The Respondent appealed the Tribunal's decision dated 7 July 2022 to the High Court (Administrative Court). The appeal was heard by Mr Justice Ritchie on 24 January 2023 and Judgment was handed down on 1 February 2023. The appeal was dismissed. Dr Katherine Alexander -Theodotou v SRA Ltd [2023] EWHC 186 (Admin).

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No.12108-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

KATHERINE ALEXANDER THEODOTOU Respondent

Before:

Mr G Sydenham (in the chair)
Mr R Nicholas
Mrs L McMahon-Hathaway

Date of Hearing: 16 – 20 and 25 May 2022

Appearances

Andrew Tabachnik QC, of 39 Essex Chambers. London. WC2R 3AT, for the Applicant.

Alisdair Williamson QC and Daniel Mansell, Counsel, of 3 Raymond Buildings, Gray's Inn, London, WC1R 5BH, for the Respondent.

JUDGMENT

Allegations

The Allegations levelled against Dr Theodotou arose from a Rule 12 and a Rule 14 Statement as set out below:

Rule 12 Statement

1. The allegations against the Respondent, Dr Katherine Alexander Theodotou, are that, whilst in practice as sole principal of Highgate Hill Solicitors ("HHS"):

Unauthorised litigation (AP Group Litigation)

1.1 On 3 April 2016, the Respondent caused proceedings to be issued in the District Court of Cyprus against Michael Kyprianou & Co LLC, in the names of the individuals set out at Schedule A, each of whom was at the material time a former client of HHS, without their knowledge or consent. In doing so, the Respondent breached Principles 2 and 6 of the SRA Principles 2011 ("the 2011 Principles").

Fixed Fee Arrangement (Tersefanou – Mr DW/Mrs MW)

1.2 Between June 2012 and June 2019, the Respondent, having agreed to act for Mr DW and Mrs MW in the Tersefanou Litigation for an agreed fixed fee, as defined by Rule 175 of the SRA Accounts Rules 2011, but in any event:

1.2.1 Sought to charge further fees in addition to the agreed fee;

1.2.2 Put improper pressure on Mr DW and Mrs MW by suggesting that she would withdraw if the additional fees were not paid;

1.2.3 Failed to provide a breakdown of the fees incurred and sought;

1.2.4 Caused to be submitted to Mr DW and Mrs MW an invoice dated 18 September 2018 which did not reflect fees properly incurred in Mr DW and Mrs MW's case and which were misleading; and/or

1.2.5 Submitted to Mr DW and Mrs MW a bill of costs dated 5 June 2019 which did not reflect fees properly incurred in Mr DW and Mrs MW's case and which were misleading;

and in doing so breached Principles 2, 4, 5 and 6 of the 2011 Principles.

Conduct of case (Tersefanou – Mr DW/Mrs MW)

Solicitors Accounts Rules

1.3 The Respondent failed to keep proper accounting records which accurately showed:

1.3.1 the money held for each client; and

1.3.2 client money received, held or paid by the Respondent, and any office money held, for each client;

and in doing so breached Rule 1(f) of the Solicitors Accounts Rules 1998 ("1998 Accounts Rules")/Rule 1.2(f) of the SRA Accounts Rules 2011 ("2011 Accounts Rules") and Rule 32(4) of the 1998 Accounts Rules/Rule 29.1 of the 2011 Accounts Rules.

1.4 The Respondent failed to carry out regular reconciliations between client cash accounts, client bank statements and client ledgers in compliance with the requirements of Rule 29.12 of the 2011 Accounts Rules, and in doing so acted in breach of that Rule.

1.5 Between January 2015 and June 2017, the Respondent could not demonstrate that HHS held sufficient funds to meet the firm's liabilities to clients, and in doing so breached Principles 4, 6 and 10 of the 2011 Principles and Rules 29.1 a 29.2 of the 2011 Accounts Rules.

Co-operation with the Legal Ombudsman

1.6 The Respondent failed to comply with a decision of the Legal Ombudsman dated 10 November 2017, in respect of a complaint made by Mrs SD (on behalf of herself, Mr AD, Mr GS and Mrs KS), in that she failed to ensure that payments in the sum of £2,100 were made to the complainants as required by the decision or in any event in a timely manner. In doing so, the Respondent breached Principles 6 and 7 of the 2011 Principles.

1.7 The Respondent failed to co-operate fully with the Legal Ombudsman in that she failed to ensure that HHS provided a full and prompt response to a request for information made by the Ombudsman on 6 November 2017, in the course of investigating a complaint made against the firm by Mrs EM. In doing so the Respondent breached Principles 6 and 7 of the 2011 Principles and Outcome 10.6 of the 2011 Code.

1.8 The Respondent failed to comply with a decision of the Legal Ombudsman, dated 19 February 2018, in respect of a complaint made by Mrs EM, in that she failed to ensure that a payment of £250 was made to Mrs EM as required by the Legal Ombudsman or in any event in a timely manner. In doing so, the Respondent breached Principle 7 of the 2011 Principles.

Rule 14 Statement

1. The further allegations against the Respondent, Dr Katherine Alexander-Theodotou, are that whilst in practice as sole principal of Highgate Hill Solicitors ("HHS"):

1.1 The Respondent made statements and/or representations, which were false and misleading, in support of her application for professional indemnity insurance cover for HHS for the period 1 September 2020 – 31 August 2021, and in so doing breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019. Dishonesty is alleged, although this is not a requirement or the Allegation to be proved.

1.2 The Respondent made statements and/or representations, which were false and misleading, in support of her application for professional indemnity insurance cover for

HHS for the period 1 September 2021 – 31 August 2022, and in so doing breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019. Dishonesty is alleged, although this is not a requirement or the Allegation to be proved.

2. Dishonesty is alleged with respect to each of the Further Allegations, but dishonesty is not an essential ingredient to prove either of the Further Allegations. Recklessness is also alleged in the alternative with respect to each of the Further Allegations, but, again, recklessness is not an essential ingredient to prove either of the Further Allegations.

Executive Summary

3. At a Case Management Hearing on 25 April 2022, an application was made by the Applicant for the Rule 14 Allegations to be determined first on the basis that, if proved, it would impact on the Applicant's position with regards to the Rule 12 Allegations.

4. Dr Theodotou opposed that application and contended that the Rule 12 Allegations informed the Rule 14 Allegations and therefore they should be considered chronologically. The Tribunal rejected that submission and granted the Applicant's application. The Tribunal was cognisant of the fact that if dishonesty in the Rule 14 allegations was found proved, the likely sanction (absent exceptional circumstances being found) would be an Order striking Dr Theodotou off the Roll of Solicitors which would render pursuance of the Rule 12 Allegations disproportionate in all of the circumstances.

5. The Rule 12 Allegations 1.1 – 1.8 were STAYED with the Applicant being granted LIBERTY TO RESTORE. For the avoidance of doubt, no evidence was received in respect of and the Tribunal did not consider the Rule 12 Allegations.

6. The Rule 14 Allegations 1.1 and 1.2 were found PROVED as was the aggravating feature of dishonesty. Given that finding, recklessness, which was alleged in the alternative to dishonesty, in Allegation 2, was not considered.

Sanction

7. Dr Theodotou was sanctioned to an Order Striking her from the Roll of Solicitors and ordered to pay costs to the Applicant in the sum of £124,830.00, the full reasons for which are set out below.

Documents

8. The Tribunal considered all of the documents, in relation to the Rule 14 Allegations, which were contained within an agreed electronic hearing bundle.

Preliminary Applications

9. *Respondent's initial applications to adjourn*

9.1 At the outset of the substantive hearing, Mr Williamson QC explained to the Tribunal that Dr Theodotou was waiting for a helper to assist her with using the CaseLines electronic bundle for the hearing. That helper was due at HHS in approximately an

hour. Dr Theodotou's absence at the outset of the hearing was due to her inability to operate the CaseLines software without assistance.

9.2 Mr Williamson QC further alluded to the "large volume of material" filed and served by Dr Theodotou overnight "without [his] knowledge" which he had not read and needed to consider.

9.3 Given the circumstances, Mr Williamson QC applied to adjourn the hearing on the following terms:

(i) An hour to secure the attendance and participation of Dr Theodotou; and/or

(ii) A day to enable him to review the late material and obtain instructions from Dr Theodotou in that regard; and/or

(iii) A "full" adjournment of the substantive hearing given the late medical evidence filed and served which referred to a further deterioration of Dr Theodotou's vision.

The Applicant's Submissions

9.4 Mr Tabachnik QC "reluctantly" accepted that "some form of adjournment" was required given the late service of voluminous material by Dr Theodotou notwithstanding the fact that an UNLESS Order was made on 25 April 2022 prohibiting her from relying on further material without leave of the Tribunal. Mr Tabachnik QC acknowledged that the Tribunal would need to consider that material prior to its determination of the applications to adjourn.

9.5 Mr Tabachnik QC suggested an adjournment until 2pm on Day 2 of the substantive hearing was the "least unfair way to proceed".

The Tribunal's Decision

9.6 The Tribunal carefully considered the submissions advanced by the Parties. The Tribunal was fully aware of the medical conditions faced by Dr Theodotou including her visual impairment. The Tribunal accepted the importance of Dr Theodotou being able to follow the proceedings via the CaseLines bundle relied upon. In order for her to do so she required assistance from a helper. The Tribunal therefore GRANTED the application for a "short" adjournment of one hour for her helper to arrive in that regard.

9.7 The Tribunal REFUSED the remaining two applications (to adjourn until the following day or to adjourn the substantive hearing in its entirety) on the grounds that (a) the flagrant breach by Dr Theodotou of the UNLESS Order prohibiting late service of material absent permission of the Tribunal, (b) the fact that Dr Theodotou had been given adequate time to file and serve all documents she sought to rely upon as previously directed and (c) late service of voluminous material (which ran to nearly 4000 pages) represented Dr Theodotou's approach to and attempts throughout the proceedings to derail and/or secure an adjournment of the substantive hearing.

10. *Respondent's application for permission to rely upon further documents*

10.1 By way of an undated application, the Respondent applied for leave to rely upon further medical evidence in the following terms:

> "The Respondent applies for leave to adduce the expert evidence of:
> 1) Mr George Saleh, Consultant Ophthalmic and Oculoplastic Surgeon …
> 2) Dr Matthew Starr, Ophthalmologist …
> 3) Dr Michael Gross, Consultant Neurologist…
> 4) Professor Hawkes, Honorary Consultant Neurologist…
> 5) Dr Angus Kennedy, Consultant Neurologist …
> 6)Dr Charles Kaplan, Consultant Neurologist …
> 7) Dr Sadgun Bhandari, Consultant Psychiatrist …
>
> The above is important evidence in respect of the Rule 14 allegations. This medical evidence is crucial in order to understand:
>
> a) the Respondent's difficulties with reading when the insurance forms (which are the subject of the Rule 14 allegations) were completed;
> b) and 2) the Respondent's state of mind, and how it was affected by her neurological and mental health issues, at the relevant time…"

The Applicant's Submissions

10.2 Mr Tabachnik QC submitted that, as the application sought to reintroduce all of the medical evidence previously relied upon as a substantive defence to the Rule 14 Allegations, the application was not opposed.

The Tribunal's Decision

10.3 Given the fact that (a) the medical evidence had already been seen by the Tribunal in support of previous applications to adjourn and (b) the consent of the Applicant, the Tribunal GRANTED the Respondent's application for permission to rely upon the same.

11. *Applicant's application to rely upon further evidence*

11.1 By way of an application dated 13 May 2022, the Applicant applied for permission to rely upon further evidence in the following terms:

> "…The Applicant requests permission to serve the witness statement of Mr Chris Jones. Mr Jones is available to give evidence and be cross examined [at the substantive hearing].
>
> The Tribunal Division will be familiar with the procedural history to this matter and we do not set that out in detail here, but in summary:
>
> - On 14 January 2022, the Applicant was granted permission by the Tribunal to file a Rule 14 statement. The Respondent was ordered by the Solicitors Disciplinary Tribunal to provide an Answer to the Rule 14

statement allegations by 25 February 2022. Paragraph 20.2 of the Tribunal's January 2022 memorandum contemplated that the SRA would have 3 weeks to respond (by 18 March 2022).

