The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2017/0169/D3

Jacqueline Vallejo
The Director-General of the Bar Standards Board
The Chair of the Bar Standards Board
The Treasurer of the Honourable Society of the Middle Temple

Disciplinary Tribunal

Jacqueline Vallejo

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 27 April 2022, I sat as Chairman of a Disciplinary Tribunal on 15 June 2022 to hear and determine one charge of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Jacqueline Vallejo, barrister of the Honourable Society of Middle Temple.

Panel Members

2. The other members of the Tribunal were:

   Stephanie McIntosh - [Lay Member]
   Hayley Firman - [Barrister Member]

Charge

3. A single charge was put to the respondent. She admitted the charge.

Charge 1

Statement of Offence

Professional misconduct, contrary to Core Duty 1 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Jacqueline Vallejo, a barrister, between 3 February 2016 and 8 March 2016 whilst acting as counsel for the defence in proceedings at Snaresbook Crown Court failed to observe her duty to the court in the administration of justice in that she behaved in a rude and unprofessional manner by acting as set out in the attached schedule and/or saying words or words to the same effect as those set out in the attached schedule.

Charge Sheet Schedule

1. On or about 3 February 2016:

a. refused to engage with prosecution counsel in relation to attempting to agree a schedule;

b. on being ordered by the judge to engage with prosecution counsel in relation to the schedule, replied she would not comply with that order;

c. said to the judge "if your Honour wants to do anything about me and my conduct that's fine…Not a problem at all….so if your Honour wants to report me then so be it…I'd rather you do it sooner rather than later though"; and

d. When the judge stated that she (the judge) was not going to delay or distract from the trial, replied "…well that's' exactly what your Honour is doing."

(audio recording 3 February 2016, part 1 of 8 at or about 2:22 to 5:40; transcript 3 February 2016, part 1 of 2)

e. in submissions to the judge said "don't try to make me sound like an idiot"; and

f. when asked to sit down by the judge, replied "is that the fifth time your Honour has asked me to sit down?" and then "I was going to sit down, I didn't need your honour to tell me…".

(audio recording 3 February 2016, part 3 of 8 at or about 34:00 to 35:30; transcript 4 February 2016)

2. On or about 12 February 2016:

a. when the judge sought clarification about a witness's evidence, stated (in front of the jury) "Well if your Honour wants to conduct the cross-examination, I'll sit down";

b. when the judge invited her to continue with cross examination, stated (in front of the jury) "No your Honour, your Honour can continue if you like"; and

c. criticised the judge (in front of the jury) by stating "When Mr Brown gave evidence yesterday, he gave evidence in relation to hearsay and your Honour of course didn't stop him, and of course there's been no hearsay application from the Crown…"

(transcript 12 February 2016)

3. On or about 16 February 2016:

a. adopted an abrupt, disrespectful and unhelpful tone, attitude and approach towards the judge;

b. was unduly argumentative with the judge;

c. when asked by the judge to clarify the issues in relation to certain evidence, replied "I've explained it already" and then that she was accepting the "whole of the prosecution case…because I'm being forced to by the Learned Judge"; and

d. During an interaction with the judge in relation to the provision of a Defence Statement stated "…I cannot force my client to provide a defence statement. What part of that does your honour not understand?"

(audio recording 16 February 2016, part 2 of 2 at or about 4:53:06 – 4:59:00; transcript 16 February 2016)

4. On or about 8 March 2016:

a. adopted an abrupt, disrespectful and unhelpful tone, attitude and approach towards the judge;

b. was unduly argumentative with the judge;

c. talked over and/or interrupted the judge;

d. when the judge summarised evidence that had been given by a witness, stated (in front of the jury) that it was "absolute rubbish"; and

e. said to the judge (in front of the jury) "is your Honour giving evidence?"

(audio recording 8 March 2016 at or about 1:52:23-1:56:55; 2:05:58-2:10:52; 2:18:05-2:18:48; 5:36:29-5:39:20; 5:41:52-5:46:09; 6:04:54-6:05:33; 6:08:12-6:14:50; transcript 8 March 2016)

Parties Present and Representation

4. The Respondent was present and was represented by Ali Naseem Bajwa QC. The Bar Standards Board ("BSB") was represented by David Bedenham, Counsel.

