The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2019/1225/D3

Ms Althea Sonia Brown
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

Althea Sonia Brown

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 19 November, I sat as Chairman of a Disciplinary Tribunal on 13-15 December 2021 and the 12 March 2022 to hear and determine three charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Althea Sonia Brown, barrister of the Honourable Society of Lincoln's Inn.

Panel Members

2. The other members of the Tribunal were:

   Sarah Baalham [Lay Member]
   Sadia Zouq [Barrister Member]

Charges

3. The following charges were found proven:

Charge 1

Statement of Offence

Professional misconduct contrary to Core Professional misconduct, contrary to Core Duty 1 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook – Version 4).

Particulars of Offence

Althea Brown, a barrister, failed to observe her duty to the court in the administration of justice at an Employment Tribunal hearing on 12 and 13 September 2019, in that she:

a) In the course of her submissions to the tribunal on the afternoon of 12 September 2019 alleged that Ms C (the opposing barrister) had made an untruthful statement to the tribunal, without reasonable basis; and/or

b) In the course of her submissions mimicked and/or mocked Ms C by:

i. On one or more occasions repeating the words used by Ms C adopting a noticeably different and disrespectful tone of voice to her usual voice; and/or

ii. Comparing Ms C's submissions to the words of the literary character Violet Bott "I'm going to scream and scream until I'm sick", thereby imputing without reasonable basis that Ms C was behaving in a juvenile and/or petulant manner; and/or

c) In the course of her submissions to the tribunal on the morning of 13 September 2019 said that Ms C had a "fundamental intellectual difficulty".

By so doing Ms Brown displayed a pattern of behaviour that undermined Ms C and/or distracted the tribunal from matters relevant to the hearing.

Charge 3

Statement of Offence

Professional misconduct, contrary to Core Duty 5 and/or rC3.2 and/or rC7 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook – Version 4).

Particulars of Offence

Althea Brown, a barrister, behaved in a way which is likely to diminish the trust and confidence which the public places in her or the profession, and/or abused her role as an advocate at a hearing on 12 and 13 September 2019, in that she:

a) In the course of her submissions to the tribunal on the afternoon of 12 September 2019 alleged that Ms C (the opposing barrister) had made an untruthful statement to the tribunal, without reasonable basis; and/or

b) In the course of her submissions mimicked and/or mocked Ms C by:

i. On one or more occasions repeating the words used by Ms C adopting a noticeably different and disrespectful tone of voice to her usual voice; and/or

ii. Comparing Ms C's submissions to the words of the literary character Violet Bott "I'm going to scream and scream until I'm sick", thereby imputing without reasonable basis that Ms C was behaving in a juvenile and/or petulant manner; and/or

c) In the course of her submissions to the tribunal on the morning of 13 September 2019 said that Ms C had a "fundamental intellectual difficulty".

By so doing Ms Brown (1) improperly undermined, insulted, humiliated and/or annoyed Ms C; and/or (2) was in the circumstances unprofessional and likely to diminish the trust and confidence that the public places in her or the profession.

Parties Present and Representation

4. The Respondent was present and was represented by Clare Dixon QC. The Bar Standards Board ("BSB") was represented by Gareth Tilley.

Preliminary Matters

5. There were no preliminary matters.

Pleas

6. Ms Brown denied the charges.

Evidence

7. This case concerns the Respondent, who was called in 1995, and her opponent in an Employment Tribunal case on the 12 and 13 September 2019, Ms C, who was called in 2014. The Respondent represented the Claimant employee, Ms W, and Ms C the Respondent employer, A. The Respondent had replaced previously instructed counsel about a week before the hearing, whereas Ms C had been counsel from the outset. Both counsel had considerable experience in appearing in the Employment Tribunal. The hearing was to be the final hearing of the claim, which was for about £6,000 unpaid wages, the Claimant contending that she should have been paid an increase in her salary from July 2017 after a salary review in July 2017, the Respondent contending that the increase was dependent on the result of an appraisal of her work in 2016. The Respondent asserted that she was only entitled to the increase if she scored 3 on that appraisal whereas she had in fact only scored 2. The Claimant asserted that that appraisal had not taken place and therefore she should be judged by her score in an earlier appraisal that year in which she had scored 3. Witnesses attended for each side, Ms W and her Trade Union representative from the Royal College of Nursing, Mr A, and for the Respondent, Mr R from A and Ms S, an HR advisor employed by A. Also present were the solicitors for each side, Ms S for the Claimant and Ms W for A.

