



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2019/1250/D3

David Thomas Osborne

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of Gray's Inn

Disciplinary Tribunal

David Thomas Osborne

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 December 2021, I sat as Chairman of a Disciplinary Tribunal on 17 January 2022 and 29 March 2022 to hear and determine five charges of professional misconduct contrary to the Bar Standards Board Handbook against David Thomas Osborne, barrister of the Honourable Society of Gray's Inn.

Panel Members

2. The other members of the Tribunal were:

Geoffrey Brighton (Lay Member)

Siobhan Heron (Barrister Member)

Charges

3. The following charges were admitted.

Charge 1

Statement of Offence

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Professional misconduct, contrary to rule C73 of the Code of Conduct (9th edition, Bar Standards Board's Handbook - Version 3.0).

Particulars of Offence

Between 22 April 2017 and 27 April 2017 David Osborne, a barrister, received and/or handled client money that was not paid to him for his services, in that:

(1) on 22 April 2017, David Osborne requested a payment of £1000, in a letter to his direct access client, SW, but did not indicate what the payment was for in clear terms for the client; (2) on 27 April 2017 David Osborne received £1000 from his direct access client, SW, with no indication of what the payment was for or an indication that it was a fixed fee payment in advance of services.

Charge 2

Statement of Offence

Professional misconduct, contrary to rule C19.4 of the Code of Conduct (9th edition, Bar Standards Board's Handbook-Version 2.2 - 3.0).

Particulars of Offence

Between 3 March 2017 and 28 April 2017, David Osborne, a barrister, misled or permitted to be misled, his direct access client, SW, about the extent to which he was able to supply legal services and conduct litigation, in that:

(1) on 3 March 2017, David Osborne sent SW his terms of agreement and failed to advise the lay client in clear and readily understandable terms that he was not authorised to conduct litigation;

(2) on 27 April 2017, David Osborne filed an application on behalf of his direct access client, SW, in Wandsworth County Court and served it on the other parties.

Charge 3

Statement of Offence

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Professional misconduct, contrary to Core Duty 10 and rule S6 of the Code of Conduct (9th edition, Bar Standards Board's Handbook-Version 3.0).

Particulars of Offence

David Osborne, a barrister, on 26 April 2017, failed to take reasonable steps to manage his practice in such a way as to achieve compliance with his regulatory and legal obligations, and carried out a reserved legal activity that he was not authorised to carry out, namely the conduct of litigation, in that:

- (1) on 27 April 2017, David Osborne filed an application with Wandsworth County Court for an adjournment;
- (2) David Osborne served copies of the application in particular (1) above on other parties on behalf of his direct access client, SW.

Charge 4

Statement of Offence

Professional misconduct, contrary to rule C73 of the Code of Conduct (9th edition, Bar Standards Board's Handbook - Version 3.0).

Particulars of Offence

Between 26 April 2017 and 27 April 2017, David Osborne, a barrister, handled and/or controlled client money in that:

- (1) on 26 April 2017, David Osborne paid a £100 fee to Wandsworth County Court on behalf of his direct access client, SW;
- (2) on 27 April 2017, David Osborne deducted the fee of £ 100 paid on behalf of SW to Wandsworth County Court on 26 April 2017 from monies SW paid to him on 27 April 2017.

Charge 5

Statement of Offence

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Professional misconduct, contrary to rule C64 of the Code of Conduct (9th edition, Bar Standards Board's Handbook - Version 4.4).

Particulars of Offence

Between 6 March 2020 and 9 July 2020, David Osborne, a barrister, failed to promptly provide information to the Bar Standards Board that it required of him, in that:

(1) David Osborne failed to provide comments and information relating to an investigation by the Bar Standards Board, initially by 30 March 2020 but extended to 9 July 2020, that was requested on:(1.1) 6 March 2020; (1.2) 11 March 2020; (1.3) 23 March 2020; (1.4) 24 March 2020; and (1.5) 2 July 2020.

(2) David Osborne declined to provide a copy of the client care letter to his direct access client,

SW, that was requested on 5 June 2020 and was due by 12 June 2020.

(3) on 6 July 2020, David Osborne emailed the Bar Standards Board asking to 'hear no more of this' in relation to the investigation.

Parties Present and Representation

4. The Respondent was not present but was represented by Paul Parker of Counsel. The Bar Standards Board ("BSB") was represented by Priya Khanna of Counsel.

Preliminary Matters at the 17 January 2022 hearing

Application to Proceed in the absence of the Respondent

5. Prior to the hearing medical evidence had been served by David Osborne and on his behalf.
6. David Osborne did not attend the proceedings and had voluntarily absented himself. On behalf of David Osborne, Mr Parker applied for the proceedings to proceed in the absence of the Respondent. This application was on notice to the Bar Standards Board.
7. Mr Parker submitted: (i) that the proceedings can and should proceed given the medical reason for David Osborne's absence. (ii) David Osborne was properly served with the

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notice of the proceedings and the case papers, his lawyers were fully instructed and were able to respond to each stage of the proceedings. (iii) He did not apply for an adjournment. (iv) It was just to proceed in David Osborne's absence given his ill health and medical condition.

