The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case Reference: 2022/1204/D3

Dr Charlotte Proudman

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, July 2010.

Disciplinary Tribunal

Dr Charlotte Proudman

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 22 November 2024, I, HH Nicholas Ainley, sat as Chairman of a Disciplinary Tribunal on 10-13 December 2024 to hear and determine 5 charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Dr Charlotte Proudman, barrister of the Honourable Society of Lincoln's Inn.

Panel Members

2. The other members of the Tribunal were:

   Ian Arundale (Lay Member)

   Naomi Ryan (Barrister Member)

Charges

3. The following charges were denied.

Charge 1

Statement of Offence

Professional misconduct, contrary to Core Duty 3 and/or rC8 of the Code of Conduct of the Bar of England and Wales (9th Edition), Bar Standards Board Handbook

Particulars of offence

Dr Proudman, a barrister, acted contrary to Core Duty 3 and rC8, in that on 6 April 2022, she posted or allowed a 14-part thread to be tweeted in her name on her twitter account, which contained misleading tweets which individually and/or cumulatively inaccurately reflected the findings of the judge in a case in which she was instructed. Such conduct could reasonably be seen by the public to undermine her integrity, and in fact lacked integrity.

The tweets in question are as follows:

"the Judge is undermining not only W's mental health & wellbeing as a woman, but he is also throwing a Miss Havisham spin on W, as a failed unstable wife. Despite the fact it was found that H is violent & has a temper where he drinks and resorts to aggression".

This tweet was inaccurate in that the Judge did not find that the Respondent husband was violent and/or that he resorted to aggression.

"this screams of excusing the alleged perpetrator and blaming the wife. Oh, he liked vigorous debate and she was quiet- what does she expect? As if his temper and throwing things at her is permissible. It's NOT".

This tweet was inaccurate in that it referred to the Respondent husband "*throwing things at*" the Applicant wife, which did not reflect the findings.

Charge 2

Statement of Offence

Professional misconduct, contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9th Edition), Bar Standards Board Handbook

Particulars of offence

Dr Proudman, a barrister behaved in a way which was likely to diminish the trust and confidence which the public placed in her and in the profession, contrary to Core Duty 5, in that on 6 April 2022, she tweeted or allowed a 14-part thread to be tweeted from her twitter account which contained misleading tweets which individually and/or cumulatively inaccurately reflected the findings of the judge in a case in which she was instructed.

The tweets in question are as follows:

"the Judge is undermining not only W's mental health & wellbeing as a woman, but he is also throwing a Miss Havisham spin on W, as a failed unstable wife. Despite the fact it was found that H is violent & has a temper where he drinks and resorts to aggression".

This tweet was inaccurate in that the Judge did not find that the Respondent husband was violent and/or that he resorted to aggression.

"this screams of excusing the alleged perpetrator and blaming the wife. Oh, he liked vigorous debate and she was quiet- what does she expect? As if his temper and throwing things at her is permissible. It's NOT".

The tweet was inaccurate in that it referred to the Respondent husband "*throwing things at*" the Applicant wife, which did not reflect the findings.

Charge 3

Statement of Offence

Professional misconduct, contrary to Core Duty 3 and/or rC9 of the Code of Conduct of the Bar of England and Wales (9th Edition), Bar Standards Board Handbook

Particulars of offence

Dr Proudman, a barrister failed to act with integrity in that she knowingly or recklessly misled or attempted to mislead the public about the findings made by the judge in a case in which she was instructed when on 6 April 2022, she tweeted or allowed a 14- part thread to be tweeted from her twitter account which individually and/or cumulatively inaccurately reflected the findings of the judge.

The tweets in question are as follows:

"the Judge is undermining not only W's mental health & wellbeing as a woman, but he is also throwing a Miss Havisham spin on W, as a failed unstable wife. Despite the fact it was found that H is violent & has a temper where he drinks and resorts to aggression".

This tweet was inaccurate in that the Judge did not find that the Respondent husband was violent and/or that he resorted to aggression.

"this screams of excusing the alleged perpetrator and blaming the wife. Oh, he liked vigorous debate and she was quiet- what does she expect? As if his temper and throwing things at her is permissible. It's NOT".

