The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2017/0482/D5

Naseem Bajwa 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

Naseem Bajwa 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 30 August 2019, I sat as Chairman of a Disciplinary Tribunal on 1 October 2019 to hear and determine four charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Naseem Bajwa Esq., barrister of the Honourable Society of Gray's Inn.

Panel Members

2. The other members of the Tribunal were:

   Dr Manju Bhavnani OBE (Lay Member)
   John Lyon (Lay Member)
   Zoe Saunders (Barrister Member)
   Lee Gledhill Esq (Barrister Member)

Charges

The following charge was found proved:

Charge 1

Statement of Offence

Professional Misconduct contrary to paragraph 902 of the Code of Conduct of the Bar of England and Wales [8th Edition].

Particulars of Offence

Naseem Bajwa, a barrister, dishonestly made a false declaration on the admission application form to Gray's Inn in failing to disclose that he had been convicted of a disciplinary offence and fined by the Solicitors Disciplinary Tribunal, in that: a] on 8 March 2011, Mr Bajwa completed and signed an application form for admission to Gray's Inn which stated that he had never been convicted of a disciplinary offence by a professional or regulatory body; b] Mr Bajwa had on 10 June 2010 been convicted of a disciplinary offence and fined by the Solicitors Disciplinary Tribunal; c] Mr Bajwa acted dishonestly by making the application because he knew that the statement that he had never been convicted of a disciplinary offence by a professional or regulatory body was false.

Parties Present and Representation

3. The Respondent was present and was unrepresented. The Bar Standards Board ("BSB") was represented by Peter Edwards Esq.

Preliminary Matters

4. At the outset of the hearing the Tribunal noted that the wording in the particulars of offence in charges 1 and 2 was incorrect. With the consent of the parties, charges 1 and 2 were amended to reflect that the incorrect declaration was on the Admission Form and not the Call Form.

Pleas

5. Mr Bajwa admitted charge 2. Mr Bajwa did not admit charges 1, 3, and 4.

Submissions

6. Mr Edwards opened the case for the BSB, setting out the background to the alleged offences.

Evidence

Mr Bajwa gave evidence under Oath and answered questions put to him by the Tribunal. Mr Edwards cross-examined Mr Bajwa.

Finding

7. The Tribunal retired and then gave the following judgment:

Naseem Ahmed Bajwa, the respondent, was born in 1937 so he is now around 82 years old. He obtained a BA in 1956 and an MA in 1960 from Punjab University, Lahore. He was enrolled as an Advocate of the Pakistan Courts in 1993 and subsequently as an Advocate of the High Court on 26th February 1998. He was registered as a Registered Foreign Lawyer on 8th February 1999. In 1991 or 1992 he obtained an LLM in International Law from the University of Nottingham.

In 1981 he was fined £250 for a criminal matter and consequently he was expelled from membership of Lincoln's Inn in 1982. He has explained to us in his evidence the circumstances which gave rise to the conviction. It appears that he took the blame for something his son had done and, as a result, pleaded guilty to what amounted to forgery. As a consequence of this conviction he was expelled from membership of Lincoln's Inn in 1982. He reapplied unsuccessfully in 1992 or 1993 to Lincoln's Inn.

On 8th March 2011 he applied to Gray's Inn for admission as a barrister. He declared the conviction and the expulsion, but he was unsuccessful and, as we heard today, he then appealed, was successful in his appeal and was admitted to Gray's Inn as a barrister. However, he did not declare a conviction by the Solicitors Disciplinary Tribunal on 10th June 2010, some nine months before. I shall return to that later.

On 7th or 8th March 2012 he petitioned for call to the Bar and was called that month, called as a transferring qualified lawyer. In his Admission Declaration at page 22 he, as I said, referred to the conviction for forgery and the expulsion but not to the matter which had come before the Solicitors Disciplinary Tribunal. It is noteworthy that at paragraph 2(b) he declared by signing the form that, "I have never been convicted of a disciplinary offence by a professional or regulatory body nor are there are any disciplinary proceedings pending against me anywhere in respect of any such offence". At paragraph 8 on page 23 he declared that he had "read and understood the terms of the further declaration which I will be required to sign before I can be called to the Bar".

