



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case Reference: 2023/1013/D5

Mr Lewis Robert Simon Tresman

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of: Gray's Inn, November 1980.

Disciplinary Tribunal

Mr Lewis Robert Simon Tresman

1. In accordance with an appointment made by the President of the Council of the Inns of Court in a Convening Order dated 2 February 2024 I sat as Chairman of a Disciplinary Tribunal on 19 February 2024 to hear and determine 4 charges of professional misconduct contrary to the Bar Standards Board Handbook against Mr Lewis Robert Simon Tresman, barrister of the Honourable Society of Gray's Inn.

Panel Members

2. The other members of the Tribunal were:

Monica Stevenson (Barrister Member)

Ruth Gray (Barrister Member)

Kenneth Cameron (Lay Member)

Andrew Ward (Lay Member)

Charges

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3. Charges 2 and 4 were admitted by the Respondent. Charges 1 and 3 were found proved.

Charge 1

Statement of Offence

Professional misconduct contrary to paragraph 301(a)(i) of the Code of Conduct of the Bar of England and Wales (8th Edition).

Particulars of Offence

Lewis Tresman, a practising barrister, engaged in conduct which was dishonest or otherwise discreditable to a barrister, in that, from around June 2007 until 5 January 2014, he knowingly allowed Staple Inn Chambers to invoice his professional fees with added VAT despite knowing that he was not registered for VAT at the time.

Charge 2

Statement of Offence

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

Particulars of Offence

Lewis Tresman, a practising barrister, engaged in conduct which was likely to diminish public confidence in the legal profession or otherwise bring the legal profession into disrepute, in that, from around June 2007 until 5 January 2014, he knowingly allowed Staple Inn Chambers to invoice his professional fees with added VAT despite knowing that he was not registered for VAT at the time.

Charge 3

Statement of Offence

Professional misconduct contrary to Core Duty 3, rC8 and rC9.1 of the Bar Standards Board Handbook (Versions 1.0-4.6).

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Particulars of Offence

Lewis Tresman, a practising barrister, was dishonest, in that, from 6 January 2014 until 23 February 2023, he knowingly allowed Staple Inn Chambers to invoice his professional fees with added VAT despite knowing that he was not registered for VAT at the time.

Charge 4

Statement of Offence

Professional misconduct contrary to Core Duty 5 of the Bar Standards Board Handbook (Versions 1.0-4.6).

Particulars of Offence

Lewis Tresman, a practising barrister, behaved in a way that is likely to diminish to trust and confidence which the public places in him or the profession, in that, from 6 January 2014 until 23 February 2023, he knowingly allowed Staple Inn Chambers to invoice his professional fees with added VAT despite knowing that he was not registered for VAT at the time.

Parties Present and Representation

4. The Respondent was present at the hearing. He was not represented. The Bar Standards Board (“BSB”) was represented by Mr Winston Jacob.

Findings

5. Mr Lewis Robert Simon Tresman, who was called to the bar in November 1980, appears before the Tribunal today on four charges. All of the charges arise out of the same set of circumstances. Mr Tresman has accepted that charges 2 and 4 are made out. He does not accept charges 1 and 3.
6. The BSB has been represented by Mr Jacob. Mr Tresman appears in person. He agreed, at the request of the Tribunal, to give evidence. Mr Jacob reminded the Tribunal that it was up to Mr Tresman whether or not he chose to give evidence. Mr Tresman said it would be his preference to give evidence on oath because he wished to make sure that the Tribunal appreciated his understanding as to what happened.

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7. The charges are of serious professional misconduct. The background to those charges is as follows.
8. In July 2004, Mr Tresman was declared bankrupt. The creditor in the bankruptcy petition was HMRC, to whom Mr Tresman owed money by way of income tax. As a consequence of having been adjudged bankrupt, in December 2004, he was deregistered for VAT. He was never re-registered for VAT.
9. In the early part of 2007 the bankruptcy was discharged.
10. During the period the Respondent was subject to the bankruptcy, his income and outgoings were scrutinised by the trustee of the bankruptcy. That was no longer the case once the bankruptcy was discharged.
11. The Respondent's Chambers continued to charge clients for VAT for Mr Tresman's work. They did so using the VAT number which had applied prior to the bankruptcy in the belief that it was a valid number. Mr Tresman himself did not realise that the registration number was no longer valid. He told us, as indeed he had said in correspondence with the BSB, that it dawned on him at some point in the summer of 2007 that something was amiss because he was not receiving any forms from HMRC to fill in for VAT returns even though Chambers were charging VAT for his work, and he was receiving VAT. He realised then that he should not be receiving these monies.
12. He says that he always intended to repay the VAT. Unfortunately, he had started to gamble, having found himself one day in an arcade where he started to play the machines and very soon thereafter he became addicted. It was at the forefront of his evidence to this Tribunal that he never intended to keep the VAT money permanently. He persuaded himself that there would come a time when he would be able to repay it all. He reminded the Tribunal that he has repaid to the Legal Aid Agency the sum of £22,119.85 which it had accepted as a settlement. That is a fraction of the VAT charged on legal aid work. As of today, it seems that in the region of £90,000 has been written off by the Legal Aid Agency.