- The Respondent failed to serve any Answer or other evidence by 25 February 2022 and at a subsequent case management hearing, the Tribunal made an Unless Order on 25 April 2022 requiring that the Respondent file her Answer by Tuesday 3 May 2022 4pm. (No provision was made at that time for any reply evidence from the SRA, in the remaining 2 weeks before the substantive hearing dates. This would not have been appropriate without foreknowledge of what the Respondent would seek to say).

- The Respondent filed an Answer to the Rule 14 Statement and witness statement evidence 2 hours after the deadline on 3 May 2022 and again had to apply for permission to the Tribunal to rely on her Answer. The Applicant did not oppose the application (save in respect of Mr Oswald's statement) and permission was granted by the Tribunal on 10 May 2022 (with its Memorandum issued on 10 May 2022).

- In the Respondent's Witness statement dated 3 May 2022, she asserts that Respondent's firm, Highgate Hill solicitors, had provided certain documents and information to Hera Indemnity Ltd ("Hera") relating to the SRA's investigations (see for example paragraphs 10 and 11 of the Respondent's statement). This was the first time the Respondent had raised this alleged explanation as to what information/documents were sent to Hera.

- In the Respondent's Witness statement dated 3 May 2022, she asserts that Respondent's firm, Highgate Hill solicitors, had provided certain documents and information to Hera Indemnity Ltd ("Hera") relating to the SRA's investigations (see for example paragraphs 10 and 11 of the Respondent's statement). This was the first time the Respondent had raised this alleged explanation as to what information/documents were sent to Hera.

- Fault of the Respondent. The Tribunal will of course be aware of the repeated failures by the Respondent to comply with the Tribunal's directions and the SRA has had to respond to new documents, information and representations within extremely limited timeframes as a result. Mr Jones' statement has been produced around 10 days after service of the Respondent's relevant witness statement. This was half the amount of time the Tribunal's January 2022 memorandum envisaged would be available to prepare reply evidence. Moreover, as the Tribunal is aware, the SRA has been considerably distracted for much of this week by the Respondent's unsuccessful judicial review of the Tribunal's 25 April 2022 refusal of the adjournment application, which was dismissed as unarguable at the High Court yesterday.

- Further to this, the SRA seek to rely on Mr Jones' witness statement and respectfully request permission from the Tribunal to rely on it in the proceedings commencing on 16th May 2022. The Respondent has already been sent a copy of Mr Jones statement at 2.49pm today, very shortly after it was finalised…"

The Respondent's Submissions

11.2 Mr Williamson QC did not oppose the application.

The Tribunal's Decision

11.3 The Tribunal GRANTED the unopposed application for permission to rely upon additional witness evidence out of time.

12. *Respondent's applications pertaining to the Rule 12 Allegations*

12.1 By way of applications dated 11 May 2022, the Respondent applied for permission to file and serve (a) a full Answer and (b) expert evidence with regard to the Rule 12 Statement.

The Applicant's Submissions

12.2 Mr Tabachnik QC invited the Tribunal to defer consideration of the applications pending the outcome of the Rule 14 Allegations.

The Tribunal's Decision

12.3 The Tribunal considered the position advanced by Mr Tabachnik QC to be the most sensible, proportionate and reasonable use of time. It would enable the Tribunal and the Parties to focus on the Rule 14 Allegations, the outcome of which would inform whether the Applicant intended to proceed with the Rule 12 Allegations.

12.4 The Tribunal therefore POSTPONED consideration of the applications.

13. *Respondent's further application to adjourn*

13.1 Mr Williamson QC, having taken further instructions, applied for the substantive hearing to be adjourned. In so doing he relied upon further evidence filed namely:

- Email from Dr Theodotou to the Applicant dated 15 May 2022 in which she stated:

  "… I am informing you that I am visually disabled and unable to read the SRA bundles of documents and my documentation too.

  This makes it impossible for me to give any evidence.

  I cannot defend myself against the allegations because of my disability. I have other health problems too but my vision is the real obstacle.

> You know about this disability, and my general health condition and you staunchly found against my application.
>
> If I cannot read the documents properly, it means I cannot defend myself. I am therefore a vulnerable person.
>
> I am also writing to the Disability Rights Commission and raise the issue with them for their decision.
>
> I am unable to offer my evidence. This was told to your clients on numerous occasions. I have strong evidence of victimization *(sic)* by you and others.
>
> There is strong evidence, that despite my great successes, you plan to deprive me of my certificate.
>
> I have been led to understand your intentions from the certificates section of the SRA offices. If this is what you want to do, please let me know.
>
> I am far too unwell and disabled to go through a theatrical show of unfair treatment and trial…"

- Letter from Dr B dated 5 May 2022 in which he set out accounts given to him by Dr Theodotou and stated that:

  > "…Her symptoms have continued as before and if anything, have got worse…"

- Optical Report from FR dated 22 May 2022 which concluded that the use of a lit magnifier (as recommended by Consultant Ophthalmologist Dr S previously) was:

  > "… not convenient or sustainable for fluent reading tasks which carry high importance to the patient. Patient also reports eye pain whilst using a magnifier to read…"

13.2 Mr Williamson QC submitted that, whilst the Tribunal was very familiar with the medical evidence to date, it was plain from the additional evidence that her vision had deteriorated over the preceding weekend. Her position as at the substantive hearing was (a) an inability to "deal with the proceedings", (b) aggravation caused by the glare from a computer screen (the hearing was convened remotely with the hearing bundle in electronic form) and (c) she was unable to operate the electronic CaseLines bundle. Mr Williamson QC further submitted that Dr Theodotou had (a) "no suitable assistance", (b) "inadequate facilities" and further (c) that her legal team could not attend upon her offices nor could she attend at their chambers.

<u>The Applicant's Submissions</u>

13.3 Mr Tabachnik QC opposed the application and submitted that the further evidence filed added "nothing to the Tribunal's previous consideration" [of an application to adjourn] on 25 April 2022. Dr Theodotou's email to the Applicant on 15 May 2022 was of limited if any assistance in that it contained mere assertions made on her part absent medical evidence to substantiate the same.

13.4 With regards to Dr B's report, Mr Tabachnik QC submitted that it "doesn't take anything further than previously".

13.5 With regards to the Optical Report, Mr Tabachnik QC noted that it was dated and predicated on an assessment in early April 2022 both of which predated the Tribunal's adjournment determination on 25 April 2022 at which stage Dr Theodotou elected not to rely upon it. Conversely, she chose to rely upon the expert report of Dr S to which precedence should be afforded given his position as a Consultant Ophthalmologist as opposed to an Optician. Mr Tabachnik QC reminded the Tribunal that Dr Theodotou had previously indicated that clarification was being sought from Dr S as to the suitability of a lit magnifier but that evidence had not been forthcoming.

The Tribunal's Decision

13.6 The Tribunal carefully considered the further application to adjourn, the additional evidence relied upon in support and the Applicant's submissions. In so doing it determined that:

- No weight could be attached to Dr Theodotou's email to the Applicant which contained irrelevant and unsubstantiated assertions on her part.

- The "Report of Findings" of Optician FR was of limited assistance given the conclusions reached by Ophthalmologist Dr S whose expertise was superior.

- Dr S's conclusions regarding the use of a lit magnifier as a reasonable adjustment to assist Dr Theodotou remained valid.

- Dr B's report predated Dr Theodotou's demonstrable ability thereafter to communicate with the parties by electronic means, to issue a claim for Judicial Review of the Tribunal's decision not to adjourn the substantive hearing on 25 April 2022, to file and serve numerous subsequent applications thereafter along with nearly 4000 pages of additional evidence.

13.7 With regards to any limitations on her ability to participate in the remote hearing, the Tribunal made plain the types of reasonable adjustments available to her in its memorandum of the 25 April 2022 hearing, conveyed its willingness to assist in taking more regular breaks, shorter sitting days and the like. The Tribunal was firmly of the view that the onus was on Dr Theodotou to deploy any reasonable adjustments that would assist and that she had elected not to do so. The substantive hearing had been fixed since January 2022 and Dr Theodotou was well aware of the impact of her health in effectively participating in the proceedings. Rather than engage with them and seek solutions, she had voluntarily chosen to make application after application for an adjournment instead. The allegations levelled by Dr Theodotou were historic in part and serious in their entirety. The overarching public interest required expeditious consideration of the same.

13.8 The Tribunal therefore REFUSED the application to adjourn.

Applications made during the course of the substantive hearing

14. *Respondent's application for permission to rely on evidence served out of time*

14.1 At the end of Day 2 and during the course of cross examination in respect of Mr Crilly, Mr Williamson QC applied for permission to admit a document in evidence out of time. That document was HHS's claims history with AON.

The Applicant's Submissions

14.2 Mr Tabachnik QC objected to the application given the terms of the UNLESS Order granted by the Tribunal on 25 April 2022.

The Tribunal's Decision

14.3 The Tribunal noted that both parties had, during the substantive hearing, been uploading documents into the electronic CaseLines bundle without permission and relying upon the same in the course of their submissions/cross examination. The Tribunal considered that was an unacceptable disregard to the Tribunal's judicial role, powers and procedures. The resultant mess it had caused hindered the transparency of the proceedings and had the potential to derail the fairness of the proceedings.

14.4 The Tribunal refused the application and directed that:

14.4.1 Neither party shall upload any document to the electronic CaseLines bundle without permission of the Tribunal.

14.4.2 The parties shall prepare a schedule setting out the documents it had uploaded to the electronic CaseLines bundle without permission of the Tribunal.

14.4.3 The parties shall file and serve retrospective applications for permission to admit any additional documents it sought to rely upon.

14.5 On the morning of Day 3 of the substantive hearing, the parties had complied with the directions set out above, apologised to the Tribunal and made plain that no disrespect was intended by their previous actions.

14.6 A joint application was made to admit the additional documents set out in their respective schedules which the Tribunal GRANTED.

15. *Applicant's application to interpose the evidence of Mr Crilly*

15.1 On Day 3 of the substantive hearing, Mr Tabachnik QC relayed to the Tribunal that Mr Crilly was only available that day to give evidence on behalf of Pen. He therefore applied to call Mr Crilly out of turn, and mid-way through Mr Jones' evidence, in order to ensure that the Tribunal heard from Mr Crilly.

The Respondent's Submissions

15.2 Mr Williamson QC did not oppose the application.

The Tribunal's Decision

15.3 The Tribunal GRANTED the unopposed application.

16. *Respondent's application regarding the cross examination of Mr Jones*

16.1 On Day 3 of the substantive hearing the Respondent filed and served an application in the following terms:

> "…The Respondent applies for permission to cross-examine Mr Jones on a conversation that he had with the Respondent in which (i) she told him that she had had 'a lot of problems' with the SRA; (ii) she asked him to seek details from AON. That conversation took place before the signing of the first HERA form. After the signing there were further conversations and the Respondent enquired of Mr Jones as set out in her further witness statement which she also seeks permission to file and serve. She further seeks permission to rely on the fact that she told AON to send the material and she was told that they had sent it…"

The Applicant's Submissions

16.2 Mr Tabachnik QC opposed the application.

The Tribunal's Decision

16.3 The Tribunal considered the application made and the objection raised. With regards to the first limb, namely the cross examination of Mr Jones, the Tribunal determined that it could not and would not curtail Mr Williamson QC in putting his client's case to Mr Jones. Unless and until the scope of cross examination became unfair or irrelevant to the salient issues, the Tribunal would not intervene and that element of the application was GRANTED.

16.4 With regards to the second limb, namely the application to admit the Respondent's fourth witness statement, the Tribunal determined that Dr Theodotou could not and should not be permitted to file witness statements throughout the course of the hearing to rebut witness evidence received during the course of the hearing. The correct approach was for Mr Williamson QC to put her case in cross examination and for her to give evidence, if she so elected, during which she could address any matters she refuted. The Tribunal therefore REFUSED the second limb of the application.

Factual Background

17. Dr Theodotou was admitted to the Roll on 15 October 2002. At all relevant times, she was a sole practitioner and principal of HHS. The practice was established in 2005. Dr Theodotou also had a Cypriot practice called K. Theodotou LLC, of which she was the Principal.

