



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Report of Finding and Sanction

Case reference: PC 2020/2112/D3

Sanjay Nathan Visvanathan

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

#### Sanjay Nathan Visvanathan

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 November 2021, I sat as Chairman of a Disciplinary Tribunal on the 6 December 2021 to hear and determine two charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales [9<sup>th</sup> Edition Version 4.4 of the BSB Handbook] against Sanjay Nathan Visvanathan, barrister of the Honourable Society of the Middle Temple.

#### Panel Members

2. The other members of the Tribunal were:

Lakshmi Ramakrishnan [Lay Member]

Ashley Serr [Barrister Member]

#### Charges

3. The following charges were admitted.

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## Charge 1

### Statement of Offence

Professional misconduct, contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales [9<sup>th</sup> Edition Version 4.4 of the BSB Handbook].

### Particulars of Offence

Sanjay Nathan Visvanathan, an unregistered barrister, 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 14 February 2020 he submitted a research project to Cardiff University as part of his LLM Bar Professional Training Course in which he declared that the work was his “own independent work and research” but which contained substantial amounts of work taken from a paper submitted by another student at Cardiff University in August 2019, shown by a Turnitin Originality Report with a 38 % match to that other paper and an overall Similarity Index of 61 %.

## Charge 1

### Statement of Offence

Professional misconduct, contrary to paragraph rC8 of the Code of Conduct of the Bar of England and Wales [9<sup>th</sup> Edition Version 4.4 of the BSB Handbook].

### Particulars of Offence

Sanjay Nathan Visvanathan, an unregistered barrister, behaved in a way which could reasonably be seen by the public to undermine his honesty and integrity, contrary to rC8, in that on 14 February 2020 he submitted a research project to Cardiff University as part of his LLM Bar Professional Training Course in which he declared that the work was his “own independent work and research” but which contained substantial amounts of work taken from a paper submitted by another student at Cardiff University in August 2019, shown by a Turnitin Originality Report with a 38 % match to that other paper and an overall Similarity Index of 61 %.

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## Parties Present and Representation

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

## Preliminary Matters

The Tribunal outlined the procedure and protocol that the hearing would take and confirmed the documents they had received and had read. The Tribunal asked the BSB to clarify their case in relation to the charges and how they applied to an unregistered barrister residing outside of the UK and what sanction could be applied. As the respondent was unrepresented, he was entitled to know what he was actually admitting to and the possible consequences of the admission. The Tribunal also asked the BSB to clarify whether it shared information regarding a barrister facing disciplinary proceedings residing in another country, in this case, Malaysia, whether they shared information regarding these proceedings.

The BSB confirmed that there were 2 elements to the charges, 1 that the respondent had copied a large amount of text from another student’s paper he also copied the date and reference to those documents from the other student’s paper. Even though he had made a declaration that the work was his own.

In relation to the question of unregistered barristers, the Tribunal were advised that the definition was at Part 6 of the BSB’s Handbook which states: *“means an individual who does not hold a practising certificate but who has been called to the Bar by one of the Inns and has not ceased to be a member of the Bar”*.

In relation to any sanction that could be applied, the BSB confirmed the limitations as set out in rE210 of the Bar Standards Board Handbook for a three-person panel which states:

*“rE210*

*A three-person panel must not:*

*.1 disbar a barrister or suspend a barrister’s practising certificate for a period longer than twelve months; or*

*.2 revoke the authorisation or licence (as appropriate) of a BSB entity or suspend it for a period longer than twelve months; or*

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*.3 remove a registered European lawyer from the register of European lawyers; or*

*.4 impose a sanction of suspension on any BSB regulated person for a prescribed period longer than twelve months; or*

*.5 impose a Disqualification Order for more than twelve months.*

*This Regulation does not prevent a three-person panel making an order in accordance with rE211 below.”*

In relation to whether the BSB informs other jurisdictions if a barrister is facing disciplinary proceedings, the BSB advised that this was considered on a case-by-case basis. The BSB did have a number of ‘Memorandums of Understanding’ with other regulatory bodies.

