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Neutral Citation Number: [2018] EWHC 2051 (Admin)



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

CO/1048/2018

Royal Courts of Justice  
Tuesday, 17<sup>th</sup> July 2018

Before:

MR JUSTICE GOSS

B E T W E E N :

THE QUEEN  
ON THE APPLICATION OF  
MAUREEN OBI-EZAKPAZU

Appellant

- and -

BAR STANDARDS BOARD

Respondent

## **JUDGMENT**

## **APPEARANCES**

THE APPELLANT appeared in Person.

MS C DIXON (instructed by Bar Standards Board) appeared on behalf of the Respondent.

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MR JUSTICE GOSS:

- 1 This is an appeal to the High Court pursuant to s.24 of the Crime and Courts Act 2013 against the decision of a Bar Disciplinary Tribunal ("the Tribunal") chaired by Ms Sally Harrison QC made on 9th March 2018 by which the appellant was found guilty of professional misconduct and suspended from practice for a period of three months. The appeal is against both conviction and sentence.
- 2 The appellant is a member of Gray's Inn and was called to the Bar on 24th July 2008. At all material times, she practised from her own chambers, Family Matters. The charge of professional misconduct arose from a decision of the Legal Ombudsman with which the appellant failed to comply. As she did before the Tribunal, the appellant has represented herself in this appeal. There was no oral evidence at the Tribunal hearing. Application was made at the beginning of this appeal hearing for it to proceed by way of a rehearing. I was satisfied, for the short reasons I gave, that applying the provisions of CPR 52.21 the case should proceed by way of review. All relevant material was before the Tribunal, the case against the appellant had been sufficiently articulated and the hearing was Art.6 compliant. Similarly, I rejected an application that the appellant be permitted to adduce evidence in the form of email correspondence passing between her and the Legal Ombudsman. It was not disputed that she cooperated in the process of the investigation and consideration of the complaint by the Legal Ombudsman up to the point of the determination. The alleged misconduct related to her failure to comply with that determination, so this material was and is irrelevant to any issue in the appeal.
- 3 The relevant background may be summarised as follows. A former client of the appellant, Mile Ilic, who instructed her on a direct access basis, complained to the Legal Ombudsman about fees charged by the appellant following her acceptance of instructions from Mr Ilic on 8th February 2015, under which she agreed to carry out a number of pieces of work for identified fees, which were respectively itemised on an invoice of the same date. Mr Ilic

paid that invoice the following day. On 25th February 2015 he paid a further invoice for anticipated work. A dispute arose as to the charges and the work actually carried out. By a preliminary decision, the Legal Ombudsman found that the appellant should repay the sums paid by Mr Ilic in respect of items of work not actually undertaken, write off a further unpaid invoice for emails sent and pay a fine of £100 for failure to make a refund of a payment for attending a hearing which, in the event, did not take place. Following submissions from the appellant, that preliminary decision was made final on 29th September 2015. Mr Ilic accepted the decision and, on 9th October 2015, the Legal Ombudsman wrote to the appellant stating that the decision had become binding and enforceable, pursuant to s.140(a) of the Legal Services Act 2007.

- 4 The appellant applied for a judicial review of the award. That application was, in due course, dismissed by a final order dated 24th November 2016. The Legal Ombudsman then enforced the award in the Central London County Court. On 24th October 2017 a final third party debit order was made. As a consequence, the appellant's bank paid the sum ordered.
- 5 The charge laid against the appellant was of professional misconduct contrary to Core Duties 5 and 10 and rule rC71 of the Code of Conduct of the Bar of England and Wales (9th edition) which provide:

"CD5 You must not behave in a way which is likely to diminish the Trust and confidence which the public places in you or in the profession.

CD10 You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations."

"rC71 You must give the Legal Ombudsman all reasonable assistance requested of you, in connection with the investigation, consideration, and determination, of complaints made under the Ombudsman scheme."

6 The essence of the charge against the appellant was that by failing to comply with the Legal Ombudsman's decision she was in breach of these core duties and this rule.

7 The Tribunal proceedings are governed by Disciplinary Regulations 2017. By Regulation rE164 the Tribunal must apply the criminal standard of proof when deciding charges of professional misconduct. The Tribunal found the appellant guilty of the charge. By regulations rE203 and rE204, on finding any charge proved it is provided that the Tribunal will hear evidence of any previous adverse findings, and representations made by or on behalf of the practitioner, before announcing and recording its decision on sentence. There is no provision for the prosecutor to make representations on the appropriate sentence and none were made in this case. There were no previous adverse findings and the appellant made no representations by way of mitigation. It is clear from the transcript of the proceedings that she was very upset and annoyed by the finding of guilt, interrupting the delivery of the decision by the chairman before it was complete. She repeatedly indicated that there was no mitigation, declining a specific invitation to mitigate: her complaint was in relation to the finding of guilt.

8 By way of sanction, she was suspended from practice for three months. Pursuant to Regulations rE220 and r241 that sanction was suspended pending determination of this appeal.

