Neutral Citation Number: [2023] EWHC 1249 (Admin)

Case No: CO/2478/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2023

Before :

THE HONOURABLE MRS JUSTICE THORNTON DBE

- -

Between :

ZEESHAN MIAN **Appellant**

- and -

BAR STANDARDS BOARD (BSB) **Respondent**

- -
- -

The **Appellant** appeared in person
Mr Mathieson (instructed by the **Bar Standards Board**) for the **Respondent**

Hearing date: 25th April

- -

Approved Judgment

This judgment was handed down remotely at 10:00am on 24th May 2023 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 THORNTON DBE

The Hon. Mrs Justice Thornton :

Introduction

1. This is a statutory appeal, pursuant to section 24 of the Crime and Courts Act 2013. The Appellant (Mr Mian) is a former solicitor who transferred to become a barrister. He appeals against a unanimous decision of a Disciplinary Tribunal of the Council of the Inns of Court ("the Tribunal") on 16 June 2022 in relation to twelve charges of professional misconduct.

2. The professional misconduct relates to the Appellant's failure to notify Lincoln's Inn or the specialist regulator of barristers in England and Wales, the Bar Standards Board ("BSB"), that he was the subject of investigation and then disciplinary charges by the Solicitors Regulation Authority ("SRA") and the Solicitors Disciplinary Tribunal ("SDT") from 2015 - 2020.

3. The twelve charges of professional misconduct were found proved, including a finding of dishonesty in relation to three of the charges. By way of sanction, the Tribunal disbarred the Appellant. He appeals, as of right, against the finding of guilt and the sanction imposed.

Factual Background

Chronology

4. In its decision, the Tribunal said the chronology of events was important. I set out a brief chronology as follows.

5. In 2007, the Appellant was admitted as a solicitor, becoming the Director of Denning Solicitors. On 23 February 2015, he was informed by the SRA that it had received a report about his firm employing a disqualified barrister, asking whether the allegation was accepted and raising queries about the barrister in question. On 15 December 2015, he received a letter from the SRA informing him that it was starting a formal investigation into several matters and seeking his response to the allegations (in his capacity of Director of the firm). The letter stated that the Appellant's reply might be used by the SRA for regulatory purposes, including as evidence in any investigation and or decision by the SRA and in disciplinary proceedings before the SDT. The letter went on to say that "If it is decided that an application should be made to the SDT such a decision may be made without further reference to you. We would of course formally notify you if such a decision were made".

6. On 17 February 2016, he applied for admission to the Bar as a Solicitor. His application was accompanied by a Certificate of Good Standing issued by the SRA, dated 23 November 2015, after the initial contact from the SRA in February 2015 but before the letter of December 2015 informing the Appellant of the formal investigation.

7. On 7 April 2016, a case officer at the SRA emailed the Appellant to say, "I am currently considering imposing conditions on your Practising Certificate and I will seek to forward my report to you soon". The Appellant responded by email saying, "I am disappointed to note that you are proposing to impose conditions on my practice certificate….".

8. On 15 April 2016, the Bar Standards Board approved his application for transfer to the Bar on the basis he had the necessary education and qualifications to be admitted to an Inn of Court and to be called to Bar, but informing him that the Inns of Court had further admission procedures.

9. On 4 May 2016, the Appellant signed two declarations. The first was in relation to his application for admission to Lincoln's Inn as to which he signed to say that the following statements were correct:

> *'I have never been convicted of a disciplinary offence by a professional or regulatory body nor are there any disciplinary proceedings pending against me anywhere in respect of any such offence.'* (paragraph 2(b))
>
> *Except as disclosed below, I am not aware of any matter which might reasonably be thought to call into question my fitness to become a practising barrister.*[10]*'* (paragraph 3)

10. The footnote at the end of the sentence in paragraph 3 states as follows:

> *'10 This includes any incident or behaviour which if known to the Inn might cause your application to be considered more carefully. If in doubt, disclose the incident/behaviour. Two examples are given by way of illustrating but not as limitations on disclosure:*
>
> a. *Receipt of a police caution*
> *b. A Court injunction or Anti-Social Behaviour Order restricting your conduct.'*

11. Other paragraphs (signed) in the declaration provide as follows:

> *'6. I undertake that I will inform the Inn immediately if any statement made in this Declaration ceases to be true before I have been admitted to the Inn and while I am an applicant for admission to the Inn.*
>
> *7. I undertake that while I am a Student member of the Inn:-*
>
> *……*
>
> *(c) I will promptly inform the Under Treasurer (or Sub-Treasurer) of the Inn in writing if:*
>
> *…….*
>
> *(ii) there are disciplinary proceedings pending against me……'.*

