



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case Reference: 2020/1115/D5.

Mr Barry John Harwood

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

Mr Barry John Harwood

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 8 April 2024, I sat as Chairman of a Disciplinary Tribunal on 29 April and 30 April 2024 to hear and determine 6 Charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Mr Barry John Harwood, barrister of the Honourable Society of Lincoln's Inn.

Panel Members

2. The other members of the Tribunal were:

Helen Norris (Lay Member)

Geoffrey Brighton (Lay Member)

Sirah Abraham (Barrister Member)

A further nominated Barrister Member, Yusuf Solley, was prevented from attending the hearing which was able to continue with a Panel of 4 in accordance with r E149.

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Charges

3. The following charges were found proven.

Charge 1

Statement of Offence

Professional misconduct, contrary to **CD3** and/or **rc9.1** of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Mr. Barry John Harwood, a barrister, failed to act with honesty and/or with integrity in that in or around March 2019, Mr. Harwood knowingly misled or attempted to mislead the Bar Standards Board, by making false allegations against Mr SF in respect of one or more of the following:

- (a) As part of his allegation of homophobia and sexual orientation discrimination and/or harassment, in or around March 2019, Mr Harwood complained about SF's use of the word "husband" within email communications to Mr Harwood when referring to Mr Harwood's partner at the time. Mr Harwood maintained that he and his partner were in a civil partnership (as opposed to being married), and/or that Mr Harwood did not subscribe to such terms, including "husband" and "married", and/or that SF was aware of this. Mr Harwood made that complaint to the BSB, knowing that he himself had referred to his partner as "husband" and the two of them as "married" in WhatsApp messages in July and December 2018 in the 'Nous Sommes Advocacy' group shared by Mr Harwood and SF.

- (b) As part of his allegation about race discrimination and/or harassment, bullying, and general inappropriate behaviour in or around March 2019, Mr Harwood alleged that AN had raised concerns with him about SF's use of the nickname ["..... .."] for her. Mr Harwood made that allegation about SF, knowing that AN had never raised such concerns with him.

- (c) As part of his allegation in or around March 2019, Mr Harwood alleged that DT had

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raised concerns with him about comments made by SF on WhatsApp regarding the 9/11 terrorist attacks as DT had lost a close friend in the attack and/or DT's friend had gone missing in the attacks. Mr Harwood made that allegation, knowing DT had never said to him that DT knew anyone killed or gone missing in the 9/11 attacks.

Charge 3

Statement of Offence

Professional misconduct, contrary to **CD5** of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

As a result of the conduct set out in the Particulars of Offence in Charge 1 or (in the alternative) Charge 2, as also set out below, Barry John Harwood, 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.

- (a) As part of his allegation of homophobia and sexual orientation discrimination and/or harassment, in or around March 2019, Mr. Harwood complained about SF's use of the word "husband" within email communications to Mr Harwood when referring to Mr Harwood's partner at the time. Mr Harwood maintained that he and his partner were in a civil partnership (as opposed to being married), and/or that Mr Harwood did not subscribe to such terms, including "husband" and "married", and/or that SF was aware of this. Mr Harwood made that complaint to the BSB, knowing that he himself had referred to his partner as "husband" and the two of them as "married" in WhatsApp messages in July and December 2018 in the Nous Sommes Advocacy group shared by Mr Harwood and SF.
- (b) As part of his allegation about race discrimination and/or harassment, bullying, and general inappropriate behaviour in or around March 2019, Mr Harwood alleged that AN had raised concerns with him about SF's use of the nickname ["...."] for her. Mr

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Harwood made that allegation about SF, knowing that AN had never raised such concerns with him.

