The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2019/1076/D5 + PC 2020/1233/D5

Jonathan James Turner
The Director-General of the Bar Standards Board
The Chair of the Bar Standards Board
The Treasurer of the Honourable Society of the Inner Temple

Disciplinary Tribunal

Jonathan James Turner

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 18 November 2022, I sat as Chairman of a Disciplinary Tribunal on 28 November 2022 to hear and determine nine charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Jonathan James Turner, barrister of the Honourable Society of the Inner Temple.

Panel Members

2. The other members of the Tribunal were:

   Tray Stephenson [Lay Member]
   Lakshmi Ramakrishnan [Lay Member]
   Hayley Firman [Barrister Member]
   Sadia Zouq [Barrister Member]

Charges

3. The following charges were admitted / found proven.

PC 2019/1076/D5

Charge 1 (criminal standard of proof)

Statement of Offence

Professional misconduct, contrary to Core Duty 1 and/or rC3.1 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Jonathan Turner, a barrister, failed to observe his duty to the court in the administration of justice (CD1) and recklessly misled the court (rC3.1) in that on 25 June 2018 he created and uploaded to the Crown Court Digital Case System ("CCDCS") a Notice of Additional Evidence ("NAE 6") (i) being reckless as to whether the court would be misled into believing that the material referred to in the NAE 6 was served prosecution evidence and (ii) or being reckless as to whether the material referred to on NAE 6 was used prosecution evidence.

Charge 4 (criminal standard of proof)

Statement of Offence

Professional misconduct, contrary to rC8 and/or rC9.1 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Jonathan Turner, a barrister behaved in a way which could reasonably be seen by the public to undermine his honesty and integrity (rC8) and recklessly misled (rC9.1) the Legal Aid Agency ("LAA") in that in or around July 2018, he submitted to the LAA a bill/fee claim in case T2018706 by which he sought payment on the basis that the material referred to in a Notice of Additional Evidence ("NAE 6") was served prosecution evidence in circumstances where he was reckless as to whether it did in fact amount to served prosecution evidence.

Charge 6 (criminal standard of proof)

Statement of Offence

Professional misconduct, contrary to rC8 and/or rC9.1 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Jonathan Turner, a barrister behaved in a way which could reasonably be seen by the public to undermine his honesty and integrity (rC8) and recklessly misled (rC9.1) the Legal Aid Agency ("LAA") in that on or about 15 July 2018, he submitted to the LAA submissions in support of his fee claim in case T2018706 and therein made submissions that gave the impression that a Notice of Additional Evidence ("NAE 6") had been prepared and served by the prosecution and the material referred to in NAE 6 was served prosecution evidence, in circumstances in which he was (i) reckless as to whether NAE6 amounted to served prosecution evidence and (ii) reckless as to whether he had authority from the prosecution to upload NAE6 to the Crown Court Digital Case System.

Charge 7 (criminal standard of proof)

Statement of Offence

Professional misconduct, contrary to rC8 and/or rC9.1 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Jonathan Turner, a barrister behaved in a way which could reasonably be seen by the public to undermine his honesty and integrity (rC8) and recklessly misled (rC9.1) the Legal Aid Agency ("LAA") in that on or about 7 August 2018, he submitted to the LAA submissions in support of his fee claim in case T2018706 and therein made submissions that gave the impression that a Notice of Additional Evidence ("NAE 6") had been prepared and served by the prosecution, in circumstances in which he was (i) reckless as to whether NAE6 amounted to served prosecution evidence, and (ii) reckless as to whether he had authority from the prosecution to upload NAE6 to the Crown Court Digital Case System.

