Neutral Citation Number: [2022] EWHC 921 (Admin)

Case No: CO/3561/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISRATIVE COURT

IN AN APPEAL FROM THE BAR DISCIPLINARY TRIBUNAL
PURSUANT TO SECTION 24 OF THE CRIME AND COURTS ACT 2013

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/04/2022

Before:

MRS JUSTICE HILL

- -

Between:

SKY BIBI — **Appellant**
- and –
BAR STANDARDS BOARD — **Respondent**

- -
- -

The Appellant appeared in person
Leo Davidson (instructed by the Bar Standards Board) for the Respondent

Hearing date: 30 March 2022

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Approved Judgment

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

Covid-19 Protocol: this judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time of hand-down is 2.00pm on 13 April 2022

Mrs Justice Hill:

Introduction

1. This is a statutory appeal by virtue of rules made pursuant to section 24 of the Crime and Courts Act 2013, by which the Appellant appeals the decision of a Disciplinary Tribunal to disbar her from practice as a barrister. The decision was reached after a professional misconduct hearing that took place from 1-3 June and 23-24 September 2021. Oral reasons were given for the Tribunal's decision on 24 September 2021. These were then set out in writing in the Tribunal's Report of Finding and Sanction (RFS) dated 20 October 2021. The Bar Standards Board defended the decisions of the Tribunal and invited me to dismiss the appeal.

The facts

2. The Appellant was called to the Bar on 22 November 2007.

3. On 6 December 2018 she was convicted at Cheshire Magistrates' Court of an offence under Regulation 8(1) of the Council Tax Reduction Schemes (Detection of Fraud Enforcement) Regulations 2013, arising out of her failure to disclose a change in her financial circumstances pertinent to her council tax. This had resulted in her receiving £1,054.24 in council tax benefit to which she was not entitled. She was sentenced to a 12-month conditional discharge, a costs order of £1,000 and a victim surcharge of £20. She appealed this conviction to the Crown Court.

4. On 13 September 2019 her appeal by way of re-hearing was dismissed at Chester Crown Court. The sentence was varied to a 12-month community order with a curfew requirement, a costs order of £2,500 and the victim surcharge of £85.

5. Between June and October 2019, the Appellant worked for Backhouse Jones solicitors. It was alleged by the Bar Standards Board (BSB) that in various respects she had not disclosed these criminal proceedings to them.

6. The five-member Disciplinary Tribunal heard evidence from Linda Hindmoor and Steven Meyerhoff from Backhouse Jones solicitors as well as the Appellant. The Tribunal also considered several bundles of evidence, including the material presented to the Crown Court and a transcript of the judgment dismissing the appeal.

7. The Tribunal found the following four charges of professional misconduct, contrary to the Code of Conduct of the Bar of England and Wales, proved against the Appellant:

> Charge 1: behaving in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the profession and/or acted in a way which could reasonably be seen by the public to undermine her honesty and integrity, in that between 13 April 2015 and 6 September 2016, she was required but failed to disclose a change in her financial circumstances, namely, a change of

employment status and receipt of income, which she knew would affect her entitlement to a council tax benefit, or affect the amount of any reduction in council tax payments under the council tax reduction scheme of Manchester City Council.

Charge 2: behaving in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the profession and/or acted in a way which could reasonably be seen by the public to undermine her honesty and integrity in that, following her appeal by way of a re-hearing at Chester Crown Court, on the 12 and 13 September 2019, she had dishonestly stated in evidence that:

(i) She had disclosed all of her bank accounts to the Council when completing the initial claim form at the Council;

(ii) She had taken evidence of all of her bank statements to the Council;

(iii) She had declared all of the sums relied upon by the Respondent and/or listed in the schedule used by the Crown Court in the appeal to the Council either over the phone or in person;

(iv) The process of presenting the documents to the Council had changed in 2015, including that in 2015 Council officers did not always scan the documents, and/or when they did scan documents, they sometimes returned the original documents to her and sometimes did not;

(v) She attended the Council Offices in or around September 2014 to provide documents and that these included bank statements of her five different bank accounts;

(vi) She had not worked for PLS (a solicitors' firm); and

(vii) Sums received by her and relied upon by the Council and considered by the Court had not been for legal work.

Charge 3: failing to act with honesty and with integrity in that she:

(i) Failed to disclose the fact of her conviction and sentence pursuant to or during the course of the recruitment process leading to her employment with Backhouse Jones Solicitors;

(ii) In June 2019 provided a Disclosure and Barring Service (DBS) certificate which she had obtained on 27 November 2018 prior to her conviction on the 6 December 2018 and which accordingly did not reflect the true state of her criminal record; and

(iii) Between 12 June 2019 and 20 October 2019 during her employment with the Solicitors failed to disclose the fact of her conviction and sentence.