8. Mr Parker relied upon the fact that David Osborne having suffered a stroke in October 2020, continues to suffer from ill health. Most recently on 8 December 2021, David Osborne underwent surgery to repair an aortic aneurysm. He is currently recuperating from that operation and his next medical appointment to assess his condition was to take place on 26 January 2022. David Osborne is 78 years of age.
9. We considered the supporting medical evidence that was provided at J17-19.
10. The BSB did not object to the application or apply for an adjournment given the circumstances of this case.
11. Rule rE183 states that where the Respondent has not attended at the time and place appointed for the hearing, the disciplinary tribunal may nevertheless, subject to compliance with rE234, in respect of that Respondent, proceed to hear and determine the charges or applications relating to that Respondent, if it considers it just to David Osborne to do so and is satisfied that the relevant procedure has been complied with that is, the Respondent has been duly served in accordance with rE249 of these regulations with the documents required.
12. We also considered the case of *R. v Jones* [2002] UKHL 5; [2002] 2 Cr. App. R. 9 in which various factors were set out when assessing the "overall fairness" of a trial taking place in the absence of an accused.
13. We were satisfied that it is just to proceed with the 17 January 2022 hearing in the absence of David Osborne, given all the circumstances of these proceedings. We considered in particular that David Osborne was represented by counsel who was fully instructed in the matter. We anticipated that the charges were to be admitted in full and that therefore no live evidence was to be heard or to be given by David Osborne (or anyone else) in relation to the proceedings.

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14. We were satisfied that David Osborne would suffer no unfairness or prejudice if the proceedings continued in his absence. We also did not consider that the BSB would suffer any unfairness or prejudice if the case was to proceed in this way. This was the unanimous decision of the Panel.

Application to Admit David Osborne's evidence as hearsay.

15. On David Osborne's behalf there was an application to admit David Osborne's evidence pursuant to rE166. This took the form of David Osborne's witness statement and Respondents' answers, and some medical evidence.
16. We had already decided that it was just for the case to proceed in the absence of David Osborne for the reasons already given.
17. Mr Parker submitted: (i) Mr Osborne's state of health prevented his attendance, and Mr Osborne admitted all the charges. (ii) His witness statement did little more than to put some flesh on the bones of his formal answer and to give some chronological context both to the matters alleged against him (which he admitted) and to the relevant parts of the chronology prepared from the documents and relied upon by the BSB. (iii) Given the admission of the charges by David Osborne, the BSB would suffer no unfairness or prejudice by the admission of the evidence as they are able to make submissions as to weight as applicable during the course of the proceedings.
18. The BSB did not object to the application but submitted that what weight may be attached to the evidence would be a matter for the Tribunal and there cannot be any challenge or cross examination.
19. We decided that the evidence should be admitted in writing and so we admitted the Respondent's hearsay evidence to the charges, provided on the 12th of January 2021 by email, along with his witness statement dated 12 November 2021 and the supporting medical evidence, these documents having already been filed in the bundle at J1-5 and 6-19. This was the unanimous decision of the Panel.

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Pleas

20. All five charges were admitted by the Respondent.

Evidence

21. Mr Osborne was called to the Bar at Gray's Inn on 18 July 1974 [BSB/ Letter re Certificate of Call/A5] and authorised to accept public access instructions on 26 April 2005.
22. The Panel heard the opening of the case by the BSB, the BSB's submissions, and submissions from Paul Parker. The Panel considered the evidence provided in support of the offence charged, as relied on by the BSB and placed before the Panel in support of the charge. The Panel considered the Respondent's evidence admitted as hearsay and the written admissions as to the factual matters. The Panel considered the bundle of documents provided.

Legal Framework

23. We were required to consider whether we were satisfied that the charges were sufficiently serious to meet the high threshold of professional misconduct having considered BSB v Howd 2017 EWHC 210(Admin) and Khan v BSB [2018] EWHC 2184 (Admin)].
24. We were assisted by the written and oral submissions of both parties. The legal framework was agreed by both parties.
25. The conduct alleged in Charges 1-4 took place in 2017 and the Tribunal had to be satisfied there was evidence of professional misconduct to the criminal standard of proof i.e. beyond reasonable doubt (rE261A Disciplinary Tribunal Regulations, "DTRs").
26. Charge 5 arises from conduct after 1 April 2019 and the civil standard of proof applies i.e. on the balance of probabilities (that it is more likely than not) (rE164 and rE261 DTRs).

