The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2017/0136/D5

Ehi Andrew Ukiwa
The Director-General of the Bar Standards Board
The Chair of the Bar Standards Board
The Treasurer of the Honourable Society of Middle Temple

Disciplinary Tribunal

Ehi Andrew Ukiwa

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 9 May 2018, I sat as Chair of a Disciplinary Tribunal on the 28 June 2018 to hear and determine six charges of professional misconduct contrary to the Bar Standards Board Handbook against Ehi Andrew Ukiwa, barrister of the Honourable Society of Middle Temple.

Panel Members

2. The other members of the Tribunal were:

   Deborah Spring [Lay Member]
   Alison Thorne [Lay member]
   Lee Gledhill [Barrister Member]
   Thomas Williams [Barrister Member]

Parties Present and Representation

3. The Respondent was present and was represented by David Etherington QC. The Bar Standards Board ("BSB") was represented by Nicholas Bard Esq.

Charges

4. The following charges were found proven.

Charge 1

Statement of Offence

Professional misconduct contrary to rule rS6 and/or Core Duty 5 of the Bar Standards Board Handbook.

Particulars of Offence

Ehi Andrew Ukiwa, whilst an unregistered barrister, carried out reserved legal activity, when not entitled to do so under the Legal Services Act 2007 [as amended], and thereby behaved in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the profession. He did so by purporting to exercise a right of audience in proceedings which concerned the estate of the Olaifa Proceedings on the following occasions: i] 5 September 2016 in the County Court of Bromley; ii] 11 October 2016 in the Chancery Division of the High Court at the Rolls Building; and iii] 6 December 2016 in the Chancery Division of the High Court at the Rolls Building.

Charge 2

Statement of Offence

Professional misconduct contrary to rule rS8 and/or Core Duty 5 of the Bar Standards Board Handbook.

Particulars of Offence

Ehi Andrew Ukiwa, whilst an unregistered barrister and not authorised to hold a practising certificate, practised as a Barrister and thereby behaved in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the profession. He did so by practising as a Barrister, purporting to be authorised to carry out a reserved legal activity [exercise a right of audience], and representing a party in the Olaifa Proceedings on the following occasions: i] 5 September 2016 in the County Court of Bromley; ii] 11 October 2016 in the Chancery Division of the High Court at the Rolls Building; and iii] 6 December 2016 in the Chancery Division of the High Court at the Rolls Building.

Charge 3

Statement of Offence

Professional misconduct contrary to rule rS6 and/or Core Duties 3 and/or 5 of the Bar Standards Board Handbook.

Particulars of Offence

On 20 January 2017, Ehi Andrew Ukiwa whilst a pupil barrister in the first period of his pupillage, carried out reserved legal activity, when not entitled to do so under the Legal Services Act 2007 [as amended], and thereby behaved in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the profession, and/or failed to act with integrity. He did so by purporting to exercise a right of audience and to represent a party in the Olaifa Proceedings, in the Chancery Division of the High Court at the Rolls Building, in circumstances where he knew that he was not entitled or authorised to do so, alternatively was reckless as to whether or not he was entitled or authorised to do so.

Charge 4

Statement of Offence

Professional misconduct contrary to rule rS8 and/or Core Duty 3 of the Bar Standards Board Handbook.

Particulars of Offence

On 20 January 2017, Ehi Andrew Ukiwa whilst a pupil barrister in the first period of his pupillage, at a time when he did not have a practising certificate, practised as a Barrister and thereby failed to act with honesty and/or integrity. He did so by practising as a Barrister purporting to be authorised to carry on a legal activity [exercise a right of audience] in the Olaifa Proceedings, in the Chancery Division of the High Court at the Rolls Building, in circumstances where he knew that he was not entitled or authorised to do so, alternatively was reckless as to whether or not he was entitled or authorised to do so.

Charge 5

Statement of Offence

Professional misconduct contrary to rule rS8 and/or Core Duty 5 of the Bar Standards Board Handbook.

Particulars of Offence

On 20 January 2017, Ehi Andrew Ukiwa whilst a pupil barrister in the first period of his pupillage, at a time when he did not have a practising certificate, practised as a Barrister and thereby failed to act with honesty and/or integrity. He did so by practising as a Barrister and thereby behaved in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the profession. He did so by practising as a Barrister and purporting to be authorised to carry on a reserved legal activity [exercise a right of audience] in the Olaifa Proceedings, in the Chancery Division of the High Court at the Rolls Building.