Charge 4: knowingly and recklessly misleading her employer, in the same three ways as specified in Charge 3 (RFS, paragraphs 10-31).

8. Having found Charges 3 and 4 above proved, the Tribunal did not consider it necessary to make a finding on a further charge that had been laid in relation to the Backhouse Jones matters (RFS, paragraph 31).

9. In considering sanction, the Tribunal found that there were two mitigating factors in the Appellant's case, namely her previous good character and unusual personal circumstances, including health and bereavement. However the Tribunal identified several aggravating factors, namely premeditation, an element of financial gain, persistent conduct over a period of time, undermining the profession in the eyes of the public, attempts to hide the misconduct or wrongly lay blame elsewhere, lack of remorse and lack of insight. In respect of charges 1 and 2, the Tribunal ordered that the Appellant be disbarred. In respect of charges 3 and 4, it imposed a suspension of 12 months (RFS, paragraphs 32-38).

10. The disbarment was not to take effect until the conclusion of any appeal. However, the Tribunal ordered that the Appellant suspend her practice immediately. The BSB was also ordered to withdraw the Appellant's current practising certificate and not issue a new one pending the appeal (RFS, paragraph 39). The Appellant appealed the suspension. On 16 December 2021, Bourne J dismissed that appeal.

11. The Appellant's Grounds of Appeal and Skeleton for this appeal advanced six grounds. The BSB's position was, in summary, that none of the grounds disclosed any error of law, merely disagreements with the Tribunal's findings and decisions. I was provided with all the material that was before the Tribunal, a full transcript of the 1-3 June 2021 phase of the hearing and various other documents by the Appellant.

The legal framework

12. This appeal is governed by CPR Part 52. Under CPR 52.21, the Court will allow the appeal where the Tribunal's decision was (a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

13. An appeal is limited to a review of the Tribunal's decision, unless the court considers that in the circumstances of the appeal it would be in the interests of justice to hold a rehearing, under CPR 52.21(1). There was no application for me to hold a rehearing in this case and I did not consider that the interests of justice required me to do so.

14. The nature of a review was described by May LJ in *Dupont de Nemours (EI) & Co v ST Dupont (Note)* [2003] EWCA Civ 1368; [2006] 1 WLR 2793 at [94] as follows:

> "The review will engage the merits of an appeal. It will accord appropriate respect to the decision of the lower court. Appropriate respect will be tempered by the nature of the lower court and its decision-making process. There will also be a spectrum of appropriate respect depending on the nature of the decision of the lower court which is challenged. At one end of the spectrum will be decisions of primary fact reached after an evaluation of oral evidence where credibility is in issue and purely discretionary decisions. Further along the spectrum will be multi-factorial decisions often dependent on inferences and an analysis of documentary material. Rule 52.11(4) expressly empowers the court to draw inferences".

15. One issue pertinent to this appeal was the ability of the BSB to rely on the findings against the Appellant in the criminal proceedings. As to this, Regulation (r) E169 of the BSB Handbook provides, so far as is relevant:

> "In proceedings before a Disciplinary Tribunal which involve the decision of a court or tribunal in previous proceedings to which the respondent was a party, or where a wasted costs order was made against the respondent, the following Regulations shall apply:
>
> .1 a copy of the certificate or memorandum of conviction relating to the offence shall be conclusive proof that the respondent committed the offence;
>
> .2 any court record of the findings of fact upon which the conviction was based (which may include any document prepared by the sentencing judge or a transcript of the relevant proceedings) shall be proof of those facts, unless proved to be inaccurate…".

16. In *Ukiwa v Bar Standards Board* [2021] EWHC 2830 (Admin) at [33], Collins Rice J clarified that rE169 is "not a jurisdictional provision [but] a rule of evidence".

17. As far as sanctions are concerned, it is recognised that professional regulators are "expert and informed tribunals" and that they are "particularly well placed…to assess what measures are required to deal with defaulting [practitioners] and to protect the public interest". Therefore, "Absent any error of law, the High Court must pay considerable respect to the sentencing decisions of the tribunal. Nevertheless, if the High Court, despite paying such respect, is satisfied that the sentencing decision was clearly inappropriate, then the court will interfere": *Law Society v Salsbury* [2008] EWCA Civ 1285; [2009] 1 WLR 1286 at [30], per Jackson LJ. The relevance of this factor in an individual case will vary according to the nature of the lower tribunal, its decision and the issues on the appeal: *Diggins v Bar Standards Board* [2020] EWHC 467 (Admin) at [30], per Warby J.

