approbation.²⁵

Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse."

He then listed illustrations of situations in which solicitors were acting without integrity.

The above framing by Jackson LJ remains the most expansive jurisprudence when it comes to the meaning of integrity in relation to solicitor conduct.²⁶ In *Wingate*, Jackson LJ drew on these words from Sir Thomas Bingham in *Bolton v Law Society*:²⁷

'It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. ... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees.'

Since 2018, around 40 cases in the High Court and Court of Appeal concerning solicitors have made reference to *Wingate*.²⁸

Those later cases actually add very little to *Wingate*. Instead, these cases – appeals from the Solicitors Disciplinary Tribunal (SDT) – tend to tread similar paths. If the SDT has done a decent

²⁵ In *Hoodless and Blackwell v. Financial Services Authority* [2003] UKFTT FSM007 the applicants challenged decisions by the FSA to withdraw their approvals to perform the functions of investment advisers and investment management. The criteria for assessing the fitness of approved persons were set out in the FSA Handbook. They included 'honesty, integrity and reputation'. In considering these criteria, the Financial Services and Markets Tribunal, at para 19, said: 'In our view 'integrity' connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuine grey areas, a finding of lack of integrity would not be appropriate).' There is much I find troubling here. What are 'ordinary standards'? Does this mean they are not (or there are not) specific role morality standards? If so, surely that cannot be right? Equally, aren't 'grey areas exactly' where integrity should be doing some work?

²⁶ I have chosen the word 'framing' quite intentionally. The SDT seems to talk on occasion about a 'test' coming from *Wingate* (although I am not sure I saw or recognised a 'test'). See for example: how Morris J talks about the case of *Zulfiqar Ali* at the SDT in [2021] EWHC 2709 (Admin); how Lang J reports on *John Martin Gao* in the SDT in [2019] EWHC 2130 (Admin) SDT (at para 12.11); and how Walker J reports on *Alexander Zivancevic* in the SDT in [2019] EWHC 1950 (Admin) SDT (at para 8.25). It would be more accurate to talk, as Sir Gerald Barling did in *Sophia Khan* - [2022] EWHC 484 (Ch) at para 104 - of Jackson LJ's comments on integrity in *Wingate* as 'helpful guidance'.

²⁷ [1994] 1 WLR 512 at 518 A-D.

²⁸ I say 'around 40' as different legal databases give different lists of later citing cases. I am not sure why this is. These are cases on solicitors. Other cases, in different professional contexts, also cite *Wingate*. I am not interested in those other cases for this talk.

enough job of saying ‘The solicitor did X and we think is lacking integrity’ (or instead that ‘A solicitor acting with integrity would not have done Y’) then the courts on appeal tend to say, and here I am of course paraphrasing, “Yes, that seems fine given the SDT has specified particular conduct”.²⁹ As long as the findings of fact (of a lack of integrity) are sufficiently and clearly spelled out by the SDT, then that seems to suffice on appeal.³⁰

What I find difficult about *Wingate* - and the associated older and newer cases - is that we tend to be talking about integrity in the breach: what it looks like when a solicitor *lacks* integrity. And then we build up, from those cases, a list of examples of conduct which do not show integrity.³¹ This is not per se problematic, and might sometimes be useful,³² but the obligation on solicitors is a positive one, not a negative one. It is an obligation to *act with* integrity.³³

What then are the contours of this positive obligation? What does it mean to *act with* integrity? As I just noted, Jackson LJ said in *Wingate* that, ‘the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members’. This idea, of integrity connoting high or higher standards, had already been surfaced the year before in *Williams v SRA* in 2017. There, Carr J (as she then was, now the Lady Chief Justice) commented that ‘Want of integrity arises when, objectively judged, a solicitor fails to meet the high professional standards to be expected of a solicitor.’³⁴

What else do we glean from the case law on this positive obligation to act with integrity? Actually not very much. The SDT in the 2018 case of *Vay Sui Ip* described someone with a lack of integrity

²⁹ There are various examples. See, for instance: Morris J in *Zulfiqar Ali* - [2021] EWHC 2709 (Admin) para 96 and para 135; Holroyde LJ in *Kulwant Singh Manak* - [2018] EWHC 1958 (Admin) para 60; Martin Spencer J in *Mark Lorrell* - [2019] EWHC 981 (Admin); Holgate J in *Ahmad v SRA* [2018] EWHC 1596 (Admin) at para 72; Walker J in *Alexander Zivancevic v SRA* - [2019] EWHC 1950 (Admin) at para 26; and Davis LJ in *Richard Clegg v SRA* - [2019] EWHC 2408 (Admin) at para 34.

³⁰ *Beckwith v SRA* [2020] EWHC 3231 (Admin.) at para.13: “There is no dispute as to the approach we should take when deciding this appeal. This appeal is by way of review, not rehearing. The question for us is whether the Tribunal’s conclusion was ‘wrong’. Findings of fact, and decisions on evaluation of facts are primarily questions for the Tribunal and are only to be revisited if the conclusion reached by the Tribunal rested on an error of principle or fell outside the bounds by what the Tribunal could properly and reasonably have decided. This general caution, which applies to all appeals is heightened in this case because the decision under appeal is a decision of a specialist tribunal: see generally *Solicitors Regulation Authority v Good* [2019] EWHC 817 (Admin) per Flaux LJ at para.30, and *General Medical Council v Bawa-Garba* [2019] 1 WLR 1929 per the court at paras.64 – 67.”

³¹ In *Wingate*, for example, at para 101, Jackson LJ goes on to give examples (from previous cases) of ‘illustrations of what constitutes acting without integrity’. The SRA also does this (drawing on *Wingate*) in the list of ‘case studies’ in its guidance on integrity - <https://www.sra.org.uk/solicitors/guidance/acting-with-integrity/>. These SRA case studies are examples ‘where we [the SRA] have taken disciplinary action against the solicitor(s) involved on grounds of acting without integrity’.

³² In that solicitors then have a check list of what not to do; and in that regulators can easily enforce in relation to these particular examples.

³³ Sarah de Gay writes: “The issue, for both directors and solicitors, is the standards and regulations are phrased positively. Consider the difference between being told to “do good” versus “do no harm.” Both have the potential to be vague, but the former surely requires a list of “do’s” alongside a list of “don’t’s”.” – see: <https://www.brunswickgroup.com/solicitors-integrity-regulation-lawyers-i11985/>. There is a different way of looking at this, as my colleague Isra Black pointed out to me: ‘From the summary in the case law integrity seems just to mean adherence to the relevant role morality. And so it tracks what is required, the flipside of which is what is impermissible (though there may be room for a third category of conduct that is permissible, but not required, about which various positive and negative reactive attitudes are possible). So, the obligation to act with integrity might just be the obligation not to do what is impermissible.’ I am not sure I agree, but this is worth further thought.