The Investigations

18. The Applicant commenced a forensic investigation into HHS ("the First Investigation") in April 2013. A Production Notice ("PN1") was served upon Dr Theodotou on 15 April 2013 which required her to make available for inspection specific documents and records. The First Investigation concluded with a Forensic Investigation Report dated 23 April 2014 ("the First Report").

19. The Applicant commenced a second forensic investigation into HHS ("the Second Investigation") in July 2015. A Production Notice ("PN2") was served upon Dr Theodotou on 15 September 2015 which required her to make available for inspection specific documents and records. On 30 October 2015, the Applicant served a revised PN2 in an attempt to narrow the issues between the Parties given representations she had made in that regard. On 15 December 2015, the Applicant issued proceedings in the High Court for the enforcement of the revised PN2 which was settled by consent in February 2016. The Second Investigation concluded with a Forensic Investigation Report dated 11 November 2016 ("the Second Report").

20. The Applicant commenced a third forensic investigation into HHS ("the Third Investigation") in January 2017 which culminated in a Forensic Investigation Report dated 10 May 2017 ("the Third Report").

21. On 30 June 2017, the Applicant sent Dr Theodotou an "Explanation of Conduct" letter seeking her representations on the findings in the First, Second and Third Investigations. Dr Theodotou provided a full explanation by way of a 33 page letter.

22. On 18 July 2018, the Applicant made a decision to refer Dr Theodotou to the Tribunal for determination of the allegations. The Tribunal certified that there was a case to answer and Dr Theodotou was served with the first iteration of the Rule 12 Statement.

23. On 25 February 2021, the Applicant sent an email to Dr Theodotou notifying her that further reports had been made regarding her conduct. Those reports emanated from a former client and the Legal Ombudsman. They were received after Dr Theodotou's 2020 application for Professional Indemnity Insurance ("PII 1") and the 2021 application ("PII 2"). On 4 March 2021, Dr Theodotou telephoned the Applicant to discuss the further reports and steps were taken to arrange a visit to HHS for further investigation. On 26 April 2021, Ms Bartlett ("FIO") notified Dr Theodotou that she would visit HHS on 4 May 2021. On 26 April 2021, Dr Theodotou replied that the date was not convenient for her accountants or her Practice Manager Mr Oswald. The visit, and the start of the investigation, was re-scheduled for 10 May 2021. An interim Forensic Investigation Report ("the Fourth Report") was issued on 17 November 2021.

The Legal Ombudsman Awards

First Award in 2017

24. Dr Theodotou was notified by way of a letter dated 10 November 2017 from the Legal Ombudsman ("the LeO") that awards totalling £2,100.00 be paid by HHS to four former clients within 14 days. That deadline for payment was subsequently extended to 5 December 2017 due to late acceptance of the same by one of the former clients. On

11 December 2017 the LeO chased up payment with HHS and granted a further extension of time for payment until 18 December 2017. Dr Theodotou was warned in that correspondence that failure to pay could result in the LeO reporting her to the Applicant. At no time did Dr Theodotou challenge the originating LeO decision.

25. On 6 August 2018 the Applicant sent Dr Theodotou an "Explanation of Conduct" letter with regards to non-payment of the LeO award. On 10 August 2018 Dr Theodotou replied. In short, she disputed the bases upon which the awards had been made but stated:

> "…In order to avoid wasting my very valuable time in continuous correspondence, which would deprive the rest of my clients of my good services, I shall remit to your offices, under protest and without prejudice to proceedings due to occur in London and Cyprus, the sum of £2100 GBP as was determined by yourself but unfairly. The sum will be remitted by 20 August 2018 as you determined…"

26. Dr Theodotou made payment by way of bank transfer on 17 August 2018.

Second Award in 2018

27. Dr Theodotou was notified by way of a letter dated 19 February 2018 from the LeO that an award totalling £250.00 be paid by HHS to a former client. That decision was never challenged by Dr Theodotou and payment was made by way of a cheque dated 6 October 2018.

Witnesses

For the Applicant

- Sarah Bartlett Forensic Investigation Officer ("FIO")
- Chris Jones Senior Claims Manager; Hera Indemnity (Insurance Broker for Lloyds)
- Paul Crilly Head of Solicitors Professional Insurance at Pen Underwriting

For the Respondent

- Dr Katherine Alexander Theodotou Respondent
- Thomas George Oswald Practice Manager of HHS
- David Williams [at sanction with regards to mitigation]

28. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the submissions advanced by the parties. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

29. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's right to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

30. **Allegation 1.1 - False and misleading statements/representations in 2020**

The Applicant's Case

30.1 Mr Tabachnik QC stated that the misconduct alleged related to non-disclosures by Dr Theodotou to her insurance broker ("Hera") and her Insurer ("Pen"). The non-disclosures fell into four categories:

(i) Forensic Investigation Reports conducted and completed by the Applicant.
(ii) The Rule 12 Proceedings.
(iii) The further forensic investigation commenced by the Applicant in relation to the Rule 14 Allegations.
(iv) The existence of two Legal Ombudsman awards made against Dr Theodotou/HHS.

30.2 On 4 August 2020, Hera sent a marketing email to Dr Theodotou regarding its provision of indemnity insurance. At that point, HHS's insurance provider was, and had been the preceding 10 years, Liberty with AON as broker. Dr Theodotou replied to that email with a completed insurance proposal form dated 12 August 2020. At the time of completing PII 1 Dr Theodotou had been qualified for 18 years and HHS had been established for 16 years with Dr Theodotou as Principal. Mr Tabachnik QC submitted that she was a very senior and experienced solicitor who was well acquainted with running HHS.

30.3 PII 1 posed a number of questions which Dr Theodotou, as Principal of HHS and signatory on the form, answered "No" to:

> "...**Has any fee earner or former Partners in the practice over the past 10 years …**
>
> - had an award made against him or her by the Legal Ombudsman …?
> - practised in a firm subject to an investigation/intervention by the Law Society or SRA?
>
> … Has the firm ever been the subject of any visit or enquiry from the Forensic Investigation Unit of the Law Society or the Solicitors Regulation Authority or has notice of any proposed enquiry been given?
>
> … If you have answered "yes" to any of the above questions please provide full details on a separate sheet and include a copy of all reports and relevant

> correspondence issued by the SRA, Legal Ombudsman … Forensic Investigation Unit.

30.4 Mr Tabachnik QC reminded the Tribunal that, at that time, Dr Theodotou had (a) two LeO awards made against her (in favour of four clients in November 2017 and one client in February 2018), (b) been investigated by the Applicant SRA on three occasions culminating in three forensic investigation reports in April 2014, November 2016 and May 2017, and (c) had been visited by the Applicant SRA on a number of occasions during the course of the investigations. Given those facts, Mr Tabachnik QC submitted that the answers provided were plainly incorrect and furthermore no details of the LeO awards, investigations, visits or forensic investigation reports were provided by Dr Theodotou to Hera.

30.5 PII 1 continued:

> "… All material information must be disclosed as part of the proposal and before insurance commences. Material information includes any fact which we may reasonably wish to know in relation to our assessment of risk, the exposure and in calculation of any appropriate premium. You must disclose all such information whether or not a specific question has been included in the application form.
>
> Is there any other material information that may be relevant to this application with specific reference to the Risk Management Procedures and Areas of Practice? …"

30.6 Dr Theodotou answered "No" in response to this question despite the fact that the Rule 12 Allegations had been certified as showing a case to answer by the Tribunal a few weeks before completion of the form (in July 2020). Mr Tabachnik QC submitted that event was clearly relevant material information for Hera.

30.7 PII 1 continued:

> "… We declare that to the best of our knowledge or belief that the particulars and statement given in this application are true and complete and this application, declaration and information shall be the basis of the contract between ourselves and the insurer.
>
> We declare that we have informed the insurer of all facts which are likely to influence the insurer in the acceptance or assessment of the insurance. We accept that if we are in doubt whether any fact may influence the insurer, we should disclose it.
>
> We agree that we have a continuing obligation to notify insurers of any material matters during the currency of any policy.
>
> We accept that any deliberate misrepresentation of facts declared on this proposal form may be referred to The Legal Complaints Service…"

30.8 The form was signed and dated by Dr Theodotou on 12 August 2020. Mr Tabachnik QC submitted that Dr Theodotou was well aware of the false answers given and that it was "blindingly obvious" that certification of the Rule 12 Statement should have been disclosed yet she elected not to do so.

30.9 PII 1 continued:

> "… **Document Checklist**
>
> … if applicable, please provide the following:
>
> - …
> - …
> - A copy of all reports issued by the SRA … Forensic Investigation Unit, Legal Ombudsman, Disciplinary Tribunal …"

30.10 Mr Tabachnik QC submitted that Dr Theodotou's failure to disclose any reports represented further, false, confirmation on her part that all relevant matters had been disclosed when in fact they had not.

30.11 PII 1 was sent to Hera on 14 August 2020. On the same date Mr Jones raised a query with Dr Theodotou regarding the areas of practice undertaken by HHS which she clarified on 16 August 2020 and accepted that a "visual error" had occurred. Mr Tabachnik QC submitted that this exchange demonstrably showed that Dr Theodotou was actively engaged in the exercise of completing and checking PII 1. Given that fact, Mr Tabachnik QC submitted that she would have therefore been well aware of erroneous answers given to questions regarding LeO awards, forensic visits, forensic investigations, reports and other material matters.

30.12 On 17 August 2020, Dr Theodotou signed an "IMPORTANT NOTICE – DUTY OF FAIR REPRESENTATION" in attestation of the following:

> "… The Insurance Act 2015 came in to force on 12th August 2016. Under this Act, Insureds owe a duty of disclosure to the insurer which includes a duty to make a fair presentation of the risk. A "fair presentation" is one:
>
> - which clearly discloses all material circumstances which the Insured's Senior Management, including persons responsible for the Insured's insurance, know or ought to know following a reasonable search or which is sufficient to make the insurer ask questions about the risk. A circumstance is material if It would influence an insurer's judgment in determining whether to take the risk and, if so, on what terms. If you are in any doubt whether a circumstance is material we recommend that it should be disclosed;
>
> - which discloses information in a manner which is clear and accessible to a prudent insurer (i.e. no 'data dumping");

- in which every material representation as to a matter of fact is substantially correct and every material representation as to a matter of expectation or belief is made in good faith.

Failure to disclose a material circumstance may entitle an insurer to:

- in some circumstances, avoid the policy from inception and in this event any claims under the policy would not be paid;
- impose different terms on cover; and/or
- proportionately reduce the amount of any claim payable.

Failure to disclose a material circumstance may entitle an insurer to:

- in some circumstances, avoid the policy from inception and in this event any claims under the policy would not be paid;
- impose different terms on cover; and/or
- proportionately reduce the amount of any claim payable…"

30.13 Mr Tabachnik QC contended that this was a further opportunity for Dr Theodotou to correct the erroneous position advanced in PII 1 but she consciously elected not to do so.

30.14 On 18-19 August 2020, there was email communication between Mr Jones and Dr Theodotou in which clarification was sought and further documentation requested and amended PII 1 forms sent. No amendments were made to the "offending" questions set out above. Dr Theodotou responded in detail to all matters raised by Mr Jones. Mr Tabachnik QC submitted that reinforced the level and degree of involvement Dr Theodotou had in securing insurance for HHS.

30.15 Pen Underwriting issued the annual professional insurance for HHS on 1 September 2020. Mr Tabachnik QC submitted that it did so on the basis of information provided to it by Hera. Hera obtained that information from Dr Theodotou by way of PII 1, subsequent clarification obtained from her and further documents provided by her. Mr Tabachnik QC submitted that neither Hera nor Pen were aware, as a consequence of Dr Theodotou's failure to disclose, of the LeO awards, forensic visits, forensic investigations, forensic investigation reports or certification of the Rule 12 Statement by the Tribunal. All of those matters were material and should have been disclosed on PII 1. Mr Tabachnik QC submitted that Dr Theodotou was well aware of the materiality and relevance of those matters and made a conscious decision not to disclose the same which was dishonest or reckless.