Preliminary Matters

The Tribunal confirmed that they had received and read all the correspondence sent to them and listened to the audio recordings of the court proceedings which the charges related to, which included the Master Bundle, sections A - Charge Sheet, B - Correspondence, C – Audio Recordings and D – Transcript of the court proceedings.

Evidence

Mr Bedenham presented the case on behalf of the BSB. A section of the audio recording was played of the proceedings on the 3 February 2016, which recorded the respondent's behaviour towards the judge in court in the presence of the jury.

Findings

The respondent having admitted that charge, the Tribunal found it proved.

Mitigation

Mr Bajwa QC addressed the Tribunal in mitigation on behalf of the respondent.

Sanction and Reasons

Following retirement to consider the matter, the Tribunal unanimously agreed, taking into account the mitigation put forward on behalf of the respondent and the gravity and nature of the offence, that the appropriate sanction was:

1 Four months suspension, to take effect after the 21-day notice of appeal period.

2 Costs of £2000 to be paid to the Bar Standards Board within 1 year of the Tribunal. Liberty to apply to the Tribunal to vary the costs order if necessary, having regard to the respondent's means to pay.

Ruling

I gave an ex tempore ruling which set out the Tribunal's reasons for the imposition of this sanction. The relevant part of the transcript, edited only to remove procedural discussions, to rearrange and tidy certain sections and to correct typographical errors, is appended to this report at Annex A

Approved: 24 June 2022

Paul Lowenstein QC
Chairman of the Tribunal

Appendix A

Jacqueline Vallejo is charged with one offence, namely a matter of professional misconduct contrary to Core Duty 1 of the Code of Conduct of the Bar of England and Wales (Ninth Edition), the particulars of which are that she, a barrister, between 3rd February and 8th March 2016, whilst acting as counsel for the defence in proceedings at Snaresbrook Crown Court, failed to observe her duty to the court in the administration of justice, in that she behaved in a rude and unprofessional manner by acting as set out in the attached schedule and/or saying words or words to the same effect as those set out in the attached schedule.

There is then a charge sheet schedule running to nearly two full pages, containing four groups of detailed charges, each relating to events on a different day between 3rd February and 8th March 2016. Detailed materials and allegations are set out there. These allegations were all put to Ms Vallejo at the beginning of the hearing and assisted ably by counsel she then accepted all of them, and therefore the Tribunal found them to be proved.

The proceedings then continued with the Bar Standards Board setting out the framework of the case that had been put against Ms Vallejo. We were directed to elements of the transcript of the trial, the question, and there was the playing of some but not all of the audio recording of the trial where examples were given of the rude conduct of the advocate to the learned judge in that court.

There then followed able mitigation on behalf of Ms Vallejo by her counsel Mr Bajwa QC, which we have listened to carefully and taken into account in its totality.

Having heard that mitigation and read the materials, both in advance and having discussed them between ourselves thereafter, we have reached conclusions on sanction which I will now address in terms of the framework that is set out in the Sanctions Guidance of the BTAS.

The first thing that we need to do is to decide which of the relevant groups of behaviour the admitted charges fall into. It was submitted to us by Mr Bedenham, who appeared and made very helpful submissions both in writing and orally on

behalf of the Bar Standards Board, that all of the behaviour fell within category I, which is the category that broadly deals with behaviour towards others. He identified for us certain of the behaviour which he said potentially fell within category G, the administration of justice, and other behaviours which he said potentially fell within category C, bullying, primarily because of the insulting nature of the behaviour.

The panel has considered carefully all of the allegations and each of the proposed categorisations and has taken into account both the submissions of Mr Bedenham and what was said for Ms Vallejo by Mr Bajwa. We find that all of the matters of rudeness fall, as was accepted on behalf of Ms Vallejo, within category I, behaviour towards others. We find that none of them fall within the category whose title is broadly bullying. We considered that there was an argument that some of the behaviours might have fallen within category G, administration of justice, but since there is no impact to what follows from that possibility it is not necessary to decide it, and therefore we do not apply the group G administration of justice sanctions to any of the behaviour.

