The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2015/0304/D5 + PC 2017/0068/D3

Sophia Cannon
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

Sophia Cannon

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 18 December 2019, I sat as Chair of a Disciplinary Tribunal on 22 - 24 January 2020 to hear and determine 5 charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Sophia Cannon, an unregistered barrister.

Panel Members

2. The other members of the Tribunal were:

   Mrs Alison Fisher (Lay Member)
   Mr John Lyon (Lay Member)
   Mr Peter Causton (Barrister Member)

   The Convening Order had nominated another barrister member to sit on the Tribunal but had recused herself because the Respondent was known to her and there had been insufficient time to nominate a replacement barrister member. The Tribunal remained quorate and seized of the case in accordance with rE149.

Charges

3. The following charges were found proved by unanimous decision of the Tribunal:

PC 2015/0304/D5

Charge 1

Statement of Offence

Professional Misconduct, contrary to Core Duty 5 and rC8 of the Code of Conduct of the Bar of England and Wales (1st Edition).

Particulars of Offence

Sophia Cannon behaved in a way likely to diminish the trust and confidence which the public places in the profession by acting in a way that could reasonably be seen by the public to undermine her honesty and integrity by misleading the Court on the 14 August 2014 in that she: [1] Informed the Court that a Respondent had been served with a copy of the draft order sought at a hearing when she knew that they had not been so served; and [2] Informed the Court that the Respondent was aware of the application to release a secured fund of £50,000 and had expressed a view about this when she knew that the Respondent was not aware of the application and had not expressed any view.

Charge 2

Statement of Offence

Professional Misconduct, contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (1st Edition).

Particulars of Offence

Sophia Cannon behaved in a way likely to diminish the trust and confidence which the public places in the profession by failing to comply with the agreements recited within and the orders of a District Judge made on 2 September 2014, 20 November 2014 and 15 January 2015.

Charge 3

Statement of Offence

Professional Misconduct, contrary to Core Duty 5 and rC8 of the Code of Conduct of the Bar of England and Wales (1st Edition).

Particulars of Offence

Sophia Cannon, a barrister, behaved in a way likely to diminish the trust and confidence which the public places in the profession by acting in a way that could reasonably be seen by the public to undermine her honesty and integrity by misleading the Court on 16 June 2015 in that she made an application ex parte to transfer proceedings to the High Court stating that a hearing had been listed before a High Court Judge on 17 June 2015 which statement she knew or ought to have known was untrue.

Charge 4 was Dismissed.

PC 2017/0068/D5

The following charge was found proved by unanimous decision of the Tribunal.

Charge 1

Statement of Offence

Professional Misconduct, contrary to Core Duty CD5 of the BSB Handbook (2nd Edition).

Particulars of Offence

Sophia Cannon engaged in conduct which was likely to diminish the trust and confidence which the public places in a barrister or in the profession in that in relation to proceedings, in which she was a litigant in person, she: [1] On 10 April 2015 [a] pursued an application or applications which the Judge found to be without merit and [b] was made the subject of a barring order for a period of 3 years [preventing her from making any further applications without leave of the Court]; [2] On 13 December 2015, she made an application to the Court for injunctive relief which on 10 February

2015, a High Court Judge found was totally without merit; [3] On 13 July 2016, she made an application to the Court which a High Court Judge found [a] disclosed no reasonable grounds, [b] was an abuse of the Court's process, [c] was incoherent and made no sense and [d] was totally without merit; [4] On or around the 15 November 2016, she made a further application to the Court which a High Court Judge found was [a] abusive and [b] totally without merit; and [5] On 2 December 2016 she was made the subject of a limited Civil Restraint Order by a High Court Judge which remained in force until 1 February 2018.

Parties Present and Representation

4. The Respondent was not present and was not represented. The Bar Standards Board ("BSB") was represented by Helen Evans.

Preliminary Matters

5. There was a written application to adjourn by the Respondent and an invitation by the BSB to consider whether to proceed with the hearing in the Respondent's absence, as to which the BSB said it was neutral. The BSB also made an application to add pages 107-113 in relation to the application to the bundle entitled 'Bundle of Additional Documents' entitled AD/3. Pages 107-109 come from the Respondent and pages 110-114 were discovered by the BSB on 21st January 2020 once the Respondent raised a late submission in writing that she was unable to leave the house. The BSB acknowledged that pages 110-114 had not been served on the Respondent. The Tribunal decided to allow the application to add the documents into the bundle but in the event pages 110-114 played no part in the Tribunal's decision-making and were disregarded.

6. In relation to the Respondent's application to adjourn the hearing, the BSB also remained neutral. The BSB submitted two authorities, namely, R v *Jones* [2003]1 AC 1 and *GMC v Adeogba*. [2016] 1 WLR 3867. It was submitted that to assist their decision the Tribunal should also take into account the following matters which had been received in writing in the preceding 24 hours from and on behalf of the Respondent:

   (i) The circumstances and effect of the assault that the Respondent said that she suffered in May 2019;

(ii) Medical evidence relating to an injury to her hand sustained in the assault and related medical evidence;

(iii) The email from her personal assistant dated 22 January 2020.