Background Findings

27. By way of background, we found as a fact the following:
 - (1) These proceedings arose from David Osborne's conduct in 2017, in the course of carrying out instructions on behalf of SW (a client). The instructions were received

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on a direct or public access basis, in an ultimately unsuccessful clinical negligence claim.

- (2) The Public Access Scheme Guidance for Barristers [January 2016] provides guidance on the interpretation of the BSB Handbook and good practice.
- (3) S12-14 Legal Services Act 2007, restricts the conduct of litigation to those who are authorised to do so. At the material time, David Osborne was not authorised to conduct litigation [BSB/Email from Authorisation Department Confirming B is not Authorised to Conduct Litigation/ C232-C234; BSB/ Summary of Allegations and Supporting Documents Including Guidance/C13].
- (4) On 3 March 2017, David Osborne sent SW his terms of agreement and failed to advise his lay client, SW, in clear and readily understandable terms that he was not authorised to conduct litigation (Charge 2).
- (5) On 22 April 2017, David Osborne wrote a letter to SW and requested a payment of £1000 “on account”. He did not indicate what the payment was for in clear terms to the client (Charge 1). The reason given for the requested payment was that “much [had] been done” since the last payment. There was no indication what services the payment was specifically for or an indication that the money was intended to be a fixed fee paid in advance.
- (6) On 26 April 2017: David Osborne filed an application on behalf of SW, in the Wandsworth County Court. The application was for an extension of time (Charges 2 & 3). Thereafter on the same day David Osborne served copies of the application on other parties on behalf of his direct access client, SW (Charge 3).
- (7) In relation to the application, David Osborne paid a £100 fee to Wandsworth County Court on behalf of his direct access client SW (Charge 4).
- (8) On 27 April 2017 David Osborne received £1000 from SW, with no indication of what the payment was for or an indication that it was a fixed fee payment in advance of services (Charge 1).
- (9) On the same day David Osborne deducted the fee of £ 100 paid on behalf of SW to Wandsworth County Court on 26 April 2017 from monies SW had paid to him on 27 April 2017 (Charge 4).
- (10) On 28 April 2017 David Osborne wrote to SW and confirmed service of documents on another party and that he had issued the application. He also confirmed he had paid the court fees (Charges 2,3, & 4).

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- (11) Thereafter between 6 March 2020 and 9 July 2020, David Osborne failed to promptly provide information to the Bar Standards Board that it required of him (Charge 5). 5 requests are particularised in the charge spanning a period of almost 4 months. The relevant correspondence included the following:
- (a) On 6.3.20: BSB wrote to Mr Osborne with a summary of allegations, supporting documents and request for a response to the alleged breaches of the Handbook by 30 March 2020.
 - (b) Following further correspondence from David Osborne a reminder was sent by the BSB on 23.3.20.
 - (c) On 5.6.20: Email from BSB to Mr Osborne requested a copy of the client care letter provided to SW – no later than 12 June 2020 and reminding Mr Osborne that he had not provided a response to the allegations as required under rC64.
 - (d) During this period and beyond David Osborne and the BSB were engaged in correspondence relating to a complaint that had been made to the Legal Ombudsman Service (LoB), which the BSB had indicated did not prevent David Osborne from answering their requests for comments and information relating to its investigation that were required by 30.3.20 and later extended to 9.7.20. and finding that had been made.

28. We have not referred to every piece of correspondence and every event in the chronology in this ruling.

Submissions

29. The BSB submitted that:
- (1) David Osborne’s conduct amounted to professional misconduct.
 - (2) There has been serious and flagrant disregard for the rules.
 - (3) David Osborne was aware at all times of the need to inform himself of the Direct Access Guidance, having been instructed on a direct access basis by his client.
 - (4) David Osborne completely disregarded the requirements and restrictions placed upon him.
 - (5) The guidance is very clear, and David Osborne chose to disregard the rules.
 - (6) David Osborne’s own correspondence did not sit with and was not consistent with his later actions handling client money and conducting litigation.

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(7) It was clear what information was needed by BSB when it conducted its investigation, and his attitude was of indifference, and he had no intention to assist.

30. Mr Osborne submitted:

(1) Whilst admitted that the conduct in respect of each charge amounts to professional misconduct, in terms of gravity, this is not a case of routine behaviour or deliberate breaches.

(2) The conduct was one of oversight with the way David Osborne asked for money from his client.

(3) In the emergency situation that the client faced, David Osborne filed the application, in what was an unusual one-off circumstance.

31. We then dealt with each charge, but we grouped together as charges 1 and 4. This appeared to us convenient on the facts given the way the charges were linked.

Charges 1 and 4

32. Charge 1 (receiving and handling client money). In relation to this charge, we found that:

(1) Between 22 April 2017 and 27 April 2017 David Osborne received and/or handled client money that was not paid to him for his services, in that:

(a) on 22 April 2017, he requested a payment of £1000, in a letter to his direct access client, SW, but did not indicate what the payment was for in clear terms to the client; and

(b) on 27 April 2017 David Osborne received £1000 from SW, with no indication of what the payment was for or an indication that it was a fixed fee payment in advance of services.