The second question that we have to decide is that set out in the Guidance starting at page 57 within category I, behaviour towards others, step 2, the seriousness of what happened. Mr Bajwa accepted that all of the matters to which Ms Vallejo has accepted culpability were examples of rudeness which should not have happened. The real discussion is how much further these matters went.

To assess the seriousness of what happened, our starting point is the table on page 57 of the Guidance, where certain elements of potential culpability and other elements going to the question of harm are set out. We have looked at all of those individually and find that on the list, which is not comprehensive but is only indicative, the one element of culpability that we can flag is that the misconduct occurred against the background of requests to stop. It is quite clear to us that the learned judge, and having heard the audio we can confirm, in a reasoned and balanced manner regularly asked Ms Vallejo to control what she was saying in court, but Ms Vallejo, for whatever reasons, ignored those requests and instead carried on.

We looked then at the harm categories. Four of them are listed. They are misconduct which caused humiliation and/or fear; impact on working life/career of those affected by the misconduct; injury caused to the victim whether physical or psychological; and injury to feelings. We find broadly that all of those items are engaged to a greater or lesser degree, not in each of the material manners in which they can arise – for example, there was no fear that was engaged – but in one way or another there was evidence that each of those harms were caused by the behaviour.

The seriousness was compounded by the following behaviours which the panel took strongly into account. First of all, although we do not find that the respondent set out to cause harm, her conduct was plainly reckless as to whether or not she caused harm or fell within the behaviour which is prohibited by these parts of the Code of Conduct. She was belligerent directly to the court. She exhibited in court and in her explanations of what happened in court a misguided pride, a misguided belief in her own abilities, and she therefore chose, as her counsel's written submissions to us demonstrated, to carry on regardless in circumstances where she knew at the time she was in difficulties and yet thought that she could solve the problem by finishing the trial. She should not have done that. She should have taken advice and followed that advice and, if necessary, done something about it. It is not for us to say what she should have done, but we can think of several things she ought to have done. So, in carrying on regardless, she compounded the seriousness of what happened and created to a great extent what members of the panel have called "the toxic atmosphere in court" as recorded in the passages that we have read.

That then further compounds the seriousness, because it demonstrates to us that notwithstanding an unblemished and long career at the Bar, a severe lack of insight at the time into the consequences of her behaviour. It was said on her behalf that she was not focusing on harming anybody else, but only on herself. But that, in our view, is a matter of aggravation.

Therefore, the starting point – and before we come to matters of mitigation and aggravation – is that we find unanimously that this was conduct which fell somewhere between the middle and the upper range of seriousness for this

category of offence. We are told by the table at page 58 of the Guidance that the middle range is indicatively met by a sanction of a medium level fine to up to 12 months' suspension, and the upper range would be over 12 months' suspension to disbarment. This panel is not empowered to impose any period of suspension over 12 months.

Therefore, our starting point before applying the necessary adjustments caused us to start at a fairly high point in terms of sanction.

We then come to step 4, which is the application of aggravating and mitigating factors. The aggravating factors that are listed in the table on page 58 of the Guidance do not apply here. There are other aggravating factors which are relevant and which we take into account in the following ways; or offset in the following ways. The first is the argument that she should have known better after 19 years at the Bar. Mr Bajwa elegantly, I thought, put it that that matter is offset by the fact that she has had an unblemished career at the Bar for the last 19 years, and therefore it becomes a neutral factor in our considerations.

The second factor is lack of insight. I have already said that that lack of insight at the time of the hearing fed into our view that this fell between the middle and upper range of seriousness. But what about lack of insight persisting after the hearing? Having heard the able submissions on behalf of both parties as to how to approach that matter, and having taken the best view we can on the available evidence, we take the view that, notwithstanding some of the things might be better not to have been said in written submissions, that the way the case has been put today and the clear remorse shown by Ms Vallejo demonstrate to us that she is now insightful and probably has been for a very long time as to what happened. We accept that, and therefore we do not find that the lack of insight after the events in question to be any form of aggravation. In fact, the remorse is a matter that we take into account in mitigation.

