



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2018/0069/D5 + PC 2019/0279/D5

Oliver White Esq

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

Disciplinary Tribunal

Oliver White

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 17 September 2020, I sat as Chair of a Disciplinary Tribunal on the 15 October 2020, 20 November 2020, 12 December 2020 and 12 February 2021 to hear and determine 12 charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Oliver white, an unregistered barrister.

Panel Members

2. The other members of the Tribunal were:

Janine Green (Lay Member)
John Vaughan (Lay Member)
Sadia Zouq (Barrister Member)
Thomas Williams (Barrister Member)

Charges

3. The following charges were found proven:

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Charge 3

Statement of Offence

Professional Misconduct, contrary to rC64.1 of the Code of Conduct of the Bar of England and Wales (9th edition).

Particulars of Offence

Oliver White a barrister, failed to promptly provide information to the Bar Standards Board (BSB) that it required from him and failed to notify the BSB of material changes to that information in that he failed to respond to written and telephone message requests to pay the fines as ordered by the disciplinary tribunal on 28 September 2017 under reference number PC 2016/0171/D5 or contact the BSB promptly to set up payment plans.

The said written requests are dated 02/10/2017, 13/10/2017, 23/10/2017, 30/10/2017, 16/11/2017 and said telephone messages from BSB are dated 09/10/2017, 23/10/2017, 24/10/2017, 26/10/2017.

Charge 4

Statement of Offence

Professional Misconduct, contrary to Core Duty 9 of the Code of Conduct of the Bar of England and Wales (9th edition).

Particulars of Offence

Oliver White a barrister, failed to be open and co-operative with his regulators in that he failed to co-operate with the Bar Standards Board (BSB) in correspondence and in particular in that he failed to respond to written and telephone message requests to pay the fines as ordered by the disciplinary tribunal on 28 September 2017 under reference number PC2016/0171/D5 or contact the BSB promptly to set up payment plans.

The said written requests are dated 02/10/2017, 13/10/2017, 23/10/2017, 30/10/2017, 16/11/2017 and said telephone messages from BSB are dated 09/10/2017, 23/10/2017, 24/10/2017, 26/10/2017.

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Charge 5

Statement of Offence

Professional Misconduct, contrary to rC64. 1 of the Code of Conduct of the Bar of England and Wales (9th edition).

Particulars of Offence

Oliver White a barrister, failed to promptly provide information to the Bar Standards Board (BSB) that it required from him and failed to notify it of material changes to That information in that he failed to provide information to the BSB regarding his Failure to comply with requested payment plans in correspondence and telephone Conversations between 08/12/2017 and 20/02/2018 in that,

- In response to BSB sending reminders to Oliver White of his obligation to pay the fine, Oliver White requested a payment plan on 8 December 2017;
- At Oliver White's request on 8 December 2017, the BSB agreed to a payment plan of 5 monthly payments starting on 18 December 2017;
- Oliver White failed to make the initial payment or provide the BSB with information as to the fact that he would not be making payments;
- On 28 December Oliver White requested an extended payment plan for 12 months which was agreed to by the BSB on 2 January 2018 with the first payment due by 31 January 2018;
- Oliver White failed to comply with this payment plan and failed to notify the BSB of the failure until after the date for the initial agreed payment had passed.

Charge 6

Statement of Offence

Professional Misconduct, contrary to Core Duty 9 of the Code of Conduct of the Bar of England and Wales (9th edition).

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Particulars of Offence

Oliver White a barrister, failed to be open and co-operative with his regulators in that he failed to co-operate with the Bar Standards Board (BSB) in correspondence and in particular failed to co-operate with the BSB following his request for payment plans in correspondence and telephone conversations between 08/12/2017 and 20/02/2018 in that;

- In response to BSB sending reminders to Oliver White of his obligation to pay the fine, Oliver White requested a payment plan on 8 December 2017;
- At Oliver White's request on 8 December 2017, the BSB agreed to a payment plan of 5 monthly payments starting on 18 December 2017;
- Oliver White failed to make the initial payment or provide the BSB with information as to the fact that he would not be making payments;
- On 28 December Oliver White requested an extended payment plan for 12 months which was agreed to by the BSB on 2 January 2018 with the first payment due by 31 January 2018;
- Oliver White failed to comply with this payment plan and failed to notify the BSB of the failure until after the date for the initial agreed payment had past.