(2) This was a clear and obvious breach of the rule by a very experienced barrister who has conducted a significant amount for direct access work having been authorised in 2005 for such work.

(3) David Osborne knew the requirements rC73 of the Code of Conduct (9th edition, Bar Standards Board's Handbook - Version 3.0), because he had already adhered to this rule on 3.3.17.

(4) David Osborne, by using the request for payment "on account" on 22.4.17, chose to request client money which he knew he was prohibited from doing. We reject that some of his conduct was an oversight or reckless.

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- (5) We accepted the BSB submission: The regulatory requirement to explain why fees are being charged do not operate retrospectively. There has to be “agreement in advance and on clear terms” (paragraph 49, BSB Public Access Guidance for Barristers) [BSB/Summary of Allegations and Supporting Documents Including Guidance/C33]. This is to ensure that lay clients who do not have a solicitor instructed are clear as to what they are paying for and for the barrister to ensure they are properly keeping account for the legal services/advocacy they are providing.
 - (6) We took into account that the charge had been admitted by David Osborne. We were satisfied that the charge was sufficiently serious to meet the high threshold of professional misconduct having considered *BSB v Howd* 2017 EWHC 210(Admin) and *Khan v BSB* [2018] EWHC 2184 (Admin)]. We found the charge proved to the criminal standard. This was a unanimous finding by the Panel.
33. Charge 4: (what David Osborne did with the client money). In relation to this charge, we found that:
- (1) This was a further breach of rC73 of the Code of Conduct (9th edition, Bar Standards Board's Handbook - Version 3.0). Between 26 April 2017 and 27 April 2017, David Osborne handled and/or controlled client money in that:
 - (a) on 26 April 2017, David Osborne paid a £100 fee to Wandsworth County Court on behalf of his direct access client, SW;
 - (b) on 27 April 2017, he deducted the fee of £100 paid on behalf of SW to Wandsworth County Court on 26 April 2017 from monies SW paid to him on 27 April 2017.
 - (2) David Osborne, in his letter of 28 April 2017 thanked SW for her cheque payment from 27 April 2017. He went on to state, in relation to the public access work he had conducted at Wandsworth County Court on “Wednesday”, “I also paid the court fee of £100” in the context of an application to adjourn the case “for further time to prepare” her “claim”. Mr Osborne went on state “I am charging you...the court fee of £100”.
 - (3) Having obtained the money on account in breach of the rules, David Osborne had then gone on to use the money in breach of the rules.
 - (4) Furthermore, he had failed to inform SW of how he was using the money held by him.

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- (5) David Osborne must have known that he had failed to “demonstrate that the agreement was made in advance and on clear terms and that the client fully understands the implications”. As required by: [BSB/...Guidance/C33].
- (6) This was a clear and obvious breach of the rule by a very experienced barrister who had conducted a significant amount of direct access work having been authorised in 2005 for such work.
- (7) We took into account that the charge had been admitted by David Osborne. We were satisfied that the charge was sufficiently serious to meet the high threshold of professional misconduct having considered *BSB v Howd* 2017 EWHC 210(Admin) and *Khan v BSB* [2018] EWHC 2184 (Admin)]. We found the charge proved to the criminal standard. This was a unanimous finding by the Panel.

Charge 2

34. Charge 2: We found in relation to this charge:

- (1) David Osborne had breached rule C19.4 of the Code of Conduct (9th edition, Bar Standards Board's Handbook-Version 2.2 - 3.0). Between 3 March 2017 and 28 April 2017, David Osborne misled or permitted to be misled, his direct access client, SW, about the extent to which he was able to supply legal services and conduct litigation, in that:
 - (a) on 3 March 2017, David Osborne sent SW his terms of agreement and failed to advise the lay client in clear and readily understandable terms that he was not authorised to conduct litigation; and
 - (b) on 27 April 2017, he had filed an application on behalf of his direct access client, SW, in Wandsworth County Court and served it on the other parties.
- (2) David Osborne's conduct was in breach of rule C19.4 on two occasions over several weeks.
- (3) David Osborne's terms of agreement letter did not mention any restriction or limitation on his entitlement to provide legal services. It did not, state, in “clear and readily understandable terms”, that he had not been permitted to conduct litigation in particular.
- (4) The content of the 28.4.17 letter at C5 – explaining the litigation he had carried out, which he was unauthorised to do, was clearly misleading as it gave the impression to any reasonable reader that was able to conduct litigation.
- (5) David Osborne did not adhere to the clear and unambiguous requirement of rC19.4.

