



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2023/0875/D5

Stephen Nicholas Simon Taylor

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

Stephen Nicholas Simon Taylor

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 20 March 2024, I sat as Chair of a Disciplinary Tribunal on 10 April 2024 to hear and determine three charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Stephen Nicholas Simon Taylor, barrister of The Honourable Society of Inner Temple Inn.

Panel Members

2. The other members of the Tribunal were:

Vince Cullen (Lay Member)

Melissa West (Lay Member)

Yusuf Solley (Barrister Member)

Paul Ozin KC (Barrister Member)

Charges

3. The following charge was admitted:

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Charge 1

Statement of Offence

Professional misconduct, contrary to Core Duty 3 and/or rC9.1 of the Bar Standards Board Handbook version 4.6 (9th Edition).

Particulars of Offence

Stephen Nicholas Simon Taylor, a self-employed barrister, acted without honesty and integrity in that, on 16 August 2022, he knowingly misled his client by falsely stating that the client's case papers were likely to be at Mr Taylor's home address, when at such time he knew this to be untrue.

4. The following two charges were not pursued by the Bar Standards Board:

Charge 2

Statement of Offence

Professional misconduct, contrary to Core Duty 5 and/or rC8 of the Bar Standards Board Handbook version 4.6 (9th Edition).

Particulars of Offence

Stephen Nicholas Simon Taylor, a self-employed barrister, behaved in a way that is likely to diminish the trust and confidence which the public places in him (or in the profession), and undermined his integrity in such a way that could be seen in that on 16 August 2022, he knowingly misled his client by falsely stating that the client's case papers were likely to be at Mr Taylor's home address, when at such time he knew this to be untrue.

Charge 3

Statement of Offence

Professional misconduct, contrary to Core Duty 2 of the Bar Standards Board Handbook version 4.6 (9th Edition).

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Particulars of Offence

Stephen Nicholas Simon Taylor, a self-employed barrister, failed to act in the best interests of his client, in that on 16 August 2022, he knowingly misled his client by falsely stating that the client's case papers were likely to be at Mr Taylor's home address, when at such time he knew this to be untrue.

Parties Present and Representation

5. The Respondent was not represented. The Bar Standards Board ("BSB") was represented by Mr Nicholas Bard of counsel.

Preliminary Matters

6. Mr Taylor indicated before the hearing that he intended to accept Charge 1 but that he denied Charges 2 and 3. The panel considered, as a preliminary matter, whether to accept the Bar Standards Board's approach that Mr Taylor's acceptance of Charge 1 sufficiently reflected the overall substance of the complaint against Mr Taylor.
7. The panel agreed that the Bar Standards Board's approach was acceptable, but noted that the Sanctions Guidance required the panel to take into account the totality of Mr Taylor's conduct, including the quality of the service provided by him to the client, and that the impact of his conduct on, for example, the trust and confidence that the public put in the profession, may be relevant to considering sanction for Charge 1. The panel therefore took the view that the dismissal of Charges 2 and 3 did not mean that a broad view of the nature of Mr Taylor's conduct referred to in those charges and the consequences of it were rendered irrelevant to proceedings. The parties were invited to make representations on that approach, and did not demur from it.
8. On that basis, only Charge 1 was put to Mr Taylor.

Pleas

9. Mr Taylor accepted Charge 1.

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Evidence

10. Mr Taylor gave live witness evidence and was questioned by both the panel and counsel for the BSB.
 - a. Mr Taylor asserted that he was honest by nature and habit, that he had great remorse for what he had done, and that he had been truthful in the past, even in situations where dishonesty would have benefited him.
 - b. Mr Taylor asserted that he was not embarrassed about his conduct. Under questioning from the panel, he revised his formulation of that point, explaining that he was not so embarrassed by his conduct that he felt that he needed to avoid talking about it, including with colleagues.
 - c. When asked about the delay of approximately three months between making the untrue statement and correcting it, Mr Taylor said that he had been "*burying his head in the sand*".
 - d. He stated that he had changed his own practice, as had his chambers, to the management of confidential waste, in that it was now placed for disposal in a location that was not proximate to the storage of papers.
 - e. Mr Taylor had not turned his mind to what the appropriate sanction should be. However, when asked about this by the panel, he suggested that, were this a criminal matter where he was representing a client in his position, he would be asking the judge for a discharge.
11. The Panel considered the documents contained in the bundle of documents provided by the Bar Standards Board, which included a detailed account of the facts which gave rise to these proceedings. The Panel also considered the written and oral submissions made on behalf of the BSB.
12. In short, the underlying events were as follows.