- (c) As part of his allegation in or around March 2019, Mr Harwood alleged that DT had raised concerns with him about comments made by SF on WhatsApp regarding the 9/11 terrorist attacks as DT had lost a close friend in the attack and/or DT's friend had gone missing in the attacks. Mr Harwood made that allegation, knowing DT had never said to him that DT knew anyone killed or gone missing in the 9/11 attacks. -

Charge 4

Statement of Offence

Professional misconduct, contrary to **CD9** of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

As a result of the conduct set out in the Particulars of Offence in Charge 1 or (in the alternative) Charge 2, as also set out below, Barry John Harwood, a barrister, failed to be open and cooperative with his regulators.

- (a) As part of his allegation of homophobia and sexual orientation discrimination and/or harassment, in or around March 2019, Mr. Harwood complained about SF's use of the word "husband" within email communications to Mr Harwood when referring to Mr Harwood's partner at the time. Mr Harwood maintained that he and his partner were in a civil partnership (as opposed to being married), and/or that Mr Harwood did not subscribe to such terms, including "husband" and "married", and/or that SF was aware of this. Mr Harwood made that complaint to the BSB, knowing that he himself had referred to his partner as "husband" and the two of them as "married" in WhatsApp messages in July and December 2018 in the Nous Sommes Advocacy group shared by Mr Harwood and SF.

- (b) As part of his allegation about race discrimination and/or harassment, bullying, and

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general inappropriate behaviour in or around March 2019, Mr Harwood alleged that AN had raised concerns with him about SF's use of the nickname ["...."] for her. Mr Harwood made that allegation about SF, knowing that AN had never raised such concerns with him.

- (c) As part of his allegation in or around March 2019, Mr Harwood alleged that DT had raised concerns with him about comments made by SF on WhatsApp regarding the 9/11 terrorist attacks as DT had lost a close friend in the attack and/or DT's friend had gone missing in the attacks. Mr Harwood made that allegation, knowing DT had never said to him that DT knew anyone killed or gone missing in the 9/11 attacks.

Charge 5

Statement of Offence

Professional misconduct, contrary to **rc8** of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

As a result of the conduct set out in the Particulars of Offence in Charge 1 or (in the alternative) Charge 2, as also set out below, Barry John Harwood, a barrister, acted in a way which could reasonably be seen by the public to undermine his honesty, and/or integrity.

- (a) As part of his allegation of homophobia and sexual orientation discrimination and/or harassment, in or around March 2019, Mr. Harwood complained about SF's use of the word "husband" within email communications to Mr Harwood when referring to Mr Harwood's partner at the time. Mr Harwood maintained that he and his partner were in a civil partnership (as opposed to being married), and/or that Mr Harwood did not subscribe to such terms, including "husband" and "married", and/or that SF was aware of this. Mr Harwood made that complaint to the BSB, knowing that he himself had referred to his partner as "husband" and the two of them as "married" in

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WhatsApp messages in July and December 2018 in the Nous Sommes Advocacy group shared by Mr Harwood and SF.

- (b) As part of his allegation about race discrimination and/or harassment, bullying, and general inappropriate behaviour in or around March 2019, Mr Harwood alleged that AN had raised concerns with him about Mr SF's use of the nickname [“”] for her. Mr Harwood made that allegation about SF, knowing that AN had never raised such concerns with him.
- (c) As part of his allegation in or around March 2019, Mr Harwood alleged that DT had raised concerns with him about comments made by SF on WhatsApp regarding the 9/11 terrorist attacks as DT had lost a close friend in the attack and/or DT's friend had gone missing in the attacks. Mr Harwood made that allegation, knowing DT had never said to him that DT knew anyone killed or gone missing in the 9/11 attacks. -

Charge 6

Statement of Offence

Professional misconduct, contrary to **rC67** of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

As a result of the conduct set out in the Particulars of Offence in Charge 1 or (in the alternative) Charge 2, as also set out below, Barry John Harwood, a barrister, made a report under Rule rC66 without a genuine and reasonably held belief that Rule rC66 applies.