³⁴ Para 54, *Williams v SRA* [2017] EWHC 1478 (Admin). This idea of objectivity is also seen in *Christopher Hayes v SRA* where Hickinbottom LJ says that, ‘Whereas honesty is a basic moral quality expected of all members of society, integrity expresses the higher objective standards which society expects from professional persons and which a profession expects from its own members.’ - [2018] EWHC 1248 (Admin) at para 52.

as, ‘someone who lacked a steady adherence to a moral code’.³⁵ More recently, in November 2023, the SDT in the case of *Ian Clay* said that Mr Clay’s actions lacked the ‘moral compass’ expected of a solicitor to the extent that it was a breach of the requirement to act with integrity.³⁶

Put together, where do these various framings on acting with integrity in *Wingate* and beyond take us? I am not sure they take us very far. I am also not sure, and will explain why in a moment, if that matters very much.

Let me suggest that one framing of integrity as higher standards means that a solicitor needs to act with honesty and independence, that they should recognise their role in relation to the rule of law and the administration of justice. That solicitors should not take unfair advantage of others. Acting with integrity might mean that while, of course, a solicitor should act in their client’s best interests there may be situations in which the wider public interest should take precedence.

Those among you well versed in the SRA’s Standards and Regulations will no doubt be smiling. Everything I have just suggested integrity means is *already* specified in the SRA’s regulatory toolkit. All of those things are already *existing* obligations, *separate* to the obligation to act with integrity. Some are, for sure, examples of the ‘higher standards’ we expect of solicitors, as per *Wingate*. But they are also free-standing obligations. What then does acting with integrity mean above and separate from acting in a way that is consistent with the other Principles and other requirements the SRA has set out?³⁷ This might sound like a simple question, but when you look at the case law you often see judges and tribunal members blurring their language and mixing and matching ideas of integrity, independence, trust and confidence in the profession and so on.³⁸

³⁵ Para 144 of the SDT ruling. That solicitor, ‘demonstrated a belief that his duties were to his client, but he was blind to his duties to the court and in the wider context of the administration of justice’. This framing was approved of by Lane J when the SDT decision came to the high court for review. See *Vay Sui Ip* [2018] EWHC 957 (Admin) at para 165.

³⁶ *Ian Clay* – para 21.82.5 – SDT Case No 12471-2023. There is also reference to a ‘moral compass’ in the context of integrity in an earlier SDT case - *SRA v Marcus Paul Nickson* SDT Case No. 11436-2015 (paras 175 and 180.4). I am grateful to Kingsley Napley for pointing out *Nickson* to me. We see the use of the term ‘ethical compass’ (and whether it points in the right direction for the purposes of professional integrity) in the financial services case of *Jeffery v. Financial Conduct Authority* FS/2010/0039.

³⁷ When it comes to enforcement, a lack of integrity is alleged in addition to, and also separate from, alleged breaches of the SRA’s other professional principles. In their study of all cases before the SDT in 2015 (i.e. before the reforms introducing honesty as a stand-alone principle), Andy Boon and Avis Whyte found that a failure to act with integrity was the second most pleaded breach of the SRA’s professional principles (21.5% of all cases) after maintaining public trust (23.8%). A lack of independence, by contrast, was only alleged in 3.2% of cases. See: Andrew Boon and Avis Whyte, ‘Lawyer disciplinary processes: an empirical study of solicitors’ misconduct cases in England and Wales in 2015’ *Legal Studies* 39.3 (2019): 455-478, P469. In *Wingate*, Jackson LJ noted (at para 64) how the charge most often laid in relation to the SPR 1990 was ‘conduct unbefitting a solicitor’. I asked the SRA, in preparing this talk, for any more recent data they might be able to provide. They shared that, in 2022, 70% of all matters before the SDT involved an allegation of a lack of integrity. In 2023, this was 86%.

³⁸ The SDT in *Beckwith* said (at para 25.191) that: ‘When considering whether the Respondent’s conduct lacked integrity... The Tribunal found that the Respondent’s conduct had fallen below what was expected of him by members of the public and of the profession’. This suggests there is then a fine line between not acting in a way that upholds trust and confidence (one principle) and acting without integrity (another principle)? When is it one but not the other? We see judges and tribunal members mixing the two (and probably not even aware they are doing so). Look at the language here from the SDT: “The Respondent had breached the trust placed in him and the Firm by clients, who believed that their monies were being safeguarded by being in the Firm’s client account. The Respondent’s actions had caused significant harm to the reputation of the profession, and were a complete departure from the standards, integrity and probity expected of a solicitor.” (taken from *Forz Khan* by Warby J - [2018] EWHC 2184 (Admin) at para 52). See also Flaax LJ in *Kwame Adyekum Siaw* - [2019] EWHC 2737 (Admin) at para 56 – who talks about striking off being appropriate in some instances of a lack of integrity because ‘the reputation of the profession...will only be properly protected in such a case by the sanction of striking off’.

The relevant case law also suggests that integrity is something we know when we see it.³⁹ Here, the SRA's Guidance on the professional principle of integrity says that, 'Acting with integrity means different things in different situations and contexts... whether in a practise/professional context or in a private setting outside of legal practice.'⁴⁰ The SRA's Guidance also references three of the key cases on integrity and sets out examples, from the case law, of a lack of integrity.

Some might find this lack of concrete articulation, both from the courts and from the regulator, not very satisfying. You are telling me, they might say, that I need to act with integrity (and you might prosecute me for breach) but you are not really telling what that means or what that looks like?

Here, Gregory Treverton-Jones KC and Nigel West have labelled integrity in the SRA's rules a 'very unhelpful concept.'⁴¹ I beg to differ. I think this obligation to act with integrity does two important things. First, it acts or might act as a catch-all where a solicitor's conduct is problematic but where we are unable to find a particular rule to attach that problematic conduct to.⁴² This is how it is a 'useful short-hand'. Second, the professional principle of integrity is a powerful reminder and signifier (like the professional principle of independence, like the principle on the rule of law) of the special role of the solicitor: a reminder that simply doing what a client wants is not the be all and end all. Integrity, more than the SRA's other principles, captures the 'spirit' of the professional role, quite apart from the individual substantive rules. The challenge of articulating that spirit remains, of course. I will speak more about this later.

Ground Projects in Thinking About Integrity

Some of those concerned with integrity suggest that acting with integrity means staying true to our 'ground projects'.⁴³ Ground projects are said to be things that give life meaning. Jane might be committed to charity. Jo might find meaning in art. Family matters very much to Méabh. And so on.⁴⁴

³⁹ See Davis LJ in *SRA v Chan* [2015] EWHC 2659 (Admin) at para 48: "As to want of "integrity", there have been a number of decisions commenting on the import of this word as used in various regulations. In my view, it serves no purpose to expatiate on its meaning. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case." This is then repeated in later cases (see, eg, para 47 of *Newell-Austin v Solicitors Regulation Authority* [2017] EWHC 411 (Admin)). As Jackson LJ says in *Wingate* (at para 103), 'A jury in a criminal trial is drawn from the wider community and is well able to identify what constitutes dishonesty. A professional disciplinary tribunal has specialist knowledge of the profession to which the respondent belongs and of the ethical standards of that profession. Accordingly, such a body is well placed to identify want of integrity. The decisions of such a body must be respected, unless it has erred in law.'

⁴⁰ <https://www.sra.org.uk/solicitors/guidance/acting-with-integrity/> - published in 2019 and updated in 2022.