Charge 6

Statement of Offence

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

Particulars of Offence

On 20 January 2017, Ehi Andrew Ukiwa whilst a pupil barrister in the first period of his pupillage, failed to observe his duty to the Court in the administration of justice. He did so by appearing and purporting exercise a right of audience, and representing a party in the Olaifa Proceedings, in the Chancery Division of the High Court at the Rolls Building, without having a practising certificate issued by the Bar Council.

Judgment

This is an extempore judgment, in relation to this Disciplinary hearing. We are conscious that the proceedings are recorded and therefore I do not intend to go in detail through the facts save to say that Mr. Ehi Andrew Ukiwa has admitted Counts 1, 2, 3, 5 and 6 and has denied only Count 4 that on 20th January 2017 (which is significant, because that was the basis of the second half of the charges, namely, 11 days into his pupillage) while a pupil in the first period of a four-month pupillage, at a time when he did not have a practising certificate, practised as a barrister and thereby failed to act with honesty and/or integrity.

The charge, as we know, goes on to explain the circumstances of his appearance before Norris J in the High Court. The issue is whether he thereby failed to act with honesty and/or integrity. It is admitted in other charges that he was negligent or reckless but that is not the central issue in this charge which, as I say, relates solely to the question of honesty and/or integrity.

We have heard, and are grateful for, a detailed opening from Mr. Bard on behalf of the Bar Standards Board, one of the central questions being, has the Bar Standards Board shown that he did not believe he was entitled to carry on as he did in court doing interim applications after his pupillage started (being, as I say, 11 days into the first four months) without rights of audience or an eight-month pupillage. He presented himself as a Barrister (whether using the word or not) before Norris J and there was evidence that the order prepared by Norris J – it was pointed out in a question from one of the Tribunal – referred to him as "counsel" at a time when his defence is that he was not counsel but he thought he was a member of CILEX, the Council of Legal Executives, a graduate thereof, which entitled him to appear on interim applications in court. Various counsel, Messrs. Weaver and Kyriakides, who appeared against him on various of the earlier applications, all refer to him, whether he said he was a Barrister or not, is not the point, but it is accepted all round that he presented as a Barrister and where asked to sign anything saying he was counsel, did so.

The Bar Standards Board have set out in their opening note – and I will not repeat them but it is a helpful list in the opening – the points that the Bar Standards Board seek to make in relation to his behaviour. I have those at paragraphs 10(a) to (f) of the opening. Mr. Etherington who, if I may say so, typically ably, has represented the interests of Mr. Ukiwa, takes issue with paragraph (a) that his maturity of years meant that he (as it were,

putting it in the vernacular) should have known better and would be more aware than someone very youthful and inexperienced. Mr. Etherington has made the point with some force that it was different for him because he was in a very small set of Chambers and it was not as if he could go back to Chambers and chat with everybody. They were in a room with four of them and Mr. Etherington points out that what he was in fact doing, as is his case, is that he was not conducting new work, this was merely a hangover from a case which had started in the County Court in relation to a possession action and he was simply continuing it, albeit up to a fairly high level in the Chancery Division in the Rolls Building.

The prosecution also argue that the defendant did not appear to have considered or paid regard to the nature of pupillage despite the provisions of Pupillage in the 2016 Pupillage Handbook which is essential reading and which he agrees he had read, but he has told us that he was of the opinion that his CILEX qualification trumped his inability to appear in court in his first six months or four months of pupillage because CILEX had given him the right to attend interim hearings. The documentation from CILEX is perfectly clear and makes it clear that unless exceptions apply, a person does not have the right of audience unless they have asked for it and been granted it. He clearly did not ask for a right of audience at any stage when he was in court.

He, Mr. Ukiwa, claims that he did have a right or misunderstood his rights because he had rung CILEX on a number of occasions and been told that he did have the rights and it was all right. In his proof of evidence, which is the document we originally saw, he said that he had made a phone call. In his evidence he had said he had made several and when he was questioned about it he said there were two phone calls in both of which he was put through to the Regulatory Department, someone in the Regulatory Department who told

him that it was all right. Mr. Bard, on behalf of the Bar Standards Board, has challenged that allegation and said that it is not accepted by the prosecution.