Parties Present and Representation

4. The Respondent was present and represented himself. The Bar Standards Board ("BSB") was represented by Zoe Gannon at the 2020 hearings by Leo Davidson on the 12 February 2021.

Preliminary Matters – 20 November 2020 [Day 2]

5. On the 15 October 2020 Mr White was sent some directions. He was asked if there was any reason why he had not served any medical evidence for his inability to attend at the last hearing.
6. Mr White advised that he could provide the evidence during the lunch adjournment. He had sent off for a test with the NHS. He advised he was now well.

Pleas

7. All the charges were denied.

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Submissions by the BSB

8. On behalf of the BSB, Zoe Gannon presented the BSB's case. She referred to the BSB Skeleton Argument and took the Tribunal through the charges and the supporting evidence.

Evidence (part 1)

9. Ambika Lall (for the BSB).
10. Oliver White.

Day 3 - 12 December 2020

Evidence (part 2)

11. Oliver White (continued)

Findings

12. Mr White is now 43 and currently an unregistered barrister, having been admitted in 2000 by Lincoln's Inn and called in 2001. He is an undischarged bankrupt.
13. The 12 charges concern his failure to respond to his regulator, the BSB, with information it requested and also to pay two fines imposed as sanctions by two separate Tribunals. In 2017 HMRC started bankruptcy proceedings against him. In an undated skeleton argument prepared by him for another Tribunal in PC 2016/0026/D5 probably in March 2017 he stated "R has been the subject of bankruptcy proceedings which remain ongoing" We accepted that in this indirect way he had notified the BSB of those proceedings. On 14 June 2017 a bankruptcy order was made, and his estate vested in his trustee, although a trustee was not appointed until 13 October 2017. It appears that a Tribunal suspended him from practice for two years on 7 July 2017, so until 6 July 2019. On 28 September 2017 he appeared again before another Tribunal (2016/0171/D5) and was fined £500 for failing to be open and co-operative with the BSB, the fine was to be paid by 20 October 2017. He said nothing to the Tribunal about the bankruptcy order and the Tribunal and the BSB remained ignorant of it having been made.
14. It was in October and November 2017 that the BSB sent him 5 letters and left telephone messages requesting information about his financial situation as nothing

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had been paid. The Respondent did not reply to any of these communications. In evidence the Respondent said he did not listen to the messages or open the envelopes. These communications are the subject of charges 3 and 4. On 8 December 2017 the BSB telephoned the Respondent and, as the Respondent said in evidence it was “an isolated call which I picked up” in the course of which he requested a payment plan, D31 in the hearing bundle. The BSB agreed to a plan starting on 18/12/17 with 5 monthly payments the first of which would be paid “before Christmas”. In fact, he made no payments. On 28 December by way of a perfectly coherent letter, he apologised for not having made the first payment and he requested another payment plan over 12 months, which was agreed by the BSB on 2 January 2018. The first payment was agreed by him to be paid by 31 January 2018. As before nothing was paid nor did he communicate with the BSB this time over his failure to pay or give any information as to his financial situation. His behaviour during this period is the subject of charges 5 and 6.

15. On 20 February 2018 the BSB wrote to him, asking him to respond to a new complaint against him under reference number PC 2018/0069, that being the failure to pay the £500 fine. This letter is the start of the sequence of communications the subject of charges 7 and 8. Eventually the Respondent replied to the repeated requests for information by saying on the 13 April 2018 “I thought it had been paid.” On the 23 April he told the BSB by an email, that (D69) that he had instructed his bank to pay £100” today” but as it transpired nothing was paid. On 29 June 2018 the complaint investigation was suspended as the Respondent was receiving residential treatment of some sort. However, on the 16 July 2018 he was back before another Tribunal (PC2015/0394/D3, PC 2016/0274/D3, PC 2016/0292/D3). On this occasion the Respondent attempted to put into evidence a couple of medical reports which he had redacted himself but he was told that the Tribunal would only look at unredacted reports and he did not provide such reports. From what was disclosed by the Respondent during our hearing probably there would have been references to the health issues the Respondent had. He was fined a total of £4,000. Once again, the Tribunal and the BSB were left in total ignorance of the bankruptcy order or that, by this time a trustee in bankruptcy had been appointed. He was given 4 months to pay. We doubt whether these fines would have been imposed in this total amount or at all if the Tribunal had been told his true financial position and in particular that his estate had vested in the trustee in bankruptcy. Had the BSB known it would undoubtedly

