The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2018/0186/D3

Stephen Sweeney

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of the Inner Temple

Disciplinary Tribunal

Stephen Sweeney

In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 5 February 2020, I sat as Chairman of a Disciplinary Tribunal on 9 March 2020 to hear and determine three charges of professional misconduct contrary to the Bar Standards Board Handbook against Stephen Sweeney, barrister of the Honourable Society of Inner Temple.

Panel Members

The other members of the Tribunal were:

Mr Paul Robb (Lay Member)

Ms Zoe Saunders (Barrister Member)

Charges

The following charges were admitted and found proven:

Charge 1

Statement of Offence

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

Details of Offence:

Stephen Sweeney, a BSB regulated person, behaved in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the profession in that on the 27 March 2017, he assaulted X by beating her, for which conduct he was on the 8 March 2018 convicted at the Thames Magistrates Court under section 39 of the Criminal Justice Act 1988. Mr Sweeney was sentenced to a Community Rehabilitation Order with a Rehabilitation Activity Requirement to comply with any instructions of the responsible officer to attend appointments, or to participate in any activity as required by the responsible officer up to a maximum of 25 days. Mr Sweeney was also ordered to pay £250 compensation and £500 costs and made subject to an Order not to contact the victim directly or indirectly.

Charge 2

Statement of Offence

Professional Misconduct contrary to rC8 of the Bar Standards Board Handbook.

Details of Offence:

Stephen Sweeney, a BSB regulated person, acted without integrity, alternatively behaved in a manner which could reasonably be seen by the public to undermine his integrity in that on the 27 March 2017, he assaulted X by beating her, for which conduct he was on the 8 March 2018 convicted at the Thames Magistrates Court under section 39 of the Criminal Justice Act 1988. Mr Sweeney was sentenced to a Community Rehabilitation Order with a Rehabilitation Activity Requirement to comply with any instructions of the responsible officer to attend appointments, or to participate in any activity as required by the responsible officer up to a maximum of 25 days. Mr Sweeney was also ordered to pay £250 compensation and £500 costs and made subject to an Order not to contact the victim directly or indirectly.

Charge 3

Statement of Offence

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

Details of Offence:

Stephen Sweeney, a BSB regulated person, behaved in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the profession in that on the 8 March 2018, he failed to surrender to custody at Stratford Magistrates Court, having been released on bail on the 27 February 2018, for which conduct he was convicted on the 8 March

2018 at the Thames Magistrates Court of failing to surrender to custody without reasonable cause under the Bail Act 1976 and fined £50 and ordered to be detained in the courthouse for 1 day [detention deemed served by reason of time already spent in custody].

Parties Present and Representation

The Respondent was present and was represented by Shaun Esprit. The Bar Standards Board ("BSB") was represented by Gareth Tiley.

Amendment to the Charges

The Charge Sheet was amended by agreement to redact the reference to Core Duty 3 in Charge 2.

Ruling on Admissibility of Statement of Victim

We have been asked to consider the admissibility of statements made by the complainant in criminal proceedings, whom for the purposes of this decision I am going to call Miss X.

This is the unanimous decision of the panel.

The statements in question are at page 105 to 110 of the bundle prepared for the purposes of today by the BSB. The first statement is a statement made by Miss X to the Bar Standards Board dated 31st January 2020. That statement exhibits a statement in criminal proceedings dated 3rd May 2017. The Bar Standards Board seek to rely on both statements and in particular in relation to the statement of 3rd May 2017 to rely on the parts of that statement which relate to events of 27th March 2017 which gave rise to a criminal prosecution against the defendant and ultimately a conviction after trial on 8th March 2018 in the Thames Magistrates' Court under section 39 of the Criminal Justice Act 1988.

The issue which arises is the factual basis of that conviction which is not agreed as between the Bar Standards Board and the defendant. The Bar Standards Board seek to rely on the account given by Miss X in her statement of 3rd May 2017 as forming the basis of the criminal conviction; the defendant invites the court to prefer his account as set out in the statements that he has adduced within these proceedings.

We have heard submissions from Mr Tilley on behalf of the Bar Standards Board and from Mr Esprit on behalf of the defendant in relation to the admissibility of the statements of Miss X.