Principle Breaches

30.16 Mr Tabachnik QC submitted that at the time of completing PII 1, Dr Theodotou was an experienced and senior solicitor who had run HHS for 16 years. She was well aware, in her capacity as Principal, Compliance Officer for Legal Practice and Compliance

Officer for Financial and Administration, of her duties to her regulatory body. She was well aware of the LeO awards made against her, the forensic investigations undertaken and the existence of Rule 12 Proceedings as at the time of completing PII 1. Notwithstanding her awareness, she made a conscious decision not to disclose any of those relevant matters when asked specific questions in that regard on PII 1. That was dishonest by the standards or ordinary decent people and contrary to Principle 4.

30.17 In so doing, she also failed to act with integrity, contrary to Principle 5, and behaved in a way that failed to uphold public trust and confidence in the solicitors' profession and the provision of legal services contrary to Principle 2.

Chris Jones

30.18 Mr Jones confirmed that the content of his witness statement dated 13 May 2022 was accurate and true to the best of his knowledge and belief.

30.19 Under cross examination, Mr Jones accepted that he had experienced "over the years" people not completing PII forms correctly. Mr Jones accepted that he had "tried to provide all relevant evidence to the SRA" from online records and hard copy files regarding HHS. Mr Williamson QC put to Mr Jones that he did not provide a full record in that an initial PII 1 was sent by Dr Theodotou on 12 August 2020 followed by an amended version dated 13 August 2020. Mr Jones accepted that contention. Mr Williamson QC put to Mr Jones that he did not request HHS's claims history until 14 August 2020 and that was not received until 16 August 2020 along with an amended PII 1. Mr Jones accepted that contention.

30.20 Mr Williamson QC put to Mr Jones that despite the claims history provided by Dr Theodotou showing a claim in 2013 – 2014, Dr Theodotou had ticked erroneously ticked in the corresponding box on PII 1 that there had been no claims during that year. Mr Jones accepted that contention and stated that the "yes" box should've been ticked. Mr Jones accepted that was an inaccuracy that he did not pick up on at the material time. Mr Jones asserted that his role as an insurance broker was to gather all information, forward it to the underwriter who could then raise queries if further information was required.

30.21 Mr Williamson QC put to Mr Jones that between 16 and 18 August 2020 Dr Theodotou signed the "Duty of Fair Presentation" Form following a conversation between them as to what she was required to disclose. Mr Jones did not accept that contention and asserted that he did not recall any such conversation. Mr Williamson QC put to Mr Jones an email dated 19 August 2020, at which point he had seen the claims history and which suggested that he had a conversation with Dr Theodotou about what had to be disclosed. Mr Jones replied "I guess" and accepted that he would have had "a few" conversations with Dr Theodotou in the application process. Mr Jones accepted that he "must've missed" the 19 August 2020 email when disclosing "all relevant documents" to the Applicant. Mr Williamson QC asked whether he had "missed" any other relevant documents to which Mr Jones replied "I don't think so".

30.22 Mr Jones stated that when asked to provide a witness statement by the Applicant, he searched for communications and documents relevant to SRA investigations as opposed to HHS's claims history.

30.23 Mr Williamson QC asked Mr Jones whether the gap in HHS's claims history between 2014 and 2019 was ever questioned by him. Mr Jones replied that he "did not think so" and that he "just sent it [the claims history] to the insurers [Pen]". Mr Williamson QC queried whether Mr Jones ever asked who insured HHS between 2014 and 2019. Mr Jones replied that he "must've done but did not recall".

30.24 Mr Williamson QC asked Mr Jones what should happen if, as Dr Theodotou did, an indication was given on PII 1, that qualified accounts were required as a consequence of inquiry and/or investigation by the Applicant into HHS's compliance with the Solicitors Accounts Rules. Mr Jones replied that Dr Theodotou "should've provided more information" but that she did not. Mr Williamson QC put to Mr Jones that Hera "was not just a letterbox" to which he replied that he would "look at the main information required [on the PII] for example areas of practice, turnover, number of partners. [He] would not look at every detail. If the insurers [Pen] wanted more information they would ask".

30.25 Mr Williamson QC put to Mr Jones that he had been made aware of the Rule 12 proceedings "around the time of the form [PII 2]". Mr Jones replied "not to my recollection". Mr Williamson QC suggested that, given the gaps in the documents disclosed to the Applicant which had been brought to his attention during the course of cross examination, he may have received information from Dr Theodotou regarding the Rule 12 proceedings. Mr Jones rejected that suggestion and maintained that he had not.

Paul Crilly

30.26 Mr Crilly confirmed that the content of his witness statement dated 7 January 2022 was accurate and true to the best of his knowledge and belief.

30.27 Mr Crilly accepted that an insurance broker undertook the first part of the PII process (namely completion of forms and collation of documents) then refers the same onto him in his capacity as underwriter. Mr Crilly further accepted that he would sometimes seek further information but that depended on "the broker, if [they] were experienced they would know what we need to provide terms [of insurance]". Mr Crilly could not recall whether he dealt with either of the PII applications and stated that it was "possibly a colleague" who did.

30.28 Mr Williamson QC asked why further information was not sought by Pen regarding Dr Theodotou's indication on PII 1 that qualified accounts were required as a consequence of inquiry/investigation into HHS's compliance with the Solicitors Accounts Rules. Mr Crilly replied that Pen relied upon the solicitor completing the form to provide full disclosure. Mr Crilly accepted that, despite Dr Theodotou's indication, no concern was raised by Pen in that regard.

30.29 In relation to the claims history, Mr Crilly stated that Pen was only concerned with the preceding six years to any application for PII. Therefore from 2014 in respect of PII 1 and 2015 in respect of PII 2. Mr Williamson QC put to Mr Crilly that two claims to "Mavern" in 2014 and 2015 was therefore within Pen's remit which Mr Crilly accepted. Mr Williamson QC asked whether further details in relation to those claims was requested by Pen. Mr Crilly replied that "if [Pen] had received the documents [they] would've looked at the values of the claims and if significant, would've asked further

questions but if no reserves, they wouldn't effect the premium so wouldn't have to investigate." Mr Crilly stated that from the claims history it appeared that there was nil reserve in respect of the 2014 and 2015 claims to Mavern.

30.30 Mr Williamson QC asked what notification of any SRA investigation or matters could lead to. Mr Crilly replied that Pen relied "on the SRA questions [on the PII form] around monitoring and forensic investigations rather than the claims history which may or may not [reveal] an SRA issue."

30.31 Mr Crilly confirmed that the "mere fact" of a forensic investigation report would not cause Pen to refuse insurance. Pen would be concerned with whether that investigation had resulted in a sanction being imposed and if so what sanction. Mr Williamson QC queried the position regarding proceedings that had not yet culminated in a sanction. Mr Crilly replied that Pen "would expect to at least be told of the proceedings because, dependent on that [Pen] would ask further questions. There was a difference between monitoring and investigation. [His] concern was not being told anything. That was a red flag as there was no smoke without fire. [Pen required] the opportunity to know what was going on and if [Pen] believed it could result in a serious fine of more than £5,000.00 it triggered a referral up before [Pen] could offer any terms".

30.32 Mr Williamson asked whether that referral would be triggered by Tribunal proceedings or a forensic investigation. Mr Crilly replied "a bit of both. It depended on the [insurance] market environment. If the environment was competitive [Pen] may refer everything up but in the last few years, the fact of a referral [Tribunal Proceedings] would've caused [Pen] to decline insurance."

Sarah Bartlett

30.33 Ms Bartlett confirmed that the contents of her witness statement dated 21 January 2021, and her interim FIR dated 17 November 2021 were accurate and true to the best of her knowledge and belief.

30.34 Under cross examination, Ms Bartlett accepted that prior to her visit to HHS she familiarised herself with the previous investigations into HHS and following the visit she "read around the Applicant's enforcement department communications" with Dr Theodotou in order to prepare a chronology for her interim FIR. Ms Bartlett also accepted that the main activity of HHS over the preceding eight years arose out of the "Cypriot property scandal" and GK's involvement in that but it was "not at the forefront of [her] mind at the time of the visit".

30.35 Mr Williamson QC put to Ms Bartlett that Dr Theodotou made plain at the visit that the main accounts were under the jurisdiction of her Cypriot firm. Ms Bartlett stated that the notification of visit referred solely to HHS and that she only expected to inspect the accounts of HHS; Ms Bartlett only asked to see the books of account for HHS and not the Cypriot firm. Ms Bartlett accepted that Dr Theodotou had raised a jurisdictional issue regarding the Cypriot firm which was regulated by the Cypriot authorities.

30.36 Mr Williamson QC put to Ms Bartlett that she was aware that GK had maliciously instigated the reports made to the Applicant which culminated in the subsequent investigations. Ms Bartlett stated that she "did not know what the position was as she never discussed [them] with GK".

30.37 Mr Williamson QC put to Ms Bartlett that she was aware of Dr Theodotou's position that the Applicant's investigations "were not valid" because of the jurisdictional issues and GK's involvement. Ms Bartlett accepted that she was "aware of past issues, [but that they] did not concern [her] other than background [as she] concentrated on what [she] was asked to investigate".

The Respondent's Position

Dr Katherine Theodotou

30.38 In her initial response to the Applicant dated 13 December 2021, Dr Theodotou flatly denied the allegations regarding PII 1 and PII 2.

30.39 In her Answer to the Rule 14 Statement dated 3 May 2022, Dr Theodotou set out how her visual and neurological impairments had impacted at the material times.

30.40 Dr Theodotou confirmed that the content of her witness statement dated 3 May 2022 was accurate and true to the best of his knowledge and belief. In so doing she asserted that she signed PII 1, gave it to NB (deceased) who completed and submitted it to Hera. Dr Theodotou stated that she "did not know anymore about it".

30.41 Mr Tabachnik QC reminded Dr Theodotou of the instructions on PII 1 that; "A Principal/Partner/Member/Director must sign and date this form and any separate sheets on behalf of the firm having consulted to ensure that the answers given are true and complete" and asked whether she appreciated that fact when signing a blank form before handing it over to NB for completion; Dr Theodotou replied that she "didn't think [NB] did anything wrong on the form. [She] signed it and answered any supplementary questions [from Mr Jones]".

30.42 Under cross examination Dr Theodotou accepted that she was (a) Principal of and ran HHS from its inception in 2004, (b) admitted to the Roll of Solicitors of England and Wales in 2002 and (c) called to the Cypriot Bar "in the 1990's". Dr Theodotou did not accept that she was a "very senior lawyer" and asserted that she was "just senior".

30.43 Dr Theodotou accepted that it was her signature on PII 1, dated 12 August 2020 and that the Rule 12 Statement had been certified as showing a case to answer a few weeks prior. Dr Theodotou accepted that it was the first time she had dealt with Hera and that it was very important for insurance companies to have all relevant material so that they can assess risk; Dr Theodotou asserted that Hera "knew of the [Rule 12] proceedings".

30.44 Mr Tabachnik QC put to Dr Theodotou that she had completed the PII process for many years prior to PII 1; Dr Theodotou replied "they had all of the information". Mr Tabachnik QC asked Dr Theodotou whether she held any regret regarding her conduct in relation to completing PII 1; Dr Theodotou replied "I do not".

Mr Tabachnik QC put to Dr Theodotou whether her view was that she didn't do anything wrong in the application; Dr Theodotou replied "I did not".

30.45 Mr Tabachnik QC put to Dr Theodotou that referral to the Tribunal and certification of a case to answer with regards to the Rule 12 Allegations were material to the risk assessment insurers undertook; Dr Theodotou replied "the SDT published [existence of the Rule 12 proceedings] everywhere, [she] published it too and everyone knew about it". Mr Tabachnik QC reminded Dr Theodotou that in its original form, there were 14 Rule 12 Allegations; Dr Theodotou replied "after November 2020 it was cut down to less allegations, small allegations hanging around for ten years". Mr Tabachnik QC put to Dr Theodotou that two of the remaining allegations accused her of lacking integrity which was material to risk; Dr Theodotou replied "I do not accept the integrity argument".

30.46 Mr Tabachnik QC put to Dr Theodotou that as at July 2020, she was required to answer the Rule 12 allegations which was material to PII 1; Dr Theodotou replied "has anything been proven? You haven't brought this forward. You can't speak about them, you have proven nothing".

