

Report of Finding

Case reference: PC 2021/3787/D5

Naseem Ahmed Bajwa

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

Disciplinary Tribunal

Naseem Ahmed Bajwa

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 10 November 2023, I sat as Chairman of a Disciplinary Tribunal on 27 November 2023 to hear and determine two charges of professional misconduct contrary to the Bar Standards Board's Handbook against Naseem Ahmed Bajwa, barrister of the Honourable Society of Gray's Inn.

Panel Members

2. The other members of the Tribunal were:

Clara Cheetham [Lay Member]

Andrew Ward [Lay Member]

Justine Davidge [Barrister Member]

Alexander Horne [Barrister Member]

Charges

3. The hearing was concerned with the following charges (as amended):

Charge 1

Statement of Offence

Professional misconduct contrary to Core Duty 5 and/or rS6 Bar Standards Board's Handbook (Version 4.3).



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Particulars of Offence

Naseem Ahmed Bajwa, an unregistered barrister, behaved in a way that was likely to diminish the trust and confidence that the public places in him or the profession in that, on 19 November 2019, he conducted litigation without entitlement to do so under the Legal Services Act 2007 by:

- (1) filing at the Upper Tribunal Immigration and Asylum Chamber a Judicial Review Claim Form on behalf of an applicant for judicial review (Upper Tribunal reference number: JR/5807/19);
and
- (2) stating in the Claim Form that he was making the application as a representative for the applicant.

Charge 2

Statement of Offence

Professional misconduct contrary to Core Duty 5 and/or rS6 of the Bar Standards Board's Handbook (Version 4.3).

Particulars of Offence

Naseem Ahmed Bajwa, an unregistered barrister, behaved in a way that was likely to diminish the trust and confidence that the public places in him or the profession in that, on 26 November 2019, he conducted litigation without entitlement to do so under the Legal Services Act 2007 by:

- (3) filing at the Upper Tribunal Immigration and Asylum Chamber a Judicial Review Claim Form on behalf of an applicant for judicial review (Upper Tribunal reference number: JR/5899/19);
and
- (4) stating in the Claim Form that he was making the application as a representative for the applicant.

Burden and standard of proof

4. The burden of proving the charges lay upon the Bar Standards Board throughout. Each charge had to be considered separately. The civil standard of proof could be applied in respect of both charges in which the professional misconduct alleged occurred after 1 April 2019.



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

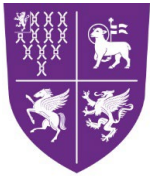
Parties Present and Representation

5. The Respondent was present; he was unrepresented. The Bar Standards Board (“BSB”) was represented by Winston Jacob.

Preliminary Matters

Application to adjourn

6. By a letter dated 30 October 2023 the respondent, Mr Bajwa, had written to the BSB enclosing a letter from his GP to a consultant psychiatrist stating that Mr Bajwa had been feeling low with an associated lack of interest in anything around him over several months and that his mood had gradually worsened. The respondent also enclosed an e-mail confirming a booking of an appointment with a consultant on 18 October 2023. There was nothing further to indicate the outcome of the appointment, but in his letter the respondent wrote that in view of the fact that his 87th birthday was only 8 weeks away and his physical and mental health was not only poor but deteriorating, he must accept sound medical advice to retire from the Bar and not seek to renew membership. He therefore asked for the disciplinary tribunal proceedings to be cancelled.
7. In response by letter dated 8 November 2023, the BSB informed Mr Bajwa that if he wished to resign voluntarily from the Bar his request should be made to his Inn rather than to the BSB. He was also asked to note that if a barrister voluntarily resigned they may still fall under the definition of an “applicable person” as an unregistered barrister at the time of the conduct complained of. Thus, if a voluntary resignation was accepted by his Inn it would not preclude the BSB from continuing with the proceedings and any subsequent disciplinary action. The BSB wrote that they were sympathetic and understood his poor health, but asked for confirmation of whether he intended to retire from the Bar and to seek to vacate the proceedings. It was said that if he did seek to vacate the proceedings the medical evidence provided up to then was insufficient and that more detailed and specific evidence would be required. He was therefore asked for confirmation as to whether he would like an opportunity to provide further medical evidence.
8. By letter, also dated 8 November 2023, Mr Bajwa told the BSB that he was trying to make an appointment with a consultant, hopefully in the next month. He asked that the hearing on 27



November might be adjourned due to his poor mental health and inability to be in a good position to defend himself. He also asked the BSB to consider his proposal that he might be allowed to retire honourably in exchange for the proceedings against him being dropped.