The Bar Standards Board also say that he did not consult or inform his Pupil Supervisor about his attending court to represent clients in a serious matter and he did not notify the Chambers where he was performing his pupillage. We are bound to say, looking at the realities of the situation, if a pupil in his first week or two of pupillage was to find himself in the Chancery Division in the Rolls Building, he would be telling everybody within earshot about it as being something of a feather in his cap. He says he did not because this was simply a hangover, as it were, from the proceedings at the Bromley County Court. The Bar Standards Board say that that is an important issue because he was deliberately withholding knowledge about the hearing from the Chambers where he was serving a pupillage and that was because he knew perfectly well that if he mentioned that he was appearing in court, doing anything in court in his first two weeks (let alone his first four months of pupillage) then his Chambers or his pupil supervisor at least would have given him a severe ticking off and told him that he was not allowed to do it. Indeed, his pupil supervisor has made the position perfectly clear in their written statement. Did he – which is the question we have to ask ourselves – deliberately withhold knowledge about the hearing or did he just not mention it because he did not think it was relevant?

There is also the issue which has been gone into in depth (and I will not repeat the evidence that has been given about it) in relation to the question of finance. This goes directly to the issue of dishonesty. On 16th August 2017 he writes to the Bar Standards Board saying, "I will explain to the Bar Council that at the times I had sight of the matter" – in other words the Olaifa proceedings – "I was a McKenzie Friend and not paid." That was his position when he first put forward his proof of evidence. It has subsequently

changed in the light of the fact the Bar Standards Board have now, with the assistance of others, unearthed the payments that he was made. In September 2016, months before what I have just referred to, at page 12 of the second bundle of Bar Standards Board documents, on 19th September, very shortly after the first hearing, he is saying, "Please clarify our professional costs. There are three defendants. They must pay their costs. I am really sorry about this. If they are intending to attend the hearing of 21st September and are not making the arrangement to pay their costs, please instruct someone else." It is perfectly clear that he was expecting to be paid and the documentation shows that he was paid in a series of payments between 12th February 2016 in the Olaifa proceedings until 18th January 2017, which is something like 11 months. There were repeated payments for sums in the hundreds of pounds £200 or £300 a time in the Olaifa proceedings. We have had to wrestle with the fact that he was originally telling the Bar Standards Board that, first of all, he was a McKenzie Friend, as he told his instructing solicitor and, secondly, that when he was first asked about it, he said at no stage was he being paid for it, it was all being done pro bono. That is to be found at pages 10 and 11 of the defendant's first bundle:

> "For the avoidance of doubt, I have never appeared for any other client on the basis of my CILEX membership. I have never appeared for any other client" – by which he says he meant "solicitor" – "in any court or tribunal during my first period of pupillage and I was not paid for any of the hearings the subject of these charges. I acted pro bono in all of them."

He now accepts that was a mistake, but I remind the Tribunal of the fact that he was in fact paid not only once, a small amount of money, but sums of moderate substance over a period of very nearly a year. The prosecution argue that that goes to the issue of honesty and is a matter from which we can draw an inference.

I do not propose to go through Mr. Ukiwa's evidence. He is 57 years old. He described how he could not get a pupillage having been called to the Bar in 2010 and therefore he chose the CILEX route to qualification. It was on the basis of the two telephone calls I have referred to that they told him he had the right to appear in interim hearings. For the reasons I have given I regret to say that we do not accept his evidence in relation to that matter. He states and Mr. Etherington, on his behalf, concedes, that his record keeping was chaotic and he says that he simply bundled up the papers when he ended up falling out with Mr. Ukpedor, the solicitor, on 24th January 2017. He sent them all back and that meant that he had no paperwork in relation to how much he had earned, how much he had been paid, what the fee notes were, any dates. He had no record of invoices, he had no record of anything. It was that, partly, which led him to say, mistakenly, that he acted pro bono because he had thought he had. I regret to say that we do not accept that evidence.

