Neutral Citation Number: [2025] EWHC 1029 (Admin)

Case No: AC-2024-LON-001451

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 April 2025

Before :

MRS JUSTICE MCGOWAN DBE

- -

Between :

STEPHEN TAYLOR

Appellant

- and -

THE BAR STANDARDS BOARD

Respondent

- -
- -

Mr Marc Beaumont (instructed **by Beaumont Legal Services Limited**) for the Appellant
Mr Nicholas Bard (instructed by) for the Defendants

Hearing date: 31 October 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 29 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE MCGOWAN

Mrs Justice McGowan DBE:

Preamble

After the hearing of this appeal on 31 October 2024, the parties were notified on 17 December 2024 that the appeal would be allowed and that the period of suspension would be lifted. On behalf of the Appellant, Mr Beaumont requested an opportunity to make short further submissions on the level of any fine to be imposed. On behalf of the Bar Standards Board Mr Bard sent short written submissions on 19 March 2025 and Mr Beaumont, with the assistance of Mr Malins KC (who did not appear at appeal), sent a further skeleton argument on 1 April 2025.

Introduction

1. Mr Beaumont represented Mr Stephen Taylor, **("the Appellant"),** at the hearing and Mr Bard appeared on behalf of the Respondent. I am grateful to them both for their helpful written and oral submissions. Mr Bard has maintained a neutral stance on the actual sanction, as he did at the original hearing.

2. The Bar Standards Board, **("BSB"),** was created in 2006 as an independent body to regulate the conduct of barristers in the public interest. Its purposes are to set the standards of conduct for barristers and to authorise barristers to practise; to monitor the service provided by barristers to assure quality; to set the education and training requirements for becoming a barrister as well as setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers and to handle complaints against barristers and to take enforcement or other action where appropriate.

3. Its disciplinary functions are supported by Sanctions Guidance, **("the Guidance")**, issued by the Bar Tribunals and Adjudication Service, **("BTAS")**. The current guidance, version 6, came into effect on 1 January 2022.

> *"This Guidance has been developed by the Bar Tribunals and Adjudication Service ('BTAS') in collaboration with the Bar Standards Board ('BSB'), for use by members of BTAS's Disciplinary Tribunals and the Independent Decision-Making Body (IDB) of the BSB (collectively referred to as 'panels'), when considering what sanctions should be imposed where a finding of professional misconduct has been made for a breach of the BSB Handbook."*

4. The regulatory objectives of the BSB were set in the ***Legal Services Act 2007.*** The BSB Handbook, **("the Handbook"),** contains the rules governing conduct and the Code of Conduct for Barristers, **("the Code").** The objectives in the Act are summarised in the handbook as follows:

   i) protecting and promoting the public interest;

   ii) supporting the constitutional principles of the rule of law;

   iii) improving access to justice;

iv) protecting and promoting the interests of consumers;

v) promoting competition in the provision of the services;

vi) encouraging an independent, strong, diverse and effective legal profession;

vii) increasing public understanding of the citizen's legal rights and duties; and

viii) promoting and maintaining adherence to the following professional principles:

a) that authorised persons act with independence and integrity;

b) that authorised persons maintain proper standards of work;

c) that authorised persons act in the best interests of their clients;

d) that authorised persons comply with their duty to the court to act with independence in the interests of justice; and

e) that the affairs of clients are kept confidential

5. The Handbook sets out the standards with which the BSB requires regulated persons to comply.

6. The Guidance is designed to assist the panel in the exercise of their functions. It provides assistance in determining sanctions in an annex, which sets out non-exhaustive lists of factors which can help the panel determine culpability and harm, and lists aggravating and mitigating factors leading to the determination of an appropriate sanction.

Language-Taxonomy

7. The Guidance uses words such as harm, culpability, aggravating and mitigating features. All these words are used in the guidelines drafted for sentencing in criminal cases by the Sentencing Council. The Guidance also suggests a stepped approach to the determination of an appropriate sanction, again a process familiar from the Sentencing Guidelines. Whilst the language and the stepped approach to be used by the disciplinary panels is the same in the Guidance as the Sentencing Guidelines, the similarity does not extend to the purpose and regime of the BSB and the use of the Guidance.

8. There are strong similarities in the appearance, layout and approach of the Guidance. Those similarities are of form and not of substance.

9. When an individual appears before a tribunal and admits a breach of standards, that is an admission of responsibility. It is an acceptance that their conduct has failed to meet the required standard. It is not a plea of guilty, nor in my view, is it akin to a plea of guilty to a crime. An admission has a similar consequence in that it may save time and costs, and perhaps occasionally the need for witnesses to give evidence. It is also an acknowledgement of responsibility. In both instances it should operate to the credit of the individual. It goes further in the context of professional discipline, it shows a recognition of the failure to meet the standards set to protect the public interest and

maintain confidence in the profession. Such a recognition may therefore support the lack of future risk of repetition.