The Appellant's Grounds of Appeal

18. The Appellant's six grounds were quite diffuse. At times she made the same points in respect of different grounds. To avoid repetition I have addressed each point only once, in the ground where it appeared to fit best.

Ground 1: The Tribunal lacked jurisdiction to hear the charges

19. The Appellant submitted that the Tribunal lacked jurisdiction for a number of reasons. I have grouped these together under a series of headings below. The BSB's position was that all of these challenges were misconceived.

(a): The service of the disciplinary charges

20. The Appellant argued that the charges had not been properly served on her as they had been served late and to the wrong address (described as "Manchester DO" in the postage documentation). She said that this had led to delay meaning she could not fairly defend herself.

21. The Appellant had raised several allegations of late service in correspondence with the Bar Tribunals and Adjudication Service (BTAS) before the hearing.

22. *First*, by an email dated 22 March 2021 she alleged that charges 1 and 2 had not been served on her within 10 weeks of the date on which the Independent Decision-Making Panel decided to refer the matter to a Disciplinary Tribunal, as required by rE102. She argued that they not been received by her until 22 July 2020, which was 8 days late, such that the charges against her should be struck out.

23. The Appellant's application for a strike out was referred to a Tribunal Directions Judge, Philip Havers QC. In a written determination dated 31 March 2021 he noted that there was evidence from the BSB suggesting that the Appellant had in fact been properly served. He ruled that he did not need to resolve the factual dispute around service as he had "no hesitation" in rejecting the application. This was because (i) he was satisfied that it was not the intention of the legislature that any failure to serve the charges within the time limit rendered the proceedings invalid; (ii) he was "in no doubt" that the Appellant had "not been in any way prejudiced or that there is a real possibility that she may suffer prejudice" by any delay in service; and (iii) even if there was such a risk of prejudice, it was just to allow the proceedings to continue, not least because of the seriousness of the charges and the limited nature of the breach alleged.

24. *Second*, by a letter and an email dated 15 and 19 March 2021 respectively, the Appellant argued that the three charges relating to the Backhouse Jones matters should be struck out because (i) they had not been served on her until 15 January 2021, again in breach of rE102; (ii) the bundle and statements had only been served on her on 10 March 2021; and (iii) the BSB had not served the charges on the BTAS at the same time as her, again in breach of rE102.

25. This application was also referred to Mr Havers QC. In a further determination dated 6 April 2021, he found it likely that the charges had been served on the Appellant on or shortly after 16 September 2020 and that the bundle and statements had been served on the Appellant on 13 October 2020. He also concluded that any delay in serving the charges on the BTAS "plainly could [cause] no prejudice" to the Appellant. He therefore dismissed the application.

26. Before any evidence was called at the hearing on 1 June 2021, the Appellant argued that the charges had been served on her at the wrong address. Counsel for the BSB took the Tribunal to the previous determinations of the Directions Judge. The Chair pointed out that the Tribunal was not sitting as an appeal court in respect of those determinations and so declined to consider the matter further (see page T72-T79 of the transcript).

27. In the appeal hearing before me, counsel for the BSB indicated that the "Manchester DO" reference in the postal documentation was a reference to the place where the material had been posted, not where it was received.

28. In my view the Appellant has failed to identify any error in the determinations made by Mr Havers QC. She also advanced no persuasive reason why the Tribunal should have reconsidered the decisions he made. In any event, the decisions appear entirely sound on their merits. The thrust of the provisions around service is to ensure that someone facing disciplinary charges has sufficient notice of them such that they can prepare their defence. To the extent that there were any issues with service (and it is far from clear that there were), the Appellant had been able to do that.

29. For these reasons I can discern no jurisdictional issue or serious procedural irregularity in this

respect.

(b): The charges were duplicitous

30. The Appellant argued that the Tribunal lacked jurisdiction because the charges were "duplicitous". I understand that she meant by this that she had been "over-charged" because some of the factual matters underpinning different charges were the same.

31. Charge 1 related to the factual matters that had led to her conviction. Charge 2 related to the evidence she had given on oath during the criminal appeal. In my view these were separate matters and the BSB and the Tribunal were entitled to treat them as such.