Why did he not say, for example, "I cannot remember? I have given everything back to Mr. Ukpedor. I cannot remember whether I was paid or not"; albeit he had been paid on perhaps a dozen occasions over a period of 11 months. He states that at the time he explained that a lot of clients could not afford to pay and so he would only take money where the client could afford it. But we, of course, are concerned with the Olaifa proceedings and in particular the Olaifa proceedings before Norris J on 20th January.

> "I read the Pupil's Handbook and the Guidance to Pupils. I thought that CILEX trumped the restrictions on pupillage, but I consulted no one about it because I accepted what CILEX told me". That is in relation to the two telephone calls although I repeat that anyone reading any documentation in relation to CILEX and CILEX's rules would have understood that the position was perfectly clear and required special permission of one sort or another. He said that CILEX did

not seem bothered about the fact that he was in trouble in relation to this matter. "I did not ask them to confirm that they told me I was entitled to appear after the event, they had told me twice on the phone."

We have listened carefully to the submissions of Mr. Etherington. He accepts that there is a certain amount of "wriggling" as he accurately describes it on behalf of Mr. Ukiwa. But did it really strike Mr. Ukiwa as being wrong to describe himself as "counsel"? In the overall circumstances of this case, having looked at the inferences to be drawn from the way that Mr. Ukiwa has behaved in relation to finance and in relation to the other matters which the Bar Standards Board have invited us to consider, we regrettably have come to the conclusion that we are satisfied that the case is proved in accordance with the criminal standard in relation to Count 4.

(Mr. Etherington addressed the Tribunal in mitigation)

(The Tribunal adjourned)

SANCTION

THE CHAIRMAN: We have considered the aggravating and mitigating features as set out by the Bar Tribunals & Adjudication Service. Aggravating features are: (A) Premeditation; (F) Persistent conduct over a lengthy period; (G) Undermining the profession in the eyes of the public and (R) that inevitably in the light of our finding, an indication of an element of dishonesty. The mitigating circumstance is that he has 1] admitted five of the six charges; 2] genuine remorse; 3] limited experience within the profession; 7] co-operation with the investigation at least in relation to the five charges to which he pleaded guilty; 10] previous good character and 15] good reference.

I will keep these remarks short. Mr. Etherington has again addressed us on the question of disbarment or suspension which he regards as the only two realistic options here. We

have listened with care to his mitigation and to what he said in his closing remarks on the contested Count 4, some of which amounted effectively to mitigation as well. We take a very serious view, inevitably, of dishonesty within this profession but we do not regard disbarment as appropriate in this particular case for someone so early in their career. We are conscious, as I said, of his early admission of guilt to five of the six counts, his previous character and the fact that he has found a place in Chambers.

But we cannot overlook it. We regard suspension as inevitable and the least period that we feel appropriate to impose, bearing in mind that overall, without picking individual counts, Counts 4 to 6 are more serious than Counts 1 to 3, if only because he was then a pupil, we order in relation to Counts 4, 5 and 6 a period of six months' suspension and in relation to Counts 1, 2 and 3, a period of four months suspension, all those to be concurrent with each other.

Mr. Bard, thank you very much indeed for your assistance to us and Mr. Etherington, likewise.

MR. BARD: May I just say Count 3, I think, was also in relation to the same incident, so it is actually 3 to 6 deal with the pupillage matter and 1 and 2 are the three earlier matters.

THE CHAIRMAN: Yes, I see the point.
Mr. Etherington, if we were to agree to alter the six months' suspension to Counts 3 to 6 and the four months to Counts 1 and 2, all concurrent, would you take objection?

MR. ETHERINTON: Yes. In many ways it makes use of the expression we have used before "4 trumps 3 really" in respect of that so I have no objection.

THE CHAIRMAN: Yes.

(To the Tribunal) Are you content? **(The Tribunal conferred)**

THE CHAIRMAN: Yes.

Thank you for pointing that out, Mr. Bard.

So, it is six months' suspension on Counts 3 to 6 and four months' suspension concurrent on Counts 1 to 2, making a total suspension of six months which I think applies immediately, does it not?

MR. BARD: No, it is not immediate. It is 21 days in which to appeal.

THE CHAIRMAN: You have 21 days in which to appeal. Mr. Etherington will explain the position.

Approved: 10 July 2018

His Honour John Bevan QC
Chairman of the Tribunal