⁴¹ <https://www.lawgazette.co.uk/practice-points/an-ordinary-word-given-an-extraordinary-meaning/5070595.article>

⁴² It was pointed out to me by my colleague Isra Black that while descriptively this may well be true, it might also be of dubious normative merit. Without some kind of substantive account of integrity (eg that it's a kind of cluster concept, rather than independent of extant rules), this might appear like 'regulation by vibes'.

⁴³ See here the work of Bernard Williams discussed elsewhere in this paper.

⁴⁴ Alice Woolley writes that, 'Moral critics of Williams have questioned his claim that ground projects warrant so much of our attention given that he does not provide much in the way of explanation as to why that attention is deserved. Things of importance to me may range from the inconsequential (keeping my kitchen island free of clutter) to the bizarre (avoiding the sound of other people eating) to the recognisably foundational (caring for my children). It is implausible to suggest that taking a morally required course of action at the cost of any thing important to me, however inconsequential or bizarre that thing is from a point of view other than my own, will implicate my integrity. Further, as Sarah Buss has noted, it seems a cop out to simply say 'but this thing is important to me' in response to a conflicting moral obligation: 'I am what I am' is the 'lazy, cowardly way out. It is the way of bad faith: I am what I am, end of story. Even if my reasons do depend on my identity ... my identity is not self-justifying.' - see: Alice Woolley, "Context, Meaning and Morality in the Life of the Lawyer." *Legal Ethics* 17.1 (2014): 1-22., p11.

Think back to why you became a lawyer? What reasons did you give, what ‘ground projects’ did you raise, in your application to study law? If the university forms of the thousands of students who apply to UCL Laws each year are any indication, then something to do with justice or helping people or the rule of law may have been animating your own decision.⁴⁵

Think now about how much of what you do today as a solicitor is about those things: justice, helping people, the rule of law. Perhaps you felt some aspect of regret just now when I asked you to engage in that thinking exercise? This is maybe no bad thing. Damian Cox and his colleagues write that, “Regret marks a response to values. To regret something is, among other things, to keep track of what is important to you. Much regret may be foolish and overblown, but ...Regret can be the response of someone who is fully open to the reality of what is important and valuable to them.”⁴⁶

If you compare your 15-year-old self and your current self, how do you know if you still have integrity? Your “fifteen-year-old self might view some of the [current self’s] beliefs as sold-out ideals, where the [current you] sees a story of growing wiser (and maybe sadder).”⁴⁷

What you might say here, and you would be right were you to say it, is that whatever ground projects or commitments an individual has or had, something different happens when they become a solicitor. That being a solicitor is about engaging with the idea of role morality I introduced earlier – that you might need or have to do things as a solicitor that you would or might find morally problematic in your personal life. Let me give you an example.

You meet someone who has committed a number of murders. All of his victims have been found, bar one. The parents and loved ones of the unfound murder victim beg to know where the body has been hidden so that they might conduct a funeral. The murderer tells you where the body is located. Do you tell anyone else?

Let me suggest that your answer might differ depending on whether I tell you that in this scenario you are the murder’s solicitor (with important professional obligations as to confidentiality) or not his solicitor.

Great debates exist in legal ethics about how much an individual’s own morality should have any bearing or impact on what they do as a solicitor.⁴⁸ These debates sometimes get into the space of when or how the personal integrity of a person might be challenged through what they feel is required of them as a solicitor in the context of their professional integrity. Any neat separation of the two – the personal and the professional - is not always straightforward. Not least because in legal services regulation we are sometimes interested in the person as well as being interested in the professional – we certainly think about the person, for example, when we think about entrance to the profession and character and suitability tests.⁴⁹

⁴⁵ Cynics might say some of this is simply virtue signalling by applicants. I am willing to accept that may be the case in some, but by no means all, instances.

⁴⁶ Damian Cox, Marguerite La Caze, and Michael Levine, ‘Integrity’ in *The Handbook of Virtue Ethics* (Routledge 2014) at p204.

⁴⁷ David Luban, "Integrity: Its causes and cures." *Fordham L. Rev.* 72 (2003): 279, p299.

⁴⁸ See, for example: Tim Dare ‘Robust role-obligation: How do roles make a moral difference?’ (2016) 50 *Journal of Value Inquiry* 703; and WH Simon ‘Role Differentiation and Lawyers’ Ethics: A Critique of Some Academic Perspectives’ (2010) 23 *Georgetown Journal of Legal Ethics* 987.

⁴⁹ www.sra.org.uk/solicitors/standards-regulations/assessment-character-suitability-rules/

It is trite but true to say that, ‘integrity is a complex concept in ethics, and different philosophers use it in different ways.’⁵⁰ Reed Elizabeth Loder writes that:

“Integrity is an idea that pervades everyday life while remaining elusive. People use the term to describe anything from a physical object like a bridge to a piece of literature. Even anti-virus computer software performs perfunctory ‘integrity checks.’ The idea also centrally captures a moral characteristic of persons. People judged to have integrity are those who withstand the ethical assaults of everyday living without yielding their morality to pressure.”⁵¹

Different contemporary accounts of integrity (those not just concerned with solicitor or professional integrity) offer up different ways of understanding the idea – integrity as self-integration, or maintenance of identity, integrity as standing for something, integrity meaning living a convincing life or living a life of moral purpose, integrity as a wholeness of oneself (a sense of inner harmony and coherence). Some have framed these collectively as a commitment to take one’s life seriously.⁵²

Various accounts also suggest, in different ways, that a crucial feature of integrity is self-reflection and self-assessment, including associated ‘emotions of self-assessment: regret, remorse, guilt, shame’.⁵³ While these are (or may sometimes be) negative, more positive emotions (gratitude, pride, joy, hope and so on) are also linked to self-assessment. Those accounts also speak about forms of integrity requiring “active reflection... [and/or] relentless scrutiny of ends and means.”⁵⁴

Most of those who write in this space agree that acting with integrity will, on occasion, be hard.⁵⁵ Deborah Rhode noted that,

“At a minimum, persons of integrity are individuals whose practices are consistent with their principles, even in the face of strong countervailing pressures.’ Yet the term also implies something more than steadfastness. Fanatics may be loyal to their values, but we do not praise them for integrity.”⁵⁶

And Tim Dare has argued that,

⁵⁰ Yong Tan, ‘The Relationship Between the Self and Others in Williams’ Theory of Integrity’, *International Journal of Philosophy* 9(1) (2021) pp. 66-7.

⁵¹ Reed Elizabeth Loder, ‘Integrity and Epistemic Passion’, 77 *Notre Dame Law Review* 841.

⁵² Cox and others, *Virtues Handbook* (n 46) p206-7.

⁵³ Cox and others, *Virtues Handbook* (n 46) p209. Tim Dare writes: “I argue that dominant accounts of integrity, accounts that, on their face, ground integrity in autonomy, integration, and identity, in fact, rest upon a common recognition that whether or not a person has integrity turns upon whether or not she or he has engaged in a process of sincere and thorough reflection and displayed a readiness to accept the implications of such reflection. Integrity is not autonomy, or integration, or identity, and it is certainly none of these things alone. Rather, these are the sort of things to which a person of integrity should have proper regard in this process of sincere and thorough reflection, and it is this process of reflection itself which underpins integrity, not the particular outcome or focus identified by any of the views canvassed in that reflection”. See: Tim Dare, “Philosophical Legal Ethics and Personal Integrity.” *University of Toronto Law Journal* 60.4 (2010): 1021, p1027. Many formal and substantive accounts of autonomy will have as a necessary condition of being autonomous that one has subjected one’s first order attitudes and behaviours to some kind of second order evaluation. As such acting with integrity might just be acting in accordance with self-respect for one’s agency, rather than exhibiting some kind of virtue.

