



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2018/0372/D5

Richard Miles Esq

The Director-General of the Bar Standards Board
The Chair of the Bar Standards Board
The Treasurer of the Honourable Society of Gray's Inn

Disciplinary Tribunal

Richard Miles Esq

1. In accordance with a Convening Order dated 29th August 2019, I sat as Chairman of a Disciplinary Tribunal on 23rd September 2019 to hear and determine one (1) charge against Richard Miles Esq, barrister of the Honourable Society of Gray's Inn.

Panel Members

2. The other members of the Panel were:

Ms Deborah Spring (Lay Member)

Mr Paul Robb (Lay Member)

Ms Naomi Davey (Barrister Member)

Lee Gledhill Esq (Barrister Member)

Charge

3. The following charge was found proved.

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Charge 1

Statement of Offence

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

Particulars of Offence

Richard Miles, barrister, acted in way which was offensive and likely to diminish the trust and confidence which the public places in a barrister or in the profession in that on or before 7 March 2018 he posted on a Facebook chat forum, 'London floaters do as you likely' those comments particularised in Schedule A, one or more or a combination of which are offensive and disparaging, including matters of a sexual and/or violent nature, about Person A, a member of the public.

Parties Present and Representation

4. Mr Miles attended and represented himself. In accordance with a previous direction, Witness A was cross-examined on the Respondent's behalf by Ms Kama Melly QC.
5. The Bar Standards Board ("BSB") was represented by David Sharpe Esq.

Preliminary Matters

6. The tribunal heard submissions from Ms Melly about the proposed areas of cross-examination for Witness A and approved the same. Prior to the hearing itself the tribunal made rulings on Anonymity for witness A on 29 August 2019 and on Applications for Disclosure and Other Matters made by the Respondent on 11 September 2019.

Plea

7. Mr Miles denied the charge against him.

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Evidence

8. The tribunal read and considered the contents of the bundle prepared by the BSB as well as the bundle of authorities. The tribunal heard live evidence from Witness A and Mr Whittam, as part of the BSB's case. Mr Miles gave evidence in his own defence. The tribunal heard oral representations from both parties and considered the written submissions provided.

Findings

9. The tribunal determined that the essential issues to be resolved were: (i) whether the admitted conduct Mr Miles amounted to serious professional misconduct and; (ii) whether such conduct was likely to diminish the trust and confidence which the public placed in him or in the profession.
10. The tribunal was unanimously sure of the following:
 - (i) That Mr Miles posted all the comments set out in Schedule A to the charge to a Facebook group called "London Floaters do as you likey" which described itself as "private";
 - (ii) That the posts were directed specifically and only at Witness A and were grossly offensive and disparaging and included matters of a sexual and / or violent nature. For example, there were references to her being a prostitute and a witch, references to sexual and physical violence and, on one post, there was effectively a threat to kill her. The tribunal found the posts to be targeted and misogynistic;
 - (iii) That Mr Miles' submissions that the absence of any wish or intent on his part to physically harm Witness A did not amount to a defence to the charge but rather fell to be considered at the second, sanctions stage of these proceedings; and
 - (iv) That Mr Miles' posting of the messages in Schedule A was conduct that amounted to serious professional misconduct. Following Elias LJ in **Remedy UK v GMC [2010] EWHC 1245 (Admin)**, the tribunal found that Mr Miles' conduct, although outwith the practice of his profession, was

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conduct of a morally culpable or disgraceful kind that brought the profession into disrepute.

11. Detailed submissions of fact and law were made by the parties arising out of the three (overlapping) planks of the Respondent's defence. It is right that out of respect to those submissions that we should refer to each in a little detail:

(i) The Respondent's first submission was that the posts, having nothing to do with his practice as a barrister and not being the subject of a police prosecution, could only affect his personal and not his professional reputation and therefore were not likely to diminish public trust and confidence in his capacity as a barrister or in the standing of the profession. This was, in the shorthand adopted at the hearing, described as "the always in uniform point".

12. The tribunal recalled the observations of Lord Bingham in **Bolton v Law Society [1994]1WLR 512** that a profession's most valuable asset is its collective reputation and the confidence that inspires. The tribunal was satisfied that the Authorities clearly establish that the regulator is empowered to consider acts and behaviour which are not strictly related to practice. See for example, **R (on the application of Remedy UK Ltd v GMC [2010 EWHC 1245 (Admin)]**:

(ii) The Respondent's second submission was that the posts were all private and intended only for members of one specific chat group and no other (the "privacy point")

13. **In Craven v The BSB an Appeal to the Visitors to the Inns of Court dated 30.1.2014 (Unreported)** the court rejected the submission that the sending of a private email which could not be read by third parties to three recipients was not likely to bring the profession into disrepute nor effect its reputation. We accepted the submission made on behalf of the BSB that the sending of the offensive messages in this case to a group containing at least 50 members of an online chat forum was not confidential and risked resurfacing or becoming available to non members as indeed proved to be the case.