32. Charges 3 and 4 alleged, respectively, failing to act with honesty and integrity and knowingly and recklessly misleading her employer. The type of misconduct alleged in each charge was therefore different. Further, the Tribunal was live to the risk of unfairness to the Appellant in this regard and for this reason made no finding on the third Backhouse Jones matter, specifically saying it was doing so because it was "reluctant to base too many charges on the same course of conduct" (RFS, paragraph 31). The third charge had been advanced by the BSB as an alternative charge, in accordance with its common practice, in any event. Finally, had the Appellant not been disbarred in relation to Charges 1 and 2, the sentence for Charges 3 and 4 would have been a concurrent period of suspension (RFS, paragraph 38). This shows that no further penalty would have been imposed by the fact that she faced two charges arising out of the Backhouse Jones issues.

33. Accordingly, I do not discern any unfairness or procedural irregularity in the way in which the BSB charged the Appellant or in the Tribunal's approach to the various charges.

(c): Issues relating to the nature of the criminal charge and sentence

34. The Appellant alleged that the Tribunal lacked jurisdiction because the criminal offence of which she was convicted was a summary only offence. She argued that the Tribunal's jurisdiction was limited to "indictable offences". She said that this principle was derived from the "relevant handbook".

35. The Appellant could not point to any provision in the BSB Handbook limiting the Tribunal's jurisdiction in this way. During the appeal she did take me to rE169, set out above. Within that rule the word 'conviction' is italicised, such that, following rI15, its meaning is defined in Part 6 of the Handbook. There, 'conviction' is defined as 'a criminal conviction for an indictable offence'. However, per *Ukiwa*, rE169 is not a jurisdictional provision, but a rule of evidence (and its application in this case are considered under Ground 3 below). I accept the BSB's submission that the Appellant's assertion was simply incorrect, and that conduct need not be criminal at all, let alone indictable, to amount to professional misconduct. This much is clear from the wording of the charges against the Appellant.

36. The Appellant also challenged the Tribunal's jurisdiction on the basis that the conditional discharge to which she was sentenced did not constitute a conviction. She relied on section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000, which provides that a conditional discharge is only deemed to be a conviction for certain specified purposes.

37. The BSB highlighted that by the time the charges were brought against the Appellant, the

conditional discharge had been replaced with a community order by the Crown Court. Further, charge 2 did not depend on any conviction and the nature of the sentence was irrelevant to charges 3 and 4. This was because, to the extent that the relevant conduct occurred while the conditional discharge was still in place, (i) pursuant to section 5(2) of the Rehabilitation of Offenders Act 1974, a DBS certificate properly obtained in June 2019 would have shown the conviction; and (ii) the relevant question was not whether or not there had been a conviction, but whether it was a matter which should have been disclosed (see *Estephane v Health and Care Professions Council* [2017] EWHC 2146 (Admin) at [43] per Warby J, as he then was and *Davis v Solicitors Regulation Authority* [2011] EWHC 3645 (Admin), at [8] per Collins J). In my view these arguments are sound.

38. Accordingly, I do not consider that either of these issues denied the Tribunal jurisdiction as alleged.

(d): Issues relating to the nature of the disciplinary charges and the power to disbar

39. The Appellant argued that the Tribunal lacked jurisdiction "to try a charge of perjury". However, the Tribunal was not hearing a criminal allegation of this nature. Rather, it was hearing specific allegations of dishonesty, contrary to the Code of Conduct, which were particularised in the charges. To the extent that the charges were "perjury dressed up as something else", which the Appellant also alleged, they were not. They were properly formulated disciplinary charges. The Tribunal clearly had jurisdiction to consider them.

40. The Appellant also alleged that the Tribunal had erred in considering matters that related to her private life and not her professional life in respect of charges 1 and 2. Although the background to the criminal proceedings was the Appellant's council tax (arguably an element of her private life), the Tribunal was entitled to conclude that the manner in which the Appellant had conducted herself in respect to it raised the professional misconduct issues alleged in charge 1. Charge 2 was understandably considered by the Tribunal to be particularly serious because the Appellant's accounts, which were found to be dishonest, had been given on oath (RFS, paragraph 33).

41. She also alleged that the Tribunal had no power to disbar her. The Tribunal did have this power (although the actual disbarment is carried into effect by the Inns of Court). Indeed once it had made findings of dishonesty against her, there was a strong presumption in favour of disbarment: the applicable Sanctions Guidance referred to the power to disbar, provided that disbarment was the most serious sanction that could be imposed and indicated that where dishonesty was found, the "general starting point" should be disbarment, in light of relevant caselaw which was cited.