⁵⁴ Loder (n 51) p844.

⁵⁵ Loder (n 51) p845.

⁵⁶ Deborah L Rhode, ‘If Integrity Is the Answer, What Is the Question’ (2003) 72 *Fordham L Rev* 333, p335.

“Integrity cannot require moral complacency, and moral agents cannot demand, as a condition for endorsing a view, that it meet with universal approval. One significant element of common understandings of integrity is precisely a certain degree of robustness against external criticism. That robustness cannot amount to indifferent dogmatism but nor can it be vulnerable to a bit of shaking.”⁵⁷

Let’s keep all of this in mind – framings of integrity, and possible tensions between personal lives and professional lives as a lawyer - as I run through what I see as three types of integrity cases: cases about the limits of the law; some cases about what we say versus what we do, and some cases that go to the heart of the personal/professional intermix.⁵⁸

Before I do this, let me be clear: I am not saying these are cases where there is a regulatory interest in enforcing for a lack of integrity.⁵⁹ As I said earlier, I am much more interested in what it means for a solicitor to act *with* integrity. In each of these examples, do you think the lawyer is doing just that; are they acting *with* integrity? And if so, why? Remember also what we have spoken about already – integrity as higher standards, as conforming with the role, as wholeness, as having a moral compass and adherence to a moral code, as being able to take criticism, as requiring self-reflection and honest appraisal.

The Drawing the Line Cases

I see these cases as those concerned with the point at which a lawyer needs to say to their client ‘Thus far and no further’. When do or should you know as a solicitor that that point has been reached? When does acting with integrity suggest you should say ‘No’? These cases are, or can be, factually and legally complex.

Let me share three examples.

An employment lawyer is asked to draft the fifth Non-Disclosure Agreement for a client. The factual patterns of each instance seem broadly similar. Each concerns alleged sexual misconduct with an employee.

A private equity lawyer does a deal which, with other deals, has the chance of presenting a systemic threat to the financial system. This potential for systemic risk is well known among City finance lawyers.

A litigator is approached late one afternoon by a client about a story appearing in the papers the following day. The client says the story is libellous and instructs the lawyer to write ‘without prejudice’ to the journalist requiring the retraction of the story and raising the potential of a libel claim should it run. The litigator feels they have no time to check the accuracy of what their client is telling them.

I think these are interesting cases because our responses to them may not be immediately clear. What does it mean in these situations to be a ‘good’ lawyer? To act in accordance with integrity,

⁵⁷ Dare (n 53) p1030.

⁵⁸ We see the ‘easy enough’ cases come up time and time again in the case law. These are clear cases of problematic solicitor conduct. Whether they are failures of integrity or something else is up for debate. If you have your hand in the till, if you are backdating documents, if you are lying to clients about their cases, if you are lying about who you are in a firm; then I am going to suggest that we would all agree that the lawyer in question has done something wrong.

⁵⁹ There might be in some. There are not in others.

with the higher standards expected. There will – depending on the facts – be instances in which the lawyer in each scenario is doing the ‘right thing’. In which they would, if they were asked, be able to thoughtfully account for their actions in line with an objectively reasonable, good faith interpretation of their professional obligations.⁶⁰ But there are also fact patterns where these three examples are problematic. Where a lawyer is not demonstrating those higher standards or any moral compass; or where their justifications are not reasonable or not in good faith.

When it comes to lawyers’ ethics, even those who think lawyers should do all they can to advance their client’s interests within the law also accept that the use or interpretation of the law can be pushed too far. Brad Wendel, for example, speaks of a “zone of reasonableness” overlaying the range of all possible positions that could be taken on behalf of a client, outside of which a lawyer cannot act.⁶¹ In these three situations, what are the particular fact patterns that would push each lawyer’s conduct into zones of unreasonableness?

The Sayings and Doings Cases

This second set of cases include instances where law firms have expressed certain commitments or values and then do not seem in act in accordance with those expressed commitments or values. Some might, fairly or unfairly, label these actions under the broad umbrella of reputation laundering.⁶²

Here are two examples.

A law firm has written a Corporate Social Responsibility report (now as Environmental Social and Governance report) since 2007. It writes in those reports about its commitments to reducing its carbon impacts wherever possible given the existential threat of the climate crisis. The firm acts for oil and gas clients on new fossil fuel projects.

When asked why it acts for Client X, a law firm speaks about the importance of access to justice. Lawyers in that firm on average do 27 hours of pro bono work a year. This is 1.35% of the firm’s billable hours target.

The second example, on pro bono, strikes me as different to the first. There, a simple choice has been made about profit and labour; a choice which stands in stark contrast to stated preferences and values. For me, the integrity issue here is not so much the mere fact of 27 number of hours of pro bono a year, but rather the disconnect between those pro bono hours, the billable hours, and the publicly stated commitments of the firm to access to justice. This is, I would suggest, an integrity issue: in terms of living in accordance with one’s stated values.

The first example is different. I wonder if this is might be what is termed a ‘moral remainder’ situation,⁶³ first introduced by Bernard Williams? A moral remainder, ‘points to the phenomenon of an in itself defensible decision that may nonetheless result in a moral cost that merits further

⁶⁰ Even if some others might disagree with their good faith interpretations/views. It would be interesting then whether the SRA would investigate or enforce in situations of disagreement over good faith interpretations/views. I doubt they would (or would often), especially if the interpretations were in some broad zone of reasonableness.

⁶¹ W. Bradley Wendel, *Lawyers and Fidelity to the Law* (Princeton University Press 2012) p54-65.

⁶² SV de Freitas Netto and others, ‘Concepts and Forms of Greenwashing: A Systematic Review’ (2020) 32 *Environmental Sciences Europe* 1.

