Neutral Citation Number: [2023] EWHC 186 (Admin)

In the High Court of Justice
Queen's Bench Division

CO/2729/2022

Administrative Court

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 January 2023

Before :

MR JUSTICE RITCHIE

- -

BETWEEN

DR KATHERINE ALEXANDER-THEODOTOU

Claimant

- and -

THE SOLICITORS REGULATORY AUTHORITY

Respondent

Alisdair Williamson KC, and **Daniel Mansell** (instructed on Direct Access) for the **Claimant**
Andrew Tabachnik KC (instructed by Capsticks Solicitors) for the **Defendant**

Hearing date: 24 January 2023

- -

APPROVED JUDGMENT

Mr Justice Ritchie:

The Parties

1. The Appellant was a solicitor of the Supreme Court at the relevant time.

2. The Respondent is the Solicitors Regulation Authority.

Bundles

3. For the appeal I was provided with two bundles by the Appellant and two bundles by the Respondent together with skeleton arguments from each party.

The Issues

4. This appeal is about alleged professional dishonesty and the correct approach to findings in relation thereto.

5. In a judgment delivered on the 7th of July 2022 the Solicitors Disciplinary Tribunal (the Tribunal) made findings against the Appellant and imposed a sanction: ordering that the Appellant be struck from the roll of solicitors. The Tribunal also awarded the Respondent costs in the sum of £124,830. In addition the Tribunal ordered the allegations contained in a Rule 12 statement dated 19th March 2021 be stayed with liberty to the Solicitors Regulatory Authority (SRA) to restore.

6. By a notice of appeal dated 28 July 2022 the Appellant seeks to overturn the Tribunal's decisions in relation to dishonesty and for this Court to quash them and to remit the case to another disciplinary Tribunal for both the Rule 12 and Rule 14 allegations to be heard together for redetermination.

Law and procedure

7. Section 49 of *the Solicitors Act* 1974 provides as follows:

> "49(1) An appeal from the Tribunal shall lie to the High Court.
> (2) … an appeal shall lie at the instance of the applicant or complainant or of the person with respect to whom the application or complaint was made…
> (4) The High Court… shall have power to make such order on an appeal under this section as it may think fit…"

8. The following authorities: *Shaw v Logue* [2015] EWHC 5 at [33] and [62], *Benyu v Solicitors Regulation Authority* [2015] EWHC 4085 at [49] – [51], and *SRA v Barnett* [2016] EWHC 1160, provide support for the summary below of the way such appeals are handled by this Court. The appeal proceeds by way of a review rather than a rehearing. The Court will give appropriate weight to the fact that the three-member Tribunal is a specialist Tribunal which had the advantage of hearing the evidence first hand. It will therefore be slow to intervene with the Tribunal's findings of fact unless they were "plainly wrong" or unlawful. The Court may also interfere with the Tribunal's decisions if it finds a serious procedural or other irregularity in the Tribunal's proceedings.

9. These appeals proceed pursuant to CPR 52. The same tests are set out there as I have described above.

10. The Tribunal is afforded wide discretion on assessment of evidence requiring evaluation of witnesses. This wide discretion on evaluative decisions applies with particular force to judgments made after full trials, where the Tribunal had the advantage of observing the demeanour of the witnesses before them. It is not permissible simply to ask the Appeal Court to disagree with the decisions made or substitute its own decisions gained merely from reading transcripts of evidence and hearing submissions. See: *Assicurazioni Generali SpA v Arab Insurance Group* [2003] 1 WLR 577 (approved by the House of Lords in *Datec Electronic Holdings Ltd v UPS Ltd* [2007] 1 WLR 1325 at [46]); *McGraddie v McGraddie* [2013] UKSC 58; *Fage UK Ltd v Chobani* [2014] EWCA Civ 5 at [114]; *SRA v Day et al* [2018] EWHC 2726 at [61] – [71], and *SRA v Siaw* [2019] EWHC 2737 at [34] per Flaux LJ.

The Appeal

11. In summary the Appellant's main ground was that the Tribunal was wrong to deal with the Rule 14 allegations first and should have heard those together with the Rule 12 allegations. In doing so the Tribunal adopted a flawed approach to the issue of dishonesty. The other grounds were that the Tribunal was wrong to refuse to adjourn the hearing to admit late served evidence from the Appellant. The Tribunal was wrong to exclude the late served evidence and the costs order made by the Tribunal was excessive. In addition the Appellant seeks to admit fresh evidence in this appeal.