42. For these reasons I do not consider that any of these issues denied the Tribunal jurisdiction as alleged.

(e): The nature of the complainant

43. The Appellant argued that "a local authority could not refer a complaint to the BSB". She was referring here to Manchester City Council, which had brought the criminal proceedings against her. The Appellant was unable to provide any basis for this proposition: there is no reason why a local authority could not, in principle, refer concerns about a barrister's conduct to the BSB. However this was not a complete reflection of what had actually happened in the Appellant's case: rather, following the Crown Court's dismissal of her appeal and increase in sentence, the Recorder had directed that the record of the ruling be referred to the BSB (RFS, paragraph 22).

44. She also argued that her conduct could not have diminished the trust and confidence which the public places in a barrister, as no member of the public had actually complained about her. However, *Diggins* at [60] makes clear that the pertinent question is whether conduct has a tendency to diminish the public's trust and confidence, not whether it actually has.

45. Again, therefore, I do not consider either of these jurisdictional challenges made out.

(f): The standard of proof

46. The Appellant alleged that the Tribunal failed to apply the correct standard of proof. It was not clear how this was said to be a jurisdictional challenge, but it was included with the other jurisdictional challenges under Ground 1, so I address it here.

47. The correct standard of proof was the civil standard, save in respect of charge 1, to which the criminal standard applied as the charge involved conduct before 1 April 2019 (see rrE164 and E261a).

48. The Tribunal expressly directed itself to the correct standard and considered whether the evidence met the necessary standard for each charge. The Tribunal concluded that the necessary standard of proof was met for each charge. Indeed it went further in respect of charges 3 and 4 and concluded that it was satisfied to the criminal standard that Backhouse Jones did not know of the criminal matters and that the Appellant had provided the DBS certificate in question (RFS, paragraphs 23-25 and 29).

49. For all these reasons I do not consider that any of the arguments advanced by the Appellant in Ground 1 have merit.

Ground 2: The Tribunal erred by refusing to stay the proceedings

50. The Appellant argued that the Tribunal erred by refusing to stay its proceedings pending the determination of her application to the Criminal Cases Review Commission (CCRC). As with the service issue referred to under Ground 1, she had raised this issue in correspondence before the Tribunal hearing and the points had been considered by the Directions Judge, Mr Havers QC.

51. On the first occasion the Appellant relied on the fact that she was in the midst of instructing counsel to draft her CCRC application as one of the reasons why the charges against her should be struck out. In his determination dated 21 January 2021, declining to strike the charges out, Mr Havers QC noted "the mere fact that she is seeking to pursue further means of appeal does not begin to demonstrate that her conviction was unsafe, let alone that I should as a result strike out the charges".

52. On the second occasion she argued that as she had received positive advice from counsel about a CCRC application, the Tribunal proceedings should be stayed. In his determination dated 31 March 2021, refusing the application for a stay, Mr Havers QC pointed out that she had provided no supporting evidence for her assertions as to her CCRC application. He observed that her case was therefore different from that of *Shrimpton v Bar Standards Board* [2019] EWHC 677 (Admin) on which she relied.

53. By the time of the Tribunal hearing on 1 June 2021 the Appellant's counsel had drafted a CCRC

application. The application to the CCRC argued that (i) Manchester City Council had brought the prosecution out of time; (ii) the Crown Court did not have regard to the bundle of evidence the Appellant had provided, including positive character evidence; and (iii) the prosecutor may not have complied with the duty of disclosure.

54. At the start of the June hearing before the Tribunal, the Appellant renewed her application for a stay on the basis of her extant CCRC application. It is clear from the transcript that the issue occupied most of the first morning of the hearing. The Tribunal heard competing submissions from the Appellant and the BSB on the issue and then retired to consider the issue (transcript, pages T2-T60). The Chair then returned and indicated that the Tribunal had acceded to the BSB's argument that the application for a stay should be dismissed, giving detailed reasons for the decision (transcript, pages T61-T67).

55. In giving the Tribunal's decision, the Chair made the following key observations:

    (i) He noted that it was likely to take some time before the CCRC process concluded, because even if the CCRC decided to make a referral, the case would have to go back to the Crown Court for it to decide whether the Appellant's conviction was rendered unsafe, a process that would "certainly be measured in months and potentially longer" (transcript, pages T63-T65).

    (ii) He indicated that the Tribunal's view was that they had to "put to the forefront the public interest in dealing with [the Tribunal proceedings] without delay. These proceedings are about protecting the public, and public interest demands that that be done without delay" (transcript, page T65).

    (iii) He noted that if in future the Appellant succeeded in overturning the conviction, she could return to the Tribunal and the matter would be looked at in a more favourable light (transcript, page T65).