8. In order to understand the charges and our reasons and decision it is necessary to set out some of the history and the course of the hearing on those days. There was no transcript of what was said at the hearing as the proceedings were not recorded, but we were given the note made by Ms S, easily the fullest note, to which had been added the notes and/or observations of Ms W and Ms C. Pages B36-91 of the bundle. This evidence was repeated using a different format at pages E3-82.

9. The final hearing was supposed to have taken place on the 14 May 2019 but although everyone attended, there was no judge available, and it was adjourned. The parties used the time to start to agree a list of issues and by 1 July a list of issues, dated 14 May, had been agreed by counsel and solicitors for the next hearing, B27-29 and the ET so notified. Plainly this was in accordance with the Overriding Objective.

10. By an email sent by Ms S at around 9pm on the 11 September 2019, Ms W was notified that Ms Brown would be applying to amend the list of issues without disclosing what the amendments would be. The case started at 10.05 and continued on the 12 September but no amended list of issues was produced nor any authorities in support of the application. Ms Brown said that the original list contained "a number of concessions" by way of "agreed facts" which she wished to withdraw. She dealt with the original list of issues point by point, and it then became apparent that at least a good half of the issues were to be deleted. In particular whereas it had been agreed that the Claimant was not entitled to an automatic salary increase, that was no longer agreed. Ms C objected. The Judge said the choice lay between agreeing the new list and adjourning the merits hearing or agreeing the new list and starting the merits hearing. Ms C said that the merits hearing should take place on the already agreed list. Ms Brown said she was surprised Ms C was taking this position and that the Judge should proceed to the merits hearing on her amended list. Ms C mentioned there might be disclosure issues regarding the automatic entitlement. She would need "to double check points regarding disclosure." In any event if they were to change the list, she would need time to prepare the case and would seek costs of the wasted hearing. The Judge asked Ms Brown what the case was she had referred to. She replied it was Nowicka-Price v Gwent (2009), it later transpired that Ms Brown had been counsel in the case which was about the withdrawal of an admission. The Judge retired and returned at 12.40 to announce her decision namely, "will adjourn with case management orders made for a further hearing. Costs order against C regarding the amended LOI. Costs can be dealt with now or at a further hearing." B45. Ms Brown said the Judge could not make a costs order and any way cast doubt on whether Ms C needed to check anything. (It was at this point that Ms C said she was accused by Ms Brown of lying, presumably for the purpose of securing an adjournment by giving false reasons for not being able to proceed.) The Judge said, "you changed the LOI" Ms Brown replied, "I didn't- LOI is matter requiring ET's determination" Judge "I'm saying you have succeeded, thought you'd be pleased,

now have opportunity to do this properly." Taking the exchanges shortly, Ms Brown then said "This LOI has been a complete and utter red herring" Ms C said, "never done a case where two legal representatives agreed a LOI" which was then "reneged on". Ms Brown said she wanted to "crack on" B49. Ms C submitted that the Judge should not go beyond the existing list of issues." The Judge said she would take submissions again on resiling from the list--- she is recorded as saying "never sat on a case where proceeding like this and been sitting for 10 years. Would never have made a costs order without hearing from the parties." B51 Ms C said she did not understand the basis of the Claimant's case. "Is Claimant allowed to resile from LOI?" Judge - "I considered that and gave decision." Ms C said she had been completely blindsided, in support of her submission that the case should be adjourned. The note of evidence then records Ms Brown saying "Madam this is the equivalent of R saying I'm going to scream and scream until I'm sick". She is refusing to engage with me on a LOI. She says she has to go off on legal research.

11. J - this situation has been created by you wanting to change the LOI. So, need to adjourn.

12. C - we are only adjourning because Ms C needs more time to prepare.

13. J - not professional to mimic Ms C.

14. C - apologies for mimicking Ms C. I have made a sensible suggestion…..B52.

15. Thereafter each side, at the invitation of the Judge made submissions as to whether the list of issues could be resiled from at all. At page B64 the Judge sets out the competing submissions and then announced that she would permit an amendment of two paragraphs of the LOI in the way she set out. At about 6.15pm the hearing was adjourned to the following day. (It should be noted that no written list had been submitted on behalf of the Claimant even by the end of the first day.)

16. On the second day Ms C started by saying that she was not in a position to start. No reasons had been given for allowing the amendment. Furthermore, she did not understand the contractual case being advanced. She elaborated on this asserting that part of the amendment allowed had not been pleaded and said she would appeal to the

EAT on allowing a new point when no amendment application has been made in relation to that point in the pleadings.