30.47 Mr Tabachnik QC asked Dr Theodotou whether her position was that the Rule 12 Allegations were not material to the risk assessment insurers undertook; Dr Theodotou replied "they have to be proven first. You can't accuse without proof. You have proven nothing".

30.48 Mr Tabachnik QC put to Dr Theodotou that she could have sent the Rule 12 Statement (which contained the allegations and a summary of the evidence relied upon by the Applicant) to Mr Jones at Hera; Dr Theodotou replied "do you think what you are saying is correct? When allegations are true, and not before they are found true, its completely wrong according to natural justice and human rights. Why would I send them the Rule 12? I sent all details from AON".

30.49 Mr Tabachnik QC asked Dr Theodotou whether her position was that she did not send the Rule 12 Statement because they contained allegations and were not yet proven; Dr Theodotou replied "I believe in justice. I can't send a wrong Rule 12 dating back eight years and torturing me with your abuse. What have you proven? You are trying to make me say things that are wrong".

30.50 Mr Tabachnik QC put to Dr Theodotou that prior to completion of PII 1, there had been three forensic investigations undertaken by the Applicant of HHS; Dr Theodotou replied "what were they?". Mr Tabachnik QC put to Dr Theodotou that she knew of them and had seen the reports to which she replied "no, what reports?".

30.51 Mr Tabachnik QC put to Dr Theodotou that the investigations related to HHS's books of accounts and that the reports were relevant material for the insurers to know. Dr Theodotou replied that "was the accountants' material and the accounts were not under the jurisdiction of the SRA". Mr Tabachnik QC put to Dr Theodotou that it was no excuse for non-disclosure of the reports to claim that GK was behind the investigations; Dr Theodotou replied that "the insurers ought to know the investigations were futile because of the decision of superior powers" and further that she "gave all information to AON".

30.52 Mr Tabachnik QC put to Dr Theodotou that it was no excuse for non-disclosure of the LeO awards made against HHS merely because she disagreed with them; Dr Theodotou replied that they "were in the AON file. I sent [Mr Jones] everything. If he wanted more information he should've asked me".

30.53 Mr Tabachnik QC asked Dr Theodotou whether she understood the terms of the declaration that she signed on PII 1 namely:

> "…We declare that to the best of our knowledge or belief that the particulars and statements given in this application are true and complete and the application, declaration and information shall be the basis of the contract between ourselves and the insurer.
>
> We declare that we have informed the insurer of all facts which are likely to influence the insurer in the acceptance or assessment of insurance. We accept that if we are in doubt whether any fact may influence the insurer we should disclose it.
>
> We agree that we have a continuing obligation to notify insurers of any material matters during the currency of any policy…"

30.54 Dr Theodotou replied that Mr Jones "had all information on his file. [She] understood the declaration because [she had] done everything correctly".

Thomas George Oswald

30.55 Mr Oswald confirmed that the content of his witness statement dated 3 May 2022 was true and accurate in that he "didn't write it from memory, [he] wrote it from records".

30.56 In cross examination Mr Oswald stated that he had been at HHS since its inception in various administrative roles, had known Dr Theodotou since "around 1982" and considered them to be friends. Mr Tabachnik QC put to Mr Oswald that he was Dr Theodotou's "biggest supporter"; Mr Oswald rejected that assertion.

30.57 Mr Tabachnik QC asked Mr Oswald what he knew of the medical report filed in support of an application to adjourn the substantive hearing in October 2021 on Dr Theodotou's behalf. Mr Oswald replied that he was aware, had personally spoken to Dr B who had compiled the report and recalled that consequently the Applicant sought an independent assessment and report from Dr W.

30.58 Mr Tabachnik QC referred Mr Oswald to an email dated 7 October 2021 (a couple of hours before Dr Theodotou's scheduled appointment with Dr W) signed off by him in his capacity as Practice Manager to Dr W and asked whether he typed it. Mr Oswald replied "[he] should think so. [He] did not see who else had access. It could have been copied and pasted but [he] physically sent it". The email read:

> "…I should be grateful if you would kindly reply to the following questions:

1. Are you fully aware of the fact that Kathy has been pursued for 10 years by the SRA, as published by Treverton Jones QC in the Law Society Gazette?
2. Are you aware of the … she suffered following the visit of Mr B of the SRA?
3. Are you aware that Kathy suffers with … because of the SRA false allegations?
4. Are you aware that Kathy is a senior member of the Cyprus Bar?
5. Are you aware that the accuser to the SRA and the conduct of the SRA are the matter of a trial at the District Court of Nicosia?
6. Are you aware that you will have to submit to questions at the hearing at the Cyprus Court? The Advocates leading the case have been given your credentials? …"

30.59 Mr Tabachnik QC put to Mr Oswald that the intention behind the email amounted to a threat; Mr Oswald replied "what's the problem with that? [Question 6] was not threatening" and that to suggest that it was a threat was "complete nonsense".

30.60 Mr Tabachnik QC asked Mr Oswald what the purpose of the email was if not threatening; Mr Oswald replied that "Dr W admitted that he was asked to do the assessment at the last moment. If there had been more time he would have done things differently. It was grossly misleading [for Mr Tabachnik QC to suggest] that 'appearing in court' was a threat". Mr Oswald further told Mr Tabachnik QC not to "ask questions based on [his] assertions rather than what [he] was saying".

30.61 Mr Tabachnik QC put §25 of Mr Oswald's witness statement (in which he stated that NB completed PII 1 and sent it to Hera) to him and asked how he could recall the conversation with NB two years ago; Mr Oswald replied that he was able to if there was "something to make him remember it".

30.62 Mr Tabachnik QC put to Mr Oswald that his evidence was untrue and that he had provided the same to assist Dr Theodotou in advancing her defence; Mr Oswald rejected that contention and asserted that his evidence was "correct and [Mr Tabachnik QC] had not said why it was not, just made that bald assertion. The Henshaw QC opinion was written for the insurers and emailed to a lot of people so it would have been quite extraordinary if it was not sent to Hera. There was no point in not sending it on purpose".

<u>The Tribunal's Findings</u>

30.63 The Tribunal firstly considered the undisputed factual matrix upon which Allegation 1.1 was predicated. In so doing it determined that:

- Forensic investigations were undertaken of HHS which included numerous visits to the Firm and culminated in forensic reports dated April 2014, November 2016 and May 2017.

- LeO Awards were made against Dr Theodotou in November 2017 and February 2018.

- The Rule 12 Allegations were certified as showing a case to answer in July 2020.

- PII 1 asked for details of all matters referred to above in the body of the form as set out at §30.3, §30.5, §30.7, §30.9 and §30.12 above.

30.64 It was plain from PII 1, and Dr Theodotou did not dispute, that the form was signed by her under a declaration of truth (as set out at §30.53 above). It was plain from PII 1, and Dr Theodotou did not dispute, that there was no indication anywhere on PII 1 that HHS had been the subject of forensic investigations which included visits to HHS, that forensic reports had been produced at the conclusion of those investigations, that LeO Awards had been made against HHS in November 2017 as well as February 2018 and that Rule 12 proceedings had been issued a few weeks prior to her signing PII 1.

30.65 The Tribunal assessed the undisputed role that Dr Theodotou played in obtaining PII 1 by reference to the various actions undertaken by her namely:

- Signing PII 1 on 12 August 2020.

- Email to Mr Jones dated 16 August 2020.

- Completion and signing of "Confirmation of Order" form sent to Mr Jones on 17 August 2020.

- Completion and signing of "Duty of Fair Presentation" form sent to Mr Jones on 17 August 2020.

- Email to Mr Jones dated 18 August 2020 in which further clarification was given in response to queries raised and documents provided.

30.66 Against that backdrop, the Tribunal proceeded to consider the various defences advanced by Dr Theodotou throughout the proceedings, firstly to the Applicant on 9 December 2021 in which she simply stated "I deny all your allegations".

30.67 Secondly, in her Answer dated 3 May 2022, Dr Theodotou relayed the impact of her ill-health on her ability to function, then asserted that she signed a blank PII 1, gave it to NB (deceased) to complete and subsequently send to Hera. The Tribunal rejected any suggestion that Dr Theodotou's ill-health was a material factor in the completion of PII 1 given that, in 2020, she was still able to run her practice, review 400 files per fortnight (as indicated on PII 1) and conduct the complex Cypriot Litigation. The Tribunal found the suggestion that Dr Theodotou signed a PII 1, gave it to NB (deceased) to complete and submit to be incredulous and rejected the same. The Tribunal found no relevance to the Henshaw QC opinion which preceded and therefore did not comment upon the initial Rule 12 Allegations.

30.68 Thirdly, in her witness statement dated 3 May 2022, Dr Theodotou suggested that the Applicant and LeO had been misled into investigating her by GK and she therefore did not accept the validity of either process. The Tribunal considered that contention to be incredulous, disingenuous and irrelevant for any solicitor to make, let alone one of Dr Theodotou's standing and experience. The fact remained that forensic investigations

had taken place, LeO Awards had been made and Tribunal proceedings issued, none of which were disclosed on PII 1.

30.69 Fourthly, in her oral evidence before the Tribunal, Dr Theodotou asserted that she told Mr Jones of the SRA issues, he had her AON file which set out all of the previous issues and that the Henshaw QC opinion had been sent to him. Dr Theodotou stated that Mr Jones had lied in his evidence under oath. Mr Jones denied having been told by Dr Theodotou of any SRA issues until the 10 December 2021 email from her. The Tribunal accepted Mr Jones' evidence and rejected Dr Theodotou's various accounts. The Tribunal also accepted Mr Crilly's evidence that had the full background to HHS been known, it was unlikely that Pen would have issued insurance. The Tribunal rejected all of Dr Theodotou's suggestions in her oral evidence that Mr Jones and/or Mr Crilly were obliged to undertake due diligence in respect of new clients. The fact remained, and Dr Theodotou could have been in no doubt, that full responsibility for truthfully completing PII 1 vested in her and her alone.

30.70 Given the findings set out above, the Tribunal found the factual matrix of Allegation 1.1 proved on a balance of probabilities.

Principle 4: Dishonesty

30.71 When considering the aggravating feature of dishonesty, the Tribunal applied the test promulgated in in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 namely:

> "§74 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 knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder 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."

30.72 With regards to her state of mind in August 2020, Dr Theodotou repeatedly stated that she did not believe she was required to disclose the forensic investigations/reports as she considered them to be "futile" and "as a Cypriot I do not acknowledge them". The Tribunal considered that position to be disingenuous and astounding.

30.73 The fact remained, as Dr Theodotou well knew, that investigations had taken place LeO awards made against her as a solicitor on the Roll of England and Wales which she elected not to disclose.

30.74 Dr Theodotou stated repeatedly in her evidence that she did not believe that she was required to disclose the Rule 12 proceedings which had been certified as demonstrating a case to answer on the basis that "nothing was proven, they were just allegations". The

Tribunal considered that to be an incredulous stance to take particularly given her seniority, management and litigation experience.

30.75 The Tribunal did not accept that Dr Theodotou genuinely held the beliefs set out above as, in her oral evidence before the Tribunal, she maintained that she did not believe that she had done anything wrong, did not regret the manner in which PII 1 was completed and would complete a PII form in the same manner at the present time. That evidence was extremely telling and led the Tribunal to conclude that Dr Theodotou's genuine belief at the material time and the present day was that she could disregard her regulatory duties and obligations at will. The spurious explanations advanced were rejected in their entirety by the Tribunal.

30.76 Given the findings set out above, the Tribunal determined that her conduct was dishonest by the standards of ordinary decent people.

30.77 The Tribunal therefore found the breach of Principle 4 proved on a balance of probabilities.

Principle 5: Integrity

30.78 The Tribunal applied the test promulgated in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366 by Jackson LJ at [100] namely:

> "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 arbiter 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."

30.79 Given the findings on dishonesty, the Tribunal determined that Dr Theodotou demonstrably lacked integrity. Her conscious decision to mislead Hera and Pen was unscrupulous, inaccurate and a flagrant disregard to the ethical standards expected of her.

