No. CO/1462/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2019] EWHC 1420 (Admin)

Royal Courts of Justice
Friday, 12 April 2019

Before:

MR JUSTICE FREEDMAN

B E T W E E N:

(1) SOLICITORS REGULATION AUTORITY
(2) OGENE — Applicants

- and -

NAQVI — Respondent

MR S. PAUL (instructed by Capsticks Solicitors) appeared on behalf of the First Applicant.
MR Y. BHEEROO (instructed by Russell-Cooke LLP) appeared on behalf of the Second Applicant.
MR NAQVI appeared in Person.

J U D G M E N T

MR JUSTICE FREEDMAN:

1 This an ("Application") to set aside four witness summonses which have been issued by Mr Naqvi in the Administrative Court in readiness for disciplinary proceedings brought against him by the Solicitors Regulation Authority ("the SRA") and which are due to be heard for three days commencing on Monday, 15 April 2019.

2 It will be apparent from that that this is a matter of urgency which has to be determined today. Accordingly, this judgment is delivered after hearing argument between 9.30 am and 2.30 pm with an abbreviated luncheon adjournment. It is essentially an ex tempore judgment in I reserve to myself the right to edited the judgment if it is to be typed up.

3 The Application arises following the issue of six witness summonses by Mr Naqvi. He obtained summonses on 4 April 2019 against Mr Ali Cheema who worked for and/or provided services for Hard Cash Productions. He has not been served. He is apparently not currently residing in the United Kingdom, according to a Hard Cash letter dated 11 April 2019 and his whereabouts are unknown. Second, against Ms Joanna Potts of Hard Cash, the producer of an ITV documentary, to which I will refer. She is in fact going to attend and give evidence, as I understand it, for the SRA. Thirdly, against Mr Mandeep Sandhu, an investigation officer within the SRA. Fourth, Ms Jennifer Dunlop, the authorised officer of the SRA. Fifth, Ms Hanna Lane, a solicitor with Capsticks who filed the Rule 5 statement, to which I shall refer below, and, sixth, Ms Daveena Ogenie, the Head of Case Management at the Solicitors Disciplinary Tribunal ("the SDT").

4 Following service of the witness summonses on the last four people that I have named, which took place on 5 April 2019, informal service was given of the application to set aside the witness summonses on 9 April 2019 and the Application was formally served on 10 April 2019. Having regard to the proximity between the date of issue of the Application of the summonses and the date of the hearing before the Solicitors Disciplinary Tribunal and having regard also to the need to consider the position of the witnesses, I am satisfied that reasonable expedition was exercised by the Applicants in the making of this application. I am also satisfied that there is no undue prejudice to Mr Naqvi arising out of the timing of the issue and service of the Application and, in the circumstances, I abridge time for the making of the Application.

5 Before me today there has appeared for the Applicants Mr Bheeroo, Counsel for Ms Ogene of the SDT, and Mr Paul, Counsel for the SRA. Mr Paul represents the SRA who in turn make the application for the benefit of their three employees; Mr Mandeep Sandhu, Ms Dunlop and Ms Lane. Mr Naqvi has appeared in person. He has had some benefit from Mr Riza QC, who will appear for him at the Solicitors Disciplinary Tribunal and he has placed before the court some documents of Mr Riza, but he himself has appeared in person in today's hearing.

6 The background to this matter is as follows. Mr Naqvi is a sole practitioner solicitor practising in immigration law, criminal law, employment law, and litigation and wills and probate. The allegations against Mr Naqvi in the SDT proceedings which are due to be heard next week, the week commencing 16 April 2019, are set out in a Rule 5 statement dated 18 September 2018. In summary, the SRA alleges that:

> (1) Mr Naqvi failed to advise the client that applying for a visa as a spouse or partner on the basis of a non-genuine relationship was unlawful and, in doing so, breached Principles 2, 4, and 6 of the SRA Principles 2011.

(2) Mr Naqvi advised the client that in the event that the client wished to apply for a visa as a spouse or partner on the basis of relationship that was not genuine, the client should not disclose this fact to him, and in doing so breached Principles 1, 2, 3 and 6 of the SRA Principles 2011.

(3) Mr Naqvi indicated that he was willing to advise and/or assist the client in the process of applying for a visa as a spouse or partner after the client made clear that he intended or was likely to make the application based on a relationship that was not genuine and, in doing so, breached Principles 1, 2, 3 and 6 of the SRA Principles 2011.

(4) Mr Naqvi advised the client on the steps that could be taken by the client to increase the prospects of an application for a visa as a spouse or partner being successful when he knew, or ought to have known, that the relationship upon which the purported application would rely was not genuine and in doing so breached Principles 1, 2 and 6 of the SRA Principles 2011.

7 Although it is not necessary for the SRA to establish dishonesty for the allegations of breaches of the Principles, the SRA contends that Mr Naqvi acted dishonestly in relation to three of the matters alleged against him.

8 Mr Naqvi defends the SDT proceedings. He denies each of the allegations in the Rule 5 application. He denies that he acted dishonestly. In summary, he says that the allegations arise out of a covert recording made by an undercover reporter as part of an ITV documentary entitled "ITV Exposure UK - The Sham Marriage", produced by Hard Cash Productions Limited ("Hard Cash") and which was broadcast in July 2015. The video of the interview was an interview between Mr Naqvi and a fictitious client ("Mr Ali") who was the undercover reporter, who is now believed to be out of the country and whose whereabouts are unknown. That interview took place on 27 March 2015.