The tweet was inaccurate in that it referred to the Respondent husband "*throwing things at*" the Applicant wife, which did not reflect the findings.

Charge 4

Statement of Offence

Professional misconduct, contrary to Core Duty 3 and/or rC8 of the Code of Conduct of the Bar of England and Wales (9th Edition), Bar Standards Board Handbook

Particulars of offence

Dr Proudman, a barrister, failed to act with integrity, contrary to Core Duty 3 and/or behaved in a way which could reasonably be seen by the public to undermine her integrity contrary to rC8, in that on 6 April 2022, she posted or allowed a 14-part thread to be tweeted in her name on her twitter account in relation to a case in which she was instructed, which posts individually and/or cumulatively were without a sound factual basis and contained seriously offensive, derogatory language which was designed to demean and/or insult the judge.

The tweets in question are as follows:

"1/14 I represented Amanda Traharne. She said she was coerced into signing a post-nuptial agreement by her husband (who is a part-time judge). I lost the case. I do not accept the Judge's reasoning. I will never accept the minimization of domestic abuse.

2/14 Demeaning the significance of domestic abuse has the affect of silencing victims and rendering perpetrators invisible. This judgment has echoes of he "boys club" which still exists among men in powerful positions. I dissect the judgment below [with a link provided to the judgment].

5/14 "the clear impression that I have is that this was a relationship that at times was tempestuous and that H would on occasions lose his temper." Tempestuous? Lose his temper? Isn't this the trivialization of domestic abuse & gendered language. This is not normal married life.

8/14 "To put it another way, her need to maintain the relationship eclipsed her cognitive understanding." This couldn't be a clearer example of the pathologisation of a victim and the blaming of a victim- how many women "fail to leave" abuse & so are culpable? @DrJessTaylor

10/14 The Judge is undermining not only W's mental health & wellbeing as a woman, but he is also throwing a Miss Havisham spin on W, as a failed unstable wife. Despite the fact it was found that H is violent & has a temper where he drinks & resorts to aggression.

12/14 Let's move onto H's ex partner. The judge turns a blind eye to H's previous partner stating that H is controlling. The Judge unnecessarily compares W to H's previous partner, insinuating that if W was stronger, she too could have avoided H's controlling behaviour.

13/14 "I find that W "has her sights too high" [financially]. A misogynistic tale as old as time, the woman is failing to get what she wants so she makes dramatic allegations. This outdated notion puts women's right & the protection of believing survivors back years.

Charge 5

Statement of Offence

Professional misconduct, contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9th Edition), Bar Standards Board Handbook .

Particulars of offence

Dr Proudman, a barrister, behaved in a way which was likely to diminish the trust and confidence which the public places in her and in the profession, in that on 6 April 2022, at 8.25pm, she posted or allowed a 14-part thread to be tweeted in her name on her twitter account in relation to a case in which she was instructed, the posts individually and/or cumulatively were without a sound factual basis and contained seriously offensive, derogatory language which was designed to demean and/or insult the judge.

The tweets in question are as follows:

"1/14 I represented Amanda Traharne. She said she was coerced into signing a post-nuptial agreement by her husband (who is a part-time judge). I lost the case. I do not accept the Judge's reasoning. I will never accept the minimization of domestic abuse.

2/14 Demeaning the significance of domestic abuse has the affect of silencing victims and rendering perpetrators invisible. This judgment has echoes of he "boys club" which still exists among men in powerful positions. I dissect the judgment below [with a link provided to the judgment].

5/14 "the clear impression that I have is that this was a relationship that at times was tempestuous and that H would on occasions lose his temper." Tempestuous? Lose his temper? Isn't this the trivialization of domestic abuse & gendered language. This is not normal married life.

8/14 "To put it another way, her need to maintain the relationship eclipsed her cognitive understanding." This couldn't be a clearer example of the pathologisation of a victim and the blaming of a victim- how many women "fail to leave" abuse & so are culpable? @DrJessTaylor

10/14 The Judge is undermining not only W's mental health & wellbeing as a woman, but he is also throwing a Miss Havisham spin on W, as a failed unstable wife. Despite the fact it was found that H is violent & has a temper where he drinks & resorts to aggression.

