



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2017/0263/D3

Henry Hendron 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

Henry Hendron 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 12 March 2019, I sat as Chairman of a Disciplinary Tribunal on 25 and 26 July 2019 to hear and determine 2 charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Henry Hendron Esq, barrister of the Honourable Society of the Middle Temple.

Panel Members

2. The other members of the Tribunal were:

Mr John Walsh (Lay Member)

Ms Siobhan Heron (Barrister Member)

Parties Present and Representation

3. The Respondent was present and represented himself. The Bar Standards Board (“BSB”) was represented by Matthew Holdcroft Esq.

Charges

4. Charge 1

Statement of Offence

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

Particulars of Offence

On 13 April 2017, the Legal Ombudsman directed that Henry Hendron, an unregistered barrister, should reimburse fees of £650 and pay compensation of £200 to his former client, H, by 16 May 2017 which was subsequently extended to 6 June 2017 by the Legal Ombudsman. Henry Hendron failed to reimburse any, or all of those fees, and failed to pay the compensation to H by 16 May 2017 up to at least 12 September 2017. By doing so, Henry Hendron behaved in a way which was likely to diminish the trust and confidence which the public places in the profession.

5. Charge 2

Statement of Offence

Professional misconduct contrary to Rule rC71 of the Bar Standards Board Handbook.

Particulars of Offence

Henry Hendron, an unregistered barrister, failed to give the Legal Ombudsman all reasonable assistance requested of him in connection with the determination of a complaint made under the Ombudsman scheme in that he failed to comply with the decision dated 13 April 2017 that he reimburse fees of £650 and pay £200 compensation to his former client, H, by 16 May 2017 which was subsequently extended to 6 June 2017 by the Legal Ombudsman.

Pleas

6. Mr Hendron denied both charges.

Preliminary Matters

7. There were three preliminary matters.
8. First, having circulated a Case Summary dated 24 July 2019 to the Tribunal and Mr Hendron shortly before the start of the hearing, Mr Holdcroft elected not to make an oral opening on behalf of the BSB.

9. Second, the Tribunal stated that the burden was on the BSB to prove the charges to the criminal standard.
10. Third, Mr Walsh, the Lay Member of the Tribunal, disclosed that Dawn Ebanks, the BSB's Investigations Officer for this case, may have presented a small number of cases before him when she worked as a Case Manager at the Health and Care Professionals Council (where Mr Walsh was a lay Panel Member). Mr Holdcroft and Mr Hendron confirmed that they had no issue with this.

Evidence

11. Mr Watts gave evidence via Skype on behalf of the BSB. Mr Watts confirmed the truth of his witness statement, answered some questions from Mr Holdcroft, was cross-examined by Mr Hendron and was re-examined by Mr Holdcroft.
12. Ms Hobbs gave evidence on behalf of the BSB. Ms Hobbs confirmed the truth of her witness statement, answered some questions from Mr Holdcroft, was cross-examined by Mr Hendron and answered some questions from the Tribunal.
13. Mr Hendron gave evidence on his own behalf. Mr Hendron's evidence in chief was based on a small bundle of documents which he provided to the Tribunal and to the BSB. Mr Holdcroft commenced his cross-examination of Mr Hendron. During a small part of Mr Hendron's evidence, the Tribunal sat in private.
14. Mr Hendron's oral evidence was adjourned to allow Mr Hendron to call Mr Richard Hilton to give evidence on behalf of Mr Hendron. Mr Hilton answered questions from Mr Hendron. Mr Holdcroft did not cross-examine Mr Hilton.
15. Mr Hendron resumed his oral evidence (in public). Mr Holdcroft completed his cross-examination of Mr Hendron. Mr Hendron answered questions from the Tribunal.

Closing Submissions

16. Mr Holdcroft made closing submissions on behalf of the BSB.
17. Mr Hendron made closing submissions on his own behalf.
18. At 3.50pm on 25 July 2019 the Tribunal retired to consider its decision overnight.