9 It is not necessary to set out the exchanges in that interview. It suffices to say the following. The case of the SRA is to the effect that Mr Naqvi was deliberately turning a blind eye to the fact that the putative client was not in a genuine relationship. However, in his skeleton argument for the hearing on behalf of Mr Naqvi, Mr Riza QC has undertaken a textual analysis of the transcript from the video to the effect of the following argument. It is that Mr Naqvi was not advising Mr Ali to go down the marriage route. He was not assisting in relation to immigration through a sham marriage route. He points to various responses and statements of Mr Naqvi to this effect and he says this at para.1(h):

> "*When looked at in context, what he is advising is that he cannot and does not know whether any particular marriage is genuine or not, because it is not knowable except to the persons involved. He advises people on the basis that they wish to embark on a genuine marriage and the evidence required to satisfy the Home Office of genuineness - which is normally evidence that a couple are living together as man and wife for a long time.*
>
> *(i) He assumes people are genuine because he cannot know if they are not, but, so long as there is proof of joint lives - in other words that they are living and will live together he will be prepared to act- "joint living" as he puts it.*

(j) There is no evidence of complicit dishonesty whereby Mr Naqvi knew or intended to assist Mr Ali in his pretend attempt to embark on a sham marriage."

10 In addition to this, Mr Riza submits that:

"2. There is clear evidence that the undercover agent is trying to entrap the Respondent to advise him regarding applying to stay here on the basis of a sham marriage, but there is also clear evidence that he does not succeed."

11 It is then submitted:

"4. When the transcript is considered in the context of the whole conversation and it is appreciated that he is a solicitor who is being manipulated by an undercover agent in a direction he does not wish to go, Mr Naqvi kept well within the ethical standards of his profession."

12 A submission is made as to why this entrapment amounts to an abuse of process which is seriously improper and, therefore, forms the basis of an attempt to strike out the SRA's application for abuse of process and/or fairness. This is on the ground that the evidence of the undercover agent falls foul of principles developed, in particular in the House of Lords case of *R v Loosely* [2011] UKHL 53 per Lord Nicholls para.1 and para.25 and following. Mr Riza QC submits that those of general application in all areas of governance, but particularly those proposals are concerned with an officer of the Court and the administration of justice. It is therefore submitted from para 8 onwards that it is an abuse of process of the Court for the SRA to rely on the evidence of someone who was guilty of entrapment. In particular at para.10(c) it is submitted that *"the SRA is reliant on evidence obtained pursuant to such criminal enterprise is so seriously improper it brings the administration of justice into disrepute."*

13 It is not a part of this Court's function to assess the merits of the arguments which will be the subject of determination before the Solicitors Disciplinary Tribunal. However, it is useful to have summarised the issues between the parties. The SRA does not accept Mr Riza QC's textual analysis of the conversation. Further, it does not accept the submissions made as regards entrapment. In the words of Mr Paul, Counsel on behalf of the SRA before this court, at the end of para.7 of his skeleton argument:

"The central issues to be determined by the SDT at the substantive proceedings therefore involve an analysis of the meaning of the words Mr Naqvi used and the advice he gave as recorded and transcribed and his state of mind when he did so."

14 To that there should also be added the issues that arise out of the allegations of entrapment and the matters that I summarised from the submissions of Mr Riza QC.

Procedural background

15 There have been a number of procedural applications, of which this is the most recent in connection with the SDT proceedings. They are summarised more fully in the witness statement of John Henry Tippett-Cooper of 11 April 2019. They include the following. First, an application was made on 31 October 2018 by Mr Naqvi for "quashment" of

the proceedings and, alternatively, that the substantive hearing before the SDT be dealt with on the paper. There were allegations made against the SRA witnesses, including that Ms Sandhu, Ms Dunlop and Capsticks had all "conspired to employ a False Document as their first evidence intentionally with malign designs of prejudicing and to win the question to answer deceiving the honourable tribunal."

16 It was also alleged that the matter had become "Infructuous" due to the "false" Rule 5 statement of Ms Lane, a memo of Ms Sandhu dated 18 April 2018 and documents produced by Ms Dunlop. It was suggested that the proceedings involved "foul play", were "fundamentally flawed and wrong" and were based on "Submission of a False, Fraudulent Forged, Concocted Document."

17 That Application was heard on 22 November 2018 by the SDT. It was treated as an application to strike out the proceedings as an abuse of process. On 4 December 2018 the SDT handed down a memorandum dismissing that Application. I shall refer to that Application in more detail later in this judgment. Secondly, on 18 March 2019 Mr Naqvi made an Application to adjourn the substantive hearing listed to commence on 15 April 2019. Thirdly, on 25 March 2019 the Respondent made an application for five witness summonses to the SDT, including in respect of Ms Lane, Ms Sandhu and Ms Dunlop. The SRA wrote to Mr Naqvi explaining that the summonses would need to be issued by the High Court. It appears that Mr Naqvi might have been following some erroneous form of the SDT in the Application that he had made.

