



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2018/0131/D5

Mark Lorrell Esq

The Director-General of the Bar Standards Board
The Chair of the Bar Standards Board
The Treasurer of the Honourable Society of Lincoln's Inn

Disciplinary Tribunal

Mark Lorrell

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 28 October 2019, I sat as Chair of a Disciplinary Tribunal on 13 November 2019 to hear and determine four charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Mark Lorrell, barrister of the Honourable Society of Lincoln's Inn.

Panel Members

2. The other members of the Tribunal were:

Mr Paul Robb (Lay Member)
Charles Bagot QC (Barrister Member)
Ms Siobhan Heron (Barrister Member)

Charges

3. The following charges were admitted:

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Charge 1

Statement of Offence

Professional Misconduct, contrary to paragraph 301(a)(iii) and pursuant to paragraph 901.7 of the Code of Conduct of the Bar of England and Wales (8th Edition).

Particulars of Offence

Mark Lorrell, an unregistered barrister and BSB regulated person, engaged in conduct which was likely to diminish public confidence in the legal profession or in the administration of justice or otherwise bring the legal profession into disrepute contrary to paragraph 301(a) (iii) in that in 2012, Mark Lorrell who was also qualified as a solicitor and employed by X LLP acted for two clients, Y and Y1 and in so doing allowed the firm's client account to be used inappropriately as a banking facility, in breach of the Solicitors Accounts Rules and in such a way as amounted to a failure to act with integrity. Such conduct was found proved by the Solicitors Disciplinary Tribunal (SDT) in a decision dated 13 September 2016.

Charge 2

Statement of Offence

Professional Misconduct contrary to paragraphs 301(a)(i) and pursuant to paragraph 901.7 of the Code of Conduct of the Bar of England and Wales (8th edition).

Particulars of Offence

Mark Lorrell, an unregistered barrister and BSB regulated person engaged in conduct which was discreditable to a barrister contrary to paragraph 301(a)(i) in that in 2013, Mark Lorrell who was also qualified as solicitor and employed by X LLP, acted for two clients, C and S Ltd in circumstances which amounted to a conflict of interest both between the two clients and between the interests of C and Mark Lorrell and in such a way as amounted to a failure to act with integrity. Such conduct was found proved by the Solicitors Disciplinary tribunal (SDT) on 5 July 2018 and confirmed by the appeal court in a decision dated 16 April 2019.

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Charge 3

Statement of Offence

Professional Misconduct contrary to paragraphs 301(a)(iii) and pursuant to paragraph 901.7 of the Code of Conduct of the Bar of England and Wales (8th edition).

Particulars of Offence

Mark Lorrell, an unregistered barrister and BSB regulated person engaged in conduct which was likely to diminish public confidence in the legal profession or in the administration of justice or otherwise bring the legal profession into disrepute, contrary to paragraph 301(a)(iii) in that in 2013, Mark Lorrell who was also qualified as solicitor and employed by X LLP, acted for two clients, C and S Ltd in circumstances which amounted to a conflict of interest both between the two clients and between the interests of C and Mark Lorrell and in such a way as amounted to a failure to act with integrity. Such conduct was found proved by the Solicitors Disciplinary tribunal (SDT) on 5 July 2018 and confirmed by the appeal court in a decision dated 16 April 2019.

Charge 4

Statement of Offence

Professional Misconduct contrary to Core Duty 9 and/or rC65.3 of the BSB Handbook (9th edition).

Particulars of Offence

Mark Lorrell, an unregistered barrister and BSB regulated person failed to be open with his regulator and failed to promptly report to the BSB that regulatory or disciplinary or enforcement action had been taken by another approved regulator in that, the SRA (Solicitors Regulation Authority) an Approved Regulator took the following action against Mark Lorrell which Mark Lorrell failed to report to the BSB promptly or at all:

4. In March and September 2016, lodged and served section 5 allegations against Mark Lorrell which allegation included one of dishonesty.