9. By further letter, dated 13 November 2023, Mr Bajwa informed the BSB that his physical and mental health had deteriorated so much that he was unable to go abroad on a holiday (mentioned in his earlier letter), and that he had an appointment to see a consultant privately on 15 November 2023. He said that he would try to obtain a report. He went on to say that he was not at all inclined to resign his membership of his Inn but was willing to give a firm undertaking not to seek to renew his practising certificate [which he did not have at that time] provided both the disciplinary hearings were cancelled. Meanwhile, he asked for an adjournment of the hearing on 27 November 2023 until the New Year to enable him to get better and see a mental health specialist. The BSB responded to this on 17 November asking for sight of the report prepared by his treating consultant. By telephone call on 20 November 2023 the BSB reminded Mr Bajwa of a need for a copy of the consultant's report requested in order to consider his request for an adjournment. On 23 November 2023 the BSB again telephoned Mr Bajwa to find out whether he intended to provide medical evidence and Mr Bajwa said that he aimed to get the report to the BSB that day, but if unable to do so he would attend the hearing on 27 November.

10. In the event Mr Bajwa attended the hearing on 27 November without providing any further medical report. He made clear that he would not pursue an application for an adjournment. After enquiry from the Panel counsel for the BSB confirmed that Mr Bajwa's proposal that he should be allowed to retire in return for discontinuance of the proceedings was not considered to be acceptable. Accordingly, the hearing proceeded.

Application to Amend Charge Sheet

11. The BSB applied at the start of the hearing to amend charge 1, to change the reference to the applicable version of the BSB Handbook and to state that the alleged conduct occurred on 19 November 2019 (rather than July 2019). That application to amend was not opposed and was granted.



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Pleas

12. The 2 charges were put to Mr Bajwa who denied each charge.

The hearing

13. The hearing proceeded with evidence and submissions. After the Panel had retired to review the detail of the issues to be determined, it was decided that more time would be required and that it would not be fair or appropriate to announce any decision without further consideration.

Background

14. Mr Bajwa was called to the English Bar in 2012. At the time relevant to the charges under consideration he did not hold a practising certificate.

15. By letter dated 18 December 2020 the President of the Upper Tribunal (Immigration and Asylum Chamber) informed the BSB that Mr Bajwa had named himself as the representative on behalf of applicants in 2 application forms submitted in 2019. It was said that both matters had concluded by way of consent orders, which the tribunal's lawyers had insisted were signed by the applicants in person. Copies of the applications were attached. Each was a claim form for judicial review (in form T480). The first form, filed on 19 November 2019 with reference number JR/5807/19, sought judicial review of a refusal of an application made in August 2019. The second form, filed on 26 November 2019 with reference number JR/5899/2019, also sought judicial review (although the decision for which judicial review was sought is not clear from the bundle before the panel as pages 2, 4 and 6 of the form have not been copied for inclusion in the bundle).

16. Both forms, in section 1, requiring details of the applicant, contain the following:

"Please note that only persons authorised under the Legal Services Act 2007 to undertake litigation in the High Court are permitted under Rule 11 (5 A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to be a representative in immigration judicial proceedings.

Each form then continues:

"Are you making this application as a representative?" – to which the answer "Yes" was given in each of the tick boxes.