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- (6) David Osborne, in serving documents in the County Court and on the defendants in the substantive matter, did not adhere to the terms of his own engagement letter of 3 March 2017, “if for any reason I cannot carry out all the work you are instructing me to do...I shall inform you”. Thus, the direct access client remained ignorant of the fact that Mr Osborne could not act in the manner that he did in pursuit of her claim.
- (7) David Osborne failed on several opportunities between 3.3.17 and 28.4.17 to inform SW of the fact he was not authorised to conduct litigation.
- (8) We took into account that the charge had been admitted by David Osborne. We were satisfied that the charge was sufficiently serious to meet the high threshold of professional misconduct having considered *BSB v Howd* 2017 EWHC 210(Admin) and *Khan v BSB* [2018] EWHC 2184 (Admin)]. We found the charge proved to the criminal standard. This was a unanimous finding by the Panel.

Charge 3

35. Charge 3. We found in relation to this charge that:

- (1) David Osborne breached Core Duty 10 and rule S6 of the Code of Conduct (9th edition, Bar Standards Board's Handbook-Version 3.0). David Osborne on 26 April 2017, failed to take reasonable steps to manage his practice in such a way as to achieve compliance with his regulatory and legal obligations, and carried out a reserved legal activity that he was not authorised to carry out, namely the conduct of litigation, in that:
 - (a) on 27 April 2017, David Osborne filed an application with Wandsworth County Court for an adjournment; and
 - (b) he served copies of the application in particular (1) above on other parties on behalf of his direct access client, SW.
- (2) David Osborne knew that he was acting outside of his authorisation and in complete disregard for rules in its entirety.
- (3) No reasonable steps were taken to comply with the requirement to act within the rules.
- (4) We do accept that there was a perceived significant risk to the proceedings being struck out had he not so acted, and that David Osborne acted in what he believed was the client's best interests, albeit that in so doing he would be breaching his own professional rules.

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- (5) We took into account that the charge had been admitted by David Osborne. We were satisfied that the charge was sufficiently serious to meet the high threshold of professional misconduct having considered *BSB v Howd* 2017 EWHC 210(Admin) and *Khan v BSB* [2018] EWHC 2184 (Admin)]. We found the charge proved to the criminal standard. This was a unanimous finding by the Panel.

Charge 5

36. Charge 5. In relation to this charge we found that:

- (1) David Osborne breached rule C64 of the Code of Conduct (9th edition, Bar Standards Board's Handbook - Version 3.0). Between 6 March 2020 and 9 July 2020, David Osborne failed to promptly provide information to the Bar Standards Board that it required of him, in that: (1) David Osborne failed to provide comments and information relating to an investigation by the Bar Standards Board, initially by 30 March 2020 but extended to 9 July 2020, that was requested on:
 - (a) 6 March 2020
 - (b) 11 March 2020
 - (c) 23 March 2020
 - (d) 24 March 2020
 - (e) 2 July 2020.
- (2) David Osborne declined to provide a copy of the client care letter to his direct access client, SW, that was requested on 5 June 2020 and was due by 12 June 2020.
- (3) Mr Harwood's letter to Mr Osborne on 6 March 2020 clearly set out what information the BSB required. In this letter, Mr Osborne was reminded of potential breaches of the Rules in the event of non-compliance with the request for information.
- (4) David Osborne repeatedly and wilfully did not comply with the BSB and refused to accept his obligations.
- (5) Even after the reminder sent on 23 March 2020, Mr Osborne stated that he "did not intend answering any further questions on this matter."
- (6) David Osborne also declined to provide the client care letter, as requested of him on 5 June 2020 by Mr Harwood. The client care letters were ultimately provided by Mr Osborne's direct access client.
- (7) We took into account that the charge had been admitted by DO. We were satisfied that the charge was sufficiently serious to meet the high threshold of professional

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misconduct having considered *BSB v Howd* 2017 EWHC 210(Admin) and *Khan v BSB* [2018] EWHC 2184 (Admin)]. We found the charge proved to the civil standard. This was a unanimous finding by the Panel.

37. It was not possible to complete the proceedings in the one day that had been allowed for the hearing. Therefore, there was no alternative but to adjourn the proceedings until the first available date when all parties and Panel were available.

38. The parties reconvened on the 29 March 2022.

29 March 2022 Hearing

Application to proceed in absence

39. At the resumed hearing Mr Parker applied once again for the proceedings to take place in the absence of David Osborne, for the reasons previously stated. There had been no change of circumstances.

40. The BSB did not object to the application on the same basis as had previously been stated.

41. The Panel having heard submissions and having considered the medical evidence available to it, decided that the basis for the application on 17 January and on the 29 March 2022 remained the same. David Osborne having suffered a stroke in October 2020, continued to suffer from ill health. Most recently on 8 December 2021, he underwent surgery to repair an aortic aneurysm. He is currently recuperating from that operation. There was no material change in his medical circumstances since 17 January 2022. Although he meant no disrespect to the Tribunal proceedings, he remained concerned that were he to attend in person this may adversely affect his recuperation. David Osborne is 78 years of age.

