



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Report of Finding and Sanction

Case reference: PC 2018/0047/D5

Theyakaraja Palaniandy

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

Theyakaraja Palaniandy

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 24 May 2019, I sat as Chair of a Disciplinary Tribunal on 5 December 2019 to hear and determine 3 charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Theyakaraja Palaniandy, an unregistered barrister of the Honourable Society of Lincoln's Inn.

### Panel Members

2. The other members of the Tribunal were:

Mr David Crompton (Lay Member)  
Ms Siobhan Heron (Barrister Member)  
Ms Deborah Spring (Lay Member)

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## Preliminary Matters

3. The BSB applied to proceed in the absence of the Respondent and the application was granted by the tribunal. The tribunal were satisfied having received an email from the Respondent on the 4 December 2019 that he is aware of today's hearing.

## Charges

4. The following charges were read out in the absence of Theyakaraja Palaniandy Esq and recorded as denied:

### Charge 1

#### Statement of Offence

Professional Misconduct, contrary to Core Duty 5 and/or rC8 of the Code of Conduct of the Bar of England and Wales (8<sup>th</sup> Edition).

#### Particulars of Offence

Theyakaraja Palaniandy, an unregistered barrister behaved in a way likely to diminish the trust and confidence which the public places in him or in the profession and/or which could reasonably be seen by the public to undermine his honesty, integrity and independence in that while in practice as an Advocate and Solicitor in Malaysia in around November 2014, he failed to refund a deposit of RM335,000 paid to him as stakeholder pending completion of a purchase of land pursuant to a Sale and Purchase Agreement dated 15 November 2013, which purchase did not ultimately take place. By order dated 13 October 2016 he was struck off the Roll of Advocates and Solicitors of the High Court of Malaya following the finding of the Disciplinary Committee on 26 April 2016 that his conduct was unbecoming of a member of the legal profession.

### Charge 2

#### Statement of Offence

Professional Misconduct, contrary to Core Duty 9 and/or rC65.3 of the Code of Conduct of the Bar of England and Wales (9<sup>th</sup> Edition).

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### Particulars of Offence

Theyakaraja Palaniandy, an unregistered barrister failed to co-operate with the Bar Standards Board and/or failed to report to it promptly or at all to the Bar Standards Board that to his knowledge he was the subject of disciplinary or other regulatory or enforcement action by another regulator, in that, following a complaint made on or around 27 April 2015 by his client while he was in practice as an Advocate and Solicitor in Malaysia, on 26 April 2016 the Disciplinary Committee found that his conduct was unbecoming a member of the legal profession and on 13 October 2016 he was ordered to be struck off the Roll of Advocates and Solicitors of the High Court of Malaya.

Theyakaraja Palaniandy failed to report any of these matters to the Bar Standards Board which only became aware of them after the Bar Council of Malaysia notified the Honourable Society of Lincoln's Inn by letter dated 19 October 2017 that he had been struck off.

### Charge 3

#### Statement of Offence

Professional Misconduct, contrary to rC65.7 of the Code of Conduct of the Bar of England and Wales (8<sup>th</sup> Edition).

### Particulars of Offence

Theyakaraja Palaniandy, an unregistered barrister failed to report promptly or at all to the Bar Standards Board that he had committed serious misconduct in that while in practice as an Advocate and Solicitor in Malaysia in around November 2014, he failed to refund a deposit of RM335,000 paid to him as stakeholder pending completion of a purchase of land pursuant to a Sale and Purchase Agreement dated 15 November 2013 which purchase did not ultimately take place. By order dated 13 October 2016 he was struck off the Roll of Advocates and Solicitors of the High Court of Malaya following the findings of the Disciplinary Committee on 26 April 2016 that his conduct was unbecoming of a member of the legal profession.

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## Parties Present and Representation

5. The Respondent was not present and was not represented. The Bar Standards Board (“BSB”) was represented by Sara Jagger.

## Facts

6. The background to the charges is set out in the BSB’s skeleton argument dated 4 December 2019.

In short, it was alleged that in 2014, the respondent was in practice as an Advocate and Solicitor in Malaysia. He was one of two partners in a firm. On the 27 April 2015 a complaint was made against him namely that the firm had unlawfully retained a deposit of RM335,000 that it had been given as a stakeholder pending an aborted sale and purchase agreement.