12/14 Let's move onto H's ex partner. The judge turns a blind eye to H's previous partner stating that H is controlling. The Judge unnecessarily compares W to H's previous partner, insinuating that if W was stronger, she too could have avoided H's controlling behaviour.

13/14 "I find that W "has her sights too high" [financially]. A misogynistic tale as old as time, the woman is failing to get what she wants so she makes dramatic allegations. This outdated notion puts women's right & the protection of believing survivors back years.

Parties Present and Representation

1. The Respondent was present and was represented by Mark Macdonald and Ms Monica Feria-Tinta. The Bar Standards Board ("BSB") was represented by Aileen McColgan KC.

Findings

This is a hearing into five charges of professional misconduct brought by the BSB against Dr Proudman, the Respondent. All of them relate to a chain of 14 tweets sent by Dr Proudman on 6 April 2022 which contain her comments upon the judgment of Sir Jonathan Cohen in a matrimonial case in which she had been junior counsel for the wife.

In the defence that is brought on her behalf two principal matters are raised. The first (Part 1) is that the proceedings against her should never have been brought and are an abuse of the process. The second (Part 2) is that what she tweeted is not capable of amounting to professional misconduct in respect of any of the allegations set out in the charges that have been brought.

At the outset, and with the agreement of the parties, it was decided that Part 2 should be ruled on first. If the tweets do not amount to professional misconduct the charges are to be dismissed. If they are capable of amounting to professional misconduct then we go on to consider Part 1.

The matter before Sir Jonathan Cohen was a wife's application for Financial Remedy Orders in a case where there had been a postnuptial settlement. She said that due to her husband's coercive and controlling behaviour the Agreement should be of no effect; alternatively, it did not meet her needs. There was another matter that was raised but disposed of, and we do not need to deal with that.

In the course of his judgment, which was delivered towards the end of March, the judge criticised both husband and wife for wasteful expenditure on costs and misconceived steps taken by each in the litigation. He made it plain also that the issues relating to the husband's conduct contributed nothing to the resolution of the financial issues that he had to decide, because the Agreement, that is the Postnuptial Agreement, plainly did not meet the wife's long-term needs, and for that reason alone the wife would not be held to it.

The issue of conduct was raised, however, and the judge dealt with it. It had first been raised in any detail on 2 February 2022 at a hearing before Mostyn J, who gave directions

that the wife should serve a schedule of the findings that she maintained were relevant to the issue of controlling and coercive behaviour. Fourteen separate topics were raised, each of which was denied by the husband. Some were not pursued and some were not supported by evidence, but four matters were gone into; and here it would be helpful to go to the Sir Jonathan's judgment itself because that is where those matters were dealt with by him on 31 March 2022.

We turn to paragraph 31 of the judgment.

> "The allegations of coercive and controlling behaviour.
>
> 31. Physical violence. There were a number of specific incidents on which the wife relied, both for what happened by way of incident, but also as examples of the husband's temper and lack of control.
>
> (i) In December 2012 the parties had an argument relating to the very recent death of the husband's mother. The wife was in bed under the bedclothes and the husband was sitting on the bed undressing when in frustration (as he says) he brought his hand down on the bed from on high, holding the shoe or shoes which he had just taken off. In doing so, he hit the wife's leg which was under the covers. It was a forceful blow. She did not seek any medical advice but reported it to the priest, and a Women's Centre recorded bruising. She has described it as inadvertent and I do not think that the husband intended to hit her, but he was plainly reckless in what he did. It was this event that led both parties to question the forthcoming marriage."

So there the learned judge is saying in terms that there was reckless violence, which necessarily amounted to unlawful violence, that was used against the wife in December 2012; albeit he did not find that it was intentional, in fact he found that it was not intentional.

We turn to the next finding

> "(ii) In March 2013 in the course of another argument, the wife threw a cup onto the floor in exasperation, whereupon the husband took hold of some books and threw them in the air. One of them hit her on the head leaving an

abrasion and bruise and at hospital she was also diagnosed with concussion. The wife agrees that the books were not thrown at her but once again, I find that the husband was reckless. I agree with the wife that on each occasion he showed a temper which he should have controlled."

So for these two matters, and these are the matters with which we are principally concerned, in each of them there was loss of temper, there was violence, it was reckless, it led to relatively minor injury, but injury nonetheless, to the wife.

