



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2019/1240/d3

Peter Masniuk

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

Peter Masniuk

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 2020, I sat as Chairman of a Disciplinary Tribunal on 20 January 2021 to hear and determine two charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Peter Masniuk, barrister of the Honourable Society of the Inner Temple.

Panel Members

2. The other members of the Tribunal were:

Geoffrey Brighton (Lay Member)

Sadia Zouq (Barrister Member)

Charges

3. The following charges were admitted / found proven.

Charge 1

Statement of Offence

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Professional misconduct contrary to Core Duty 10 and Rule rS6 of the Bar Standards Board Handbook.

Particulars of Offence

Peter Masniuk practised as a barrister when not authorised to do so from 1 May 2019 until 26 November 2019 inclusive and therefore failed to take reasonable steps to manage his practice competently and in such a way as to achieve compliance with his legal and regulatory obligations in that he carried on a reserved legal activity by exercising his right of audience [at Leicester Combined Court on 7 November 2019 in a private law children matter; and at Birmingham Family Court on 26 November 2019 in a private law children matter] when he was not entitled to do so by reason of the fact that he did not have a practising certificate and was not authorised by the Bar Standards Board to carry on any reserved legal activity and was not otherwise authorised to do so pursuant to the Legal Services Act 2007 [as amended].

Charge 2

Statement of Offence

Professional misconduct contrary to Core Duty 10 and Rule rS8 of the Bar Standards Board Handbook.

Particulars of Offence

Peter Masniuk practised as a barrister when not authorised to do so from 1 May 2019 until 26 November 2019 inclusive and therefore failed to take reasonable steps to manage his practice competently and in such a way as to achieve compliance with his legal and regulatory obligations in that he practised as a barrister when he was not entitled to do so by reason of the fact that he did not have a practising certificate.

Parties Present and Representation

4. The Respondent was present but was not represented. The Bar Standards Board (“BSB”) was represented by Jennifer Coyne.

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Preliminary Matters

Mr Masniuk had applied on 13 January 2021 for an adjournment of the hearing to obtain further evidence and for the Tribunal to recuse itself on the ground that it was aware that material had been redacted from the hearing bundle. I considered the application on the papers under rE155. I neither granted nor refused it but directed Mr Masniuk to renew it before the Tribunal on 20 January 2021 if so advised. Mr Masniuk withdrew his application on the day of the hearing and the hearing proceeded.

Pleas

By email sent on the morning of 20 January 2021, Mr Masniuk indicated that he intended to attend and that he admitted the charges and also sent a reference letter from his employers. He formally admitted the charges at the outset of the hearing.

Findings

Peter Masniuk is a barrister of considerable experience, having been called to the Bar in 1983.

He has admitted two charges of professional misconduct. The essence of those charges is that he practised as a barrister during a period when not authorised to do so. In particular, he exercised rights of audience in family matters on two separate occasions, carrying on a reserved legal activity when not entitled to do so. Having found the charges proved, under rE203 the tribunal was provided with details of prior findings of professional misconduct against Mr Masniuk. These related to misconduct in 2001 (two cases), 2012 and 2015. One of the early cases and the 2015 matter related also to the offences of practising without a practising certificate. On the first occasion a fine of £100 plus costs of £150 was imposed. On the most recent occasion a fine of £500 and a reprimand were imposed. The Tribunal noted that three of these prior cases included offences of failing to cooperate with the regulator or failing to provide necessary information to the BMIF.

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Reasons

The Tribunal considered the current sanctions guidance, version 5. The Tribunal had regard to the general approach to sanctions in that guidance, and in particular to section E3, which relates to breach of practising requirements. It considered that category e on page 69 (*“Previous disciplinary history of failing to meet practising requirements or breaches of licence/authorisation to practise”*) is the relevant category in this case, and noted that the appropriate starting point for cases in that category is a medium to long suspension.

The tribunal also considered the general aggravating and mitigating factors within the guidance. It found the following aggravating factors present. First, the conduct was persistent. Secondly it undermined the profession in the eyes of the public; the lay client was present when this misconduct occurred. Thirdly there had been previous disciplinary findings for similar breaches. Separately there had been previous disciplinary findings for other breaches disclosing unwillingness to comply with the Handbook. Finally, Mr Masniuk had failed to respond promptly to communications from the BSB in this case. The Tribunal noted he did not substantively respond to the BSB’s communications for some considerable time and it was only lately that it became apparent that he would attend the hearing.

As to mitigating factors, Mr Masniuk had admitted these charges. The Tribunal accepted that he had expressed genuine remorse. He spoke of his embarrassment at the position in which he finds himself. The tribunal did not consider any element of financial hardship was a mitigating factor. He gave oral evidence of his financial circumstances, but the Tribunal did not consider these had any direct impact on the offences. The tribunal did accept that his personal circumstances were a mitigating factor. These included the death by suicide of a close family member. The personal circumstances were however considered to be of lesser weight than they might be in other cases given his past reliance on personal mitigation. Mr Masniuk told the panel that he has been suffering mental ill health but has yet to seek medical assistance in respect of that. Finally, the Tribunal was provided with what can be treated as a good reference from a solicitor and director at Morgan Wiseman solicitors. Those solicitors were instructing him in respect of the family law matter in Birmingham which forms part of the first charge. Despite the events of that day Morgan Wiseman have gone on since December 2019 to employ Mr Masniuk as a paralegal. The author of the letter says he has known Mr Masniuk since 2011 and was supportive of the legal services which he had provided. The firm is prepared to consider employing him as a barrister in due course as and when the circumstances of his registration permit them to do so.

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Despite the mitigation which it identified, the Tribunal considered the appropriate sanction to be one of suspension. It considered that the offences admitted by Mr Masniuk were such as to undermine public confidence and were in themselves serious breaches. A signal needed to be sent to the public and the profession that this behaviour was unacceptable. Financial penalties had been imposed in the past and had not been effective to prevent Mr Masniuk from reoffending. Because of the history there was at least some risk of repetition.

For the above reasons it was the tribunal's decision that the appropriate sanction, in respect of both charges taken together, was one of 4 months' suspension.

Costs

The BSB applied for costs, limited to Counsel's fees. Having heard from both parties the Tribunal ordered costs in the full amount sought, £1,000 plus VAT. The Tribunal consider that amount to be modest given the significant additional work required as a result of Mr Masniuk not having engaged in the process until a late stage. The costs are to be paid by 17 February 2021.

Approved: 22 January 2021

Jonathan Holl-Allen QC
Chairman of the Tribunal

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