So it was, as I said, that he applied to be called to the Bar and made a declaration which appears at page 30. At paragraph 1 of that declaration he declared, "I confirm that the declaration which I make for the purpose of obtaining admission to this Inn was true in every respect and I made it" and – by way, if you like, of a reminder of what it was that he needed to declare at any time, at 2(b) – "I have not been convicted of a disciplinary offence by a professional or regulatory body". Then finally he signed under the declaration on page 32, "I understand that if this declaration is found to have been false in any material respect or if I breach any undertaking given in it in any material respect, then that will constitute professional misconduct." his name and the date.

So the declarations which he made in fact on three occasions (although Charges 1 and 2 relate only to the 8th March 2011 when he made the application for admission to Gray's Inn) each undoubtedly required him to disclose the disciplinary offence of 2010 which had been adjudicated upon some nine months before he made the first of the declarations.

The findings of the Solicitors Disciplinary Tribunal are to be found in the applicant's bundle at pages 8 to 15. As a consequence of being found guilty of a disciplinary offence he was fined £2,000. The background was that he had been working as a case worker for his son, Azfar Nazeem Bajwa, for the firm of A. Bajwa & Co. of London E1. The firm was involved primarily in immigration matters, if not exclusively. He had worked from 2003 as an immigration lawyer. Azfar Nazeem Bajwa, the son, was admitted as a solicitor on 1st March 2005. The practice of A. Bajwa & Co. was regulated by the Office of the Immigration Service Commissioner as well as the Solicitors Regulatory Authority. Together with a third person, father and son were in a form of partnership at will which they had agreed between themselves, but which was alleged to be and found to have been a sham. I will read from page 10 of the findings:

"Under rule 7.6 of the Solicitors Practice Rules 1990 partnerships between RFLs" – Registered Foreign Lawyers – "are permitted and known as multi-national partnerships. Under the Supervision Rules in force at the time, every solicitor's firm had to have at least one principal who was a solicitor qualified to supervise and hold a practising certificate for at least 36 months within the last 10 years. An RFL who was a principal in practice could fulfil the role of a solicitor qualified to supervise provided that various conditions were met including the condition that the practice had at least one principal who was a solicitor although not necessarily a solicitor qualified to practise. In addition, under the Immigration Act 1999 any qualified persons could provide immigration advice or services and qualified persons including the following: persons registered with the OISC, qualified solicitors but not RFLs, persons supervised by other OISC registered persons or a qualified solicitor. The position at all times material to the allegations in this statement was therefore that Mr. Nazeem Bajwa could not practice on his own account as an RFL or in partnership with Mr. Azfar Bajwa who was unqualified. They

could only practise in partnership with a qualified solicitor and thus it was that the third person came to join them as an employee of the firm but with a Partnership Agreement between themselves."

At paragraph 13 on page 11: "Mr. Nazeem Bajwa could not practise alone as he was a Registered Foreign Lawyer and could not practise with Mr. Azfar Bajwa as he was not a solicitor at the time the conduct took place."

"14. The partnership at will between Mr. Nazeem Bajwa and Ms. Sharma contained the terms of employment for Mr. Azfar Bajwa. This document showed the true nature of the partnership in that Mr. Nazeem Bajwa and Mr. Azfar Bajwa could not practise together alone and, accordingly, Ms. Sharma came into the practice as a salaried partner. However, this was for no reason other than to supervise the firm and indeed the agreement made it clear that Mr. Azwar Bajwa would become the sole practitioner of the firm as soon as he qualified. The applicant accepted that this was the respondents' attempt to practise within the Rules and whilst they may not have intended a sham partnership, this was effectively what it was."

At page 14 paragraph 26: "The Tribunal accepted that whilst this had been a sham partnership in the technical sense, the respondents did not intend to mislead anyone and there have been no adverse consequences to clients as a result. Nazeem Bajwa is also a lawyer with considerable experience and indeed was the senior partner at the time" – Just pausing there, we have seen no evidential basis on which he could have been described in any formal sense as a "senior partner" and we assume that "senior" was a reference to his age rather than to his status – "and so had responsibility for ensuring that the firm complied with the relevant rules and regulations.