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13. In 2023, the Legal Aid Agency contacted Mr Tresman and or his Chambers, presumably having spotted a problem with the VAT registration number. Mr Tresman said that was his wake-up call. He immediately stopped gambling. He realised that he had been in a downward spiral, and it simply had to stop.
14. The charges concern a period from June 2007 until February 2023 when Mr Tresman's Chambers ceased charging VAT on his fee notes, it having become clear to them that Mr Tresman was not registered for VAT.
15. Although the facts are constant throughout, the charges are framed to cover two separate periods because the applicable Code of Conduct changed over time. Charges 1 and 2 are brought under the Code of Conduct (8th Edition) which was valid until 5 January 2014. Charges 3 and 4 are brought under the Code of Conduct (9th Edition) which is in the BSB Handbook, and which applied from 6 January 2014 onwards.
16. The law that applies is the same in respect of both periods.
17. The criminal standard of proof applies to all the charges. We must be satisfied so that we are sure that all elements of the charges are made out.
18. The difference between the charges which are denied and the charges which are admitted is the issue of dishonesty. For example, charge 1 charges the Respondent with being *"engaged with conduct which was dishonest or otherwise discreditable to a barrister, in that, from around June 2007 until 5 January 2014, he knowingly allowed his Chambers to invoice his professional fees with added VAT despite knowing that he was not registered for VAT at the time."*
19. Charge 2 is identical in terms of the facts, but it is worded as follows: *"Lewis Tresman...engaged in conduct which was likely to diminish public confidence in the legal profession or otherwise bring the legal profession into disrepute"*. The period concerned is the same as the period in charge 1.
20. Charges 3 and 4 are similarly distinguishable by the inclusion of the word 'dishonest' in Charge 3.

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21. We have been referred by Mr Jacob to the authority of *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67; [2018] AC 391. In particular, paragraph 74 is relied upon because this deals with the crucial issue in this case – i.e. that of dishonesty. It is clear from *Ivey v Genting Casinos* that the Tribunal must apply a two-stage test. The Tribunal must first determine as a matter of fact, subjectively, the state of the individual's state of knowledge or belief as to the facts.
22. What was Mr Tresman's actual state of knowledge or belief as to the facts?
23. It is simple. He has said, both in writing and orally to the Tribunal, that he was aware from June 2007 onwards that he was not registered for VAT. He was aware that Chambers were charging VAT on his fees. He was aware he was receiving VAT on his fees. That was his state of knowledge. It is not disputed. Accordingly, it is beyond doubt that the first limb of the test in *Ivey v Genting Casinos* is satisfied.
24. The second limb of the test is whether the conduct in question would have been considered to be dishonest, applying the standards of ordinary, decent people.
25. Mr Tresman says the element of dishonesty in charges 1 and 3 is not made out because he had no intention to permanently deprive the payers of the money. It was always his intention, one way or another, to repay the VAT which had been charged wrongly.
26. Mr Tresman misunderstands the law. He appears to be importing into the alleged offence charged here the mens rea for the offence of theft i.e. an intention to permanently deprive. Mr Tresman was invited to address the Tribunal on any authority which supported his proposition. He was unable to do so.
27. We are satisfied, without any hesitation, that the wording of charges 1 and 3 could not be clearer. The Tribunal has to be sure he was dishonest by the standards of ordinary decent people. The Tribunal does not have to be sure that he had an intention to permanently deprive.

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28. We are satisfied so that we are sure that the ordinary decent person would consider Mr Tresman's conduct to be dishonest. Mr Tresman's insistence that it never crossed his mind to keep the money is completely irrelevant.
29. In our unanimous judgment, Mr Tresman's conduct was dishonest and Charges 1 and 3 are made out.

