



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2018/0325/D5

Mr Zeeshan Saqib Mian
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

Zeeshan Saqib Mian

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 5 May 2022, I sat as Chairman of a Disciplinary Tribunal on 16 June 2022 to hear and determine 12 charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Zeeshan Saqib Mian, barrister of the Honourable Society of Lincoln's Inn.

Panel Members

2. The other members of the Tribunal were:

Lakshmi Ramakrishnan [Lay Member]

Stephanie McIntosh [Lay Member]

Zoe Saunders Barrister Member]

Hayley Firman [Barrister Member]

Charges

3. The attached charges were found proven.

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Parties Present and Representation

4. The Respondent was present and was represented by Alan Steynor, Counsel. The Bar Standards Board (“BSB”) was represented by Jamie Mathieson, Counsel.

Preliminary Matters

There were no preliminary matters.

Pleas

The Respondent denied all the Charges.

Evidence

Mr Mathieson presented the case on behalf of the BSB and relied on the documentation provided to the Tribunal. In particular, the Skeleton Arguments provided by both Counsel and the Respondent’s Response to the Charges. No witnesses were called on behalf of the BSB or the Respondent.

Mr Steynor addressed the Tribunal on behalf of the Respondent. The Respondent gave evidence on Oath and was cross examined by Mr Mathieson. Mr Steynor raised questions in re-examination.

Findings

The parties and the Appellate Court need to be aware that the recording equipment failed at the hearing. This was unknown to the Tribunal at the time of delivering the judgment. The Chair delivered the judgment both extempore and from rough notes. What is set out here has been reconstructed from those notes, from memory and from a note taken by one member of the Panel)

This is the unanimous decision of the Tribunal.

The Respondent Zeeshan Mian (“ZM”) was called to the Bar by Lincoln’s Inn on 24th November 2016. He had previously been admitted as a solicitor in 2007 and was called under the accelerated procedure for those transferring from the other branch of the profession. Issues had arisen concerning the solicitor’s firm with which he was involved. The result was that in 2016 the Solicitors’ Regulatory Authority (“SRA”) imposed conditions on his practising certificate.

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The chronology is important here and should be referred to when considering this judgment. On 7th April 2016 (B127) the SRA informed him that it proposed to impose conditions on his practising certificate. During the subsequent months he availed himself of the various review procedures to challenge this. By a letter dated 5th September 2016 the conditions were confirmed. Indeed, this was the position by 10th November 2016, a matter of around two weeks before his Call.

Meanwhile he had applied for admission to Lincoln's Inn as a student and on 4th May 2016 and signed the requisite admission declaration. At the same time, he signed a Call declaration in similar terms. Normally the admission and call declarations are some time and very often years apart. The student then repeats and confirms that matters in the admission declaration are true and correct. Because of the accelerated procedure they were on the same day. It is clear to us that because of those particular circumstances, the effect of signing the admission and call declarations together is to impose a continuing duty on the student to bring any relevant matters to the attention of the BSB and the Benchers of the Inn. The time lapse between his admission and actual call to the Bar was slightly over 6 months after the declaration.

The declarations contain two important paragraphs No. 2 relates to any pending disciplinary proceedings. No. 4 relates to any circumstances that might reasonably be thought to call into question his fitness to become a barrister. In the footnotes to the declaration there is no actual definition of what are pending proceedings. The Respondent contends that the decision to impose conditions was not a pending proceeding. Whatever may have been the position in April it is abundantly clear to us that by November 2016 there were pending proceedings. Even if we are wrong on this, the Respondent was aware of circumstances which might be thought to call into question his fitness to practice as a barrister and so came within the scope of paragraph 4.

This can be tested by looking at the events between April and November. The Respondent had not only been informed in emails that conditions were being imposed on his practising certificate See (e.g.B129), but he had also taken steps of his own. He took advice from Mr. Geoffrey Williams QC ("GW") an acknowledged expert in this area. GW was in email contact with the SRA on behalf of the Respondent. On 23rd June the SRA informed him that further disciplinary proceedings were being contemplated.