12. At page 3 of the declaration the following is said:

> *'If …… there is any other matter which might reasonably be thought to call into question your fitness to become a practicing barrister, please give details in the box below – use a continuation sheet if necessary and attached supporting documents .....'.*

13. On the same day, the Appellant signed a second declaration, in relation to his call to the Bar, which provide as follows:

> *'1. I confirm that the declaration which I made for the purpose of obtaining admission to this Inn was true in every respect when I made it.*
>
> *2. Since I made that admission declaration:*
>
> *(a) I have not been convicted of a disciplinary offence by a professional or regulatory body (nor been the subject of any pending proceedings for such an offence);*
>
> *……*
>
> *4. Except as disclosed below, I am not aware of any circumstance which has occurred while I have been a Student member of the Inn which might reasonably be thought to call into question my fitness to become a practising barrister.[9]'*

14. The footnote at the end of paragraph 4 was in the same terms as the footnote in the Admission declaration, as to which see paragraph 10 above.

15. The front pages of the application for call to the Bar contains a statement at the bottom of the form saying, "Please notify the Inn if any change of address or circumstance takes place after you have completed this form". Other paragraphs in the declaration provides as follows:

> *'If you delete any of the statements in paragraphs 1 to 3 above or there is any other circumstance has occurred while you have been a Student which might reasonably be thought to call into question your fitness to become a practising barrister, please give details in the box below …*
> *……*
> *I understand that if this declaration is found to have been false in any material respect, or if I breach any undertaking given in it in any material respect, then that will constitute professional misconduct.'*

16. On 20 May 2016, the case officer from the SRA emailed a report to the Appellant recommending the imposition of conditions on his practising certificate and seeking his views by close of business on 6 June 2016.

17. On 23 May 2016, the Appellant was admitted as a student member of Lincoln's Inn.

18. On 5 September 2016, the SRA informed the Appellant by email of its decision to impose conditions on his practising certificate as a solicitor. The Appellant appealed but the decision was upheld on 2 November 2016.

19. On 24 November 2016, the Appellant was called to the Bar by Lincoln's Inn.

20. From 10 March - 4 May 2017, the Appellant practised as an employed barrister, before registering as a third six pupil.

21. On 27 March 2018, the Appellant was referred by the SRA to the SDT who heard his case in late 2019 before imposing conditions on his practice and a fine.

22. Subsequently, the BSB laid the charges of professional misconduct against him which feature in this appeal and which led to the hearing before the Tribunal on 16 June 2022 where the Appellant was disbarred.

The Bar Code of Conduct

23. The conduct in issue in this appeal is said to be contrary to the Code of Conduct for the Bar of England and Wales, in particular Core Duties 3, 5 and 9 and the accompanying rules which supplement the core duties. The relevant core duties provide that:

- You must act with honesty and with integrity (Core Duty 3).
- You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession (Core Duty 5).
- You must be open and co-operative with your regulators (Core Duty 9).

24. The relevant rules provide that:

- "Where it is alleged that the call declaration made by a barrister on call is false in any material respect or that the barrister has engaged before call in conduct which is dishonest or otherwise discreditable to a barrister and which was not, before call, fairly disclosed in writing to the Benchers of the Inn calling him …that shall be treated as an allegation of a breach of this Handbook and will be subject to the provisions in Part 5." [rQ117]

- "You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4)." [rC8]

- "You must report promptly to the Bar Standards Board if …you (or an entity of which you are a manger) to your knowledge are the subject of any disciplinary or other regulatory or enforcement by another Approved Regulator or other regulator, including being the subject of disciplinary proceedings." [rC65]

<u>The Charges</u>

25. The 12 charges of professional misconduct reflect different periods of alleged non-disclosure.

Charges 1 and 2

26. Charges 1 and 2 concern the Appellant's conduct during his transfer and call to the Bar. Both cite the following factual matrix and allegations:

> 'On around 6 May 2016, Mr Zeeshan Saqib Mian submitted to Lincoln's Inn i) an Admission Declaration, signed 4 May 2016, and a Call Declaration, also signed 4 May 2016. He was admitted as a student member of the Inn on 23 May 2016. On 2 September 2016, the Solicitors Regulation Authority (SRA) imposed initial conditions on Mr Mian's practising certificate as a solicitor. On 24 November 2016, Mr Zeeshan Saqib Mian was called to the Bar.
>
> The Call Declaration made by Mr Mian for the purpose of being called to the Bar was materially false in that:

