



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Report of Finding and Sanction

**Case reference: PC 2108/0116/D5**

Michael O'Maoileoin

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

**Michael O'Maoileoin**

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 01.03.19 I sat as Chairman of a Disciplinary Tribunal on 08.05.19 to hear and determine 4 charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Michael O'Maoileoin barrister of the Honourable Society of Inner Temple.

### Panel Members

2. The other members of the Tribunal were:

Paul Robb (Lay Member)

Louise Clements (Lay Member)

Siobhan Heron (Barrister Member)

### Charges

3. The following charges were admitted by the respondent.

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## **Charge 1**

### **Statement of Offence**

Professional Misconduct contrary to Core Duty 5 and/or rC8 of the Bar Standards Board Handbook.

### **Particulars of Offence**

Michael O'Maoileoin acted in a way likely to diminish the trust and confidence in the profession and/or could reasonably be seen by the public to undermine his honesty and integrity, in that, while in practice as a Solicitor, he dishonestly provided a witness statement dated 24 March 2015 for the purpose of High Court proceedings which he knew contained false and/or misleading information, and in respect of such conduct on 6 March 2018, he was struck off the Roll of Solicitors, pursuant to a finding by the Solicitor Disciplinary Tribunal on 16 February 2018, that he was guilty of misconduct.

## **Charge 2**

### **Statement of Offence**

Professional Misconduct contrary to rC65.3 of the Bar Standards Board Handbook.

### **Particulars of Offence**

Michael O'Maoileoin on or after 27 March 2017, failed to report promptly or at all to the Bar Standards Board, that he was the subject of disciplinary proceedings by an Approved Regulator, namely the Law Society [Solicitors Regulation Authority].

## **Charge 3**

### **Statement of Offence**

Professional Misconduct contrary to rC65.3 of the Bar Standards Board Handbook.

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### **Particulars of Offence**

Michael O'Maoileoin failed to report promptly or at all to the Bar Standards Board, that, following a disciplinary hearing on the 16 February 2018, he had been struck off the Roll of Solicitors on 8 March 2018.

### **Charge 4**

#### **Statement of Offence**

Professional Misconduct contrary to rC65.7 of the Bar Standards Board Handbook.

#### **Particulars of Offence**

Michael O'Maoileoin, on or after 24 March 2015, failed to report promptly or at all to the Bar Standards Board, that he had committed serious misconduct, namely, that he had provided a witness statement for the purpose of High Court Proceedings which he knew contained false and/or misleading information.

### **Parties Present and Representation**

4. The respondent attended but was not represented. The Bar Standards Board ("BSB") was represented by Philip Stott of Counsel.

### **Preliminary Matters**

There were no preliminary matters raised by either party or the Tribunal.

### **Pleas**

The respondent admitted all charges.

### **Evidence**

The tribunal heard mitigation from the respondent and from Mr Khan.

### **Findings**

Given the admissions made by the respondent the Tribunal proceeded to consider the mitigation and determine the appropriate sanction.

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## Sanction and Reasons

On charge 1, the respondent was disbarred with immediate effect. There was no separate penalty on charges 2, 3 and 4.

The reasons are as follows:

