



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Report of Finding and Sanction

Case reference: PC 2019/0297/D5

Michael Anthony Rowan

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of Inner Temple

### Disciplinary Tribunal

#### Mr Michael Anthony Rowan

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 10<sup>th</sup> September 2020, I sat as Chairman of a Disciplinary Tribunal on 14<sup>th</sup> October 2020 to hear and determine 4 charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Michael Rowan, barrister of the Honourable Society of Inner Temple.

#### Panel Members

2. The other members of the Tribunal were:

Geoffrey Brighton (Lay Member)

Stephen Harpum (Lay Member)

Sadia Zouq (Barrister Member)

Naomi Davey (Barrister Member)

#### Charges

3. The following four charges were found proven against Mr Rowan:

Charge 1

Statement of Offence

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Professional misconduct contrary to Core Duty 3 of the Bar Standards Board Handbook.

#### Particulars of Offence

Michael Rowan, an unregistered barrister, acted without honesty and without integrity, in that between 4 September and 1 October 2016 while providing legal services as an employed barrister he committed fraud by false representation by submitting three expenses forms claiming expenses to which he was not entitled contrary to ss.1 and 2 of the Fraud Act 2006, for which conduct he was convicted on 23 April 2019 at Ipswich Crown Court and sentenced to 26 weeks imprisonment, suspended for 12 months, with 180 hours unpaid work, and ordered to pay a victim surcharge of £115.00.

#### Charge 2

#### Statement of Offence

Professional misconduct contrary to Rule rC8 of the Bar Standards Board Handbook.

#### Particulars of Offence

Michael Rowan, an unregistered barrister, acted in a way which could reasonably be seen by the public to undermine his honesty and integrity in that between the 4 September and 1 October while providing legal services as an employed barrister he committed fraud by false representation by submitting three expenses forms claiming expenses to which he was not entitled contrary to ss.1 and 2 of the Fraud Act 2006, for which conduct he was convicted on 23 April 2019 at Ipswich Crown Court and sentenced to 26 weeks imprisonment, suspended for 12 months, with 180 hours unpaid work, and ordered to pay a victim surcharge of £115.00.

#### Charge 3

#### Statement of Offence

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

#### Particulars of Offence

Michael Rowan, an unregistered barrister, acted in a way likely to diminish the trust and confidence which the public places in a barrister or in the profession, in that between the

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4 September and 1 October while providing legal services as an employed barrister he committed fraud by false representation by submitting three expenses forms claiming expenses to which he was not entitled contrary to ss.1 and 2 of the Fraud Act 2006, for which conduct he was convicted on 23 April 2019 at Ipswich Crown Court and sentenced to 26 weeks imprisonment, suspended for 12 months, with 180 hours unpaid work, and ordered to pay a victim surcharge of £115.00.

#### Charge 4

#### Statement of Offence

Professional misconduct contrary to Rule rC65.2 of the Bar Standards Board Handbook.

#### Particulars of Offence

Michael Rowan, an unregistered barrister, did not report promptly to the Bar Standards Board that he was, on 23 April 2019 at Ipswich Crown Court convicted of fraud by false representation contrary to ss.1 and 2 of the Fraud Act 2006.

#### Parties Present and Representation

4. The Respondent was not present and was not represented. The Bar Standards Board (“BSB”) was represented by Mr Ben Mitchell.

#### Preliminary Matters

5. In accordance with the Convening Order the hearing proceeded remotely via the Zoom platform.
6. The evening before the hearing, Mr Rowan had written to the Panel to explain that due to illness he would not be able to participate in the hearing, but that he did not wish to apply for it to be adjourned as he was not contesting the matter and did not wish there to be any further expense or inconvenience. He wrote that he hoped the matter could be heard in his absence. He provided written submissions in relation to the charges, sanction and the BSB’s application for costs.
7. The BSB made an application to proceed in Mr Rowan’s absence, and the Panel acceded to this submission.

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## Pleas

8. Whilst the Respondent's written submissions did not take issue with the facts relied upon by the BSB, he contended that he had not been dishonest, despite his guilty plea to the relevant offences before the Crown Court, and that he had understood that the BSB would automatically be notified of his being convicted upon his own plea of guilty, and thus he did not need to inform them himself.
9. For these reasons, the hearing proceeded on the basis that the charges were not accepted and had to be proved by the BSB.

## Evidence

10. No live witnesses were heard. The BSB relied upon the certificate of conviction from the Crown Court as conclusive proof of the conviction, as they are permitted to do by virtue of rE169.1, and also of conclusive proof of the facts underlying it, as they are permitted to do by virtue of rE169.2. As Mr Rowan did not attend and was not represented, he was not able to advance evidence to displace the conclusive nature of the certificate of conviction.
11. There was written material before the Tribunal contained in the bundle provided to the Tribunal and to Mr Rowan. This included transcripts of the hearing in the Crown Court, the e-mails from Mr Rowan responding to the charges against him and the character references provided in his support.

