The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

# Report of Finding and Sanction

## Case reference: PC 2017/0293/D3

John Mitton 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

### John Mitton

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 27 November 2018, I sat as Chairman of a Disciplinary Tribunal on 17 December 2018 to hear and determine two charges of professional misconduct contrary to the Bar Standards Board Handbook against John Mitton, barrister of the Honourable Society of the Middle Temple.

### Panel Members

2. The other members of the Tribunal were:

   Mr John Walsh (Lay Member]
   Mrs Kathryn King [Lay Member]
   Ms Isabelle Watson [Barrister Member]
   Edward Levey [Barrister Member]

### Charges

3. The following charges were found proven.

**Charge 1**

**Statement of Offence**

Professional misconduct contrary to Core Duty 3 and/or rC8 of the Bar Standards Board Handbook.

**Particulars of Offence**

John Mitton, between February 2015 and March 2016, acted dishonestly and/or with a lack of integrity, and/or, during the same period of time, acted in such a way that could reasonably be seen by the public to undermine his honesty and/or integrity, in that he sent a series of emails to his client, which he knew would give that client, or could reasonably be seen by the public to give that client, a misleading impression regarding the progress of his client's case on one or more of the occasions taken singularly or collectively. Namely that, having issued legal proceedings on his client's behalf, John Mitton stated that he had lodged an application to settle such proceedings and sought a hearing date for that purpose, when he had not, in fact, issued any such proceedings, he had not lodged any such application and he did not seek a hearing date.

**Charge 2**

**Statement of Offence**

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

**Particulars of Offence**

John Mitton, between February 2015 and March 2016, acted in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the legal profession, in that he sent a series of emails to his client, which he knew would give that client, or could reasonably be seen by the public to give that client, which he knew would give his client a misleading impression regarding the progress of his case, on one or more of the occasions taken singularly or collectively. Namely that, having issued legal proceedings on his client's behalf, John Mitton stated that he had lodged an application to settle such proceedings and sought a hearing date for that purpose, when he had not, in fact, issued any such proceedings, he had not lodged any such application and he did not seek a hearing date.

Professional misconduct contrary to Core Duty 5 of the Bar Standards Board Handbook [1st Edition].

## Parties Present and Representation

4. The Respondent was present and was represented by Angus Gloag Esq. The Bar Standards Board ("BSB") was represented by Nicholas Bard Esq.

## Pleas

5. The Respondent denied the Charges.

## Evidence

6. Prosecuting Counsel (PC) presented the case on behalf of the BSB.

## Findings

1. This is a hearing which relates to Mr John Mitton who is a barrister. His admission details are in the bundle. At the time of the index matters, the matters that are in debate in this Tribunal hearing, he was acting as a lawyer in a solicitor's office (a limited company solicitor's office). He had been instructed by a client (Mr Wrighton) to pursue an action against a recruitment company. He was not acting as a barrister at the time. But, of course, he was acting as a professional person and his professional duties continued. He finds himself with questions over his conduct before this Tribunal.

2. The prosecution say that this case involved dishonest conduct by Mr Mitton. Mr Mitton denies that he was dishonest (or lacking in integrity) as alleged in relation to Charge 1.

3. Charge 2 was also denied when it was put at the hearing, (although there was an indication at an early stage that he may not be denying this charge).

4. It was accepted therefore that issue in this hearing was whether Mr Mitton was acting dishonestly in the way that he conducted the case on behalf of the client.

5. As far as our approach to the matters in issue is concerned, we have been assisted – and there has been no challenge about it, by the case of Ivey v. Genting Casinos (UK) Ltd [2018] AC 391 and we used Lord Hughes test in that case to look at whether the conduct complained of was dishonest.

6. As far as we are concerned, the first question for us is to look at is the first charge, where dishonesty is an essential element, and then to move from there.

7. Turning to Charge 1 and the question of dishonesty - we know, that the facts here, when boiled down, relate to whether or not Mr Mitton was open and honest with his client about the instructed process in which he was engaged. Specifically, did he allow the client to gain a false impression that court proceedings had been issued? – when they had not. We have approached the test for dishonesty in very much the same way that it is approached by Lord Hughes.