On the 21 January 2020 the Respondent's solicitor had served medical evidence relating to her alleged assault to her hand and shoulder. The evidence was several months old. The email received on the 22 January 2020 from the Respondent's personal assistant stated that the Respondent was unable to take part in these proceedings as she was still struggling after the criminal assault and her mental health only enabled her to deal with one thing at a time. The Respondent was due to give evidence in the Magistrates Court as a witness for the prosecution on 24th January 2020.

7. A consultant psychiatrist, Dr A had examined the Respondent on 12th September 2019 and in a subsequent psychiatric report had expressed the opinion that the Respondent had the capacity to take a meaningful part in these proceedings. Dr A was called to give evidence to the Tribunal in connection with the Respondent's fitness to attend and participate. The BSB suggested that it might be appropriate to hear evidence relating to the Respondent's mental and physical state in private and asked the Tribunal to bear in mind that the Respondent, had she been present, would most likely have made that application. The Tribunal ruled that the evidence of Dr A should be given in open court but directed that Dr A should confine his evidence to the subject-matter of his report and his expert opinion as to the written material recently submitted by the Respondent to the Tribunal relating to her physical injury and her mental state.

8. Dr A said that he was unaware of an allegation of a criminal assault. He read the email from the Respondent's personal assistant received on 22 January 2020. He said that the email had comparatively little impact on his finding regarding her ability to attend the Tribunal and that her giving evidence elsewhere on Friday should not affect her ability to give evidence in these proceedings. When Dr was asked about the Respondent's physical injuries and whether it might affect her ability to attend, he said that on the information that he had seen that it should not.

9. Having considered the evidence relating to the Respondent's application together with the BSB's submissions and the evidence of Dr A, the Tribunal proceeded on the basis that the considerations which it ought to have in mind in relation to the application and also in respect of proceeding in the Respondent's absence were broadly the same. The unanimous decision of the Tribunal was that the application for an adjournment failed and that the hearing should continue in the Respondent's absence. In summary, the Tribunal gave the following reasons. First, although the Tribunal was satisfied that the Respondent was required to attend the Magistrates Court on 24th January 2020, it would have made arrangements for her to do so had she attended this hearing. Second, the Tribunal accepted the report and the oral evidence of Dr A. He opined in September 2019 that the Respondent was at that time fit to attend albeit with certain conditions by way of special measures. The Tribunal noted that the Respondent said not a word to Dr A at that time about an assault on her in May 2019 or the physical and mental effect upon her. Third, the Tribunal took into account that there was no medical or psychiatric evidence to support the Respondent's personal assistant's opinion that the mental state of the Respondent had deteriorated since last summer and that the Respondent was not fit to attend nor take any meaningful part in the proceedings and was in effect housebound due to the continuing trauma caused by the assault in May of last year. In the circumstances, the Tribunal attached no weight to those opinions and noted that the Respondent had not signified her endorsement of these statements or obtained any medical or psychiatric opinion of her own despite every opportunity to do so prior to the hearing, about which she had known for many weeks. Fourth, the case was by now extremely stale. The first disciplinary hearing had been fixed for hearing in November 2017. The Respondent applied to adjourn the hearing on mental health grounds and produced a psychiatric report in support. The hearing was adjourned. In March 2018, the Respondent produced a further psychiatric report concluding that she was not fit to attend a hearing. The report suggested that a further six months treatment was needed. There then followed certain procedural issues with both sets of proceedings and in January 2019 the charges were served afresh. The Respondent failed to engage with them. She did not attend a directions hearing in September 2019 which, among other things, directed her examination by Dr A. She failed to comply with any of the other directions given at that hearing.

10. Against that factual background the Tribunal noted that rE183 and rE184 permit a Tribunal to proceed in the absence of the Respondent provided it is just to do so. The Tribunal's attention was drawn to R v Hayat [2018] EWCA Civ 2796 in which the Court of Appeal emphasised that where an adjournment is sought there ought, as a matter of generality, to be a detailed medical report explaining why there is unfitness. The Tribunal applied each of the guiding principles in R v Jones (above) and concluded that the Respondent had voluntarily and deliberately absented herself and that there was no reliable evidence to sustain the suggestion that the Respondent was unable to attend or participate. The Tribunal also concluded that it had no confidence that if the hearing was adjourned that the Respondent would attend an adjourned Tribunal hearing. The Respondent had obtained legal representation as and when she had chosen to avail herself of it. She did not appear to have had any difficulty in instructing solicitors from time to time.

The Tribunal decided that this was an exceptional case and that the hearing should proceed in the Respondent's absence.

