



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2020/0824/D5

David Owusu-Yianoma
The Director-General of the Bar Standards Board
The Chair of the Bar Standards Board
The Treasurer of the Honourable Society of Inner Temple

Disciplinary Tribunal

David Owusu-Yianoma

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 6 January 2023, I sat as Chairman of a Disciplinary Tribunal on 8-10 February and 11+12 May 2023 to hear and determine seven charges of professional misconduct contrary to the Bar Standards Board Handbook against David Owusu-Yianoma, barrister of the Honourable Society of the Inner Temple.

Panel Members

2. The other members of the Tribunal were:

Geoffrey Brighton [Lay Member]
Stephen Harpum [Lay Member]
Josephine Davies [Barrister Member]
Siobhan Heron [Barrister Member]

Charges

3. The following charges were found proven.

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Charge 1

Statement of Offence

Professional misconduct, contrary to Core Duty 1 of the Code of Conduct of the Bar of England and Wales (Part 2 of the Bar Standards Board Handbook – 4th Edition).

Particulars of Offence

David Owusu-Yianoma, a barrister, failed to observe his duty to the court in the administration of justice by completing and submitting a Form NG, together with an Advice on Appeal/ Grounds of Appeal on 6 June 2019, which contained information that was incorrect and was recklessly misleading in that: (a) Mr Owusu-Yianoma indicated on the Form NG that he had complied with his obligations under R v McCook (b) Mr Owusu-Yianoma had not complied with his McCook obligations in that as fresh appeal counsel he had not approached the solicitors and/or counsel who had acted at trial to ensure that the factual basis upon which the Advice on Appeal/Grounds of Appeal were advanced were correct, and/or had not taken steps to obtain objective and independent evidence in support of the Grounds of Appeal (c) Mr Owusu-Yianoma knew, or ought to have known, that he had not complied with his obligations as fresh appeal counsel.

Charge 3

Statement of Offence

Professional misconduct, contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (Part 2 of the Bar Standards Board Handbook – 4th Edition).

Particulars of Offence

David Owusu-Yianoma, a barrister, behaved in a way which is likely to diminish the trust and confidence which the public places in him or in the profession by completing and submitting a Form NG, together with an Advice on Appeal/Grounds of Appeal on 6 June 2019, which contained information that was incorrect and was recklessly misleading in that: (a) Mr Owusu-Yianoma indicated on the Form NG that he had complied with his obligations under R v McCook (b) Mr Owusu-Yianoma had not complied with his McCook obligations in that as fresh appeal counsel he had not approached the solicitors and/or counsel who acted at trial to ensure that the factual basis upon which the Advice on Appeal/Grounds of Appeal were advanced were correct, and/or had not taken steps to obtain objective and independent evidence in support of the grounds of appeal (c) Mr

Owusu-Yianoma ought to have known, that he had not complied with his obligations as fresh appeal counsel.

Charge 7

Statement of Offence

Professional misconduct, contrary to rC3.3 of the Code of Conduct of the Bar of England and Wales (Part 2 of the Bar Standards Board Handbook – 4th Edition).

Particulars of Offence

David Owusu-Yianoma, a barrister, failed to observe his duty to the court by failing to take reasonable steps to avoid wasting the court's time in that: (a) Mr Owusu-Yianoma submitted the Form NG and supporting Advice on Appeal/Grounds of Appeal on 6 June 2019 indicating that he had complied with his McCook obligations, which was incorrect and, in doing so, recklessly misled the court (b) Mr Owusu-Yianoma failed to comply with his obligations as fresh appeal counsel to approach the solicitors and/or counsel who had acted at trial to ensure that the factual basis upon which the Advice on Appeal/Grounds of Appeal were advanced were correct, and/or had not taken steps to obtain objective and independent evidence in support of the Advice on Appeal/Grounds of Appeal.

Parties Present and Representation

4. The Respondent was present and was represented by Selva Ramasamy KC. The Bar Standards Board ("BSB") was represented by Joanna Kane.