12. In response, the SRA assert that the Tribunal was correct to hear the Rule 14 allegations concerning dishonesty and lack of integrity first. That was a case management decision and as such is not lightly overturned on appeal. The Respondent points out that the Appellant was free and enabled at the hearing to assert that the SRA and Legal Ombudsman's investigations were flawed. At the case management hearing where the preliminary issue was determined the Appellant did not submit that the Rule 12 allegations should be heard at the same time (an assertion that is not factually wholly accurate in my judgment). Therefore, the Respondent submitted that the raising of this issue on appeal was a procedural abuse particularly in the light of the fact that the Appellant had previously challenged other orders made in the case management decision on other grounds but not in relation to the split trial. The Respondent asserted that the discretion of the Tribunal in relation to evidence was wide and that the appellate Court should only overturn the Tribunal's findings if they were proven to be Wednesbury unreasonable (such that no reasonable tribunal would have made them). The Respondent highlighted that the Appellant had served 4000 pages of documents the night before the hearing and had made no written application for permission or relief from sanctions and was in breach of an unless order made by the Tribunal in April 2022 at the case management conference. In addition the Respondent asserted that 95% of the contents of the additional bundle were irrelevant.

As to the remaining few documents the Respondent pointed out that it had applied for permission to put a few in evidence at the hearing and was granted permission. The Appellant never asked for permission for any specific documents to be admitted in evidence during the hearing despite her multiple other applications. In relation to the new evidence for the appeal the Respondent submitted that none of it is new and it could have been produced earlier and that it makes no difference. Finally in relation to costs the Respondent identified the Appellant's argument is not more than a complaint that the Respondent instructed a silk before the Tribunal. It is noteworthy that the Appellant instructed both a silk and a junior. The Respondent asserted that the Tribunal's costs discretion was wide and no proper grounds had been produced on appeal to overturn that.

The appeal hearing

13. In opening the Appellant's counsel submitted that the appeal turned on ground one and if the Appellant did not succeed on that ground none of the other grounds could lead to real success on their own. The Appellant indicated that grounds 2, 3, 4 and five were maintained but would not take up much time during the appeal.

14. Ground one of the appeal is as follows:

> "The Tribunal was wrong to deal with the Rule 14 allegations first and in isolation from the Rule 12 allegations, by doing so it adopted a flawed approach to the issue of dishonesty."

15. The explanation for that ground was as follows. Before setting out the quote I should clarify that the "AP litigation" is litigation which the Appellant was handling for many clients in Cyprus and London. "The forms" means two insurance proposal forms which the Appellant signed seeking professional liability insurance and which the Tribunal found she completed dishonestly.

> "The Appellant's defence, in large part, to the Rule 12 allegations is that the "AP litigation" falls within the jurisdiction of Cyprus and out with the regulatory ambit of the SRA and the Legal Ombudsman. The jurisdiction issue would have been explored, in depth, during the hearing of the Rule 12 allegations. However, the jurisdiction issue was also fundamental to the Rule 14 allegations because it explained the Appellant's state of mind when the forms were being completed. The issue of jurisdiction lay at the heart of determining whether, by failing to declare the SRA's investigations and the awards made by the Legal Ombudsman, both of which the Appellant believed were invalid for want of jurisdiction and therefore did not need to be declared - her conduct was dishonest. In accordance with *Ivy v Genting Casinos* [2017] 3 WLR 1212, the Tribunal were required to consider whether the Appellant genuinely held her belief as to the facts, the very matters that formed the basis of the Rule 12 allegations and which therefore, it was said, should have been

> disclosed to the insurers. Without exploration of the Rule 12 allegations, the Tribunal could not come to a proper basis for determining the Appellant's genuinely held beliefs. Therefore, by dealing with the Rule 12 allegations in isolation, the Tribunal's approach to the question of dishonesty was fundamentally flawed."