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(iii) The third submission made by the Respondent was that these proceedings breached his rights under Articles 8 and 10 of the European Convention of Human Rights (“the convention point”)

14. The Respondent argued in effect that the BSB and BTAS are both public authorities for the purposes of the Human Rights Act 1998 and are therefore duty bound not to act incompatibly with Convention Rights. Further he submitted that the posts are protected by Article 10(1) of the Convention which covers speech which offends, shocks or disturbs....and speech which is no more than abuse. Finally, under this head he submitted that the messages he sent to Witness A amounted to “correspondence” within the scope of Article 8 (1) and were thereby protected.
15. The relationship between Articles 8 and 10 ECHR and professional regulation of potentially offensive comments made by a barrister, was recently discussed in **Khan v BSB [2018]EWHC 2184 (Admin)**. The court in that case noted that Articles 8 and 10 of the Convention are fundamental but qualified rights. In **Craven (ibid)** similar arguments were raised. In both cases they were rejected. In our judgment Articles 8 and 10(1) are engaged, the posts being a form of communication but the pursuit of disciplinary proceedings in respect of material of this nature served a legitimate aim, corresponded to a pressing social need and was in itself, proportionate to such need. Witness A’s rights under Article 8 were engaged. If the pursuit of disciplinary proceedings against the Respondent was an interference with his Convention rights under Articles 8 and 10, it was in our view a justified interference corresponding to a pressing social need to uphold and maintain professional standards which itself is of considerable importance to the public and its need to have confidence in the profession.
16. The tribunal found that the conduct of the Respondent clearly crossed the threshold and amounted to Professional Misconduct (see **Walker v BSB an Appeal to the Visitors to the Inns of Court 19.9.2013(Unreported)** and see **Khan v BSB (ibid)** and therefore that the charge in Annex 1 to this report was proved beyond reasonable doubt.

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Sanction and Reasons

17. The tribunal returned to consider sanction on 23rd October 2019. Regrettably, Ms Naomi Davey (barrister member), could not sit on that day owing to prior commitments and she took no further part in the proceedings. The tribunal remained quorate and seized of the case in accordance with rE149. The parties confirmed they were content that the tribunal remained quorate and could exercise the sanction powers of a five-person panel.
18. On 23rd October 2019 the BSB was represented by Mark Hubbard Esq. Mr Miles attended and continued to represent himself.
19. The tribunal had been provided in advance with witness statements from Mr Miles and Ms Anna Comerford, a reference from Simon Robeson and the BSB's written submissions on sanction. The tribunal heard oral submissions from both parties.
20. The tribunal considered versions 4 and 5 of the BSB's Guidance on Sanction and noted that there was no guidance offered in cases of this kind. The tribunal identified the following aggravating factors:
 - (i) Premeditation. Mr Miles' conduct was planned and deliberate and directed at a vulnerable woman living alone;
 - (ii) Involvement of others. There were undoubtedly other members of the chat group although the precise number was not clear to the tribunal on all the evidence. The evidence of the Respondent as to the number of members was, to say the least, unsatisfactory.
 - (iii) Continuation of the conduct following a warning. Mr Miles continued his conduct after one of his posts was removed by Facebook on the grounds that it was grossly offensive. The messages that post-dated this action speak for themselves and indicate a continuation of the same behaviour;
 - (iv) Lack of genuine remorse. The tribunal considered that such regret as Mr Miles did express was, at best, grudging. The tribunal noted that Mr Miles had not offered any genuine apology to Witness A nor any

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acknowledgement about the impact of his conduct on the reputation of the profession.

- (v) Lack of insight. The tribunal found that Mr Miles was not frank in his evidence about the contents of the posts or about the potential impact of his conduct.

21. The tribunal identified the following mitigating factors:

- (i) Character. Although Mr Miles was not of good character in that he had two previous disciplinary findings against him, from 2008 and 2016 respectively, they related to matters of an essentially administrative nature and were very far removed from the allegations in the instant case. In the circumstances, the tribunal did not consider that those previous matters aggravated the case;
- (ii) Conduct outwith the profession. The tribunal accepted Mr Miles' submission that the allegation in this case did not involve conduct in the course of his practice as a barrister. The tribunal considered that this was better viewed as the absence of an aggravating factor as opposed to mitigation;
- (iii) Personal mitigation. The tribunal took into account what it knew of Mr Miles' personal and family circumstances, as reflected particularly in the witness statements and reference he provided.

22. The tribunal noted that, at the time of Mr Miles' posts, there was guidance available to the Bar from the BSB about the appropriate use of social media. It said that demeaning or insulting comments posted by barristers are likely to diminish public trust and confidence in the profession and amount to a breach of CD5. Mr Miles accepted that he had been aware of the existence of this guidance but had not read it.

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23. The tribunal determined that the seriousness of Mr Miles' conduct was such that it could only be appropriately dealt with by a suspension from practice. The tribunal directed that Mr Miles be suspended from practice for a period of 10 months beginning 21 days after the date of the sanction hearing (i.e. on 14th November 2019).

Approved: 18 November 2019

HH Michael Topolski QC
Chairman of the Panel

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