



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2017/0115/D3

Peter Wareing

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of Inner Temple

Disciplinary Tribunal

Peter Wareing

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 23 January 2018, I sat as Chair of a Disciplinary Tribunal on the 26 February 2018 to hear and determine three charges of professional misconduct contrary to the Bar Standards Board Handbook against Peter Wareing, barrister of the Honourable Society of Inner Temple.

Panel Members

2. The other members of the Tribunal were:

Paul Robb [Lay Member]

Hannah Thornley [Barrister Member]

Charges

3. The following [amended] charges were admitted.

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Charge 1

Statement of Offence

Professional misconduct contrary to Core Duty 10 and rS20 of the Bar Standards Board Handbook, 2nd Edition (“the Bar Standards Board Handbook”).

Particulars of Offence

Peter Wareing, being a self-employed barrister, from about July 2015 to about 1 February 2017, supplied legal services and exercised rights of audience, by supplying legal services:

- i) On or about 7 July 2015 to a lay client in proceedings the short title of which is *Chave v Wells & Anor* HC2012 000046 & HC2014 001144; and
 - ii) Between June 2016 and February 2017 to members of the Metro Inns group of companies in proceedings before the First Tier Tribunal [Tax Chamber]
- (a) When he was a barrister of less than 3 years’ standing and (b) was a sole practitioner and hence when his principal place of practice was not a chambers or annex of chambers which was also the principal place of practice of a relevant qualified person and (c) as a consequence supplied legal services when not authorised to do so and by reason of (a), (b) and (c) above failed to take reasonable steps to manage his practice competently and in such a way as to achieve compliance with his regulatory obligations contrary to Core Duty 10.

Charge 2

Statement of Offence

Professional misconduct contrary to Core Duty 10 and rC121.1 of the Bar Standards Board Handbook.

Particulars of Offence

Peter Wareing, a being a self-employed barrister, from about 25 July 2016 to about 1 February 2017, supplied legal services to members of the Metro Inns group of companies as public access clients in proceedings before in proceedings before the First Tier Tribunal [Tax Chamber], (a) when he was a barrister with less than 3 years’ standing and (b) he did not have a barrister who was a qualified person within rule rS22 who had registered with the Bar Council as a public access practitioner readily available to provide guidance to him and as a consequence of (a) and (b) above failed to take

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reasonable steps to manage his practice competently and in such a way as to achieve compliance with his regulatory obligations contrary to Core Duty 10.

Charge 3

Statement of Offence

Professional misconduct contrary to Core Duty 5 and rS20 and rC121.1 of the Bar Standards Board Handbook.

Particulars of Offence

Peter Wareing, being a self-employed barrister, from about July 2015 to about 1 February 2017, supplied legal services in that:

- i) On or about 7 July 2015 to a lay client in proceedings the short title of which is *Chave v Wells & Anor* HC2012 000046 & HC2014 001144; and
- ii) Between June 2016 and February 2017 to members of the Metro Inns group of companies in proceedings before the First Tier Tribunal [Tax Chamber]

(a) When he was a barrister of less than 3 years' standing and (b) was a sole practitioner and hence when his principal place of practice was not a chambers or annex of chambers which was also the principal place of practice of a relevant qualified person and (c) as a consequence supplied legal services when not authorised to do so and (d) did not have a barrister who was a qualified person within rule rS22 who had registered with the Bar Council as a public access practitioner readily available to provide guidance to him when and by reason of (a), (b), (c) and (d) above behaved in a way that is likely to diminish the trust and confidence which the public places in the profession contrary to Core Duty 5.

Parties Present and Representation

4. The Respondent was present but was not represented. The Bar Standards Board ("BSB") was represented by Mark Hubbard.

Preliminary Matters

5. There was an application to amend charges 1 and 3. Mr Wareing had no objections to the proposed amendments.

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6. The Panel and BSB were provided with a Witness Statement, dated 25 February 2018 with exhibits attached from PW1 – PW4 by Mr Wareing on the morning of the hearing on the 26 February 2018.

Pleas

7. Mr Wareing initially denied all the Charges.

Evidence

8. Mr Hubbard presented the case on behalf of the Bar Standards Board.
9. Mr Wareing gave evidence on oath.
10. Mr Hubbard cross-examined Mr Wareing. During the course of cross-examination, Mr Wareing applied for a short break in proceedings to consider his position. Upon his return, Mr Wareing advised the Tribunal that he wished to change his plea and to admit the charges. The charges were re-read to him and Mr Wareing admitted the charges.

Judgment

Following retirement to consider the matter, the Chair gave the unanimous decision of the Tribunal.