"If Yes, I am" the person completing the form is given 3 alternative boxes to tick:



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

“a Solicitor”

“a Barrister with licence to conduct litigation”

“an other [sic] person entitled to conduct litigation in the High Court – please specify how”

17. In the first form (which was completed by Mr Bajwa) Mr Bajwa did not tick the box showing himself to be a barrister with a licence to conduct litigation, but he ticked the box for *“an other person entitled to conduct litigation in the High Court”* and he specified that he did so as a *“sponsor”*. He did not complete the boxes seeking details of a regulatory body and a registration number.
18. At the end of the first form under a Statement of Truth Mr Bajwa signed the same, as *“Applicant’s representative”*.
19. In the second form Mr Bajwa again ticked the box for *“an other person entitled to conduct litigation in the High Court”*. In that form he specified that he was an *“Advocate, Lahore High Court”* and the regulatory body was stated to be the Punjab Bar Council.
20. At the end of the second form under a Statement of Truth Mr Bajwa signed the same as *“Applicant’s representative”*, giving his full name *“Naseem Ahmed Bajwa (Advocate)”* and giving the name of the firm as *“Bajwa and Co. Advocates in Pakistan”* and describing his position as *“Partner”*.
21. Paragraph (5 A) of Rule 11 of the Tribunal Procedure Rules 2008 which is referred to in each of the application forms was added by amendment rules in 2011, and in 2013 and provides that:

“ In [immigration judicial review] proceedings, a party may appoint as a representative only a person authorised under the Legal Services Act 2007 to undertake the conduct of litigation in the High Court.”
22. Although the letter to the BSB from the President of the Upper Tribunal was sent in December 2020, regrettably it was not until 9 December 2022 that the BSB wrote to notify Mr Bajwa that a report had been received about his professional conduct and that following a preliminary



assessment it had been decided there was some evidence of potential breaches of the BSB Handbook and that an investigation would be conducted. His comments in response were sought by 2 January 2023. In the form containing the allegations it was said that between 1 October 2019 and 30 September 2020 Mr Bajwa carried out reserved legal activity in potential breach of the Handbook. In fact, the 2 charges presently before the Panel relate only to November 2019.

23. Mr Bajwa responded with a letter dated 29 January 2022 (presumably a mistake for 2023) in which he referred to the unexplained delay of 2 years. In respect of the 2 Judicial Review applications carrying his name, he wrote:

“I must emphasise that I did not describe myself as a barrister in either of them.”

24. In respect of the first application, he said that the late father of the applicant had been a good friend of his and that he (Mr Bajwa) had acted only in the capacity as a sponsor when submitting the application. He said that he believed that, like all sponsors, he had a legal right to do so. He said that he could also have represented the applicant at the hearing of his appeal if it had proceeded to that stage.

25. In respect of the second application, Mr Bajwa said that he had submitted it in his capacity as an advocate of the Lahore High Court. He said that:

“High Court Rules allow all lawyers in the Commonwealth jurisdictions to pay a special fee (around £450) and become eligible to appear in one particular case in the High Court, Court of Appeal or even House of Lords. This rule has enabled me to appear twice before the Court of Appeal (Civil Division). This is a matter of record and can’t be disputed.”

26. He then said that both of the applications had been made by him in person and that on each occasion he was asked by a Tribunal staff member at the reception desk (at Field House) to wait for about 20 minutes to enable the staff member to obtain proper legal advice as to whether he was qualified to submit the particular application as the applicant’s representative. He said that “On both occasions I was advised that I could and was invited to pay the fee which I did”.