10. Infringements of the professional code are not criminal offences; they are breaches of the code. The panels do not pass sentences, they impose sanctions. Phrases such as "pleading guilty" and "credit for a guilty plea" should, in my view, have no place in a disciplinary tribunal. The individuals before the tribunal are not accused of criminal offences, the complainants are not the victims of criminal offences, and the sanctions imposed are not criminal sentences. This is in no way to undervalue the significance of breaches of a professional code. Mr Beaumont, on behalf of the Appellant makes the point that this type of language is regularly used in hearings before the panel. Mr Beaumont's undoubted experience in this field makes it clear that this is common practice. In my view it is unhelpful and inappropriate in these types of disciplinary proceedings to use language and terms of art which should be reserved to the criminal courts.

11. These observations do not form any part of the reasoning process in this judgment.

Facts

12. The facts in this case are relatively simple and the issues are straightforward. That is not to underestimate the importance of the case to the Appellant and the wider public but is not necessary to repeat well-established principle or to recite the many authorities on the point, save where directly relevant to the determination of the appeal.

13. The Appellant is a barrister practising in Nottingham. He was called to the Bar in 2002 by Inner Temple. He practises in chancery and commercial work. His annual turnover is in the region of £200,000. A large part of his practice comes from "direct access" work. In other words, he is qualified and allowed to receive instructions directly from the public without the involvement of instructing solicitors or similar. He has no previous findings of misconduct recorded against him.

14. This is a statutory appeal pursuant to section 24 of the ***Crime and Courts Act 2013***, which is governed by CPR Part 52. The Appellant appeals against a sanction imposed on 10 April 2024 by a Disciplinary Panel, **("the panel"),** of the BTAS. The panel found that the appropriate sanction was suspension from practice for a period of 6 months. Their written reasons were given on 10 April 2024.

15. The panel imposed that period of suspension from practice and a requirement that he undertake further continuing professional development training in public access work. That period of suspension has not come into effect. He does not seek to appeal the requirement of further training.

16. The Appellant admitted one charge of professional misconduct, contrary to Core Duty 3 and/or rC9.1 of the Handbook, 9th edition. The particulars of that charge were that he acted "without honesty and integrity, in that, on 16 August 2022, he knowingly misled his client by falsely stating that the client's case papers were likely to be at Mr Taylor's home address, when at such time he knew this to be untrue."

17. Other allegations of professional misconduct were not proceeded with. They were a second charge of knowingly misleading the lay client and a third charge of failing to act in the client's best interest. Whilst they were not simply different expressions of the same piece of conduct, it was not necessary to proceed to a hearing on those issues and the panel made it clear it would take into account the entirety of the conduct.

18. The Appellant had accepted direct access instructions to advise on a rating dispute. He had been provided with a number of original documents and papers by his lay client. He had concluded, and as I understand it perfectly reasonably, that the client's position was unarguable. A conference had been arranged in chambers on 16 August 2022. At that conference he explained to the lay client that the case should not be pursued any further. The client asked for the return of the papers and when the appellant went to the pigeonholes in the clerks' room, the papers were not there.

19. In an attempt to avoid the delay of a search of the clerks' room and the embarrassment of explaining that they were not where he thought they should be in chambers, the Appellant told the client that they were likely to be at home and would be returned in due course. Subsequently he admitted that at the time he said that, he knew he had not taken them home.

20. A search of chambers was carried out and the papers could not be found. I am not required to make any decision about the system of storage of documents in chambers, but it appears that the Appellant accepted that he was responsible for the fact that papers had been misplaced.

21. It was not until 24 November 2022 that the Appellant told the client that the papers had not been taken home, could not be found and must have been disposed of in the confidential waste disposal system in chambers.

22. Being a barrister who accepts instructions directly from members of the public places responsibilities on counsel that would rest with the solicitor in the traditional arrangement. One of those additional responsibilities is the management of documents, often originals. Although the Appellant had advised the client that his case was hopeless, the loss of the original papers meant that the client felt he had been denied the opportunity of seeking advice elsewhere. It is clear that the papers were lost before the lie was told.