"27. As a result of the respondent's conduct, there had been a risk, however insubstantial, to the good reputation of the profession and this was a serious matter." After his Call the respondent did not apply for a practising certificate. However, in August 2012, with the permission of the Bar Standards Board, he represented a client in the Court of Appeal, therefore as counsel, and again in November 2015 he had to apply for permission as he was not a fully qualified barrister (as he had not completed the required period of pupillage) and, once again, he was given permission by the Bar Standards Board to appear in the Court of Appeal to represent a client. In fact, he did not complete the required period of pupillage until 18th December 2016.

The position, therefore, with regard to his status was described at page 82 of the applicant's bundle in the witness statement of Stephanie Bute-Fleming at paragraph 2: "A barrister can only work known as 'practising' as a barrister if they are registered with the Bar Standards Board and hold a valid practising certificate. 3: Barristers who are not practising and do not have a valid practising certificate are not allowed to supply or offer to supply legal services. 4: An unregistered barrister cannot describe himself as a barrister while providing or offering to provide legal services."

So, the position was that between 8th March 2012 and 1st August 2017 he did not hold a practising certificate. His status was that of an unregistered barrister. On 1st August 2017 he was granted a practising certificate by the Bar Standards Board and since then he has continuously held a certificate and does so today. He has stated that he wishes to continue to do so.

Following an investigation by the Solicitors Regulatory Authority concerning A. Bajwa & Co.'s handling of immigration and asylum claims, the son, Azfar Bajwa, appeared

before the Solicitors Disciplinary Tribunal on 25th October 2017 and he was struck off the Roll by the Tribunal.

Jumping forward to 27th July 2018, on that date an Adjudicator of the Solicitors Regulatory Authority was appointed to consider this respondent's conduct. At page 74 at paragraph 1 she states that she was asked to consider the conduct of Mr. Bajwa during his employment at A. Bajwa & Co. where he submitted cases for judicial review which were considered to have no merit. She made the finding at 2.1 that, "Mr. Bajwa, who is not a solicitor, has occasioned or been a party to an act or default in relation to a legal practice which involved conduct on his part of such a nature that, in the opinion of the Society, it would be undesirable for him to be involved in a legal practice in all the ways mentioned in paragraph 3.1 below without the SRA's permission." Those are enumerated at paragraph 3.1. It is not necessary to read that.

At page 78 she found, "The simple facts" – as she put it – "are that Mr. Bajwa facilitated the abuse of the litigation process by preparing claims for judicial review which were not properly arguable" and so on. "It was found by the Tribunal that he demonstrated manifest incompetence by his drafting of judicial review claims which were found by the courts to be totally without merit."

It is important to underline that this issue of the firm submitting claims for judicial review which were (some of them, at any rate) wholly without merit, is not before us and we therefore are not required to make any decision in relation to it. Furthermore, we understand from Mr. Bajwa that the Adjudicator reached her decision on paper without any evidence or representations being made to her. At paragraph 6.10 she says that, "He signed a statement of truth as a barrister at a time when he was not permitted

to do so. He also signed an application for renewal of permission for judicial review and held himself out as counsel." She made a section 43 order also stating that, "The order does not prevent Mr. Bajwa working with the profession, it simply requires any potential regulated employer to obtain the SRA's approval to employ him."

It is this matter referred to by the Adjudicator, the use of the description "barrister" or "counsel" with which we are concerned, and which is the basis of Charges 3 and 4 which have not been admitted by the respondent.

Turning specifically to Charges 3 and 4, therefore, they rely on the same facts, namely that on 10th February 2015 the respondent signed, as it was assumed, a claim form in judicial review proceedings filed in the Upper Tribunal in case number 1687/2015 and described his position as "Consultant/Barrister" at page 53 of the applicant's bundle. And in the same case, by way of a notice of a renewal to be filed in the Upper Tribunal, he stated "Counsel's name" to be his own name at page 58. In evidence he told us today that these signatures were in fact not his signatures. These matters or representations are alleged to be in breach of practising rule S8 of the Code of Conduct, 9th edition and/or contrary to Core Duty 5 of the same Code.