18 On 26 March 2019 there was an application to reopen the prior Application to strike out for abuse of process, which application was by Mr Riza QC. On 29 March 2019 the SDT gave a judgment arising out of the Application to adjourn the substantive hearing dated 19 March 2019 and arising out of the application to reopen the Application to strike out for abuse of process. The Tribunal referred to the fact that it had dealt with a similar application made on 22 November 2018 and determined, as set out above, on 4 December 2018. In referring to the Application to adjourn and the application to reopen the earlier application, attention was drawn to the fact that the application for abuse was on the basis of the evidence arising from entrapment by an undercover agent and submissions were made of the same kind that I have referred to above in connection with entrapment. The Application was refused in relation to both limbs. As regards entrapment, it was said that the entrapment argument would be available for the Tribunal at the hearing commencing on 15 April 2019. Further, it was stated at (d) and (e) as follows:

> *"(d) The tribunal at the hearing of 22.11.18 and the Tribunal now is satisfied on the evidence currently available that it will therefore be possible for the respondent to have a fair trial and that it has not so far been established that there has been any impropriety by the applicant or that there was prima facie any entrapment.*
>
> *(e) Should the evidence to be considered at the hearing commencing on 15.4.19 indicate any reasonable possibility entrapment or other abuse, it will be open to the Tribunal at that hearing to make appropriate direction and to hear, if appropriate, any renewed or further application."*

19 Next, on 1 April 2019 Mr Naqvi made a further application to *"strike out proceedings for abuse of process of law"*. In that application, Mr Naqvi referred to his intention to seek to cross-examine the SRA witnesses and stated by way of justification:

"They have committed offences of causing wrongful losses to the Government Exchequer and the respondent for wrongful gain of £22,500 and bringing the whole judicial system to disrepute by their acts and omissions."

20 There then followed the application for the six witness statements at this Court, to which I have referred above, and to the issue and service of this application.

The legal principles

21 The Court has power to issue and set aside witness summonses in aid of inferior courts and tribunals pursuant to CPR 34.4 which reads as follows:

Witness summons in aid of inferior court or tribunal

"(1) The court may issue a witness summons in aid of an inferior court or of a tribunal.

(2) The court which issued the witness summons under this rule may set it aside.

(3) In this rule, 'inferior court or tribunal' means any court or tribunal that does not have power to issue a witness summons in relation to proceedings before it."

22 Pursuant to 34APD.2, para.2.4, unless the Court directs otherwise, an Applicant must give the party who issued the witness summons at least two days' notice of an application to set aside. Section 46(11) of the Solicitors Act 1974 empowers a party to proceedings in the SDT to issue witness summonses both as to evidence and as to documents.

23 Guidance is provided in the White Book at 34.3.5 (p.1103) as to the principles relevant to an application to set aside a witness summons:

"... on an application to set aside or vary a witness summons, under r.34.3(4), ***the burden is on the issuing party to justify the summons*** *(Morris v Hatch [2017] EWHC 1448 (Ch) (Judge Paul Matthews) at para.20). On such an application the court is concerned to see that* ***parties do not abuse their privilege of summoning witnesses*** *(Raymond v Tapson (1883) L.R. 22 Ch. D. 430, CA at 435). A witness served with a summons cannot have it set aside merely by swearing that they can give no material evidence;* ***but if the court is satisfied that the witness summons has not been issued in good faith for the purpose of obtaining relevant evidence and that the witness named is in fact unable to give relevant evidence, it will set it aside****. Such an order does not prejudice the power of the trial judge to order the witness to attend if they think their presence is necessary (R. v Baines [1909] 1 KB 258).* ***The court will also set aside a witness summons which is oppressive, for example****, which relates to documents disclosure of which has been refused by the court (Steele v Savory [1891] WN. 195; 8 T.L.R. 84), or which relates to documents protected by the public interest immunity (Bookbinder v Tebbit (No. 2) [1992] 1 WLR 217).*

A witness summons (or an application in the nature of such, e.g. to produce and show a film) ***may be set aside (or refused) where it appears***

that the request is irrelevant, fishing speculative or oppressive; *see Senior v Holdsworth Ex p. Independent Television News Ltd [1987] QB 433." (emphasis added)*

24 The Court was referred to the case of *R (Baker) v Hossack* [2009] EWHC 2463 (Admin), where there was evidence sought as to the reasons for making the complaints and, to that effect, witness summonses were issued against two witnesses to provide such evidence. Silber J held that such evidence was:

> *"of no relevance to the determination of the issue in front of the Solicitors Disciplinary Tribunal. Their task is to ascertain whether Mr Hossack acted professionally and in breach of the rules as contended."* (see para.20 to 21 of the judgment).