16. In submissions the Appellant referred to Lord Hughes' judgment at paragraph 74 in *Ivey v Genting Casinos (UK) Ltd* [2017] 3 WLR 1212:

> " … When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

17. I accept that when approaching the question of dishonesty it was the Tribunal's duty:
    17.1 Firstly to determine the Appellant's actual subjective state of knowledge and belief as to the facts.
    17.2 Then the next question for the Tribunal was to determine whether the Appellant's conduct was honest or dishonest using the objective standards of ordinary decent people.

18. In her submissions the Appellant stated it was central to her defence that all of the "AP litigation" consisted of Cypriot cases and fell outside the jurisdiction of the SRA and the Legal Ombudsman. The Appellant's counsel wrote at paragraph 24 of their skeleton:

> "At the outset of the AP litigation, the clients instructed both the Appellant's English firm, HHS, and her Cypriot firm, KAT LLC. However, it is the Appellant's position that, from at least 2014, the case transferred to Cyprus, with HHS acting as an English agent KAT LLC from that point forward (an English agent being necessary because some of the litigation continued to take place in England, before the High Court and, more recently, the Court of Appeal)".

19. The Appellant asserted that by dealing with the Rule 14 allegations in isolation none of this evidence was considered and the issue of jurisdiction was not explored. Therefore the Tribunal did not engage with vital evidence which explained the Appellant's state of mind when the relevant insurance proposal forms were being completed. The Appellant complained that the Tribunal did not permit her to admit

the witness evidence in relation to Rule 12. The Appellant submitted that only by dealing with the Rule 12 allegations first could the Tribunal have ascertained the actual state of the Appellant's knowledge or belief. The Appellant relied on *Maxfield Martin v SRA* [2022]) EWHC 307 Admin, which it was submitted showed that there is a critical distinction between knowledge of falsity and dishonesty. The Appellant asserted that she not only believed that the SRA lacked jurisdiction but also that the SRA had been manipulated by Mr Kounis into starting their investigations. The Appellant submitted that the Tribunal would not have found her explanations spurious if it had heard the Rule 12 evidence. The Appellant also submitted that the Tribunal should have paid careful regard to the Appellant's motive for any alleged dishonesty and exercised caution when dismissing alternative explanations for professional behaviour. In addition the Appellant relied on her mental health and her neurological conditions at the time of completing the relevant insurance proposals in relation to the question of dishonesty.

The Tribunal's Judgment

20. After a 5 day hearing the Tribunal found the Appellant had made false applications for professional insurance in two years: 2020 and 2021. The Appellant had provided false responses to questions on the proposal forms and had effected non-disclosure by failing to inform the prospective insurers of the SDT investigations which had been certified as having a case to answer; four SRA investigations and two Legal Ombudsman final awards against her.

21. The judgment clearly set out the Rule 12 allegations against the Appellant. They were that:

(1) Whilst practising at Highgate Hill solicitors (a sole practice) the Appellant issued unauthorised group litigation in Cyprus in April 2016 against Michael Kyprianou and Co in the names of former clients without their knowledge or consent breaching principles 2 and 6 of the 2011 SRA principles.
(2) The Appellant breached a fixed fee agreement and charged Mr and Mrs W more than the fixed fee arrangement, threatened to withdraw if not paid and submitted misleading fee notes in September 2018 and a misleading bill of costs in June 2019.
(3) The Appellant did inadequate accounting for Mr and Mrs W by failing to account for client monies, failing to reconcile properly and failing to demonstrate that HHS had funds to meet their client liabilities between 2015 and 2017.
(4) The Appellant failed to cooperate with the Legal Ombudsman by failing to comply with a decision against her dated November 2017 to pay £2,100 to clients and failing to respond to the Legal Ombudsman's request for information in November 2017 and failing to comply with the Legal Ombudsman's decision awarding compensation of £250 to a client.

The allegations

22. The Rule 14 statement of allegations can be summarised as follows. Whilst practising at HHS. Allegation number:

    1.1 In August 2020 the Appellant made false statements in support of a professional negligence insurance application and did so dishonestly.
    1.2 In June 2021 the Appellant made false statements in support of a Professional insurance application and did so dishonestly.
    1.1 The Appellant was reckless in the above 2 cases if not dishonest.