Finding and Reasons

19. At 11.10am on 26 July 2019 the hearing resumed and the Tribunal announced its decision as follows.

20. *"This is the decision of the Disciplinary Tribunal on charges faced by Mr Hendron. The charges are two in number and are allegations of professional misconduct. The first charge alleges a breach of Core Duty 5. The second charge alleges a breach of rC71.*
21. *Core Duty 5 states that: 'You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.' RC71 states that: 'You must give the Legal Ombudsman all reasonable assistance requested of you, in connection with the investigation, consideration, and determination, of complaints made under the Ombudsman scheme.'*
22. *The particular charges relate to the alleged non-compliance with the final decision of the Legal Ombudsman made on 13 April 2017. Part of the determination was that £850 be paid to Mr Hendron's former client, Ms Hobbs: £650 as reimbursement of monies paid by Ms Hobbs on account to Mr Hendron in 2016; and £200 as an additional liability imposed by the Legal Ombudsman.*
23. *The history prior to 13 April 2017, the date of the determination, is relevant.*
24. *There should have been no doubt on the part of Mr Hendron that he owed money to Ms Hobbs. Evidence that he knew that he owed money to her is that in June 2016 he wrote her a cheque for £650. Sadly, the cheque was not honoured.*
25. *Mr Hendron knew of the preliminary decision of the Legal Ombudsman of 6 March 2017. The preliminary decision included an obligation on Mr Hendron to make a payment of £850. The preliminary decision was in the same terms as the final decision. The final decision indicates that both parties had indicated that they accepted the preliminary decision.*
26. *In his evidence, Mr Hendron did not dissent from the proposition that he was aware of the preliminary decision.*
27. *Mr Hendron had knowledge of the final decision by no later than September 2017, when he was written to by the BSB with a copy of the Legal Ombudsman's final report. On the front page of the report was the address of the complainant, Ms Hobbs.*
28. *We are not simply concerned with Mr Hendron's actual knowledge. He ought to have had knowledge before September 2017. He could have obtained information from material directly available to him or by accessing his chambers/former chambers. His relationship with his chambers/former chambers did not preclude him from obtaining*

information. Mr Hendron was aware of the preliminary decision. It was incumbent on him to take steps to find out what had happened since then.

- 29. In 2018, on two occasions, Mr Hendron wrote a cheque for £850, reflecting his liability to Ms Hobbs. The first cheque was in March 2018. The second cheque was in May/June 2018.*
- 30. As to the first cheque: within days, Mr Hendron wrote to Ms Hobbs saying that, due to calls on his account, the cheque would not be honoured.*
- 31. As to the second cheque: Mr Hendron indicated in correspondence with the BSB that the money would remain in a dormant account. However, he wrote to the Legal Ombudsman that, if the cheque was not cashed in a very short period of time (a day or two), he would treat the debt as waived.*
- 32. The Tribunal is not satisfied that, at the time when he wrote the cheques, Mr Hendron knew that they would be dishonoured.*
- 33. Mr Hendron knew that there was a risk that the cheques might be dishonoured, particularly if they were not promptly presented. Mr Hendron's observations on waiver were, at least in part, an attempt to force Ms Hobbs to present the cheque as soon as possible. It was an ill-advised tactic.*
- 34. We heard evidence (partly in private) of difficulties in Mr Hendron's personal life. We do not consider that those difficulties, though they provide some explanation for his conduct, provide a defence to the charges.*
- 35. The public would expect a barrister to be pro-active and to discharge obligations in a prompt manner.*
- 36. Mr Hendron criticised Ms Hobbs, in part for not providing her bank details when he requested them. Ms Hobbs cannot be criticised for not providing her bank details in the circumstances of the requests.*
- 37. The bare facts are plain. Since 2017 there has at all times been an obligation on Mr Hendron to make payment to Ms Hobbs. The payment has not been made.*
- 38. Both charge 1 and charge 2 are proved, in the sense that the conduct was a breach of Core Duty 5 and rC71. The breaches were sufficiently serious to amount to professional misconduct."*

39. The judgement ended at 11.20am.

Submissions on Sanction

40. Mr Holdcroft provided the Tribunal with a list of previous findings against Mr Hendron and referred the Tribunal to the Sanctions Guidance (version 4) at page 56: failure to comply with an order of a BTAS Tribunal, the Legal Ombudsman or the Professional Conduct Committee.