To move on, the judgment was delivered on 31 March 2022 and, subject to any advice on appeal that was given, Dr Proudman's role in the litigation would have ended then or thenabouts.

We then turn to the tweets of which complaint is made, and will go through all of them at this stage, verbatim where it is necessary to do so.

The first tweet, number 1, is to be found at page D41 and the pages following.

> "I represented Amanda Traharne. She said she was coerced into signing a post-nuptial agreement by her husband (who is a part-time judge). I lost the case. I do not accept the Judge's reasoning. I will never accept the minimization of domestic abuse."

The second tweet:, number 2:

> "Demeaning the significance of domestic abuse has the effect of silencing victims and rendering perpetrators invisible. This judgment has echoes of the "boy's club" which still exists among men in powerful positions. I dissect the judgment below"

and then there is a direct reference to the judgment itself, which was available via the link for anyone to look at who wished to, though much of the judgment is actually quoted.

Number 3:

> "Mr Limb hit his wife with a shoe, a forceful blow. She confided in her priest and told the Women's Centre. In my view this is domestic abuse but the judge said 'I do not think that H intended to hit her but he was plainly reckless in what he did'. Reckless??"

Number 4:

"H took hold of some books and threw them in the air, one of them hit W on the head causing an abrasion and bruise and at hospital she was also diagnosed with concussion. W agrees the books were not thrown at her, but once again I find that H was reckless. Reckless again?"

Number 5:

"The clear impression that I have is that this was a relationship that at times was tempestuous and that H would on occasions lose his temper." (A direct quote from what the judge said) followed by the comment:

"Tempestuous? Lose his temper? Isn't this the trivialization of domestic abuse & gendered language. This is not normal married life."

Number 6, which obviously follows straight on from number 5:

"This screams of excusing the alleged perpetrator and blaming the wife. Oh, he liked vigorous debate and she was quiet - what does she expect? As if his temper and throwing things at her is permissible. It's NOT."

Number 7:

(Quote from the judge) 'I do not accept that the wife was in fear of physical harm. There was no reason for her to be, and she expressly told the police she did not have such a fear. I do accept the arguments of H's temper during them caused her distress.'

" I'd fear physical harm, wouldn't you" is the comment that followed.

Number 8, which does not directly follow:

"To put it another way her need to maintain the relationship eclipsed her cognitive understanding (quote from the judge."

Comment: "This couldn't be a clearer example of the pathologisation of a victim and the blaming of a victim - how many women 'fail to leave' abuse & so are culpable" and then there is a reference to a doctor whose is named but not cited.

Number 9:

(Quote from the judge) “W’s psychological makeup in previous history of relationship breakups have deprived her of being able to make a rational and considered decision as to what was in her best interests. This was not caused by H’s conduct.”

Here, Dr Proudman says: “The judge blames the wife’s past relationships and mental illness.”

Number 10, which plainly follows straight on from 9

“The judge is undermining not only W’s mental health & wellbeing as a woman, but he is also throwing a Miss Havisham spin on the wife as a failed unstable wife. Despite the fact it was found that H is violent & has a temper where he drinks or resorts to aggression.”

Number 11:

“The judge states: ‘I very much regret so much energy has been devoted to exploring this subject. The emotional and financial consequences on the parties have been considerable. It has also been entirely unnecessary’

Dr Proudman’s comment

“An old notion that women are dramatic and waste our time.”

Number 12.

“Let’s move onto H’s ex-partner. The judge turns a blind eye to H’s previous partner stating that H is controlling. The Judge unnecessarily compares W to H’s previous partner, insinuating that if W was stronger, she too could have avoided H’s controlling behaviour”.

Number 13.

“‘I find’ said the judge ‘that W has set her sights too high [financially]’.”

Comment:

“A misogynistic tale as old as time, the woman is failing to get what she wants so she makes dramatic allegations. This outdated notion puts women’s rights and the protection of believing survivors back years.”

Number 14:

> "The positives. The judgment makes clear that coercive and controlling behaviour and duress is relevant when determining if a pre or post-nuptial agreement is valid in principle. The judgment makes clear that abuse is objectively determined and his intention is irrelevant."