The preliminary issue

23. Procedurally the Tribunal recorded that they had held a case management conference on the 25th of April 2022 during which the SRA had applied for the Rule 14 allegations to be determined first because they were most serious. If they were proven there would be no need to go on to consider the Rule 12 allegations. The Appellant opposed that but the order was made that the Rule 14 allegations would be determined as a preliminary issue. The Rule 12 allegations were stayed until after the preliminary issue.

The Appellant's multiple applications

24. In the judgment the Tribunal noted that the Appellant attended the final hearing late and gave as a reason that her assistant was not in the office yet. She asserted she could not operate the software necessary to understand the bundle. The Appellant's counsel brought up a large bundle of new documents which had been filed and served the night before by the Appellant which they themselves had not seen and applied to adjourn the hearing for either short period or for a long period depending on the Tribunal's view. The SRA raised the fact that back in April 2022 the Tribunal had made an unless order requiring the Appellant to serve her evidence in May and barring the Appellant from serving further evidence without permission. The Tribunal granted a short adjournment and then, noting that the Appellant's last minute attempt to serve 4000 pages was a flagrant breach of the unless order and noting the Appellant's frequent attempts to derail or adjourn previous hearings, it refused permission for the adjournment.

25. The Appellant's next application recorded in the judgment was to rely on medical evidence from seven consultants. The Appellant asserted this evidence was crucial to understanding her difficulty in reading when completing insurance forms and her state of mind at the time. This application was granted.

26. The Appellant's next application was once again to adjourn. This was based on her visual impairment and her asserted inability to read the SRA bundles. The Appellant therefore asserted it was impossible for her to give evidence and she could not properly defend herself. She asserted her vision had deteriorated in the last weekend. The SRA responded raising the fact that such assertions had been made before in particular in April 2022 and that

the senior evidence from a consultant ophthalmologist outweighed a recent optician's letter. The Tribunal found that the Appellant had recently managed to find and file 4000 pages of additional documentation and considered that with reasonable adjustments would be able to defend herself properly.

27. The SRA made an application to admit further evidence from a witness called Christopher Jones. This was granted despite the procedural irregularity.

28. The Appellant's next application was dated the 11th of May 2022. The Appellant sought to give a full answer to the Rule 12 allegations in writing. The SRA opposed this application and the Tribunal decided that they would make a decision on that matter after the hearing of the preliminary issue.

The Factual findings

29. In relation to the facts the Tribunal found that the Appellant was admitted to the roll in October 2002 and established her sole practise at HHS in 2005. She also had a separate practice in Cyprus.

30. The first SRA investigations into HHS that were relevant started in April 2013 and an SRA report was provided in April 2014. The second investigation produced enforcement proceedings in 2015 and lead to a second report in November 2016. The third investigation produced a report in May 2017 and in July 2018 the SRA referred the Appellant to the Solicitors Disciplinary Tribunal for determination in relation to the various allegations. The Tribunal certified that there was a case to answer and a Rule 12 statement was issued.

31. In February 2021 further conduct reports were raised and the SRA issued its fourth report in November 2021. The SDT hearing was listed for October 2021 and this listing was made before June 2021.

32. The Legal Ombudsman made two awards, one in 2017 and the other in 2018 both against the Appellant and both for sums of money to be paid to clients.

33. The Tribunal heard evidence from the SRA investigator and from the head of Hera (the Appellant's insurance broker), Chris Jones, and from a representative of Pen Underwriting, Paul Crilly. In addition the Tribunal heard from the Appellant and Thomas Oswald the HHS practice manager.

34. Making their findings on the balance of probabilities the Tribunal found that allegation 1.1 and allegation 1.2 were both proven and that dishonesty was proven in relation to both. Allegation 1.1 related to non-disclosure by the Appellant to her insurance broker "Hera" and to her insurer, "Pen", of the forensic investigation reports of the SRA, also of the Rule 12 proceedings of the SDT and of the Legal Ombudsman's awards. The insurance proposal was signed by the Appellant on the 12th of August 2020 and gave "no" answers to the questions: whether the Appellant

was subject to any Legal Ombudsman awards; also to the question of whether the Appellant practised in a firm subject to an SRA investigation, visit or inquiry by the SRA investigation unit. The Tribunal found that the Appellant had failed to disclose material information. There was a statement of truth attached to the insurance proposal form signed by the Appellant. There was also a document checklist asking for all SRA reports and Legal Ombudsman documents. These were not provided. In addition the Tribunal noted that the brokers, Hera, requested clarification on the 14th of August 2020 and the Appellant herself answered asserting a visual error and three days later signed a Fair Representation Notice which governed the documents and the answers that she had given to the insurers.