11. The Respondent not being present, the charges were read out and the pleas were marked 'denied'.

Evidence

12. The BSB called Witness A and he gave evidence by Skype. His witness statement had been served on the Respondent and Ms Evans asked supplemental questions relating to Charge 1 in the first proceedings. Witness A stated that he had not been served with a copy of a draft order relating to the Respondent's application prior to the 14th August 2014 hearing before a High Court Judge, nor had the Respondent discussed the subject of the £50,000 prior to that hearing. Witness A was also asked about his attendance before a Judge on 17th June 2015 (charge 4 in the first proceedings) and confirmed that he had attended before her that day and the order had been discharged.

Submissions

13. The BSB took the Tribunal through the chronology and the facts in relation to the charges by reference to Bundles 1 and 2, both of which had been served on the Respondent. This continued into the second day of the hearing.

Findings

14. These charges allege that by the particularised behaviour the Respondent behaved in a way that was likely to diminish the trust and confidence that the public places in the profession and in relation to Charges 1, 3 and 4, acted in a way that could reasonably be seen by the public as undermining her honesty and integrity. To these allegations (that is in both sets of proceedings) we apply the criminal standard of proof, in other words, that we must be sure of the matters which are alleged against the respondent before she can be found guilty of them, before they can be found to have been proved.

15. The crucial issue, therefore, is whether, in relation to Core Duty 5, such conduct as may be proved was likely to diminish the trust and confidence which the public placed in the respondent or the profession; and in relation to rC8 whether the conduct could reasonably be seen by a member of the public as undermining her honesty and integrity.

The Bar Standards Board relies on the public perceiving her conduct as undermining either her honesty or integrity in respect of Charges 1, 3 and 4 in the first set of proceedings and submits that if a barrister knowingly misleads a court that is likely to be perceived as dishonest, but if he or she recklessly misleads a court, that may instead be perceived as a lack of integrity. Reliance is placed on the authority of *SRA v Wingate* [2018] EWCA Civ 366. In that case the Court of Appeal, when considering the meaning of "integrity" albeit within the Solicitors Regulation Authority principles, there being no material difference for present purposes, Jackson LJ said in the judgment of the court that integrity is a broader concept which connoted adherence to standards which were expected from professional persons, although the test for both honesty and integrity were objective. Principle 6 of the Solicitors Regulation principles, he said, was "aimed at a different target from that of Principle 2", namely, "preserving the reputation of, and public confidence in, the legal profession".

Turning to the second Disciplinary proceedings, in 2015 the litigation between the respondent and Witness A continued and on 10th April the respondent was made the subject of an order preventing her from making any further applications for a three-year period. Very shortly thereafter, on 13th April 2015, she applied for an order against Witness A. This was granted ex parte but subsequently set aside on 17th June 2015. Thereafter the respondent made various applications which were found to be totally without merit or abusive and on 2nd December 2016 she was made the subject of a limited Civil Restraint Order by a High Court Judge.

16. So it is that the single charge in the second set of Disciplinary proceedings arises out of these latter events which are particularised as I have already recited. In the second set of proceedings the Bar Standards Board relies on the court orders and notes themselves rather than on witness evidence. Rule rE169.4 provides that in proceedings before a Disciplinary Tribunal which involve the decision of a court or tribunal in previous proceedings to which the barrister was a party, "the judgment of any civil court may be proved by producing an official copy of the judgment, and the findings of fact upon which that judgment was based shall be proof of those facts, unless proved to be inaccurate".

17. All the charges in both proceedings engage CD5 and Charges 1, 3 and 4 engage rC8. Section 2.B of the Code of Conduct contains the Core Duties of which CD5 requires a barrister not to "behave in a way which is likely to diminish the trust and confidence which the public places in [a barrister] or in the profession". Rule rC8 comprises a barrister's duty not to "do anything which could reasonably be seen by the public to undermine [his or her] honesty, integrity and independence". That rule expressly cross-refers to CD3, namely, the barrister's duty to "act with honesty and with integrity". The application section of the Code of Conduct provides by rC1.1 that "Section 2B (Core

Duties): applies to all BSB regulated persons and unregistered barristers except where stated otherwise". rC1.2(b) states that: "Rules rC3.5, rC4, rC8 [and others] … and the guidance on Core Duties also apply to unregistered barristers". rC2.1 states that, "Section 2.B applies when practising or otherwise providing legal services. In addition, CD5 and CD9 apply at all times." In other words, CD5 can apply to a barrister's private life. We will return to that subject in due course.