16. The note of evidence, taken by Ms Brown's instructing solicitor, then records the following exchange (original note reproduced):

17. "C – if R feels needs more detailed reasons, then normal course would be to require at end of events to provide full written reasons. Can't refuse to proceed until have been given adequate reasons, not how judicial process works. IF she feels hasn't got written reasons, she can make a full application and can be taken to another place. If she says not in position to proceed needs to make application to adjourn. If that application is made, I would urge you reject it, because as matter of common sense that not how the process works. You are entitled to case manage how cases work in front of you. Having shown great patience to both sides and allow both sides to show concerns they raised. You stayed till 6.15, this is what we decided, and we will get on. Learned Friend attitude of getting back to chambers and not being able to prepare, utterly untenable, having prepared case from May 2019 involved from outset, involved with LOI that was amended, she was involved with counsel previously would have understood scope involved, cannot see how R says she can't proceed. I think there is a fundamental, intellectual difficulty in understanding.

J – that is extremely insulting.

C – let me row back. Difficulty I have is that my learned friend saying.

J – very unprofessional behaviour, will make a note of that will be in my comment.

C - madam, all we need to do.

J – just pause please.

C – madam, the reason I made that observation.

J - which observation?

C – I know got off to got off to back foot, don't wish to insult LF. But LF says doesn't understand the contract claim. Difficulty I have with her making that assertion is that because in terms of how contract claim phrased in my respectful submission it couldn't

be simpler. It is R's case that in order for C to have been given a salary review in July 2017 she would have needed to have scored 3 or above in her H2 2016 appraisal. That is Rs case. Rs case therefore is contractual entitlement to that review /pay increase following that salary review was contingent on receiving a rating of 3 or above." B67

Ms C then asked for written reasons for the decision to proceed on the amended list of issues which she said also included something not pleaded. Ms Brown suggested that "a line be put through it" but Ms C said the Judge should reconsider her decision as it was prejudicial to her client. Ms Brown said that would constitute "unreasonable conduct" on the part of the Respondent. Ms Brown said Ms C would have to show it was in the interests of justice to reconsider her decision—

"If we look at even it is a reconsideration LF [learned friend] says she's going to have to convince you to reconsider of IOJ (interests of justice) to do so. Can't be because she doesn't like outcome or struggling to prepare or hasn't been able to get to grips with preparing the case.

R – I am really struggling to.

J – think you should apologise. You accused her yesterday of mimicking her.

R - I was also called a liar at one point.

J – I think you owe her an apology because of the conduct yesterday and this morning.

C – madam if she is struggling intellectually.

J - very offensive.

C - when counsel says struggling to understand what claim is about.

J – what the case is I think apology is due.

C - alright I will reflect on that.

J – this is not helping already a difficult situation. Behaviour by counsel not helpful at all. Have to make a note I asked you to apologise, and you refused / said you would consider it.

C – I haven't refused I said I will reflect on it.

J – I am looking at rule 73 which allows reconsideration on own initiative.

R - yes if you find you can't reconsider, we propose to appeal to the EAT.

J - I will consider whether or not to grant the application. Reconvene at 10.30am." (stet-pages B72-3).

18. When the hearing resumed at 11.02 Ms Brown said that having reflected "I accept your judgment (it) was offensive and insulting, didn't mean to cause offence, appreciate she is doing the best she could. I got carried away, still not appropriate."

19. It was at this point that the Judge announced that she had received a note from Ms C that she was not feeling well and was unable to continue the hearing. She said she was very disappointed with the way the case had proceeded over the two days and she would now vacate the hearing and in effect start again doing what she had "suggested" right at the beginning the previous morning. The case would be re-listed for CMD for 2 hours. In her note of the hearing, she intended to summarise the way the hearing had been conducted and "some forms of behaviour that have been unprofessional. My duty. Will be issued to you today." B75

20. After a short exchange with Ms W, Ms C's instructing solicitor, the Judge said "I have to say some behaviour I have witnessed have not seen before, not seen mimicking counsel. When pointed out apology was not immediately forthcoming."

21. Ms Brown said she did not agree with what Ms W had said namely that "it was abuse with the intention to break her down" saying "I think it is hysterical, overblown, overplayed and disproportionate and quite frankly doesn't do Ms W or counsel any credit. High drama and utterly unwarranted. Cut and thrust." To which the Judge said she did not agree and that it had been "very difficult for all parties due to constant insults."