35. Clearly in their judgment the Tribunal took into account the Appellant's defence that her Cypriot rival had maliciously instigated the SRA investigations. The Tribunal noted that the Appellant asserted that the SRA investigations were not valid because there was no British jurisdiction.

36. Dealing with each of the Appellant's defence in turn.

It was not me it was my staff

37. The Tribunal dismissed the Appellant's factual assertion that she had simply signed the insurance proposal forms but not filled them in herself. So she was not responsible. She asserted that she had given them to NB who was not a lawyer and who filled them in incorrectly. The Tribunal did not accept the Appellant's suggestion that NB filled in her form for her taking into account his lack of legal qualifications and the circumstances. They described that suggestion as "incredulous".

I had no duty to tell the Insurers, I had a defence

38. The Tribunal noted that the Appellant asserted in her oral evidence that she had no regret. The Appellant asserted that only a proven investigation would be relevant and that she did not see why she should send an incorrect allegation dating back eight years to the insurers.

Actually I did give my brokers all the information

39. The Tribunal also noted that the Appellant took an alternative position which was that if, contrary to her primary position, that there was no need to provide this information to the insurers, she did have to provide it, then her factual evidence was she had given everything to Mr. Jones of Hera. He denied that. The Tribunal rejected the Appellant's assertion that Mr Jones had been given all the missing evidence. The Tribunal accepted the evidence of Mr Crilly that insurance would probably not have been issued had the insurance company being properly informed.

Dishonesty

40. In relation to dishonesty the Tribunal considered *Ivey v Genting* but rejected the Appellant's evidence on her state of mind as "disingenuous and astounding". The

Tribunal found that she elected not to disclose the information. The Tribunal found that the Appellant believed that she could disregard her regulatory obligations. Then the Tribunal went on to find that such belief and such actions were dishonest by the standards of ordinary people. They also found that such actions lacked integrity.

41. In relation to the insurance proposal signed a year later in June 2021 it was found to be identical to the previous year. However in addition by that date further relevant information had come within the Appellant's knowledge: the Rule 12 statement issued by the SRA in February 2021 and the Rule 12 hearing had been fixed for October 2021 before the proposal form was filled in. Using the same approach the Tribunal made findings of dishonesty using the *Ivey v Genting* test.

Applying the law to the facts

42. As to the Appellant's subjective belief, I note that she was running four inconsistent defences before the Tribunal. Three of these were summarised in paragraphs 30.66 to 30.69 of the judgment.

43. The first was a complete denial. That clearly had no merit. The forms contained untruths.

44. The second defence was that she had no material involvement in filling in the two insurance application forms. One had been filled in by a non-lawyer who qualified as a physicist and worked in her office and the other by a part time weekend only member of staff. The Tribunal considered it was inconceivable that a sole principal would delegate something as important as the firm's professional liability insurance to a part time weekend worker who had no legal training. In addition the involvement of the Appellant in communications after the filling in of the form in 2020 clearly convinced the Tribunal that she did have intimate involvement in filling in the forms. In addition the Appellant was as principal responsible for the forms she signed and checking them before they went off. I see no reason to interfere with the Tribunal's findings of fact in relation to that finding. It was certainly not Wednesbury unreasonable.

45. The third defence was that there was no need to disclose the facts because all of the investigations were ultra vires and the SRA and LO had been misled by GK into making the investigations and therefore did not accept the validity of the process. The Tribunal rejected that subjective state of mind ruling:

> "The Tribunal considered that contention to be incredulous [sic], disingenuous and irrelevant for any solicitor to make let alone one of Dr Theodotou's standing and experience."

Analysis 1

46. I have thought carefully about that paragraph. The Appellant asserts it reflects a departure from the first limb of *Ivey*. It does not give sufficient analysis of the Appellant's firmly held conviction that her activities, which were the subject of the SRA investigations and the LO's awards, were not UK matters but instead Cyprus work which was not regulated by the SRA, SDT or LO. The implicit finding is that the Tribunal rejected the Appellant's assertion that she actually subjectively considered the SRA, SDT and LO investigations and awards were "invalid". So it is also implicit that the Tribunal found that the Appellant subjectively considered that the SRA, SDT and LO investigations and awards were not "invalid".