(a) At the time of signing the Call Declaration on around 4 May 2016, Mr Mian knew and failed to declare that he was the subject of pending proceedings by a professional or regulatory body, the SRA; and/or

(b) At the time of signing the Call Declaration on around 4 May 2016, Mr Mian declared that the Admission Declaration was true in every respect when he made it. This was false, because on the Admission Declaration:

i. Mr Mian declared that there were no disciplinary proceedings pending against him by a professional or regulatory body. This was false as Mr Mian was and knew he was the subject of pending proceedings by the SRA.

ii. Mr Mian declared that he was not aware of any matter which might reasonably be thought to call into question his fitness to become a practising barrister, and did not disclose the following matters which would reasonably be thought to call into question his fitness to become a practising barrister:

a. He was the subject of formal investigation by the SRA;
b. He was potentially to be the subject of referral to the Solicitors Disciplinary Tribunal and/or the imposition of conditions;

and/or

(c) The Call Declaration made for the purpose of being called to the Bar was materially false by the time Mr Mian was called to the Bar on 24 November 2016, because the SRA had imposed conditions on his practising certificate as a solicitor:

a. This rendered false the declaration that since the Admission Declaration, he had not been the subject of any pending proceedings for a disciplinary offence by a professional or regulatory body; and/or

b. This rendered false the declaration that he was not aware of any circumstance which had occurred while he had been a student member of the Inn which might reasonably be thought to call into question his fitness to become a practising barrister.'

27. Having set out the text above, Charge 1 concludes in relation to the conduct set out above as follows:

'By virtue of the Call Declaration being materially false, or by virtue of Mr Mian failing to inform Lincoln's Inn that the Call Declaration had become materially false at the time he was called to the Bar, Mr Mian behaved in a way which is likely to diminish the trust and confidence which the public places in him or in the profession.'

28. The conduct is said to be professional misconduct, contrary to Core Duty 5, and in line with rQ117 of the Code of Conduct.

29. Charge 2 concludes by alleging dishonesty as follows:

> 'By virtue of the Call Declaration being materially false, or by virtue of Mr Mian failing to inform Lincoln's Inn that the Call Declaration had become materially false at the time he was called to the Bar, Mr Mian behaved in a way which could reasonably be seen by the public to undermine his honesty, and/or integrity.'

30. The conduct is said to be professional misconduct, contrary to rC8 in line with rQ117 of the Code of Conduct.

Charges 3-7

31. Charges 3 – 7 concern the period of time from 24 November 2016 when the Appellant was called to the Bar until 20 December 2018, during which time it was said the Appellant failed to inform the BSB that the SRA had imposed conditions on his practicing certificate as a solicitor prior to his call to the Bar and which continued to be in place.

32. Charge 3 is that the Appellant failed to act with honesty, and/or integrity, contrary to CD3 of the Code of Conduct. Charge 4 is that he behaved in a way which is likely to diminish the trust and confidence which the public places in him or in the profession contrary to CD5 of the Code of Conduct. Charge 5 is that he failed to be open and co-operative with his regulators contrary to CD9 of the Code of Conduct. Charge 6 is that he acted in a way which could reasonably be seen by the public to undermine his honesty, and/or integrity contrary to rC8 of the Code of Conduct. Charge 7 is that he failed to report promptly to the BSB that he was the subject of disciplinary or other regulatory action contrary to rC65.3 of the Code of Conduct.

Charges 8-12

33. Charges 8 – 12 concern the Appellant's conduct from 3 April 2018, having been informed by the SRA, on or around that date, that he was being referred to the SDT.

34. Charge 8 is that he failed to act with honesty and/or integrity in failing to inform the BSB promptly that he had been referred to the SDT as required by Rule C65, contrary to CD3 of the Code of Conduct. Charge 9 is that he behaved in a way which is likely to diminish the trust and confidence which the public places in him or in the profession contrary to CD5 of the Code of Conduct. Charge 10 is that he failed to be open and co-operative with his regulators in reporting promptly contrary to CD9 of the Code of Conduct. Charge 11 is that he behaved in a way which could reasonably be seen by the public to undermine his honesty and/or integrity, contrary to rC8 of the Code of Conduct. Charge 12 is that he failed to report promptly to the BSB that he was the subject of any disciplinary or other regulatory action, contrary to rC65.3 of the Code of Conduct.

The tribunal hearing and decision

35. The Tribunal was chaired by a Circuit Judge. The other four members of the Tribunal comprised two barristers and two lay members. The Appellant and the BSB were both represented by Counsel. The Appellant gave evidence and was cross examined.