27. In May 2023 the BSB's authorisations manager wrote to the investigations case officer stating that she could not see any record of a litigation authorisation for Mr Bajwa and also that she could not see any application for authorisation to conduct litigation logged against his name. In July 2017 Mr Bajwa had been granted a waiver of the qualified person requirement in relation to the conduct of litigation, but he would still have needed to apply separately for authorisation to conduct litigation in order to obtain a litigation extension to his practising certificate.
28. The current guidance from the BSB on conducting litigation states that the conduct of litigation is a reserved legal activity under the Legal Services Act 2007 and that barristers do not have the right to conduct litigation unless they are authorised by the BSB to do so or are otherwise entitled to conduct litigation by virtue of other legislation. If a barrister conducts litigation without authorisation they are not only breaching the BSB Handbook, but also committing a criminal offence under the Legal Services Act 2007. The guidance goes on to explain that the Act defines the conduct of litigation as the issuing of proceedings before any court in England and Wales; the commencement, prosecution and defence of such proceedings; and the performance of any ancillary functions in relation to such proceedings. The BSB's stated view is that within the definition of the conduct of litigation is the issuing of proceedings or applications (i.e. beginning court proceedings by filing details of the claim, such as the Claim Form, or making an application for a court order). However, the guidance also provides that a statement of truth may be signed by a legal representative, which is defined as including a barrister. Authorisation to conduct litigation requires an application to the BSB for an extension to the barrister's practising certificate. Barristers who do apply for authorisation to conduct litigation are required to satisfy the BSB that they have appropriate systems in their place of practice to enable them to conduct litigation; the requisite skills and knowledge of litigation procedure to enable them to provide a competent service to clients; and adequate insurance.
29. In the course of the hearing the Panel sought clarification from the BSB of the practising status of Mr Bajwa, and in particular the nature and extent of any waiver which had been granted to him, as referred to in the letter from the authorisations manager in May 2023. The Panel were then provided with the cover sheet summarising an application by Mr Bajwa made in May 2017 and which had been decided on 24 July 2017. The summary of the application showed that Mr Bajwa had been called to the Bar in 2012 and had completed pupillage in 2017. It stated that Mr



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Bajwa was a self-employed advocate between 1993 and 2017 in the Lahore High Court and also (between the same dates) a “self-employed/employed legal representative, consultant and advocate (as an Immigration Lawyer in the UK).” It stated that he claimed to have appeared in the First and Upper Tribunals in England and Wales “well over 2000 times in the last 20 years.”

30. The letter from Mr Bajwa to the BSB asking for a waiver dated 28 April 2017 and received on 2 May 2017 and the application form for a waiver of the requirement to work under the supervision of a qualified person were also provided to the Panel. That application stated his wish to practise as a barrister in self-employed practice and also his wish, as part of that practice, to exercise rights to conduct litigation.

31. The summary document provided stated:

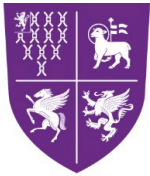
“Intending to practice as a self-employed barrister, exercising rights to conduct litigation. NB it was confirmed via e-mail correspondence with the applicant in June 20, 2017 that the waiver is to be considered for all the following activities:

- the exercise of rights to conduct litigation; and
- the exercise of rights of audience; and
- the supply of legal services to the public.”

32. The summary document provided showed that Mr Bajwa’s waiver application had been refused on 6 July 2017 as he had not yet “amassed any standing at the Bar of England and Wales”, and that he was requesting a reconsideration of that application on the basis of alternative arrangements with his son, Mr Ali Bajwa QC. The final decision as recorded was for the grant of waiver of the qualified person requirement on the basis of the proposed alternative arrangements with Mr Ali Bajwa, such arrangements to last for “entire three-year rule qualification period”.

33. A letter to Mr Bajwa from the senior supervision and authorisation officer of the BSB also dated 24 July 2017 informed him that his application had been approved and that it had been agreed to grant him the requested waiver on the following conditions:

- i) That he worked at A Bajwa & Co Solicitors under his proposed arrangement with Mr Ali Bajwa; and



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

- ii) That he met with Mr Ali Bajwa for at least one hour every 2 months for a practice review; and
- iii) That Mr Ali Bajwa sent a report to the Bar Standards Board every 6 months as to whether the practice review meetings had been satisfactory.

Once the BSB had received 6 of the 6-monthly reports (i.e. in 3 years' time) he would be deemed to have complied with the "3-year rule" and so would no longer be subject to the qualified person requirement. It was said that the purpose of the arrangements was to ensure that he received the necessary guidance such that at the end of the three-year period he was competent to exercise full rights of audience as a sole practitioner or as the sole person within an organisation exercising such rights.