⁶³ It might not be, on the facts. It might just be greenwashing, but this seems unfair as a starting premise.

attention'.⁶⁴ Williams argued that, 'moral conflicts are neither systematically avoidable, nor all soluble without remainder'.⁶⁵ In this way he was pushing back at ideas in (Kantian and Utilitarian) moral philosophy which effectively sought to reduce the moral costs of some decisions.⁶⁶ Williams wanted to explore in his work that idea that we might decide that something is the best thing to do, but might still feel it nevertheless involves doing something wrong.⁶⁷ Put another way, there are still sometimes moral costs to doing what we think is doing the right thing.⁶⁸ Recognising that something is a moral remainder is meant to 'increase the moral sensibilities' of the person doing the thing that impacts on others.⁶⁹ These sensibilities have purchase because, 'as a matter of moral psychology, maintaining too much distance between oneself and one's role... risks alienation and amorality'.⁷⁰

I am rather attracted to some aspects of Williams' ideas of moral remainders.⁷¹ I think they can be useful in that they might suggest a way of thinking about challenging legal practice choices that we sometimes frame in very binary ways. If we, for example, only respond to the question 'Should we act for this oil and gas client' with very thin statements and nothing more – 'Everyone deserves legal advice'; 'What they are doing is perfectly legal' – it might look like we have little faith in a lawyer being able to hold two difficult things in her head at the same time: agreeing to do the work for good reasons she can articulate while also passing moral judgment on the thing she has agreed to do and/or feeling some moral angst about so acting. Moral remainders help to remind us that lawyers are humans with their own moral characters as much as they are the products, servants and agents of the rule of law with important institutional roles.⁷²

In the oil and gas scenario, the firm and/or lawyers in the firm might cleave strongly to the view that their oil and gas clients have every right to exploit new oil and gas opportunities in line with their legal entitlements. They might also, and at the same time, think the climate crisis is an existential threat which requires serious action and relatedly feel a source of ethical dissatisfaction or regret in doing this perfectly legal work for their clients.⁷³

⁶⁴ Bernard Williams, 'Ethical Consistency', *Problems of the Self: Philosophical Papers 1956–1972* (Cambridge University Press 1973) 166–86. Williams also wrote that, 'In some cases the claims of the political reasons are proximate enough, and enough of the moral kind, to enable one to say that there is a moral justification for that particular political act, a justification which has outweighed the moral reasons against it. Even so, that can still leave the moral remainder, the uncanceled moral disagreeableness I have referred to.' – see: Bernard Williams, 'Politics and Moral Character' in *Moral Luck* (Cambridge: Cambridge University Press 1981) p63.

⁶⁵ Williams, 'Ethical Consistency' (n 64) p179.

⁶⁶ For a discussion, see Iris van Domselaar "Law's Regret: On Moral Remainders and a Virtue-Ethical Approach to Legal Decision-Making." *Jurisprudence*, 13(2), 220-239.

⁶⁷ Bernard Williams, *Morality: An Introduction to Ethics* (CUP 2012) p85.

⁶⁸ Gerald Postema, "Moral responsibility in professional ethics." *NYUL Rev.* 55 (1980): 63, p60.

⁶⁹ van Domselaar (n 66) p226.

⁷⁰ W. Bradley Wendel, *Lawyer Shaming*, *University of Illinois Law Review* (2022) 176, p226.

⁷¹ I note here the important point David Luban makes which is that it is not clear where accepting a moral remainder takes us. What work do moral remainders *actually* do? Is there any meaningful form of atonement associated with the acknowledged moral cost? See: David Luban, "Misplaced Fidelity." *Texas Law Review* 90 (2012), p689-690.

⁷² Compare and contrast these two differing stances on this issue: Alice Woolley and W. Bradley Wendel. "Legal ethics and moral character." *Geo. J. Legal Ethics* 23 (2010): 1065; and David Luban, "How Must a Lawyer Be-A Response to Woolley and Wendel." *Geo. J. Legal Ethics* 23 (2010): 1101.

⁷³ Alice Woolley writes that, "That an action can be morally justified does not necessarily mean that a person acting in that way will feel ethically satisfied with her conduct. For example, a civil litigator may know abstractly that her work helps to accomplish law's social settlement, but that may not be enough for her to commit to it wholeheartedly, for it to be a source of meaning. Another related problem may be that a moral principle makes demands that conflict with the lawyer's other personal commitments, with the result that complying with that principle will be experienced by the lawyer as a violation of his integrity. The impartial principle can make its claim,

Here, Brad Wendel writes that “...the same permissible act can have multiple meanings, the significance of which depends on the intentions, attitudes, and character of the lawyers involved.”⁷⁴ This must of course be right. Why a lawyer does something is worth exploring just as much as the act itself.

What I find interesting is how law firms account and explain for some of the choices they make. This, in turn, speaks to how often or in what ways those in law firms speak with their constituent members (and not to the outside world) about the choices that they make. If acting with integrity means higher standards and the deployment of a moral compass – including through moral deliberation and critical self-reflection - does that not suggest that law firms should be having these sorts of conversations internally about integrity? Between the partners, associates, trainees, and other firm members? For those solicitors in the room, have you undertaken anti-money laundering training in the last year? I imagine most or all of you will say ‘yes’. And when did you last have a (deep and sustained) conversation about whether the work you and the firm does means you are acting with integrity?⁷⁵

The Personal/Professional Intermix Cases

This final set of cases all involve different types of clashes between the personal and professional. These might also be and often are moral remainders.

Here are two examples.

Emily is deeply committed to her Christian beliefs. She is also committed to access to justice and chose to work for a large public interest litigation firm. The government is seeking to change the law on abortion to make access to abortion services more difficult. A pro-choice NGO engages Emily’s law firm to work on a challenge to that policy change. Emily has strongly held views that abortion is morally wrong, but agrees to work on the case.

Sarah votes Green and tries to reduce her carbon impacts. She qualifies into the finance team of a large City law firm. The firm has, in the past, undertaken finance and re-financing work for carbon major clients. Sarah expresses her preference to the partners not to work on any new fossil fuel projects, but says she is happy to do other work for those carbon major clients.

but that claim will create an ethical problem as well as offering a moral justification.’ – see: Woolley, ‘Context, Meaning’ (n 44) p9.

⁷⁴ W. Bradley Wendel, *Canceled Lawyers: Case Studies of Accountability, Toleration, and Regret* (OUP 2024). Wendel’s obligation on lawyers to account for their choices is personal, not abstract. He writes (at p69), for example, “Sullivan needed to do more, not to explain why *a lawyer* would be justified in representing Harvey Weinstein, but why *he* sought the engagement.”

⁷⁵ I am putting this here as an obligation to deliberate on the part of lawyers and firms. We might also wonder if the SRA’s approach to enforcement is also driving the things that law firms take seriously and devote time and energy to. That is, if the SRA does thematic or other investigative and enforcement work on anti-money laundering processes and systems, why do they not also do checks and engage in conversations about how law firms and their lawyers are reflecting on the principles in the Code of Conduct? I come back to this later. The SRA might reply that they do at least some of this through their ‘continuing competence’ reviews. I am not sure this is sufficient in how it is currently undertaken.

In each example the solicitor is having to choose which thing to prioritise; her personal beliefs or her professional practices.⁷⁶ We might think of this as ‘own interest’ conflicts.⁷⁷ We each have the moral right to control our own labour, in a society committed individual autonomy and also committed to moral pluralism (where we disagree about things like abortion or state benefits or immigration).⁷⁸ But what does that mean where we take on professional roles in institutional contexts? The SRA, as regulator, recognises these personal/professional tensions, as we shall see in a second.⁷⁹

What is also not clear here for me is whether integrity is a zero-sum game. Does having and holding on to your personal integrity mean you have more or less capacity or interest when it comes to professional integrity?⁸⁰

Let us look at a second set of cases.

Ben takes part in various organised climate crisis protests. During one such protest he breaches a civil injunction and is found guilty of contempt of court. Ben is not embarrassed or repentant for his conduct. He works in a City law firm providing tax advice and has excellent appraisals and feedback from clients.⁸¹

George works in the M&A team of a City law firm. He has a presence on X (the platform formerly known as Twitter) and LinkedIn which makes clear that he is a solicitor. His profiles include the line ‘All views are my own’. For the last three years, he has engaged in what some would term ‘gender critical’ debate online. This amounts to thousands of posts and comments.