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5. In April 2016, issued a control of practice order placing conditions on the 2015/2016 practising certificate of Mark Lorrell.
6. In September 2016 took enforcement action which resulted in an order of the SDT being made in August 2016 which ordered Mark Lorrell to be suspended from practice for three months.

Parties Present and Representation

7. The Respondent was present and represented by Stephen Harvey QC. The Bar Standards Board (“BSB”) was represented by David Welch Esq.

Pleas

8. All of the charges were admitted

Evidence

9. No evidence was provided.

Submissions

10. BSB makes submissions and refer to the opening statement. Mr Lorrell was dual qualified at the time of the offences. He was ultimately suspended for 2 years by the Solicitors Disciplinary Tribunal which expires on the 4 July 2020. He has been suspended from practising as a barrister since 7 August (by the BSB) and an interim panel suspended him on the 29 August 2019. The sanctions are designed to protect the public, maintain high standards and to promote public and professional confidence. He has in effect served a 16- month suspension. The BSB relies upon the cases of *Wingate & Evans v SRA (2018)* regarding integrity and *Adetoye v The SRA (2019)*.
11. Charge 1 relates to acting as a banking facility. This was a 3 months suspension by the SRA, and it was served from 12 August 2016. Charge 2 went to appeal and attracted a 2-year suspension, due to expire on 4 July 2020. Charge 3 is the same. Charge 4 there has been no sanction yet.
12. In relation to being suspended from the Bar: Charge 1 there was no suspension from the Bar. For charges 2 & 3 if the period of the undertaking is included, there was a suspension period on 6 July 2018 until he withdrew his undertaking on 5 August 2019

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and then on the 7 August the BSB withdrew his suspension certificate and the interim panel suspended him on 29 August until today. No suspension for charge 4. Save for approximately 3 days the suspension from the Bar runs parallel for charges 2 & 3.

13. For charge 4, Mark Lorrell should have reported in March and September 2016 and matters were brought to the BSB's attention in November 2017. Mark Lorrell reported it at this time to the BSB and this gave rise to further enquiries. He did not reveal the matters within charge 1 or the conditions of his practice order which had been issued in April 2016. He reported the matters covered in charges 2 and 3. Charge 4 is a failure to report at any stage the matters referred to in charge 1.
14. The view of the BSB is that a fair approach would be to treat the sanction on similar lines to the SDT and High Court. A barrister is from the same strand as a solicitor.
15. Mr Harvey QC on behalf of Mark Lorrell submits that an analysis of the facts and sanction imposed by the SDT such that a suspension is appropriate is agreed. He did not practise during the period that he failed to report. He did not have a practising certificate. The facts of the first charge were submitted to the BSB but it was not reported as it should have been. The matters of charge 1 were contained in forms that he submitted to the BSB, but they were not concealed. Neither were they specifically reported. He self-reported in November 2017 about disciplinary proceedings from 2016 when he had been working as a solicitor but not as a barrister. He did not make a specific reporting of having been suspended at the time that it occurred.
16. In relation to charge 1 his problems centred around 1 client. Mr Y was a respected individual, an Israeli Judge and a man of considerable wealth mostly from property investment. He instructed Mark Lorrell in a number of litigation matters. He used this client account for banking purposes but at the time was ignorant of any wrongdoing in this conduct. The complaint related solely to using it as a banking facility without being authorised and without any legal instruction from the client to do so. There was £1.25 million in the account at the time that this conduct was discovered. He had at the time 2 other partners and approximately 30 employees. No proceedings were taken against the firm. He accepted the 3-month suspension. No dishonesty was found.