42. Having again considered *rE183*, and *R. v Jones* [2002] UKHL 5; [2002] 2 Cr. App. R. 9, we were satisfied that it remained just to proceed with the hearing in the absence of David Osborne, given all the circumstances of the case. We considered in particular that David Osborne was represented by counsel who was fully instructed in the matter, and was able to place before us any further submission or materials for consideration before we decide on sanction.

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43. We were satisfied that David Osborne would suffer no unfairness or prejudice if the proceedings continued in his absence. We also did not consider that the BSB would suffer any unfairness or prejudice if the case was to proceed in this way.
44. This was the unanimous decision of the Panel.

Sanction and Reasons

45. The Tribunal heard submissions by the BSB and the Respondent on sanction. We further considered the written submissions by the Respondent along with further submissions at the 29 March 2022 hearing.
46. We applied sanction guidance version 6: 1.1.22.
47. We exercised our judgement and decided on a sanction that is in our view appropriate and fair, and based on the facts of this case.
48. We considered the purposes of making a sanction in this case which are:
- (1) To Protect the public and consumers of legal services.
 - (2) To Maintain public confidence and trust in the profession and the enforcement system.
 - (3) To Maintain and promote high standards of behaviour and performance at the Bar, and
 - (4) To Act as a deterrent to the individual barrister or regulated entity, as well as the wider profession, from engaging in the misconduct subject to sanction.
49. The sanctions decided upon are in our view appropriate, proportionate and transparent.
50. In determining the sanction, we weighed the interests of the public with those of the practitioner.
51. We have considered the totality of the sanctions imposed.
52. Each sanction imposed is in our view no more than is necessary to achieve the purposes of making a sanction in respect of each charge.

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Charges 1 and 4

53. We considered that charges 1 and 4 should be considered together.
54. We agreed with both parties that the conduct for both charges 1 and 4 fell within Group D: Financial Matters. The misconduct arose from David Osborne's handling of financial matters including handling client money.
55. We found that the following general and specific culpability factors applied:
- (1) David Osborne had been in a position of trust for financial matters.
 - (2) He had had control of the circumstances at all times, and had known that he was breaching the rules.
 - (3) He did benefit himself from the misconduct by charging for the work he had carried out [28.4.17 letter C5].
 - (4) The conduct related only to one incident and payment, and one set of proceedings.
56. We found that the following harm factors applied:
- (1) There had been harm caused to the public confidence and trust placed in the profession in particular to a Direct Access client.
 - (2) There had been no actual harm caused to SW by way of financial loss attributable to the misconduct, or any other harm. There was no overcharging in this case.
 - (3) There had been no evidence of any misuse of client monies for David Osborne's benefit.
 - (4) Potentially SW had not been aware of the misconduct, as DO had used the client money held on account to pay for court fees on behalf of the client.
57. In our judgment the indicative sanctions range was: Low culpability, limited harm. which leaves a medium level fine.
58. In relation to charge 1 the aggravating factors were:
- (1) David Osborne knew the requirements rC73 of the Code of Conduct (9th edition, Bar Standards Board's Handbook - Version 3.0), because he had already adhered to it on 3.3.17 in correspondence before committing the misconduct the subject of this charge.

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- (2) By using the request for payment “on account” on 22.4.17 C4, David Osborne chose to request client money which he knew he was prohibited from doing so.
 - (3) The misconduct involved the deliberate disregard of applicable regulations / guidance.
59. In relation to charge 4 the aggravating factors were:
 - (1) Having obtained the money on account in breach of the rules, David Osborne has gone on to use the money in breach of the rules. He paid a court fee £100 and deducted the monies from the funds paid to him.
60. In relation to both charges 1 and 4, this was a clear and obvious breach of the rule by a very experienced barrister who has conducted a significant amount for direct access work having been authorised in 2005 for such work.
61. We found the following mitigating factors in relation to both charges:
 - (1) David Osborne has admitted this and all charges.
 - (2) David Osborne has expressed remorse through his counsel.
 - (3) This conduct was intended to assist SW with her proceedings which would have been struck out if the application had not been made.
 - (4) In relation to charge 4: the amount paid over was £100 for the application fee.
 - (5) David Osborne is 78 years of age and has no relevant or recent previous disciplinary misconduct findings. He has practiced since 1974 and been authorised to conduct DA work since 2005 with an otherwise unblemished disciplinary record.
62. In our judgment the appropriate and proportionate sanction for each of charges 1 and 4 was one of a medium level fine.
63. We considered David Osborne’s means information provided for the hearing on 17 January 2022 and 29 March 2022- in relation to each of the sanctions we have decided upon today.
64. We have taken into account Mr Parker’s submission that for the year end April 2020 David Osborne had an income before expenses and tax of roughly £49,000; and for the

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year end April 2021 David Osborne had an income before expenses and tax of around a £6000 loss (according to the unsigned draft accounts we have been provided with).