⁷⁶ Alice Woolley writes that, “The other way to understand the positivist position is to say that while the lawyer’s role can never permit choosing a moral imperative over a legal one, an individual lawyer may sometimes simply choose to break the obligations of her role in order to comply with those of ordinary morality. The lawyer is not justified in making that choice vis-a-vis her role, but she makes it anyway. This view of positivism turns on the idea of a moral dilemma; sometimes people have incommensurable duties and responsibilities, and they have to choose which one to follow and which one to breach.” See: Alice Woolley, “Is Positivist Legal Ethics an Oxymoron.” *Geo. J. Legal Ethics* 32 (2019): 77, p102.

⁷⁷ Bruce Green comments that, ‘If the professional norms turn out to conflict with the lawyer’s professional values, the lawyer then faces the question of whether to give priority to personal or professional morality’ – See: Bruce A Green, “The role of personal values in professional decision making.” *Geo. J. Legal Ethics* 11 (1997): 19, p58.

⁷⁸ Wilkins, ‘Should A...’ (n5) p1039.

⁷⁹ So does the American Bar Association. Its Model Rules of Professional Conduct do not list integrity as a particular requirement. But the comments (see paras 7 and 9) to the Model Rules also say that, ‘Many of a lawyer’s professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers.’; and that ‘Virtually all difficult ethical problems arise from conflict between a lawyer’s responsibilities to clients, to the legal system and to the lawyer’s own interest in remaining an ethical person while earning a satisfactory living.’

⁸⁰ Damian Cox and others write: “Is integrity in one area of life likely to flow over into others? This is possible, in that the kind of reflection and self-assessment which goes into maintaining integrity in one sphere of life may help people to reflect similarly in other spheres. However, given human beings’ capacity and need for compartmentalization, or psychologically separating out different parts of their lives, this effect will not necessarily occur. The relationship between different types of integrity and moral and personal integrity needs to be carefully charted. Is integrity a zero-sum game, so that for example, the more artistic integrity a person has, the less she has in personal life? This does not seem necessarily to be the case. At the same time, a lack of integrity in one aspect of life does not necessarily mean there will be a lack in other aspects of life. Presumably, a person could lack personal integrity, but still have integrity in a number of restricted areas of life, such as in intellectual and artistic pursuits.” – see: Damian Cox, Marguerite La Caze, and Michael Levine, ‘Integrity’ in the *Stanford Encyclopedia of Philosophy*, online.

⁸¹ See the case of physician Dr Sarah Benn who went to jail after a series of climate protests and who has been taken off the medical register for five months by her regulator, the General Medical Council (who and still faces being permanently struck off). See: <https://www.gmc-uk.org/news/news-archive/statement-following-the-outcome-of-dr-sarah-benn-tribunal>

Are the solicitors in these examples acting with integrity? In what situations and for what reasons should we accept that someone's personal values, beliefs, and *actions* outside of work 'take precedence over the values of the legal system and the norms of the professional role'?⁸² The SRA has published guidance which in broad terms cover these two examples, an acceptance that (sometimes) acting on personal conscience can be excused in regulatory terms;⁸³ and a warning about comments made online by solicitors which are derogatory, harassing, etc (with that guidance also explicitly supporting fair comment and free speech).⁸⁴ Those SRA Guidance documents surface the moments of tension but do not (quite understandably) fully answer the question of what it means to act with integrity in specific situations.

Where we land is that the SRA's rules and guidance say much but they do not - and can not - say everything. They do not tell us, for example, what solicitors should think about when deciding how to exercise their discretion in relation to about client onboarding. The SRA rules and guidance do not say much at all (save for some limited comments about 'own interest conflicts') about Emily acting for a pro-choice client but then using her free time to advocate for reforms to reduce access to abortion services. The SRA rules and guidance do not say at what point Sarah should or could be civilly disobedient in her law firm.⁸⁵

Let me give you a final set of examples.

Charles is an equity partner in a City law firm. He is also a member of the Garrick Club. Charles made no secret of his membership but it was not common knowledge. His name as a member was recently disclosed as part of a broader exposé by a journalist. Charles sits on the firms' Partnership Promotions Panel and also makes decisions about the pay of the male and female associates in his team.

⁸² Wendel, 'Lawyer Shaming' (n 70) p223.

⁸³ SRA September 2022 Guidance on Convictions arising from matters of principle or social conscience: 'Where a conviction arises as a result of someone taking what they consider to be principled action or participating in a peaceful protest and that conviction does not involve a significant risk of harm to the public and/or material risk to property, it is unlikely to result in us taking any regulatory action. It is also unlikely that such conviction would result in a refusal for admission, or a practising certificate being granted as long as it is disclosed to us.'

<https://www.sra.org.uk/solicitors/guidance/convictions-arising-social-conscience/> So there are then, at least in regulatory terms, some situations in which acting on personal conscience can be excused. The SRA also lists mitigating and aggravating factors (e.g. being violent during the protest, not disclosing the conviction). It is interesting that the GMC has taken a different approach with Dr Sarah Benn; not least because one might think a regulator of lawyers to be more concerned about things like breaches of the law than a regulator of doctors.

⁸⁴ The SRA 2019 Warning Notice on Offensive Communications says: 'We expect you to behave in a way that demonstrates integrity and maintains the trust the public places in you and in the provision of legal services. In the context of letters, emails, texts or social media, this means ensuring that the communications you send to others or post online do not contain statements which are derogatory, harassing, hurtful, puerile, plainly inappropriate or perceived to be threatening, causing the recipient alarm and distress.' The Guidance goes on to say, 'The above Principles continue to apply to you (as the context admits) outside your practice, whether in some other business capacity or in your personal life. It is in this sphere – namely outside of work – that we are currently receiving the majority of complaints. The risk referred to above – namely that social media by its nature tends to encourage instant communication without the necessary forethought – tends to be greater when you are outside a work context. You must at all times be aware of the content you are posting and the need for professionalism.' At the same time, and in a 'topic guide' on offensive communications, the SRA says: 'It is not our role to sanction fair comment or opinions, even if strongly put and others disagree. Nor will we determine whether comments are defamatory; that is for the Court and a finding of defamation would not, of itself, necessarily result in disciplinary action. We will consider any aggravating factors, as set out below.'

⁸⁵ David Luban, *Legal Ethics and Human Dignity* (CUP 2007) p63.

Anna works in the arbitration team of a magic circle law firm. She regularly drives over the speed limit and always has points on her licence. Her friends joke that this shows a surprising and blatant disrespect for the law.

Jack is a trainee in a City firm. He has a relationship with one of the partners. Some time later, after the relationship has ended, Jack feels he is being overlooked for promotion and leaves the firm.

These cases are also about what we do in our personal lives and if, how and/or when these things become matters of professional integrity.⁸⁶ What we see in all of these various cases are moments where the personal and the professional are in tension, and where we might want to reflect on the extent to which they surface problems for the integrity of the lawyer involved. Are these moments which speak to the higher standards expected of lawyers? Or not? Are some of these even *prima facie* issues of *professional* integrity? Again, these examples are not necessarily issues of regulatory enforcement, but they do speak to what it means to be a solicitor acting with integrity where we expect more or different from them and where we have the personal potentially in tension with the professional.