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17. Mr Lorrell was arrested in front of his staff and kept on police bail for 2 years until the CPS decided that there was insufficient evidence to bring criminal charges. The immediate consequence of his arrest was a withdrawal of funding by a panel of lenders and on the 10 September 2015 his firm was wound up as a result.
18. The conflict of interest occurred between clients and in relation to Mark Lorrell. The SDT found a conflict to a limited extent. C was applying for funding and she rejected independent legal advice even though it was offered to her. In the High Court reference is made to the loan agreement that C signed, and it specifically says that she declined independent advice and was aware of the position of Mark Lorrell's firm. She understood the situation and wanted to remain with the firm, nonetheless. He was acting for the lender at the time, but he will say that he was not acting for Miss C.
19. Regarding charge 4, Mr Lorrell in his email of 31 May 2019 to Mr Carter says that he failed to report because he was dealing with day to day matters rather than reporting directly to his regulator. He would have been able to practise as a barrister in the meantime, but he did not.
20. He has been a member of the Bar since 1999. Prior to this he has never received a complaint. He became a solicitor in 2003. He focuses on litigation and advocacy and worked in his firm of solicitors. He says that he has made his mistakes but wants to carry on practising but no longer be involved in transactional matters. He has shown insight and the events took place several years ago. It has been a harsh lesson in taking risks and client conflicts. He says that at the time he was ill-equipped for the role that he found himself in and he went too far to try and keep clients. As a barrister he would be significantly removed from transactional matters and conflicts are easier to recognise and control. He wishes to resume practising as a Barrister as soon as possible. His practising certificate would not allow for direct access to clients or to conduct litigation on their behalf.
21. Looking at the guidance, if the tribunal imposed a fine, he would borrow the money from a family member. The tribunal should not impose a suspension in lieu of a fine if you find that he is impecunious. He would find the money to pay a fine. Mitigating factors are that he has admitted the charges, shown genuine remorse, the breach was unintentional, he co-operated with the investigation, there is evidence of attempts to prevent a re-occurrence, he was of previous good character. In relation to aggravating

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factors I accept that he did not report as such. He did have some previous disciplinary findings when he appeared before the SDT and the failure to report was a further matter. A fine may be the starting point but he has already been suspended for quite some time and therefore is there a need for him to be quarantined for a further period.

Findings

22. This decision is unanimous.
23. The charges are admitted. Summarising them, charge 1 relates to the use of this respondent's firm's client account as a banking facility and inappropriately. It amounts to professional misconduct and he was suspended for 3 months by the SDT on the 12 August 2016. This charge has not been dealt with in the context of his status as a barrister.
24. Charge 2 related to a finding of the SDT in July 2018 which was later confirmed to an extent by the appeal court in a decision dated 16 April 2019 although significantly the period of suspension was limited to 2 years whereas in the first place the order was that the respondent should be struck off. The court found that the criteria had not been met for him to be struck off.
25. Charge 3 was also dealt with by the SDT and appeal court and it related to an allegation of a conflict of interest between 2 clients and a failure to act with integrity and attracted a sanction that was similar namely a 2-year suspension.
26. Charge 4 relates to failure to report. In particular a failure to report the matters which gave rise ultimately to charge 1. Some matters were not proved including a matter of dishonesty, but he accepts that he failed to report the matters in charge 4.
27. As was pointed out earlier there is a way through this where it was candidly conceded by Mr Harvey QC that a logical route is to adopt to some extent the sanction that was applied by the other tribunal. Mr J Spencer dealt with charges 2 & 3 and concluded that the appropriate sanction was a 2-year suspension. The respondent seems to have approved of this approach and no-one has suggested that the learned Judge was wrong in his approach or that the sanction was anything other than appropriate. It seems to us entirely logical that if it is appropriate to impose it for the practise as a solicitor then it must also be appropriate for the other branch of the law, as a barrister.

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The suspension is being served and is due to expire on 4 July 2020. The suspension from practising as a barrister has virtually run parallel. It started on 6 July and there was then an undertaking, it was withdrawn on 5 August but then the suspension began again on 7 August. Save for 3 days the barrister suspension has run parallel and, in our view, they should continue to run parallel subject to the 3 days which would take the suspension as a barrister up to 7 July 2020.