30.80 The Tribunal therefore found the breach of Principle 5 proved on a balance of probabilities.

Principle 2: Public trust

30.81 Membership of the legal profession was a privilege. With that privilege comes responsibility for the trust vested in solicitors by the public. The public was entitled to expect that solicitors act with honesty and integrity. Failure to do so undoubtedly undermined public trust and confidence in solicitors and in the profession as a whole. Given the findings set out above, the Tribunal determined that Dr Theodotou's misconduct misled Hera and Pen and resulted in her obtaining insurance for HHS which she may not have been issued with if full disclosure had been made.

30.82 The Tribunal therefore found the breach of Principle 2 proved on a balance of probabilities.

31. **Allegation 1.2 - False and misleading statements/representations in 2021**

The Applicant's Case

31.1 Mr Jones sent Dr Theodotou and invitation to review HHS's insurance on 8 June 2021. His email reiterated the disclosure duties incumbent on Dr Theodotou in the following terms:

> "…Under the Insurance Act 2015 Insured individuals and firms and their brokers owe a duty of disclosure to insurers which includes the duty to make a fair presentation of the risk. A "fair presentation' is a high bar which requires a wide spectrum of managers and other parties to make active enquiry and declare anything which would be material to insurers. "Material" has a broad definition and the way this information is disclosed must be very clear and open. This duty applies at a number of different stages throughout the life of an insurance contract. If you would like us to provide a full definition or have any questions about your responsibilities under the Act please ask us. If in any doubt about whether something constitutes a material fact, we urge you to err on the side of caution and disclose it…"

31.2 PII 2 was signed and dated by Dr Theodotou on 27 June 2021. It was sent to Mr Jones on the same date. The format of PII 2 was identical to PII 1 in terms of its structure and the questions asked (as set out in full above at §30.3, §30.5, §30.7, §30.9 and §30.12). On page 2 of PII 2, was a handwritten endorsement by Dr Theodotou in relation to HHS accounts. Mr Tabachnik QC submitted that illustrated her involvement with the completion and submission of PII 2.

31.3 In addition to the LeO awards, forensic visits, investigations and reports, Mr Tabachnik QC submitted that there were further material changes to the position of HHS in the preceding ten months which should have been disclosed to Hera namely:

- A full forensic investigation into the Rule 14 Allegations was underway.
- Some of the Rule 12 Allegations had fallen away following an a partially successful abuse of process hearing and certain allegations being withdrawn by the Applicant in November 2020.
- A date had been fixed for the substantive hearing of the Rule 12 Allegations in October 2021.
- Two of the Rule 12 Allegations accused Dr Theodotou of lack of integrity and one of misleading conduct.

31.4 PII 2 was completed in exactly the same manner as she completed PII 1 with regards to the "offending" questions. In short, she did not disclose the LeO Awards, forensic visits, investigations or reports, the imminent substantive hearing regarding the Rule 12 Allegations or the investigation into the Rule 14 Allegations at the material time.

31.5 Dr Theodotou signed PII 2 under declaration (see §30.53 above) on 27 June 2021. With regards to the "Document Checklist", Dr Theodotou affirmed that the form was fully completed, signed and dated. She did not tick the box which requested "…a copy of all reports issued by the SRA, the former LOS/CCS/OSS, Forensic Investigation Unit, Legal Ombudsman, Disciplinary Tribunal and or any other regulatory body…"

31.6 On 27 July 2021, Mr Jones wrote to Dr Theodotou regarding PII 2. That correspondence included the following warning:

> "…We would also draw your attention to the "IMPORTANT NOTICE - DUTY OF FAIR PRESENTATION" statement which is set out as part of the enclosed Confirmation of Order form. It is essential that this Duty of Fair Presentation is clearly understood before any contract of insurance is entered into…"

31.7 On 28 July 2021, Mr Jones emailed Dr Theodotou a renewal quote and raised a query regarding "subjectivities" on the proposed policy. Dr Theodotou replied on the same date with the requested information. Included in her reply was a "CONFIRMATION OF ORDER" which was signed and dated by Dr Theodotou and reiterated the Duty of Fair Presentation.

31.8 On 29 July 2021, Mr Jones sought further clarification regarding "subjectivities" which Dr Theodotou answered fully in a lengthy email as well as completion of a lengthy "PROFESSIONAL INDEMNITY COVER FOR SOLICITORS 2020 SUPPLEMENTARY QUESTIONNAIRE". The email and the supplementary questionnaire was printed out, signed at the bottom of each page by Dr Theodotou and sent to Mr Jones in pdf format.

31.9 Pen Underwriting issued the annual professional insurance for HHS on 1 September 2021. Mr Tabachnik QC submitted that it did so on the basis of information provided to it by Hera. Hera obtained that information from Dr Theodotou by way of PII 2, subsequent clarification obtained from her and further documents provided by her.

31.10 Mr Tabachnik QC submitted that neither Hera nor Pen were aware, as a consequence of Dr Theodotou's failure to disclose, of the LeO awards, forensic visits, forensic investigations, forensic investigation, the ongoing investigation into the Rule 14 Allegations or the substantive hearing listed in October 2021 with regards to the Rule 12 Allegations. All of those matters were material and should have been disclosed on PII 2. Mr Tabachnik QC submitted that Dr Theodotou was well aware of the materiality and relevance of those matters and made a conscious decision not to disclose the same which was dishonest.

31.11 The first time Hera became aware of the Rule 14 Allegations was on 26 October 2021 by way of an email from Ms Bartlett (FIO) to Mr Jones alerting him to the same. Mr Jones replied on the same date and provided PII 1 and PII 2 along with supplementary documentation regarding "subjectivities". Ms Bartlett responded on 3 November 2021 in the following terms:

> "…Please can you confirm whether as part of the application process you were provided with any other additional information sheet or attachments.

There have been three Forensic Investigation Reports issued. The dates of them are:

a) 23 April 2014 (commenced 23 April 2013);
b) 11 November 2016 (commenced 8 July 2015)
c) 10 May 2017 (commenced 9 February 2017).

Please can you state whether the existence of these investigations were disclosed.

If you look at the SRA's Solicitors Register you should see that there is a publication regarding Dr Alexander-Theodotou. You should see that there was a decision to refer her conduct to the Solicitors Disciplinary Tribunal on 18 July 2018.

Please state whether you were made aware of this.

Please can you confirm whether you were made aware of the commencement of a further Forensic Investigation which commenced on 10 May 2021…"

31.12 Mr Jones replied on the 5 November 2021 in the following terms:

"…I have reviewed the files from last year and this year and unfortunately I cannot trace any documentation being received from the client relating to any of the investigations detailed in your email below including the further Forensic Investigation commencing 10th May 2021…"

31.13 On 13 December 2021, Ms Bartlett clarified the documents received from Mr Jones, raised some further enquiries and advised that the investigation was in the final stages. Mr Jones was asked whether Hera would assist in providing a witness statement on behalf of the Applicant. Mr Jones replied on 15 December 2021 and in so doing confirmed that Dr Theodotou first disclosed her interactions with the Applicant by way of an email dated 10 December 2021 in which she stated:

"… Thank you very much for speaking to me today.

As promised, I am enclosing my Insurance for my practice in Cyprus.

As I explained to you, I am instructed by Alexandrou Theodotou LLC. All the cases I fought in London are under their instructions and under the Cypriot Jurisdiction.

All the accounts belong to Cyprus under the Cyprus Bar. This was the decision of the Tribunal on 18/4/2018.

All their inspections are futile and therefore as a Cypriot I do not acknowledge them.

In 2020 they started the first part of the SDT proceedings against me at a time that I began the Commercial Court trial of 300 clients. This was very

> unprincipled as they could distract the attention of the court. They lost most of the allegations and they were in breach of section 6 of the Human Rights Act.
>
> This was publicised on my website and seen by many people including other insurance agents, who spoke to me about it, but were willing to consider my insurance. I was not attempting to deceive you or be dishonest because I was protected by my Cyprus insurance for all claims.
>
> SRA failed to understand the fact that I am instructed by the Cypriot firm under the Cypriot jurisdiction…"

31.14 Mr Tabachnik QC submitted that Dr Theodotou's email set out above demonstrably showed her state of mind at the material time in that (a) it was sent after Ms Bartlett had advised Mr Jones of the Rule 14 investigation and (b) failed to mention any of the various defences subsequently advanced by Dr Theodotou in the Tribunal proceedings. What was abundantly clear from the email exchanges between Ms Bartlett and Mr Jones was that Hera had no knowledge whatsoever of the various investigations undertaken by the Applicant into HHS or the Rule 12 Allegations until Ms Bartlett notified him of the same in October 2021; 14 months post completion of PII 1 and four months post completion of PII 2.

31.15 Ms Bartlett made the same enquiries of Pen as to their knowledge of previous investigations and the Rule 12 Allegations before the Tribunal. Mr Crilly replied on 3 December 2021 and confirmed that (a) no SRA issues were disclosed in the application process, (b) if they had been disclosed Pen would have requested full details and then taken into consideration the summary/outcome of each investigation. In particular level of fine etc, (c) the existence of Tribunal proceedings should have been disclosed but was not and (d) if Tribunal proceedings were disclosed Pen would have declined to offer insurance to HHS.

Principle Breaches

31.16 Mr Tabachnik QC submitted that at the time of completing PII 1, Dr Theodotou was an experienced and senior solicitor who had run HHS for 16 years. She was well aware, in her capacity as Principal, Compliance Officer for Legal Practice and Compliance Officer for Financial and Administration, of her duties to her regulatory body. She was well aware of the LeO awards made against her, the forensic investigations undertaken and the existence of Rule 12 Proceedings as at the time of completing PII 1. Notwithstanding all attendant circumstances, she made a conscious decision not to disclose any of those relevant matters when asked specific questions in that regard on PII 1. That was dishonest by the standards or ordinary decent people and contrary to Principle 4.

31.17 In so doing, she also failed to act with integrity, contrary to Principle 5, and behaved in a way that failed to uphold public trust and confidence in the solicitors' profession and the provision of legal services contrary to Principle 2.

The Respondent's Position

31.18 In her witness statement dated 3 May 2022, Dr Theodotou asserted that:

> "…The second HERA insurance was completed on the basis of the first HERA insurance, and the young lady who completed it [AK], complained that she couldn't see the various parts of the insurance very well. It was also signed by me in advance, as I was attending various meetings with clients on zoom, who wanted to know more about the [Cypriot litigation] judgement…"

31.19 Mr Tabachnik QC put to Dr Theodotou that AK was a student who worked weekends at HHS; Dr Theodotou accepted that contention. Mr Tabachnik QC put to Dr Theodotou that she completed PII 2 as evidenced by her written endorsement on the form in relation to practice fees; Dr Theodotou rejected that contention and asserted that her written endorsement was responding to a query from Mr Jones regarding HHS's 2021 accounts.

31.20 Mr Tabachnik QC put to Dr Theodotou that PII 2 was incorrect in all of the ways that PII 1 was incorrect; Dr Theodotou reiterated that Mr Jones had all of the relevant documents in the AON file.

31.21 Mr Tabachnik QC put to Dr Theodotou that she had completed PII 2 not AK; Dr Theodotou rejected that contention. Mr Tabachnik QC put to Dr Theodotou that she had further interaction with Mr Jones regarding PII 2 by way of (a) signing the "Duty of Fair Representation" on 28 July 2021, (b) completion and signing of the "Confirmation of Order", (c) completion and signing each page of the "Supplementary Questionnaire and (d) responding to queries raised in relation to "subjectivities". Dr Theodotou replied that she (a) "obviously" signed the "Duty of Fair Representation" as Mr Jones had "all documents", (b) could not remember completing/signing the "Confirmation of Order", (c) could not remember completing/signing the supplementary questionnaire and (d) carefully considered the subjectivities with Mr Jones and he "agreed with what [they] were saying".

31.22 Mr Tabachnik QC put to Dr Theodotou that there was no evidence to suggest that Dr Theodotou informed Mr Jones of the new investigation in May 2021; Dr Theodotou replied that was "because the investigation was unjustified and nothing to do with HHS. It was [a former client] regarding the Cypriot case and litigation".