Discrete Issue as to publicity

30. After the above findings and before and prior to deciding sanctions, a discrete issue arose.
31. On the charge sheet, the name of the Chambers to which the Respondent belongs/belonged is identified. Those charges were read out to the Respondent. The charges themselves go back many months. In closing submissions, the Respondent expressed concern that his Chambers might suffer as a consequence of any publicity about these proceedings. No application was made for any kind of injunctive remedy. For the avoidance of doubt, I am not suggesting that it would be appropriate to pursue an application for an injunction to prevent publicity.
32. Mr Jacob was invited to comment on this matter, particularly because the Respondent is not represented. Mr Jacob informed the Tribunal that the BSB was neutral as to whether or not the Chambers be identified. He suggested one way around this issue might be to amend the charge sheet to remove the name of the Chambers and simply refer to 'Chambers' and, as a belt and braces approach, and to then invite Mr Tresman to respond to the amended charges.
33. As attractive as that invitation might appear at first blush, for the following reasons we do not accept it. First, it would be an unusual and possibly irregular step to take. Second, the Chambers have been named already in the course of evidence. Third, this is a public hearing and although nobody would want to go out of their way to identify the Chambers, there is something uncomfortable about going out of the way to avoid identifying them. In principle, in professional disciplinary proceedings, it is important that the public are aware of the proceedings and that the hearings are open.

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34. I stress that there is no suggestion and has never been any suggestion that the Respondent's Chambers have behaved inappropriately or dishonestly.
35. We do not permit the charge sheet to be amended.

Sanction and Reasons

36. We apply the Sanctions Guidance version 6 which is applicable from 1 January 2022. It is agreed that the misconduct falls within Group A - dishonesty.
37. The Respondent concealed information dishonestly in that he did not tell his Chambers or any of his solicitors or lay clients that he was not registered for VAT.
38. In terms of culpability and harm, the following factors apply. The nature of the dishonest misconduct was very serious. It involved dishonestly obtaining money which, if it was genuinely payable, was payable to HMRC and not to the Respondent himself. It continued for over 15 years. Although initially the act of dishonesty was not calculated, as soon as the Respondent realised that he was receiving money to which he was not entitled he could and should have taken steps to repay the money and to regularise his VAT status. His failure to do so involved an element of calculation.
39. The next factor is the extent to which he benefitted or intended to benefit from the dishonesty. Plainly, he benefitted financially – ultimately to the tune of roughly £130,000 paid by the Legal Aid Agency and, on his own estimate, around £18,000 paid by privately funded clients.
40. The dishonesty had an adverse effect on others, namely HMRC, the Legal Aid Agency and any privately paying client who paid VAT when they did not have to do so. It had an adverse effect on his Chambers who became involved unwittingly in the deception. There must be at least the risk of some damage to the reputation of Chambers.

The extent to which the public confidence in the profession is undermined is very significant.

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41. Turning to additional culpability factors set out in Annex A, the Respondent had sole responsibility for the circumstances which gave rise to this misconduct. He was in a position of trust in the Chambers of which he was a founding member and in which he had the role of pupil master from time to time.
42. The Respondent put his own interests ahead of those of his lay clients. If, as Mr Tresman contended in oral evidence, he never earned enough money to be required to register for VAT, his clients would not have been obliged to pay VAT, so they paid over the top for the services rendered and he kept that money. The harm was foreseeable. It is notable that the Respondent's contention that his income was below the threshold for mandatory VAT registration is at odds with the provisions of the Chambers constitution (which he told the Tribunal he co-wrote) required all members to register for VAT. Finally, the misconduct could have amounted to the commission of a criminal offence, whether or not there have been criminal convictions or charges.
43. In terms of aggravating factors set out in Annex A, the only applicable aggravating factor we identify is the Respondent's level of professional experience. He was called in 1980, so he was already of many years' call when the serious professional misconduct began.
44. In terms of the mitigating factors in Annex A, we acknowledge that the Respondent admitted his misconduct to the Legal Aid Agency and to his Chambers but only, we are bound to observe, once he knew that the Legal Aid Agency wanted to speak to him in February 2023, by which time it had gone on for over 15 years.
45. We take into account that the Respondent cooperated fully with the BSB investigation. It is obvious from the emails that he provided information when requested and he did not seek to obfuscate.
46. We have considered whether voluntary steps were taken to remedy or rectify the breach. Well, steps have been taken, but it is difficult to assess the extent to which they were voluntary. The Legal Aid Agency have accepted the £22,119.85 in settlement of the total monies owed which exceeded £120,000.