    (iv) He identified that several of the charges did not depend on the conviction ultimately being upheld in the long-term: notwithstanding the conviction, the evidence that was the subject matter of charge 2 had still been given and the alleged failures to disclose to Backhouse Jones under charges 3 and 4 had still occurred (transcript, pages T65-T66).

56. He explained that having considered the application, the Tribunal was unanimous that the public interest required them to avoid delay and continue with the proceedings (transcript, pages T66-T67).

57. I am not persuaded that there is any sound basis for challenging this decision for the following reasons.

58. *First*, case management decisions are inherently fact sensitive. They usually, as here, involve balancing competing interests. Appeal courts will therefore rarely interfere with such decisions, as explained by Yip J in *Razaq v Zafar* [2020] EWHC 1236 (QB) at [3]:

> "…as the Court of Appeal has reinforced on many occasions, an appellate court will not lightly interfere with case management decisions or the exercise of judicial discretion. Further, it has been said that it is vital that appellate courts uphold robust case management decisions by first instance judges. See *Clearway Drainage Systems Ltd v*

> *Miles Smith Ltd* [2016] EWCA Civ 1258. The test in considering an appeal against a decision of this nature was neatly encapsulated at paragraph 68: "the fact that different judges might have given different weight to the various factors does not make the decision one which can be overturned. There must be something in the nature of an error of principle or something wholly omitted or wrongly taken into account or a balancing of factors which is obviously untenable".

59. *Second*, the case of *Shrimpton* on which the Appellant relied did not establish any wider point of principle about staying Tribunal proceedings pending CCRC applications but was a case on its own facts. In any event the *Shrimpton* judgment does not engage with the detail of why Tribunal proceedings had been stayed in that case, but simply records the fact that they had been (paragraph 39).

60. *Third*, contrary to the Appellant's submission, the Tribunal was not unduly influenced by the merits of her CCRC application in considering the stay. Rather, the Tribunal expressly indicated that it had not taken the merits into account. Indeed, it accepted that "there may be substance in some of it" (transcript, pages T63-T65). Accordingly, the Appellant's alternative assertion, that the Tribunal did not have regard to the fact that independent counsel had drafted her CCRC application in assessing the merits, does not assist her: the Tribunal was already willing to assume that there was some merit in the application.

61. *Fourth*, although the Appellant argued that the Tribunal did not consider the correct legal test in reaching its decision on the stay issue, she did not explain why. Looking at the Tribunal's decision as a whole it is clear that the Tribunal gave careful consideration to the Appellant's arguments in support of delay and balanced them against the public interest in proceeding with the matters promptly. This was an entirely appropriate approach.

62. *Fifth*, having taken that appropriate approach, in all the circumstances, the Tribunal was entitled to reach the decision it did. In light of the key observations the Tribunal made, summarised at paragraph 53 above, the Tribunal was entitled to conclude the public interest required that the proceedings continued without delay. I detect no error of the kind discussed in *Clearway Drainage Systems Ltd v Miles Smith Ltd* [2016] EWCA Civ 1258.

63. The Appellant renewed her application for a stay at the end of the evidence in the September phase of the hearing. By this point her application had been received by the CCRC and given a case number and she was hopeful that her application would be determined within around three months. The Tribunal re-visited its earlier ruling and maintained its decision, for the same reasons (RFS, paragraph 6). Again, I do not consider that this can be faulted.

64. Accordingly, I dismiss Ground 2.

Ground 3: The Tribunal erred with respect to the admissibility of evidence

65. The Appellant argued that the Tribunal was not entitled to rely on the conviction as conclusively proving the offence, for the purposes of charge 1. This is incorrect: rE169.1 of the BSB's handbook clearly provides that "a copy of the certificate or memorandum of conviction relating to the offence shall be conclusive proof that the respondent committed the offence". Although "conviction" is defined as "a conviction for an indictable offence" for the purposes of other parts of the BSB Handbook, that does not apply here. Accordingly, the Tribunal was entitled to rely on the relevant documents from the criminal proceedings as proof of the Appellant's conviction.

66. The Appellant also argued that the Tribunal wrongly admitted the Crown Court judgment and relied on that to prove the allegations of dishonesty alleged against her. In fact, the BSB's argument that the Tribunal could have regard to the judgment as 'opinion' evidence was rejected by the Tribunal. It decided that it should consider the issue of her alleged dishonesty afresh. Indeed, this was part of the reason the proceedings had not concluded during the original June listing. The Tribunal therefore went on to make its own primary findings of fact and found that the Appellant had been dishonest without reference to the Crown Court judgment (RFS, paragraphs 23 and 25).

