



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Final Report

Case reference: PCLR 2018/0331/D3 and PCLR 2018/0333/D3

Ian Wheaton Esq

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of Lincoln's Inn

Disciplinary Tribunal

Ian Wheaton 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 May 2019, I sat as Chairman of a Disciplinary Tribunal on 21 June 2019 and 1 August 2019 to hear and determine 6 charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Ian Wheaton Esq, barrister of the Honourable Society of Lincoln's Inn.
2. On 21 June 2019 the Tribunal unanimously found the 6 charges against Mr Wheaton proved, for the reasons set out in my Interim Report dated 24 June 2019. I incorporate that Interim Report into this Final Report.
3. This Final Report deals with the Sanctions.

Panel Members

4. The other members of the Tribunal were:

Mr Jonathan Monk (Lay Member)

Ms Isabelle Watson (Barrister Member)

Parties Present and Representation

5. On 21 June 2019 the Respondent was not present and not represented. Pursuant to rE183, having considered *R v Jones* [2002] UKHL 5, a decision said to apply to Disciplinary Tribunals in *BSB v Norton* [2014] EWHC 2681 (Admin) the Tribunal proceeded in his absence. The Tribunal satisfied that service of the hearing bundle with the notification of date and time had been given to Mr Wheaton. effective service in accordance with rE102-105.
6. At the conclusion of the hearing on 21 June 2019, the Tribunal had adjourned the Sanctions hearing and wished Mr Wheaton to attend as one of the sanctions available to it was suspension.
7. On 1 August 2019 the Respondent was present and represented himself. The Bar Standards Board (“BSB”) was represented by David Callow Esq on 21 June 2019 and 1 August 2019.

Preliminary Matter on 1 August 2019: Identification of Parties

8. The Tribunal emphasised that its previous directions regarding the identification of the complainants remained in force.

BSB’s Submissions on Sanction on 1 August 2019

9. Mr Callow confirmed that there were no previous adverse findings against Mr Wheaton.
10. Mr Callow referred the Tribunal to the Sanctions Guidance (version 4) at page 56: “D.3 Failure to comply with an Order of a BTAS Tribunal, the Legal Ombudsman or the Professional Conduct Committee”. Mr Callow suggested that the case fell within paragraph (b): “failure to comply with any part of the orders of the Tribunal/panel/ombudsman”, for which the starting point was a “conditional short suspension”.

Mr Wheaton’s Submissions in Mitigation on 1 August 2019

11. Mr Wheaton told the Tribunal that the sums had now been paid.
12. Having received an unsolicited email from Mr N providing his bank details on 3 July 2019 and requiring payments within 14days. Mr Wheaton made an electronic transfer to Mr N of £350 at 07:28am on 1 August 2019 (two hours before the Tribunal was due to sit). Mr Wheaton showed Mr Callow a screenshot as evidence of this transaction. Mr Wheaton could not explain why he had not paid Mr N within 14 days of the email of 3 July 2019, as requested by Mr N.

13. Mr Wheaton sent a postal order in the sum of £800 to Ms K on 31 July 2019. He did not have with him a copy of the stub or a photocopy of the postal order. Mr Wheaton made reference to his correspondence with the Legal Ombudsman (provided to the Tribunal prior to the start of the hearing on 1 August 2019) as evidence that he had been asking in 2018 for Ms K's bank details.
14. Mr Wheaton said that a banker's draft was not available on his type of bank account.
15. Mr Wheaton said that he had been in practice for 17 years and this was the first disciplinary action against him.
16. Mr Wheaton submitted that a fine was appropriate because he had paid the sums now, albeit late, and made serious attempts to comply. He had made several requests for the bank details.
17. Mr Wheaton apologised to both clients.
18. At 10:10am on 1 August 2019, the Tribunal briefly sat in private so that Mr Wheaton could give make submissions on a personal matter, but which could explain some aspects for his conduct during this period.
19. Having returned to public session, the Tribunal asked Mr Wheaton about his fee income. It is not necessary to set that out the details here, but it is sufficient to say that he has a good fee income with a significant monthly disposal amount of £5000 available to him.
20. At 10:15am on 1 August 2019, the Tribunal retired to consider sanction. The Tribunal was provided with a copy of Mr N's email to Mr Wheaton on 3 July 2019 and Mr Wheaton's reply to Mr N on 1 August 2019 at 7:31am.