8. So, the first question that we have asked ourselves is - as far as Mr Wrighton is concerned, did he believe that court proceedings had been issued? That, to us, is a vital first step in looking at the first step as suggested in Ivey, namely, "the fact-finding tribunal must first ascertain … the actual state of the individual's knowledge or belief". That, for us,

revolves around Mr Mitton's understanding as well as Mr Wrighton's understanding. One of the core issues in this case, is the submission that Mr Wrighton knew that the court proceedings had not been issued, and therefore the arguments about him asking for a date (and thereby being misled) are not accepted from the respondent's point of view.

9. We heard evidence in person from Mr Wrighton. We have looked at the credibility of Mr Wrighton's oral evidence, which we, ourselves, of course, can determine having seen him give the evidence

10. We have also looked at the e-mail flow, which is an important part of the supporting evidence, and we have looked particularly at the consistency of those e-mails when set against the evidence about meetings and oral exchanges.

11. We accept fully that there is no recorded evidence before us about the content of any oral exchanges between Mr Mitton and Mr Wrighton. There is no written evidence, no note evidence; this aspect of evidence relies entirely upon the memories of the two people at those meetings, namely, Mr Mitton and Mr Wrighton.

12. The first matter which we do accept is that there is no e-mail which clearly and unambiguously indicates that (court) proceedings had been issued. So, there is no e-mail (and I think it is accepted on all sides) which said, "We, on your behalf, have issued proceedings and a date is awaited" or something like that. So, the evidence is ambiguous to a certain extent. But the prosecution's case is that, taken together, it is a clear that Mr Wrighton did not understand that proceedings had not been issued and that Mr Mitton allowed Mr Wrighton to continue to believe that they had, and indeed almost promoted that lack of knowledge.

13. We considered the credibility of Mr Wrighton's evidence. In reality there was not a substantial challenge to his evidence in the round. There was some challenge to the way that he was conducting the matter (as a client) generally - but in essence there was not a great challenge to his evidence. We were reasonably impressed by him as a witness. We thought that he came to the Tribunal to try and tell the truth. Clearly, (at the time) he was concerned about his case, but from a point of view of being a client, there did not seem to us – and indeed it was not put to him – issues which made him in any way an unusual as a client. He was keen to get a result, keen to settle his case. But we found it difficult to find evidence that he was a 'difficult' client or anything of that nature. We accept though, of course, that Mr Mitton was not really saying that he was inordinately difficult, he (Mr Wrighton) just wanted to get a result. But in general terms, we found his evidence to be credible. I will come back to him in a moment.

14. The e-mails that we have read in this case are important. They are important individually, but they are also important as an e-mail stream, because what we have found, and what we are sure about, is that those e-mails are flatly and clearly inconsistent with the position taken by Mr Mitton – namely that at all the oral get-togethers and meetings that they had, it was made clear in one way or another - (it is not entirely clear how) to Mr Wrighton that no proceedings had been issued. Indeed, Mr Mitton indicated that Mr Wrighton was arguing very strongly that he (Mr Wrighton) did not want to lose out financially as a result of proceedings being issued, etc. We found that the e-mails just do not fit with that scenario at all. That was an important finding.

15. We considered the oral evidence of Mr Mitton. Mr Mitton's case was that the conversations about the issuing of proceedings or the date of any hearing all took place in the meetings they had and were not reflected in the e-mails. In other words, his case was that Mr Wrighton knew the true position because it had all been discussed at meetings. The e-mails, however, are, as I have indicated, plainly inconsistent with this position.

16. The inconsistency is simply explained in this way. If a legal representative is receiving an e-mail from a client, and sees that the client is talking about a court date, and that representative, as in the case of Mr Mitton, knows that there is no court date and there are no proceedings issued, we think that any professional person would immediately correct the misunderstanding and record the corrected fact in email form – whatever happened in oral meetings or in telephone calls – because e-mail is the way that Mr Mitton and Mr Wrighton were predominantly contacting each other . That was not done on a number of occasions.

17. One could obviously make a mistake and perhaps miss one correction within an e-mail stream, but the consistency of Mr Mitton ignoring requests for information about dates for hearing etc., taken together, have led us to the conclusion that we are sure that the e-mails truly reflect what was happening. We are not convinced in any way at all, that a lot more was said in the meetings which would have corrected the content of the e-mails.