!8. rC2.2 states that rules rC8 and the associated guidance apply at all times; in other words, rC8 can also apply to a barrister's private life. gC25 and gC27 then give some examples of when charges are likely to arise from conduct in a barrister's private life. We emphasise that these are expressed to be not limited to that which is set out in that Guidance. gC25 provides that, "Other conduct which is likely to be treated as a breach of CD3 and/or CD5 includes (but it is not limited to): … .3 criminal conduct, other than minor criminal offences … .4 seriously offensive or discreditable conduct towards third parties; .5 dishonesty … .7 abuse of your professional position." gC27 provides that, "Conduct which is not likely to be treated as a breach of rC8 … or CD5, includes (but is not limited to): .1 minor criminal offences; .2 your conduct in your private or personal life, unless this involves: .a abuse of your professional position; or .b committing a criminal offence, other than a minor criminal offence."

19. We were taken by Ms Evans to a decision of the Administrative Court, namely, the judgment of Holroyde J in the case of *Iteshi v Bar Standards Board* [2016] EWHC 2943 (Admin). For these purposes the facts need no recital but at paragraph 61 the court responded to a submission made by the appellant barrister, namely his behaviour by response to an order of the court could not "amount to 'behaviour' for the purposes of Core Duty 5". The court rejected that submission in the following terms, "I accept that

in the majority of cases 'behaviour' connotes active conduct. But it can in my view also include inactivity (for example, a barrister repeatedly failing to complete paperwork).

The relevant behaviour in this case was that on 12 March 2014 Mr Iteshi became subject to the RPO. I have no doubt that being made subject to an RPO is behaviour which is capable of amounting to a breach of Core Duty five. Indeed, I find it difficult to imagine circumstances in which it would not do so." We are satisfied, therefore, that conduct of the kind relied upon by the Bar Standards Board in respect of some of these matters, as I shall identify in due course, is capable of being relevant conduct. Whether it is or not, of course, will be fact specific by reference to individual cases. On the subject, however, of the encroachment upon personal life and whether conduct within what might be loosely described as "personal life" is capable of attracting and falling within the ambit of Disciplinary scrutiny for these purposes, the law, in our judgment, is entirely clear that depending, of course, upon the particular facts of each case it is capable of so doing. The matter arises again in due course in the course of our consideration of the various charges in the case.

20. We therefore come to consider each of the charges in turn and our determination in respect of each of them applying, as we do, the criminal standard of proof and the law as I have set it out. As to Charge 1 of the first set of disciplinary proceedings in our view, seven questions arise for consideration as follows, bearing in mind that there are two separate allegations within Charge 1: (1) Are we sure that Witness A had not been served with a copy of the draft order; (2) If we are sure, are we sure that the respondent knew as much; (3) Are we sure the respondent did inform a High Court Judge as alleged; (4) Are we sure that Witness A was not aware of the application to release the £50,000; (5) Are we sure he had not expressed a view about it; (6) Are we sure that the respondent knew that Witness A was unaware of the £50,000 application and had not

expressed a view; (7) Are we sure that the respondent informed the High Court Judge as alleged?

21. We return to the seven questions posited already. As to the first, namely, are we sure that Witness A had not been served with a copy of the draft order, in effect that has already been the subject of a finding of the court in the judgment of a District Judge. We refer to his judgment of 10th April 2015 in which, in judgment one, he states: "The order of a High Court Judge has to be set aside as it is clear on both parties' account that Witness A for whatever reason, maybe the failure of the court, maybe the failure of the respondent, I do not know, it is not for me to make findings, but for whatever reason clearly he was not aware of the hearing on that date as he should have been." The District Judge goes on, "The respondent, I will accept, thought he was aware of the hearing" – emphasise "***the hearing***". – "She thought he had been made aware of it by the court but it is clear from the emails that he had not."

22. In our judgment that is nothing to the point in relation to the allegation which is made by the Bar Standards Board in Charge number 1. The allegation relates, as I have emphasised, to the copy of the draft order. The High Court Judge criticised the respondent for her failure to serve any bundle of documents and there is nothing to indicate (as I have already stated) that there was ever any draft order before the hearing date. We are sure on the evidence that we have heard that this respondent knew as much, in other words, that Witness A had not been served with a draft order. We are also sure that she informed the High Court Judge that he had. We are sure that Witness A was not aware of the application to release the £50,000 and we are sure that he had not expressed a view about it to her as she sought to persuade the court. We are equally sure that she knew that he was unaware of that £50,000 application and

had not expressed a view about it. And we are sure that she informed the judge as is alleged.

23. For those reasons we conclude that in respect of Charge number 1 the case is proved and that it amounts to a breach of CD5 and of rC8 as conduct which could reasonably be seen by the public as undermining her honesty and integrity.