1. Michael O'Maoileoin was admitted as a member of the Honourable Society of Inner Temple on 25<sup>th</sup> March 1991 and he was called to the Bar on 14<sup>th</sup> October 2004. He was admitted as a solicitor on 5<sup>th</sup> January 2009. Although he was called to the Bar he in fact spent his professional life as a solicitor. He did not complete pupillage.
2. He worked for various firms of solicitors and it was during his time working for a firm called Hugh James that these proceedings relate. He moved to Hugh James in September 2013 and set up a London based insolvency and corporate recovery department with another colleague.
3. During his time with Hugh James he was acting for a client in relation to a claim being made against his client for unpaid rent in a commercial environment. During the course of acting for the client he received notice of an application for summary judgment which was being made against his client. He inadvertently failed to note the date of the hearing and, as a result, an order for summary judgment was made against his client.
4. Missing this date was clearly a serious error. The claimants against his client went on to apply for a winding up petition against his client's company. His client then instructed a second firm of solicitors called Genus Law to challenge the winding up petition. In order to support the challenge, the respondent was asked to provide a witness statement explaining what had happened. A witness statement was prepared and within it the respondent said that the application for summary judgment had been mis-filed. In fact this was not true as the respondent had in fact received the application but had omitted to note the date of the hearing.
5. The effect of producing the witness statement was to potentially mislead the court which was a serious matter. The matter was subsequently reported to the Solicitors Disciplinary Tribunal ('SDT') and the hearing took place. The hearing was concluded on 6<sup>th</sup> March 2018. The respondent admitted providing a witness statement dated 24<sup>th</sup> March 2015 to Genus Law for the purpose of High Court proceedings which he knew contained false

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and/or misleading information and in doing so breached the principles of the Solicitors Regulation Authority Code of Conduct.

6. The respondent made representations to the SDT. In essence the respondent submitted that this was a case of exceptional circumstances. It was argued that this incident was a 'absolute one-off' by a man who had led an unblemished career both before and after the events. The one-off event was caused by pressures both within and outside work which were 'wholly exceptional'. It was also argued that there was unnecessary delay in the case. It was also argued that the respondent had been permitted to carry on practising from April 2015 until 2018 and therefore the question of risk was questionable. It was finally submitted that dishonesty was admitted and the acts and omissions had been admitted throughout and that this should be taken into account in the respondent's favour.
7. The SDT considered the submissions and it found that the respondent's dishonesty was very serious as it had involved misleading the court. This was supported by the decision in *Brett v Solicitors Regulation Authority* [2014] EWHC HC 2974 (Admin).
8. The SDT found no exceptional circumstances in the respondent's case. The SDT said that, 'the respondent and experienced solicitor in a supportive environment, made a mistake and covered it up with lies to the court'. The respondent was ultimately found out in his deception. The respondent repeatedly said that he had panicked, but dishonesty and not panic was at the root of his conduct. At the point at which the winding up petition was presented in January 2015, the respondent was left exposed, because the petition was served on his client and his client knew for the first time that something had gone very wrong.
9. The respondent should have owned up immediately. That was the point that a solicitor acting with honesty and integrity should have told the truth even if he had kept his mistake a close secret until then. That was the moment to assess the situation and do the right thing. Instead he took no action for a further two months and then made a conscious and deliberate decision to be dishonest. In spite of Gregory Treverton-Jones QC's thorough and careful mitigation on the respondent's behalf, in the absence of the SDT finding that there were no exceptional circumstances, it ordered that the respondent's name be struck off the roll of solicitors immediately.

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10. In these proceedings the respondent has asked the Bar Disciplinary Tribunal to take account of the matters raised in mitigation at his hearing before the SDT. The matters that were raised on the respondent's behalf before the SDT were:

- a. he had made a sincere apology that he stood before the tribunal having admitted dishonesty and admitted bringing the profession into disrepute;
- b. the fact that he had minimal supervision from the main Cardiff office and that the supervision took place by way of weekly Skype meetings (although he did not seek to shift the blame or responsibility onto the firm for his conduct);
- c. the nature of the client was raised as an issue in that the client was a somewhat difficult and erratic character and was vague in providing instructions. As a result the defence filed by the respondent, on the client's behalf, was poor;
- d. the fact that the origins of the untrue statement was an administrative oversight, namely the failing to note a date in his diary and belief that the date was later than it in fact was;
- e. the fact that the respondent has, within a month, after the untrue statement had been submitted, rectified the problem and made a clean breast of it;
- f. the delay in investigating this matter extended over 2 years during which the respondent has worked without complaint;
- g. the testimonials and the doctor's letter were referred to in mitigation outlined the respondent's personal problems; and
- h. the essence of the submission was that it would not be necessary for the tribunal to strike off the respondent because this was an 'absolute one-off' by a man who had led an unblemished career both before and after the events.