18. Returning to credibility, we listened very carefully to Mr Mitton, and to Mr Wrighton. To be fair, there was not a great deal at issue about oral credibility. Most of this case revolves around paper (emails). But in terms of credibility, as far as the meetings are concerned, I am afraid we prefer, and are sure, that the truth was being told by Mr Wrighton. He was not actually asked directly about the meetings, but his evidence was that he understood by writing those e-mails that a court date was coming along, and he left it to Mr Mitton to get the court proceedings going; we accept that evidence from Mr Wrighton.

19. We also looked at some of the actual content of the e-mails. More than one of them, moved us to be sure that in fact Mr Wrighton did believe, and was led on to believe, by Mr Mitton that court proceedings had been issued.

20. For instance, at page 124 (of the bundle) there is an e-mail which says, "The date for hearing has not come through". This was as near to an explicit confirmation that the court date was pending that you could possibly get. So that, for us, is an evidential factor which supports our finding that the elements of the first part of the (Ivey) test is proved. Namely that the actual state of knowledge or belief of Mr Wrighton was that proceedings had been issued and a court date was pending. Mr Mitton knew that this was not the case and knew that Mr Wrighton believed that proceedings had been issued.

21. At page 77 (of the bundle) there is a reference to a date; Mr Mitton's case was that he thought that this was a reference to a (pre-court) negotiation meeting. The prosecution case was that it was a reference to a pending court hearing. Looking back to page 76, the e-mail before, and looking at these two e-mails together, we came to the conclusion, so that we were sure, that the two e-mails were not referring, as Mr Mitton said, to a negotiation meeting at some time in the future - but were referring to the page 76 court hearing date. So again, we think that is a very clear indication that the impression was

being given that court proceedings were ongoing, and a date was going to arrive in the future.

22. As far as the position of Mr Wrighton is concerned, we are sure therefore (in accordance with the first part of the test for dishonesty) that he did believe, and was led to believe, that court proceedings had been issued.

23. Turning now to the other part of the test for dishonesty, and that is looking at it from Mr Mitton's point of view at the time, we looked at the way that Mr Mitton had dealt with the e-mails. He was receiving e-mails, again and again, with reference to, "What is the court date"; "Have you got a court date"; "Can you tell us the court date"? He ignored those requests in the e-mails entirely. Now, it may be, as he argues, that this was all sorted out in the meetings that were had, but we do not accept that, I am afraid. We are not convinced, and are sure, that he (Mr Mitton) knew that the client believed that a court date was pending and that the proceedings had, in some way, been issued. He was not correcting that misunderstanding on the part of the client. So, the misunderstanding had been created and it had not been corrected. The lack of effort to disabuse the client of what was his obvious belief was a serious matter, as far as we are concerned. Again, if it had been one or two e-mails, one e-mail return exchange, one can understand in a busy life mistakes can be made. But this was not that. This was over a long period of time with a number of references which were ignored, and which gave a clear (false) impression.

24. So, we are satisfied, so that we are sure, that Mr Wrighton was not told at any time – even in the face of him writing about court dates – that court proceedings had not been issued and that his reference to a date was not correct. In fact, in evidence (it was slightly unclear as to where Mr Mitton stood on this) Mr Mitton did say, and my record of his answer is, "I accept that I never told him that the proceedings had not been issued." If that is correct, then looking at the stream of e-mails and accepting that he had never told him that the proceedings had not been issued, in our view, supports the evidence that Mr Mitton was not being straight with Mr Wrighton and continued not to be so.

25. So really the question then comes to whether or not that sort of conduct, namely, giving an impression that court proceedings had been issued, allowing that impression to continue and, importantly, not correcting a clear impression that a client has – remembering the client is the client - and the professional is the professional – whether that, in the Ivey definition, would by the standards of a member of the public, the standards of ordinary and decent people as it is set in the test, whether that would meet the test for dishonesty?.

26. It is argued on behalf of Mr Mitton that that would not meet that test; that this is more to do with muddle and poor management and the like. Either being at the middle level or lower level of (lack of) integrity and certainly, as far as Mr Mitton's submissions are concerned, not dishonesty.

27. I am afraid – and it is a tough decision, obviously, and one which we have thought very carefully about – we have no hesitation in finding that we are sure that this would, as far as the public are concerned, meet the definition of dishonest behaviour. If the public were aware of this scenario, and ordinary, decent people looked at the facts as we find them, we are sure that they would reach the conclusion that this behaviour was dishonest.