- 34. That letter to Mr Bajwa of 24 July 2017 informing him that his application had been approved did not specifically refer to that part of the application originally made by him which had included his expressed wish to exercise rights to conduct litigation.
- 35. No explanation was provided as to why Mr Bajwa was no longer in practice as a barrister at the time of the alleged incidents.

Evidence and submissions

- 36. Mr Jacob presented the case on behalf of the BSB.
- 37. The Panel had been provided with a bundle of documents and a skeleton argument on behalf of the BSB, and, following the request for clarification of Mr Bajwa's practising status referred to above, the Panel were provided with the documents relating to his application in 2017 for a waiver of the qualified person requirement. On behalf of the BSB it was explained that the waiver which had then been granted was not sufficient to authorise Mr Bajwa to conduct litigation for which (as had been explained in the letter from the authorisations manager in May 2023) a separate application would still have been necessary. Mr Jacob confirmed that Mr Bajwa had never been authorised to conduct litigation.
- 38. The Panel had also been provided with a blank application form to allow an applicant to appear in court in England and Wales to conduct a specific case or cases only (requiring payment of a

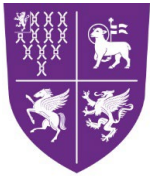


The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

fee of £440), which set out the criteria and guidelines for temporary call to the Bar of Qualified Foreign Lawyers. It was not clear how this might have applied to Mr Bajwa who had already been called to the Bar of England and Wales, but had been provided to the Panel as Mr Bajwa had made reference to the ability to make such an application in his correspondence with the BSB dated 29 January 2022 [sic]. Mr Bajwa also provided reports of 2 decisions of the Court of Appeal in which he was shown to have appeared on behalf of the applicants. In BS (India) v. Secretary of State for the Home Department [2015] EWCA Civ. 1408 he appeared before Beatson LJ on an application for permission to appeal the decision of the Upper Tribunal. The application was refused “notwithstanding the clear and helpful submissions by Mr Bajwa”. In FK (India) v. Secretary of State for the Home Department [2016] EWCA Civ. 1386 he appeared before Jackson LJ on an application for permission to appeal which was refused, it being said that his submissions had been put “most forcefully and courteously”.

39. Mr Jacob did not call any oral evidence on behalf of the BSB. He relied on the written material before the Panel and on the admissions made by Mr Bajwa that he had presented and signed each of the 2 applications which were the subject of the charges.
40. Mr Bajwa gave oral evidence that he had received his legal education in England, obtaining an LLM from Nottingham in 1991. He was admitted to the Bar in Lahore in 1991 and was called to the English Bar in 2012. He had undertaken pupillage in 2017. He said that he had a practising certificate for “a couple of years” and did immigration law work for 30 years. He said that on the 2 occasions when he had appeared in the Court of Appeal he had also drafted the applications then made to the Court of Appeal, and that therefore, in 2019, he drew a reasonable inference that he could draft the claim forms for judicial review.
41. Mr Bajwa emphasised that in neither of the application forms which were the subject of the charges had he described himself as a barrister. He repeated that on each occasion when he had presented the applications to Field House he had been asked about his position. He said that he had drawn attention to the Court of Appeal cases in which he had appeared and that the member of staff who had spoken to him had checked and then confirmed that his applications could be presented, and he then paid the required fee. It was not clear from his evidence whether when he presented the applications at Field House it was the staff member who had



asked about his status as representative for the applicants or whether it was he who had raised the question. At one point in his oral evidence he said: "I wasn't naive. I wanted to check with the court whether I could in fact file the forms." However, in answer to questions from the Panel why he had felt the need to ask the woman on the desk again on the second occasion having previously apparently been granted permission, he said he had not done so, rather it had been she that had questioned him. He then said his ability to submit the claim forms had been queried by the staff member on both occasions.

42. Mr Bajwa appeared to accept that it had been an error of judgement on his part to rely on the staff on the desk at Field House for confirmation of his ability to lodge the application forms, and that he could have checked the position with the BSB.

43. In the first application (covered by charge 1) Mr Bajwa had described himself as "sponsor". He said that in that application the applicant of whom he was the sponsor was someone like a son to him.