23. The fee was returned to the client, and a full apology was provided.

The Hearing

24. The Appellant gave evidence and was asked questions by both the panel and counsel for the BSB. The panel's report summarised his evidence as follows.

    a) *Mr Taylor asserted that he was honest by nature and habit, that he had great remorse for what he had done, and that he had been truthful in the past, even in situations where dishonesty would have benefited him.*

    b) *Mr Taylor asserted that he was not embarrassed about his conduct. Under questioning from the panel, he revised his formulation of that* *point, explaining that he was not so embarrassed by his conduct that he felt that he needed to avoid talking about it, including with colleagues.*

c) *When asked about the delay of approximately three months between making the untrue statement and correcting it, Mr Taylor said that he had been "burying his head in the sand".*

d) *He stated that he had changed his own practice, as had his chambers, to the management of confidential waste, in that it was now placed for disposal in a location that was not proximate to the storage of papers.*

e) *Mr Taylor had not turned his mind to what the appropriate sanction should be. However, when asked about this by the panel, he suggested that, were this a criminal matter where he was representing a client in his position, he would be asking the judge for a discharge."*

25. The panel found the Appellant to be a credible witness, but they were dissatisfied by some aspects of his evidence. They were troubled that it had taken him three months to tell the client about the loss of the papers and they found his answer about burying his head in the sand to be unprofessional. In essence whilst they acknowledged his acceptance of lying about the loss of the papers, they felt that he underestimated the significance of what he had done and that he did not recognise the potential impact on public confidence and trust in the profession.

26. The panel found the seriousness of the breach, taken in the round, to be at the lower end of the scale. They found that the harm caused was also at the lower end of the range, as no or limited harm was actually caused. Further they found that there were no aggravating features, save what they described as "a partial lack of insight". In his favour they found many mitigating features namely, his admission and apology, his attempts to remedy or rectify the breach and the steps he taken to ensure there was no repeat by instituting steps for the better management of papers.

27. The panel took its approach from the basic principle as enshrined in ***Bolton v Law Society [1994] 1 WLR 512***, that dishonesty merits disbarment unless there are "exceptional circumstances". They looked for exceptional circumstances which meant that disbarment was not required.

28. They found that the combination of all the features of the case meant that disbarment was not necessary. It would be disproportionate. However, they were concerned about their concluded view that the Appellant did not realise how serious the breach was; they thought he had "incomplete insight". Nonetheless. that did not outweigh their conclusion that there were exceptional circumstances which meant that disbarment was not necessary.

29. However, given that the Appellant's incomplete insight troubled the panel they felt that the appropriate sanction was a period of suspension for 6 months and a requirement to undertake further continuing professional development relating to public access work before re-commencing his practice.

Appeal

30. He appeals the sanction imposed on the grounds that it was "clearly inappropriate", per Jackson LJ, ***Salsbury v Law Society [2009] 1 WLR 1286 at [30]:***

> *"Absent any error of law, the High Court, must pay considerable respect to the sentencing decisions of the tribunal. Nevertheless, if the High Court, despite paying such respect, is satisfied that the sentencing decision was clearly inappropriate, then the court will interfere."*

31. Mr Beaumont argued that I should find errors of law in the approach taken by the panel. He submitted that the panel was wrong to adopt what he called a top-down approach in determining the sanction. His complaint is that the panel took disbarment as the "default position". As will be seen below I accept his principal submission that the sanction was clearly inappropriate. Accordingly, I do not need to reach broader conclusions on any error of law. If it may be of any future value, it seems to me that given that the sanction for dishonesty is almost inevitably disbarment, then disbarment must be the proper starting point before consideration of whether exceptional circumstances apply. If they do, then a more nuanced application of the guideline, as happened on this case, would follow.

32. The Appellant represented himself at the hearing. He admitted the charge and gave evidence about what had happened. Mr Beaumont takes exception to his having given evidence whilst being unrepresented and unfamiliar with criminal procedure. He makes the point that given that the admission to one charge was accepted the panel should not have commenced on what he describes as a "Newton hearing". He argues that as there was no dispute of fact, there was no need for evidence.

33. The Appellant chose to represent himself, he must have expected to be called upon to give an account. He is a barrister, even if not a criminal practitioner, he chose to act for himself and must have felt capable of doing so. I do not find any basis for the suggestion that he was "interrogated" by the panel. It is a crucial part of the panel's function to consider whether the barrister has demonstrated insight and understanding so that there will be no repetition. The panel did find that there was no risk of repetition so notwithstanding their reservations about his full insight they found, in his favour, that there was no future risk.

34. The authorities make it very clear that a panel such as the BTAS Disciplinary Tribunal are experts and have experience and expertise in the regulation of barristers. It is not for this court to interfere with their decision on the basis of disagreement. As Mr Bard submitted, an appeal should only be allowed for the right reasons, not because I or another panel might have taken a different view.

