The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2016/0344/D3

Hilary Roberts

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

Hilary Roberts

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 10th October 2017, I sat as Chair of a Disciplinary Tribunal on the 30th November 2017 to hear and determine three charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales and the Bar Standards Board Handbook against Hilary Roberts, barrister of the Honourable Society of Gray's Inn.

Panel Members

2. The other members of the Tribunal were:

   Dr Rosemary Gillespie [Lay Member]

   Thomas Williams [Barrister Member]

Charges

3. The following charges were admitted / proved:

   Charge 1

   Statement of Offence

   Professional misconduct contrary to paragraph 301 of the Code of Conduct of the Bar of England and Wales [8th Edition].

Particulars of Offence

Between the 28th February 2013 and the 5th January 2014, Hilary Roberts engaged in conduct which was likely to diminish the public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute [paragraph 301(a)(ii), namely, i] he failed to make the payments he had agreed to make to settle the employment tribunal claim of David Brinning; ii] he did not respond to requests and correspondence relating to the outstanding money including after the making of a County Order for recovery of the award on the 13th June 2013.

Charge 2

Statement of Offence

Professional misconduct contrary to Core Duty 5 of the Bar Standards Board Handbook.

Particulars of Offence

Between the 6th January 2014 and the 1st July 2017, Hilary Roberts behaved in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the profession, namely, i] he failed to make the payments he had agreed to make to settle the employment tribunal claim of David Brinning; ii] he did not respond to requests and correspondence relating to the outstanding money including after the making of a County Order for recovery of the award on the 13th June 2013.

Charge 3

Statement of Offence

Professional misconduct contrary to Core Duty 9 of the Bar Standards Board Handbook.

Particulars of Offence

Between the 20th March 2017 and the 1st July 2017, Hilary Roberts has failed to be open and co-operative with his regulators regarding David Brinning's complaint and failed to provide promptly information required of him by the Bar Standards Board for the purpose of its regulatory functions in that he failed to provide any response to or written comments upon his lay client's complaint by the 20th March 2017 as required by the Bar Standards Board.

Parties Present and Representation

4. The Respondent was present but was not represented. The Bar Standards Board ("BSB") was represented by Charles Crinion and Ms Gift Akinola, BSB Investigations Officer, was in attendance.

Judgment

The Chair: I will give a short judgment. This is the judgment of the Tribunal.

In June 2012, Temple Chambers at 32 Park Place, Cardiff, was dissolved. The respondent, Hilary Roberts, was the Head of Chambers at that time and therefore in the position of main responsibility in that Chambers for the administration of those Chambers and also for the employees. Mr Roberts was required to bring about the formal closure of the Chambers. Mr David Brinning was a senior clerk at Temple Chambers for 32 years prior to their dissolution. The length of time is significant.

Mr Roberts has been found by us not to have complied with contractual obligations in respect of Mr Brinning and indeed, because of that failure to comply with those contractual obligations, Mr Brinning commenced proceeds in the Employment Tribunal against Mr Roberts acting for and on behalf of the whole membership of Chambers at the time of dissolution.

Those proceedings were compromised. There was a settlement reached on 11th December 2012. We have seen the Settlement Agreement which was reached between Mr Roberts' former Chambers and their senior employee. It was entered into under the auspices of ACAS. It provided for a lump sum payment in a number of instalments to Mr Brinning in the total sum of £57,500 in full and final settlement of the claim. The instalments were said to be three: the first instalment (at paragraph 2 of the Settlement) being £20,000 to be

payable within 14 days; the second instalment of £27,500 would then be paid within 28 days following the first payment. Those payments were recorded in the Settlement to reflect the fact that a payment of £10,000 had already been made to Mr Brinning on account.

There was a default in the making of the agreed payments. Then Mr Brinning applied to the County Court sitting at Cardiff for the registration of the Settlement. On 12th June 2013 a proper officer of the County Court at Cardiff made an order – which is sealed by the court – giving permission to the applicant for the enforcement of the Award in the court. The Award was that there should be an enforceable sum of £27,877.68 together with further interest becoming due. All of that is recorded on the face of the order which is before us.

The evidence before us – none of which has been challenged – is that Mr Roberts has indeed paid some of the money owed to Mr Brinning. A schedule of payments is before us, see page 32 of the exhibit to Mr Brinning's statement, which was unchallenged before us. The schedule shows that as at 19 July 2017 some £12,500-odd was due and owing from Mr Roberts to Mr Brinning. The figures have been brought up to date today at this Tribunal. It is said that the current figure outstanding is £12,850-odd. Mr Roberts accepts the mathematical calculation but raises a query as to whether 8% is or is not the correct rate of interest to be applied to that debt.