36. Before the Tribunal, the Appellant accepted as a matter of fact:

(1) that he received correspondence from the SRA and was aware that an investigation was being carried out which ultimately led to disciplinary proceedings against him;

(2) that he was aware that restrictions had been placed on his practising certificate by the SRA; and

(3) that he did not inform Lincoln's Inn before or at his call to the Bar of the SRA or the BSB after his call, about the investigation and disciplinary proceedings against him.

37. The Appellant's case before the Tribunal was that he did not consider that the investigation and allegations against him were justified or were relevant to any professional duty he might owe as a barrister. The limitations imposed by the SRA on his practising certificate related to the administrative duties which a solicitor is required to carry out in relation to his firm rather than to matters relating to the Appellant's conduct of litigation or advocacy. He strenuously denied that he had acted dishonestly in failing to disclose the matter and maintained any failure to do so was careless rather than dishonest.

38. The Tribunal was unanimous in finding the twelve charges of professional misconduct proved. Judgment was given ex-tempore. Following retirement to consider sanction, the Tribunal, by a majority of 3 to 2, concluded that the appropriate sanction was that of disbarment. Unbeknownst to the Tribunal at the time, the equipment recording had failed, with the consequence that there was no official record of the hearing or the judgment. In producing a written record of its ruling, the Tribunal relied on notes taken by its members.

The decision

39. In finding charges 1 and 2 proved, the Tribunal addressed matters as follows:

> *'The Respondent …was called to the Bar by Lincoln's Inn on 24th November 2016. He had previously been admitted as a solicitor in 2007 and was called under the accelerated procedure for those transferring from other branches of the profession. Issues had arisen concerning the solicitor's firm with which he was involved. The result was in that in 2016 the Solicitors Regulation Authority imposed conditions on his practicing certificate.*
>
> *The chronology is important here and should be referred to when considering this judgment. On 7th April 2016 (B127) the SRA informed him that it proposed to impose conditions on his practising certificate. During the subsequent months he availed himself of the various review procedures to challenge this. By a letter dated 5th September 2016 the conditions were confirmed. Indeed, this was the position by 10th November 2016, a matter of around two weeks before his Call.*
>
> *Meanwhile he had applied for admission to Lincoln's Inn as a student and on 4th May 2016 signed the requisite admission declaration. At the same time, he signed a Call declaration in similar terms. Normally the admission and call declarations are some time and very often years apart. The student then repeats and confirms that matters in the admission declaration are true and correct. Because of the*

accelerated procedure they were on the same day. It is clear to us that because of those particular circumstances, the effect of signing the admission and call declarations together is to impose a continuing duty on the student to bring any relevant matters to the attention of the BSB and the Benchers of the Inn. The time lapse between his admission and actual call to the Bar was slightly over 6 months after the declaration.

The declarations contain two important paragraphs No. 2 relates to any pending disciplinary proceedings. No. 4 relates to any circumstances that might reasonably be thought to call into question his fitness to become a barrister. In the footnotes to the declaration there is no actual definition of what are pending proceedings. The Respondent contends that the decision to impose conditions was not a pending proceeding. Whatever may have been the position in April, it is abundantly clear to us that by November 2016, there were pending proceedings. Even if we are wrong on this, the Respondent was aware of circumstances which might be thought to call into question his fitness to practice as a barrister and so came withing the scope of paragraph 4.

This can be tested by looking at the events between April and November. The Respondent had not only been informed in emails that conditions were being imposed on his practising certificate See (e.g.B129), but he had also taken steps of his own. He took advice from Mr. Geoffrey Williams QC ("GW") an acknowledged expert in this area. GW was in email contact with the SRA on behalf of the Respondent. On 23rd June the SRA informed him that further disciplinary proceedings were being contemplated.

It is clear to us that because of those particular circumstances, the effect of signing the admission and Call declaration at the same time is to impose a continuing duty on the part of the student to bring to the attention of the BSB or the Inn any matter that might reasonably be thought to call into question his fitness to practise as a barrister.

The Respondent was by November the subject of pending proceedings, but even if we are wrong on that he was aware of circumstances which might be thought to call into question his fitness to practise as a barrister

If a former solicitor has had restrictions and conditions imposed on his practising certificate this is something which ought to be disclosed. It renders call declaration false as it means that matters that should have been disclosed have not been disclosed. It is clear to us that by 10th November, he knew full well what the position was and nevertheless went ahead with his call to the Bar.