Sanction and Reasons (on 1 August 2019)

21. At 10:55am on 1 August 2019, the hearing resumed, and the Tribunal announced its unanimous decision on sanction.
22. On 21 June 2019 the Tribunal heard and determined 6 charges of professional misconduct against Mr Wheaton (see Interim Report). The hearing proceeded in his absence, but the Tribunal adjourned the determination of sanctions as one of the potential outcomes was suspension. The Tribunal wished to give Mr Wheaton an opportunity to address the Tribunal before making a final determination. The Tribunal had not reached a view on sanctions on 21 June 2019.

23. The Tribunal noted that there were 6 charges: two sets of 3 charges. The BSB submitted that each set of 3 charges arose out of the same facts, but there were different breaches for each charge.

24. The charges were as follows.

PCLR 2018/0331/D3

Charge 1

Statement of Offence

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

Particulars of Offence

On 9 January 2018 the Legal Ombudsman directed that Mr Wheaton should comply with its decision to pay compensation of £350 to his former client, N. Mr Wheaton failed to carry out this action by the due date of 23 January 2018 or at all. By this failure, Mr Wheaton behaved in a way which was likely to diminish the trust and confidence which the public places a barrister or in the profession.

Charge 2

Statement of Offence

Professional misconduct contrary to Core Duty 9 of the Bar Standards Board Handbook.

Particulars of Offence

On 9 January 2018 the Legal Ombudsman directed that Wheaton should comply with its decision to pay compensation of £350 to his former client, N. Mr Wheaton failed to carry out this action by the due date of 23 January 2018 or at all. By this failure, Mr Wheaton failed to co-operate with his regulator.

Charge 3

Statement of Offence

Professional misconduct contrary to Core Duty 10 of the Bar Standards Board Handbook.

Particulars of Offence

On 9 January 2018 the Legal Ombudsman directed that Wheaton should comply with its decision to pay compensation of £350 to his former client, N. Mr Wheaton failed

to carry out this action by the due date of 23 January 2018 or at all. By this failure, Mr Wheaton failed to take reasonable steps to manage his practice competently and in such a way as to achieve compliance with his legal and regulatory obligations.

25. The charges were as follows.

PCLR 2018/0333/D3

Charge 1

Statement of Offence

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

Particulars of Offence

On 18 June 2018 the Legal Ombudsman directed that Mr Wheaton should comply with its decision to pay compensation of £600 to his former client, K. Mr Wheaton failed to carry out this action by the due date of 16 July 2018 or at all. As at the date of service of the charges [11 February 2019], the sum remained unpaid. By failing to carry out this action, Mr Wheaton behaved in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the profession.

Charge 2

Statement of Offence

Professional misconduct contrary to Core Duty 9 of the Bar Standards Board Handbook.

Particulars of Offence

On 18 June 2018 the Legal Ombudsman directed that Mr Wheaton should comply with its decision to pay compensation of £600 to his former client, K. Mr Wheaton failed to carry out this action by the due date of 16 July 2018 or at all. As at the date of service of the charges [11 February 2019], the sum remained unpaid. By failing to carry out this action, Mr Wheaton failed to co-operate with his regulator.

Charge 3

Statement of Offence

Professional misconduct contrary to Core Duty 10 of the Bar Standards Board Handbook.

Particulars of Offence

On 18 June 2018 the Legal Ombudsman directed that Mr Wheaton should comply with its decision to pay compensation of £600 to his former client, K. Mr Wheaton failed to carry out this action by the due date of 16 July 2018 or at all. As at the date of service of the charges [11 February 2019], the sum remained unpaid. By failing to carry out this action, Mr Wheaton failed to take reasonable steps to manage his practice competently and in such a way as to achieve compliance with his legal and regulatory obligations.