47. No mention is made in that part of the judgment of the potential defence/s of the Appellant to each SRA investigation and to the LO awards. But it is clear from the rest of the judgment that the Tribunal did not doubt that the Appellant subjectively believed that she had a defence to the SRA and SDT charges and allegations. As for the LO awards that is not so easy for the Appellant to prove her subjective knowledge or belief on invalidity because she did not appeal or challenge the awards and paid them (see para. 24).

48. Once the Tribunal had rejected the Claimant's asserted subjective belief that the SRA, SDT and LO investigations and awards were "invalid", that left only the implied finding that she believed they were valid and that undermined her subjective defence to the effect that she did not have to disclose "invalid" investigations.

Findings continued

49. Another defence was that the Appellant was unwell and could not see the forms properly. The Tribunal noted she was reviewing 400 files per fortnight in the practice at that time and conducting complex litigation in Cyprus. It rejected the ill health defence as incredulous.

50. The fourth and inconsistent defence was that the Appellant had provided all of the relevant information to her insurance broker. This was allegedly in a telephone conversation or by sending an opinion of a QC to them. In addition, or in the alternative, it was by sending the file of a broker called AON, her previous broker, to Hera. Hera denied these assertions. After a clear and careful examination of the evidence in relation to that the Tribunal rejected this inconsistent defence on the balance of probabilities. I can find no unreasonableness or glaring error sufficient to even start the process of querying that factual finding. The Tribunal heard from Mr Jones of Hera and preferred his evidence.

Analysis 2

51. I stop here to comment that the Tribunal rejected the defence which the Appellant now relies upon in this appeal. To the extent that this solicitor of the Supreme Court was in effect giving evidence that she believed she could deny the existence of SRA and SDT investigations and Legal Ombudsman awards, even though she knew of the

existence of these is quite remarkable in my judgment. The more I considered this submission the less I found it attractive. Even accepting that the Appellant utterly and completely believed that she had a good defence to all of the SRA investigations, the SDT charges and the Legal Ombudsman's awards (none of which awards were appealed or reviewed) that is a completely separate matter from denying the existence of those matters. The Tribunal clearly did not accept, and I see no reason to interfere with this decision, that the Appellant subjectively believed that she was not required to disclose the existence of relevant facts because she had a defence to some or even all of them.

52. A parallel which assisted me in my thinking would be road traffic insurance. Where a road traffic insurer asks a prospective insured whether the prospective insured is the subject of any up and coming road traffic charges the answer to that question is purely factual. It is either yes or no. That is totally separate and different from the question whether the prospective insured has a complete or brilliant defence to those upcoming charges. Just because A knows that his friend was driving his car when the speeding offences occurred, not A, the charges A faces must be disclosed if A is asked by the prospective insurer whether A faces charges.

53. The Appellant's responses that it was "*futile"* to disclose the existence of the SRA and SDT investigations to her prospective professional negligence insurers and that "*as a Cypriot I do not acknowledge them*" are disappointingly pugnacious but also a window into her thinking about her professional responsibilities at the time. They do not accord with the duty of Uberrimae Fidei – utmost good faith, owed to insurers in law, let alone a professional lawyer's duty to disclose, which cannot in my judgment be lower than the duty imposed on all other members of the public.

54. It is clear to me and also appears to have been clear to the Tribunal that the Appellant should have confessed and sought to avoid.

55. The Appellant's reliance on the absence of the detailed evidence in relation to the Rule 12 allegations before the Tribunal is nothing to the point. It is clear from the Tribunal's judgment that they did not disbelieve her asserted belief in the validity of her defence based on lack of jurisdiction on the SRA and SDT matters. However they found that she subjectively chose not to provide the relevant facts to the insurance brokers or the insurers for the reasons set out in her evidence and in the judgment.

56. The Tribunal's findings may also have been affected by the numerous unmeritorious adjournment applications and the unimpressively late service of evidence in breach of unless orders.

57. In my judgment the Tribunal clearly did consider the subjective element of the Appellant's defences to the Rule 14 charges numbered 1.1 and 1.2, they just expressed themselves in robust terms.