67. Finally, to the extent that the Tribunal did consider the Crown Court judgment for the purposes of understanding what had happened during the appeal process, it was entitled to do so: in *Constantinides v The Law Society* [2006] EWHC 725 (Admin) at [28], Moses LJ made clear that an earlier judgment was "admissible to prove background facts in the context of which the appellant's misconduct had to be considered".

Ground 4: There was an appearance of bias in the Tribunal proceedings and the Appellant did not have a fair hearing

68. The Appellant argued that the Tribunal had already taken against her and predetermined the case, as it had read the Crown Court judgment and seen the comments made therein about her honesty. However, the Tribunal was clear that it was reaching its own conclusions about her as explained under Ground 3. Further, as Moses LJ said in *Constantinides* at [32], the "The Tribunal, with its lay member, was a skilled and expert body well able to reach its own conclusions, uninfluenced by the conclusions of another". The Chair specifically reminded the parties of this principle during the hearing on 3 June 2021 (Transcript, pages T288 and T306). In my view there is no basis for the allegation that the Tribunal considered her evidence and submissions other than impartially and with an open mind.

69. The Appellant argued that during certain exchanges with the BSB's counsel, the Chair identified similar points that might have arisen in previous cases in which they had both been involved. No further details of this were given, albeit that counsel for the BSB on the appeal (who appeared before the Tribunal) had some recollection of them. This sort of exchange is not uncommon. While the Appellant might have felt uncomfortable as a result of these exchanges, I do not consider that they meet the objective threshold for a credible case of bias or predetermination by the Tribunal set out in *Porter v Magill* [2002] 2 AC 357 at p.494Hnamely whether "a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased".

70. The Appellant also made complaint of the manner in which the BSB chose to present its case against her. She challenged the fact that she had not been able to cross-examine the various witnesses who had given evidence in the criminal proceedings. The BSB had chosen not to call them before the Tribunal but to rely on the documents. She also argued that there was another witness from Backhouse Jones who should have been called and who would have assisted her case.

71. Ultimately it was for the BSB to decide which witnesses it was going to rely on and how it was going to put its case against the Appellant. The BSB chose not to call the various witnesses who had given evidence in the criminal proceedings in relation to charges 1-2, because it felt it could

make out its case on the basis of the documents.

72. This meant that the Appellant was unable to cross-examine those witnesses before the Tribunal. However, it is clear that she raised this point with the Tribunal at the end of the 3 June 2021 hearing, arguing that the evidence amounted to hearsay, and that the Tribunal had this issue very much in mind. The Tribunal ruled that there was sufficient evidence to proceed, noting that the evidence from the witnesses was largely business records, that they had been cross-examined twice before, in the Magistrates' and Crown Courts and that the Appellant could make submissions on these points (transcript, pages T304-314). It is also part of the background that the Appellant's counsel had not sought to cross-examine these witnesses during the Crown Court appeal (although she was very critical of him for not doing so).

73. The Appellant did have the opportunity to cross-examine the witnesses from Backhouse Jones. She suggested that there was a further witness from the firm whose evidence was relevant. If she had wanted to call a further witness in her defence to charges 3 and 4, it was for her to try and do so.

74. During the appeal hearing before me, the Appellant asserted that no accommodation was made in the Tribunal proceedings for her status as a vulnerable person, but she gave no specifics of this, beyond the assertion. The transcript of the June hearing suggests that the Tribunal was very accommodating of the fact that the Appellant was representing herself. It shows that the Tribunal gave careful consideration to her application for a stay and the various other preliminary issues she raised, as appropriate. She made lengthy submissions throughout. She cross-examined the Backhouse Jones witnesses. She also gave evidence. Although the cross-examination of her by the BSB continued into the September phase of the hearing (of which no transcript was available) I did not discern from the June transcript any comment by her to the effect that she needed to have further accommodation made for her needs by way of breaks, a change in the manner of questioning, or anything of that nature. At the end of the June listing, the Tribunal adjourned the hearing for an additional two days in order to ensure that the Appellant had a fair opportunity to respond to the charges and put her case fully.

75. Overall, I do not consider that there was any appearance of bias or unfairness in the Tribunal proceedings in the manner alleged.

Ground 5: The Tribunal erred with respect to the duty to provide reasons

76. The duty to give reasons is a function of due process and therefore justice, both at common law and under Article 6 of the European Convention on Human Rights. Fairness requires that the parties, especially the losing party, should be left in no doubt why they have won or lost (see, for example, the White Book 2021 at paragraph 52.21.7).