In reaching our decision we have had regard to the disciplinary tribunal regulations E166(1) and (3). Subsection 1 provides that we have the power to admit any evidence, whether oral or written, whether given in person or over the telephone or by video link or by such other

means as the disciplinary tribunal may deem appropriate, whether direct or hearsay and whether or not it would be admissible in a court of law.

In this case we are concerned with hearsay evidence arising out of the two statements of Miss X which I have mentioned. Rule E166(3) gives us the power to exclude such hearsay evidence if it is not satisfied that reasonable steps have been taken to obtain direct evidence of facts sought to be proved by the hearsay evidence.

It is accepted that we have the power to admit hearsay evidence, but that we have a discretion as to whether we should admit that evidence.

Mr Tilley on behalf the Bar Standards Board has referred us to the decision of Spencer J in the case of *El Karout v. Nursing and Midwifery Council*, reported under neutral citation in 2019 EWHC, page 28. At page 21 of the decision, paragraph 95 makes reference to the corresponding provisions of The Nursing and Midwifery Council fitness to practice rules 2004 in relation to adducing hearsay evidence and in particular that those rules include reference to the word "fairness". Although there is no such reference in the provisions of the disciplinary tribunal regulations, Mr Tilley on behalf of the Bar Standards Board accepts that it is right that we should have regard to fairness when determining the application to admit hearsay evidence and in particular to do so by reason of the defendant's Article 6 rights.

It is against that backdrop then that the Bar Standards Board invite us to have regard to E166(3) and to decide whether or not first of all this evidence should be excluded because we are not satisfied that reasonable steps have been taken to obtain direct evidence of the facts sought to be proved by the hearsay evidence.

The complainant, Miss X, has refused to attend this hearing. She is not the complainant of the Bar Standards Board; she was the complainant within the criminal proceedings. Mr Tilley therefore says it would be unreasonable as she is not the complainant in these proceedings and he says indeed unprecedented for the Bar Standards Board to seek to compel her to attend. He told us in answer to questions that she had been contacted on a number of different occasions, both directly by telephone and by email, and had refused to attend.

We accept that the Bar Standards Board have taken reasonable steps to attempt to ensure that the complainant in the criminal proceedings, Miss X, attend this hearing and accordingly we do not exclude her statements as hearsay evidence by reason of the provisions of Rule E166(3).

However, we then have to consider the broader exercise of our discretion whether to admit hearsay evidence into these proceedings.

In this case there was a criminal trial by reason of the defendant's not guilty plea. That trial took place before a District Judge. We have not been provided with any transcript of evidence, we have not been provided with any transcript of the District Judge's findings.

We are told by the defendant that the District Judge said that Miss X, the complainant in the criminal proceedings, was credible. However, we do not know the context in which that

was said and we are also told that the same District Judge found the defendant not guilty in relation to a separate charge also contained within the statement which it is sought to adduce within these proceedings; neither do we know whether the statement that the Bar Standards Board seek to adduce into evidence in these proceedings was actually before the District Judge within the criminal proceedings.

I asked Mr Esprit whether the statement had been adduced during the course of the evidence in the criminal proceedings and he told the tribunal that the defendant could not recall whether that had in fact been adduced in evidence. Accordingly we do not know precisely what evidence the District Judge heard and importantly what evidence he relied upon in reaching his guilty verdict. We do not know, for example, whether or not the conviction was based upon the defendant's own admissions in relation to the events in question.

It appears to be common ground both between the defendant and the Bar Standards Board that the events that the defendant accepts happened would potentially have given rise to a guilty verdict by the District Judge.
We must then consider what the purpose of the admission of this evidence is. We have had regard to the case referred to in Mr Tilley's written submissions, although not referred to in his oral submissions, namely the decision of the High Court (Queen's Bench Division) of *Levy v. Solicitors' Regulation Authority*, the neutral citation for which is 2011 EWHC 740. The judgment in question was given Jackson LJ and at paragraph 34 he says this: "Procedurally it is imperative that the tribunal does not proceed to sanctioning before having decided upon an announced basis of its finding on the substantive allegations. As a general principle fairness demands that disputed issues which can substantially affect sanctions be resolved and be resolved in a procedurally fair manner and that the parties then be able to address the sanctioning tribunal on the appropriate sanction. An analogy in criminal sentencing is the so-called Newton hearing designed to resolve disputed issues of fact where after a guilty plea all that remains is sentencing."