Mr Brinning has, on a number of occasions, asked Mr Roberts to pay what is owed. In particular, there are before us in a bundle at pages 23 and 24, letters dated 20th June and 5th November 2016. Those letters were both written to Mr Roberts, one to his new Chambers address where he is currently in practice, at

number 9 Park Place in Cardiff, and the other one to Mr Robert's home address in or near Cardiff. Mr Roberts did not trouble himself to reply to Mr Brinning.

Accordingly, in December 2016 a complaint was made to the Bar Standards Board on 2nd December 2016 by Mr Brinning. Notwithstanding that complaint, Mr Roberts still did not trouble himself to reply to his Chambers Clerk of 32 years' standing and indeed we are told no further payments have been made from the outstanding sum even today. No explanation has yet been given to us in any form at all in advance of this Tribunal as to why that money has not been paid. That is a matter which we take very seriously indeed.

The impact of these matters on Mr Brinning is set out in an impact statement which formed part of the evidence which Mr Roberts has accepted. The impact statement (page 34 of the bundle) explains to us that Mr Brinning had been the Clerk of the Chambers for 32 years. He went from earning what he called a "good income" to next to nothing. He says that he and his wife were devastated and – bearing in mind that that this Settlement was in December 2012 and at that time only approximately £30,000 had been paid – the impact was exacerbated by the fact that within the Brinning Family a tragedy befell, that is that Mr Brinning's wife fell severely ill in January 2013, after which she spent six months having surgery and treatment. Part of the impact of the non-payment, says Mr Brinning in his statement, was that he had to sell up family properties, including the family holiday home, because he could not afford to pay the mortgages. He says also in terms that he could not afford to take his sick wife away to allow her to recuperate or to spoil her at that stage, which he said really hurt him.

Later in the statement he explains the financial strain that this non-payment has put him under and he says that he has no doubt that the financial strain that they were caused, caused the wife much anxiety and stress, so much so that it contributed to her state of health. He says that they felt that they were fighting two fronts at the same time, the first being the health and the second being Mr Roberts, one of which they should not have had to fight.

There is a further fact that Mr Brinning brings to our attention in his impact statement. He says that he wishes to make a final point: that is in the spring or summer of 2013, that is after the Settlement was entered into and after the facts I have described, that he was made aware that in his former Chambers' bank account was sufficient money to allow him to be paid in full, but no explanation has ever been given to him or to anybody else as to why that money was not paid to him. In fact he points out that he probably had the power at that time to write a cheque to himself, but he acted properly and did not do so.

On the basis of the facts as I have recited and also the impact that we have heard about, the Tribunal finds Charges 1 and 2 proved.

On the third charge, which is failure to engage with the Tribunal, we have been referred to the statements – which has not been challenged – of Ms Akinola. She has set out, and we have seen previously exhibited to other statements, the correspondence between Mr Roberts and his Regulator. It does not read well. Mr Roberts has been the subject of many communications from the Bar Standards Board but has replied only twice, as the evidence stands before us, and then only as suited him, and then did not do what he said he would do on either occasion.

In particular, there were communications to Mr Roberts (I will not say what each one contained, but they are in the evidence) on 24th February, when the summary of the complaint went out; on 13th March the Bar Standards Board wrote to Mr Roberts reminding him that his response was due by 20th March; and then there is the first of the Roberts communications. On 20th March he wrote to the Bar Standards Board requesting an extension. The Board granted him an extension explaining that this was an indulgence – we have seen the correspondence on that – but Mr Roberts then went silent and did not have the courtesy to take the matter any further. That is a serious professional matter and is also to be viewed with some opprobrium particularly given Mr Roberts' level of seniority at the Bar. On 25th July 2017 the Bar Standards Board served charges. There was no response. Therefore, on 18th August the Bar Standards Board had to write to this Tribunal Service to say that there had been no response and then further correspondence had to be entered into. On 11th September, 19th September and 28th September 2017 the Bar Standards Board wrote to Mr Roberts requesting that he respond to the directions that were being proposed at that stage. Mr Roberts, who is still in professional practice at a set of Chambers, did not trouble himself to respond other than on 9th October 2017 when he wrote to the Bar Standards Board saying,

> "I apologise for delay in my responses. I will respond before the end of this week."

Unfortunately, again, Mr Roberts then did not do what he said he was going to do and there was no response. Therefore, on 17th October 2017 the Bar Standards Board wrote to Mr Roberts again and said they would bring the matter before this Tribunal.

We have looked at this and we have found that on at least, therefore, six occasions Mr Roberts did not respond to communications from his professional Regulator. On two occasions he did respond but only to ask for something for himself and then did not comply with the indulgences that he himself had asked for. On the first occasion an indulgence was granted, the second time was one that he said he was taking for himself in any event.