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It is clear to us that because of those particular circumstances, the effect of signing the admission and Call declaration at the same time is to impose a continuing duty on the part of the student to bring to the attention of the BSB or the Inn any matter that might reasonably be thought to call into question his fitness to practise as a barrister.

The Respondent was by November the subject of pending proceedings, but even if we are wrong on that he was aware of circumstances which might be thought to call into question his fitness to practice as a barrister

If a former solicitor has had restrictions and conditions imposed on his practising certificate this is something which ought to be disclosed. It renders call declaration false as it means that matters that should have been disclosed have not been disclosed. It is clear to us that by 10th. November, he knew full well what the position was and nevertheless went ahead with his call to the Bar.

We remind ourselves of the law that we have to apply. The burden of proof is at all times on the BSB. Because these events occurred before 1st April 2019, we must apply the criminal standard of proof in that we must be satisfied so that we are sure or beyond reasonable doubt. We remind ourselves of the relevant cases where dishonesty is alleged. We were referred to various cases, some of them by the Respondent himself rather than his counsel. The two leading cases are Ivey v. Genting Casinos (2017) (UKSC) and R. v. Barton (2020) (CACD). The test is the same in both civil and criminal cases and it is our view that the same applies to the proceedings in this Tribunal. The case of R. v. Ghosh (1982) (CACD) no longer represents the law and any cases based on it should not be followed. Those such cases to which we were referred are of no assistance.

The test involves two questions:

1. What did the [Respondent] himself actually know at the time?
2. If that is what he knew, would an ordinary, decent, law-abiding person regard his conduct as dishonest?

The Respondent, in our judgement plainly knew that these matters were pending and he also knew of the imposition of conditions. In his evidence he has almost admitted as much.

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The Respondent submits that these matters were not relevant and that he did not believe them to be relevant. We have to factor this into our decision when we consider the 2nd question in the test of dishonesty.

The Respondent is not an uneducated man nor is he a novice in the legal profession. He had been a solicitor for nearly 10 years before he was called to the Bar. He was aware of what the SRA was investigating as the email correspondence shows.

We have considered the evidence in the documents about the Respondent's mental health. We accept that he was depressed but we do not accept that he was unable to make relevant judgements.

In his evidence he said that he formed a judgement of his own. He did not take any advice on the issue from anyone else at the Inn but took it upon himself to decide that it was not relevant.

The burden of proof is on the BSB to disprove his explanation. All the BSB's evidence has been contained in documents. The Respondent did not ask for any oral evidence to be called on behalf of the BSB

We are wholly unable to accept the Respondent's assertion that it was not relevant. It must have been obvious to him that he should have informed the Benchers and the BSB of these matters, He failed to inform the Benchers of the Inn or the BSB of them.

We make every allowance that we can but, in the end, as far as charges 1 and 2 are concerned we are driven to the conclusion that he knew perfectly well about these matters and made a conscious decision to withhold them. On Charge 1 this would diminish the trust and confidence that the public has in the profession.

On Charge 2 we are satisfied that this would undermine his honesty and or his integrity. In our judgment both his honesty or integrity would be undermined.

Accordingly, we find charges 1 and 2 proved.

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Charges 3 to 7 involve his failure to inform the BSB of these matters after his call. He failed to inform the BSB, and no good reason has been given why he did not. We are therefore sure that that he failed to act with honesty or integrity. He should have informed the BSB.

Charge 4 We are satisfied that he behaved in a way which is likely to undermine the trust in the profession.

Charge 5. He failed to be open and cooperative.

Charge 6. This undermines his honesty and integrity.

Charge 7. We find this proved as a simple matter of failing to report.