Charge 9 (criminal standard of proof)

Statement of Offence

Professional misconduct, contrary to rC8 and/or rC9.1 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Jonathan Turner, a barrister behaved in a way which could reasonably be seen by the public to undermine his honesty and integrity (rC8) and recklessly misled (rC9.1) the Legal Aid Agency ("LAA") in that on or about 7 November 2018, he submitted to the LAA submissions in support of his fee claim in case T2018706 and therein made assertions which Jonathan Turner was reckless as to the accuracy and truthfulness of the assertions. The relevant assertions being:

a. that there was no CPS caseworker available on 25 June 2018 to draft any Notice of Additional Evidence ("NAE") that the prosecution had wished to serve.

b. that it was the clear intention of prosecution counsel that the material referred to in NAE 6 be "properly served, but for the lack of a caseworker".

c. that it was "suggested that if there were any difficulty regarding service that the document be removed by the CPS".

PC 2020/1233/D5

Charge 1 (civil standard of proof)

Statement of Offence

Professional misconduct, contrary to Core Duty 1 and/or rC3.1 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Jonathan Turner, a barrister, failed to observe his duty to the court in the administration of justice (CD1) and recklessly misled the court (rC3.1) in that, on 24 January 2020, he uploaded an "indictment" onto the Crown Court Digital Case System ("CCDCS") being reckless as to whether the court would be misled into believing that the indictment had been uploaded and validly preferred by the Prosecution

Charge 4 (civil standard of proof)

Statement of Offence

Professional misconduct, contrary to rC8 and/or rC9.1 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Jonathan Turner, a barrister behaved in a way which could reasonably be seen by the public to undermine his honesty and integrity (rC8) and recklessly misled the court and/or the prosecution (rC9.1) in that, on 24 January 2020, he uploaded an "indictment" onto the Crown Court Digital Case System ("CCDCS") and, during discussion with the court clerk and prosecution counsel, referred to that indictment in such a way as to give the impression that it had been uploaded and validly preferred by the prosecution, being reckless as to whether that was the impression given.

Charge 6 (civil standard of proof)

Statement of Offence

Professional misconduct, contrary to Core Duty 1 and/or rC3.1 and/or rC6.1 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Jonathan Turner, a barrister, failed to observe his duty to the court in the administration of justice (CD1) and recklessly misled the court (rC3.1) in that on or about 11 February 2020 he sent to the Court a "note" in which he stated that on 24 January 2020 he had informed prosecution counsel that he (Jonathan Turner) had drafted and uploaded the indictment onto the Crown Court Digital Case System ("CCDCS") in circumstances where he was reckless as to whether he had actually done so.

Charge 9 (civil standard of proof)

Statement of Offence

Professional misconduct, contrary to Core Duty 5 and/or Core Duty 10 and/or rS6 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Jonathan Turner, a barrister, carried out a reserved legal activity that he was not entitled to carry out (rS6) and thereby behaved in a way which was likely to diminish the trust and confidence which the public places in him or the profession (CD5) and/or failed to take reasonable steps to manage or carry out his practice in such a way as to ensure compliance with his legal and regulatory obligations (CD10) in that on 24

January 2020 he uploaded an "indictment" onto the Crown Court Digital Case System ("CCDCS").

Parties Present and Representation

4. The Respondent was present and was represented by David Perry KC and Laura Jeffrey of counsel. The Bar Standards Board ("BSB") was represented by David Bedenham of counsel.

Evidence

5. Mr Bedenham presented the case on behalf of the BSB.

6. Mr Perry called Lee Karu KC to give character evidence on behalf of the Respondent.

7. Mr Perry addressed the Tribunal in mitigation and the relevant sections of the Sanctions Guidance on behalf of the Respondent.

Findings

8. Mr Turner has admitted liability, on an agreed basis of plea, in respect of two separate charge sheets which relate to his conduct in respect of two different cases. Where reference is made to the bundles put before us, the Maqsood bundle will be referred to as MB and the Collins bundle as MC.

9. On PC 2019/1076 (the Maqsood case), he has admitted 5 charges of professional misconduct (Charges 1,4,6,7, and 9) and on PC 2020/1233 (the Collins case) he has admitted 4 charges of professional misconduct (Charges 1, 4, 6 and 9).

10. In respect of all of these allegations, the basis of his admission of liability is that he was reckless rather than dishonest. This is a basis that has been accepted by the Bar Standards Board and is one that we also will accept and follow.