22. The arguments continued until the hearing ended at 1pm. In the course of those arguments Ms Brown tried to persuade the Judge to continue the hearing saying "It is patently obvious that Ms W's submissions and those of counsel amount to no more than a wilful refusal, please record my words, a wilful refusal to accept the decision of this tribunal." B78 The Judge asked Ms Brown if there was any way she would reconsider her position and stick with the agreed list of issues, to which Ms Brown replied "my mouth is open---how can you ask that question. You have made a decision, we spent all day dealing with it and now, because the Respondent says doesn't like your decision… no madam, we will not." B79

23. The Judge made an order signed by her on 24 September revoking all orders made by her, vacated the hearing and listed it for a 2-day full merits hearing. In her Reasons she said: [original paragraph numbering retained from the Reasons]:

> "2. At the outset of the hearing, Ms Brown, counsel for the Claimant, who had been appointed approximately a week prior to the hearing to replace the Claimant's previous counsel, made an application to amend the List of Issues agreed by the Claimant's former counsel and counsel for the Respondent, Ms C. Ms Brown submitted that the reason why she wished the List of Issues to be amended was because the List included a section of "agreed matters." She submitted that there was no factual basis for making some of the concessions made by the Claimant in the list.
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> 3. Ms C had only learnt of this at 9.00pm the day before. She objected to the List of Issues being amended in any way. Ms Brown submitted that the hearing could commence even though the List of Issues was no longer agreed. I informed the parties that I only wished to start the hearing if the List of issues was agreed. I suggested that the full merits hearing be converted into a closed preliminary hearing to allow agreement of the List of Issues. This was objected to by Ms C.
>
> 4. I proposed an alternative list of issues which was not accepted by Ms C on the basis that the List of Issues had already been agreed.
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> 5. I therefore proposed that the case be adjourned to give the parties an opportunity to agree the List of Issues and a cost order be made against the Claimant (after I had heard submissions from both the Claimant and the Respondent), given that the

adjournment arose because of the Claimant's request to amend the List of Issues so late in the day.

6. Ms C submitted that the previously agreed List of issues could not now be amended. I then requested that both parties make submissions to me on the matter of whether a list of issues agreed between counsel, and which contained matters which were identified as "agreed "between the parties could be amended. Both counsel did so. I then ordered that, having read the pleadings, some amendments would be made to those matters which had been identified as "agreed".

7. On the second day of the hearing, Ms C submitted that she could not start the hearing based on the amended List. She requested a variation to my order. I requested that the parties prepare submissions for this application to vary my order under Rule 29, Employment Tribunals Rules of Procedure 2013.

8. Ms C did not return to the hearing due to feeling ill. Ms W, solicitor for the Respondent, requested an adjournment to the proceedings, stating that representation would be stepped down. Ms W was visibly distressed and then left the building.

9. The hearing was distressing primarily because of the conduct of Ms Brown, she spoke to Ms C in a very patronising manner and at one point called her a liar. She periodically spoke over both Ms C and myself. She mimicked the way Ms C was speaking and tried to make a mockery of her name. She also said at one point that Ms C was intellectually incapable of dealing with the issue. On each occasion, I asked Ms Brown to apologise and informed her that such behaviour was unprofessional and not permitted in my court room. Ms Brown apologised on the first day but refused to do so on the second day stating she would "reflect upon it". After an adjournment, she did apologise. This was after, however, Ms C had sent myself a note during the adjournment stating that she was not well due to the bullying and insulting behaviour of Ms Brown.

10. The solicitor for the Respondent, Ms W, did at one point also have an outburst towards Ms Brown. I asked her to address her points through Ms C. Ms W was also mimicked by Ms Brown.

11. At the point when the Respondent's representatives left the tribunal, I had no choice but to postpone the hearing.

12. 1 revoke my order amending the list of issues and relist the hearing to start from the beginning. This is in the interests of justice because:

12.1 I was distracted by the behaviour of Ms Brown and found it difficult to concentrate on conducting the hearing and to make decisions due to the very hostile atmosphere. My ability to make decisions was therefore possibly compromised.

12.2 We made very little progress during the two days and so the hearing would inevitably have been postponed part heard and so it is better to start afresh." B12

24. On 27 September Ms C made a complaint about Ms Brown's alleged behaviour to the Bar Standards Board. B1

25. On the 14 November 2019 the case came back to the ET, this time before Judge Wade. She dismissed the application to amend. She noted there was no new list before her. The list of issues agreed in May/July was sensible. Making agreements between the parties was "much encouraged by tribunals." The Claimant had been present when the list had been agreed. A new list was not in the interests of justice. The Claimant would not be successful on Gwent. Departing from the list agreed would cause considerable prejudice to the Respondent. Listed for a final hearing in March 2020.

In short, this decision by Judge W entirely vindicated the position taken by Ms C and demonstrated that the two days in September 2019 had been a complete waste of time and money.

26. In March 2020 Judge E heard evidence. The issues were those agreed by counsel in May/July 2019. That Judge found that there had been no appraisal meeting and the claim succeeded. The parties were each represented by different counsel.