28. Therefore, we find that the first charge in the charges list is proven. Of course, we need to now look in detail (because there are so many alternatives) and see where that flows. As far as the other charge is concerned, it may not be so necessary. In fact, what we find is that Mr Mitton acted dishonestly and acted in a way which would reasonably be seen by the public to undermine his honesty in that he sent these e-mails to Mr Wrighton.

29. It is not necessary for us, I do not think, to look at integrity (an alternative in charge 1) as well - because integrity has a different definition. If we find dishonesty and that, for us, is the most important finding. I think it would not be necessary for us to find integrity as well as dishonesty. We find dishonesty; there is no question about that.

30. So far as Charge 2 is concerned, it flows inevitably that we find Charge 2 proved as well because it flows inevitably from Charge 1, that by being dishonest Mr Mitton acted in a way which was likely to diminish the trust and confidence which the public would place in a professional in that he sent those e-mails.

31. So, we find Charge 2 proved but, of course, it is rather taken up by the finding in Charge 1.

32. So those are our findings.

33. May I just deal with some of the submissions that were raised? We certainly did not ignore them. We thought it was right that Mr Mitton should know exactly what our findings were as soon as he could.

34. In the submissions it was said that there was a lacuna in the evidence that was presented in this case because there was a lack of copies of notes of the meetings which took place and therefore Mr Mitton was, in difficulty in being able to support, with evidence, the content of those meetings. We see that argument and we accept that there could be an argument in that direction. In almost every case that one ever hears; more evidence would always be helpful. However, we cannot accept, having found what we find, that the issue of what was said in meetings or otherwise can actually be relevant to our findings. Even if, taking the extreme view, at every meeting something was said about there being no proceedings issued, we just cannot see that it is consistent with the e-mails which went on through the months that this case was proceeding. It was just not credible to us that there could be a meeting where it was made clear that there were no proceedings, and nothing had been issued and then an e-mail following from Mr Wrighton saying, "When is the court date?" That just did not seem credible to us. I am afraid that we understand the point about lack of paperwork, and maybe there is paperwork that could have been before us, but we do not think that that assists in our observation of the e-mails. We do not think that the e-mails are misrepresentative of the flow of this case.

35. We also accept that on the face of it there is no motive in terms of gain (by Mr Mitton) but, of course, as was submitted, gain is not a necessary ingredient in this case. It is not a matter of gain; it is a matter of professional conduct. So as far as gain is concerned, we accept that there might not have been a financial gain. The gain was really time, I suppose. But if one looks at it from the other point of view, there was a potential loss because the client could have gone to somebody else. He could have got on with other ways of pursuing it; numerous things could have happened. So, it is not just gain that is

an issue in these kinds of professional matters, although it sometimes can be evidentially helpful.

36. We also accept (as I noted at the beginning) that there is no clear and unambiguous declaration that was false. But, of course, it is the combination of declarations which lead to this being false and dishonest conduct.

37. We also took account of Mr Mitton's admission to the SRA. In a sense, he had admitted some form of lack of integrity to the SRA, but we came to our conclusion independently of that admission. We accept there might be some view that there is double-counting here, but it is absolutely essential that the two professional bodies ensure that they are both protecting their professions in a proper way. That is why these proceedings have flowed and quite properly in our view.

38. We took account, obviously, of the fact that Mr Mitton has been working and that there have been no complaints since he has been working at the Bar. Of course, it is a sadness that this finding has now been made against him. But again, his conduct or his work since leaving the solicitor's practice does not really help us.

39. For the record I think it is right to say that because we found dishonesty, we also find, of course, that Mr Mitton lacked integrity during that period. Dishonesty, in our view, is a mark up from integrity, it would be impossible, in our view, with this set of facts, not to be acting without integrity if you are acting dishonestly. So, we find on both limbs but, obviously, it is the dishonesty matter which is important.

## Sanction and Reasons

40. Mr Mitton, this is a sad day for you. We fully understand that. Professional life is a great world to be in, and to be facing what you are facing is, we understand, very difficult

41. We have looked at the matter in the round and looked at both mitigating and aggravating circumstances. We have considered all those that are the formal mitigating and aggravating circumstances in the lists that are available to the Bar, of course, and I am sure you have the list there. As far as we are concerned, in terms of mitigating circumstances, the important mitigating circumstance was your previous good character. This is the first time that you have been before this Adjudication Panel and also was a first time when you were before the SRA.