44. The Panel were provided by the BSB with a Presidential Guidance Note of 2013 for unrepresented claimants in the Upper Tribunal. This stated that:

"In an appeal against a decision refusing entry clearance to come to the UK, there will usually be no objection to the person who supported the application which led to refusal being your representative at the appeal hearing. Such a person is called a sponsor. The sponsor will not be notified of the hearing unless he or she has been recorded by the Tribunal as your representative and their address in the UK is given."

45. The Guidance Note appears to envisage that the sponsor might give evidence in support of the appeal and might make closing submissions on behalf of the applicant. In cross-examination Mr Bajwa said that over the years he had seen sponsors appear in the Upper Tribunal without questions raised by the Home Office adjudicators or judges. He said that in his view a sponsor was a party to the proceedings and therefore exempt from the stipulation referred to in the note in the Judicial Review Claim Form that only persons authorised under the Legal Services Act 2007 to undertake litigation in the High Court were permitted under rule 11 (5 A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to be a representative in such proceedings.



46. Mr Bajwa stated that he was very careful to work within the law; however, he also said that he did not try to keep up-to-date with developments in the rules relevant to his area of practice and that he was not familiar with rule 11 (5 A).
47. In respect of the second application (covered by charge 2) in which Mr Bajwa had described himself as entitled to conduct litigation in the High Court by reference to his status as an advocate of the Lahore High Court, Mr Bajwa said that as a qualified foreign lawyer he would have been authorised to conduct litigation. He said that as a foreign lawyer he felt that he could fill in the application forms and had both done so himself, and seen others do the same on countless occasions. He said he had an honest belief as to his ability to do so born of his experience.
48. Mr Bajwa accepted that there was a blurred distinction in his mind between his right to appear as an advocate at hearings and his right to conduct litigation. However, he believed he was entitled to conduct litigation and he said he now understood that was not the same as a right of audience. He said he had not seen the distinction until it was raised in the hearing. He said he could have avoided the difficulty he was in if he had appreciated the distinction at the time. He did not provide any explanation as to why he had previously applied to the BSB for rights to conduct litigation if it was not a distinction he had appreciated at that time.
49. Mr Bajwa said that he was not able to recall the terms of the waiver letter which had been sent to him by the BSB in July 2017. He therefore did not appear to rely on any possible ambiguity within that letter, which had not expressly covered his request for authorisation to conduct litigation.
50. In closing submissions, Mr Bajwa said that if he had incorrectly submitted the 2 applications they should have been rejected by the staff at Field House at the time, rather than being allowed to proceed after the fee had been taken. He repeated that he had not attempted any deception or misrepresentation by describing himself as a barrister. He said that on both occasions when submitting the application the lady to whom he had spoken went upstairs to check and he was then told that the manager approved of them. He suggested that the manager may have had



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

some legal qualification. He had not been allowed to pay the fee until the applications were accepted. He said that at the time of the second application, when he was questioned by the lady, he had said that he was a foreign lawyer. It was only after a long delay that the BSB made the allegations against him which had been a great shock to him.

51. He submitted that in the circumstances it was unfair of the BSB to treat what he had done as misconduct, particularly after he had asked to be allowed to retire on an undertaking. He also submitted that if what he had done was wrong, it was not serious enough to be misconduct.

52. In closing submissions in reply, Mr Jacob suggested that there were 4 questions to be considered:

(1) Did the respondent conduct litigation? It was submitted that he had done so by filing the forms stating that he was a representative.

(2) Was he entitled to conduct litigation? It was submitted that there were no grounds to say that he was an authorised person within the meaning of the Legal Services Act 2007 approved by a regulator or otherwise licensed. It was submitted also that no exemption applied. If he was a sponsor, that did not make him a party to proceedings: the relevant rules did not suggest that a sponsor was a party. His status as sponsor simply gave him the ability to assist; and moreover, he had not claimed in the form to have become a party. Temporary Call to the Bar of England and Wales as a foreign advocate (if that was what had happened in his case) did not provide authorisation to conduct litigation.