At the outset of the hearing today the charges Mr Wareing faced were amended by consent to narrow the provision of legal services described in Charges 1 and 3. As amended, the charges were as follows. [*The amended charges were then read out, as set out above.*]

Mr Wareing admitted all three charges and as such the Tribunal found them to be proved.

In considering this matter the Tribunal had the benefit of a pack of documents prepared by the Bar Standards Board which ran from 1 to 71 pages (and we will refer to documents by reference to that pagination), also a witness statement prepared by the

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respondent, Mr Wareing, dated 25th February 2018 and four appendices to that statement.

Briefly, the background is as follows. Mr Wareing was called on 14th October 2004. On 25th November 2013 he completed his pupillage and he became a tenant at Church Court Chambers. He made an application for his first practising certificate (see pages 7 to 13 of the bundle). This led to a communication from the Bar Council, an e-mail, sent on 29th January 2014 (see page 14 of the bundle) from John Shin which, in particular, as relevant, said as follows:

“If you have not held higher rights of audience as a solicitor, please can you advise us of the name of your qualified person at Church Court Chambers.

“The ‘three year rule’.

“The ‘three year rule’ is the requirement that a barrister work with a ‘qualified person’ for his first three years of entitlement to exercise full rights of audience.

“Please note the following:

- a ‘qualified person’ is a solicitor or barrister who has practised for at least six of the last eight years and has been entitled to exercise full rights of audience for the previous two years.*
- A qualified person may act as such in relation to up to two barristers at a time.*
- A qualified person must be readily available to provide guidance to the barrister in question. In order to be in compliance with the three year rule a barrister’s principal place of practice must be either the principal place of practice of his qualified person or an office of an organisation of which his qualified person is an employee, partner or director.”*

Mr Wareing replied to Mr Shin by an e-mail on the same day thanking him for his swift response. Amongst other things he said in that e-mail in reply, *“This means, I accept, I am subject to the ‘three-year rule’, the parameters of which you very kindly reprise in your e-mail to me.”*

It was in the Tribunal’s view abundantly clear at this stage that Mr Wareing was aware that the three-year rule applied to him. The date from which the three years ran was set out in that e-mail and Mr Wareing’s response indicates that he understood and accepted the rule.

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On or about 19th January 2015 Mr Wareing left Church Court and joined Cotswold Chambers, a chambers which he says he then left on 21st May 2015 having been suspended from a date in February 2015.

By an e-mail sent on 29th August 2015 Mr Wareing was to tell the Bar Council that his qualified person in relation to his period at Cotswold Chambers was the Head of Chambers, Mark Smith (see the e-mail at pages 23 to 24). This communication indicates that during his period at Cotswold Chambers, and indeed when he wrote the e-mail on 29th August 2015, Mr Wareing was aware of the requirement to have a qualified person.

Mr Wareing accepted that after he left Cotswold Chambers he was no longer a member of a barristers' chambers but that, nevertheless, on 7th July 2015 acted for a lay client (instructed by a solicitor) in relation to possession proceedings and in due course acted for the Metro Inn group of companies in a tax case before the First Tier Tribunal from or about July 2016 until early 2017. Mr Wareing also accepted before us that during this period he was practising from his home address from which no other barrister practised and that he did not have a qualified person in place during this time either in relation to the Handbook Rules relating to the supply of legal services or those relating to direct access.

We note that in addition to the 29th January 2014 e-mail that we have already referred to, the Bar Council drew Mr Wareing's attention to the three-year rule and/or the qualifying person provision or aspects of it in e-mails sent to him on 22nd July 2015 from Alexandra Paynter (see pages 21 to 22) to which Mr Wareing replied on 29th August (see pages 23 to 24) and also in e-mail sent on 24th September 2015 (see page 24A) which Mr Wareing accepted in the proceedings today that he received. There was also an e-mail from Ms Newton sent on 28th September 2016 (see page 42) and a further e-mail from Ms Newton to Mr Wareing sent on 18th October 2016 (see page 46).

At the outset of this hearing Mr Wareing denied the three charges. He gave evidence and was cross-examined by Mr Hubbard representing the Bar Standards Board. During the course of being questioned, Mr Wareing accepted that the BSB Handbook and

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Codes require a barrister of less than three years' standing to have a "qualified person" as defined. Having been taken through the documents by Mr Hubbard during his questioning, Mr Wareing ultimately accepted that it was his responsibility to inform himself of the applicable rules of practice as a barrister and how they applied to him. Shortly after this, and having asked for a few moments to reflect, Mr Wareing indicated he wished to change his plea to admit the charges, which he then duly did.

Turning specifically to our decision in relation to sanction having set out that relevant background, we were referred by Mr Hubbard to section E3 of the Sanctioning Guidance or the Sentence and Guidance (as it was called then). Version 3 is the one applicable to this situation. E3 deals with "Breach of practising requirements". It covers a wide range of situations. Mr Hubbard indicated that the instant circumstances came towards the upper end.