We remind ourselves of the law that we have to apply. The burden of proof is at all times on the BSB. Because these events occurred before 1st April 2019, we must apply the criminal standard of proof in that we must be satisfied so that we are sure or beyond reasonable doubt. We remind ourselves of the relevant cases where dishonesty is alleged…

…

The test involves two questions

1) *What did the (Respondent) himself actually know at the time?*
2) *If this is what he knew would an ordinary decent law abiding person regard his conduct as dishonest*

The Respondent in our judgment plainly knew that these matters were pending and he also knew of the imposition of conditions. In his evidence he has almost admitted as much.

The Respondent submits that these matters were not relevant and that he did not believe them to be relevant. We have to factor this into our decision when we consider the 2nd question in the test of dishonesty.

The Respondent is not an uneducated man nor is he a novice in the legal profession. He had been a solicitor for nearly 10 years before he was called to the Bar. He was aware of what the SRA was investigating as the email correspondence shows.

We have considered the evidence in the documents about the Respondent's mental health. We accept that he was depressed but we do not accept that he was unable to make relevant judgements.

In his evidence he said that he formed a judgement of his own. He did not take any advice on the issue from anyone else at the Inn but took it upon himself to decide that it was not relevant.

The burden of proof is on the BSB to disprove his explanation. All the BSB's evidence has been contained in documents. The Respondent did not ask for any oral evidence to be called on behalf of the BSB.

We are wholly unable to accept the Respondent's assertion that it was not relevant. It must have been obvious to him that he should have informed the Benchers and the BSB of these matters. He failed to inform the Benchers of the Inn or the BSB of them.

We make every allowance that we can but, in the end, as far as charges 1 and 2 are concerned we are driven to the conclusion that he knew perfectly well about these matters and made a conscious decision to withhold them. On Charge 1 this would diminish the trust and confidence that the public has in the profession.

On Charge 2 we are satisfied that this would undermine his honesty and or his integrity. In our judgment both his honesty or integrity would be undermined.'

40. Having set out its core reasoning above the Tribunal, found that Charges 3 – 12 were proved on the basis that Charges 3 – 7 involved the Appellant's failure to inform the BSB of the relevant matters after his call and Charges 8 – 12 involved similar non-disclosure in relation to later events in early 2018 when the Applicant was informed that proceedings were to be taken against him by the SDT.

41. Turning to the issue of sanction, the Tribunal reasoned as follows:

'Sanction and Reasons

Following retirement to consider sanction, the Tribunal, by a majority of 3 to 2, concluded that the appropriate sanction was that of disbarment.

We apply the Sanctions Guidance issued at the beginning of 2022. This applies to the date of the determination regardless of when the events occurred.

Section 5 deals with dishonesty. We have found dishonesty proved specifically in relation to Charges 2, 6 and 11. Others involve undermining trust and confidence in the profession. "Dishonesty" here includes but is not limited to making false statements and declarations and concealing information. The Guidance also states that where a finding of dishonesty is made, the starting point is that such a finding will lead to disbarment in all but the most exceptional circumstances. Examples of these are given. They include but are not limited to such matters as the following:

1 Admitting the misconduct at the earliest opportunity
2 Self reporting
3 Demonstrating genuine remorse
4 Co-operation with the investigation
5 Efforts to remedy the harm caused
6 Attempts to prevent repetition of the offending conduct
7 Acting on advice
8 Lack of experience
9 Health issues
10 Previous good character

We remind ourselves of what the Guidance says. No matter how strong the mitigation, disbarment will probably be the most appropriate sanction where dishonesty has been proved. We also remind ourselves of the words of Lord Bingham that maintaining the integrity and good reputation of the profession as a whole is more important than the fortunes of any individual member of it (Bolton v. Law Society 1994). It reminds us of the need to maintain public trust and confidence in the profession.

When we look at the potential mitigation, so many of the mitigating factors are absent from this case. For example, those at 1 to 3 are wholly absent. As to 4, it is true that he did not obstruct the investigation, but this is as far as it goes. 5 and 6 are not applicable or relevant. He did not act on advice, and he did not lack experience. As to 9 we note the evidence about his mental state, but he was not incapable of making a rational decision. As to his good character this is reduced by the fact that the SDT eventually found the charges against him proved and imposed a fine.

Looking at the mitigating factors, he has not been able to demonstrate that they apply.

Regrettably the decision of the tribunal has to be that looking at those factors and the Guidance, the Respondent must be disbarred on the charges of dishonesty. It can be applied to the rest of the charges concurrently or we can make no separate sanction.