25 I was referred by Mr Bheeroo to the case of *Morris v Hatch* [2017] EWHC 1448 in which His Honour Judge Paul Matthews, sitting as Judge of the High Court, said the following at paragraphs 20 to 21:

> *"20. The relevant law is not in any doubt. It is clear that the Court has power to set aside or vary a witness summons that has been issued: see CPR rule 34.3(4). On an application to set aside or vary a witness summons, the burden does indeed lie upon the issuing party to justify the summons, rather than on the resisting party to show why it should be set aside. It is also clear that the cases (largely decided under the old RSC) have established a number of grounds upon which the court may (not must) set aside a witness summons. These include that the summons was not issued in good faith for the purpose of obtaining relevant evidence, that the witness cannot in fact give any relevant evidence, that it is oppressive, and that it breaches the confidentiality of others, particularly where the same information could be obtained in ways that do not. See R v Baines [1909] 1 KB 258, and South Tyneside Borough Council v Wickes Building Supplies Ltd [2004] EWHC 2428 (Comm). The latter was cited to me during the argument, and I referred to the former.*
>
> *21. But it is also clear that the Court must balance the interests of justice in the fair disposal of the claim with competing outside interests. And the fact that a party issuing a witness summons has motives going beyond the purposes of the particular action does not by itself make the issue of the summons oppressive. Similarly, the fact that a witness may (or, indeed, may be obliged to) claim privilege against answering certain questions does not mean that the witness summons should be set aside. Privilege may be waived, or may not prevent the particular question, or a part of such a question, from being answered."*

26 A question also arises as to who may make the application and as to whether this application can be made by somebody other than the person to whom the witness summons is directed. That arises in this case, because Mr Paul's client is the SRA, albeit that as regards two of the parties for whom he makes submissions they are employees of the SRA. In my judgment, there is authority to the effect that it is not a barrier to an application to set aside a witness summons that a person is not the Respondent to the witness summons: see *Marcel v Commissioner of Police* per Sir Nicholas Brown Wilkinson VC at p.239C and in the Court of Appeal per Dillon LJ at p.253B and per Sir Christopher Slade at p.267B. An issue that sometimes arises is that an employer should be able to make the application on behalf of

an employee, particularly where that employee was simply acting in the course of his or her employment. It seems to me that this applies a fortiori where the non-party to the witness summons is already a party to the action and, therefore, is affected in that the conduct of the action will be affected by whether the witness summons stands or does not. In these circumstances, the SRA has the necessary standing to make the application which it does.

The submissions on behalf of the applicants

27 The Applicants submit that each of the four respondents to the witness summonses are not able to give material or relevant evidence. They also submit that the witness summonses have not been obtained in good faith and for the purpose of obtaining relevant evidence. They submit that the witness summonses are speculative and oppressive. They also rely upon other discretionary reasons, in particular that (1) Ms Lane is unwell; (2) there are policy reasons why the particular Respondent should not be compelled to give evidence.

28 As regards the identity of the four persons against whom witness summonses have been issued where it is sought to set them aside, I shall say a few words about each of them. As regards Ms Ogene, her position is summarised in her witness statement as follows:

> *"7. I am the Head of Case Management at the Solicitors Disciplinary Tribunal (the SDT). I qualified as a solicitor in May 2006 and have worked for the Tribunal since January 2016. I have held my current position since January 2016.*
>
> *8. My role is to lead and supervise the SDT's Case Management team with ultimate responsibility for ensuring that cases before the SDT are managed in an effective and efficient manner prior to and in the immediate lead up to their determination by hearing. This includes dealing with correspondence to the SDT, emails and telephone calls and identifying appropriate action to be taken."*

29 The evidence of Mr Tippett-Cooper identifies the SRA witnesses as follows:

> *"15.1. Ms Mandeep Sandhu is an investigation officer in the supervision directorate of the SRA, which is responsible for undertaking the initial investigation of reports the SRA receive in relation to a solicitor's alleged misconduct. In this case the extent of Ms Sandhu's involvement in the proceedings involving the respondent was to prepare a memorandum setting out the findings of her investigation to the legal and enforcement directorate of the SRA. The memorandum (included at pages 2 to 7 of JHT1) refers to and relies on the evidence referred to within it and was exhibited in the SRA's Rule 5 statement. ...*
>
> *15.2. Ms Jennifer Dunlop is a Case Manager in the Legal and Enforcement Directorate of the SRA. The Legal and Enforcement Directorate are responsible for preparing proceedings to be referred to the SDT. Part of this function (and part of Ms Dunlop's role as a legal advisor - her role in April 2018) is to review memorandums prepared by the investigation directorate to assess if the evidential and public interest test for making the referral has been met. The evidential test requires that the SRA be satisfied that there is enough evidence to provide a realistic prospect that the regulated person will be found to have committed misconduct and the public interest test requires the SRA to be satisfied that such proceedings are required in the public interest.*

Ms Dunlop signed a decision dated 27 April 2018 (appearing at p.1 of JTC1) after considering Ms Sandhu's memorandum and decided based on this document that the relevant tests were met ...

15.3. Ms Hannah Lane is a solicitor at Capsticks Solicitors LLP and had day-to-day conduct of the SDT proceedings involving the Respondent under my supervision and the supervision of Danielle Purcell, partner at Capsticks. The Legal and Enforcement Directorate instructed Capsticks Solicitors LLP in relation to the SDT proceedings involving the Respondent in or around May 2018. Ms Lane is not a witness of fact in relation to the allegations against the Respondent - the Rule 5 statement is the mechanism by which the SRA advances its pleadings in the SDT as required under Rule 5(2) of the Solicitors (Disciplinary Proceedings Rules) 2007 ..."