On reflection it seemed to the Tribunal that section E2 of the Guidance which is called, as shorthand "Holding out" better reflected the situation. We refer in particular to the description given at the outset of that Guidance:

"Holding out' is the shorthand term to describe a barrister who is not entitled to practise presenting himself to others in a way that would lead people to believe that he is entitled to practise and offer legal services as a barrister."

Under this Guidance, which the Tribunal felt was the most applicable to the current circumstances, the Tribunal considered that the situation was best reflected in "Category c" under the heading "Common circumstances" which reads: *"Providing legal services for financial gain in circumstances where the client is misled into believing the barrister is entitled to practise."*

The "Starting Point" provided in the Guidance for such conduct is a *"Medium level fine to suspension dependent on the extent of the financial gain"*.

Recognising, of course, that this is only guidance, the Tribunal considered that this was indeed the appropriate starting point to apply, based on the charges and the history that I have summarised.

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The Tribunal then went on to identify relevant “Aggravating factors”. The Tribunal considered that the following in particular were present. First, that the conduct occurred over a lengthy period. It spanned 7th July 2015 to early 2017 and in a context where during that period Mr Wareing was sent a number of e-mail communications from the Bar Council highlighting the position to him, as we have described.

Secondly, previous disciplinary findings: in this case on 26th May 2017 four charges were found proven in relation to Mr Wareing’s conduct, three of those based on his admissions. The first two of those charges concerned the supply of legal services to public access clients in respectively June and then September to December 2014 at a time when he was not qualified or registered to provide such services. Charge 3 concerned supplying legal services without having a litigation extension to his practising certificate. The Tribunal took no further action in relation to Charge 1 recognising that Mr Wareing had been placed in a difficult situation by virtue of his solicitor withdrawing from the case, but imposed a reprimand in relation to Charges 2, 3 and 5. We say no more about Charge 5 because we recognise it covers a different sort of misconduct. In relation to Charges 1, 2 and 3 – and focusing on Charges 2 and 3 because the Tribunal took no further action in relation to Charge 1 – we consider there is similarity in that they involve instances where Mr Wareing supplied legal services in breach of regulatory requirements.

The third aggravating factor we have identified is that the conduct Mr Wareing has accepted was of a nature likely to undermine trust and confidence in the profession as he indeed accepted by virtue of admitting Charge 3.

Fourthly, it appears to us that the motivation for acting in relation to the supply of legal services he is charged with must have been one of financial gain.

Fifthly, we highlight Mr Wareing’s apparent lack of insight. Given the Bar Council’s communications over a period of time that we have identified earlier, we consider that the relevant regulatory requirements were brought to Mr Wareing’s attention on a number of occasions and that he failed to act upon this. If he was in any uncertainty, he could have taken steps to clarify. But, in any event, we have highlighted that he was

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aware of the need to provide a qualified person and did so when at Church Court and then at Cotswold Chambers. Further, until his late admission of the charges today, including at the outset of the questioning by Mr Hubbard, it did not appear to us that he appreciated the seriousness of his conduct or the implications of it.

We then turn to identify relevant “Mitigating factors”. We do take into account that Mr Wareing has admitted the charges, albeit at the last moment. We also bear in mind that he was relatively junior in the profession whilst, at the same time, noting that the Rules he had breached were specifically in place to protect or safeguard the public in relation to the practise of those who have recently qualified.

We heard and we accept that Mr Wareing is now in a barristers’ chambers where he has put an appropriate qualified person in place. We bear that in mind as significant. We also understand from the evidence that during this series of events we have described he did on one occasion speak to the Bar Council Ethics Helpline.

However, given the lateness of the change of plea, the content of Mr Wareing’s witness statement dated 25th February 2018 (only the day before this hearing) and indeed the lack of expression of remorse during his mitigation to us, we cannot find that this is a situation where Mr Wareing either has or had shown remorse.

Bearing all these relevant features in mind, we considered whether a period of suspension would be appropriate. We have, in essence, only decided against suspension because of the new arrangements that Mr Wareing now has in place in his current chambers with a qualified person and we would be most reluctant to do anything that would disrupt those appropriate arrangements.

Accordingly, we have turned to consider a fine in line with the Guidance we have already referred to. We have taken into account the information Mr Wareing has given us regarding his means and also the overall proportionality of the sanction we impose. On that basis we impose a fine of £500 on each of the charges, therefore amounting to a fine of £1,500 in total to be paid to the Bar Standards Board by the 30th April 2018.

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Approved: 13.03.2018

Heather Williams QC
Chairman of the Tribunal

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