The defendant in this case has admitted an act of physical violence which caused injury to Miss X. We accept his admission and it is not disputed by the Bar Standards Board. We have to consider whether against that backdrop we can resolve the sanction fairly in this case and we accept the defendant's contention that it would not be proportionate to attempt to go beyond his evidence and to admit the hearsay evidence of Miss X, particularly in circumstances where she is not the complainant in this case.

We have had regard to the fact that this is a discretionary exercise and we must have regard to the overall fairness to the defendant, particularly, as I have said, when Miss X is not the complainant in these proceedings. If this evidence is to be adduced it cannot be tested in cross-examination and we have had regard to the fact that we do not know the basis of the conviction by the District Judge. It seems to us that if this evidence were to be admitted there is a real risk that this tribunal would be invited to make findings beyond that that the District Judge at the criminal proceedings made and rely on evidence that was not actually before him at trial. That would be plainly unfair to the defendant.

Accordingly, having regard to all of the matters that I have set out, we refuse the application to admit the hearsay evidence contained in the statements.

Sanction and Reasons

In terms of sanction this is a unanimous decision of the panel.

Undoubtedly this is a very sad case indeed. The background to the charges with which we are concerned is the breakdown of the defendant's marriage to Miss X in 2017, which was undoubtedly a tragic and difficult time for the defendant and Miss X and indeed for their children. On 27th March 2017 the defendant assaulted Miss X. He was charged with an offence under section 39 of the Criminal Justice Act 1988. He pleaded not guilty and was convicted after a trial on 8th March 2018 and sentenced to a community rehabilitation order with a rehabilitation activity requirement of 25 days. In addition he was ordered to pay £250 in compensation and £500 in costs.

On 9th March 2018 he self-reported his conviction to the Bar Standards Board and he has admitted three charges today.

An issue has arisen as to the basis of the guilty verdict in the criminal proceedings. For the reasons we have already given we declined to admit the hearsay evidence contained within Miss X's statement in which she set out her basis of the events of 27th March 2018. Accordingly we sanction the defendant on the basis of the facts admitted by him, namely that in the course of an argument he assaulted his wife, causing her to fall backwards and in so doing she sustained a graze injury to her cheek.

We have taken into account in mitigation a number of references provided to us which attest to the defendant's good character, his ability as a barrister, his charitable acts to a number of people and those references are not just in relation to his professional life but also in relation to his personal life.

Undoubtedly the defendant is a man of previous good character. We have taken into account that this was a single incident that occurred in the heat of the moment in circumstances in which he was in the throes of the breakdown of his marriage. Against that we take into account this conduct has undermined the profession.

In terms of sanction I am going to deal first of all with charges one and two, charge two as amended. We have considered the sanctions guidance in the BTASar Standards Board handbook, version five. We have considered the circumstances of the offence and in particular whether the offence for which he was convicted could be considered a conviction for a low level

assault. We do not accept that that is appropriate; Miss X sustained an injury by reason of the assault.

Accordingly we consider that this falls within the sanctions guidelines set out in the BTAS Guidance at section B(2)(b) and accordingly the starting point is a medium level suspension.

We have taken into account all of the mitigation factors that I have set out and the fact these guilty pleas bring the profession into disrepute. A medium length suspension is a period of over three months and up to six months. Having regard to the extensive mitigation we consider that the appropriate sanction is a sanction to a suspension from practice of four months.

Accordingly in relation to charge one the sanction is a four month suspension. In relation to charge two there will be a four month suspension and that will run concurrently.

As to charge three, this relates to a failure to attend a Bail Act offence, we have taken into account mitigation put forward in relation to this offence. There is no sanction guideline in relation to this offence. However, we have looked at the general guidance in the BTAS Guidance. We consider that this offence is at the lower end of the professional misconduct scale. There was a genuine mistake, there was no risk to the public, but what occurred was unacceptable and should not occur again.

Accordingly in relation to this charge our sanction is a formal reprimand. Accordingly, Mr Sweeney, I formally reprimand in relation to the breach of Core Duty 5 in failing to surrender to custody on 8th March 2018.

Those are our sanctions.

Approved: 02 April 2020

Sally Harrison QC
Chairman of the Tribunal