Following retirement to consider whether it was appropriate for this panel to deal this matter or whether it should remit it to a 5-person tribunal, the Tribunal advised that they were undecided and would like to hear from the respondent in mitigation.

## **Pleas**

The respondent admitted the charges.

## **Evidence**

Mr Mitchell presented the case on behalf of the BSB.

## **Findings**

The charges being admitted, the Tribunal found the charges proved.

## **Submissions from the Respondent**

Mr Visvanathan addressed the Tribunal in mitigation. He stated that he had co-operated with the BSB during their investigation of the matter. He had disclosed the documents required. He had admitted the charges at the first opportunity. In summary, he said that it was a stupid and appalling thing to have done, however, it occurred when his well being was difficult and challenging. He had struggled with his exams and did not pass them the first time round and had to retake them. This had taken a toll on his confidence and was at a low ebb. He did manage to pass the exams in the end but had doubts as to whether he had deserved to do so.

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He had to submit a research paper on his LLM course for which there was a deadline and, in his panic to complete and submit it in time, he had access to another student's work and copied a large proportion of it into his paper. Prior to this incident, he had had an unblemished academic and disciplinary record during his course with the University. This was a single incident; it was not during the course of his professional practise. He explained that he had to pass the BPTC course before applying to study for the LLM course. He had opted to complete both courses in 1 year, rather than 2 years to reduce the cost of the courses, citing the exchange rate between UK Sterling and the Malaysian Ringgit being unfavourable. Following the finding of academic misconduct, he decided to withdraw from the course as he thought his integrity would be in question even if he passed the exam. He had supplied evidence of this and of the grades he had achieved for his BPTC coursework.

The respondent was questioned regarding the fact that in more than one written statement he had stated that he was 'paraphrasing', whereas it was clearly a case of plagiarism. He admitted that it was copying. He was also questioned as to how this would affect his practice in Malaysia. Although he was uncertain of the exact consequences, he thought it would affect his practice or work prospects in the future in Malaysia. He was asked whether he would be willing to make an undertaking not to apply for a Practising Certificate to practise in England and Wales for a period of time. He confirmed that he would and iterated that he had no intention of practising in the UK or Wales as he had now returned to Malaysia and was going to settle down and live his life there amongst his family. He was questioned as to whether he had notified his employer about these proceedings and confirmed that he had not. He advised that his employer was his Father, and it was a matter of shame that he had not told him, but he intended to do so once the outcome of the hearing was known.

The BSB confirmed that there were no other findings of professional misconduct against the respondent.

### Sanction and Reasons

Following retirement to consider the matter, the Tribunal confirmed that they would proceed with the hearing and would not be remitting it to a 5-person Tribunal.

The Sanction was that Mr Visvanathan be Reprimanded. Mr Visvanathan provided an undertaking not to apply for a Practising Certificate to practise at the Bar of England and Wales for 12 months from the date of the expiry of the appeal period. Costs of £500 to be paid to the

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Bar Standards Board in 2 instalments. £250 to be paid within 28 days of the hearing and £250 to be paid within 6 months of the hearing [plus VAT if appropriate]. The Tribunal recommend to the BSB that the BSB refer this matter to the appropriate Malaysian legal regulator.

The Tribunal considered the following Mitigating and Aggravating Factors applied:

#### Mitigating Factors

The respondent admitted that charges.

He showed genuine remorse.

He had limited experience within the profession.

It was a single incident.

The respondent had co-operated with the investigation.

He had taken voluntary steps to rectify the breach.

He was of previous good character.

#### Aggravating Factors

Premeditation.

Undermining the profession in the eyes of the public.

Attempts to hide the misconduct or wrongly lay blame elsewhere.

**Approved: 10 December 2022**

**Paul Lowenstein QC**  
**Chairman of the Tribunal**

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