11. Mr Turner was called to the bar in 1999. He is a criminal practitioner of very considerable experience, and according to the evidence that we have seen and heard as to his character and past he has an excellent reputation and is held in high regard by his professional colleagues. It is, perhaps, needless to mention that he will have acquired a thorough and extensive knowledge of the practice and procedure of the criminal courts where he practises.

12. We will deal first with the facts of the two cases, as to which there is very little if any dispute of any significance. The Maqsood case is the earlier in time.

The Maqsood Case

13. This was originally a 4 handed trial in which the defendants were charged with conspiracy to supply cocaine. Two had pleaded guilty and the remaining two, Shahid Maqsood, represented by Mr Ian Hudson, and Kiran Maqsood, represented by Mr Turner were listed for trial as a back-up before HHJ Burn at Bradford Crown Court on 25 June 2018.

14. An application to dismiss the charges against Kiran Maqsood had been served by her solicitors. This was to be dealt with immediately before the trial. In response to that application, prosecuting counsel Ms Kitty Colley raised, in writing, the evidence provided by 3 text messages which had been extracted from the downloads of the phones of both Maqsoods. These 3 texts were served evidence; the raw data from which they were extracted, exhibits labelled KEC/2 and JMT/1 were not. They were accordingly classified as unused material.

15. Mr Turner took the view, which he expressed to Ms Colley, that all the raw data, in other words, the whole of these two exhibits should be served as evidence, and that if they were not, he would be making submissions as to the admissibility of the 3 texts that had been served. Ms Colley did not agree with him and invited him to take the matter up with the judge (MB 32 para 10). She did, however, ask the police to provide the raw data to both defence counsel to review if they wished, and this was done later that day.

16. The case did not come on during the morning and there were discussions between counsel as to acceptable pleas. This was perfectly proper and conventional but what Mr Turner also did during that morning was not.

17. At some point he gained access to the digital case system (DCS). He was entitled to do this as defence counsel, but only for purposes that were relevant to his duties as defence counsel. He then made an entry on the DCS exhibiting, as entry NAE6, the whole of KEC2 and JMT1. He accepts that he had no business to do this and must also accept that anyone looking at the DCS would be misled into believing that NAE6 had been entered on to it by the prosecution, whose job it was to enter it, if it was to be entered at

all, and that it was now served material. NAE6 comprised thousands of pages and, if it were genuinely served material, its service would greatly affect the page count of documents served, which was a matter of considerable relevance to the fees that the trial would command.

18. He told Mr Hudson that he had drafted an NAE in respect of the raw data and Mr Hudson told Ms Colley (MB33 para 13); according to her first statement Mr Hudson said that he had been asked to pass on what he had been told for her to agree it, but she, quite understandably, did not agree and was also, understandably, very concerned by what had happened (MB 38 para 9). Mr Turner now accepts that whilst he thought he mentioned what he had done to her, she cannot have heard him. She is adamant that he did not.

    The case came on in the afternoon before HHJ Burn; the issue concerning KEC/2 and JMT/1 was not raised by Mr Turner nor was any application to dismiss pursued by him although there was court time for both. The trial itself had to be put off as there was insufficient time for that. In fact, a week or so later the case was concluded against Mr Turner's client by being left on the file and marked not to be proceeded with.

19. These are the facts that lie behind Charge 1 to which Mr Turner's explanation for what happened is that, whilst he went about things the wrong way, he believed that what he did was to bring about what would have happened anyway, because there was a practice at Bradford Crown Court of insisting that the prosecution serve the whole of the underlying data if they wanted to adduce particular examples of texts. We have been shown a ruling of HHJ Rose QC sitting at that court which was to that effect in a case in 2018 in which Mr Turner appeared.

20. That may have been his view, and we will accept that it was, but, as he concedes by his plea it was reckless of him to do what he did and run the risk of misleading the court, if there was a trial, and the Legal Aid Agency, who would be paying his fee, into believing that NAE6 had got on to the DCS by a legitimate route either because the CPS had put it there, or that there had been a judicial ruling on it, when neither was the case.