Pausing there, these are the only two instances out of many cases – hundreds if not thousands – to adopt the description given by the respondent in which the respondent has been involved. He has said that he usually described himself as a "Case Worker", which he was entitled to do. We note that in a document supporting the admission to Gray's Inn dated 7th January 2011 at page 25, Senior Immigration Judge McKee, in writing a reference for Mr. Naseem Bajwa said that, "For several years I have been a full time Judge with the Asylum and Immigration Tribunal and now with the Upper Tribunal.

Throughout this time, I have been familiar with Mr. Bajwa's work as an advocate. He has been representing clients before the Immigration Appellate Authorities for much longer than I have been in the business myself and I have plenty of first-hand experience of his skills as an advocate. I have no doubt Mr. Bajwa has the ability and experience to provide advocacy services beyond the Tribunal's system and that he is a fit and proper person to be admitted to the Bar."

In August 2018, at page 72 and 73 of the applicant's bundle, the respondent wrote this to the Investigations and Hearing Team at the BSB: "I did not know that when I was called to the Bar I had to disclose these matters." – That is the Solicitors Disciplinary Tribunal findings. – "I had disclosed the old criminal conviction from 1980 and my entire focus was on explaining that, notwithstanding that matter, I was a fit member of Gray's Inn. If I could and did deem it to be my duty to disclose a criminal conviction (which is, of course, a very serious matter) logically, if I had known that I had to disclose Solicitors Disciplinary matters, I would have done so at the same time. None of the Disciplinary matters involved any element of dishonesty and the outcome was a reprimand and financial penalty. They did not occur to me to be of a nature or seriousness as would need to be disclosed. Moreover, I do not recall there being any part of that application process in which these matters would have come to mind as needing to be disclosed."

"In relation to the second complaint, the use of the expression 'holding out' is factually and linguistically inaccurate. I accept that on two occasions I described myself as a 'barrister' on the judicial review application form and in hindsight I should not have done so. However, I did not describe myself to any client as a barrister and this is the reason I take issue with the suggestion that I held myself out as one. I could not hope to get any benefit or advantage from describing myself only in the application form as

a barrister. No client was aware of the contents of the strictly administrative parts of the form. Accordingly, no client was misled. I could easily have described myself as a case worker as I did in 99.9 % of such forms. The error may have well crept in because my Gray's Inn ID card issued on 8th March 2012 describes me as a 'barrister'."

In his response dated 7 May 2019 at paragraph 13 he wrote "I do not now recall whether I read that" …the declaration… "at the time of my completing and signing the application. If I did read it, I certainly did not take it in as I ought to have done." Paragraph 15 "The truth is that my whole mind was dominated by the thought that I must disclose the conviction….I felt that if anything was going to prevent my admission to Grays Inn it was this criminal conviction".

With regard to Charges 3 and 4 he wrote "The contents of both…forms were completed by my staff. Naturally I take responsibility for their work, so I do not place the blame for the misrepresentations anywhere but with myself…"

In his evidence to us he said, "The criminal conviction so dominated and clouded my mind in its importance that the Solicitors Disciplinary matters went out of my mind….I wasn't hiding the SRA matter. It was inconceivable it would not be passed on to the BSB…It was a negligent omission…. Applying for the third time I knew I was facing an uphill battle, the odds against me made the chance of success minimal. The question was, was I wasting my time in making a doomed application? The disciplinary would not prevent me but a criminal conviction would".

There was a change in approach in the evidence given by Mr. Bajwa to us in that at first, he asserted that these were not his signatures and then later he explained that people in his firm were authorised to write his signature on those forms.

In relation to the application for admission to Gray's Inn, and the undoubtedly false (as he has admitted in relation to Charge 2) assertion that there were no disciplinary offences, the simple answer is that he should have known, as it is obvious from the content of the forms that he signed, that he should be declaring the matter, whatever he thought of it, himself.