On that chronology and with that evidence, the Tribunal find that the third charge is also proved.

That judgment having been recorded and those charges having been proven, we can now move, if you do not mind, Mr Crinion, to dealing with sanctions guidance.

(The proceedings continued)

Sanction and Reasons

The Chair: Please sit down. My apologies for taking the time, but we needed to consider a few matters.

Mr Roberts, we have considered very carefully everything that you have said to us today and also the case put against you. I am going to deal, first, with Counts 1 and 2 together although I will separate them out when it comes to the relevant principles to be applied; but they are part and parcel of the same ongoing failures, albeit that the Rules changed in the meantime and that is the only difference.

You put before us a number of points which you asserted were in mitigation. But of the points you put before us, we found eight to be points in

aggravation. We have to say to you that we were very unimpressed with the evidence we heard about your conduct in relation to the substantive matters and indeed your demeanour today.

The principal point that we have taken into account in terms of mitigation was that you have been badly let down, you say, by others and that is your explanation for not having been in a position to have paid Mr Brinning the money that was owed to him. You also said that you put your hands in your own pocket and paid him substantial amounts in the past. But we set against those facts, the fact that you, as Head of Chambers, an experienced member of the Bar of about 40 years, had indemnities from the other members of Chambers. You did not pursue the other members of Chambers for reasons best known to yourself and, as Head of Chambers, that is what you have to do if you owe somebody money. You also put before us in mitigation that you said you did not want to trivialise it, but then you went on to tell us that it was a relatively small sum. It is not a relatively small sum to Mr Brinning and, if it was a relatively small sum, you ought to have paid it and years ago.

Then there are the further points that you put before us in mitigation, but we found to be an aggravation.

Firstly we noted, particularly the lay member on this Tribunal noted, that everything you appeared to say to us was about yourself and very little about the impact on Mr Brinning.

Secondly, you put arguments before us in relation to your income, when I asked you, and about how hard this had been from your own perspective, but

there was no real evidence of it. We were very surprised that there had been no statement, no figures, no facts, no documents.

Thirdly, you gave us to believe that you have an income of about £50,000 net a year which members of this Tribunal have observed is not an insubstantial amount and out of that you should have found over this period of time the money to pay Mr Brinning if you could not or were unwilling to recover it from others.

Fourthly, your conduct brings the profession into disrepute. You say that there is very little effect on the public. That is not correct. The standing of the profession is something to which the public are entitled to have trust. That is why we are professionals. In behaving in a way that is not professional, that has a very significant effect on the public. It was striking to the Tribunal that you should continue to think that way.

Fifthly, you have not paid the debt and you have made no real or in fact any proposals to pay it. You said, "If I have to, I will raise the money". That was said under pressure from me asking why you had not paid and when you were going to pay. You have made no offer at all to pay, it seems; no one has told us in evidence. You have not told us that you have made any offer to pay the outstanding amount over the four and three-quarter-odd years that it has been outstanding. That stands significantly against you.

Sixthly, you raised with us the matter of a payment of £5,000 that you said you believed another former member of Chambers had made to Mr Brinning, but which you had later found had not made. Your position on this changed in the course of your address to us. You first said that you had known the truth since March 2014 but when I pressed you on it, you changed what you said to us, to

last year. We were very unimpressed with that but either way that money therefore, obviously, has not been paid. We were equally unimpressed by your putting that material forward to effectively minimise the amount that is owed to Mr Brinning because you said that in your own mind it was really only £2,000. Then you had to add back in the £5,000. Then there was £500 which you had not noticed somehow and then there is the interest running. Again, as the lay member of this Tribunal has observed internally – and we agree – the vast majority of that money, if not all of it, had been avoidable had you only behaved properly at an earlier stage.

Seventhly, your demeanour did not impress us. You had to be pushed before you demonstrated any remorse whatsoever. It came only in answer to questions that you said you were sorry but you seem to have absolutely no understanding – or at least no expression of an understanding – of the impact of this on Mr Brinning and indeed on his late wife. The effect, therefore, on the complainant, which is all unchallenged evidence, is a matter that we take heavily into account when coming to where we are going to go.

What is the proper approach? For the first charge the Version 2 Guidelines are applicable. The available sanctions are set out at paragraph 5.3. The Guidelines in relation to non-payment of a sum ordered to be paid are set out in Guideline F.2. We note, and we think that this should be drawn to the attention of those responsible for promulgating the Rules, that there is no Guideline that helps a Tribunal in relation to the non-payment of a sum agreed to be paid or embodied as part of an agreement to be paid, for example, here under the ACAS Agreement, but that is relevant to this case because it was charged in this case. Therefore, we proceed under the non-payment of the order

but with an absolute discretion under the non-payment of the ACAS Award bearing in mind the significant overlap between the two.