- (a) As part of his allegation of homophobia and sexual orientation discrimination and/or harassment, in or around March 2019, Mr. Harwood complained about SF's use of the word “husband” within email communications to Mr Harwood when referring to Mr Harwood's partner at the time. Mr Harwood maintained that he and his partner were in

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a civil partnership (as opposed to being married), and/or that Mr Harwood did not subscribe to such terms, including “husband” and “married”, and/or that SF was aware of this. Mr Harwood made that complaint to the BSB, knowing that he himself had referred to his partner as “husband” and the two of them as “married” in WhatsApp messages in July and December 2018 in the Nous Sommes Advocacy group shared by Mr Harwood and SF.

- (b) As part of his allegation about race discrimination and/or harassment, bullying, and general inappropriate behaviour in or around March 2019, Mr Harwood alleged that AN had raised concerns with him about SF’s use of the nickname [“....”] for her. Mr Harwood made that allegation about SF, knowing that AN had never raised such concerns with him.
- (c) As part of his allegation in or around March 2019, Mr Harwood alleged that DT had raised concerns with him about comments made by SF on WhatsApp regarding the 9/11 terrorist attacks as DT had lost a close friend in the attack and/or DT’s friend had gone missing in the attacks. Mr Harwood made that allegation, knowing DT had never said to him that DT knew anyone killed or gone missing in the 9/11 attacks.

Parties Present and Representation

4. The Respondent was not present and was not represented. The Bar Standards Board (“BSB”) was represented by Phillip Stott.

Preliminary Matters

5. The BSB applied to proceed in the absence of the respondent who had not appeared at the hearing and had not indicated any intention of attending or wish to do so, and had not indicated any inability to attend. The Panel considered communications between the BSB and Mr Harwood as well as BTAS and Mr Harwood, and decided to proceed in his absence, satisfied that Mr Harwood has been made aware of proceedings, of the hearing and of the application to proceed and that he had been sent all relevant details and all required information. The Panel decided that it was fair to proceed and that there would be no benefit from adjournment of the hearing.

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Pleas

6. The Panel considered Mr Harwood to have denied the charges. Although they had not been formally put to Mr Harwood because of his absence from the hearing, the Panel considered that his statement indicated a denial of the charges.

Evidence

7. The Panel read a written statement and heard oral evidence from each of witnesses on behalf of the BSB, namely VBS, AN, DT and SF.
8. The Panel read all written statements and evidence provided by Mr Harwood in the bundle provided by the BSB despite not hearing evidence from him, from which they understood his denial of the charges and they understood his suggested explanations for the evidence of the witnesses against him.

Findings

9. After reading and hearing the evidence and submissions the Panel retired for consideration of their decision, and then returned to give their decision as follows.
10. The Panel have heard and considered six charges of professional misconduct against Mr Harwood, the respondent. Mr Harwood has not attended or been represented at this hearing, although he did have legal representation in earlier stages of proceedings.
11. The six charges all relate to the same three underlying facts and specifically to the three allegations made by Mr Harwood to the Bar Standards Board about SF, another employed barrister who was at the relevant time Mr Harwood's line manager in the firm in which they both worked. The case advanced by the Bar Standards Board is that the three allegations made by Mr Harwood against SF were false and known by Mr Harwood to be false.
12. For that reason, Charge 1 alleges that Mr Harwood misled or attempted to mislead the BSB in respect of each allegation and thereby failed to act with honesty. That is the most serious charge. Charge 2, relying on the same facts is put in the alternative to Charge 1 and charges that Mr Harwood was reckless and thereby acted without

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integrity. The remaining 4 charges, again based on those facts, allege that Mr Harwood behaved in a way which was likely to diminish the trust and confidence placed by the public in him or in the profession, that he failed to be open and cooperative with the regulator, that he acted in a way which could reasonably be seen by the public to undermine his honesty and integrity, and that his report to the Bar Standards Board was made without a genuine and reasonably held belief.