At a hearing on 26 April 2016 before the Disciplinary Committee in Malaysia, the committee found that the deposit had been kept in the firm’s office account in breach of Solicitor’s Accounts Rules and that although he had tried to refund it, that the refund cheque had bounced due to insufficient funds and there had been no reimbursing of the monies.

The relevant Disciplinary Board considered the committee’s report and on the 13 October 2016 the respondent was struck off the roll.

On 19 October 2017 the Malaysian Bar Council notified Lincoln’s Inn. This was the first time that the Bar Standards Board had become aware of the matter.

On 25 November 2019 the respondent sent an email to the Bar Standards Board stating that he wished to partake in the BTAS hearing by telephone however in an email on the 4 December 2019 to the Bar Standards Board he said that he was no longer intending to. His email said that he had no knowledge that his business partner had deposited the client’s deposit into the office account. He accepted that he was a signatory to the account and was therefore jointly liable for the it. He accepted that he did not notify the Bar Standards Board of the outcome of the Malaysian proceedings and said that he was unaware that he had been required to.

## Evidence

7. No evidence was heard.

## Submissions

8. The Chair asked questions of the BSB (Ms Jagger) in relation to the standard of proof. Ms Jagger confirmed that the BSB are required to prove the charges to the criminal standard of proof as they pre-date April 2019.

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Ms Jagger said that the BSB rely upon the findings of the Disciplinary Committee in Malaysia as the facts upon which they made their decision were accurate.

## Findings

9. We find the 3 charges proved. The finding and sanction were made in the absence of the Respondent in accordance with rE183.

## Sanction

10. As a majority we have decided that the Respondent should be disbarred. In line with Rule E227 the BSB will not provide a practising certificate to the respondent.

## Reasons

11. The Panel was satisfied that the Board had proved Charge 1. In the particular circumstances of Mr Palaniandy's practice, it operated as a firm of solicitors and barristers and he was one of the partners. Another partner in the firm received money from a client which should have been paid into a designated Clients' Bank Account. The money was in fact paid into an Office Account in breach of the rules. The client's money was not returned to him as it should have been when he demanded it. Although Mr Palaniandy blamed his partners; we were satisfied that he was jointly and severally liable to the client. We find that the respondent failed to return the client's money and that he failed to take control of the loss of client's funds when it came to his attention that it had occurred.

As to Charge 2 we find that this charge is also proved. The respondent knew of the proceedings against him and admits that he was under a duty to report the circumstances to his Inn. He exculpates himself by reference to ignorance at the time and apathy.

So far as Charge 3 is concerned, the charge was not drafted as a continuing obligation although we find as a fact that the respondent did not at any time between November

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2014 and October 2016 report the allegation of serious misconduct as he should have done. By 12<sup>th</sup> March 2015 a writ had been issued against him and therefore he was at that time in possession of all the facts that he needed to make his report. We find that the 12<sup>th</sup> March 2015 is sufficiently proximate in time to November 2014 to bring it within the terms of the charge as being “in or around November 2014”.

Our findings on all three charges are therefore that the respondent is guilty of all three charges.

We heard submissions as to the appropriate sanction. We acknowledge that there is no allegation that Mr Palaniandy acted dishonestly in connection with the matters that led to these charges. Our decision in the case of Palaniandy is – by majority – that Palaniandy should be struck off the Register of Barristers in England and Wales. One member of our panel felt that a lesser sanction would be appropriate having regard to the fact that Mr Palaniandy had not himself acted dishonestly. The majority of the panel considered that it was his responsibility as a partner in the firm to ensure that the rules relating to clients’ money were complied with, to rectify errors if any occurred and to make good any loss suffered by the client. Having discovered the breach of rules and his partner’s failure to repay the client Mr Palaniandy then failed to make good the client’s loss himself. As a partner in the firm he was liable to the client jointly with all other partners. The fact is that the client suffered significant financial loss and he did not recover his funds. The majority of the panel considered that such conduct justified disbarment and the order was made accordingly.

Approved: 14 January 2020

Her Honour Penny Cushing  
Chairman of the Tribunal

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