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have brought that to the Tribunal's attention. In fact, by an email dated 12 September 2018 the BSB wrote "How has your financial situation changed between July and now? I understand you gave the Tribunal information about your financial situation and on this information, they said you could have 4 months to pay the fine." We asked the Respondent why he had not disclosed the existence of the bankruptcy order and he said "At all times I was aware of an obligation to report bankruptcy. I didn't tell the Tribunal about it because of my shame and my perceived reputational harm if it was on the public record. It was a deliberate decision not to mention my bankruptcy." The Rules in the BSB Handbook and Code of Conduct provide at rC65 "you must report promptly to the BSB if any of the following occur....c. a bankruptcy order is made against you." The Respondent has not been charged with a breach of this specific rule.

16. On the 17 July the Respondent had paid £300 off the £500 fine. Also, it was on this day that the BSB in the person of Gift Akinola was informed by the Legal Ombudsman of the bankruptcy order. The investigation into PC 2018/0069 had been suspended from 29/6/18 to 30/7/19 and then again from 17/8/19 to 4/11/19. The latter suspension was due to the fact that the Respondent had gone to South Africa for treatment for his health issues. This was paid for by his parents he told us. On the 12 September 2018, the BSB wrote to the Respondent asking for information about the "status" of the bankruptcy and asking for confirmation that the fines were included as debts against the estate (D103-5). There was no reply. On 18 September, the trustee advised the BSB that no mention had been made of the fines by the Respondent. On some date in September 2018 the Respondent again asked the BSB to agree a payment plan for the fines. On 15 January 2019, the trustee confirmed that he was never informed of the fines. On 20 January 2019 the Respondent sent an email saying he was "currently unwell" but he gave no information about his financial situation. On 21 January, the BSB submitted proof of the debt to the trustee. On 23 January, the Respondent emailed the BSB saying "let me be clear I can't pay these fines because I am without income and bankrupt. Do what you have to do but shame on you." In evidence to us the Respondent apologised for what he described as an "intemperate" response.
17. On 31 July the Respondent left for South Africa. On his return he sought assistance for his health condition. On the 4 November 2019 he sent (D152-3) what he described as

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“formal written representations to the two complaints currently pending against me.” In that letter he referred to his serious health issues which he said the BSB were aware of. “In all the circumstances...it will be clear that my failure to pay these fines has not been through defiance or neglect but through incapacity, both materially and by reason of ill health.” He referred to the debts being part of his estate. He also referred to a recent clinical report prepared on my behalf, “a copy of which I provided to you during the course of our meeting last week.” This was a face-to-face meeting with Ms Akinola who no longer works at the BSB having left a few weeks later. The BSB have no copy of that report in their possession. However, if the reference to a report was picked up, then no one challenged the assertion he had made. On 20 February 2020 an eviction order was executed by Santander, the main creditor and since then the house the Respondent owned has been sold and the trustee has informed the BSB that no money is left with which to discharge the debts/fines.

18. Directions were given in the case before us but the Respondent did not comply with them and from the 30 June 2020 he remained silent until the evening before the day listed for the hearing of this case when he announced he had tested positive for Covid19 and was not at his home where his papers were and therefore he could not/would not attend. As the hearing was by Zoom there was in fact nothing to stop him from appearing at the hearing, but he did not do so. We gave further directions and adjourned to 20 November when he did appear, and adjourned part heard to 12 December. On 20 November we gave directions relating to the Respondent’s wish to provide medical evidence but in the event on the 12 December the Respondent, without producing any evidence of any request to anyone, the Respondent asserted that he was unable to get a report from his medical practitioner who had retired and he identified his name and asked for an adjournment so that he could obtain a report from him. We refused that request as there was no evidence of him having engaged with any medical person, in order to obtain any report. It was in our view unlikely that if given more time any report would be forthcoming whether at all or within a reasonable time. His failure to comply with directions in the past, for example the production of his positive test result, also argued against any adjournment. At this point the Respondent claimed he had sent that result through but then accepted he had not done so and on the 12 December over lunch he sent through a redacted (by him) result showing that on the 4 October he had tested positive. We said that there comes a point when one has to say enough is enough and the proceedings need to be

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drawn to a conclusion. In short there was no third-party evidence of his medical history or his condition at any point in time throughout this chronology we have set out other than a letter from the clinic in South Africa confirming that he had received treatment for his health issues. He told us that he was now well.