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13. Mr Taylor was instructed on a direct access basis by Mr. S in or about May 2022, to advise him about the potential repayment of a significant amount paid by way of business rates, which had been subject of a court order, which Mr S and his father sought to set aside.
14. Mr Taylor advised Mr S in conference on 19 May 2022, for a fee of £500 plus VAT. Following that conference, Mr Taylor was asked to consider a significant amount of further documentation collated by Mr. S and/or his relatives with a view to assessing the potential merits of the claim. Mr Taylor agreed a fee of £2000 plus VAT, which Mr S paid in advance of the conference which took place at Mr Taylor's chambers on 16 August 2022.
15. Mr S attended the conference remotely with a friend or relative of his, Mr. K, who attended in person. Perhaps surprisingly, Mr Taylor did not have any case papers to hand at the time of the conference, although he assured the panel that he had fully read the papers in advance and that he gave advice during the conference, which did not require reference to any specific documents; and that his view was that there was a very limited prospect of successfully pursuing a case against the city council for repayment of business rates.
16. At the conclusion of the conference, Mr S asked for the return of the documents he had submitted for the purpose of seeking advice, which were contained, Mr Taylor recalls, in two lever arch files. Mr Taylor left the conference room to retrieve them.
17. Unfortunately, Mr Taylor could not find the files pertaining to Mr. S's potential claim and, perhaps with a view to saving further time looking for them in chambers, where Mr Taylor believed them to be, he told Mr S and/or Mr K that the papers were likely to be at his home address. In fact, when he said this, Mr Taylor knew it was a lie because he had at no time taken the files home and had kept them at all times in chambers, whether close to his pigeonhole or elsewhere.
18. Mr Taylor and his clerks continued to search unsuccessfully for the files in chambers for a week or so after the conference, and they could not be found. Mr Taylor ultimately concluded the files must have inadvertently been disposed of within chambers owing to their proximity to the confidential waste shelf near the pigeonholes.

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19. This must have been a source of some embarrassment to Mr Taylor, particularly in the context of his statement on 16 August 2022 about the papers being at his home address. Mr Taylor did not notify Mr. S until 24 November 2022, three months later, of the disappearance or disposal of the original documents which he had provided for the purpose of Mr Taylor advising in conference.
20. On 24 November 2022, Mr Taylor notified Mr S by email that the documents no longer existed. In that email, he said:

“Firstly, I apologise unreservedly for not being able to return your files. My conclusion as to their whereabouts is that they have, unfortunately, been disposed of in our confidential waste.

My reason for that conclusion is as follows.

- 1. The papers were not removed from Chambers.*
- 2. They were, instead, kept in my pigeon hole.*
- 3. The room within which the pigeon holes are kept has a shelf within it that is used for the temporary storage of files to be disposed of as confidential waste.*

Because the files are nowhere in Chambers, the only plausible explanation for their loss is that they were taken out of my pigeon hole for the purpose of removing another file from the pigeon hole, and placed on the shelf for confidential waste whilst that was done. Your files must have been accidentally left on the shelf for confidential waste, and, later, disposed of (they are shredded).

I am embarrassed that I told you that I may have taken the files home, because that wasn't true. I didn't take them home. I said that I may have done, only because I wanted to avoid the embarrassment of not being able to locate the files in Chambers when you were here asking for them. At the time I considered it to be a reasonable excuse to give, because I was sure that they were here somewhere in Chambers. As it transpires, they are not.”

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Findings

21. The Panel considered the evidence and found Mr Taylor to be a credible witness. However, certain aspects of his conduct warrant comment.
22. The panel was concerned that it took three months for Mr Taylor to notify the client that the papers had been disposed of.
23. The panel found Mr Taylor's answer in evidence that he sought to bury his head in the sand unhelpful and unprofessional. At a practical level, Mr Taylor's statement on 16 August 2022 about the client's papers being at his home address did not, in fact, cause loss to his client as the papers had already been destroyed at the time of the conference or shortly thereafter. Mr Taylor repeatedly stated in evidence that the client's case was hopeless. However, the effect of the disposal of the documents was that his client was unable to take matters further with the claim. The client could not seek a second opinion as to the merits. In the panel's view, Mr Taylor seemed to lack any insight into the consequences of the loss of the documents and the impact on his client of being told three months later that documents that the client thought might justify a claim were no longer in existence.
24. The panel was also troubled by Mr Taylor's evidence that he was not that embarrassed about telling the lie about the whereabouts of the documents, which he appeared to excuse in his mind on the basis that the claim was not going anywhere anyway, so the loss of the documents should not have been a particular source of concern for his client.
25. The panel does not agree with Mr Taylor's approach to these events. The overall lack of judgment shown by Mr Taylor in these events was likely to diminish the trust and competence which the public will be likely to have in his conduct overall.