27. At the start of the hearing before us, the BSB made an application to admit in evidence the statements of Ms W, Mr R and Ms G (formerly S) as hearsay evidence. The application was opposed. We were referred to and considered NMC v Ogbonna (2010), Thorneycroft v NMC (2014) and El Karout v NMC (2019). The scope of rule E166 is very wide. Each of these witnesses refused to attend the hearing. Ms W stated in an email

"…I thought I had made it unmistakably clear that I do not wish to stand as a witness in these proceedings nor do I want my statement to be relied on as hearsay evidence…" Her evidence was decisive in relation to the allegation in Charge 1(d) and 3(d). Mr R said "I am deciding to withdraw my witness statement at this stage, this has gone on for far too long and I am no longer in a position to continue" Ms G said "I am withdrawing my participation….I have nothing further to add on the subject and if I can please request there are no further communications from you on this subject." The BSB did not apply for witness summonses. Our decision was that we would admit them for what they were worth, this evidence, generally speaking, was not sole or decisive, the weight to be attached to the statements was very much for us to decide and we had fairness to Ms Brown very much in mind particularly since the witnesses were refusing to come and could not be cross-examined. In the event we ignored these statements in coming to our decision.

28. Ms C gave evidence by video link. We found her to be reliable and credible and accepted her evidence in its entirety. In relation to the second day, she said: "I felt I could not continue as I had been subjected to so many nasty comments."

29. Ms Brown was subdued in giving her evidence and had to be asked to speak up on many occasions which contrasted with the evidence of Ms W at D19 where she wrote, in relation to whether she heard the word "liar", that she never heard her say that and that she could hear everything she said, "as she speaks clearly." In relation to her apology for mimicking Ms C she said it was in the context of her refusing "to sit down and agree a new list of issues." Regarding the comment about "fundamental intellectual difficulty in understanding" she said she did not think she had phrased it very well. She agreed she had not challenged the assertion that she had called Ms C a liar. "I was taken aback by being told I called her a liar." The fact that the two days were a waste of time, was not her fault. She was devastated when she got the Judge's reasons. "it is extraordinary for a Judge to write that without my being able to comment." However, the fact is that the Judge did make comments about the way she perceived Ms Brown to be behaving and did say that she was making a note of it all.

30. Mr A gave evidence. He had been the claimant's trade union representative. He was critical of Ms C's behaviour describing it as inappropriate and that she was being rude to the Judge. He thought all three, counsel and Ms W, were behaving in a way he would

not have expected. We felt he was very partisan and decided he had not heard or seen as much as the Judge had.

31. Ms S had said in her witness statement that she did not observe or consider any behaviour of Ms Brown to be insulting or humiliating towards Ms C---during the hearing. Plainly the Judge thought otherwise, and Ms S's own note somewhat belies this assertion. In relation to the word "liar" she said, "I can't completely deny that I missed it" but "I think Ms C thought Ms Brown said she had misled the court and took that as being called a liar." She accepted she was not able to take a complete note.

32. Ms W gave evidence. In an email of 22 October 2019 (D23) she wrote "..I found Althea very professional and knowledgeable while A was just trying to be obstructive which is no surprise to me….No wonder Althea made that remark about the A barrister's intellectual ability after she constantly repeated—I do not understand…..I have not seen Althea mimicking anyone" she said she did not recall the word liar ever being used during the hearing. "It would have been shocking for me so I would have remembered it. I was listening to everything that was going on." She said she felt that Ms C was trying to be obstructive, "she was apparently not understanding, in my opinion she did understand but was trying to be obstructive." She did not agree that the application to amend was sprung on ATOS at the last moment.

33. In general terms we believe that the shared belief of Ms Brown's witnesses that Ms C and Ms W were being obstructive has affected their perception, honestly held, of what was said or done by Ms Brown.

34. The standard of proof is the civil standard.

Findings

We were unanimous in all our findings and decisions.

35. The allegation, 1(a), 2(a) and 3(a), that Ms Brown called Ms C a liar or alleged that she had made an untruthful statement to the tribunal is proved. We accept Ms C's evidence, also, we have the notes of evidence and the Judge's reasons. There is no reason why the Judge would have recorded this in her reasons unless it had happened. We reject the suggestion made by counsel that the Judge could have got it from Ms C saying, "She called me a liar" and turned the assertion into a fact. It is in our judgment significant

that when this assertion was made (B72) it was not contradicted by Ms Brown. We reject Ms Brown's denial of having used the word or something to similar effect. At that moment in the hearing Ms Brown was seeking aggressively to cast doubt on the credibility of Ms C's reasons for being unable to continue with a merits hearing. Neither Mr R nor Ms W heard the word or anything to like effect being said. Ms W asserted that no one used the word liar at any time but is plainly contradicted by the note of evidence. Mr R conceded that but for his attention being drawn to B72 he would not have remembered that exchange. It is more than likely that they missed it. In any event they each thought Ms C was being obstructive in her reasons for not being able to continue with the hearing.