35. With all due respect to the panel for their carefully reasoned decision, I do find that the sanction they reached was clearly inappropriate in the circumstances of this case. It was disproportionate. I take the view that the panel was correct to start by considering disbarment and then move on to suspension. However, it would then have been appropriate to reflect further, and to consider whether all the requirements of the imposition of sanction and the duty to protect public trust and confidence in the profession could not have been met by the combined effect of the requirement to complete further professional development training and a financial penalty to mark the seriousness of any act of dishonesty by a barrister.

36. This was not a lie told for personal gain, in any real sense. It was not a lie about the case, or the proceedings and it was clearly spontaneous. However, I do not find it to be without real significance and do not accept the submissions that this is at the lowest end, not simply of dishonest conduct but of misconduct generally.

37. I find the use of the expression "white lie" very unhelpful in these circumstances. It is a very imprecise term. Mr Malins in his written submissions also reminds me that barristers are human beings, and therefore fallible. This was not a social occasion at which a lie was told as an excuse for lateness or similar, designed to cover embarrassment and to protect the feelings of the recipient of the lie. This was a professional relationship in the furtherance of the administration of justice. Barristers must not tell lies of any description to a court, tribunal or client. Barristers are occasionally fallible in their advice, their performance and possibly even their judgment. They must not be fallible in their honesty. The proper functioning of the system of justice depends on the public being able to have trust and confidence in the word of a lawyer.

38. I accept, as did the panel, that this is lower in the scale of deliberate lies told in such a professional relationship. They found that it was a spontaneous failing, designed to avoid having to explain the loss of the papers. I do not go behind that finding. I accept that whilst the Appellant simply had not understood how seriously this would be perceived, he fully realises that now. He has been faced by the prospect of suspension from April 2024 until December 2024. The consequence of six months suspension would have been the loss of at least half his annual income, a figure likely to have been in excess of £100,000.

39. I must consider afresh the proper sanction to be imposed. He has an unblemished previous record and admitted the breach to the client and accepted the charge before the tribunal. I have reference to the Guidance of January 2022 (v6). Section 5 sets out the approach to be taken to dishonesty. It starts from the premise that disbarment is almost inevitable unless, as in this case, there are exceptional circumstances. The Guidance makes clear that dishonesty that is "momentary, isolated and occurred on the spur of the moment" may justify the finding of such exceptional circumstances. I follow that panel's view that this is a case properly identified as having exceptional circumstances and that disbarment is not required. I do not believe that suspension is warranted to protect the public interest. The requirement of further professional development is made out and I do not interfere with that part of the sanction imposed. This is not so serious as to require suspension from practice.

40. This must be marked by a fine, not as the Guidance makes clear as a punishment: this is not a sentence, rather it is a deterrent. The financial consequences of the original period of suspension would have been in excess of £100,000, half his annual turnover. Whilst the relation between income lost and suspension is not a precise one or a proper means of assessing a fine, it is nonetheless illustrative. On the Appellant's behalf it is argued that a fine set at £10,000, 10% of that figure would be proportionate. That submission is based on the proposition that this was a "white lie" and accordingly not serious. I disagree.

41. It is also argued that there should be "credit for the guilty plea". As set out above I do not find it helpful to the Appellant to have the analogy drawn between his conduct and criminal offending. He has not committed or been convicted of any criminal

offence. Mr Beaumont relies on the case of ***Khan v BSB [2018] EWHC 2184 (Admin)*** in which the court gave an "appropriate discount" for the early admissions. I accept that the Appellant's early recognition of what he had done, his admission to the client coupled with the apology, the restoration of the fee and the payment of an additional sum as assessed by the Legal Ombudsman are all factors to his credit and should be weighed in his favour. They lessen the need for the deterrent impact of the sanction.

42. At Section 6 the Guidance lists the available sanctions. Paragraph 6.16 sets out the three levels of fines.

Low	Up to £5,000	Sufficiently serious to justify a fine
Medium	£5,001-£15,000	Moderately serious
High	£15,001-£50,000	Serious misconduct that does not

warrant a suspension to protect the public interest.

43. In my view whilst this dishonest conduct does not warrant a period of suspension it is serious misconduct. This is conduct which falls at the lower end of dishonesty, it is not conduct which falls at the lower end of the full range of misconduct. Having reflected on the amount of the fine, I accept Mr Beaumont's submissions that the Appellant's admission and recognising of his wrongdoing are important features and should be properly weighed in the balance in his favour, to an extent that is properly represented in the final figure. Accordingly placing this breach in the high category of serious conduct not meriting suspension but acknowledging all the matters in his favour, I determine the correct fine to be £25,000.

44. The appeal against a period of suspension for six months is allowed. A fine of £25,000 is imposed in its place. The requirement to complete further professional development training remains.