19. Charges 9 and 10 concerned his failure to pay the £4,000 fines. Charges 11 and 12 related to requests for information from him “including but not limited to his financial circumstances and the current status of the bankruptcy” made from 12/9/18 to 27/2/19.
20. We reminded ourselves that the burden of proof was on the BSB and that the standard of proof for these allegations was the criminal standard, given their date. Also, we noted that the professional misconduct had to be serious to be professional misconduct.
21. In relation to the bankruptcy Counsel for the BSB drew our attention to *Marcus v Institute of Chartered Accountants* (2004) EWHC 3010 (Ch), *Law Society and others v Shah and others* (2007) EWHC 2841 (Ch) and *In re Nortel GmbH* (in administration) and related companies (2013) UKSC 52. From these we concluded that the fines were provable debts in the estate which vested in the trustee in bankruptcy. They related to conduct or rather obligations incurred before the bankruptcy order. The obligation to pay the debts ceased once the estate vested and if they could not be paid out of the estate then upon the Respondent’s eventual discharge, he would not have any continuing liability to discharge them. The obvious absurdity in this case was the fact that the fines were imposed in ignorance of the Respondent’s bankruptcy because he chose not to disclose that fact to either Tribunal. The BSB did eventually, no thanks to the Respondent, prove the debts, but it was not hindered or disadvantaged in obtaining the money by the Respondent’s conduct vis-à-vis the BSB. There is simply no money in the estate after paying preferential creditors and there would not have been.
22. In our judgment the Respondent is and has been irresponsible throughout his dealings with the BSB and previous Tribunals and with us. We accept, drawing inferences from his evidence and the facts known to us that his health issues had a disastrous effect on him professionally, emotionally and financially and that, in general terms much of his behaviour was probably attributable to those health issues.

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23. We decided that charges 1, 2, 9 and 10 were not proved. Charge 1 alleged that he, contrary to rC64.2 “failed to make or reasonably facilitate payment” of the balance of £200. The Rule provides “You must comply in due time with any decision or sentence imposed by the BSB” Ms Gannon for the BSB submitted that the Rule infers an obligation to act reasonably so as to enable or facilitate the payment of the fines, in other words he had a professional obligation to inform the trustee of their existence and the nature of the debt. We reject that submission. First of all, that is not what the Rule says and even if that obligation can be inferred from the Rule the Particulars of Offence did not particularise that. The particulars of an alleged offence are important and need to make clear exactly what is alleged if they are to stand any chance of being proved. In any event he could not pay a fine off his own bat at all or without the involvement of the trustee, and anyway there was no money in the estate to pay it. Charge 2 alleged professional misconduct contrary to Core Duty 5, namely, “You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.” The particulars relied merely on the failure to pay. In the circumstances of this case as adumbrated above the failure to pay a fine which he could not pay being a bankrupt and which would probably not have been imposed had the true situation of the Respondent been known to the Tribunal, cannot be a breach of Core Duty 5, or at the very least we could not be sure that it was. Charges 9 and 10 alleged breaches of the same Rule and Core Duty, but the Particulars simply relied on the failure to pay the £4,000. For the same reasons we dismissed them.
24. In relation to the remaining counts they were all in pairs, each pair relating the same facts, but alleging breaches of rC64.1 and Core Duty 9 respectively. In respect of charges 3,4,5 and 6 we found them proved to the necessary standard by a majority of 3 to 2. The Respondent did not dispute in relation to the 5 letters sent to him or the 3 telephone messages that they had been communicated and that he had made no response. The requests were properly made by the BSB. Rule 64.1 says “You must **promptly** (our emphasis) provide all such information to the BSB as it may for the purpose of its regulatory functions from time to time require of you and notify it of any material changes to that information.” Core Duty 9 provides “You must be open and co-operative with your regulators” The Respondent provided no reply in response to repeated requests. The sequence of requests came to an end in October(D27) without any extension of time to answer them other than an expression of hope that