9 By s.24 of the Crime and Courts Act 2013 the High Court may "...make such order as it thinks fit on an appeal under this section." Permission to appeal is not required. Pursuant to CPR 52.21(1) an appeal is limited to a review of the decision of the lower court unless the Court considers that, in the circumstances of an individual appeal, it would be in the interests of justice to hold a rehearing. PD52D does not provide that the appeal will be by way of a rehearing. As I have already ruled, none of the circumstances of the appeal

made it in the interests of justice to hold a rehearing. Accordingly, this appeal has proceeded as a review of the decision of the Tribunal.

10 By CPR 52.21(3) the appeal will be allowed where the decision of the lower court was "wrong" or "unjust because of a serious procedural or other irregularity in the proceedings in the lower court." The Court has to determine whether the exercise by the Tribunal of its discretion was wrong in principle or went beyond the ambit within which disagreement is possible (see *Richardson v Ealing London Borough Council* [2005] EWCA Civ 1798 at para.34).

11 In relation to sentence, as was stated by Mostyn J in *Obi v SRA* [2013] EWHC 3578 at para.8:

"... in determining whether a decision was 'wrong' does not involve the appeal court entering into an exercise of sentencing anew.

A decision will not be wrong simply because the appeal court might, had it been sitting at first instance, have awarded a different sentence."

12 I turn to the grounds of appeal against conviction. The appellant raises ten written grounds, the first eight of which relate to the finding of guilt and the remaining two challenge the sanction. They may be conveniently divided into five groups. I shall identify and address each in turn.

13 Grounds 3 and 8 lie at the heart of the appellant's case and it is appropriate to consider them first. It is her case that the legal and regulatory obligations that she was under were satisfied and completed by 9th October 2015 when the Legal Ombudsman gave his decision on Mr Ilic's complaint. She submits that the legal and regulatory obligation placed upon a barrister under Rule c71 does not extend to the barrister having to accept the decision or having to comply with any direction issued by the Legal Ombudsman and that the words of the rule should be construed to mean that.

14 Rule c71 provides:

" ... cooperation with the Legal Ombudsman: you must give the Legal Ombudsman all reasonable assistance requested of you, in connection with the investigation, consideration, and determination, of complaints made under the Ombudsman Scheme ..."

15 The Tribunal refused to construe Rule c71 in the way contended for by the appellant. It referred to the decision in *SRA V Baffour* Case No. 11042-2012. That was a case concerning proceedings brought against a solicitor where the Solicitors Disciplinary Tribunal found him to be in breach of principle 7 of the SRA principles 2011 by failing "to comply with your legal and regulatory obligations and deal with your regulators and ombudsman in an open, timely and cooperative manner" by not doing what the Legal Ombudsman had required him to do, namely returning money and having his bill costed. The requirement under that regime was differently phrased to the one applicable in this case and did not include the word "determination". However, it was arguably equivalent to the requirement, or was possibly a lower requirement than that which the appellant was under. In this case the Tribunal rejected a narrow construction of the word "determination" such that the duty to cooperate and assist ended on the making of the Ombudsman's decision and found that cooperation with the determination of the Ombudsman included "compliance with the decision to achieve a final resolution of the complaint." To construe the obligation otherwise, the Tribunal stated, made no sense as it "would mean that there would never be a breach for failing to comply."

16 I am satisfied that the conclusion of the Tribunal was lawful, reasonable and rational. It would render a requirement largely meaningless if a barrister's obligation under the rule was merely to cooperate with the process but not with the result.

17 By Grounds 1 and 6 the appellant submits that the Tribunal was in error in finding to the requisite standard that failure to carry out the direction of the Legal Ombudsman on



9th October 2015 and not paying the sum due under the Legal Ombudsman's direction were breaches of CD5 and amounted to professional misconduct.

- 18 The finding of the Tribunal set out in para.8 to 14 inclusive of its decision was that, although it was reasonable for the appellant to pursue judicial review of the Judicial Ombudsman's decision, once she had exhausted the judicial review process, there was no basis upon which she could continue to fail to comply with the Legal Ombudsman. Her failure was found to amount to a breach of CD5 both because of the impact upon Mr Ilic, who was entitled to be paid, and because the public at large is entitled to expect that, once the appeal process is exhausted, a barrister will comply with the Legal Ombudsman's decision.
- 19 In relation to the question of whether the breach was sufficient to amount to professional misconduct, counsel for the Bar Standards Board drew the Tribunal's attention to the decision in *Walker v BSB*, an unreported decision of the Visitors to the Inns of Court on appeal from the Disciplinary Tribunal of the Council of the Inns of Court dated 19th September 2013. The facts of that case were very different. It was a single lapse by an experienced advocate by way of an inappropriate question asked during cross-examination of an expert witness. It was, nevertheless, accepted in that case that such a lapse was capable of constituting a breach of a core duty and amounting to professional misconduct.
- 20 In my judgment, the Tribunal was quite entitled to find that the appellant's failings were a breach of CD5 and sufficient to amount to professional misconduct. Indeed, it would be difficult to conceive of any other reasonable or rational conclusion to which it could have come on the facts. The appellant, dissatisfied with the Legal Ombudsman's decision, deliberately refused to comply with it.
- 21 Grounds 2 and 7 challenge the finding that the conduct amounted to a breach of CD10 generally and, specifically, that it amounted to a failure to "manage her practice

competently." The Tribunal found that the facts and matters alleged did amount to a failure to comply with CD10, because the appellant failed "to manage her practice so that she paid in accordance with the Ombudsman's decision by which she was bound and which was a legal and regulatory obligation."