To move from the tweets to the charges. It is important to point out that the evidence that was adduced before us on behalf of the BSB is all the evidence that there is to call in respect of them; and it amounts to the judgment of the learned judge and the tweets themselves.

We turn to Charge 1. Professional misconduct, contrary to Core Duty 3 and/or rC8 of the Code of Conduct.

> " Dr Proudman, a barrister, acted contrary to Core Duty 3 and rC8, in that on 6 April 2022, she posted or allowed a 14-part thread to be tweeted in her name on her twitter account, which contained misleading tweets which individually and/or cumulatively inaccurately reflected the findings of the judge in a case in which she was instructed. Such conduct could reasonably be seen by the public to undermine her integrity, and in fact, lacked integrity. The tweets in question are as follows" and they are the Miss Havisham reference, as we shall call it, and number 6: "This screams of excusing the alleged perpetrator … As if his temper and throwing things at her is permissible. It is NOT."

So were these misleading tweets which individually or cumulatively inaccurately reflected the findings of the judge? What the judge certainly found and what we have repeated was that on two occasions the husband had engaged in reckless violence while in temper. Whether that was connected with drink or not is not mentioned and we shall put that to one side. It was also found by the judge that he threw books which hit her, and hit her on one occasion with a shoe,. Did he throw anything <u>at</u> her as the tweet alleged? The judge did not say that, and in that respect the tweet was inaccurate. What the judge found was that he threw books, the books hit her and his violence in doing that was reckless.

Does this demonstrate sending misleading tweets, individually or cumulatively inaccurately reflecting the findings of the judge or not? In our judgment what was in the tweets comes very close to what the judge actually found . The tweets, insofar as they are factually

inaccurate at all, are so only to a minor degree and certainly, in our judgment, not to the extent necessary to found a charge of lack of integrity. In other words, we find that Charge 1 is simply not made out on its face.

The same must therefore follow logically, as is conceded, for Charge 3, but also in our judgment for Charge 2, which is based on the tweets being inaccurate and misleading to the extent of constituting professional misconduct.

That is not the end of the matter, because Charges 4 and 5 have to be considered, which requires us to consider the free speech protections contained in Article 10 ECHR

These charges, insofar as relevant state that

> " Dr Proudman, a barrister, failed to act with integrity, contrary to Core Duty 3 and/or behaved in a way which could reasonably be seen by the public to undermine her integrity contrary to rC8, in that on 6 April 2022, she posted or allowed a 14-part thread to be tweeted in her name on her twitter account in relation to a case in which she was instructed, which posts individually and/or cumulatively were without a sound factual basis and contained seriously offensive, derogatory language which was designed to demean and/or insult the judge"

What has to be considered here, in our judgment, is whether what was undoubtedly tweeted was "seriously offensive derogatory language that was designed to demean or insult the judge", and if it was, whether this amounted to professional misconduct.

Freedom of speech is protected by article 10 of ECHR. Article 10 applies to us as a tribunal and to proceedings before us. It is in the following terms.:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the

> protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

It can readily be seen that the freedom is not unfettered and it is obvious that what might be permissible comment from a journalist or a member of the public may not be permissible to a lawyer practising as such constrained by the ethics of his or her profession.

The question we have to deal with is whether it is arguable that what was tweeted by Dr Proudman went beyond the bounds of permissible conduct from a professional person in her position. We have been greatly assisted in assessing this by the case of *Morice v France*. We accept that the context of that case was quite different from this, because in *Morice* the court was dealing with a case of criminal defamation being brought against a lawyer, on whom criminal sanctions had been imposed, and of course in circumstances such as that, particular care would have to be taken before deciding that someone had lost the protection that otherwise they would have under Article 10. But general comments are made about what lawyers can and cannot say as well in that judgment. We start at paragraph 124.

We go to sub-paragraphs (i) and (ii).

> "Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society.' As set forth in Article 10, this freedom is subject to exceptions … which must, however, be construed strictly and the need for any restrictions must be established convincingly.
>
> The adjective 'necessary' within the meaning of Article 10 paragraph 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it,

even those given by an independent court. The court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression, as protected by Article 10."

We move on to paragraph 125;

"Moreover, as regards the level of protection, there is little scope under Article 10(2) of the Convention for restrictions on political speech or on debate of matters of public interest."