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47. We have taken into account that the Respondent has no other regulatory findings against him. Although the Respondent has not provided any references, we understand and accept from him that the reason for not seeking character references is because he is aware from the Sanctions Guidance that where the misconduct involves dishonesty, such references (however glowing) would carry limited weight.
48. We have considered very carefully the Respondent's personal circumstances. The Respondent explained his behaviour by saying that he had become addicted to gambling. He would spend around £30,000 per year on gambling. This caused the breakdown of his relationship. He ended up being forced to sell a property at a time when the market was flat, and he applied the modest equity together with a small inheritance to discharge the bankruptcy and repay certain debts.
49. The Respondent told us that the day he was confronted with the knowledge that the Legal Aid Agency was interested in him was the day he stopped gambling. We give him credit for the fact that, notwithstanding a chronic addiction which caused him to behave very dishonestly, he was able to stop gambling immediately in one day and not go back.
50. We have taken all these matters into account. However, bearing in mind that this is a case of serious dishonesty, the mitigation afforded by these unhappy personal circumstances is very slight.
51. The unanimous conclusion of the panel is that the seriousness of this dishonesty is upper range (i.e. significant culpability and significant harm) for which the indicative sanction is disbarment.
52. The Respondent was invited to say whether he wished to advance exceptional circumstances as a reason why he should escape disbarment. He said, with his customary reasonableness and candour, that he did not seek to argue that there were exceptional circumstances for not disbarring him. Applying our minds to everything he has told us so openly about his background, we agree there are no exceptional circumstances to depart from the indicative sanction of disbarment.

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The commencement of the sanction

53. Rule E225.1 and rE227 taken together provide that where a Respondent is to be disbarred, the sanction should take effect immediately unless in the circumstances it is inappropriate to do so.
54. We have heard submissions from the Respondent and from the BSB on whether the disbarment should be deferred. The Respondent contends that, because of forthcoming hearings, particularly a hearing listed for three days in March, the disbarment should be deferred. He has drawn our attention to 6.45 at page 28 in the Sanctions Guidance which provides a scenario where it might be appropriate to defer a sentence, namely where there would be an undue detriment or impact on a client because an important hearing is due to take place in the days after the disciplinary hearing. The Respondent says, and we have no reason to doubt what he tells us, that his lay client is a vulnerable woman. She finds it difficult to relate to people and she has already dispensed with the services of two lawyers, whereas she is able to trust the Respondent. The forthcoming hearing is a fact-finding hearing in the High Court after which (although it may be many months down the line) there is likely to be a hearing at which the future care plan for the child will be decided. He also asks us to bear in mind a case to be heard in six weeks or so where he is representing a foreign national in a public law family proceedings. He has emphasised the importance of the cases for the parents he represents and the likely difficulty of instructing replacement counsel if he is unable to continue particularly with the case listed in March. He says that his instructing solicitors are aware of this disciplinary hearing and are keen for him to continue to act.
55. The BSB oppose the invitation to defer the sanction. They contend that it is not in the public interest to do so given the seriousness of the charges and the findings of fact made.
56. Mr Tresman responds to this by arguing, with reference to the March case, that it is not in the public interest to deprive a vulnerable client who places her faith in a particular advocate to go without his services at such an important hearing. He says it is disproportionate to prevent him from representing this particular vulnerable adult.

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57. We have weighed very carefully those arguments. Our unanimous view is that it is not inappropriate to defer the activation of the sentence. We take judicial note that very often, regrettably, litigants do have a change of Counsel, often as late as one or two days before a hearing. It is unlikely, in our judgment, that alternative Counsel will not be found but if that turns out to be impossible to instruct replacement counsel, no doubt an application will be made to the High Court judge to adjourn the hearing. We are far from satisfied that we should depart from the usual course.
58. The sanction is disbarment with immediate effect. BSB is directed to suspend the Respondent's practising certificate with immediate effect as a consequence of the immediate disbarment.

Costs

59. The BSB has sought an order for costs in the sum of £1,560.
60. The Respondent acknowledges, very fairly, that the sum claimed is reasonable.
61. Normally the BSB's costs are recoverable. We have listened to everything the Respondent has said in relation to his means. Although there is no documentary evidence in support of his position, we are mindful that the order for disbarment cuts off all sources of income for him. In the circumstances, although the BSB is entitled to pursue its costs, the majority view of this Tribunal is that there should be no order as to costs.
62. The Treasurer of the Honourable Society of Gray's Inn is requested to take action on this report in accordance with rE239 of the Disciplinary Tribunal Regulations 2017.

Dated: 23 February 2024

HER HONOUR JANET WADDICOR
Chair of the Tribunal

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