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the BSB might hear from him by 22 November. Then by chance because he answered the phone on the 8 December the Respondent proposed a payment plan. It is of paramount and fundamental importance that barristers should be entirely frank and open with the BSB, their regulator, the more so when they are asked for relevant information. Deliberately not to reply is serious professional misconduct. Just as he did before the two Tribunal hearings after the bankruptcy order had been made, we are sure he chose not to reply. His belated proposal to pay by way of a payment plan supports this conclusion. In relation to charges 5 and 6, these relied in the particulars on his proposing a payment plan which, without explanation he did not even start, and then after further communications from the BSB making a new proposal which again without any explanation he did not start. The majority of us were sure that these charges were proved. He was obviously aware that the BSB were chasing him for important information or any information about his situation, but he was neither open nor co-operative nor providing information in accordance with the Rule. The minority took the view that he was unwell, and the effect of his ill health would have been such that it precluded him from making any response.

25. Counsel for the BSB had referred us to *Bar Standards Board v Howd* (2017) EWHC 210(Admin) in which Lang J concluded, on the facts of that case and in relation to different allegations,

“As I have already said, in the light of the further medical evidence adduced on appeal, I have concluded that the Tribunal misunderstood and misapplied the medical evidence, and thus assessed Mr Howd’s conduct on an erroneous basis. The medical evidence established, on the balance of probabilities, that his inappropriate, and at times offensive, behaviour was a consequence of his medical condition. It also established that his excessive consumption of alcohol was very likely to have been a response to the onset of his medical condition, and it probably had the unfortunate consequence of exacerbating his disinhibition and loss of judgment. In these circumstances, Mr Howd’s behaviour plainly was not reprehensible, morally culpable or disgraceful, as it was caused by factors beyond his control. In my judgment, it did not reach the threshold for a finding of serious professional misconduct.”

26. The majority took the view that in the Respondent’s case, firstly, there was not any medical evidence and secondly, that even if one could infer from his evidence that throughout the relevant period he was unwell, there was no expert evidence to support

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the proposition that his ill health was the consequence of a medical condition or that at the particular and specific times to which these charges related, that that was the case or that any medical factors beyond his control were affecting his failures to provide information.

27. Charges 7 and 8 particularised times when the BSB was frequently extending the time for a reply and then on two occasions suspended time for a reply. One cannot complain about a failure to respond promptly if you then extend time in which to provide information or a response. Furthermore, the suspensions confused the situation. In any event the Respondent did eventually reply. These allegations lacked any clarity and could not be proved to the required standard. Similarly, with charges 11 and 12 which related more or less to the same period.
28. In his skeleton argument the Respondent asserted that “there is no rule or regulation in the BSB Handbook that obligates an individual upon request from a representative of his regulator to provide detailed information and/or update on the progression of the bankruptcy. The BSB’s use of r65.6 to infer such an obligation exists is without foundation and wholly disingenuous.” This submission is plainly wrong, one only has to refer to Rule 64.1 and Core Duty 9, which were the duties allegedly breached, to see that it is wrong, and we rejected it.

The Respondent was told that a date for sanction will be made available and you will be informed of it in due course.

Day 4 - 12 February 2021

Findings

29. We have decided that there should be no order to costs. A suspension of practice for 12 months on each of charges 3, 4, 5 and 6 concurrent for the charges proven, a total of 12 months. We will hand down a judgement in due course and set out our concerns and recommendations to the BSB in relation to fitness to practise.

In relation to your ill health we will refer to it as that.

30. Mr White advised the Panel that he would be appealing the suspension and that he would like an opportunity to review the report and to make written submissions if he was not content with it.

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31. The Tribunal observed that the suspension is only triggered after the 21 day period for appealing has elapsed. Mr White does not have a practising certificate. He cannot apply for a practising certificate until 12 months has passed from when the period of appeal has elapsed or at the conclusion of any appeal proceedings whichever may occur last. The Tribunal will give you until the 16 February at 12pm to provide written submissions.

Approved: 05 March 2021

HH Witold Pawlak
Chairman of the Tribunal

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