So far as Charges 3 and 4 are concerned, the document signed at page 53 was a judicial review claim form for an applicant who had instructed A. Bajwa & Co. Solicitors. The statement of truth purported to be signed by the respondent. The words "Consultant/Barrister" have been typed in by the firm, A. Bajwa & Co. Solicitors. The respondent told us that he did not type himself. It is noteworthy that the word "Consultant" was not deleted nor, of course, the word "Barrister" which has given rise to the allegations made. It was left in that ambivalent way. If any thought had been given to the description, then the word "consultant" would have been struck through or not typed. The document would only have been seen by the court administrative staff, and the Home Office, the respondent to the application, and the Upper Tribunal Judge. The public as such would not have seen it. There is no suggestion that the client was deceived. The Upper Tribunal was a Tribunal before which the respondent appeared frequently as a case worker on appeals but not for judicial review applications for which he would have required permission from the BSB. If anything, it was a technical holding out and certainly, we all agree, not something which was likely to diminish the trust and confidence which the public places in him or in the profession.

Subsequently, on 20th April 2015, the request (at page 58) for oral consideration of the application for permission to apply for judicial review stated at paragraph 5, "Counsel's name" and then the name of the respondent. The printed text, "Counsel's name" is a printed part of the form and not typed in by A. Bajwa & Co. In fact, as appears at page 59 of the applicant's bundle, a Mr. Hussain of counsel represented the applicant in June 2015. Again, we cannot see how this can amount to a breach of Core Duty 5.

So, the question arises, was it a breach of Rule S6 headed up as "No practice without authorisation"? Did the respondent hold himself out as a barrister? We have no doubt that if you describe yourself to a court or to any respondent as a "barrister" or "counsel", whether in a document or otherwise, you are holding yourself out and that the respondent is undoubtedly wrong in thinking that holding out relates only to clients. He said in his skeleton argument (which was adopted by him as his proof of evidence) dated 7th May 2019 that "the contents of both 10th February and 20th April 2015 forms were completed by my staff. Naturally I take responsibility for that work, so I do not place the blame for misrepresentations anywhere but with myself. However, these were two occasions on which I permitted it to happen as opposed to making a conscious decision to present myself as a barrister."

The respondent had, as I have said, conducted hundreds of applications in immigration matters. By these technical misdescriptions no one was taken in. There was no intention to take anyone in. It served no purpose. The description could have been "case worker" although, of course, in the request for an oral hearing, only counsel could appear on that hearing. Had he thought of doing so, Mr. Bajwa could have applied to the BSB for permission to act as counsel on that particular occasion, although he did not do so. No representations were made to the client that he was a barrister.

The respondent had what appears to have been a somewhat cavalier approach to the signing of the court documentation in immigration appeals probably due to the volume of work and the likely result of those cases. Both Charges 3 and 4 relate to a single judicial review application. He allowed himself to be misdescribed we find as "Consultant/Barrister" or "Counsel" in court forms. He said that he authorised someone to sign the forms on his behalf in the office, so the description was provided or written by someone in the firm. He accepts that he had the responsibility to ensure it was correct and agrees that it was not.

But these were, in our judgment, entirely technical misdescriptions. Having regard to the purpose of the Rules and the Guidance, in our judgment he was not carrying on any reserved legal activity by authorising the signing of these documents in his name with the descriptions of "Consultant/Barrister" or "Counsel" and in all the circumstances it was so technical a misdescription that it could not be characterised as professional misconduct under the Regulations. We doubt if he was ever aware of the description or indeed even appreciated his responsibility to ensure that he had seen all the documents going out in his name.

None of this in any way undermines the general principle that representatives should always ensure that they are not misdescribed. But, on the evidence in this particular case, we cannot be sure that the charges have been proved and we dismiss Charges 3 and 4.

I return to the critical issue on Charge 1 whether dishonesty has been proved to the necessary criminal standard. I have already gone through the material facts. After discussion we are all sure that he had not at the material time forgotten the Disciplinary

Tribunal findings and therefore the disciplinary offence. And we are sure that he, therefore, deliberately failed to disclose a conviction for a disciplinary offence which had occurred about nine months before and one which he could not really have forgotten about, and one which, in the findings, whether or not he agreed with them, he knew that his conduct, together with the co-respondents in that case, had been described as "having a risk, however insubstantial, to the good reputation of the profession" and had been labelled rightly or wrongly, by the Solicitors Disciplinary Tribunal as a "serious matter". Plainly on his evidence the respondent was aware of the conviction. If, as it appears, he did, he believed that it was of no real consequence, then there was no reason not to disclose it and then to explain it away.