For the second charge we proceed under the Version 3 Guidelines where our available sanctions are in paragraph 5.4. Guideline C.5 relates to "Non-payment of an order". Equally, there is no Guideline that assists us for non-payment of an agreed sum.

We then take what we think is the realistic view that the two charges, 1 and 2, should be sanctioned together because they are part of a continuum. But we do bear in mind that the available sanctions under the two regimes are different. In particular, the maximum sum that can be imposed by way of fine is much higher under the Version 3 Rules and the maximum period for suspension has been raised from three to 12 months under the Version 3 Rules.

On Charges 1 and 2, taking them together and all the facts together, our sanction is that you be suspended from practice for a period of two months. That is in the middle of the range that is available under the Version 2 Rules but falls within the lower range under the Version 3 Rules.

On the third charge, which was non-engagement (I use my own words to summarise) with the Regulator, again we were very highly unimpressed with your conduct at the time and your demeanour today. Your only real mitigation was that you said that documents had been lost or were hard to come by. There was mention of something to do with a failed laptop. But there was no evidence put before us and no attempt to put any real evidence before us as to what documents might have been available, what they might have shown, why it was that you could not engage with the Regulator. In fact, we take the view that what

you told us today and your conduct is severely aggravating. A member of the Bar, particularly a senior member of the Bar and one who has been a Head of Chambers, is expected to engage promptly, fully and openly with his Regulator and not to fail to engage on at least six occasions and only to engage on two occasions and then only where you sought to assist your own position. On those two events, you first asked for an indulgence of time which you were given and then you inexplicably did not follow up. Then again later you told the Regulator you were going to have more time and even then you did not follow up. That had put the Regulator to the cost and expense of bringing these proceedings on in the way it has had to and to deal with your case on a fully documented basis, for which the rest of the profession must pay.

The available sanctions – and this is a matter charged in a period where only the Version 3 Rules apply – are the same as those that I set out above on the Version 3 Rules. The relevant Guideline for failure to engage is Guideline D.2 at page 44. Guideline D.2 at page 44 has three different degrees of seriousness (a), (b) and (c), ranging from "Delays in responding but with some level of engagement with the BSB" to "Deliberate decision not to engage with the BSB showing a disregard for the authority of the Regulator". (b) is simply "Failure to respond at any point to the BSB enquiries".

You described your own conduct in this regard as "abject". We take the view it was deliberate and it was persistent because you were given every chance to respond but have produced no explanation that we can understand as to why you did not, apart from not being able to understand yourself why you did not. That is not acceptable for somebody who is still in professional practice at your sort of seniority and responsibility.

The starting point for a level (c) "Failure to respond" under this Guideline is a medium level fine. That is defined at page 23 of the Guidelines as "a fine somewhere between £1,000 and £3,000". Although we have a full discretion, we have decided that you should, on this offence, be fined the sum of £2,000.

There are two more things that I would like to say at this stage on behalf of the whole of the Panel. The first is this: that an application has been made for the expenses of Mr Brinning to be paid in the sum of £246.33 in relation to travel. That is so ordered.

The second is something which we would have liked to have been able to do but cannot. That is we would have liked to have been able to order you to pay Mr Brinning promptly the money you owe him. We cannot do that because the Rules have changed, but we can make an observation. The observation is that in our view you should.

Is there anything else?

MR CRINION: No, thank you.

THE CHAIR: Is there any application for costs?

MR CRINION: Is there a timescale for paying the fine?

THE CHAIR: Have you got anything to say about that? We are not going to hear about long periods of time.

THE RESPONDENT: Could I ask for 28 days?

THE CHAIR: Yes, 28 days from today. The order, when it is drawn, should contain a date, not a 28-day period, the time and a date, so 4.00 p.m. on such-and-such a date.

MR CRINION: Is the payment of the costs by the same date?

THE CHAIR: No, they should be paid within seven days.

MR CRINION: Within seven days; thank you.

THE CHAIR: The period of suspension, I will need help on. There needs to be a start date, but it is normally set after any possible period for appeal. So, I think we do not specify the start date; that is dealt with by the Regulator. Is that correct?

MR CRINION: Yes.

THE CHAIR: Are you applying for costs?

MR CRINION: I am not applying for costs.

THE CHAIR: Is there anything else you would like to say to us, Mr Roberts?

THE RESPONDENT: No, thank you.

THE CHAIR: Thank you very much.

Approved: 19.12.17

Paul Lowenstein QC
Chair of the Tribunal