30 The submission of the Applicants is that none of these witnesses are able to give any material evidence on the allegations set out in the Rule 5 statement and that, therefore, it is inappropriate and unreasonable for Mr Naqvi to seek a witness statement against each of them.

Submissions of Mr Naqvi

31 Mr Naqvi says that at hearing before the SDT he will be pursuing not only his substantive defence to the charges against him, but that he will be renewing the abuse of process argument. He says that he requires the evidence of the four respondents to the witness summonses, in particular in connection with the abuse of process argument. It is not clear precisely how the abuse of process argument will be developed. One thing is clear and that is that there will be an abuse of process argument run by Mr Riza QC in relation to the matters relating to entrapment. I have referred to those above. The latest iteration of that is in a skeleton argument signed by Mr Riza QC dated 9 April 2019. However, in addition to that, there are credibility issues which Mr Naqvi intends to develop before the hearing in which he makes serious criticisms of those who have been involved in the preparation and conduct of the case of the SRA, the administrator and of Ms Ogene of the SDT.

32 By way of summary only and not in any way being comprehensive of what he has put before the Court, he says the following. First, he points to the fact that the exhibit to the Rule 5 application was a letter from the Home Office which mentioned an arrest of Mr Naqvi and also stated that he was on bail. This was false. He says that this has triggered and given oxygen to the whole process. He says that he should be able to cross-examine those who were responsible for the matter being placed before the Solicitors Disciplinary Tribunal and who may have been influenced by it in connection with the decision to bring him to the SDT. In particular, he calls this document a false document and he posits two possibilities in relation to it, namely

(a) they used the document knowing that it was false;

(b) or they did not investigate or read the matter and relied of the false document unknowingly and negligently. In that event, they are lying that they have investigated, read and evaluated the evidence. In either event, the case has become ‘infructuous’.

33 Mr Naqvi says that this document was attached to Ms Lane's statement under Rule 5 and that he would want to ask her about the circumstances in which that got into the document. He says that the redaction of that inaccurate passage is not an answer to the case of abuse of

process. He says that the Tribunal should now see everything about how contaminated the case was and should be able to cross-examine in relation to it.

34 He is critical of the correspondence that followed the decision of the Tribunal of 4 December 2018. In that regard, it is necessary to refer in more detail to the decision of 4 December 2018. The submission that was made by Mr Naqvi was referred to at para.22 that the Applicant's case had been made on evidence that had not been properly investigated. At para.24 he stated that the communication from the Home Office contained a false statement, as he had never been arrested, and, according to the Tribunal, he submitted that if the email from the Home Office was removed there was "nothing left". He submitted that the Applicant had not carried out proper investigations for over a year from September 2017 to October 2018 and made other criticisms about the conduct of the Applicant relating to the video footage and the Respondent's name. At para.25 it was stated:

> *"The respondent pointed out that Mr Collins had accepted, on behalf of the Applicant in his email dated 9 November 2018, that if the Respondent was not in fact arrested then the applicant took no point on this and was happy for this sentence to be redacted. The Respondent submitted that the Applicant was turning a blind eye and not properly investigating matters. He repeated the Applicant had not properly assessed what he said as there was nothing in the documents to show he had been arrested. He submitted that this was evidence that that the Applicant had not read the papers. "*

35 At para.27 it is reported:

> *"The Respondent submitted that if the statement from the Home Office was removed there was no case against him."*

36 The approach of the Applicant to this is stated at para.34:

> *"Mr Collins confirmed that the SRA did not take any point in relation to the Respondent's alleged arrested. He accepted that the Applicant did not carry out any investigations into whether the Respondent had been arrested or not, but this was because no point had been taken that turned upon this fact. He submitted any failure to consider or investigate the accuracy of the email dated 24 February 2017 from the Home Office was not a significant factor in this case."*

37 The Tribunal then came to its decision and at para.41 stated:

> *"The Tribunal having considered the email from the Home Office dated 24 February 2017 was satisfied that the relevant sentence within that email, which referred to the Respondent having been arrested and on bail, could be redacted by the applicant with no difficulty. Indeed, Mr Collins had suggested this course himself and had made it clear that the Applicant did not rely on that document as anything other than evidence of how the matter had come to the SRA's attention. Once that sentence was redacted, there would be nothing in the documentation before the division of the Tribunal dealing with the final hearing to suggest that the respondent had been arrested or placed on bail."*

38 That was one of the bases upon which the Tribunal accepted that the Respondent was able to receive a fair trial and that there had not been impropriety to the requisite degree on the part of the SRA.