This is a matter that we would stress because, of course, the issue of domestic violence is a matter of public interest, and it is perfectly legitimate to perceive that it is.

"Accordingly, a high level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest, as is the case, in particular, for remarks on the functioning of the judiciary, even in the context of proceedings that are still pending in respect of other defendants."

The court then goes on to drawing a distinction between statements of fact and value judgments.

"The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10… However, where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient 'factual basis' for the impugned statement: if there is not, that value judgment may prove excessive… In order to distinguish between a factual allegation and a value judgment it is necessary to take account of the circumstances of the case and the general tone of the remarks … bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact.

Lastly (and this is a reflection of the fact that of course one was dealing with criminal proceedings here),

> "the nature and severity of the sanctions imposed are also factors to be taken into account on assessing the proportionality of the interference. As the court has previously pointed out, interference with freedom of expression may have a chilling effect on the exercise of that freedom. The relatively moderate nature of the fines" [that were imposed in *Morice*]"does not suffice to negate the risk of a chilling effect on the exercise of freedom of expression, this being all the more unacceptable in the case of a lawyer who is required to ensure the effective defence of his clients."

That of course was no longer the position here; the case was over when the tweets were broadcast.

> "Generally speaking, while it is legitimate that the institutions of the State, as guarantors of the institutional public order, to be protected by the competent authorities, the dominant position occupied by those institutions requires the authorities to display restraint in resorting to criminal proceedings."

Paragraph 128: "Maintaining the authority of the judiciary"

> "Questions concerning the functioning of the justice system, an institution that is essential for any democratic society, fall within the public interest. In this connection, regard must be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a State governed by the rule of law, it must enjoy public confidence if it is to be successful in carrying out its duties. It may therefore prove necessary to protect such confidence against gravely damaging attacks that are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying."

We repeat the phrase that is used , "it may therefore prove necessary to protect such confidence against gravely damaging attacks that are essentially unfounded."

We move on to paragraph 130 and 131.

> "What is at stake is the confidence which the courts in a democratic society must inspire not only in the accused, as far as criminal proceedings are concerned … but also in the public at large.

> Nevertheless - save in the case of gravely damaging attacks that are essentially unfounded - bearing in mind that judges form part of the fundamental institution of the State, they may as such be subject to personal criticism within the permissible limits, and not only in a theoretical and general manner… When acting in their official capacity they may thus be subject to wider limits of acceptable criticism than ordinary citizens."

We have found those various statements a helpful lead as to the view that we should take when construing article 10.

These tweets are almost all statements of opinion, save where we have already mentioned an issue of fact that was incorrectly put forward by Dr Proudman; and all of them are concerning a matter of public interest. Are they unfounded and gravely damaging to the judiciary? Our answer is no. They were robustly expressed opinions on an important matter of public interest. They were moreover opinions which a rational and conscientious lawyer was entitled to express without losing the protection that Morice illustrates is provided by article 10. We do not condone them; that is not our function. Our function is to determine whether it has been established by the BSB to the civil standard that Dr Proudman has lost her Article 10 protection because what she tweeted was so factually unfounded and so gravely damaging to the judiciary as to amount to professional misconduct. We do not consider that it came close to that.

These tweets would not have been pleasant for any judge to read. No one would enjoy having comments like those in the tweets made about them when they have done their professional duty in discharging what is always a complicated and difficult function; the remarks may even be thought to be hurtful. But they are not gravely damaging to the judiciary, and in our judgment it is not arguable that they are. We take the view that the Judiciary of England and Wales is far more robust than that. For these reasons we also dismiss Charges 4 and 5. So the charges are dismissed.

Dated: 14 March 2025

HH Nicholas Ainley

Chairman of the Tribunal

The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

BSB v Dr C R Proudman

2022/1204/D3

Costs application determination

1. This is the ruling of the tribunal on an application for costs made by the successful respondent to disciplinary proceedings, Dr Proudman

2. The application was adjourned at the conclusion of the disciplinary proceedings in order for the tribunal to receive written submissions as to whether costs should be awarded at all, and if so in what sum. Detailed submissions and citations from authority were received up to the early part of June 2025. These have all been read and considered, albeit there will not be reference to every submission that has been made in this ruling.