Sanction and Reasons

26. The Panel considered the BTAS Sanctions Guidance Version 6 dated 1st January 2022. As the Foreword to the Sanctions Guidance makes clear, the purpose of the Sanctions Guidance is to promote both transparency and consistency so that the public and the profession know the principled basis on which sanctions will be decided and are able to

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identify the probable range of sanction for any particular misconduct; however, those imposing sanctions are free to depart from this Guidance where appropriate, but where that occurs, they must be sure they can, and do, explain their reasons with clarity. The panel did not consider it necessary so to depart.

27. Section A of that Guidance relates to matters involving dishonesty.

28. The Guidance for dishonesty offences, whether at the lower end of culpability or otherwise, indicates that disbarment is ordinarily the appropriate sanction. The rationale for that approach, and the rare exception to it, are explained in the guidance on the assessment of seriousness (step 2 in the methodology) in Section A, in these terms:

“Case law indicates that, for legal professionals, proved findings of dishonesty should result in disbarment except where there are exceptional circumstances. In determining whether such circumstances apply, panels should take into account the general factors set out at Annex 2. The factors listed below are particularly relevant in the context of dishonesty. They are already covered in the general factors but expanded upon here solely for emphasis.

In deciding whether there are exceptional circumstances that would not result in disbarment the most important factor to be given most weight in determining sanction is the nature and extent of the dishonesty and the degree of culpability.”

29. The last sentence in that passage contains a reference to *SRA v James* EWHC Admin [2018] 2058, and correctly states the effect of that decision by the Divisional Court. That decision contains a detailed analysis of the relevant case law. In particular, the panel notes two matters. First, the references to the decision of Kerr J. in *Lusinga v Nursing and Midwifery Council* [2017] EWHC 1458 (Admin) underscore that (subject to the second point below) a significant factor militating in favour of the existence of exceptional circumstances is the momentary and one-off nature of the dishonest conduct (paras 50 and 109). Secondly, the panel notes the court’s analysis (see esp. paras 50 and 51) that the narrowness of the residual category of “exceptional circumstances”, capable of avoiding the ultimate sanction, is particularly mandated in disciplinary proceedings relating to legal professionals (as opposed to other professions), because of the paramount importance

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placed upon public confidence in the honesty of such professionals; and, for the same reason, whilst personal mitigation may be relevant to the overall assessment of whether there are “exceptional circumstances”, caution should be exercised in placing reliance on it.

30. The panel recognises that Mr Taylor effectively self-reported the incident by assisting the internal investigation process within his chambers and having full knowledge that his Head of Chambers had reported the matter to the Bar Standards Board. Further, the panel notes the candour displayed by Mr Taylor at a comparatively early stage in the sequence of relevant events in admitting to the client, in his email of 24 November 2022, the lie and apologising for it. Indeed, were it not for that communication, the fact of the lie, which is the subject-matter of the charge, is unlikely to have come to light.
31. The panel is prepared to accept that the initial lie was a fleeting lapse of judgment in circumstances in which Mr Taylor could not readily find the papers in chambers in the course of the conference of 16 August 2022. While Mr Taylor may have panicked in the heat of the moment when telling the lie, the panel is concerned that Mr Taylor ‘sat’ on the lie while he became aware that the papers may have been destroyed, and made no attempt to address the matter openly with his client until 14 December 2022, when Mr Taylor formally apologised and a complaint was raised.
32. Mr Taylor did not profit from the lie. The panel is prepared to believe that Mr Taylor is essentially an honest and honourable individual who takes seriously the distinction between being truthful and untruthful in all aspects of his daily life, including his professional life.
33. While Mr Taylor did not recognise the impact on public confidence in the profession of what might seem, at first blush, a fairly innocuous lie, in this case we consider that Mr Taylor’s client was entitled to be aggrieved at Mr Taylor’s professional conduct towards him, including his realisation that Mr Taylor had lied to him. In this regard, the panel is troubled by Mr Taylor’s apparent failure to grasp the impact of his action from the wider perspective of public trust and confidence in the profession.