58. In my judgment it was not necessary to try the Rule 12 allegations either before or at the same time as the Rule 14 allegations to do justice to the Appellant's defences to the Rule 14 charges. Ground of Appeal 1 blurs the distinction between a genuinely held belief there is a defence to the Rule 12 allegations or some of them, and a genuinely held belief that such a defence is a justification for not disclosing the matters in question to potential insurers when asked specifically to do so. The Appellant was not unfairly restricted at trial from asserting her belief that the SRA/SDT/LO charges/investigations/awards were flawed.

59. A litmus test of whether the Appellant and her legal team truly considered that justice could not be done in relation to the inconsistent defence of *"I did not believe I had to disclose the investigations because I had a defence"* without trying the Rule 12 allegations first or at the same time is the events in and after the case management order made in April 2022. The order was made for the preliminary issue. Reading the transcript of the April hearing the Appellant did not so argue with much substance. This lack of objection was mirrored by the fact that a challenge was raised to other parts of the April order but not that part. I consider that it is close to an abuse of process for the Appellant to advance by this appeal a collateral challenge to that April 2022 case management decision, in circumstances where she pursued an appeal or judicial review of other rulings set out within the same order (but not against the procedural decision to take the Rule 14 allegations as a preliminary issue).

60. I agree with Mr Tabachnik's submission that the fundamental flaw in Ground of Appeal 1 is that it blurs the distinction between: (a) a genuinely held belief there is a defence to the Rule 12 allegations, and (b) a genuinely held belief that such a defence is a justification for not disclosing the fact/existence of the investigations to potential insurers.

Other grounds of appeal

61. As for Ground 2: Refusal to adjourn. For the reasons provided by the Tribunal I consider that the decision was within the case management discretion allowed to the Tribunal and indeed justified. It was neither illogical nor unreasonable. The medical reports had long since been relied upon and the Appellant's assertions of inability to defend herself did not appear to be evidenced by her robust and detailed approach to her answers when being cross examined.

62. As for Ground 3: Late served evidence. The Appellant had "flagrantly" breached an unless order. No mention was made during the appeal of any 'smoking gun' document which would have altered the case on key issues. Indeed no application was made during the hearing before the Tribunal for admission of any such document. This ground is dismissed because it lacks substance.

63. Ground 4: Fresh evidence. I do not consider that the *Ladd v Marshall* factors have been sufficiently evidenced either in relation to the explanation for why the evidence was not put before the Tribunal or how the evidence would have been significant.

64. Ground 5: Costs. The award was well within the discretion allowed to the Tribunal. In my judgment this case justified the SRA instructing a single silk. The appeal on this ground is dismissed.

Th adjournment application

65. At the start of the hearing the Appellant applied to adjourn the hearing on medical grounds and on the grounds that she was needed in Court in Cyprus and so could not attend. The notice of application was dated 17.1.2023.

66. The evidence in support of the Cyprus court dates was vague from a Mr Kyriakides and I found it unconvincing in that it did not state that the Appellant was needed in Court on the date of the appeal hearing.

67. The medical evidence from the Claimant was to the effect that the Claimant could not attend remotely due to visual difficulties and electronic communication issues. The Appellant had been to London on 12.1.2023 for an eye appointment to see Dr Shah and the doctor had confirmed she was awaiting cataract surgery and had dry eyes. He prescribed lubricant.

68. The SRA's response was that the Appellant was not required to be at the hearing, she has instructed a silk and a junior. The appeal had been listed since September 2021.

69. In my judgment the application to adjourn was ill founded. The Claimant was not required to give evidence on the appeal. The medical evidence did not state that the Appellant could not attend on video link. The legal letter from Cyprus was obviously vague and did not support the Appellant being unable to attend on the day.

70. In addition the appeal had been in process for 6 months. The Claimant had clearly been able to give instructions to her counsel over that period.

71. Taking into account reasonable allocation of court resources, the interests of justice in avoiding delays and the SRA's interests I considered that the adjournment application should be dismissed.

Conclusions

72. For the reasons set out above I dismiss the appeal on all grounds.

73. The SRA will draw up the order and if there are any consequentials on costs which are not agreed a 30 minute hearing can be listed before me in the next 7 days.

END