24. We turn to Charge 2 relating to the failure to comply with agreements recited within the orders of the District Judge from time to time as particularised. The terms of the orders are entirely clear on their face. After Witness A became aware of the hearing that had taken place on 14th August, he applied to set that order aside. That led to three hearings before the District Judge on 2nd September 2014, 20th November 2014 and 15th January 2015 which give rise to Charge 2 in these proceedings, namely, failing to comply with those orders. The evidence shows quite plainly that by coincidence he rang the High Court on 14th August either as that hearing was taking place in his absence or at some time during that day. He did not do so not because he had notice of the terms of the application that was being made, but because he was aware of a separate application being made and was aware of the return date for that application. Indeed, that application was the vehicle upon which the respondent carried her applications made, as we find, without notice as to their nature to Witness A. There were, as the order drawn up by the respondent plainly shows, material non-compliances by her with what had actually been ordered by King J. The learned judge had, for example, made it very plain because of her misgivings about the £50,000 and the awareness or otherwise of it by Witness A as the subject of an application, imposed a stay of 14 days on release of that sum pending his making any application he might wish to make having been informed of the order. Not only does that not appear in the draft put before the court which, unfortunately, was signed off but, to the contrary, it is expressed as being an

order whereby the moneys must be paid out urgently. When later taxed about that in one of the hearings before the District Judge, the respondent asserted that she was not aware that the judge had made that stipulation; plainly wholly at odds with what is recorded on the transcript of what occurred that day.

25. Although we are concerned with specific charges against this respondent, we are entitled – and indeed required – to look at her conduct generally in so far as it is capable either of supporting or undermining the position which she has, from time to time, asserted. We reach the sure conclusion that that which I have just identified is but one of many examples of her non-compliance with requirements made of her by courts and of her unreliability and inconsistency and impulsiveness in relation to court proceedings instigated and pursued by her.

26. We come then to the substance of Charge Number 2. The table attached to the skeleton argument prepared and submitted by Ms Evans sets out the key parts of the District Judges' orders and the eight breaches of it.

27. For a time during these disciplinary proceedings the respondent was represented by solicitors, Shakespeare Martineau. During that period by letter dated 14th July 2017 they, acting on her behalf, admitted non-compliance with these orders as a matter of fact, but suggested that she had an explanation for so doing which she would in due course give. She has in fact never advanced any explanation in these proceedings and indeed has failed to comply with all directions (paragraphs (1) to (8) above by the dates specified or, in some cases at all.

28. Appendix A to the skeleton argument sets out in tabular form both the nature of the four relevant orders made and the breaches of them. As I have indicated, non-compliance has been admitted by the respondent's solicitor, presumably on instructions.

Subsequently, in respect of (4) above the respondent has disputed that she failed to send Witness A's solicitors a statement setting out information of the kind that was the subject of the order. That she did send some information is plain but, on any view, it was inadequate as shown by the District Judge's order of 20th November 2014 which required compliance by 12th December 2014.

29. For these purposes we have regard to a skeleton argument dated 19th November 2014 prepared on behalf of Witness A in proceedings before District Judge Simmonds in which he dealt with what he asserted were the breaches.

30. The respondent was directed to serve by 5th September 2014 copies of all applications, notes and evidence submitted by her so far to the court. The order is specific as to what should have been served. There was purported compliance on 5th September by the respondent but in fact that which was attached to an email bore little or no relation to the documentation which the learned District Judge had ordered to be served. So it was that the District Judge repeated the order of 20th November 2014 whereby the respondent was ordered to comply fully with paragraph 3 of the order of 2nd September 2014 by 12th December. Nevertheless, the documents were not forthcoming. The respondent disclosed no statements filed in support of her application of 3rd July 2014 which had been the subject of an order by the District Judge.

31. She had also been ordered to pay the costs of the hearing of 20th January 2014 assessed at £4,500 inclusive of VAT by 29th January 2015. That sum had not been paid by the due date and it appears that it never has been paid by her. If proof were needed as to non-compliance, the District Judge recited the relevant dates during the course of the relevant hearings before him, the non-compliance to which I have referred and so there are findings to that effect whereby we are satisfied so that we are sure that the breaches alleged are plainly proved.

32. That being so, we are entirely sure that the matters alleged, namely, the subject matter of Charge 2, are proved and we therefore ask whether we are sure that that amounts to a breach of Core Duty 5, namely, conduct likely to diminish the trust and confidence which the public places in the profession. As to whether a barrister involved personally in litigation is capable of falling within Core Duty 5 by non-compliance with court orders or failure or refusal to satisfy judgments of the court, Ms Evans drew our attention to the relevant sanctions at the relevant time, namely, Version 3 (Revised) of the BTAS Sentencing Guidance: Breaches of the BSB Handbook. At C.5 "Breach of Court Direction or failure to comply with a Court Order" under the titled "Description" the following appears:

"Breach of a Court direction or order usually occurs in the course of a barrister or a BSB Licensed /Authorised Body representing a client. However, it is possible that such a breach may occur in the course of a case that a barrister is involved with on a personal level." Listed thereunder are certain circumstances in which breaches might occur, set out according to severity.