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34. Applying the above analysis, the panel's assessment of the relevant criteria in the Sanctions Guidance is as follows.
35. The seriousness, by reason of culpability and harm, is, taken as a whole, at the lower end of the scale. Although the conduct was intentional and designed to cover Mr Taylor's embarrassment (and therefore for his own benefit, to the prejudice of the client), it was a one-off lapse in the heat of the moment, implemented without great sophistication, albeit that there was delay in admitting to it. The harm was low to moderate. The Panel considered that the correct analysis was that this fell within the lower range (low culpability, limited or no harm).
36. Save for the panel's conclusion that there was a partial lack of insight on Mr Taylor's part (which is explained further below), there are no aggravating features of the case.
37. Many of the listed mitigating factors in Annex 2 of the Sanctions Guidance apply. Mr Taylor admitted the misconduct, at a reasonably early opportunity, and he apologised to the client. He co-operated with the BSB investigation. He took, or attempted to take, voluntary steps to remedy or rectify the breach. (He admitted his lie and he tried to find the papers.) He attempted to prevent a recurrence of such conduct (by reflecting upon his conduct and by immediate changes in his management of confidential waste). The panel considered that the misconduct is unlikely to be repeated. Recognising the limited weight of personal mitigation in a case of this kind, Mr Taylor did not advance any. The panel took note of, but for the reasons set out above placed limited weight on, Mr Taylor's previous good character and the absence of regulatory findings.
38. In accordance with the guidance in Section A of the Sanctions Guidance, the panel considered, in applying the aggravating and mitigating factors (step 5), whether the indication of possible "exceptional circumstances", which meant that Mr Taylor should not be disbarred, was made out.
39. While the panel was concerned that Mr Taylor did not appear to understand the wider implications and seriousness of his behaviour on 16 August 2022 and beyond, in terms of his dealing with his client, the panel considers that Mr Taylor's culpability and the nature,

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scope and extent of Mr Taylor's dishonesty does not, in the particular circumstances of this case, warrant disbarment.

40. Disbarment would be disproportionate in the context of Mr Taylor's practice over the last 20 years, and the fact that this was a one-off, albeit very misguided, incident which does not justify the most extreme sanction in this case. Focusing on the principal relevant question, in the panel's view, the nature and extent of the dishonesty and the degree of culpability were so limited on the facts that "exceptional circumstances" were made out.
41. Mr Taylor's suggestion that his behaviour would justify a discharge was, in the panel's view, wholly naïve and misconceived. Mr Taylor failed to recognise the seriousness of his conduct, knowing as he did that the indicative sanction for all dishonesty offences, subject to exceptional circumstances, is disbarment. However, after giving anxious consideration to the question, that assessment of incomplete insight on Mr Taylor's part does not, in the panel's view, outweigh the panel's conclusion that exceptional circumstances are made out. The panel, however, took it into account in determining the sanction required.
42. The panel concluded that the necessary, proportionate and adequate sanction, in these exceptional circumstances, is a period of suspension coupled with a requirement that Mr Taylor undertakes and completes continuing professional development relating to public access work before returning to unrestricted practise. The panel is of the view that, without such steps, there would be an ongoing risk to the public (the condition precedent to the imposition of a period of suspension, referred to in para 6.35 of the Sanctions Guidance). Conversely, the panel is satisfied that the enforced period of reflection, produced by a period of suspension, coupled with particular focus by Mr Taylor on his competencies and responsibilities with respect to public access work, produced by his enforced repetition of appropriate public access training, meets the needs of the case and the purposes of the imposition of sanctions (as stated in para 2.2 of the Sanctions Guidance, all of which apply), namely, (i) protecting the public and consumers of legal services, (ii) maintaining public confidence and trust in the profession and the enforcement system (iii) maintaining and promoting high standards of behaviour and performance at the Bar, and (iv) acting as a deterrent to the individual barrister, as well as the wider profession, from engaging in the misconduct subject to sanction.

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43. The panel accordingly directs that the Respondent, Mr Taylor:

- a. be suspended for a period of six months;
- b. attend in person (i.e. not by way of remote attendance) a period of public access training for barristers provided by the Bar Council, or a Bar Council approved trainer, of not less than one complete day's duration, and that he will be suspended from practice if such training is not completed by the conclusion of the period of six months suspension, from the date of the conclusion of the six months period and thereafter until his completion of the specified training; and
- c. pay costs to the Bar Standards Board in the amount of £2,670.

44. As regards the period of training, the panel does not prescribe a particular programme. However, the panel has in mind that Mr Taylor should attend a public access course for barristers, and notes that one such course is being run on 16 and 17 May 2024, in person in London. The details are available on the Bar Council website.

45. In accordance with rE241 of the Bar Standards Board Handbook, the Bar Standards Board must take the appropriate steps to put the sanction into effect. The Bar Standards Board indicated in the hearing that they would not give effect to the sanction for 21 days from today (the period allowed for any appeal to be made). Until the suspension is given effect, Mr Taylor shall be allowed to continue to practice.

Dated: 10 April 2024

Her Honour Judge Sara Staite
Chair of the Tribunal

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