Final Thoughts

There is a lovely line (for an academic who offers more questions than he answers) used by David Luban and Brad Wendel in their work that is said to be attributed to an unnamed German philosopher which goes: "I can't solve your problems; my job is to help you enjoy them."⁸⁷

This evening, I have spoken with you about integrity: this legal requirement on solicitors (and many others); this idea that spans the personal and the professional in complex and messy ways.

Let me offer some takeaways.

First, we can see integrity as a cluster concept. It sits as an individual professional requirement, but does not necessarily sit separately to other professional rules and principles. Judges and others mix integrity with other professional principles and ideas - independence, honesty, the rule of law, trust in the profession, and so on - because these things are connected to and part of acting with integrity. For me, the requirement to act with integrity is primarily a reminder of an obligation on

⁸⁶ In December 2021, the SRA published research it had commissioned on the new STARS. The report noted that, "A second concern raised by some solicitors is that enforcement actions are sometimes taken in relation to actions and behaviours that are not directly related to professional conduct. This concern predates the Standards and Regulations Reforms but has persisted since their introduction. The solicitors raising this concern highlighted the challenges in drawing a line between professional conduct and purely personal conduct, but nonetheless stressed that enforcement should not relate to actions and behaviours other than professional misconduct. In relation to this point, one solicitor highlighted a considerable disparity between the Code of Conduct for Barristers and the Code of Conduct for Solicitors, RELs and RFLs in respect of the definition and interpretation of the requirement to comply "at all times and in all circumstances". As one solicitor noted "There is a need to distinguish between what is really unprofessional in how you operate as a lawyer in business and unprofessional personal behaviour, which is unattractive but is much more the responsibility of the employer and civil courts (if necessary), rather than the professional regulator, except in the most egregious of cases". The SRA has taken steps to mitigate this risk, such as through providing (or planning to provide) guidance on issues such as personal integrity, use of social media and avoidance of sexual misconduct." The report authors went on to recommend: "The SRA could take further steps to promote awareness and understanding of the revised Enforcement Strategy. There is need to promote increased awareness of the Strategy in general, as well as to promote better understanding of specific issues, such as the line between professional and personal integrity." See -

<https://www.sra.org.uk/globalassets/documents/sra/research/evaluation-of-star-reforms.pdf?version=4af4ed>

⁸⁷ Luban and Wendel, 'Affectionate History' (n 6) p364.

solicitors to think about their special role in society and what we expect because of that important role (alongside their obligations to their clients).

Some of you might have noticed that my talk tonight is titled 'Moral Reminders' but that one of the invitations that went out from the Livery Company was instead for a talk entitled 'Moral *Reminders*'. While this was a typo, it gets to the heart of what I am talking about. Integrity as a signifier, as a reminder.

The second takeaway from tonight is that integrity is to be found in agency. In the personal domain, what makes one an agent might be conforming one's behaviour to values closely and reflectively held, most likely subjectively set. In the professional domain—where role moralities are in play—integrity involves conforming to substantive values, those of the profession. We see different challenges to integrity because the substantive values of the profession are plural and often difficult to specify, and because whatever the specified values of the profession are, they may be in tension with the values of the personal domain. We sometimes forget or play down the agency of solicitors, but that agency and that associated integrity-linked reflective work is critical.

The third takeaway from tonight is that exercises of integrity may and sometimes will be morally criticisable. This could be because of the significance of the impacts of doing the legal thing for a client: the moral cost despite doing the right thing. Criticism might instead be offered because we are wrong about what the professional values are that matter, or what those professional values reasonably mean. Or criticism might be because we are not sure which set of values—personal or professional—matter most (or we get that decision 'wrong'). Integrity means taking that criticism - withstanding it and accepting/acting on it. Being able, as Tim Dare put it, to withstand a bit of shaking.

The fourth takeaway from tonight is that integrity is hard because it's often hard to know what is required in general and in particular contexts. Here, and as I said earlier, we might think that integrity captures the 'spirit' of the professional role, quite apart from the individual substantive rules. But the challenge of articulating the spirit remains.

How then to do this? How to respond to the challenge of articulating the spirit of the professional role while accepting the subjectivity of individual solicitors? In line with the SRA's approach to continuing competence, I think lawyers and law firms need to be actively reflecting on and talking about integrity; much more than I feel they currently do or appear to. What does acting with integrity mean for you and your firm? What are the things that you, as solicitors and as law firms, individually and collectively value? What do you want to say you will commit to in your legal practices, and why? Can you be more transparent about what you decide it means for you, and your firms, to act with integrity?

We do not and should not expect solicitors to be 'paragons of virtue'.⁸⁸ But we do and should expect them to act like solicitors. Generally, these expectations will mirror what we expect of anybody else in society: be honest, treat others with respect, and so on. In some situations, we will want and need to expect more or different things. What will be required, and when, will differ on the situation; just as the SRA guidance on acting with integrity sets out. It is here where that integrity-linked need and obligation to reflect that I have talked about is so critical. The entire regulatory scheme of the Legal Services Act and the SRA Code/rules is that lawyers have a complex of duties (which may sometimes be in tension) and moments of discretion. Integrity (like the professional principle on independence, like the professional principle on the rule of law)

⁸⁸ See *Wingate* (para 102) and *Beckwith* (paras 30 and 34).

simply suggests to lawyers what should guide their conduct when exercising that discretion: that they are institutional actors in our justice system with important social roles.

Gerald Postema wrote that lawyers can have morally disintegrated lives in various ways. They can compartmentalise to a significant degree and refuse to address or recognize the extent to which their lives involve morally inconsistent principles. That sort of lawyer is unable to see, or does not want to accept, the moral complexity of their work. In the alternative, a lawyer might live a morally disintegrated life by seeking refuge, without deliberation, in simple and thin accounts that justify the special nature of her role: ‘What my clients seek to do is legal’ and so on.

I have not said much this evening about behavioural ethics, but it is of course relevant to how integrity plays in out in practice. As David B Wilkins has written, ‘It is a familiar truth in social science that those who are called upon to support positions that they initially find morally abhorrent will search for ways to reduce the distance between their beliefs and their practices.’⁸⁹ Over time, without us really realising it, we might as lawyers come closer to positions and stances we once thought problematic.⁹⁰ One of the challenges with integrity is that we often want to see ourselves as the good guy: as David Luban put it, ‘our need to see ourselves as ethically righteous people regardless of the knavery of our calling’.⁹¹ And yet behavioural ethics work shows us how,

‘many individuals will, under some circumstances, violate those norms with which the bar is primarily concerned: honesty, integrity, remorse for prior offenses, and respect for the rights of others. For example, large percentages of individuals will cheat or steal in the face of opportunities to gain with little risk of loss, and will refuse to admit their misconduct. Exposures to stress, strong competition, authority, or peer influence can readily alter patterns of moral behavior.’⁹²

Andrew Perlman writes that, “lawyers frequently find themselves in the kinds of contexts that produce high levels of conformity and obedience and low levels of resistance to illegal or unethical instructions. The result is that subordinate lawyers...will find it difficult to resist a superior’s commands in circumstances that should produce forceful dissent.”⁹³ The point I am making here is that our integrity might be modified by the contexts and circumstances we find ourselves in as lawyers. This is a different sort of challenge, and worth some further reflection.