42. Apart from those matters, we have taken account of the reference which we have had from your Chambers which is a solid reference. It speaks well of you and, obviously we take account of that matter.

43. We have also taken account of the fact that clearly at this time you were under a lot of personal pressure and stress, both in terms of, I think, your home life, where there were problems at home. Although we have not delved deeply into it, there was clearly some sort of problem internally within the firm in terms of your organisation and payment etc. of fees. I have to say, and you will accept, I am sure, that professional people, at almost at every level, are under a lot of stress and pressure. One of the watch words of professional life is that one must deal with the stress and not allow it in any way to spill over into the way that you conduct your professional life because, of course, that puts the

public at risk. The whole point about professional life is that the public must not be placed at risk.

44. As far as aggravating circumstances are concerned, we do find circumstance "a" which is "premeditation". This was not premeditated in the sense that it is a single incident which was planned, but the premeditation element, we think, is part of the continuing nature of the responses that you made over the period of time. It certainly is an aggravating circumstance that you allowed this to continue. As I think I have said more than once, perhaps one mistaken or over-ambitious reply in an e-mail could be corrected; carrying on for months and months was much more serious, very serious indeed. So, we do find premeditation here.

45. We do not find "b" to "e". As far as "Persistent conduct over a lengthy period of time", yes, we do find that this was a matter of persistent conduct. Obviously "g" applies here, "Undermining the profession in the eyes of the public". The others on the first page of the standard aggravating circumstances we do not find. We do not find "(o) Lack of remorse" because really if you contest a matter you are in a very difficult position to begin to show remorse, although we do take account of the fact that you did actually write in and say you were going to partially plead and apologise for your conduct. So, there was some remorse - but it rather fell away when you decided to withdraw your plea. But that being said, I think it is probably not the most important part of this case.

46. What we do find – and it is an issue for you, of course, it is probably more minor now given our overall finding – that there was a "Failure to respond promptly to communications". We think that was an important factor in terms of the general conduct of this case. It is very important that professionals respond properly to communications from their professional body. If they cannot do something, like provide information, they tell the professional body that they cannot do it. I think you argued that you had only heard very recently about the hearing date. But, of course, months and months ago you knew that the BSB were involved in this matter. So, it was incumbent upon you, as a professional person, to make sure that you kept in contact with your professional body and found out exactly what was happening, what was required of you. I do not think it would have made a huge difference to the case itself because there are findings on the evidence that was historical. But that is a matter that was an aggravating circumstance as far as we are concerned.

47. Letter "r" which is "Element of dishonesty". This finding applies across the piece.

48. I am afraid that, with some sadness, of course, we do not find that there are any exceptional or unusual mitigating factors which would lead us to believe that the starting point should be moved away from. In the actual Guidelines itself it talks about "Clear evidence that behaviour was out of character and the consequences were not intended". We just cannot find that that is the case here, particularly because of the course of conduct and the length of time it took. It is not a personal life matter and it does involve "dishonesty in professional life".

49. As you will have been advised, and know, our findings that you acted dishonestly - the starting point for any decision, as far as sentence is concerned, is disbarment. So, as I say, with a heavy heart, we do find that you are disbarred from being a barrister from today.

50. We award £90 costs in relation to the witness. Those costs should be paid, we will say, within 28 days but, obviously, if there are issues you must contact the BSB direct and you can make arrangements to pay in different ways.

51. There is an appeal process. That process is something which Mr Gloag will no doubt advise you about. Make sure that if you decide you are going to appeal – I am not inviting you to do so – you do it within the timeframe that is required and that you respond properly to any documents that are required by the Appeal Panel.

52. That disbarment will be on both of the charges concurrent.

53. We suspend the practising certificate with immediate effect

54. So that does mean, unfortunately, Mr Mitton, that you cannot continue with professional practice from this moment onwards. It is a serious matter if you do. I realise it is a very difficult matter for you to deal with, but it is a serious matter. So please do not be tempted to do so.

55. I want to thank everybody, including you, Mr Mitton, for assisting us in this hearing. It has been a long day for you all and some of you have come from a great distance. But thank you all for your help.

56. THE RESPONDENT: Thank you.

57. 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: 04 January 2019**

**His Honour Stephen Dawson**

**Chairman of the Tribunal**