31.23 Mr Tabachnik QC put to Dr Theodotou that between the completion of PII 1 and PII 2, her application to stay the Rule 12 proceedings as an abuse of process was determined by the Tribunal; Dr Theodotou replied "I believe so, you were there". Mr Tabachnik QC put to Dr Theodotou that the decision in that regard was issued in November 2020; Dr Theodotou replied "if you say so".

31.24 Mr Tabachnik QC put to Dr Theodotou that following the Applicant re-drafting the Rule 12 Statement as directed by the Tribunal following that hearing, she was aware that the remaining allegations were proceeding and were listed for a substantive hearing in October 2021; Dr Theodotou replied that she was "busy with the [Cypriot litigation] but she was aware [albeit] quite not *(sic)* well".

31.25 Mr Tabachnik QC put to Dr Theodotou that at the time she signed PII 2 she was aware of the imminent substantive hearing into the Rule 12 Allegations; Dr Theodotou replied that "the Rule 12 was not proven. It was an essay written by several people [and] not proved. What was the point of having a Rule 12?".

31.26 Mr Tabachnik QC put to Dr Theodotou that there was no evidence of her having sent the Rule 12 Statement to Mr Jones or any update following the abuse of process hearing; Dr Theodotou replied that she could not "see any good reason to send it to [Mr Jones] or anyone else … the Rule 12 was inaccurate and false information from GK so [there was] no reason to send it to [Mr Jones] and it was under Cypriot jurisdiction". Dr Theodotou asserted that she did not update Mr Jones as to the outcome of the abuse of process hearing as "it was all disclosed on [the internet]. If [Mr Jones] was in any doubt he could have called the SRA or checked their website".

31.27 Mr Tabachnik QC referred Dr Theodotou to a section of her witness statement in which she stated:

> "… I verify that when the SDT proceedings were announced first in 2017 and then in 2018, we asked politely Mr Andrew Henshaw QC [Justice Henshaw] to write an opinion on the strength of the allegations, and which was circulated as from that time to various insurance brokers. I was informed that NB (deceased) sent it also to HERA head office…"

31.28 Mr Tabachnik QC put to Dr Theodotou that opinion was dated October 2018 and commented upon the initial concerns raised by the Applicant in its "Explanation of Conduct" letter; Dr Theodotou replied that it "commented on all allegations in the Rule 12". Mr Tabachnik QC put to Dr Theodotou that she was wrong as the Rule 12 Statement was not in existence as at October 2018 (the initial iteration of the Rule 12 Statement was dated July 2020); Dr Theodotou replied that the opinion commented on "the majority of it".

31.29 Mr Tabachnik QC queried why Dr Theodotou would send the opinion to Hera but not the final Rule 12 Statement; Dr Theodotou replied "because the opinion detailed the evidence but was not evidence". Mr Tabachnik QC queried whether Dr Theodotou asked NB to see the covering letter under which the opinion was supposedly sent to Hera; Dr Theodotou replied that "NB probably telephoned [Hera] then sent it to a specific person. [she did not have] it because he [NB] had his own way of doing things". Mr Tabachnik QC put to Dr Theodotou that the NB "story" was not credible; Dr Theodotou did not accept that contention.

31.30 Mr Tabachnik QC queried why it wasn't sent electronically as it that was how it was sent to AON on 14 October 2018 from and email prefix "kat_acc@...." Dr Theodotou replied that she "[has] people doing emails for [her] as [she] doesn't use computers". Mr Tabachnik QC suggested, and Dr Theodotou accepted, that the email was in her words/dictated by her. Mr Tabachnik QC put to Dr Theodotou that, in that email, she was seeking to minimise the SRA issues to Mr Jones; Dr Theodotou rejected that contention and asserted "I sent the bundle to [Mr Jones], he didn't event look at them, he emailed me regarding the competitive [insurance] market. [She] didn't need to persuade [Mr Jones], he had the AON file and [Henshaw QC's] opinion".

31.31 Dr Theodotou further stated that she was not concerned whether Hera "insured [HHS] or not as [she] already had international insurance" and that she only sought UK insurance "for the sake of it".

31.32 Mr Tabachnik QC referred Dr Theodotou to her previous witness statements in which she said, with regards to her visual impairment:

- Statement dated 16 October 2020, she had difficulty in reading documents for more than 45 minutes.

- Statement dated 8 October 2021, she could not read A4 sized documents with size 12 font. She could only read A3 documents with enlarged font.

31.33 Mr Tabachnik QC reminded Dr Theodotou that both statements were predicated on a statement of truth which she had signed; Dr Theodotou replied "so what?". Mr Tabachnik asked Dr Theodotou queried how the evidence referred to above could be reconciled with (a) her claims on PII 1 and PII 2 that she reviewed 400 files per fortnight in 2020 and 2021, (b) her ability to complete the PII application for Cypriot insurance in January 2022, (c) her claim of having spent 15.5 hours preparation on judicial review proceedings against the Tribunal in May 2022 and (d) how she was able to read Mr Oswald's 54 page witness statement dated 3 May 2022.

31.34 Dr Theodotou replied that (a) staff reviewed 400 files per fortnight and provided her with summaries which she trusted, (b) the Cypriot insurance form only took her day to complete and her handwriting thereon was very bad as she "could not see straight", (c) the statement if costs regarding the 15.5 hours preparation time on the judicial review was completed by "people in the office [upon whom she] depends … the document was wrong" and (d) Mr Oswald's statement was partly read to her and partly read by her.

31.35 Mr Tabachnik QC put to Dr Theodotou that her assertions regarding visual impairment could not be reconciled with SNQC's written evidence regarding her involvement in the Cypriot litigation before the Civil Court of Appeal. Dr Theodotou replied that Mr Tabachnik QC was "exaggerating points which [were] not there for [his] own benefit Liaising doesn't mean anything [She] had a lot of knowledge in [her] head over the 11 years [of the Cypriot litigation]. [She] was not reading or writing volumes of documents, it [was] only an appeal".

31.36 Mr Tabachnik QC put to Dr Theodotou that on PII 1 and PII 2 she had dishonestly/recklessly provided false and misleading information regarding forensic investigations, visits and reports as well as LeO awards and Tribunal proceedings that had been issued against her and in so doing lacked integrity and undermined public trust in the provision of legal services. Dr Theodotou rejected the entirety of his contentions.

<u>The Respondent's Submissions</u>

31.37 Mr Williamson QC submitted that at the heart of the case was the evidence given by Mr Jones. It was clear that in 2020 and 2021 there were telephone calls between him and Dr Theodotou. The exact content of those conversations remained unknown and Mr Jones was unable to assist.

31.38 Further concerns regarding Mr Jones' evidence were that:

- He initially denied having been sent a claims history in August 2020 but subsequently accepted that he had when presented with the email in cross examination.

- He was shown the 2013/2014 notification of a claim against HHS and accepted that was significant but that he failed to seek further information from Dr Theodotou in that regard.

- He accepted that PII 1 was not correctly filled out with regards to claims which should have triggered further enquiry on his part but did not.

- Dr Theodotou ticked a box on PII 1 which indicated a breach of the SRA Accounts Rules that demonstrated an SRA history but no further information was requested by Mr Jones.

- Mr Jones stated in his initial evidence that he had conducted a thorough search of all files and computer systems after which he provided all documents to the Applicant yet he accepted that he had "missed" the documents put to him in cross examination.

31.39 Mr Williamson QC submitted that it was inconceivable to suggest that no conversations took place between Mr Jones and Dr Theodotou regarding the Cypriot litigation as that was the entirety of her practice, yet Mr Jones claimed that he was not aware until he received the judgment from Dr Theodotou shortly before the PII 2 renewal.

31.40 Mr Williamson QC submitted that it was obvious that Dr Theodotou told AON about the SRA investigations as she instructed Mr Henshaw QC to provide an opinion in that regard for that purpose. That was reflected in her claims history.

31.41 Despite all that is set out above, Mr Jones maintained that the only disclosures made by Dr Theodotou regarding SRA issues was her email of 10 December 2021 when the Rule 14 allegations were under investigation.

31.42 Mr Williamson QC submitted that the Tribunal had to be satisfied that Dr Theodotou did not tell or put Mr Jones on notice, due to the incorrect completion of PII 1 and PII 2, of any SRA issues, LeO awards and Tribunal proceedings. Dr Theodotou's state of mind at the material times was crucial. She believed, it was submitted, that Mr Jones had been sent the opinion of Mr Henshaw QC, had received the entire AON file and was aware of the Tribunal proceedings by virtue of SRA and Tribunal publicity in that regard as well as the publicity on HHS's website.

31.43 Mr Williamson QC further submitted that Dr Theodotou, rightly or wrongly, did not accept that the SRA had the jurisdiction to investigate her in relation to the Cypriot litigation, the reports made against her were borne out of malice and as such she was entitled to complete PII 1 and PII 2 in the manner that she did.

31.44 Mr Williamson QC stated that HHS was swamped with the complex group action that was the Cypriot litigation. Dr Theodotou delegated tasks to staff that she knew well and

trusted were competent. She relied upon them to complete the PII forms in the way that she would have done. Her actions were not, Mr Williamson QC contended, dishonest, reckless or lacking integrity and as such she did not undermine public trust in her or in the profession.

The Tribunal's Findings

31.45 The questions in PII 2 were worded in exactly the same manner as PII 1.

31.46 It was plain from PII 2, and Dr Theodotou did not dispute, that the form was signed by her under a declaration of truth. It was plain from PII 2, and Dr Theodotou did not dispute, that there was no indication anywhere on PII 1 that HHS had been the subject of forensic investigations which included visits to HHS, that forensic reports had been produced at the conclusion of those investigations, that LeO Awards had been made against HHS in November 2017 as well as February 2018, that the Rule 12 Allegations had been set down for a substantive hearing and that a Fourth Investigation into HHS (with regards to the Rule 14 Allegations) had commenced in April 2014.

31.47 The Tribunal assessed the undisputed role that Dr Theodotou played in obtaining PII 2 by reference to the various actions undertaken by her namely:

- The handwritten endorsement on page 2 of PII 2 in which Dr Theodotou stated; "* The 2021 have not completed yet, because our accounting period ends 31/12/2021".
- Her signature under the declaration of truth at page 9 of PII 2.
- Letter to Mr Jones on 27 June 2021 enclosing
    - PII 2.
    - 2020 certificate of insurance.
    - Cyber insurance and a request that Hera provide the same for 2021/22.
    - Official judgment of the High Court presented by Sir Michael Burton with regards the Cypriot Litigation.
    - 2019 accounts.
    - 2020 Accounts.
    - Proprietors certificate.
- Email to Mr Jones on 29 July 2021 regarding outstanding subjectivities.
- Supplementary questionnaire signed at the bottom of each page on 29 July 2021.

31.48 Against that backdrop, the Tribunal considered the defence advanced by Dr Theodotou, namely that it was signed by Dr Theodotou in advance and completed on the basis of the PII 1 by AK who complained that she "could not see various parts of the form very well". The Tribunal rejected Dr Theodotou's evidence. It was (a) inconceivable that Dr Theodotou delegated the task of completing PII 2 to such a junior member of staff who worked part time on a Saturday and (b) could not be reconciled with the documentary evidence alluded to above which plainly demonstrated the active role that Dr Theodotou played on the PII 2 process. Furthermore, it did not vitiate the fact that ultimate responsibility for the accuracy and content of PII 2 was vested in Dr Theodotou. Dr Theodotou compounded the inaccuracies of PII 1 by not disclosing the forensic visits, investigations, reports. LeO Awards, progression of the Rule 12 proceedings or the investigation into the Rule 14 Allegations.

31.49 Given the findings in relation to Allegation 1.1 and the matters set out above, the Tribunal found the factual matrix of Allegation 1.2 proved on a balance of probabilities.

Principle 4: Dishonesty

31.50 The Tribunal determined that Dr Theodotou's state of mind as at June/July 2021 was that she (a) was fully aware of the matters which needed to be disclosed on PII 2, (b) was solely responsible for completing PII 2, (c) she made a conscious decision not to disclose and (d) in so doing was dishonest by the standards of ordinary decent people.

31.51 The Tribunal therefore found the breach of Principle 4 proved on a balance of probabilities.

Principle 5: Integrity

31.52 The Tribunal found, for the reasons set out above at §30.71, the breach of Principle 5 proved on a balance of probabilities.