- 22 There can, I repeat, be no doubt that the appellant intentionally did not pay the money in accordance with the Ombudsman's decision. The appellant submits that there was no consideration of other respects in which she managed her practice competently and in compliance with her legal and regulatory obligations. The Tribunal was quite entitled to find that in the respects identified the appellant was in breach of her obligations and their decision betrays no error in principle, process or conclusion.
- 23 In her skeleton argument and oral submissions, the appellant contends that the conclusion of the Tribunal amounted to a finding based on strict liability and that the proceedings should have been brought against Family Matters, the chambers through which Mr Ilic's claim was handled. That submission has no basis. Every individual barrister is responsible for their own conduct and the management of their own practice. In any event, she was the only member of Family Matters.
- 24 Grounds 4 and 5 are merely repetition of aspects of the appellant's other grounds relating to the finding of having been in breach of the charge laid against her and add nothing to them.
- 25 In oral submissions the appellant submitted that the Tribunal had no regard to her Art.6 and Art.8 rights, the latter being the consequences of its decision in terms of the effects of a penalty by way of suspension of practice and was only raised during the latter part of her oral submissions during this hearing. There is no basis for any complaint in relation to any failure to accept the engagement of these rights.

- 26 Accordingly, the finding of professional misconduct was a decision to which the Tribunal was perfectly entitled to come. I turn to the sentence.
- 27 Grounds of appeal 9 and 10 relate to sentence. In accordance with the usual practice, the Bar Standards Board's representative merely drew the Tribunal's attention to the relevant Sentencing Guidance. That has also been the approach of counsel instructed on the Board's behalf on the appeal. The relevant part of the Bar Tribunals and Adjudication Service Sanctions Guidance 2018 is at s.D3 of the bundle. The Tribunal considered this section and found that the appellant's deliberate decision not to engage with the Legal Ombudsman brought her within D3(c), which provides that, in circumstances where there has been "a deliberate decision not to engage with the BSB showing a disregard for the authority of the regulator", the starting point in terms of sanction is a medium suspension. In this case the appellant made a deliberate decision not to engage with the result of the decision by the Legal Ombudsman as a regulator.
- 28 In making their decision the Tribunal invited the appellant to make submissions in mitigation of her position, but she declined to do so. The Tribunal found that the respondent's failure to attempt to comply with the Legal Ombudsman's decision was an aggravating factor which took the matter outside the circumstances described in s.D3(a).
- 29 The fact that a failure to attempt compliance with the decision of the Legal Ombudsman was found to be an aggravating factor is the tenth ground on which the appellant appeals. However, this is a factor expressly referred to in s.D3 of the Sanctions Guidance as being an aggravating factor for this type of offence. There can no doubt that the appellant decided not to comply with the decision of the Legal Ombudsman. No mitigating factors identified in D3 or otherwise are relied on or are apparent. There is no indication that the Tribunal misdirected itself and/or took into account something which it was not entitled to take into account when imposing the sanction or failed to take into account something which they

should have. At this hearing the appellant has expressly repeated that there is no mitigation and she seeks to advance no mitigation.

30 Accordingly, there is no basis for a finding that the Tribunal was wrong in imposing the sanction that it did.

31 This appeal is dismissed.

MS DIXON: My Lord, in the evidence there are two points of correction.

MR JUSTICE GOSS: Yes, please.

MS DIXON: The first is the fine is for £100 and not £780.

MR JUSTICE GOSS: Yes, sorry. That can be corrected on the transcript.

MS DIXON: Yes. Also, in terms of the sanctions, D3(c) does refer to the BSB and here, obviously, we are dealing with the Legal Ombudsman. It has to be interpreted as being a deliberate decision not to engage with, in this case, the regulator being the Legal Ombudsman.

MR JUSTICE GOSS: Yes.

MS DIXON: As read out literally as you did it is not to engage with the BSB, which does not make sense.

MR JUSTICE GOSS: I did then go on to say but --

MS DIXON: Yes. I just wanted to be sure that you were aware and you are and that is fine. My Lord, nothing further.

MR JUSTICE GOSS: Yes. I did wrongly refer to the rules of the Supreme Court. That will be corrected when the judgment comes to be corrected. Anything else?

MS DIXON: Not for me, my Lord.

MR JUSTICE GOSS: Thank you.

MS DIXON: It follows that the period of suspension to be clear --

MR JUSTICE GOSS: The suspension of the sentence now comes to an end and the period of suspension therefore from practice, as I understand it, starts immediately.

MS DIXON: Yes. I was just asking if I needed an order to that effect, but the answer is no. The appeal is dismissed.

MR JUSTICE GOSS: I have not studied the rules with care, but I anticipate that once the appeal is dismissed then the status quo is maintained. In other words, the suspension will commence.

Thank you both very much.

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