> *The sanction is one of disbarment.*
>
> ….
>
> *The minority view was that although the Respondent's conduct was serious it was not conduct so serious as to merit disbarment. In the circumstances a substantial period of suspension would have been appropriate and proportionate but the length of this was not discussed. There was very limited harm and although we all agreed that this was a case which was in the lowest category, where we effectively disagreed was that there was nothing exceptional about this case which merited a departure from the guidance that states that disbarment is the only appropriate sanction.'*

The Court's powers on appeal

42. The relevant legal framework was common ground.

43. The appeal is governed by CPR Part 52. As applied to the present context, this Court will allow an appeal if the decision of the Tribunal is wrong or unjust because of a serious procedural error or other irregularity in the proceedings. The appeal will be limited to a review of the decision of the Tribunal unless the Court considers that in the circumstances of the present appeal, it would be in the interests of justice to hold a re-hearing (CPR 52.21).

44. The Court will afford appropriate respect and restraint to decision making by a specialist adjudicative body like the Tribunal which has greater experience of regulating the Bar than the Courts (General Medical Council v Bawa-Garba [2019] 1 WLR 1929 at §67 and Hewson v Bar Standards Board [2021] EWHC 28 (Admin) at §32), although the spectrum of respect may depend on what is in issue (EI Dupont de Nemours & Co v ST Dupont [2003] EWCA Civ 1368; 1 at §92).

Grounds of appeal

45. At the hearing before me, the Appellant represented himself, although he relied on a skeleton argument drafted by Counsel prior to his decision to represent himself. I permitted him appropriate breaks during the proceedings at his request.

46. Following discussions at the start of the hearing, it was agreed by the Appellant and Counsel for the BSB, that the grounds of appeal could be distilled and refined as follows:

> Issue 1 – Was the Tribunal wrong to find that the Appellant knew and failed to declare that he was the subject of pending proceedings by the SRA when he signed the Admission and Call Declarations on 4 May 2016?
>
> Issue 2 – Was the Tribunal wrong to find that the Appellant knew and failed to declare that he was aware of a matter which might reasonably be thought to call into his question his fitness to become a practising barrister, specifically a) that he was the subject of formal investigation by the SRA and b) that he was

potentially to be the subject of referral to the SDT and/or the imposition of conditions?

Issue 3 – Was the Tribunal wrong to find that any such failure to declare was dishonest, lacking in integrity, or could reasonably be seen by the public as undermining his honesty or integrity?

Issue 4 – Was the Tribunal wrong to find that signing the Admission and Call Declarations placed the Appellant under a 'continuing duty' such that he committed misconduct when he knew and failed to declare that he had been made subject to conditions as of his call on 24 November 2016?

Issue 5 – Was the Tribunal wrong to find that any such failure to declare was dishonest, lacking in integrity, or could reasonably be seen by the public as undermining his honesty or integrity?

Issue 6 – There being no dispute that from the time of his Call onwards, the Appellant did not promptly inform the BSB of the imposition of SRA conditions (Charges 3 – 7) and did not inform the BSB of the referral to the SDT on around 3 April 2018, was the Tribunal wrong to find that this failure to self-report constituted professional misconduct as charged (including that it was a dishonest failure)?

Issue 7 – Was the Tribunal wrong to find that the appropriate sanction was disbarment?

47. Towards the end of the hearing before me, the Appellant conceded that his failure to inform the Bar Standards Board about his referral to the SDT amounted to professional misconduct, but he contended that his actions in this regard were careless rather than dishonest. He confirmed his position in this regard in written submissions after the hearing.

48. In the skeleton argument produced on his behalf by Counsel, it was submitted that all that had happened by 4 May 2016 was that the SRA had instigated an internal administrative investigation, not a "proceeding", and accordingly there was nothing for the Appellant to declare to Lincoln's Inn. The Tribunal fell into error in concluding there was continuing duty on the Appellant to notify Lincoln's Inn once the declarations were signed. Whilst by the date of his call to the bar he was aware that conditions had been imposed on his practicing certificate as a solicitor, the conditions imposed were not based on any formal finding; were of no practical effect; were not disciplinary measures; were of no relevance to practice as a barrister as they related to the management of a firm of solicitors; they did not involve an allegation of dishonesty made to or by the SRA and the Appellant had nonetheless been issued with a certificate of good standing by the SRA in November 2015. The Appellant's genuine belief up to, and as at, 24 November 2016 was that the imposition of conditions was not relevant or material to disclose. An ordinary, decent, law-abiding person would not regard his conduct as dishonest.