11. The tribunal considered these matters with care. It is acknowledged that the respondent had a serious blow to his life as a result of this conduct. The tribunal took account of the fact that there has been an apology.

12. So far as the lack of supervision is concerned the tribunal took the view that it was incumbent on any solicitor or professional person, even in the early stages of his or her

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career, to ensure that the oversight and supervision is sufficient to protect the public and clients. Although it is clear that firms must take some responsibility to ensure that systems are set up to manage and oversee work which is being carried out. In reality most legal work is very individualised and relies upon individual barristers or solicitors acting with care.

13. The tribunal understood that the genesis of the untrue statement was a simple mistake which could be made by anyone in the world of work but it was one which clearly would have brought upsetting consequences to the respondent and he was aware of that potential outcome. However, again the essence of professional life is the ability to face up to mistakes and to act with integrity and honesty even in the face of ignominy. The public and clients are protected by the knowledge that a professional person will always act honestly even if that professional person makes a serious mistake. In this case the respondent made a catastrophic decision to provide an untrue statement and it was one which goes to the essence of professional integrity and conduct. The missing of a date was understandable and has no doubt happened to almost every professional person in the course of their lives but it is essential for professional men and women to acknowledge mistakes and to accept the embarrassment and potential consequences in terms of possibly losing employment.
14. The testimonials received in support of the respondent were impressive and indeed there is no evidence that the respondent was not hard-working and a conscientious and effective lawyer. However, even with his background, misleading the court is exceptionally serious.
15. It could be also argued that the respondent should have owned up to his initial mistake very much more quickly than a period of months. He knew during that time that things were not right.
16. So far as delay in bringing proceedings is concerned it is fully understandable that the respondent would have been under great pressure while these proceedings were ongoing. It would be better for all parties if this matter was concluded more speedily and in a sense the respondent would have been lulled into a false sense of security by the fact that he could continue practising and was able to make a contribution after the event however delay in itself does not, in the view of the tribunal, go to reducing the seriousness of the offending in the first place.

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17. The respondent made a conscious decision to lie in his witness statement, three paragraphs of which were untrue. The intention behind the untruths was to mislead the court into believing that the reasons for the respondent's failure to attend the hearing on 4<sup>th</sup> August and/or make submissions on behalf of his client were other than the reality. The respondent took no action at all between receiving the summary judgment in August 2014 and 24<sup>th</sup> March 2015 in spite of the fact that in January 2015 the respondent's failures on the client matter came to a head with the service on the client of the winding up petition. The respondent concealed his initial mistake in failing to diarise the hearing date. He had the perfect opportunity to own up to his wrongdoing on the receipt of the winding up petition however, he did not confess even at that point. Instead, he provided a false witness statement two months later in response to the request from Genus Law. That witness statement was wrong in substance and contained specific lies.
18. The Respondent had knowledge of the reason by Genus Law had requested the witness statement and the purpose to which it was to be put. In spite of the many opportunities along the way for the respondent to put matters right, by his dishonesty he made the situation much worse. This was not a momentary aberration occurred during an episode of panic but a sustained pattern of behaviour.
19. The respondent was the only person who could benefit from his misconduct in terms of protecting his professional reputation. He was not seeking to preserve the reputation of the firm but, instead, exposed it to significant risk.
20. In all the circumstances the panel take the view that the only appropriate sanction in this case is one of disbarment.
21. The Tribunal adds that it adopts the view of the SDT in that there are no exceptional circumstances.
22. The mitigating factors that the tribunal considered were relevant are the respondent's admission of the charges, genuine remorse, this was a single incident, the respondent co-operated with the investigation, his previous good character and his good references.
23. The aggravating factors that the Tribunal considered were relevant are, premeditation, undermining of the profession in the eyes of the public and the indication of an element of dishonesty.

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Approved: 20 May 2019

His Honour Stephen Dawson  
Chairman of the Tribunal

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