(3) Was his conduct in breach of the Code of Conduct? It was submitted that it was in breach in that failure to comply with the Legal Services Act was likely to diminish trust and confidence in the individual and the profession.

(4) Was it sufficiently serious to be misconduct? It was submitted that it was in that a failure to comply with the Legal Services Act could amount to a criminal offence. In addition, there was an obligation on barristers to keep up-to-date with changes in the law and it appeared that Mr Bajwa had not read the relevant provisions of the Tribunal Rules which were referred to in the claim forms immediately before the parts of those forms which he completed. It was submitted that he should not have been undertaking that sort of work if he was unable to keep up-to-date. It was also submitted that it was not clear whether he had raised the question with the administrative staff when presenting the forms, or whether



the administrative staff had raised it with him. If it was he who had raised it because he had suspicions about his position, it tended to aggravate what he had done. It had been his responsibility to ensure he was allowed to do what he was wanting to do, and not that of the administrative staff.

Findings

53. The Panel are satisfied that in filing the applications and then stating that he was doing so as a representative for the applicants, Mr Bajwa was conducting litigation which he was not authorised to do. His claim to have been a sponsor did not bring him within the provisions of the Legal Services Act. Likewise, his purported reliance on unspecified High Court rules which enable qualified foreign lawyers to appear in court on payment of a fee does not address the confusion between rights of audience and the right to conduct litigation.
54. Insofar as Mr Bajwa has relied on what he maintains was said to him by a member of the administrative staff there remained some lack of clarity and inconsistency in his oral evidence about who had raised the question of his ability to issue the applications on each of the 2 occasions when he attended Field House. In considering the question of the credibility and reliability of Mr Bajwa's account of these occasions the Panel have had to bear in mind the passage of time, Mr Bajwa's age and the suggestion (which he made during the hearing) that his memory may have been affected by medication. It is also difficult to make any definite finding about what did or did not happen on each occasion without having heard anything from the official or officials to whom he spoke. However, whatever the precise circumstances, Mr Bajwa was a specialist practitioner, who on his own evidence, had been doing this type of work for some years; and, if he really had been uncertain as to his ability to lodge the applications he should have done more than rely on a tribunal official. He could, and should, have undertaken further research of the position, and, if in doubt, asked the BSB.
55. Both the BSB and Mr Bajwa reminded the Panel of the decision in [Khan v. Bar Standards Board](#) [2018] EWHC 2184 (Admin) in which reference was made [at para 31] to the firmly established principle that behaviour must attain a certain level of gravity before it can qualify as professional misconduct. In his judgment Warby J (as he then was) stated [at para 36] that:



“The authorities make plain that a person is not to be regarded as guilty of professional misconduct if they engage in behaviour that is trivial, or inconsequential, or a temporary lapse, or something that is otherwise excusable or forgivable.”

Warby J went on to suggest caution in setting precise parameters for what can and cannot qualify as professional misconduct.

56. In that context, the Panel considered carefully the possibility that what Mr Bajwa did on each occasion was no more than an honest mistake, and one which had no significant consequences in that the applicants themselves have not complained and both of the applications appear to have been settled. However, as stated above, Mr Bajwa was under a professional responsibility to have been aware of the relevant rules and requirements and could not properly delegate his own responsibilities to be sure of what he could and could not do to a tribunal official. He had also suggested that he had at least some suspicion as to his ability to file the claim forms. Accordingly, in acting as he did, Mr Bajwa was at least reckless. Taking into account the fact that Mr Bajwa’s actions could amount to a criminal offence this made the matter a serious one.

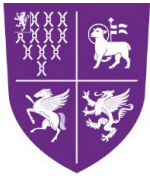
57. The unanimous decision of the Panel is that both charges of professional misconduct have been established to the required standard.

58. As there was not enough time on the day of the hearing to draft a fully reasoned decision on this matter and then proceed to consider the question of sanction, time has been taken by the Panel to finalise this decision. Once this decision has been sent to the parties it will be necessary to arrange a separate hearing (with a time estimate of half a day) to consider any appropriate sanctions and application for costs. In respect of costs the BSB may wish to consider whether it is a case in which delay is relevant.