77. Initially the Appellant argued that the Tribunal had given no reasons for its decisions. This could not be sustained given that the RFS runs to some 40 paragraphs over 30 pages. The Appellant modified her position on this ground during the appeal hearing, to argue that the reasons given by the Tribunal were inadequate.

78. In respect of charges 1-2, the Tribunal summarised the pertinent evidence. It correctly identified that the central issue was whether the Appellant had made the disclosures with respect to her bank accounts, income and other matters listed in the charges or not. The Tribunal found

unanimously that she had not, and explained why: "...it is simply impossible to accept the [Appellant's] evidence that she made all those disclosures at different times to different officials, and that none of them found their way to the relevant records". It went on to find that she had dishonestly made the various statements on oath that were alleged against her. Accordingly it fully explained why it had found charges 1 and 2 proved (RFS, paragraphs 17-25).

79. The Appellant argued that the Tribunal had failed to consider the legal tests of dishonesty. However, the nature of the findings the Tribunal had made did not make this a "borderline" case: the Tribunal was entitled to conclude that its findings, to the effect that she had made statements which she knew to be untrue while under oath, amounted to dishonesty. I accept the BSB's submission that there is no reason to suppose that the Tribunal interpreted the concept of dishonesty wrongly.

80. In respect of charges 3-4, the Appellant's case was that she had told Sacco Mann (the recruitment consultants working with Backhouse Jones) about the criminal proceedings and they then told Backhouse Jones about them. She also alleged that the DBS certificate had not come from her.

81. The Tribunal again summarised the pertinent evidence. It noted that Mr Meyerhoff had "made clear" in his evidence that he did not know about the Appellant's conviction and sentence and that Ms Hindmoor's evidence was that the Appellant had provided her with the DBS certificate. It explained that it accepted the evidence of both those witnesses. It also explained that it had had regard to the fact that the DBS certificate was obtained at a time when Backhouse Jones would have had no need for it and had the Appellant's home address on it. It also noted that email communications from Sacco Mann to Backhouse Jones did not mention any conviction. They inferred from this that the conviction had not been disclosed. Further, they concluded that if Sacco Mann had been aware of it, they would have told Mr Meyerhoff about it, and he had no such knowledge. This fully explained why the Tribunal found charges 3 and 4 proved (RFS, paragraphs 14-16 and 26-31).

82. The Appellant highlighted during the appeal that she had made legal submissions to the Tribunal about the legal duties on recruitment agencies in respect of disclosures to employers. While it is correct that the Tribunal did not refer to these submissions in their decision, in my view they were rendered academic by their factual finding that the Appellant had not made any such disclosure to Sacco Mann. In those circumstances the lack of reference to the submissions does not amount to a failure to give reasons such that the appeal should be allowed: reasons do not need to refer to every argument advanced.

83. In my view, looked at as a whole, the Tribunal clearly provided adequate reasons for its decisions. Accordingly, this ground of appeal fails.

Ground 6: The Tribunal erred in making the findings it did, given the gaps in the evidence

84. The Appellant argued that the Tribunal was not entitled to "assume and make up" evidence. I do not accept that the Tribunal did so: rather, it made careful findings of fact based on the evidence before it to the appropriate standard. Where it drew inferences, in respect of the DBS certificate and Sacco Mann, these were entirely reasonable on the evidence the Tribunal had before it.

85. Charge 1 was conclusively proved by the fact of the conviction and the Appellant failed to

establish exceptional circumstances which could justify going behind it.

86. In respect of Charge 2, what the Appellant had said in evidence in her Crown Court appeal was clear. Indeed, she reiterated many of the points before the Tribunal. The Tribunal had to decide whether those statements were dishonest. In doing so, it considered all the documents which had been before the Crown Court. It also had the benefit of lengthy oral evidence from the Appellant, by reference to those documents. It had plenty of evidence on which to base its findings.

87. For Charges 3 and 4, the Tribunal considered the key documents such as the copy of the DBS certificate and relevant correspondence. They had the benefit of hearing direct oral evidence from two witnesses, who were challenged by the Appellant. They also heard from the Appellant. The Tribunal chose to prefer their evidence over the Appellant's.

88. I agree with the BSB that in truth this ground amounts to the Appellant disagreeing with the decisions made by the Tribunal on the evidence it had before it. The Tribunal had sufficient evidence to make the decisions it did and was entitled to do so.

Conclusion

89. For all these reasons the appeal is dismissed.