3. The power to award costs is set out in the BSB Handbook as follows;

rE 244 A Disciplinary Tribunal may make such orders for costs, whether against or in favour of a respondent, as it shall think fit.

rE245 A party who wishes to make an application for costs must, no later than 24 hours before the commencement of the hearing, serve upon any other party and file with BTAS a schedule setting out the costs they seek.

rE246 Where it exercises its discretion to make an Order for costs, a Disciplinary Tribunal must either itself decide the amount of such costs or direct BTAS to appoint a suitably qualified person to do so on its behalf.

rE247 Any costs ordered to be paid by or to a respondent must be paid to or by the Bar Standards Board

4. The reader of this ruling is referred to the determination of the tribunal for the facts that the tribunal found and that lie behind this application. Dr. Proudman submitted, albeit in very general terms, that she was seeking costs before the hearing took place.

5. The first matter to consider is whether there should be an order for costs at all, as these are not routinely awarded to successful respondents. They are only awarded where there is a "good reason". That, as the authorities make clear, is because it is in the public interest that

those who have a disciplinary function in respect of professional people should not feel unduly inhibited from bringing disciplinary proceedings by the fear of costs consequences if they lose. The public interest in ensuring that professional people are properly supervised and where necessary subject to discipline is too strong for that.

6. The recent judgment of Eyre J in SRA v Tsang [2024] EWHC 1150, draws together the authorities of the Higher Courts and usefully sets out the principles that should be followed. It is a case to do with the SRA but the same principals apply to the BSB

> "In considering whether there is such a good reason [i.e.to award costs] the fact that the proceedings were brought in exercise of the SRA's regulatory function is to be seen as a crucial factor and regard is to be had to the risk that the making of adverse costs orders will have a chilling effect on the exercise of the regulatory jurisdiction. However, those factors are not conclusive. Good reasons are not confined to those cases where the proceedings have been improperly brought or so badly conducted as to have amounted to "a shambles from start to finish". However, those examples are to be seen as indicating the kind of matters which can amount to a good reason and for other matters to amount to a good reason they must be of a comparable gravity."

And

> "I am satisfied that a finding that the proceedings were brought on a basis which was fundamentally misconceived as a matter of law can be a good reason for a costs order… A mistake going to the root of the basis of proceedings such that they were fundamentally flawed is capable in an appropriate case of being a good reason for an award of costs…"

7. It is urged on us by Dr Proudman that this is a case where the failings of the BSB were such that costs should be awarded and, moreover, on an indemnity basis. This would amount to a very significant award, as on our approximate calculation she is claiming £352,017 in costs.

8. There are two main submissions that she makes in support of her application. It is submitted on her behalf firstly, that the charges were so doomed to fail that they should never have been proceeded with, and secondly that she has been improperly pursued and harassed by the conduct of the BSB in a way that a man would not have been had he been the author of her tweets. She asserts that this was the equivalent of a malicious prosecution, and that it

therefore follows that these proceedings were improperly brought and pursued and constitute discriminatory and oppressive behaviour that should not be countenanced. We shall deal with the second submission first.

9. On the 8th of March 2024 she applied through leading counsel, and supported by a 60 page skeleton argument, to strike out the charges against her on the basis, not of the inadequacy of the charges themselves, that issue was not addressed, but on the basis that they were improperly brought as set out above. The application came before HHJ Carroll, sitting as a directions judge at those strikeout proceedings, on the 9th and 10th of September 2024. He felt unable to grant a strike out on grounds which he explained in paragraph 43 of his ruling as follows.

> "There is a clear public interest in the maintenance of public confidence in the legal system, in judges, and in the legal professionals who voluntarily take upon themselves the duties and responsibilities of their profession, in the Bar's case, as set out in the Code of Conduct. There is equally a public interest in ensuring that any decisions to prosecute allegations of falling below those standards are made properly, fairly and absent any transgressions of an individual's rights e.g. free of discrimination. To reach the point where any tribunal can properly make a judgment on those competing public interests, first it will be necessary to properly litigate the point through evidence, to make appropriate findings of facts upon that evidence, to determine whether or not the discrimination exists and if so, to assess the extent to which that may have impacted upon the decision to charge and whether it was sufficiently egregious to dismiss the charges or whether it amounts to mitigation rather than a full defence to the allegations. I am not satisfied on the state of the matters before me at this point that I am able to take those steps to the extent of taking the exceptional decision of staying the proceedings. In short, I am not satisfied that these matters have yet been properly litigated, though I am satisfied that the Tribunal can and ought to entertain evidence and arguments under this head."