Application for a rehearing and to introduce new evidence

49. Prior to the hearing, the Appellant applied in writing for the appeal to be conducted by way of re-hearing. He also sought permission for the introduction of new evidence (which included correspondence between the Appellant, his then instructed Counsel, Mr Williams KC and the clerk to Mr Williams) and for the Court to allow oral evidence limited to the new evidence. The basis of his application was said to be two-fold: firstly, because the recording equipment at the Tribunal hearing had failed, contrary to the requirement for a verbatim record of proceedings before a Disciplinary Tribunal and secondly, on the basis that the Tribunal was unjustly influenced and misled by the BSB's (unfounded) allegations before the Tribunal.

50. The Bar Standards Board objected to the application for a rehearing and introduction of new evidence but made the pragmatic suggestion that I allow the Appellant to rely on and deploy the relevant evidence, deferring a decision on its relevance and admissibility until after I had been shown the additional documents and heard all the parties' submissions. This was the approach adopted by the Court in Diggins v Bar Standards Board [2020] EWHC 467 (Admin).

51. Towards the start of the hearing, I went through each of his allegations that the BSB had misled the Tribunal in detail with the Appellant. The Appellant indicated he was content that I consider the fresh evidence 'de bene esse'. In written submissions filed after the hearing, the Appellant indicated that he no longer maintained his case that a rehearing was necessary because the BSB had misled the Tribunal, or any allegation that the BSB had misled the Tribunal. There were, however, he submitted, other good reasons for the decision under appeal to be revaluated on its facts.

Discussion and conclusions

Rehearing

52. I do not consider it necessary in the interests of justice to re-hear the appeal and accordingly I proceed by way of a review of the Tribunal's decision. My reasons are as follows in this regard. Whilst unfortunate, the failure of the recording equipment cannot be said to have led to injustice because the Tribunal gave an ex-tempore judgment at the hearing in which it found all the charges proved and imposed a sanction of disbarment. The Tribunal then used the notes by members to construct a written record of the oral judgment. It was not suggested to me that there was any material deviation in the written record as compared with the oral judgment. Secondly, the Appellant withdrew his allegations that the BSB had misled the Tribunal. This was a sensible course of action as I was entirely unpersuaded of the merits of this accusation when I went through each of the allegations with the Appellant at the hearing. Thirdly, I bear in mind that the nature of an appeal under CPR 52.21 contains, a degree of flexibility necessary to enable the court to achieve the overriding objective of dealing with individual cases justly, including the power to admit fresh evidence, which applies equally to a review or re-hearing (EI Dupont de Nemours & Co v ST Dupont at §96), although it appears to be the case that the fresh evidence is no longer required because, as the Appellant said himself in his written application notice, its purpose was to assist the Court in determining if the Tribunal was unjustly influenced by the BSB, an allegation subsequently withdrawn by the Appellant in writing after the hearing. Nonetheless, I have considered the evidence, de bene esse, as per the pragmatic concession by the BSB.

Review of the panel's decision

53. Before the Tribunal, the Appellant had accepted that he was aware that an investigation was being carried out by the SRA which led to restrictions being placed on his practicing certificate (and ultimately disciplinary proceedings against him). He accepted that he did not inform Lincoln's Inn, before or at his call to the Bar, or the BSB after his call. His case before the Tribunal was, in material part, that he did not consider that the investigation and allegations against him were relevant to any professional duty he owed as a barrister.

54. It is apparent that the Tribunal firmly rejected the Appellant's case that the matters in question were not relevant, reaching a clear finding that:

> '*If a former solicitor has had restrictions and conditions imposed on his practising certificate this is something which ought to be disclosed.*'

55. In my judgment, this is an assessment reached by a specialist tribunal which ought to be given due respect (GMC v Bawa-Garba). In any event paragraphs 9 and 10 of the witness statement of an investigation manager at the SRA, which was before the Tribunal, amply justify its finding in this respect:

> '*On 2 September 2016, the SRA decided to impose conditions on Mr Mian's practising certificate. Conditions are imposed when the SRA identifies a risk to the public but not necessarily as a result of proven facts. They are considered to be a protective measure but not a final determination, they do not conclude matters and are considered to be separate from any disciplinary action taken by the SDT. Conditions are reviewed annually at the point at which the solicitor makes an application for renewal of their practising certificate.*
>
> *10. The conditions imposed on Mr Mian were: Pursuant to Regulation 7 of the SRA Practising Regulations 2011, The practising certificate of Mr Zeeshan Saqib Mian is subject to the following conditions:*
>
> *1. Mr Mian shall only act as a solicitor in employment. That employment must first be approved by the SRA*
> *2. Mr Mian shall not be a manager or owner of any authorised body or authorised non-SRA firm*
> *3. Mr Mian shall not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body, or Head of Legal Practice (HOLP) or head of finance and administration (HOFA) in any authorised non-SRA firm*
> *4. Mr Mian shall not act as a signatory to any client of office account, or have the power to authorise transfers from any client or office account*
> *5. Mr Mian shall not be the money laundering reporting officer for any authorised body or authorised non-SRA firm.'*