13. The main documentary evidence is contained in the substantial bundles provided by the Bar Standards Board, which include Mr Harwood's responses to the charges and other contemporaneous and later communications from him.
14. Mr Harwood has clearly denied the allegations contained within the charges, although because he has not attended he has not formally pleaded to the charges. So far as possible, his written explanations have been put to the four witnesses called by the BSB.
15. The burden of proof is on the BSB in respect of each charge. The evidence on each charge has to be considered separately; and in this case the factual basis for the charges arose before the 1st of April 2019. Accordingly, the criminal standard of proof applies.
16. The factual background is clearly set out in the bundles provided and in the helpful opening note presented by Counsel for the BSB.
17. There had been concerns about Mr Harwood, in particular, about his performance and his communications, which came to the attention of SF. SF telephoned Mr Harwood, and on the 8th of March 2019 they discussed matters which SF then followed up with a contemporaneous e-mail to Mr Harwood. This set out some of the matters discussed and suggested a proposed meeting to take matters forward, which, in the event, never occurred. Matters were also referred to the firm's Human Resources body, and Mr Harwood's subsequent grievances were not upheld. Shortly after that, Mr Harwood referred SF to the Bar Standards Board.
18. Without attempting to set out the complicated procedural history thereafter, the six current charges were formulated and led to this hearing after SF had himself complained to the Bar Standards Board about what he suggested had been fundamentally dishonest allegations against him.
19. In this hearing, the Bar Standards Board witnesses heard by the Panel were VBS, AN, DT and SF, all fellow employees at the relevant time. The Panel found each of those

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four witnesses to be honest, truthful and convincing throughout. They gave a clear picture of the working structure and the relationships within the firm and the Panel wholly rejected the suggestion by Mr Harwood that any of those people had or might have had some ulterior motive for disputing what Mr Harwood had claimed about them. The case advanced by the BSB was fully supported by each of those witnesses, none of whom exaggerated or embellished. In respect of VBS, AN and DT, none of them supported Mr Harwood's assertions about what they had said or about what had happened to them, and their evidence showed the inaccuracy of what Mr Harwood reported about them. Their evidence also showed Mr Harwood's explanations for the allegations against him to be unconvincing and unreliable.

20. The Panel reject his allegation of victimisation. Accordingly, the evidence overall shows that there was no proper or reasonable basis for Mr Harwood's complaints about SF.
21. In the circumstances, it is necessary to go on to consider whether his complaints were made honestly as alleged in Charge 1 or made recklessly as alternatively alleged in Charge 2.
22. The test for dishonesty set out in the leading case of *Ivey v. Genting Casinos* decided in 2017 applies in Disciplinary Tribunals. It requires a two-stage inquiry.
23. First, it is necessary to ascertain subjectively the actual state of the respondent's knowledge and belief as to the facts. In this case, that assessment is critical to the issue of honesty. Mr Harwood has not given oral evidence and so his position and thinking at the time have not been tested. However, there is ample and significant material from which relevant inferences can be drawn. As submitted by the BSB, it is clear that Mr Harwood had repeatedly referred to his civil partner as his husband and to the ceremony which they undertook to have been a marriage. That completely undermined Mr Harwood's complaint about SF when referring to Mr Harwood's partner as his husband. In particular, this undermined the complaint that the reference to his husband had been homophobic. Indeed, the reference by SF to Mr Harwood's partner was made in a supportive context in the e-mail concerned. After that, Mr Harwood did not take the opportunity to correct or qualify that particular complaint, as he might have done on review of the relevant communication and messages. Indeed, he appears conspicuously not to have referred, or drawn attention,

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to the images and messages which showed his own use and acceptance of the descriptions of his partner and their status.