39 Following that decision to which I shall return in relation to the question of the video evidence, there was email correspondence, particularly on 7 February 2019, between Mr Naqvi and Ms Ogene of the SDT. Ms Ogene was taking steps to make sure that the redacted material was before the Tribunal. Mr Naqvi challenged her as to how she said that the redaction was authorised. She relied upon the decision of 4 December of the Tribunal. In particular, in one email she said:

> *"On the basis of the position outlined by the Applicant, the Tribunal at the hearing on 22 November 2018, the Tribunal did not make a formal direction for the provision of the document, as this was unnecessary as the Applicant had agreed to the making of the redaction sought by yourself."*

40 Mr Naqvi still says that there was no order that was made about redaction and that the SDT/SRA are adopting an unauthorised way of dealing with the matter and he seeks to be able to cross-examine in this regard. He also takes issue with the way in which the SRA has conducted itself as regards the video evidence of the covert interview. He refers to a memorandum of the SRA dated 18 April 2018 prepared by Ms Sandhu in which it is stated on the first page:

> *"The transcript indicates that this was Ali's second meeting at the firm. An audio recording of the first visit is available."*

41 That audio recording was not provided until 15 March 2019. He refers to a letter dated 26 March 2019 from Capsticks on behalf of the SRA in which the following was written:

> *"Following the Respondent's disclosure request on 15 March 2019 for a copy of the recording of the first meeting, Capsticks approached Joanna Potts to provide a witness statement, as she had produced and directed the ITV Exposure documentary featuring the Respondent. Mr Potts notified Capsticks that an audio recording of the first meeting featuring the Respondent existed. This was the first point that Capsticks and the SRA's Legal and Enforcement Department were made aware of the existence of the audio recording of the first meeting."*

42 Mr Naqvi points to the apparent contradiction between that paragraph of that letter and the memorandum of 18 April 2018. In other words, he says that they were aware of it because the earlier memorandum had referred to it. Capsticks then seek to explain the position in a letter dated 9 April 2019 and accept that the wording of the letter dated 26 March was confusing. However, it states that the enquiries as to that recording did not lead to it being located or accessed. It is stated that it was only in March 2019 that it was located. It is also accepted that the audio recording should have been located earlier than mid-March. They note that Mr Naqvi had had a copy of the full translated transcript of the first audio recording in good time before the substantive hearing.

43 Mr Naqvi submits that this shows that there has been suppression of evidence and false and misleading information and he wants to get to the bottom of this as part of an abuse allegation by cross-examining the officers of the SRA in relation to how this ever arose. He also says that he has sought cross-examination of Mr Ali in respect of the video. He is no longer with the production company Hard Cash and he says his position is prejudiced and,

particularly because Mr Ali's whereabouts cannot be ascertained, he is unable to develop that part of this case and, therefore, the court should be particularly accommodating to the desire to cross-examine other witnesses.

44 He contends that the case against him is so flawed that there must have been an abuse of process in going ahead with it. He also says that the fact that there is a statement of truth on the Rule 5 statement should lead to the Court saying, at least in respect of Ms Lane, that attendance should be ordered in respect of that.

Discussion

45 The burden is on the issuing party to justify the summons rather than on the resisting party to show why it should be set aside. It is also the case that if a witness cannot in fact give any relevant evidence there is no basis for the summons to be issued. I refer to the exposition of the law above. Mr Naqvi in my judgment has failed to identify any evidence which can usefully be given by any of the four witnesses.

46 The starting point is that this case is all about the covert video evidence that was obtained on 27 March 2015. It is about what was said and the meaning of what was said. It is also about the nature of the entrapment. For that reason, I have set out in some detail the issues that arise and the arguments that are being raised by Mr Riza QC on behalf of Mr Naqvi. In respect of those matters, it is not suggested that any of the witnesses, who are the Respondents named in the four witness summonses with which I am concerned, have any evidence to give. They were not involved at all, directly or indirectly, in relation to the transaction in question. They can say nothing of assistance in relation to what was said, the meaning and the effect of what was said, or the nature or circumstances of the entrapment. The four allegations which are before the SDT are matters that relate entirely to the events of 27 March 2015. It is apparent from the nature of the job descriptions of Ms Ogene, Ms Sandhu, Ms Dunlop and Ms Lane that there is no evidence which they can give in relation to those matters.

47 In my judgment, the way in which this case has been conducted, and the particular criticisms made of the conduct of the case, are irrelevant to the allegations concerning 27 March and whether or not the case is established by reference to that. As regards the matters that have been prayed in aid, I consider them in relation to matters concerning abuse of process that still remain before the Tribunal. Insofar as the matters about abuse of process relate to the question of entrapment and the matters relied upon by Mr Riza QC on behalf of Mr Naqvi, the four witnesses will be unable to say anything in relation to those matters. To the extent that there are other matters about the abuse of process to which I have referred, there is a concern as to whether or not this is going over old ground, particularly having regard to the decision of 4 December 2018 and the decision of 29 March 2019.

48 In relation to the conduct of the case and the allegations that have been made in the nature of dishonest and fraudulent conduct against these witnesses, they are not set out with any particularity that would be required in order to make out a prima facie case of fraud. There is nothing in the papers before me that indicates that there is a case of fraudulent conduct in relation to them and in those circumstances the making of allegations of that kind does not, in my judgment, justify some investigation against them in connection with fraudulent conduct. In any event, that is not the case that is before the Tribunal. The case before the Tribunal, as I have indicated, is about the events of 27 March 2015.

49 Further, in respect of the other matters that are referred to, they are matters which in my judgment do not require cross-examination of witness. They are matters which can be

established by reference to the documents. It is doubtful in my judgment that there is any benefit in going over the matters relating to the question as to whether the view of Ms Ogene was justified in relation to the redaction. In fact, although it appears to me that the understanding about the meaning and effect of what occurred on 4 December 2018 appears to this court to be justified, namely that the Tribunal was prepared to act upon the basis of the redaction which was undertaken by the SRA. I make no final ruling in relation to that, because the SDT is better positioned than this court is in order to opine about what happened. In any event, there is no material in relation to that aspect that requires any relevant cross-examination of any of these witnesses.