## Findings

12. The Panel found unanimously as follows:

'In respect of charges 1, 2 and 3, plainly there is overlap and they all derive from the convictions in the Crown Court. Although they overlap, we have considered them individually and we have concluded that the charges are established to the requisite standard of proof. Mr Rowan has accepted the fact of his convictions which were based on the pleas of guilty tendered to the Crown Court on legal advice. In the circumstances we must regard the convictions as conclusive, including as they do an element of dishonesty. We have considered the possibility of going behind the conclusive nature of those by reference to the guidance in the case of *Shrimpton v Bar Standards Board [2019] EWHC 677 (Admin.)*. The difficulty is that Mr Rowan has not put anything before us to suggest there was an exceptional

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circumstance of the sort contemplated by cases such as *Shrimpton* and so no exceptional circumstances exist enabling us to go behind the convictions and the underlying facts. Weight should be given to the sentencing remarks of the Crown Court judge indicating that Mr Rowan accepted the elements of the offences. It is clear that in the Crown Court, for whatever reason, Mr Rowan did not pursue a suggestion there was not dishonesty or any suggestion that there had been no more than negligence or misunderstanding. So the charges are established. In respect of charge 4, there is no doubt that Mr Rowan failed to report the convictions against him. He may well have failed to do so on the basis of his understanding that there was no necessity, as he had been advised that it would be reported anyway, and we know he was in fact reported to the BSB on the same day as he was convicted. But nevertheless, the duty within the Code of Conduct requirements is a strict one and at the very least Mr Rowan should, as the BSB submitted, have checked that it was reported as it was suggested to him it would be. So, charge 4 is also made out. We are unanimous in those decisions.'

### Sanction and Reasons

13. In respect of charge 4, no sanction was imposed, as the Panel noted that they could well understand why Mr Rowan did not himself notify the BSB as he understood they would be notified, and indeed they were so notified immediately by prosecuting counsel. Therefore, the Panel did not consider any sanction appropriate in respect of charge 4.
  
14. As regards charges 1, 2 and 3 we have considered the current guidance on sanctions and noted that any sanction must reflect the seriousness of the offences and has to be proportionate. The general starting point where there has been a conviction for an offence of dishonesty is disbarment and we have had that very firmly in mind. Plainly any conviction for dishonesty has to be regarded seriously as it undermines the profession and confidence in which the profession is held. But there are cases in which the Tribunal has some residual discretion not to disbar and to consider the alternatives. The nature, scope and consequences of the dishonesty are relevant matters. We have carefully considered aggravating and mitigating factors in this case. There was an element of breach of trust, but against that there are a number of cogent mitigating factors. The fact of the conviction is admitted by Mr Rowan. The amount of the expenses wrongly claimed amounted to £3,000 or perhaps less. It appears to have been undisputed that the expenses were actually incurred, and Mr Rowan is said to have repaid them in full fairly promptly. The facts arose now some considerable time ago, and on the evidence available to us represent the only blemish on an otherwise unblemished career. He is a

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person of previous good character as reflected in the sentencing remarks of Crown Court judge. He has co-operated with the inquiry by the BSB. We have in this case received several references in support of the respondent which are references by people who plainly knew him well and by whom his professionalism and integrity were well-regarded. We also attached weight to the fact that those references were provided before his conviction.

15. We have established as best we can that not only was the offending such as it was of a limited duration it occurred also at a time when R was suffering from bereavement with the loss of his father and from some conflict within the family with a relative challenging the will of his late father.
16. After extensive discussion we have decided that this is a case in which disbarment is not necessary or proportionate. In those circumstances we are unanimous that a suspension of 3 years is sufficient to mark the gravity of the offending by this barrister. That is the sanction imposed concurrently for each of charges 1, 2 and 3. As the respondent does not currently hold a practising certificate, in accordance with Annex 1.3 of the BSB's Handbook, the BSB are ordered that his practising certificate should not be renewed if an application is made within 3 years.
17. The only other matter to be considered is costs – there is a claim for £1,200 by the BSB. We do not have any information from the Respondent as to his means or further submissions from him about the costs application but he makes the point that he presently has no income, and there is now a suggestion of quite serious ill health. In the circumstances we make an order for payment of £600 inclusive of VAT towards the costs of the BSB. Time to pay can be negotiated by the Respondent with the BSB.
18. The Finding and Sanction were made in the absence of the respondent in accordance with rE183.

**Dated: 15<sup>th</sup> October 2020**

**His Honour James Meston QC  
Chairman of the Tribunal**

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