21. The other Maqsood charges deal with what happened after 25 June 2018. We will deal now with Charge 4, his claim for a fee.

22. As we have already mentioned one of the matters taken into account when calculating counsel's fee for a trial is the page count, which is the number of pages of served evidence. Unused material is not included in the page count.When the case was over, and, as we have mentioned, it ended without the need for a trial in early July, Mr Turner submitted his fee claim; this would have been some time in July 2018. In that claim he sought payment on the basis that NAE6 should be included in the page count. He accepts that that was reckless behaviour but asserts that he assumed that, in conformity with what he understood of the practice in Bradford the prosecution had accepted that NAE6 should be treated as served evidence.

23. We consider that, having himself wrongly entered NAE6 on the DCS in the first place he had a positive duty to check whether that was the case before asking for payment in respect of it; a duty that he failed to exercise.

24. In fact, his claim for NAE6 payment did not succeed. The document that underlay it is the foundation of Charge 6 (MB 54 et seq). Mr Turner persisted in his claim for payment based on the validity of the entry that he had made on the DCS. He should not have done. There was also a positive assertion in his written claim that the material in NAE6 was pivotal to the prosecution case, further suggesting to a reader of this document that NAE6 was served at the instance of the prosecution because they had no option but to serve it (MB 59).

25. He appealed against this determination on 7 August 2018. His submissions in support of that appeal are the subject matter of charge 7. They are largely repetition of his initial claim; they illustrate little new except his determination to persist in a claim that he should have realised should never have been made.

26. Finally, Charge 9. This involved further submissions made to the Legal Aid Agency in respect of his fees on 7 November 2018. Here, it is not the claim for NAE6 based fees that is in issue, because he withdrew that part of his claim; it is what he asserted about why he drafted NAE6. He said that the prosecution intended that the material in NAE6 should be "properly served" but there was no CPS caseworker available, and so he did it himself, bringing that fact to the attention of prosecuting counsel and telling her that if there was any difficulty regarding service NAE6 could be removed.(MB79 and 80) Not

one of these assertions was true and we must conclude that in writing what he did Mr Turner had a reckless disregard to whether they were true.

The Collins Case

27. Charges 1, 4 and 9 can be dealt with together.

28. This was a case about making off without payment against two defendants. It was originally due to be heard at Preston Crown Court. There is no doubt that the prosecution intended to discontinue it but there seems to be some doubt as to whether an appropriate notice of discontinuance was ever given; we do not consider that that matters because, for whatever reason, it was in the list at Preston. Mr Turner, who was defending the Collins', was part heard in Burnley Crown Court on another matter, and so the case was transferred there, appearing in the list on 24 January 2020.

29. That day Mr Andrew Brown, a Senior Crown Advocate, was prosecuting the list. Mr Turner came into court. The judge was out of court at this time. We know what happened then, because the court recording system was running and we have a transcript of what was said between 10.09 and 10.13. (MC 79 et seq).

30. There was some discussion about Mr Turner's part heard case, then Mr Turner mentioned Collins to Mr Brown and told him that it was a case where there was to be an offer of no evidence. That could only be an appropriate disposal of the case if there was an indictment on the DCS; and was itself the only appropriate disposal if an indictment was in fact on the DCS. Mr Turner said there was an indictment and, to laughter, "…I don't get paid if it's a discontinuance"

31. Mr Turner was right to say that there was an indictment, something that no one else knew, because he had drafted it that morning and put it on the DCS himself. This was not only something that he should not have done as defence counsel but was something that he was not allowed to do as counsel by the relevant regulations.

32. The end result of that was that the Collins' were arraigned before HHJ Dodd, pleaded not guilty, no evidence was offered, and Mr Turner became entitled to the fee appropriate to that outcome, rather than being unpaid, as he would have been if there had been a discontinuance.

33. It is quite obvious that Mr Brown had no idea that Mr Turner had drafted and uploaded the indictment (CB 100 and 101), nor did HHJ Dodd, and she was concerned that the decision to abandon the case had been taken so late that an indictment had been drafted. She asked for a written explanation from the CPS.