Charges 8 to 12 involve a later series of events. They move forward to early 2018. It is quite clear to us that by 27th March 2018 and certainly on 3rd April the Respondent was informed that proceedings were going to be taken against him by the Solicitors' Disciplinary Tribunal ("SDT"). The Respondent did not inform the BSB of the proceedings or their outcome and it was not until the BSB had discovered the matter in early 2019 that he informed them.

No real explanation has been put forward for his failure to inform the BSB. We find all of these charges proved.

In reaching our decision we have taken into account the Respondent's good character and apply it in the usual way that it makes it less likely but not impossible that he has committed the offences.

In the result, we unanimously find all of the charges proved.

Mr Steynor addressed the Tribunal in mitigation.

Sanction and Reasons

Following retirement to consider sanction, the Tribunal, by a majority of 3 to 2, concluded that the appropriate sanction was that of disbarment.

We apply the Sanctions Guidance issued at the beginning of 2022. This applies to the date of the determination regardless of when the events occurred.

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Section 5 deals with dishonesty. We have found dishonesty proved specifically in relation to Charges 2, 6 and 11. Others involve undermining trust and confidence in the profession. “Dishonesty” here includes but is not limited to making false statements and declarations and concealing information. The Guidance also states that where a finding of dishonesty is made, the starting point is that such a finding will lead to disbarment in all but the most exceptional circumstances. Examples of these are given. They include but are not limited to such matters as the following:

1. Admitting the misconduct at the earliest opportunity
2. Self-reporting
3. Demonstrating genuine remorse
4. Co-operation with the investigation
5. Efforts to remedy the harm caused
6. Attempts to prevent repetition of the offending conduct
7. Acting on advice
8. Lack of experience
9. Health issues
10. Previous good character

We remind ourselves of what the Guidance says. No matter how strong the mitigation, disbarment will probably be the most appropriate sanction where dishonesty has been proved. We also remind ourselves of the words of Lord Bingham that maintaining the integrity and good reputation of the profession as a whole is more important than the fortunes of any individual member of it (*Bolton v. Law Society 1994*). It reminds us of the need to maintain public trust and confidence in the profession.

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When we look at the potential mitigation, so many of the mitigating factors are absent from this case. For example, those at 1 to 3 are wholly absent. As to 4, it is true that he did not obstruct the investigation, but this is as far as it goes. 5 and 6 are not applicable or relevant. He did not act on advice, and he did not lack experience. As to 9 we note the evidence about his mental state, but he was not incapable of making a rational decision. As to his good character this is reduced by the fact that the SDT eventually found the charges against him proved and imposed a fine.

Looking at the mitigating factors, he has not been able to demonstrate that they apply.

Regrettably the decision of the tribunal has to be that looking at those factors and the Guidance, the Respondent must be disbarred on the charges of dishonesty. It can be applied to the rest of the charges concurrently or we can make no separate sanction.

The sanction is one of disbarment.

As the decision is disbarment this usually takes effect after 21 days subject to any appeal. We direct immediate suspension of the Respondent's practising certificate.

The Respondent must pay the BSB's cost in the sum claimed and may be at liberty to make an arrangement for the payment of the same.

The minority view was that although the Respondent's conduct was serious it was not conduct so serious as to merit disbarment. In the circumstances a substantial period of suspension would have been appropriate and proportionate but the length of this was not discussed. There was very limited harm and although we all agreed that this was a case which was in the lowest category, where we effectively disagreed was that there was nothing exceptional about this case which merited a departure from the guidance that states that disbarment is the only appropriate sanction.

Costs

Mr Mian was ordered to pay Costs of £2,670.00 to the Bar Standards Board. Time to pay to be agreed with the Bar Standards Board.

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5. The Treasurer of the Honourable Society of Lincoln's Inn is requested to take action on this report in accordance with rE239 of the Disciplinary Tribunal Regulations 2017.

Approved: 6 July 2022

His Honour Andrew Goymer
Chairman of the Tribunal

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