50 Further, in relation to the video it is said that the documents are what they are. It is not necessary to have cross-examination of the witnesses in relation to what occurred about the video. That it was unfortunate that it was not provided earlier is clear and, if there is any prejudice at all that would arise out of that, then that is a matter that can be relied upon by Mr Naqvi before the Tribunal. However, that was a part of the decision of the Tribunal on 4 December of 2018 when it was said that the Applicant had been selective in relation to the use of parts of the video and the decision of the Tribunal was that there could be a complete un-redacted transcript of the video footage so that there was no scope for selectivity.

51 On the basis of that, the Tribunal was satisfied that the matter could be investigated fully and that there could be a fair trial. It is true that the Tribunal did not know at that stage about the fact that there was this video that had not been produced and would not be produced as transpired until late March 2019. However, I am satisfied that the submissions can be made in that regard about that and do not require some collateral issue in relation to whether with the exercise of greater diligence the video could have been obtained earlier. That it could have been obtained earlier with the exercise of reasonable diligence is in effect admitted by Capsticks on behalf of the SRA. Thus, the submission that the evidence is required either in respect of redaction or in respect of the video is one which I reject.

52 It is then said that the fact that Ms Lane made a Rule 5 statement should have as its effect that she should be available for cross-examination just as the maker of a witness should be available. It is said that because there is a statement of truth at the end of the Rule 5 statement that supports the fact that there should be such an entitlement. It appears from looking at the Rules, the Rule 5 statement is in effect the process through which the case is stated and it has the part of statements of case in High Court proceedings. There is a separate matter of routine procedural witness statements and witness statements of those who are going to be called have been provided. I am told that it is outside the experience, in particular of Mr Bheeroo who has some experience in relation to these matters, for the maker of the Rule 5 statement to be called simply because that person provided a Rule 5 statement, just as it would be wholly exceptional for a person who provided a statement of truth on a High Court pleading to be required to give evidence simply because of having provided that statement.

53 In my judgment, there is no relevant material which these witnesses have on which they should be made available to attend and there has been a failure on the part of Mr Naqvi to provide a basis therefore for the witness summonses to be issued against these witnesses. Although that suffices for my judgment, there are other matters that are prayed in aid. First, it is said that the Application is speculative and/or oppressive. In my judgment, that arises out of substantially the same facts and matters as the ones that I have referred to insofar as there is not material that Mr Naqvi can point to. He hopes that he will be able to make some headway simply by having the witnesses in the witness box and, similarly, the fact that he has alleged fraud and made allegations in the nature of fraud without any prima facie basis

for them he may hope that he would be able to develop that through cross-examination. In my judgment, a witness summons which is issued for a speculative or oppressive purpose should not be permitted.

54 It is also submitted that that there are powerful policy reasons why the court should exercise particular caution before permitting these respondents to be cross-examined. There is no rule in relation to that, but it is a matter that I give some weight to. The Court should exercise caution before making the Case Manager of a tribunal have to submit to cross-examination. In any event, I do not have to decide it on this basis, because there is no relevant evidence that Ms Ogene can give. Similarly, in relation to those who were involved whether as lawyers from the outside or inside on behalf of a regulatory authority, the Court should proceed again with some caution before permitting cross-examination, but here again the Court relies upon the other matters before to which I have referred.

55 The only other two matters that were relied upon were, first of all, Ms Lane is unable to give evidence for medical reasons. I do not place any weight in relation to that. Whilst not doubting that Ms Lane has been off work and will be off work to the beginning of May, a decision has been made to redact the document so that there is no information that the Court has been provided about the nature of her illness and as to her in disposition and as to whether or not she could have provided evidence. However, I am satisfied that for all the reasons I have given she has no relevant evidence to give and that the Court should not compel her to give evidence.

56 Finally, it is said that the SRA witness summonses have not been issued in good faith for the purpose of obtaining relevant evidence. That is a serious allegation that is made by the SRA. They say that having regard to the number of applications that have been made it is:

> *"A fair inference that these summonses form the latest part of a pattern of behaviour whereby Mr Naqvi has pursued aggressive tactics in order to avoid the substantive allegations against him being properly considered at an oral hearing."*

57 I decline to make any finding to that effect. Mr Naqvi is entitled to defend himself. He is defending himself in particular through Leading Counsel who has settled documents on his behalf and he intends to pursue all matters that are available to him before the Tribunal. In my judgment, this is not a basis that I rely upon at all in relation to the judgment which I reach.

58 However, having considered all of the matters that are before the Court, all of the written material and all of the oral submissions, and expressing my thanks to Counsel and to Mr Naqvi who has represented himself in this application, I have come to the view that in all the circumstances it is appropriate for each of the four witness summonses to be set aside and I so order.

MR PAUL: I am grateful to your Lordship. The SRA makes an application for its costs of today.

The application is made on the basis that this is an application which Mr Naqvi contested and lost. We were the successful party and, therefore, the ordinary rule applies in my submission.