Preliminary Matters

5. After discussions between the parties on 8 February 2023, the substantive hearing commenced on 9 February 2023.

Pleas

6. Mr Owusu-Yianoma denied charges 1-4, admitted charges 5 and 6, and admitted charge 7 in part (based on rC3.3 and recklessness).

Evidence

7. The BSB's case was presented solely on the documentary evidence; there was no oral evidence from the BSB for the Tribunal to consider.

8. Mr Owusu-Yianoma was called to give evidence. His witness statement and an open letter dated 7 February 2023 stood as his evidence in his chief. He was cross-examined by Ms Kane, was re-examined by Mr Ramasamy, and answered questions from the Tribunal.

Findings

9. On 11 May 2023 the Tribunal announced its decision. The Tribunal said that it had considered the matter very carefully, had listened to extensive oral evidence at the hearing in February 2023, and had considered the written submissions, both opening and closing submissions, prepared by counsel for the BSB and on behalf of Mr Owusu-Yianoma.
10. The Tribunal found on the balance of probabilities that charges 1, 3 and 7 were proved on the grounds that Mr Owusu-Yianoma had submitted a form NG and an advice on appeal/grounds for appeal on 6 June 2019 which contained information which was incorrect and recklessly misleading on the grounds set out in charges 1, 3 and 7, and that he ought to have known that he had not complied with his obligations as fresh appeal counsel.
11. The Tribunal noted that Mr Owusu-Yianoma had previously admitted charge 7 on the grounds of recklessness and, as already indicated, found this charge proved on the balance of probabilities.
12. The Tribunal did not find charges 2, 4, 5 and 6 proved, and noted that charges 5 and 6 were alternatives to charges 1 to 4.
13. On 12 May 2023 the Tribunal provided a further summary of the reasons for its decision. The Tribunal found recklessness established in this case on the balance of probabilities for the following reasons. Mr Owusu-Yianoma was aware, when he ticked the box in form NG, that there was a risk that the statement was not true in that there was a risk that he had not complied with the duties under *R v McCook* [2014] EWCA Crim 734, and in those circumstances, which include the fact that he had made no attempt to check the *R v McCook* guidance personally, it was unreasonable of him to have taken that risk. Moreover it was clear to the Tribunal that the online form NG was very easy to follow and complete and this was relevant to the finding of recklessness.
14. Secondly, Mr Owusu-Yianoma admitted that he did not in fact comply with his obligations under *R v McCook*. The Tribunal cited the text in charge 5, which was an admitted charge, albeit not relevant to the Tribunal's determination: "Mr Owusu-Yianoma submitted an

Advice on Appeal/Grounds of Appeal having failed to comply with his obligations as fresh appeal counsel to approach the solicitors and/or counsel who had acted at the trial to ensure that the factual basis upon which the Grounds of Appeal were advanced were correct, and/or had not taken steps to obtain objective and independent evidence in support of the Advice on Appeal/Grounds of Appeal.” In those respects, the Tribunal found also that, in circumstances where he was an experienced criminal specialist practitioner, he ought to have known the importance of knowing the law and specifically should have checked the law and guidance specified in form NG in preparation of a criminal appeal where he was acting as fresh counsel.

15. The Tribunal’s conclusion that Mr Owusu-Yianoma was reckless in the manner set out in charges 1, 3 and 7 was supported by the following findings which the Tribunal made:
 - (a) He sought to engage a non-legally qualified third party to make enquiries of the previous solicitors concerning the trial process.
 - (b) He had not personally checked the guidance in *R v McCook*.
 - (c) His oral evidence (a) that it was preferable for an appellate judge to decide the merits or otherwise of the appeal even if (as he acknowledged) he had not checked the guidance in *R v McCook* and (b) that he would still have drafted and submitted grounds of appeal even if the trial solicitors had refuted the factual matrix of the appeal in advance of the submission of the appeal was, in the opinion of the Tribunal, wholly misconceived.
 - (d) He failed to directly contact previous trial counsel and/or solicitors to ascertain the significance of the allegations made against them in the appeal documentation.
 - (e) He failed to have regard to the potential impact on the proposed appellant of pursuing a non-meritorious appeal.