Dated 10 January 2024

HH James Meston KC

The Hearing Adjourned Part heard on 27 November 2023 and resumed on 11 April 2024 – Report on sanction follows below.



Report of Sanction

Case reference: PC 2021/3787/D5

Naseem Ahmed Bajwa

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

Disciplinary Tribunal

Naseem Ahmed Bajwa

59. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 10 November 2023, I sat as Chairman of a Disciplinary Tribunal on 27 November 2023 to hear and determine two charges of professional misconduct contrary to the Bar Standards Board's Handbook against Naseem Ahmed Bajwa, barrister of the Honourable Society of Gray's Inn. As set out in a written decision dated 10 January 2024, the unanimous decision of the Panel was that both charges of professional misconduct have been established to the required standard. Reference is made to that previous decision for the facts of the case.

60. On 11 April 2024 I sat as Chairman of the Tribunal to consider sanction.

Panel Members

61. The other members of the Tribunal on 11 April 2024 were:

Andrew Ward [Lay Member]

Justine Davidge [Barrister Member]

Alexander Horne [Barrister Member].

Charges

62. The hearing was concerned with the following charges (as amended):

Charge 1



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Statement of Offence

Professional misconduct contrary to Core Duty 5 and/or rS6 Bar Standards Board's Handbook (Version 4.3).

Particulars of Offence

Naseem Ahmed Bajwa, an unregistered barrister, behaved in a way that was likely to diminish the trust and confidence that the public places in him or the profession in that, on 19 November 2019, he conducted litigation without entitlement to do so under the Legal Services Act 2007 by:

- (5) filing at the Upper Tribunal Immigration and Asylum Chamber a Judicial Review Claim Form on behalf of an applicant for judicial review (Upper Tribunal reference number: JR/5807/19);
and
- (6) stating in the Claim Form that he was making the application as a representative for the applicant.

Charge 2

Statement of Offence

Professional misconduct contrary to Core Duty 5 and/or rS6 of the Bar Standards Board's Handbook (Version 4.3).

Particulars of Offence

Naseem Ahmed Bajwa, an unregistered barrister, behaved in a way that was likely to diminish the trust and confidence that the public places in him or the profession in that, on 26 November 2019, he conducted litigation without entitlement to do so under the Legal Services Act 2007 by:

- (7) filing at the Upper Tribunal Immigration and Asylum Chamber a Judicial Review Claim Form on behalf of an applicant for judicial review (Upper Tribunal reference number: JR/5899/19);
and
- (8) stating in the Claim Form that he was making the application as a representative for the applicant.



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Parties Present and Representation

63. The Respondent was not present or represented on 11 April 2024. The Bar Standards Board (“BSB”) was represented by Winston Jacob.

Preliminary Matters

64. Mr Jacob noted that, in a telephone call with the BSB on 9 April 2024, Mr Bajwa had said that he would not attend on 11 April 2024. The Tribunal was satisfied that Mr Bajwa had made a considered decision not to attend and that the hearing could proceed in his absence.

65. The Tribunal recorded that, although Clara Cheetham (second Lay member) was not in attendance, the matter could proceed in her absence under rE149.

BSB’s submissions

66. By reference to his skeleton argument, Mr Jacob invited the Tribunal to take no further action. This was because Mr Bajwa had been disbarred in other disciplinary proceedings. If the order disbarring Mr Bajwa were overturned, the BSB would consider its position as to whether and, if so, how the decision to take no further action could be revisited. Mr Jacob noted that Mr Bajwa was outside the normal time limit for appealing his disbarment.

67. Mr Jacob confirmed that the BSB was not seeking costs.

Decision on Sanction

68. The Tribunal decided that, in circumstances where Mr Bajwa had been disbarred in other disciplinary proceedings and there was no pending appeal, the correct course, as suggested by the BSB, was to take no further action in these proceedings.

69. There was no order as to costs.

70. The hearing took place in the absence of the Respondent in accordance with rE183.

Dated 11 April 2024

HH James Meston KC