29. This is the sanction that we impose for charges 2 & 3.
30. For charge 1, this led to the hearing before the SDT and to a suspension as a solicitor in 2016 for 3 months. That misconduct which involved inappropriate use of a client account, was never reported. Because it was never reported, a similar parallel sanction was never imposed. We feel that there should be. It is of course much later now however that delay is due in no small measure to the delay in reporting those matters, and we feel that there ought to be a 3-month suspension as a barrister which must run consecutively for the suspension imposed for charges 2 & 3. They will run until 7 July 2020 and the 3 months suspension for charge 1 will run until 7 October 2020. Just as there was logic in imposing a parallel suspension for charges 2 & 3, the same logic ought to be applied for charge 1. Mr Harvey accepted the logic.
31. Charge 4 is a failure to report. Unlike the other charges it has attracted no sanction whatsoever so far but it is an important charge. It relates to allegations first made in 2016 including an allegation of dishonesty. This matter namely, charge 1 did not come to light until November 2017 but it was not the respondent that reported it, it was an investigation which revealed it and he failed to report it. In this context we start afresh with consideration of the appropriate sanction. At page 63 of version 5 of the sanctions guidance the starting point is set out at part b. and failing to report promptly. The starting point is said to be a low to medium level fine. I was assured that if a fine was imposed that the respondent will be able to find the money within 14 days so we have had to consider whether this is the right way to proceed. But for aggravating features it might have been appropriate to impose a fine. But there was a substantial delay in reporting the matters and even in 2017 it was not reported but discovered. It has led to a delay in dealing with that matter from the point of view of the Bar. Page 73 of sanctions guidance lists a disciplinary finding for a similar breach as an aggravating feature. We have had to take into account that the respondent had charge 1 from 2016 on his record and charges 2 & 3 and they are serious matters. We

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have come to the conclusion that it would be inappropriate to use just the starting point because there are aggravating factors. We take the view that there must be a further period of suspension. In deciding the period, we have taken into account totality and it seemed to us that ordinarily it might have led to 4 months suspension but for totality purposes we will halve it to 2 months.

32. It will follow on the other suspensions and therefore the period of suspension will run until 7 December 2020.
33. There was some doubt at one point as to whether the respondent held a practising certificate at any relevant time. We have been informed that he did between 20.9.17 – 5.7.18 and this would have been impossible had he reported the matters much earlier.
34. Mr Welch: I am not sure whether it is clear enough as to why you have gone down the consecutive rather than the concurrent route.
35. Chair: Regarding charges 2 & 3, Spencer J provided a full judgement. The 2-year suspension deals with that misconduct and that misconduct alone. Charge 1 related to using the client account as a banking facility. It was wholly different to the matters charged in 2 and 3 and so the suspension should be consecutive. Charge 4 is wholly separate and had he reported, action would most probably have been taken much earlier and this is why this should be consecutive too.
36. Mr Welch: Rules 225-229 require that where the barrister is suspended for more than 12 months, the regulations require the tribunal to consider having the sanction stayed pending an appeal.
37. Chair: In the absence of an application by the respondent to have the sanction stayed we are mindful not to take this any further.
38. Mr Welch: If the tribunal does not consider it now and an application is made at a later date, the BSB will have to take the matter to the High Court.
39. Chair: The respondent is suspended in any event as a solicitor. It would not be in his best interests to apply to stay the sanction. We can't see him being allowed to work as a barrister if he can't work as a solicitor. We have looked at the rule, we have

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considered whether we should grant a stay and we are of the view that it is not in his interests to make the application and it is not a course that we should take.

40. Mr Welch: Can I request a full reason for your decision.
41. Chair: This is an unusual case. The suspension for practising as a solicitor will run in any event. If we stay the sanction for practising as a barrister, it is unlikely to be of any help to this respondent as he is unable currently to practise as a solicitor.
42. Mr Welch: But that will not prevent him from applying for a barrister practising certificate.
43. Chair: If he is granted a stay and applies for a certificate, he is unlikely to be allowed to practise as a barrister.

Approved: 22 November 2019

**His Honour Alan Greenwood
Chairman of the Tribunal**

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