10. As Judge Carroll pointed out, and we agree, there are almost insuperable difficulties in the way of such a submission succeeding in the absence of evidence of malpractice. The decision makers, including in particular in this case, the independent barrister Theresa Murphy who advised on the propriety of the charges, would have to be heard, have an opportunity to give their account and be cross-examined before any reasoned conclusion could be come to.

11. The procedure that was adopted at the hearing before us, with the agreement of the parties, did not allow for that, at least initially. What was suggested by the tribunal and was agreed to by counsel representing both Dr Proudman and the BSB was that whether the tweets were capable of amounting to professional misconduct should be dealt with first, and if they were capable of so amounting, matters such as whether bringing the proceedings amounted to an abuse of process would then be gone into. We were not invited at any stage to take a course other than the one that was in fact adopted and which resulted in the dismissal of all charges.

12. It follows from this that we are not in a position to come to a reasoned conclusion as to whether these proceedings were maliciously brought because the matter was simply not addressed before us. In short, we are in the same position as Judge Carroll was.

13. In the absence of such evidence, in our judgment it would not be appropriate for us to make any order as to costs where those costs were incurred in support of allegations of malpractice. We would be making an order for costs in respect of very serious allegations without an evidential basis for making it.

14. We suspect, because of the way matters proceeded before Judge Carroll, that that conclusion disposes of the greater part of the application for costs.

15. That brings us back to the first submission, which is that this case was too weak to come before a tribunal at all. As has been pointed out above that was not a matter that was raised before Judge Carroll, but that does not affect its merits if the submission is soundly based. The main thrust of the allegations against Dr Proudman related to her comments in the tweets that she issued. We came to the firm conclusion that they did not cross the line that they would have to cross in order for them to constitute professional misconduct whether because of inaccuracy or their offensive nature. We based our decision very largely on our interpretation of Article 10 of the ECHR and the ECHR authority of Morice v France

16. In matters of statutory interpretation, particularly interpretation of ECHR judgments and the Articles which they address it is common for judges and tribunals to differ; rational people can disagree. In this case those responsible for bringing the proceedings against Dr Proudman came to the clear view that the line drawn by Morice was crossed and Article 10 protection

was not available to Dr Proudman. We took a different view and expressed it, we hope, with firmness and clarity. That is a long way from holding that the decision to proceed was fundamentally misconceived; in other words was not one that a rational decision maker could come to. We therefore do not feel, applying the principles set out in Tsang, that this case comes into the category of case that would attract an award of costs. Accordingly, we do not feel that there should be an order as to costs at all.

17. In case we are wrong on this point there are some matters as to quantum that we feel should be dealt with in this ruling.

18. Sivanandan makes it clear that Dr Proudman if entitled to costs is entitled to her reasonable costs of acting in person. If we are correct in holding that costs simply cannot be awarded if incurred dealing with the malicious prosecution submission as opposed to the weakness of the charges there will have to be an apportionment as to the hours spent. The amount claimed per hour should also be considered. We would have remitted these matters to a suitably qualified person to determine as we lack the expertise to do so.

19. The next matter that would arise relates to the fees charged by Miss Feria Tinta. She addressed us at the hearing and we accept that she was representing Dr Proudman on a fee paid basis. Here again there may have to be an apportionment and here again we suspect, although we do not know, that the great bulk of her fees relates to the malicious prosecution argument. We also note that on the eve of the hearing a 95 page skeleton argument was submitted by her which was in the event never considered and would undoubtedly have been the subject of criticism for its inordinate length if it had been.

20. Finally, there is a claim for over £200,000 for pro bono costs. By specific statutory provision these are available in certain types of case including cases before the civil courts and certain tribunals. Parliament has not chosen to make such costs capable of being awarded in professional disciplinary tribunals. We take the view that in the absence of specific judicial or statutory authority it is not within our powers and unreasonable to make an order for costs that have not been incurred against a losing party in proceedings such as those before us.

10 July 2025