36. We are sure that Ms Brown mimicked and/or mocked Ms C by altering her tone of voice, 1(b)(i) and 3(b)(i). apart from Ms C the Judge said so and Ms Brown apologized for doing so (B52).

37. Ms Brown admitted using the words "I'm going to scream etc." 1(b)(ii) and 3(b)(ii), we find that in using those words Ms Brown was implying that Ms C was behaving in a childish and petulant way in order to get her own way.

38. We decided there was insufficient evidence for us to reach a conclusion as to 1 and 3 (b)(iii) and (iv).

39. We found 1(c), 2(b) and 3(c) proved as to the assertion of a "fundamental intellectual difficulty" to grasp the case being put by Ms Brown. It was admitted to have been said by Ms Brown, the notes show it to have been said and the Judge's response emphasizes it.

40. 1(d) and 3(d) we did not find proved. This allegation related to Ms W only and her evidence was the decisive evidence for it. She had refused to give evidence, could not be cross-examined and in circumstances where she, the alleged victim, was not supporting the allegation we would not consider it.

41. In relation to allegations in 1(e) and 3(e) without a tape recording it is difficult to reach firm conclusions. In any event gesturing can be a more theatrical style of advocacy, sighing, if it happened, unfortunately is fairly commonplace. As to 1(f) and 3(f) of which there was an example at B70, by the end there was a lot of speaking over other

participants. As for 1(g) there was one direct reference to Ms Brown's years of practice and one inferred reference to her seniority. In the scale of things these are if anything fairly venial matters and certainly not serious professional misconduct, even if part of a pattern of behaviour as alleged by the BSB.

The Charges and Professional Misconduct

42. Charge 1 alleges a breach of a barrister's duty to the court in the administration of justice. The Respondent's behaviour did undermine Ms C, leading ultimately to her leaving the hearing, as we find, due to the behaviour of the Respondent in the ways we have found to be proved. There is no doubt whatsoever that her behaviour did distract the court in carrying out its function. That the two days proved to be upsetting to all concerned and a total waste of time and money was due to over-aggressive and offensive behaviour of the Respondent. It was serious professional misconduct in our judgment.

43. We were referred to and considered Alister Walker v Bar Standards Board 19/9/13, a decision of Sir Anthony May and two other visitors to the Inns of Court. Mr Walker had asked a question imputing dishonesty in the witness without a proper basis in his instructions or arising out of other evidence for doing so; and second, he should have sought the court's leave to put a question imputing theft and thereby impugning the witness's character under section 100 of the Criminal Justice Act 2003. The facts were not in issue, the question was whether his conduct amounted to professional misconduct. Reference was made to the useful, as we think, opinion of Lord President (Emslie) in Sharp v The Law Society of Scotland [1984] SC 129 where he said at pages 134 and 135: "There are certain standards of conduct to be expected of competent and respectable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorized as professional misconduct." So, the failure to comply with the recognized standards of behaviour must be serious to amount to professional misconduct.

43. In our judgment the matters we have found proved were seriously reprehensible and did represent a course of conduct throughout the hearing which was serious professional misconduct in the context of Core Duty 1. Ms Brown's behaviour crossed the line of seriousness and Charge 1 is therefore proved.

44. Charge 2 concerns Core Duty 3 and/or rC8 of the Conduct Rules and alleges a failure to act with integrity and/or behaviour which could reasonably be seen by the public to undermine the Respondent's integrity. We were referred to Solicitors Regulation Authority v Wingate [2018] 1WLR 3969 in particular paragraphs 95 to 102. Although integrity is a broader concept than honesty, it is a more nebulous concept. It is useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members, namely adherence to the ethical standards of one's own profession. However, "neither courts nor professional tribunals must set unrealistically high standards…The duty of integrity does not require professional people to be paragons of virtue." In BSB v Howd [2017] EWHC210 (Admin) at paragraphs 43 to 46 there was a discussion as to the meaning of integrity, which concluded that "integrity" took its colour from the term "honesty" and connoted probity and adherence to ethical standards, not inappropriate and offensive social…behaviour. Ms Brown believed that Ms C was making excuses in order to justify the hearing being adjourned, a course which might lead to Ms Brown's client having to pay the costs thrown away. She could not accept that Ms C's declared inability to understand the case being advanced by Ms Brown was genuine or if it was then she had a "fundamental intellectual difficulty." We have no difficulty in identifying Ms Brown's words as offensive and insulting and as serious misconduct for the purpose of charges 1 and 3 but we have struggled to find this to be professional misconduct contrary to Core Duty 3 and/or rC8 of the Conduct Rules. We dismiss this charge