26. The facts relating to these charges can be summarised as follows:

(a) In relation to the case of Mr N in January 2017 Mr Wheaton accepted direct access instructions from Mr N to assist in private family proceedings. Mr N wanted to appeal a decision of 11 January 2017. The appeal was submitted on 1 February 2017 and refused on 21 February 2017. Mr N complained that Mr Wheaton had failed to do as instructed on time. In a preliminary decision, the Legal Ombudsman found poor service and ordered Mr Wheaton to pay £350. Mr Wheaton accepted this decision; Mr N rejected it. In its final decision, the Legal Ombudsman also found poor service and ordered Mr Wheaton to pay £350. Payment was due by 23 January 2018. A final letter was sent on 22 March 2018, requiring final payment by 29 March 2018. Mr Wheaton failed to pay.

27. The Tribunal said that running parallel with the Mr N case was the Ms K's case. In May/June 2017 Ms Kissane instructed Mr Wheaton on a direct access basis to draft amended Particulars of Claim. It was a Queen's Bench Division claim for some £125,000. Following determination of the application to amend, Ms K complained. She said that she had been charged for a two-hour conference but it lasted only 15 minutes. On 9 January 2018 the Legal Ombudsman wrote that Mr Wheaton had agreed to pay £500. Payment was due by 23 January 2018. On 28 January 2018 the Legal Ombudsman sent an email to Mr Wheaton saying that Ms K had not received the £500. The Legal Ombudsman's preliminary decision was that £600 was now due. The Legal Ombudsman's final decision of 18 June 2018 was also that £600 was due. Mr Wheaton failed to pay.

28. The gravamen of the charges was that Mr Wheaton had failed to comply with the directions of the Legal Ombudsman to pay compensation to two former clients; in Mr N's case 18 months had elapsed since the direction of the Legal Ombudsman and 12 months in Ms K's case

29. The Tribunal confirmed that it had read the bundles in full, including Mr Wheaton's email of 14 May 2019. The Tribunal had also heard Mr Wheaton in mitigation.
30. The Tribunal had borne in mind section 3 of the Sanctions Guidance (version 4): "Purpose and principles of sanction".
31. The BSB had drawn the Tribunal's attention to the Sanctions Guidance (version 4) at page 56: "D.3 Failure to comply with an Order of a BTAS Tribunal, the Legal Ombudsman or the Professional Conduct Committee". The second paragraph stated that:
- "Under rC71 Barristers and BSB Licensed / Authorised Bodies are required to cooperate with the Legal Ombudsman. The appropriate sanction will depend on the nature of the original sanction, whether compliance of whole or part of the order remains outstanding and the reasons why the breach occurred. It is therefore difficult to set an overall starting point. A financial penalty may not be appropriate where previous financial orders remain outstanding. In most cases, where order(s) remain outstanding, and no serious attempts have been made to comply, a conditional short suspension could be appropriate (i.e. the suspension does not become operative unless the barrister fails to comply with conditions set by the Tribunal).*
- When compliance has been achieved by the date of the Tribunal, the starting point should be a low level fine combined with a reprimand/advice as to future conduct."*
32. Listed on page 56 of the Sanctions Guidance were various possible circumstances.
33. Mr Callow submitted that paragraph (b) was appropriate: *"failure to comply with any part of the orders of the Tribunal/panel/ombudsman"*.
34. The Tribunal had looked at the suggested aggravating factors on page 56 and concluded that none applied here on the facts of this case. There were no similar previous findings. It could not be said that there was *no attempt* to comply with the order: there was compliance, albeit it at a late hour, as set out later on in this judgment.
35. As invited to do so by the BSB, the Tribunal considered the charges together; in two sets of three charges each with a common factual origin which led to the breaches categorised in the separate charges.
36. The Tribunal noted that Mr Wheaton had made the following points. First, there were no previous findings against him; this was his first appearance before a Disciplinary

Tribunal. The Tribunal took that into account. Second, Mr Wheaton said that he had made the payments to his former clients: he had made an electronic transfer to Mr N at 07:28am on 1 August 2019; he had sent a postal order to Ms K on 31 July 2019. Third, Mr Wheaton submitted that he had engaged with the Legal Ombudsman and the BSB. Fourth, Mr Wheaton advanced personal mitigation, which the Tribunal heard in private.