There is also a further reason in that without prejudice save as to costs that offer was made to Mr Naqvi on Tuesday evening, which I can show your Lordship. The offer was on the

basis that if Mr Naqvi consented to the summonses being set aside the SRA would not seek any costs of the application. That is a further matter which, in my submission, the court should take into account.

MR JUSTICE FREEDMAN: Is there a costs schedule?

MR PAUL: There is a costs schedule.

MR JUSTICE FREEDMAN: Yes. That is for how much?

MR PAUL: The total sum is £7,750.

MR JUSTICE FREEDMAN: Yes.

MR PAUL: Just in terms of basis, my Lord, my instructions are to seek those costs on a standard basis.

MR JUSTICE FREEDMAN: Yes.

MR BHEEROO: My Lord, I make no application for costs.

MR JUSTICE FREEDMAN: Thank you. Mr Naqvi.

MR NAQVI: Yes, my Lord. This is all, but I had tried to have placed before your Lordship.

MR JUSTICE FREEDMAN: I know.

MR NAQVI: And for the last four years I am on these proceedings and I have not been able to work properly with the peace of mind, because every other few months there are the same queries and, even after that, every call, every email comes I think that maybe there is someone recording that or someone is coming in that same context, whether some query for the work is better genuine client is behind or what is there and I do not have many means. £14,000 was my earnings in 2014. In '15 it became before this covert operation it became double before in 2013 I started my practice. In 2014 it was £14,000 my earnings. In that Rule 5 statement it is. And then came up to £35,000 in 2015, but then again it decreased to £14,000 next year because of this and since that, 2018 and 2017, I have reported £22,000 maybe for the whole year. £36,000 last year.

This is I am not able to work properly. It is explicitly everything is on record and never happened. Unblemished record for the last 25 years I have worked in the High Court and representing narcotics cases, murder cases, represented Ministry of Law for human rights in Pakistan. Never done anything. No complaint at all even here in this country for 10 years. No complaint from any client from anyone or from anywhere.

I have challenged. I have asked. I served that notice to admit on 9 or few days ago I mentioned in my skeleton argument. It did not have any complaint from Home Office from any quarter, even otherwise from the community, anywhere in the world, bring that to me and tell me that you have pointed out for any sham marriage case or anything. Bring

that evidence to me and otherwise admit you have not investigated into the matter and that notice is not on the record.

MR JUSTICE FREEDMAN: Thank you. Mr Paul, I am concerned about two matters.

MR PAUL: Yes.

MR JUSTICE FREEDMAN: I have not looked in too much detail about the amounts, but I am concerned, first of all, about the fact that if Mr Naqvi wins in the disciplinary tribunal he would get his costs, would he, against the SRA?

MR PAUL: Not normally, my Lord.

MR JUSTICE FREEDMAN: What do you mean "not normally"?

MR PAUL: The normal position -- Mr Bheeroo may assist -- is that the regulator is seen as exercising a public function and, in so far as the case is properly brought, respondents cannot normally recover their costs.

MR BHEEROO: That's correct, my Lord. Even in circumstances where the respondent is successful in defending proceedings, it is not often the case that they get awarded the costs.

MR JUSTICE FREEDMAN: But might he get an order for costs?

MR BHEEROO: It is certainly possible in certain. *Baxendale Walker* is an example. It is certainly possible albeit is not often seen. It really is dependent on whether the Tribunal has viewed the bringing of the case itself to be properly brought.

MR PAUL: My Lord, there is some guidance in relation to that point in the White Book about the normal position regarding successful defence in relation to regulatory proceedings, if it would assist your Lordship.

MR JUSTICE FREEDMAN: Yes, please.

MR PAUL: This is the point my learned friend and I were just making about the *Baxendale Walker* case and that is at p.1371.

MR JUSTICE FREEDMAN: 1371.

MR PAUL: Page 1371 of Volume 1.

MR JUSTICE FREEDMAN: Well, I am certainly reluctant to make an order for a payment on the eve of the hearing. I am also concerned about the time for the court staff and because I have to be somewhere. Do you know how long in the ordinary course it would take for the judgment of the Tribunal to be issued?

MR PAUL: In my experience, my Lord, ordinarily the Tribunal gives its decision at the end of the substantive decision with reasons to follow. Again, my learned friend --

MR BHEEROO: That's correct, my Lord. The Tribunal will give its decision as well as sanction usually on the same day.

MR JUSTICE FREEDMAN: Yes.

MR BHEEROO: Written decisions aim to be delivered within seven to eight weeks, but they can sometimes take longer.

MR JUSTICE FREEDMAN: In those circumstances, I want to reverse the question of costs to a written application. I want to be told what the result was of the decision and I will then consider whether I make the decision about costs at that point or after the reasons for the decision have been given.

Mr Naqvi should not think as a result of that that he is getting off at all. It is a pragmatic way of dealing with the matter, given where we are today and given how proximate it is to the case. I am also anxious, despite the conviction that I have about the decision that I have reached, that Mr Naqvi pushes this behind him and concentrates only on the arduous case that he has to deal with for next week.

That is what I am going to do. I am going to reserve the question of costs. There is liberty to restore it and I will deal with it in writing unless any party wants to have an oral hearing at any stage.

Did you understand that, Mr Naqvi?

MR NAQVI: Yes, my Lord.

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