



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2018/0182/D5

Neil Frew Esq

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of the Middle Temple

Disciplinary Tribunal

Neil Frew Esq

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 10 December 2018, I sat as Chairman of a Disciplinary Tribunal on 17 January 2019 to hear and determine five charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Neil Frew Esq., barrister of the Honourable Society of Middle Temple.

Panel Members

2. The other members of the Tribunal were:
3. Alison Fisher [Lay Member]
Jonathan Monk [Lay Member]
Isabelle Watson [Barrister Member]
James McClelland [Barrister Member]

Charges

4. The following charges were admitted: Charge 2 was withdrawn.

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Charge 1

Statement of Offence

Professional misconduct contrary to Paragraph 301(a)(i) and pursuant to paragraph 901.7 of the Code of Conduct of the Bar of England and Wales [8th Edition].

Particulars of Offence

Neil Frew, an unregistered barrister, who was also admitted to the Roll of Solicitors in 2008, engaged in conduct whether in pursuit of his profession or otherwise, which was dishonest or otherwise discreditable to a barrister, in that between 30 September 2010 and 5 January 2014, he conspired with others to defraud the Legal Aid Agency by dishonestly claiming to have used and paid a company called Legal Support Services for interpreters' services, when in fact, no such agency was used to obtain the interpreters. On 23 November 2016, he was convicted of conspiracy to defraud by the Crown Court at Sheffield. On 9 June 2017 he was sentenced to two years imprisonment suspended for two years and ordered to complete 200 hours of unpaid work before 8 June 2018.

Charge 3

Statement of Offence

Professional misconduct contrary to Core Duty 5 and rC8 of the Code of Conduct of the Bar of England and Wales [9th Edition].

Particulars of Offence

Neil Frew, an unregistered barrister, who was also admitted to the Roll of Solicitors in 2008, 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 behaved in a manner which could reasonably be seen by the public to undermine his honesty and integrity in that between 6 January 2014 and 1 October 2014, he conspired with others to defraud the Legal Aid Agency by dishonestly claiming to have used and paid a company called Legal Support Services for interpreter services, when in fact, no such agency was used to obtain the interpreters. On 23 November 2016, he was convicted of conspiracy to defraud by the Crown Court at Sheffield. On 9 June 2017 he was sentenced to two years imprisonment suspended for two years and ordered to complete 200 hours of unpaid work before 8 June 2018.

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Charge 4

Statement of Offence

Professional misconduct contrary to Cored Duty 9 and rC65.2 of the Code of Conduct of the Bar of England and Wales [9th Edition].

Particulars of Offence

Neil Frew, an unregistered barrister, failed to report promptly to the Bar Standards Board that he had been convicted of a criminal offence other than a minor criminal offence, in that on 23 November 2016, he had been convicted of conspiracy to defraud by the Crown Court at Sheffield and did not report the said conviction to the Bar Standards Board until 23 February 2018.

Charge 5

Statement of Offence

Professional misconduct contrary to Cored Duty 9 and rC65.3 of the Code of Conduct of the Bar of England and Wales [9th Edition].

Particulars of Offence

Neil Frew, an unregistered barrister, failed to report promptly to the Bar Standards Board that he had been the subject of regulatory and enforcement action and disciplinary proceedings by another Approved Regulator, in that on 1 September 2017, the Solicitors Regulatory Authority brought proceedings before the Solicitors Disciplinary Tribunal against Neil Frew, which Tribunal on 6 November 2017 made an order striking him off the Roll of Solicitors. Mr Frew did not report these actions to the Bar Standards Board until 23 February 2018.

Parties Present and Representation

5. The Respondent was not present and was not represented. The Bar Standards Board (“BSB”) was represented by Stephen Mooney Esq.

Pleas

6. The Charges were admitted.

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Evidence

7. Neil Frew was called to the Bar by Middle Temple in October 2004. He did not undertake pupillage and has, accordingly, at all material times been an Unregistered Barrister. He was admitted to the Roll of Solicitors on 15 May 2008 and in due course became a salaried partner in a firm in Bradford, Chambers Solicitors. By reason of the matters to which we will refer in a moment he was struck off the Roll on 6 November 2017.
8. On the 23 November 2016 Mr Frew was convicted on an indictment containing a single count of Conspiracy to Defraud. His co-accused were two other partners in the firm and the allegation was that they had conspired together and with others to defraud the Legal Aid Agency by claiming disbursements in respect of the provision of interpreters in connection with immigration and asylum cases. The agency to whom they claimed to have made the disbursements did not in fact exist.
9. On 9 June 2017 Mr Frew was sentenced to 24 months imprisonment, suspended for 24 months. He was also made subject to an unpaid work requirement. In his sentencing remarks, the trial judge said: "... You knew exactly what was going on and were a willing participant to it. However, your role is distinguishable to the extent that there is no evidence that, as a salaried partner, you were going to benefit in any way from what was going on...". The judge went on to say that the fact that Mr Frew did not benefit personally from the fraud allowed him to make a distinction between him and his co-accused by suspending the inevitable sentence of imprisonment.
10. Charges 1 and 3 focus on the dishonest nature of his behaviour, his criminal conviction arising from it and the effect of this on public trust and confidence in him and in the profession as a whole. They are essentially the same; the multiplicity of counts arises from changes to the Code of Conduct which came into effect on the 6 January 2014.
11. Charges 4 and 5 focus on his overlooking his obligation to self-report to the BSB promptly.
12. On 17 May 2018 a letter was sent to Mr Frew from the Bar Standards Board informing him of the complaints made against him, reminding him of his duty to respond to them and informing him of sources of help and advice that might be available to him. The letter made plain the extent and nature of the complaints against him and identified in an attached document, "Summary of Complaint", the alleged breaches of Core Duty 5 and of rC8, rC65.2 and rC65.3 (9th Edition). No specific reference was made to the breaches arising from the Code of Conduct (8th Edition) which are the subject matter of

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charge 1. The letter, however, made specific reference to the extent of the investigation: “the investigation relates to your criminal conviction for conspiracy to defraud where you received a suspended sentence of imprisonment....”