24. The next allegation relates to Mr Harwood's stated concern about the nickname given to AN, which Mr Harwood put forward as a further allegation about SF in his use of that nickname.
25. The evidence of AN herself, which is wholly accepted by the Panel, was that she never raised as a concern with Mr Harwood, or anyone else, about the nickname which she had, and that she had never suggested that it troubled her. She also rejected the connotation put upon that nickname, which, if she was aware of it at the time (which she said she was not), she said had never been of any concern to her. AN was indeed ignorant of that suggested connotation. In her statement she also described what Mr Harwood had about her to be an extremely false allegation which had upset her. She said that she believed it was nothing but a ridiculous and silly fabrication on his part, twisted by Mr Harwood, to cause harm.
26. The third allegation is that Mr Harward claimed that DT was concerned about comments made by SF about the 9/11 terrorist attack, and that Mr Harwood misrepresented DT's connection with that event. In fact, Mr Harwood in that respect had distorted and exaggerated DT's position and his views. Having heard DT, the Panel can see no basis for what Mr Harwood complained about.
27. In determining Mr Harwood's actual state of mind, the Panel conclude that the only proper inference in the circumstances that is that Mr Harwood knew that each of the three allegations that he was making about SF were false.
28. It is difficult understand why he might have invented or exaggerated matters, as he must have done. The Panel do not wish to speculate, but certainly do not rule out SF's suggestion that Mr Harwood was counterattacking against SF to defend his own position in respect of concerns and complaints about his conduct and in an attempt to deflect SF from considering those complaints and concerns.
29. Stage one of the *Ivey* test leads to a finding by the Panel that Mr Harwood did not know or reasonably believe his allegations about SF to be true; indeed, he knew them to be untrue. At stage two, it is necessary to apply the objective standard of ordinary decent people, and that exercise leads the Panel to a finding of dishonesty.
30. Accordingly, Charge 1 is established.
31. Charge 2 therefore does not require a separate decision.

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32. The remaining Charges are all established essentially on the same factual basis. Mr Harwood's conduct was likely to diminish trust and confidence in him and in the profession, and to have been seen by the public as undermining his honesty and integrity. Those are the conclusions of the Panel and are unanimous.

Sanction and Reasons

33. Following the findings by the Panel, they decided that it was appropriate to proceed again in the absence of the respondent to consider the question of the applicable sanctions in his case.

34. There was some information about Mr Harwood's current circumstances and also some evidence which may not be entirely up to date about his personal and mental health position. There was nothing to indicate a need to defer consideration of sanctions.

35. In applying the Sanctions Guidance in this case, the Panel was of course dealing with the matter on the basis of a finding of dishonesty which, according to the Guidance almost inevitably leads to a decision to disbar in the absence of exceptional circumstances. In this case the evidence which had been seen and heard relating to the dishonest conduct of the respondent shows it to have been conduct which was deliberate and sustained and which was harmful to all concerned, in particular, to SF, as he described, who was the main target of the false complaints made to the Bar Standards Board; but it was also upsetting and worrying to the others who were involved as they described, VBS, AN and DT, all of whom are legal professionals who were caught up in what Mr Harwood said and did, and all of whom worried about the consequences of what was happening.

36. The Panel had to look at mitigating and as well as aggravating circumstances. Mr Harwood apparently had no disciplinary record and there was some evidence of positive contributions to the profession and to the community. However, there was no evidence of remorse or of insight, which suggested to the Panel that the risk of repetition could not be wholly ignored in this case. None of the mitigation, such as it was, and none of the explanations which Mr Harwood provided, such as they were, amounted to exceptional circumstances to suggest that anything other than an order for his disbarment would be appropriate. That was the order to be made in this case.

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37. In addition to that, the order there will be an order for cost against Mr Harwood in the sum of £5,544, reflecting that the hearing did not run for the expected three days, but in fact concluded in two days.

38. The Tribunal made an order under rE227.3 of the Disciplinary Tribunal Regulations, requiring the Bar Standards Board not to issue any practising certificate to Mr Harwood, pending the hearing of any appeal.

39. 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.

Dated: 17 May 2024.

HH James Meston KC
Chairman of the Tribunal

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