Principle 2: Public trust

31.53 The Tribunal found, for the reasons set out above at §30.81, the breach of Principle 2 proved on a balance of probabilities.

32. **Allegation 2 - Dishonesty or Recklessness**

32.1 The Tribunal was not required to consider Allegation 2 given its findings that Allegation 1.1 and 1.2 were proved and were dishonest, contrary to Principle 4.

Previous Disciplinary Matters

33. None.

Mitigation

34. Mr Williamson QC called Mr David Williams to give character evidence on Dr Theodotou's behalf. Mr Williams stated that he had instructed Dr Theodotou on the Cypriot litigation for nearly 12 years. He was the group Chair/spokesperson for the 250 claimants in the Cypriot litigation. His experience of Dr Theodotou was that her knowledge, assistance, openness and empathy with all claimants was impressive. The Cypriot litigation had been, and continued to be, arduous and all-consuming but he was reassured by having Dr Theodotou "with us every step of the way. Without her [he] dread[ed] to think where [he] would be today".

35. Mr Williams further stated that "If Dr Theodotou was struck off, [he] could not see any other outcome than [the claimants in the Cypriot litigation] being left in a disastrous situation. Dr Theodotou [had] such vast knowledge in [their] case, lived and breathed it for 12 years and [he] could not believe that anyone else could pick it up. [The claimants] had exhausted all funds to date, the amount involved [was] eye watering. Many of the claimant's [were] in dire straits and starting again would be impossible".

Exceptional Circumstances

36. Mr Williamson QC acknowledged that, given the two findings of dishonesty, the likely sanction to be imposed was an Order striking Dr Theodotou from the Roll of Solicitors. Mr Williamson QC contended that exceptional circumstances existed that militated against such an Order. Mr Williamson QC submitted that Dr Theodotou genuinely, albeit erroneously, believed at the material times that she had completed PPI 1 and PII 2 correctly in that (a) the Rule 12 Allegations had not been proved, (b) she did not accept the outcome of the Applicant's investigations which she believed to have been predicated on malice by GK, (c) she did not accept the LeO awards and (d) she believed that the Henshaw QC opinion and the AON file detailing all involvement with the Applicant had been sent to Hera. Additionally it was plain, form the medical evidence filed throughout the proceedings, that Dr Theodotou was labouring under ill health for a considerable time. Mr Williamson QC finally submitted that there was no risk that Dr Theodotou would repeat the misconduct found.

37. Mr Williamson QC therefore proposed the following as alternative sanctions to an Order striking Dr Theodotou from the Roll:

37.1 *Suspended Suspension Order until the outcome of the Cypriot Litigation (including costs)*

37.1.1 Mr Williamson QC submitted that public trust would not be undermined if aware of the terrible position the Claimant's to the Cypriot Litigation were in and the extensive assistance Dr Theodotou had given them. Mr Williamson further submitted that the reputation of the solicitors profession would not be tarnished if such a sanction were imposed.

37.2 *Suspended Suspension Order until the end of the Appeal in the Cypriot Litigation*

37.2.1 Mr Williamson QC advised the Tribunal that the Appeal was due to be heard in the following 14 days. He submitted that the balance of justice would be met if the Tribunal did not lodge any Order of suspension with the Law Society until that period had passed, effectively suspending any suspension for 14 days.

<u>Applicant's Submissions on Law</u>

38. Mr Tabachnik QC commended §51 of the Tribunal's Guidance Note on Sanction which provided the relevant legal principles in relation to exceptional circumstances.

39. Mr Tabachnik acknowledged that the Tribunal had a wide discretion to suspend any sanction it imposed and that discretion was unfettered. However, he strongly submitted that the Tribunal should not exercise its discretion in favour of Dr Theodotou as there it was uncertain when the Cypriot Litigation would conclude. Leading Counsel had indicated in a testimonial on behalf of Dr Theodotou that there were "43 other cases" and that if the appeal was successful, further work would be necessary with regards to quantum of damages.

40. Mr Tabachnik QC acknowledged the oral evidence provided by Mr Williams and the testimonials filed on her behalf which attested to her integral involvement in the Cypriot Litigation. Mr Tabachnik QC contended that deployment of section 41 of the Solicitors Act 1974 (employment of a solicitor who is struck off or suspended) would be the "proper way of doing things". That mechanism would enable the Applicant, if persuaded on its merits, to consider an application by Dr Theodotou to continue to practice in approved employment until the conclusion of the Cypriot Litigation. The process would require full disclosure on the part of Dr Theodotou and approved supervision of her. Mr Tabachnik QC submitted that approach could potentially meet the overarching public interest and maintain the reputation of the profession.

Sanction

41. The Tribunal referred to its Guidance Note on Sanctions (Ninth Edition: December 2021) when considering sanction.

42. The Tribunal noted the helpful concession made by Mr Williamson QC that, given the findings of dishonesty, the likely sanction to be imposed was one striking Dr Theodotou from the Roll of Solicitors unless exceptional circumstances were found.

43. The Tribunal found that Dr Theodotou was solely responsible for the misconduct which was planned and repeated in 2020 and 2021. At the material times she was a very senior solicitor, had run her own practice for a significant period of time and held all managerial roles therein. She was highly culpable.

44. The impact of Dr Theodotou's misconduct was serious, it represented a grave departure from the complete probity, integrity and trustworthiness required of her by the public and the profession. The harm caused to both was significant, intended and eminently foreseeable.

45. There were a multitude of aggravating features to the misconduct namely in that it was dishonest, deliberate, calculated and repeated. Dr Theodotou consistently sought to attribute blame on others for her non-disclosures, NB (deceased) and AK for not completing PII 1 and PII 2 properly, Mr Jones for not asking more questions/interrogating HHS or the SRA website for publicity regarding proceedings, third parties making malicious reports about her to the Applicant and the Applicant itself for the manner in which it conducted proceedings. For Dr Theodotou to have maintained in her oral evidence before the Tribunal that she did not believe she had done anything wrong and would not change the manner in which she completed PII 1 and PII 2 demonstrably evidenced a complete lack of insight into her failings. The Tribunal was in no doubt that Dr Theodotou, given her significant experience, was well aware that non-disclosure of all matters complained of amounted to a breach of the material duties incumbent on her to protect the public from dishonest solicitors and also to maintain the reputation of the profession.

46. The Tribunal did not find any mitigating features to the misconduct.

47. Given all of the matters found, the Tribunal determined that the seriousness of Dr Theodotou's misconduct was at the highest level, such that the only appropriate sanction was an Order striking Dr Theodotou from the Roll of Solicitors.

48. Having reached that decision, the Tribunal proceeded to consider the submissions made by Mr Williamson QC and determined that:

Exceptional Circumstances

48.1 When considering the submissions made, the Tribunal applied the principles promulgated in *Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)* and *Solicitors Regulation Authority v James et al [2018] EWHC 3058 (Admin)*. In so doing, the Tribunal determined that the dishonest misconduct was initiated on PII 1 and repeated on PII 2 a year later. Dr Theodotou was given numerous opportunities to correct the position on both forms, with regards to the Duty of Fair Representation and in numerous communications with Mr Jones but failed to do so. The benefit to Dr Theodotou was her obtaining insurance for HHS which may not have been issued had the true position regarding the Applicant's concerns been disclosed.

48.2 Dr Theodotou had been able to practice without restriction from August 2020 to date as a consequence of her repeated non-disclosure. Whilst her conduct in relation to the Cypriot Litigation appeared to be laudable, the scale of her character was evident during the course of the Tribunal proceedings. She had placed the claimant's in the Cypriot Litigation at risk of having to conclude lengthy and complex litigation without solicitor representative. The lack of insight demonstrated by Dr Theodotou caused the Tribunal great concern. She appeared to consider herself beyond regulation despite her extensive experience on the Roll and running HHS.

48.3 The Tribunal found the suggestions that Dr Theodotou's health, any action undertaken by GK, reliance on others to complete PII 1 and PII 2. Similarly, that Mr Jones knew of the SRA issues but chose to ignore and that he lied in his oral evidence before the Tribunal to be incredulous. Dr Theodotou was a very senior and experienced solicitor. It was abundantly clear to the Tribunal, having observed the manner in which she approached the Tribunal proceedings and given her integral role in the Cypriot Litigation, that Dr Theodotou was able to clearly, rationally and strategically navigate proceedings. That could not be reconciled with the assertion that she could not see, did not understand or did not think that either PII 1 or PII 2 were dishonestly completed.

48.4 None of the "exceptional circumstances" directly related to the dishonest misconduct given the Tribunal's rejection of the various defences Dr Theodotou had advanced in the proceedings.

48.5 The Tribunal therefore did not find exceptional circumstances existed. The only sanction that adequately reflected the gravamen of the misconduct and that which was required in the overarching public interest, was an Order Striking Dr Theodotou from the Roll of Solicitors.

Costs

Applicant's Submissions

49. Mr Tabachnik QC applied for costs in the sum of £124,830.00 as particularised in the schedule of costs dated 24 May 2022. He acknowledged that amount exceeded what the Tribunal was used to considering in a case of this nature but averred that was due

to Dr Theodotou's conduct. Mr Tabachnik QC submitted that her "innumerable attempts to derail the proceedings" as a consequence of a multitude of "spurious applications" inevitably resulted in increased costs having been incurred by the Applicant in defending the same.

Respondent's Submissions

50. Mr Williamson QC accepted that costs were due to the Applicant in principle but disputed the quantum claimed. Mr Williamson QC submitted that the Rule 14 Allegations were, on the Applicant's own account, simple and straightforward. The evidence relied upon ran to "a few hundred pages". Mr Williamson QC submitted that given those facts, the case did not warrant the instruction of Queen's Counsel, costs in that regard were unnecessarily incurred and a reduction should be made accordingly.

51. Mr Williamson QC referred the Tribunal to a Cypriot Tax Return for 2021 which detailed Dr Theodotou's salary from her Cypriot practice.

The Tribunal's Decision

52. The Tribunal noted that Dr Theodotou failed file and serve a Statement of Means in accordance with the Standard Directions. The Tax Return referred to above was mainly in the Cypriot language with some English translation. It appeared to show a gross income of €48,000.00 but was of limited, if any, assistance to the Tribunal which was not told of any other income, assets held by Dr Theodotou or indeed her outgoings.

53. The Tribunal acknowledged that the application for costs which was far higher than one would expect for a case of this nature. However, the Rule 14 Allegations were joined to the Rule 12 Allegations in respect of which Mr Tabachnik QC had been instructed in 2020. Given that fact, the Tribunal did not consider it unreasonable or disproportionate for Mr Tabachnik QC to have been instructed with regards to the Rule 14 Allegations despite the straightforward nature of them.

54. Furthermore, the proceedings were not straightforward due to Dr Theodotou's consistent and repeated;

- Non-compliance with Tribunal Directions.
- Change in legal representation shortly before Case Management Hearing's and the Substantive Hearing.
- Applications for extensions of time to file and serve her Answer and supporting evidence. Dr Theodotou only served the same 12 days before the substantive hearing.
- Applications to adjourn the substantive hearing predicated on evidence that had already been considered and rejected by the Tribunal and which did not comply with the Tribunal's Guidance Note on Health.

- Late service of voluminous amounts of, largely irrelevant, material (nearly 4000 pages the evening before the substantive hearing) without permission of the Tribunal, on occasion without the knowledge of her legal representative.

55. Dr Theodotou's conduct in the proceedings directly impacted on the costs incurred by the Applicant. Given all attendant circumstances, the Tribunal found that the costs claimed were reasonably incurred and proportionate to the case.

56. The Tribunal therefore GRANTED the application for costs in the amount claimed.

Statement of Full Order

57. In relation to the Allegations contained in the Rule 14 Statement dated 12 January 2022, the Tribunal Ordered that the Respondent, KATHERINE ALEXANDER THEODOTOU, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £124,830.00.

58. The Tribunal Ordered that the Allegations contained in the Rule 12 Statement dated 19 March 2021, be STAYED and that the Applicant be granted Liberty to Restore.

Dated this 7th day of July 2022
On behalf of the Tribunal

G Sydenham
Chair