45. Charge 3 alleges a breach of Core Duty 5 and/or rC3.2 and/or rC7, namely, behaviour likely to diminish the trust and confidence which the public places in her or the profession, and/or abusing her role as an advocate at the hearing. The "other person" being Ms C whom she undermined, insulted and annoyed and, in doing so, acted unprofessionally. Her conduct would undoubtedly diminish public trust and confidence in her or the profession. Given our findings of facts we are unhesitatingly of the view that this charge is proved and that this breach of Core Duty 5 and of the rules amounted to serious misconduct.

Sanction and Reasons

46. The Respondent is being sanctioned pursuant to two findings of misconduct made after a contested hearing on the 15 December 2021, relating to her behaviour towards her opponent in court in September 2019. The Sanctions Guidance Version 6 came into

effect on the 1 January 2022 with retrospective effect. We have therefore followed the 5-step process required by Version 6 as set out below. Submissions were made as to whether the appropriate sanctions guidance should be Version 5 given that this case, but for various delays would have been concluded long before the 1 January 2022. Regardless of which version should apply for the actual sanctions in this case, we have no doubt that there has been a step-change in the approach to be taken towards the determination of sanctions and that that new approach should be adopted now regardless of when a case may have started life or may have been otherwise concluded. Our view as to the sanctions guidance applicable to this case is that Version 6 should now be followed. However, fairness is a factor which dictates the sanctions to be applied and that may require consideration in appropriate cases of what the sanction might have been under an earlier version. In any event, whichever Version is used the guidance is just that, guidance. The Guidelines are not tramlines as has been said in the context of the Criminal Sentencing Guidelines.

A. Determine the appropriate applicable Misconduct Group for the proved misconduct as set out in Part 2.

In our judgment it is Group I "behaviour towards others" which best reflects the nature and gravity of the misconduct as charged and proved, however, there are elements of Group G, "Administration of Justice", and Group C, "Discrimination, non-sexual harassment and bullying," which are relevant for the reasons set out in the second step and therefore we read them across as paragraph 3.7 of the Guidance requires us to do. The involvement of these two other groups aggravates the seriousness of the Group I misconduct. Specifically charge 1, breach of Ms Brown's duty to the court by bullying behaviour towards her opponent engages Groups C and G. Whereas charge 3, undermining her opponent and diminishing trust and confidence in the profession is primarily in Group I.

B. Determine the seriousness of the misconduct by reference to culpability and harm factors.

The Judge in her reasons at paragraph 9 said that the hearing had been "distressing primarily because of the conduct of Ms Brown." At paragraph 12 she said, "I was

distracted by the behaviour of Ms Brown and found it difficult to concentrate on conducting the hearing and to make decisions due to the very hostile atmosphere."

Although the Respondent's misconduct consisted of her behaviour towards her opponent, it did obstruct the administration of justice in that the hearing which lasted at least 1.5 days was a complete waste of time and money largely because of her behaviour. Eventually at the next hearing another Judge dealt with the application made by Ms Brown to amend the previously agreed list of issues, by refusing the application. The person who made the complaint to the Bar Standards Board about Ms Brown was her opponent, not the Judge. We have been referred to the case of BSB v Marguerite Russell PC2017/0170/D5, but that case concerned rude, disruptive and unpleasant behaviour directed at a trial Judge and, also admissions were made by Ms Russell at the outset. We consider that it is of no significant relevance to the appropriate sanction in this case. We accept that counsel on the opposite side to Ms Brown was so distressed by Ms Brown's behaviour that she felt unable to continue with the case on the second day and withdrew in the course of the morning. This was actual harm caused by the misconduct. It is noteworthy that Ms Brown's opponent was 22 years junior to her in call. In our judgment Ms Brown, not having provided any written document showing exactly what amendments she wished to make to the list of issues previously agreed between counsel then acting for each side, adopted an aggressive and disruptive approach to get the result she wanted for her client, an approach which got out of hand. It was conduct verging on bullying. The Respondent's conduct was deliberate in order to achieve her aim. Although both counsel were experienced in the Employment Tribunal there was a very significant difference in call between the complainant, called in 2017, and Ms Brown, called in 1995.