41. Mr Hendron made a plea in mitigation. He also confirmed that he would send the money to Ms Hobbs.

42. At 11.35am the Tribunal retired to consider its decision on sanction.

Sanction and Reasons

43. At 12.30pm the hearing resumed and the Tribunal announced its decision on sanction as follows.

44. *"This is the Tribunal's decision on sanction.*

45. *The BSB referred the Tribunal to the Sanctions Guidance (version 4): section D3, failure to comply with an order of a BTAS Tribunal, the Legal Ombudsman or the Professional Conduct Committee. The BSB submitted that the matter fell within paragraph (d), a deliberate and sustained decision not to engage with the BSB/Legal Ombudsman over an extended period of time, for which the starting point is a long suspension.*

46. *Mr Hendron made three points. First, he did not accept that this was a deliberate and sustained decision not to engage. There was engagement, in particular from September 2017, with the Legal Ombudsman and the BSB. Second, Mr Hendron referred to the evidence of his personal circumstances (evidence which we largely heard in private). Third, Mr Hendron said that he was just coming back into professional practice at the Bar following a three year period of suspension. He is back in practice on his own account, accepting instructions both from solicitors and on a direct access basis.*

47. *We have been presented with a list of previous disciplinary findings for a variety of matters. We have taken them into account. There are a number of matters, some very serious, as reflected in the sanctions imposed. However, the previous history is not similar to the professional misconduct with which we are concerned today.*

48. *This is not a case which clearly and obviously falls within paragraph (d) of section D3 of the Sanctions Guidance. The failure to comply was over a protracted period, but this is not a case where there was no engagement or attempt to engage. There is therefore some substance in Mr Hendron's first submission.*

49. *We accept that Mr Hendron's personal circumstances are a relevant factor.*

50. *As to Mr Hendron's third submission: he reminded us that a three year suspension is tantamount to disbarment. As we understood him, Mr Hendron sought to argue that, as he had just concluded a three year suspension, the Tribunal was not in a position to suspend him today. We disagree. However, the fact that he has recently served a three year suspension is relevant: we take it into consideration.*

51. *We will sentence for both charge 1 and charge 2 together. There will be two components to the sanction: (1) Henry Hendron shall be suspended for 3 months; (2) Henry Hendron shall be prohibited from accepting or carrying out any public access instructions for a period of 9 months.*

52. *The matters today arose out of instructions accepted on a public access basis. We have had regard to the public protection element of sanctions: both the primary suspension and the longer prohibition on accepting public access instructions are designed to protect the public. The sanctions are also designed to uphold the reputation of the profession.*

53. *The period of 3 months and the period of 9 months shall start at the same time."*

54. The judgment ended at 12.45pm, when the Tribunal retired to give Mr Hendron time to consider whether he wished to make an application under rE221 to postpone the commencement of the suspension.

Concluding Matters

55. On the resumption of the hearing at 1.00pm, the Tribunal emphasised that, in determining the length of the suspension, the Tribunal had given regard to the fact that it was also imposing a prohibition on accepting public access instructions. The Tribunal had considered the sanctions in the round.

56. Mr Hendron elected not to pursue an application under rE221.

57. The Tribunal ordered that: (1) the sanctions would not take effect until the 21 day period for an appeal had expired; and (2) in the event of an appeal within the

prescribed period, the sanctions would not take effect until the appeal had been dismissed or withdrawn.

58. The hearing ended at 1.20pm.

Approved: 15 August 2019

**Jonathan Holl-Allen QC
Chairman of the Tribunal**