33. Similarly, under the heading, "C.6 Failure to comply with a Court judgment" it is possible, so the Guidance says, that it will result from a barrister representing a client but it may "occur as a result of an event in the barrister's personal life". Whilst, of course, that is simply advisory in the Sentencing Guidance, in our judgment it is instructive in demonstrating that which we, in any event, without that reference would conclude, namely, that there will be circumstances in which a barrister will fall foul of Core Duty 5 by personally failing to comply with court orders or judgments of the court.

34. By no means do we apply some blanket approach to the effect that this will always be the case. Each case will depend upon its own facts. There will be circumstances in which there are mitigating features or factual aspects which persuade a Tribunal that the

culpability in question does not amount to professional misconduct contrary to Core Duty 5. We have no doubt at all on the particular facts of this case that Charge number 2 does amount to a breach of Core Duty 5 both in respect of its nature, that is the significance of the non-compliances and the failure to satisfy the judgment as to costs and, in our judgment decisively, the attitude of this respondent at the time as set out in our judgment, accurately by counsel for Witness A at the time, namely, her reasons or purported reasons for not complying which were simply not credible and might even be categorised as risible. As for her non-compliance as to costs, she has never advanced any reason for not paying costs. The sum is a substantial one and should have been paid.

35. For all those reasons we find that Charge 2 is proved. I should say that we find both cumulatively in respect of (i) to (viii) in Charge 2 and individually that the matters amount to misconduct of the kind alleged.

36. The events of 16th and 17th are, on the face of it, curious. We are conscious that we must not speculate about matters about which there is either no evidence or in respect of which the evidence is unclear or conflicting. But we reach the following sure conclusions for the purposes of our consideration of this third charge. First, we are sure that, whether by personal appearance or by ensuring the matter was put before him, on 16th June the respondent did inform Judge 1 that a matter to which she was a party was to be heard by a High Court Judge on the following day.

37. In support of that conclusion we have the letter in evidence from Her Majesty's Courts and Tribunals Service dated 29th October 2015 which is appended to a witness statement of Witness A (which is in evidence before this Tribunal) in which the writer, in response to Witness A's enquiries as to how all this could have occurred, states amongst other things as follows: "The application dated 4th June 2015 that was submitted to the

Court stamped as received at the court on 12th June 2015 was forwarded to the Urgent Referral Judge for attention. The information also supplied by the applicant indicated that there was already a hearing taking place at the Court on 17th June 2015 in front of a High Court Judge." There is then a reference to two partial emails. Then the letter goes on: "The Urgent Referral Judge, Judge 1, remarks 'Refer the application under case number … to transfer to the High Court and listed before a High Court Judge on 17th June 2015 listed together with the matter already listed before a High Court Judge."

38. As it seems to us, the inescapable conclusion from that letter is that the respondent did indeed, either expressly or face-to-face or by some other means, represent that which is alleged against her and it is not for this Tribunal to speculate as to her reasons for it. But that she did so we have no doubt. We therefore find that she did mislead the Court on the 16th June in that she made an application ex parte to transfer the proceedings to the High Court for the reasons that are alleged. We are also satisfied that she did know or that she ought to have known that the assertion that she made was untrue, and we are satisfied so that we are sure on the evidence that this is proved.

39. Turning to Charge 4, namely, the allegations relating to the events on 17th June, that is the day following the misconduct, as we find it to be, on 16th June. The allegations need no recital and I have already made plain that on 17th the respondent obtained an order from Judge 1 continuing the non-molestation order for a limited period. I have already indicated that it is not for the Tribunal to speculate as to why, on the 16th, she did what she did knowing, as we find, that what she had asserted was not true. The gravamen of the allegation in Charge 4, however, is that she did not appear before Judge 2, that she did appear before Judge 1, that she failed to tell Judge 1 that the case had been listed that day before Judge 2. That she could have acted in that way deliberately and misleadingly having regard, amongst other things, to her expectation as to the presence

of Witness A in the court building is one possibility. That she could genuinely have been confused as to where the case was listed, unaware of the fact that it was listed before Judge 2 and innocently unaware as opposed to recklessly or carelessly disregarding any careful scrutiny of court notices is another possibility. We remind ourselves of the high evidential standard that must be met in this case and we conclude in respect of Charge 4 that that standard is not met by the Bar Standards Board on the evidence that has been put before this Tribunal. Therefore, so far as Charge 4 is concerned of the first set of Disciplinary proceedings, the case is not proved.