65. We also considered what we have been told about David Osborne's outgoings and other debts including monies owed to HMRC.
66. However, we were provided with little supporting documents to add weight to the information provided, a point we raised at the start of the hearing on 17 January 2022. No information was provided as to David Osborne's work this past tax year and any income received from any source. We considered that there has been a lack of any supporting materials in relation to any tax returns, expenses incurred, assets held, pensions received and any other income. We have only been provided with draft set of accounts for the year ending April 2021 (almost a year ago). We therefore have placed very limited reliance on the information we were provided with.
67. We were unable to place further weight on the information provided as to means alone, and have found it surprising that no further documents were provided to assist us assess David Osborne's means.
68. On the 29 March 2022 we were informed that David Osborne has not renewed his practicing certificate with the Bar Council, and does not intend to work going forward as a self-employed barrister in the future. It follows that he is no longer practicing as a self-employed barrister.
69. In the absence of any further information as to means we were entitled to assume that David Osborne's means did not require any further form of adjustment over and above that which we have allowed for to a limited extent when determining the sanctions for each of the charges.
70. Furthermore we have made appropriate adjustments in the case of charges 1 and 4, and for all charges, to ensure that the totality of the sanctions was proportionate.

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71. We are, if appropriate, required to impose a separate sanction for each charge, bearing in mind they should be proportionate to the totality of the misconduct. We found it appropriate to do so.
72. In deciding the final sanction for this charge we considered all the sanctions we are passing in this matter.
73. Our decision was to impose a fine as the sanction for charges 1 and 4. A fine is not intended to be punitive because punishment is not a purpose of professional regulatory sanctioning. Fines are designed to mark serious misconduct, and prevent through deterrence, a reoccurrence of the conduct [§6.17 Guidance v6].
74. Accordingly, we decided on a fine of £1000 for each of charges 1 and 4. This was our unanimous view.

Charge 2

75. In relation to Charge 2 the BSB submitted that this charge fell within Group F: Misleading the court and others. On behalf of David Osborne, it was submitted that the appropriate category was K: Formal obligations to the client.
76. We decided that both Groups apply in this case because the misconduct concerned a breach of the public access rules (K) and the misleading or permitting a client to have been misled (F).
77. We considered both Groups and considered it appropriate to apply Group K in the circumstances of this case.
78. We found that the following general and specific culpability factors applied:
- (1) David Osborne had control of circumstances at all times and knew he was breaching the rules.
 - (2) David Osborne did benefit himself from the misconduct by charging for the work he had carried out [28.4.17 letter C5].
79. We found that the following harm factors applied:

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- (1) There had been harm to the public confidence and trust placed in the profession in particular in relation to a Direct Access client.
 - (2) There had been no actual harm caused to SW, although SW could have been harmed by the potential misapprehension of what she was led to believe by what she was told by DO and by his conduct.
 - (3) There had been no evidence that the conduct had caused any distress or worry to SW or that that it had impacted her case negatively. In fact as we understand it, David Osborne's misconduct had assisted to save her case from being struck out at least at that stage.
 - (4) This had been an isolated incident.
 - (5) His conduct had not contributed to the failure of the case or caused it on the information before us.
80. In our judgment the indicative sanctions range was: low culpability, limited harm. The indicative sanction ranged from giving advice as to future conduct – low level fine.
81. The aggravating factors in relation to charge 2 were as follows:
- (1) David Osborne's conduct had breached rule C19.4 on two occasions over several weeks.
 - (2) David Osborne had failed on several opportunities between 3.3.17 and 28.4.17 to inform his client of the fact that he was not authorised to conduct litigation.
 - (3) This was a clear and obvious breach of the rule by a very experienced barrister who had conducted a significant amount for direct access work having been authorised in 2005 for such work.
82. We found the following mitigating factors applied:
- (1) David Osborne has admitted this and all charges.
 - (2) We rely upon the same mitigation as we have referred to above.
83. In our judgment the appropriate and proportionate sanction was one of a low level fine. We applied here the same matters we have already stated regarding means. We have taken into account that we are required to impose a separate sanction for each charge,

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and that the sanction must be proportionate and apply the principles of totality. In deciding the final sanction for this charge, we considered all the sanctions we are passing in this matter.