13. In response, by email of 18 May 2018, Mr Frew made specific admissions as to the breaches of the Code of Conduct (9th Edition). He went on thus: “I do not intend to defend myself against any of the allegations and simply request that I be disbarred in a cost and time efficient fashion.”
14. Subsequently (on or about 21 November 2018) the Bar Standards Board served its papers on Mr Frew which included the Charge Sheet before us today. In an exchange of emails on 22 November 2018 Mr Frew acknowledged receipt of the papers and made it clear that he did not intend to attend at this hearing. He wrote: “... I have no intention of defending the charges against me in the context of my criminal conviction. I accept that I am guilty of the charges against me. In this circumstance is it possible for this matter to be resolved by way of an agreed outcome whereby I am guilty and accept that I will be struck off. I wish to dispose of this matter in the least amount of time and cost.” And later that day: “I confirm that I will not be attending as I am unable to defend the charges which I accept.”
15. On the 12 December 2018 the unused material and the Convening Order were sent to Mr Frew and signed for by him on the following day. He was reminded or informed of the date of today’s hearing in that correspondence.
16. On the 11 January 2019 Mr Frew confirmed that he consented to service of the charges by way of email (as had happened on 22 November 2018) and that he also had no objection to the hearing proceeding in his absence.
17. In those circumstances we are satisfied that the procedures stipulated in rE102 to 105 and rE132 of the Disciplinary Tribunal Regulations have been fully complied with.
18. We must, accordingly, decide whether it would be just to proceed in Mr Frew’s absence in accordance with rE132.
19. We have been helpfully referred to the leading authority on this topic (Jones [2002] UKHL 5, applicable in proceedings of the kind before us today). We remind ourselves that this was a case, as is normal in cases of this kind, where the relevant party had absented himself without offering any explanation for having done so. In this case the respondent who, it should not be forgotten, is legally qualified has made it plain that he has no wish to be present and has no submission to make as to the sanction appropriate in his case. As is made plain in Jones (above), the right to be present at a hearing can be waived if knowing or having the means of knowledge as to when and

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where his trial is to take place a party deliberately and voluntarily absents himself. Mr Frew has full knowledge of the nature and extent of the case which he is called upon to meet, has been informed on more than one occasion of the date and place of this hearing and has made an informed, deliberate and voluntary decision to absent himself. In those circumstances there is no room for doubt; it would plainly be just to proceed in his absence, thereby not only ensuring that these proceedings come to finality but also that the express wishes of Mr Frew are met.

20. In the light of Mr Frew's responses which we have summarised we proceed on the footing that the factual matters set out above are admitted by Mr Frew to be true. Given that the admissions are against interest, the inference that these matters are not merely admitted to be true but are in fact true is inevitable.

Findings

21. We therefore find the remaining four charges proved.

Sanction and Reasons

22. Notwithstanding Mr Frew's concession on the topic, it nonetheless remains a matter for this Tribunal to determine what the correct sanction is. We have considered the Sanctions Guidance (Version 4).
23. In relation to Charges 1 and 3, the Guidance makes it clear that "dishonesty is not compatible with practice in a profession which requires exceptional levels of integrity. The general starting point should be disbarment... unless there are clear mitigating factors that indicate that such a sanction is not warranted...".
24. We note that the dishonest conduct which gave rise to the indictment persisted for a period in excess of four years and led to criminal charges and a sentence of imprisonment, albeit suspended. We further observe that he contested the criminal allegations and was disbelieved by the jury on his oath. There are in those circumstances significant aggravating factors. We can detect no mitigating factors of a kind which could possibly indicate that a sanction less than disbarment is appropriate.
25. We therefore agree with Mr Frew's realistic assessment that just as his misconduct was met by the proportionate sanction of his being struck off the Roll of Solicitors, so also it can only be appropriately met by his disbarment.
26. As to Charges 4 and 5, the Guidance suggests a sanction far less severe than disbarment. The BSB have submitted that this case falls very much at the lower end of the scale. It is accepted that his delay in self-reporting was attributable to oversight, not

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to a deliberate decision to conceal his misconduct from the BSB, and that so soon as it came to his attention that he was obliged to do so, he immediately complied with his duty to disclose. We also note that all of these matters had been within the knowledge of the SRA (his immediate regulator) from a very early stage.

27. Had these matters stood alone, we would have found it appropriate to administer a reprimand, a sanction which is both backward looking (marking the fact of the misconduct) and forward looking (creating an incentive to more compliant conduct in the future). A combination of this partly forward-looking sanction with disbarment is an uncomfortable one.
28. In those particular circumstances, without condoning his breach of obligation, we consider it appropriate not to impose any separate penalty.
29. Accordingly, in respect of Charges 1 and 3 we make an order of disbarment. We have made our finding and imposed this sanction in the absence of Mr Frew in accordance with rE183.
30. In respect of Charges 4 and 5, we impose no separate penalty.
31. We have made our findings and imposed sanctions in relation to Charges 1 and 3 in the absence of Mr Frew in accordance with rE183.
32. There is no application for costs and accordingly we make no order.
33. The Treasurer of the Honourable Society of Middle Temple is requested to take action on this report in accordance with rE239 of the Disciplinary Tribunal Regulations 2018.

Approved: 25th January 2019

**His Honour Alistair McCreath
Chairman of the Tribunal**

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