40. I turn now to the one charge in respect of the second set of Disciplinary proceedings. I have already set out in terms the allegations made of which there are five, but all amounting to the one charge of breach of Core Duty 5. Dealing with them in turn, the first allegation – Charge 1 (i) - is that relating to (a) the pursuit by the respondent of applications which the District Judge found to be without merit and (b) which resulted in the respondent being made the subject of a barring order. During the hearing Ms Evans indicated that the BSB was content to abandon (a) and proceed only with (b). On 10th April 2015 the respondent appeared before the District Judge when he dealt with four separate matters by four separate judgments. Judgment number four in the transcript that we have been provided with, relates to the order that is the subject of (i) of Charge 1 in the second proceedings. In that judgment the District Judge had to consider Witness A's application for an order which would, if granted, have prevented the respondent from making any further applications to the court. He reached the conclusion, for the reasons set out in his judgment, that this is what he would do in the particular circumstances as he found them. In paragraph 46 he recognised that any restriction is a significant and serious restriction on someone's statutory right to bring proceedings and that it should be used with care and sparingly and as an exception not as the rule, indeed, as he put it, "a weapon of last resort."

41. He then categorised the conduct of the litigation saying that it had been "nothing but fraught with difficulty" due to the respondent who he said "does not understand sometimes what is required. She failed", he said, "to understand, for example, the undertaking that she had given in the consent order made by a Judge that she would make no further applications. He described her approach as being like a scattergun, failing to put her case and then telling him (the District Judge) that her case had completely changed and that therefore the position which she had given the judge on that day carried no weight at all. He recited that he had already made a costs order against her; had struck out her application; that she had sought leave to appeal and that all those applications had been dismissed on appeal by a High Court Judge; that she now sought to re-open most of the orders made by consent by a Judge even though they were two years old.

42. He took issue with the respondent's assertion that there had been no loss and no upset or anything and no harm to Witness A. He then dealt in detail with the harm, as he described it, both to Witness A and to the respondent. He said at paragraph 53, "Accordingly, it seems to me that there needs to be a line in the sand, a brake must be deployed in this case to stop the respondent making any further applications." He described that course as a "proportionate one for a period of three years".

43. Moving then to Charge 1(ii), it is a fact as shown by the judgment of the court that on 13th December 2015 the respondent did indeed make an application to a High Court Judge. We have read the judgment dated 10th February 2016. That application included Witness A, his counsel, and the law firm by which he was employed, and the Bar Standards Board all as respondents.

44. As for Charge 1(iii) this relates to an application by the Respondent which came before a High Court Judge on 21st July 2016 when the Respondent appeared in person. The

learned judge recites that he had given two judgments on 21st September 2015 in the first of which he refused the respondent permission to appeal the orders made by the District Judge on 10th April, as to which I have referred at least in part already. In the second, he refused to renew an order made ex parte by another High Court Judge on 12th August 2015. The application of 13th July 2016 was effectively one in which the respondent sought a re-opening of the findings made by a High Court Judge which led to his 21st September 2015 judgment. He sets out the application as drafted, as to which he says, "I do not understand what this means". The application was supported by a statement which the learned judge categorised as "incomprehensible" to him making all manner of strange allegations which, in his view, plainly disclosed no reasonable grounds and was an abuse of the court's process being incoherent and making no sense. Finally, he certified that the application was totally without merit. In our judgment there could not be a more coruscating criticism of an application than that which we have just summarised.

45. As for Charge 1(iv) on 15th November 2016 the respondent made a further application to the court which a High Court Judge found to be abusive and totally without merit. He gave a further ruling and described how now before him was an email which he described as an application purporting to be in Form C2 but not properly formulated containing grounds A to F. Ms Evans has indicated that the BSB does not pursue the 'abusive' element of this charge since the High Court Judge made no express finding to that effect. It is not necessary for the grounds to be recited. Suffice it to say that at paragraph 3 the learned High Court Judge says that none of the documents now appended to that application or email alters his view as to the merits which he describes as "wholly meritless and deserving of being struck out". He says that, "As this is the second application which is totally without merit the threshold requirement for a limited CRO is met". He confirmed the order previously made by him on 2nd December 2016.

46. Then Charge 1(v) whereby on 2nd December the ruling of the learned High Court Judge of that date recites that he had received a further undated application from the respondent but, as was explained during the course of Ms. Evans' submissions to us this morning, in fact 1(v) ought to be considered before (iv) at least for the purpose of trying to understand its meaning in that there were not five items attached to it as indeed is recited in paragraph 1. What was attached was an order of a District Judge suggesting that the case follow a normal path and be resolved on 23rd December. The learned judge does recite that the grounds that he did receive made "familiar extreme allegations which are in large measure incoherent and in my judgment" he says: "they are abusive and must be struck out". Again, he certifies that the application is totally without merit and of his own motion, as has already been recited, he makes a limited Civil Restraint Order by that ruling.