37. As to Mr Wheaton's second point, the Tribunal observed that it had taken Mr Wheaton some 12 months to make the payment to Ms K and some 18 months to make the payment to Mr N. To say that the payments were made at the eleventh hour was an understatement. There was a lack of pro-active attempts to comply with the Ombudsman's Directions. For a member of the Bar of Mr Wheaton's seniority, this was poor and shoddy conduct, if not appalling. The Legal Ombudsman had been left with no option but to refer the matter to the BSB. Notwithstanding the referral, Mr Wheaton did not respond. If Mr Wheaton had responded then as he had done in the last 48 hours, the case would not have been brought by the BSB. Mr Wheaton's conduct was the sole reason for the hearing before the BSB
38. The Tribunal recognised Mr Wheaton's additional stress arising from the matters heard in private. However, that personal matter was static: it was always there during the 18 months since the first Direction to pay and could not and did not prevent him from complying with the Ombudsman's Directions.
39. The Tribunal noted that Mr Wheaton had £5,000 per month as disposable income and could always have made the payments.
40. The Tribunal noted that Mr Wheaton had an audit trail of engagement with the Legal Ombudsman and the BSB. However, that did not deal with the crux of the complaint; the payments to Mr N and Ms K. This had only been resolved in the last 48 hours.
41. In the Tribunal's view, the means of payment ultimately used by Mr Wheaton were available to him from a very early stage. But they were not used. Mr Wheaton had advanced no credible reason for not using them. As long ago as 14th May 2019, in his email to the BSB, he had referred to payment by postal orders.
42. On 3 July 2019, about two weeks after the hearing on 21 June 2019 and the publication of the Interim Report, Mr Wheaton receive an apparently unsolicited email from Mr N requesting payment in 14 days. That was ignored. Mr Wheaton had no explanation for not paying in 14 days.

43. The Tribunal wanted to say that the facts commended themselves to a suspension: Mr Wheaton's behaviour and appalling disregard for the directions of the Legal Ombudsman suggested a behaviour that the Tribunal would not expect of a member of the Bar. Mr Wheaton admitted that his conduct did not look good.
44. However, the Tribunal noted that suspension was a serious matter. Referring to the Sanctions Guidance and the note at p56, the Tribunal noted the following passage
- " When compliance has been achieved by the date of the Tribunal, the starting point should be a low level fine combined with a reprimand/advice as to future conduct ".*
- Whilst it could be argued that the relevant date of the Tribunal was 21 June 2019, the Tribunal would not take that view and interpreted this passage as meaning by the time the Sanctions hearing was due to take place on 1 August 2019. One reason for this was that Mr Wheaton had chosen not to be present at the hearing on 21 June 2019. Albeit at the eleventh hour, compliance had been achieved.
45. The Tribunal had considered the Sanctions Guidance at page 32 as to what amounted to a low level fine: it was a fine up to £1,000. The Tribunal took a very serious view of Mr Wheaton's conduct and disregard of two orders to pay. Mr Wheaton's explanations were unsatisfactory. His conduct was at the very top end of the maximum fine level applicable here.
46. The Tribunal imposed the following sanctions:
- (1) In respect of Mr N's complaint: that Mr Wheaton pay a fine of £1,000 to the BSB by 15 August 2019.
 - (2) In respect of Ms K's complaint: that Mr Wheaton pay a fine of £1,000 to the BSB by 15 August 2019.
 - (3) In respect of Mr N's complaint: that Mr Wheaton be reprimanded by the Tribunal.
 - (4) In respect of Ms K's complaint: that Mr Wheaton be reprimanded by the Tribunal.
 - (5) In respect of both complaints: that Mr Wheaton be ordered to attend on the Leader of his Circuit to be given advice as to his future conduct.
47. The Tribunal directed that a copy of the Interim Report and this Final Report be sent to the Leader of Mr Wheaton's Circuit.

48. The Tribunal reprimanded Mr Wheaton by stating that it was appalled by his behaviour. Mr Wheaton had admitted that it did not look good. If Mr Wheaton had really wanted to comply, he could have done so. The means of payment used by Mr Wheaton in the last 48 hours could have been used a long time ago. The non-payment was not due to the matters heard in private. Mr Wheaton had chosen not to be pro-active. The conduct taken as a whole diminished the standing, trust and confidence which the public places in the profession and the Legal Ombudsman is entitled to expect, from a member of the Bar. Pursuant to rE241, the BSB must take the appropriate steps to put the sanctions into effect.

Approved: 02 August 2019

Mohammed Khamisa QC
Chairman of the Tribunal