We have come to the conclusion that he deliberately failed to disclose it for fear that it would tip the balance against him and prevent him from achieving an objective which he very much desired. Was his conduct, therefore, honest or dishonest? Applying the objective standard of ordinary decent people, we are sure that it was dishonest, whatever he thought about the omission himself. Therefore, we have come to the conclusion that Charge 1 of the charges has been proved to the necessary standard.

8. Discussion followed re: rE209 *"In any case where a charge of professional misconduct has not been found proved, the Disciplinary Tribunal may direct that the matter[s] be referred to the Bar Standards Board for it to consider whether an administrative sanction should be imposed…".*

9. Following retirement to consider the matter, the Tribunal are unanimously of the view and advise that it should not be referred. Thank you very much for drawing it to our attention.

9. Discussion followed on sanction and the Tribunal heard submissions in mitigation.

(The Tribunal Adjourned)

Mitigation

10. Mr Bajwa made further submissions in mitigation.

Sanction and Reasons

11. The Tribunal retired and gave the following decision on sanctions:

THE CHAIRMAN:

The respondent is 82 years old and has, apart from the matters we have heard about in the course of this hearing, enjoyed a good reputation as an advocate and lawyer, as the old references in the bundle attest.

His dishonesty sprang from the life-long goal and desire to achieve the status of a barrister. Whether had he disclosed the Solicitors Disciplinary Tribunal findings he would have succeeded in explaining them away, we cannot say. But he might still have been successful in being admitted to Gray's Inn if he had explained the full circumstances.

He holds a practising certificate and wishes to continue to do so. If he were to work as a barrister, he would still have to work for three years in Chambers with another barrister of at least six years' call.

We have come to the conclusion that disbarment is too severe a penalty and after very careful consideration of the particular facts and background of this case, the sanction on Charge 1 will be suspension of his practising certificate for 12 months and on Charge 2, as it was an alternative, no separate penalty.

MR. EDWARDS: Sir, there is just one matter which we have to raise that the Tribunal, almost undoubtedly will have come across.

THE CHAIRMAN: Suspension of the practising certificate until the time for appealing has expired?

MR. EDWARDS: Correct.

THE CHAIRMAN: But we do suspend his practising certificate until the time for appealing expires.

MR. EDWARDS: Yes.

THE CHAIRMAN: The time for appealing is how long?

MR. EDWARDS: 21 days.

THE CHAIRMAN: 21 days, so in effect he has 21 days for the 12-month period of suspension, or does it not?

MR. EDWARDS: It does not. It is counted towards the period of suspension. It is just there is a slight anomaly in that until that period expires ----

THE CHAIRMAN: He could apply for ---

MR. EDWARDS: ---- he could continue practising effectively.

THE CHAIRMAN: Yes, I see.

MR. EDWARDS: So, the order should be that the BSB should remove the practising certificate with immediate effect.

THE CHAIRMAN: Right.

MR. EDWARDS: That is the proper order.

THE CHAIRMAN: Suspension of his practising certificate is 12 months with immediate effect; yes?

MR. EDWARDS: Yes. The order is for the BSB to remove, yes, pending any appeal. Yes, we require the respondent to suspend any practice immediately, in which case the Bar Standards Board must suspend that respondent's practising certificate with immediate effect.

THE CHAIRMAN: So, the order is for the BSB to suspend the practising certificate with immediate effect.

Approved: 08 October 2019

HH Witold Pawlak
Chairman of the Tribunal

The Bar Tribunals & Adjudication Service
9 Gray's Inn Square,
London
WC1R 5JD
T: 020 3432 7350
E: info@tbtas.org.uk

The Council of the Inns of Court. Limited by Guarantee
Company Number: 8804708
Charity Number: 1155640
Registered Office:
9 Gray's Inn Square, London WC1R 5JD