47. The case advanced by the Bar Standards Board in respect of Charge 1 is that these categorisations by two High Court Judges and one District Judge demonstrate beyond doubt that this respondent had engaged in conduct which was likely to diminish the trust and confidence which the public placed in her or in the profession. We are quite sure that the conduct demonstrated both a complete lack of judgment on her part and a determination without reference to either the law or the effect of her litigious conduct on third parties, whether they were respondents to the application or indeed those who were entitled, with knowledge of her misconduct, to make a judgment as to the trust and confidence that could be placed in a member of the Bar such as this respondent. This was a litany of wholly misguided, misconceived litigation on her part and we have no doubt at all that amply satisfies and proves that which is alleged against her by the Bar Standards Board in Charge 1. In that connection, that is in connection with our categorisation of the respondent's conduct in the context of the second set of Disciplinary proceedings, Ms Evans submitted that the behaviour of this respondent in

the court environment is a relevant consideration and that the fact that the respondent was acting as a litigant is nothing to the point given her status as a barrister. In our judgment that is a relevant consideration in this case, for there is a reasonable expectation that the standard to be attained and maintained by a member of the Bar is significantly higher than that of an ordinary litigant.

48. For all these reasons we find in relation to the charges in respect of Charges 1, 2 and 3 of the first proceedings and in respect of the charge in the second proceedings they are proved.

49. The Tribunal then considered whether to allow some time for the Respondent to attend for sanction. The personal assistant to the Respondent had attended the Tribunal on 23rd January 2020 to take notes and requested that the Respondent be given an opportunity to provide written submissions on sanction. The Tribunal adjourned the sanctions hearing to the next day, 24th January 2020.

Further Submissions

50. On day 3, the BSB raised with the Tribunal the material that had been received from the Respondent on the morning of the 24 January 2020. The Tribunal confirmed that it had also received the material and had read it.

51. In one of her emails the Respondent said that she would "come across" to the Tribunal but also said later on that she would like an adjournment of 42 days. The Tribunal concluded that she was not intending to come along that day, and this conclusion was reinforced by her written submissions, much of which suggested that she was concerned not with sanction but with how the Tribunal had reached the decisions it had on 23rd January.

52. The Tribunal proceeded with the sanctions hearing. The BSB referred to the Sanctions Guidance and the factors to be taken into account and the approach to be taken when facing multiple charges.

Sanction

53. The findings and sanctions made in each set of proceedings were made in compliance with Rule rE183. The Tribunal had regard to the cardinal principles set out in version 3 of the Sanctions Guidance. The Tribunal applied the principle of proportionality.

54. PC 2015/0304/D5

Charge 1: The Tribunal proceeded on the basis that on 14 August 2014 the Respondent acted dishonestly in telling a High Court Judge that Witness A had been served with a copy of the draft order when she knew that he had not and that she acted dishonestly when she told the Judge that Witness A was aware of the application and had expressed a view. This represents very serious misconduct and the guidance at page 30 provides that the starting point is one of disbarment. The Tribunal took into account that there was no professional or other dishonesty prior to this incident. The Tribunal noted the written submissions sent that morning by the Respondent. The Tribunal concluded that the only appropriate sanction was one of disbarment.

55. Charge 2: Failures in 8 respects by the Respondent to comply with orders made by the District Judge in 2014 & 2015. The Tribunal concluded that these amount to repeated and flagrant disregard of her obligations to comply with orders of the court. This misconduct fell within category C5 and category C6 and was repeated misconduct. Category C5 and C6 would usually attract a fine or a suspension. Any suggestion that the misconduct was unintentional or due to confusion would be rejected. The Tribunal concluded that, had the Respondent been registered, the misconduct would have resulted in a suspension for 12 months. We therefore imposed on this unregistered barrister a prohibition from applying for a practising certificate for a period of 12 months with immediate effect.

56. Charge 3: We found that the Respondent lied on 16 June 2015 when she misled the Court as alleged. As with Charge 1, B5 of the Guidance has a starting point of disbarment for dishonesty. This is 10 months after the first dishonesty and the repeat offending was regarded by the Tribunal as an aggravating feature. No mitigation was offered by the Respondent. The Tribunal's conclusion was that the sanction of disbarment was entirely appropriate in the circumstances.

57. PC 2017/0068/D3

Charge 1: This charge related to pursuing wholly unmeritorious applications. They were pursued with a determination and irrationality such that the court's time was wasted with all of the inconvenience and expense that ensued. It was wholly inappropriate conduct by a barrister who should have known better. There is no specific sanction guidance for this. The Tribunal bore in mind the sanction imposed for not dissimilar conduct in Iteshi v Bar Standards Board [2016] EWHC 2943 (Admin). The Tribunal regarded this conduct, carried on as it was over a long period of time and affecting numerous third parties, as very serious and concluded that in all the circumstances the minimum sanction it should impose in the circumstances was one of disbarment.

58. The Tribunal's decision as to sanction was unanimous in respect of each charge proved. These sanctions are expressed to run concurrently. We made no financial order. There being no application for costs by the BSB, we make no order as to costs.

59. The Treasurer of the Honourable Society of the Middle Temple is to take any action required in relation to Rule rE239 and / or rE240.

Approved: 30th January 2020

His Honour Jeremy Carey
Chairman of the Tribunal