Over time, I have come to the view that one of the biggest problems with professional ethics is that we – the ‘we’ being solicitors – often outsource our professionalism and forget our agency. As noted by Trevor Farrow, many legal ethics theories upload and download moral decision-making—uploading to “judges, politicians and other public officials” who create the law (i.e. lawyers saying ‘The law is what it is, whether or not I like it’), and downloading to clients who determine the moral scope of a legal retainer (i.e. lawyers saying, ‘I am simply a vehicle for my client’s legally permissible wishes’).⁹⁴ In my own empirical work, I have suggested that some lawyers in large law firms see the firm’s Compliance Officer for Legal Practice (the COLP, a role required by the SRA) as the holder of the firm’s moral compass and the keeper of its moral code;

⁸⁹ Wilkins, ‘Should A...’ (n5) p1055-1056.

⁹⁰ Lon L. Fuller, Philosophy for the Practicing Lawyer, in *Principles of Social Order* (Kenneth I. Winston ed., 1981) 287-88.

⁹¹ Luban, ‘Causes and Cures’ (n 47) p304.

⁹² Deborah L. Rhode, "Moral character as a professional credential." Yale LJ 94 (1984): 491, p559.

⁹³ Andrew M. Perlman "Unethical obedience by subordinate attorneys: Lessons from social psychology." *Hofstra L. Rev.* 36 (2007): 451, p452.

⁹⁴ Trevor C. W. Farrow, The Good, the Right, and the Lawyer, 15 *Legal Ethics* 163, 169 (2012).

leading to forms of ‘COLPing mechanisms’ in professional ethics (i.e. a feeling of ‘Someone else in the firm is doing ethics for me’).⁹⁵ Richard Moorhead writes that these and other, related issues can lead to problems of mutually assured irresponsibility;⁹⁶ the idea being that ‘lawyers may tend to the view that lawyers advise and the client decides; simultaneously, clients may justify their actions on the basis that the lawyers told them they could or should take some particular action.’⁹⁷ Taking greater ownership of professionalism might (and I do not want to put a stronger claim than ‘might’) help City solicitors better articulate responses to the many attacks they are facing: as professional enablers of corruption, as mouthpieces for oligarchs, and so on.

Before I finish, it is important that I acknowledge that moral remainders – defensible actions with moral costs – do not arise every day in City legal practice. Here, David Luban vividly writes that, ‘By and large, lawyers do not go frantically through life encountering one moral dilemma after another like challenges in a video game’.⁹⁸ But when moral challenges do or might arise in legal practice then we should take the time to reflect on them (in the moment and in advance); to sense check our actions; to engage in moral deliberation. To sit with the uncomfortable idea that we are doing harm and creating significant negative impacts, even if there are good reasons for so doing.⁹⁹ This is about accepting the moral responsibility for the actions we take as lawyers.¹⁰⁰ Are you - a solicitor or a law firm - sure you are acting for the ‘right’ reasons, and can you thoughtfully articulate what those reasons are? Are you as a solicitor being supported by your firm to engage in this form of moral deliberation?¹⁰¹

I have suggested this evening that I think it perfectly acceptable that the SRA Code says so little about integrity (although its guidance probably could say a little more than it currently does; and I would of course be happy for this talk to be a prompt for some additional work by the regulator). We might think of this as an issue of ethics and not of law; where rules of professional conduct/the law of lawyering can only take us so far. Alice Woolley writes that,

⁹⁵ Steven Vaughan, Response to LSUC Consultation Paper: ‘Promoting better legal practices’, CEPLER Working Paper 2016-2.

⁹⁶ Richard Moorhead ‘Mutually Assured Irresponsibility: An Example from the Post Office’ Lawyer Watch (18 Sept 2021) available at <https://lawyerwatch.wordpress.com/2021/09/18/mutually-assured-irresponsibility-an-example-from-the-post-office/>. See, relatedly, Beck’s idea of ‘organised irresponsibility’: Ulrich Beck, *Risk Society: Towards a New Modernity* (London: Sage 1992).

⁹⁷ Richard Moorhead, Steven Vaughan, and Kenta Tsuda ‘What Does It Mean for Lawyers to Uphold the Rule of Law?’ (Report for the Legal Services Board 2023) 41.

⁹⁸ Luban, ‘How must a lawyer be’ (n 72) p1116-1117.

⁹⁹ See here, generally, Brad Wendel’s recent book, *Canceling Lawyers* (n 74).

¹⁰⁰ Postema wrote that, “On my view, if there is a sufficient justification for conduct that ordinarily would be regarded (even by the actor) as morally wrong, then it is just a confusing mistake to say that the action is still wrong, though justified. On the other hand, it does not follow from this that the agent may regard the action and its consequences with equanimity. For despite the justification, responsible persons will fully appreciate the moral costs of their actions. One *cannot ignore* them or regard them as merely prima facie or presumptively valid considerations, because a principle to which one is committed—a part of one—has had to be compromised. This fact will be manifested both emotionally—in agent-regret and the willing acceptance of responsibility for the consequences of one’s actions—and behaviorally in taking appropriate actions to express this regret and acceptance of responsibility”. See: Gerald Postema, “Self-Image, Integrity and Professional Responsibility” in *The Good Lawyer*, David Luban, ed. (Rowman and Allanheld, 1984) at 309. Donald Nicholson and Julian Webb seem to take a similar approach to Postema: “Notwithstanding the principle of loyalty, lawyers must recognise that they are implicated in and hence morally responsible for all actions taken on behalf of clients. They cannot pass on moral responsibility either to clients, who they have freely chosen to represent, or to the profession, which they have freely chosen to enter. Thus in deciding whether to undertake or to continue representation, or to engage in particular forms of representation, lawyers are obliged to consider the impact on their personal moral integrity, the integrity of the profession as a whole, and the interests of affected third parties, the general public, and the environment.” – See Chapter 10 of *Professional Legal Ethics: Critical Interrogations* Donald Nicolson et al. (Oxford Academic Books, 2000).

¹⁰¹ I have not, in this talk, covered how integrity might operate or be challenged differently for in-house lawyers. This is worth some further explanation.

“The law does not tell a lawyer how to exercise the moral discretion it permits him, it does not tell a lawyer when he ought to reject or go beyond what his role requires, and it does not tell a lawyer how to construct an ethical practice except where the ethical question is one the law addresses. These questions are questions of “legal ethics”—about what it means to be a good lawyer. They are important. But they are questions about which the law, and hence positivist legal ethics, has nothing satisfactory to say.”¹⁰²

Seen in this way, the legal obligation on solicitors to act ‘with integrity’ is, as I have said, primarily a signalling device to lawyers of their special social and institutional roles and, importantly, that the SRA Code of Conduct is not the be-all and end-all of how to be a ‘good’ lawyer. Integrity as a principle in the Code is then, above all else, an important moral reminder.

¹⁰² Woolley, ‘Oxymoron’ (n 76) p82.