C. Determine the indicative sanction level for the proved misconduct.

We are required to identify the least severe sanction which is proportionate to the seriousness of the offence. In our judgment the guideline sanction which meets this requirement is "advice as to future conduct/reprimand to low level fine." If it were Version 5 which we were to apply then it would come under C.8 -a repeated pattern of discourtesy against a background of repeated warnings or interventions from the Judge, the discourtesy of course being primarily directed against her opponent. This would give rise to a starting point of a reprimand accompanied by a medium level fine. If it were

Version 5 and C8 which were to dictate the appropriate sanction the majority, if not all of the aggravating factors would be engaged in varying degrees.

D. Apply aggravating and mitigating factors.

One of the Respondent's witnesses, Mr A, said that when there was a break in the proceedings on the second day and the Claimant, her witnesses and Ms Brown spoke together, Ms Brown asked whether she needed to apologise. We deduce from this that she was to some degree oblivious to the manner in which she had behaved and its effect. It is true that she apologized when the hearing resumed but it was not exactly a sincere apology, more a token apology in our view. In fact, by then her opponent had left. On the same day the Judge invited Ms Brown three times to apologise for what she was saying to which Ms Brown said she would "reflect" on that request. The Judge then said, "I asked you to apologise, and you refused/said you would consider it." Ms Brown's response was to say, "I haven't refused I said I would reflect on it." The Respondent does not appear to have understood or taken seriously the impact her behaviour was having on her opponent and for that matter on the Judge. Similarly, counsel for the Respondent relies on an apology made through the Respondent's solicitors in a letter sent on 2 June 2020, long after the proceedings had been put in train. Again, this was more in the nature of the solicitors doing what they thought the Respondent should be seen to be doing. A sincere apology might have been a personal letter from Ms Brown to her opponent apologizing for her behaviour before the proceedings were started. Accordingly, we find that there was a lack of genuine remorse.

We received one reference from Ms Brown's head of chambers, who stated as follows,

"I have known Althea Brown for some 25 years since she first joined our Chambers in 1995. I wish to attest to Althea Brown's long and valued contribution to our Chambers, her commitment to securing fair treatment for our younger members and employees, and her dedicated, and impressive, work advancing the cause of equality and diversity in Chambers both as a member of the Management Committee, and as part of the Committee for Equality and Diversity. She is someone who always goes the extra mile for others.

Althea Brown is a person of strong principles and of generous spirit. She deeply cares about the needs and problems of others, and she wears her heart on her sleeve. I have

read the judgment of the Board, and I, of course, respect its findings. But I would respectfully ask the Board to take account of my own view that it is out of character for her to have been overbearing in her dealings with a professional colleague. On the contrary, she is a person who may be forthright in expressing her views but who is fair, considerate and kind to others."

We accept that the matters that have been proved were out of character. The Respondent co-operated with the investigation and admitted some of the matters alleged, although in truth that which was admitted was what had been recorded in the note of the proceedings in the Employment Tribunal and left little scope for disagreement. The previous matters known, or breaches concern a failure to pay her BMIF premium in July 1999, and a failure to provide details of her completing the CPD requirements in January 2009. These matters are not similar misconduct, so we treat the Respondent as someone with no relevant record of misconduct. The allegations have been hanging over the Respondent since October 2019. A public finding of misconduct for a barrister of 25 years call carries with it its own stigma and we take that into account.

E. Consider the totality principle and determine the final sanction(s);

The two charges which have been proved, failure to observe her duty to the court in the administration of justice, and behaviour in a way likely to diminish the trust and confidence the public places in the profession, rely on exactly the same misconduct. Accordingly, the two charges involve different forms of misconduct arising out of the same facts that we found to be proved. Group G would not strictly be relevant to the second charge we found proved.

Sanctions Version 6 indicates a low-level fine is up to £5,000.

In our judgment the appropriate sanction is that the Respondent will receive a Reprimand from this Tribunal and must pay a fine of £750 on each charge, therefore £1500 in total. It is important in this context to remind ourselves of the stigma the findings of misconduct and the reprimand carry with them The BSB has asked for its costs in the sum of £6270. However, at the hearing it increased the figure to £7,170. There was no hearing in fact on the 8 February 2022 as it had been adjourned for good reasons, so we deduct the fee for that day and reach a figure of £5,820 including VAT.

There has been no evidence of any inability to pay any particular amount and therefore we order the Respondent to pay the costs incurred by the BSB in prosecuting this case in that amount.

Althea Sonia Brown has been reprimanded by this Tribunal in respect of her behaviour on each of the two charges and shall pay a fine of £750 on each of the two charges to the Bar Standards Board within 28 days of the expiry of time for appealing or the expiry of any appeal hearing.

Approved: 25 March 2022

His Honour Witold Pawlak
Chairman of the Tribunal