The next point of aggravation is one to which the panel returned several times in its deliberations. That is that the examples of rudeness that have been put before us took place both in the absence of, but importantly sometimes in the presence of the jury. That was a significantly aggravating element of this case.

Mr Bajwa did not address those allegations or that matter which had been put clearly, and I do not think there is any proper explanation for that apart from, as I imagine Ms Vallejo would now accept, that it just should not have happened. We have taken that element into account already in our starting point for the appropriate sanction, and therefore we do not add anything to our starting point for it, but we do mark the fact that this is important for at least two reasons. The first is that any person attending court, and the judge, would have had cause to be offended that these rudenesses were not taking place as it were in the privacy of the *voir dire*, but were happening in open court in front of the jury and (to the extent relevant) the public, because the jury are the public for that purpose. It is a very serious matter, and it should not have happened, and from what we can see and have heard from the transcript the judge tried to control it, but Ms Vallejo was uncontrollable and carried on in the way that I have indicated.

There was a further aggravating factor, which was that this was persisting conduct over a period of time and was not an isolated incident. There were many examples, as charged and admitted.

Now to matters of mitigation, which is where Mr Bajwa's detailed submissions were primarily addressed. There are four mitigating factors identified in the table on page 58. The first is immediate apology. That did not happen, though Mr Bajwa put before us, and he was correct, that there was an element of mitigation, and that is that the offences as put to Ms Vallejo were accepted and not contested from the moment where she could first do that within the context of the proceedings that happened and the long pause that stopped her being able to accept the offences at an earlier date. There was, however, no immediate apology to anybody, and in fact there was to a great extent a doubling down during the period of the trial which served to aggravate it.

The other mitigating factors are equally not applicable. I will not read them out, but they are listed in the table on page 58.

That said, Mr Bajwa did put certain items of mitigation before us to which I now turn, and I hope I in shorthand manage to capture his submissions on these points.

The first was that Ms Vallejo is of 19 years' call (or was at the time) and had a clean record as at the time of the incidents in question. We accept that, but as I have already indicated that offsets only the fact that she should have known better, which Mr Bajwa properly accepted.

He referred to a number of contributory factors. Those were pressures of case and workload, personal life, medical treatments, and so forth – I will not go into details – her wish to withdraw because of pressure, but she carried on because she felt that there was a proper reason to do it, and she may have had certain health problems during the period of the trial as well as undoubtedly afterwards, and we were referred to a GP's note which expressed Ms Vallejo having had some sort of need to visit the GP in that regard at the time.

We have considered carefully whether or not those matters mitigate what happened, and I regret to say that they do not. The view of the panel was that rather than explaining and diminishing her responsibility for what happened, they are only part of the history which indicates that she should have done something about it at the time.

The next element that was put before us was that Ms Vallejo did not intend to hurt the judge, but the fact that she saw only her own suffering and that she did not intend to harm others but just wanted to finish the trial and she was remorseful, other than being remorseful those factors are neutral in our view.

The fact that she expresses remorse is important.

Mr Bajwa assured us that Ms Vallejo had had a low level of input into his written submissions and that she is not fully responsible or even partly responsible – it was not clear – for matters involving certain of the interactions at court, and he said that she had bitter regret and that she has not sought to make excuses. We are very pleased that those matters that happened at court were not pursued in submissions today, even though they were in the written submissions. But we attribute little or no weight to the other matters because they do not add to the other grounds of mitigation.