34. Mr Turner, who had an obvious duty to the court to say what he had done, said nothing, even though he must have known that completely innocent parties were potentially going to be criticised for something that he had brought about.

35. Charge 6 deals with what happened as a result of HHJ Dodd's request for further information. At some time after 24 January, it became known to Mr Brown and HHJ Dodd that from examination of the DCS it was evident that Mr Turner had uploaded the indictment. The judge ordered the matter to be listed before her. Mr Turner submitted a written note (CB 21) but did not attend the hearing, which was on 13 February 2020.

36. This note is the basis for charge 6. In it he asserts that he told prosecuting counsel that "I've put a draft indictment on the system" We now know from the transcript that he said no such thing, and we consider that it showed a reckless disregard of his duty to the court for him to assert to the judge that he did. HHJ Dodd ordered a further investigation, but the pandemic put a halt to any further court enquiry.

Sanction and Reasons

37. We have been guided by Sanctions Guidance Version 6 in coming to our conclusions.

38. We emphasise at this point that we are not dealing with deliberate dishonesty. The BSB is content to proceed with these matters as occasions of reckless professional misconduct and we will not go behind their acceptance of that position.

39. We do consider, however, that, notwithstanding that, certain points should be kept firmly in mind. First that it is incumbent on every practitioner at the Bar to avoid reckless, risk taking or heedless conduct. Second, where only a little thought is needed to show that that conduct could lead to a real possibility that the practitioner might receive money to which he is not entitled, the need to avoid it becomes a professional imperative.

40. We consider that, in acting as he did on the occasions that we have set out above, Mr Turner fell far short of the conduct required of any member of the Bar let alone one of his seniority and experience. In fairness to him, he has accepted that, and we give him credit for his acceptance.

41. We consider that it would be appropriate in this case to impose concurrent sanctions. In our view this would be the appropriate way to reflect our view of the totality of his misconduct. We do not propose to impose a separate penalty in respect of Collins Charge 9 as we regard it better to treat it as an aggravating feature of Charge 1

42. We should first determine the misconduct group into which these charges fall. There is no dispute about this. These matters (apart from Collins Charge 9) come within group F "Misleading the Court and Others"

43. Second, the seriousness. We consider culpability first, and here financial gain, actual or potential, is relevant in our judgment for the reasons set out in paragraph 30 above. In the Collins case this would have been minor but in Maqsood it would have been £5000 or thereabouts if NAE6 had been accepted. We regard this as a seriously aggravating feature of the case particularly as Mr Turner persisted in trying to get payment based on NAE6.

44. We also consider it an aggravating feature that in two separate cases less than two years apart Mr Turner conducted himself in the manner that he did. In other words his misconduct cannot be treated as an isolated incident.

45. Third, the harm. There was limited harm, but it was more than negligible. The outcome of the Maqsood case was not affected, and the Collins' were going to be discharged one way or another, but in Collins the CPS were made by the judge to account for themselves in open court when they should not have been, for an action by Mr Turner that he did not own up to.

46. Taking all these matters into account we consider that this is a case in the middle range of seriousness.

47. In mitigation there is his plea, 23 years of dedication to the profession, the lapse of time since these matters and, of course, the fact that we are dealing with reckless misconduct, not deliberate dishonesty.

48. We have borne in mind all that has been said and written on his behalf and are prepared to accept that the likelihood of any repetition of his misconduct is slight, but despite all these matters we do not consider that we are left with any option but suspension from practice; these repeated examples of recklessness; there would appear to be 7 separate occasions, cannot adequately be reflected by a financial penalty.

49. Giving a discount, as we do, for his plea, we consider that the least penalty that we can impose is suspension from practice for 6 months on each charge concurrent beginning from the date of receipt by Mr Turner of these reasons for our decision.

Costs

50. The Respondent was ordered to pay the BSB's costs of £4,680.

Dated: 5 December 2022

His Honour Nicholas Ainley
Chairman of the Tribunal