16. The Tribunal did not find sufficient evidence to justify a finding of dishonesty having regard to his state of mind at the time he ticked the box, despite finding significant and troubling inconsistencies in the presentation of his oral evidence at the hearing.

Sanction and Reasons

17. Following written and oral submissions on sanction from Ms Kane and Mr Ramasamy, and having retired to consider its decision, the Tribunal announced its decision on sanction.

18. The Tribunal was mindful of the overriding objective that sanctions should not be punitive but should reflect the need to protect the public and consumers of legal services, should maintain public confidence and trust in the profession and the enforcement system, and

maintain and promote high standards of behaviour and performance at the Bar. Sanctions should act as a deterrent to individual barristers or regulated entities, as well as the wider professional importance of deterring a barrister from engaging in the misconduct which was subject to the sanction.

19. The Tribunal had received detailed written submissions on behalf of the BSB and Mr Owusu-Yianoma and had considered these with great care.
20. The Tribunal was satisfied that the misconduct group in the sanctions guidance had been properly identified by Mr Owusu-Yianoma's actions in recklessly misleading the court as proved in the disciplinary charges 1, 3 and 7 and that the Tribunal was guided by section F of the sanctions guidance: "misleading the court and others".
21. In respect of the seriousness of the professional misconduct which the Tribunal had found proved, the Tribunal concluded that the nature of the reckless misleading was in itself serious and made within a professional context. The Tribunal found that Mr Owusu-Yianoma had control over and complete responsibility for the circumstances which gave rise to the misconduct and that the harm consequent upon misleading the court could reasonably have been foreseen.
22. When considering the harm, the Tribunal considered that his misconduct impacted on a number of agencies, individuals and organisations which were adversely affected, and that the harm was significant. The appellate judge had to consider an unmeritorious appeal and the Court of Appeal had to investigate whether the factual basis of the appeal was accurate. The appeal notice and the grounds of appeal included serious and misconceived allegations against other legal professionals which required them to set out their response to the points raised in the appeal documents.
23. Self-evidently, Mr Owusu-Yianoma's conduct as set out above impacted on the public confidence in the legal profession. Furthermore, the misconduct had the potential to have an adverse impact on the administration of justice and led to an extensive enquiry into the accuracy of the allegations made in the grounds of appeal and allegations which were wholly unmeritorious and led to a misdirection of judicial resources.
24. In its view, the Tribunal determined that the culpability and harm factors were such that this was significant misconduct and significant harm, and that the conduct fell within the upper range of seriousness.

25. The Tribunal considered, having regard to the evidence heard from Mr Owusu-Yianoma at the hearing, that he demonstrated a lack of insight into his culpability and the consequences of his actions, particularly having regard to his level of professional experience.
26. In respect of mitigating factors, the Tribunal acknowledged the partial admissions in respect of recklessness which were conceded on his behalf at the outset of the hearing in February 2023, and the Tribunal recognised his apology in respect of his conduct. The Tribunal also took into account his previous good character and the positive testimonials which the Tribunal had received.
27. The Tribunal appreciated the impact which the professional misconduct had had on Mr Owusu-Yianoma and recognised that he had taken steps to educate himself in relation to the conduct of the appeal process.
28. The Tribunal also recognised that the time of the commission of the disciplinary offences Mr Owusu-Yianoma was facing difficult and challenging personal circumstances.
29. Given the foregoing, it was the unanimous decision of the Tribunal that the Respondent be suspended for 12 months concurrent on each charge in relation to the three charges found proven (charges 1, 3 and 7).
30. Following submissions from the parties on costs, the Respondent was ordered to pay £5000 (including VAT) towards the BSB's costs, with a payment plan to be agreed with the BSB.

Dated: 31 May 2023

**Her Honour Sara Staite
Chairman of the Tribunal**