It was said next that Ms Vallejo is paying the heaviest price for what she has done. Her personal relationships collapsed. Her health collapsed during or soon after the trial, or maybe around the time of the application for permission to appeal. It has been impossible for her to return to work, and there are certain matters which we address by looking at Mr Bajwa's skeleton argument, particularly at paragraph 59(b) on page 11, which indicated that there were very particular pressures on Ms Vallejo. It was said, further, that she has not worked for five years, that these proceedings have been hanging over her and she cannot face the legal world, and that she has run out of money. She is funded by her parents. She has £679 in her bank account, which has either been wholly or partly provided by her parents. She has not taken benefits to which she is entitled. And that with a sense of proper correctness she would pay any financial penalty which was imposed on her, but she would have to draw on her parents' money, in order to do that, and therefore she should be considered as a person of reduced means.

Taking all those points together, and Mr Bajwa asked us to consider what was proportionate now in the context of all those matters.

We find that the heavy price and then following submissions in terms of mitigation fall into two categories.

The first, which we take into account quite strongly in terms of mitigation, is that we have read Ms Vallejo's medical history at the time of the trial and understand that she had recently been undergoing certain treatments (which I will not describe now), which are known to cause behaviour and mood changes. Members of the panel have experience of such matters from other sources. We think that although we have not heard from experts, we have read the materials that Ms Vallejo has sent us and we do understand that some of her intemperate behaviour may have been caused by medicine or treatments that she was taking or receiving, and we are not unsympathetic, or (putting it positively) we are sympathetic to those episodes in her life.

As to the subsequent events, they are distressing and impactful, but they could have or would likely have happened in any event. If the test is should the sanction that we had in mind be altered or reduced because Ms Vallejo has had

hard times since, the answer is that we need to look at the impact on her of each of those matters first individually and then in the round.

We do take into account the fact that she has had difficulties and has not been able to work. She has taken a very cautious approach.

We also take into account that some of these matters have got nothing to do at all with what happened in court and therefore they are not mitigations for those, but they are consequences of what might have happened, what happened in her life and happened since then.

We were assured that the misconduct and the sort of misconduct was unlikely ever to be repeated, and we accept that submission insofar as it goes. We were told that Ms Vallejo doubts herself and is nervous about going back into practice. We understand the submission that was made to us in that regard, and we take those matters into account as matters of mitigation.

It was said that this was an out of character moment. She is full of contrition. We are now six years on. And we were reminded, quite properly, that we are five years from charge because of certain intervening events which, as Mr Bajwa would put it, pressed the pause button. That has two effects. First of all, it had the effect on the first opportunity to plead. The second is that it has been a very long that this has been hanging over Ms Vallejo's head. It is not her fault that is has gone on this long, and in fact she has shortened matters by indicating the plea.

Taking all those matters into account, taking a step back as we are obliged to do and looking at the totality principle, and reminding ourselves of the available sanctions by the indicative guidelines for this particular offence and also accounting for the fact of the period of time over which the behaviour ran, we are of the view that it is inescapable that there should be a period of suspension from practice. The reason there should be a period of suspension is, firstly, to reflect the public effect of what was done at the time, particularly the fact that some of the events that are alleged and accepted happened in front of the jury. Secondly, we bear in mind that although a long time has passed and Ms Vallejo has had her practising certificate back for approximately 2 years, it is proper now, given that

she says she is still reflecting on whether or not to go back to work, but has been deeply affected by these matters hanging over her, that there is still an element of public protection that needs to be applied in her case.

The view of the panel is that the only way that that can be properly done is for a period of time for reflection, following which she can come back to work, having put these matters behind her.

We considered a relatively long period of suspension because of the gravity of what was done. We have considerably reduced by more than a half the period of suspension that we initially had in mind because of the grounds of mitigation put forward on behalf of Ms Vallejo. The period of suspension will be four months, and that will take effect from the end of the time allowed for appeal in the usual way.

We have then gone on to consider whether or not any other sanctions are appropriate given the seriousness and gravity of the matters. Having discussed it in detail between ourselves, our view is that there should be no other sanctions. The reason we do not impose a fine is because in our view a period of suspension would be sanction enough. A secondary but much less important reason is that to pay a fine Ms Vallejo has told us that she would have to borrow from others, so effectively the fine would not fall on her own shoulders.

There are no other conditions to be placed on Ms Vallejo and there are no conditions to be placed on her practising certificate when she returns to work.

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