84. The final sanction imposed is a fine of £500 and this was our unanimous view.

Charge 3

85. The BSB submitted that this charge fell within Group L: obligations to the regulator. On behalf of David Osborne, it was submitted that the appropriate category was K: formal obligations to client.
86. We decided that both Groups could apply in this case because the misconduct concerned non-compliance with the formal obligations to the BSB not to carry out reserved legal activity when not authorised to do so(L), and also was a breach of the public access rules (K).
87. We considered both Groups and consider it appropriate to apply Group K in the circumstances of this case.
88. We found that the following general and specific culpability factors applied:
- (1) David Osborne had control of the circumstances at all times and knew what he was breaching the rules. He had carried out a reserved legal activity when not authorised to do so.
 - (2) David Osborne had benefitted himself from the misconduct by charging for the work he had carried out [28.4.17 letter C5].
89. We found that the following harm factors applied:
- (1) There had been no actual harm caused to SW, although she could have been harmed by the potential misapprehension of what she was led to believe by what she was told by DO and by his conduct.
 - (2) There had been no evidence that the conduct had caused any distress or worry to SW or that it had impacted her case negatively. In fact, as we understand it, DO's misconduct had assisted to save her case from being struck out at least at that stage.

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- (3) This had been an isolated incident.
 - (4) David Osborne's conduct did not contribute to the failure of the case or cause it on the information before us.
 - (5) There had been harm to the public confidence and trust placed in the profession in particular towards a Direct Access client.
90. In our judgment the indicative sanctions range was: low culpability, limited harm. The indicative sanction is from giving advice as to future conduct to a low level fine.
91. The aggravating factor was that this was a clear and obvious breach the rule by a very experienced barrister who has conducted a significant amount for direct access work having been authorised in 2005 for such work.
92. We found the following mitigating factors in relation to both charges
- (1) DO has admitted this and all charges.
 - (2) We rely upon the same mitigation as we have referred to above.
93. In our judgment the appropriate and proportionate sanction for each charge was a low level fine.
94. We applied the same matters and principles as we have already stated regarding means, that we are required to impose a separate sanction for each charge and totality. In deciding the final sanction for this charge, we considered all the sanctions we are passing today.
95. In our judgment the appropriate and proportionate sanction was a fine of £500. This was our unanimous view.

Charge 5

96. Both parties submitted that this charge fell within Group L, which we agreed with.
97. We found that the following general and specific culpability factors applied:
- (1) David Osborne had control of the circumstances at all times and knew that he was breaching the rules.

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- (2) That the duration and scope of the non-engagement with the regulator had lasted just over 3 months.
 - (3) David Osborne repeatedly failed to engage as required, and that numerous and repeated attempts to obtain the information had been ignored along with the serious consequences which were warned.
98. We found that the following harm factor applied:
 - (1) The breach harmed the public confidence.
99. In our judgment the indicative sanctions range was low culpability, limited harm. The indicative sanction was from the giving of advice as to future conduct to a low level fine.
 - (1) The aggravating factor was the lack of response to warnings and in particular the 6 March 2020 warning when David Osborne was reminded of potential breaches of the Rules in the event of non-compliance, with the request for information, and the follow up reminder on 23 March 2020.
100. We found the following mitigating factors applied:
 - (1) David Osborne has admitted this and all charges.
 - (2) We relied upon the same mitigation as we have referred to above.
101. We have considered that David Osborne felt worn out and ground down by the Legal Ombudsman complaint procedure, but that does not provide any justification or excuse, as recognised by the admission to the charge.
102. In our judgment the appropriate and proportionate sanction for each charge was a low level fine.
103. We applied the same matters and principles as we have already stated regarding means, that we are required to impose a separate sanction for each charge and totality. In deciding the final sanction for this charge, we considered all the sanctions we are passing today.
104. The sanction imposed is one of a fine of £1250. This was our unanimous view.

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105. The total sanction amount is a fine of £4250.
106. We considered the means information provided before us, such as it is, when deciding the level of financial sanction imposed overall and in respect of each charge.
107. We also considered whether David Osborne should be prohibited from accepting or carrying out public access instructions. Given all the circumstances we do not consider that such a prohibition is required in this case given the sanction we have decided, and the fact David Osborne is not currently practicing as a self-employed barrister.
108. David Osborne has not been present throughout the proceedings. However, the relevant procedure under rE183 has been complied with. The finding and sanction were made in the absence of the respondent in accordance with rE183. This was agreed by both parties.

Costs

109. The tribunal has considered the cost application from the BSB for £3300 including VAT.
110. We considered rE244 and the new Sanction guidance (version 6).
111. We also considered the submissions made by the Respondent at both hearing dates. The Panel noted that rule E 244 provides a broad discretion on costs. The amount claimed did not include investigative costs. The amount we considered to be fair, proportionate and we think fit, having regard to David Osborne's means and the financial penalty we have imposed today is £3300.
112. David Osborne has six months to pay from expiry of the appeal, for the sanction fine and costs.
113. The total amount due is £7550.

Approved: 7 April 2022

Michael Goodwin QC
Chairman of the Tribunal

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