56. In written and oral submissions, the Appellant focussed on the definition of 'pending proceedings' in paragraph 2 of the Admission and Call Declarations for Lincoln's Inn. He did so to argue that there was no requirement for him to inform Lincoln's Inn about matters when he signed the declarations in May 2016 and there was no continuing duty

on him to update Lincoln's Inn on his call to the Bar. These submissions do not, however, in my view, provide material assistance to the Appellant's case. This is because, firstly, Charges 1 and 2 are put on an alternative basis. The charge is that the Appellant failed to disclose matters on signing the call declaration on or around 4 May 2016 and/or the call declaration was materially false by the time the Appellant was called to the Bar on 24 November 2016. Secondly, the scope of the declarations is material. The Appellant focuses on paragraph 2 (…nor are there any disciplinary proceedings pending against me anywhere in respect of any such offence) (underlining is Court's emphasis) to make the case that he was only subject to an internal administrative investigation by the SRA when he signed the declarations. However, as the Tribunal identified, the form contains a further declaration in the following terms, 'I am not aware of any matter which might reasonably be thought to call into question my fitness to become a practising barrister.' The footnote to the sentence states that 'This includes any incident or behaviour which if known to the Inn might cause your application to be considered more carefully'. It also says, 'If in doubt, disclose the incident/behaviour'. The Appellant focussed in submissions on the examples given in the footnote (receipt of a police caution and a court injunction/anti-social behaviour order) which he submitted were examples of conclusive guilt and not applicable to his situation. However, the examples are non-exhaustive. The broad scope of the obligation is, in my view, to be found from the preceding explanatory text ('this includes any incident or behaviour which if known to the Inn might cause your application to be considered more carefully').

57. I accept that the declarations make better sense in the context of the usual practice where they are signed, some time apart, by students of the Inn. In the Appellant's case they were signed on the same day as part of an accelerated procedure of transfer to the Bar as a qualified solicitor. Nonetheless, the Tribunal cannot in my judgment be said to be wrong in finding that the forms imposed a continuing duty on the Appellant to inform Lincoln's Inn of any change in circumstances up to the time of his call to the Bar in November 2016 not least because the first page of the call declaration contains the statement *'Please notify the Inn if any change of address or circumstance takes place after you have completed this form*.' Even if it may be said that this stipulation relates to administrative details like an address, the wording of both declarations (set out at paragraphs 9 – 15 above) envisaged a continuing duty from admission to call and were accompanied by a broad stipulation 'if in doubt, disclose the behaviour'. The message could not be clearer.

58. In this context, in my judgment the following assessment of the Panel cannot be faulted:

> *'Whatever may have been the position in April, it is abundantly clear to us that by November 2016, there were pending proceedings. Even if we are wrong on this, the Respondent was aware of circumstances which might be thought to call into question his fitness to practice as a barrister and so came withing the scope of paragraph 4.*
>
> *It is clear to us that by 10th November, he knew full well what the position was and nevertheless went ahead with his call to the Bar.'*

59. Before me, the Appellant challenged aspects of the BSB's/Tribunal's characterisation of the chronology of some of the events. In particular, the Tribunal's recording that 'On 7th April 2016 the SRA informed him that it proposed to impose conditions on his

practising certificate.' Even if I accept the Appellant's submission that this event should be considered as the SRA simply giving consideration to the imposition of conditions, it does not in my view materially assist the Appellant. This is for the reasons explained above and because, as is common ground, the SRA, confirmed the imposition of the conditions in September 2016, before his call to the Bar. The same applies to the dispute as to whether the SRA informed him that "further" disciplinary proceedings were being contemplated by the SRA on 23 June 2016 and on the significance, or otherwise, of the Appellant's consultation with Mr Williams KC.

Dishonesty

60. I turn then to the question of dishonesty which the Appellant continues to strenuously deny and which has significant implications for the imposition of the sanction, which he also challenges.

61. In the Appellant's skeleton argument, it is said that the Tribunal failed to ask itself whether the Appellant's belief (that the imposition of conditions/SRA proceeding was not relevant) was genuinely held and thereby misdirected itself. The Tribunal's conclusion that they did not accept the Appellant's case in this regard was said to reveal a paucity of analysis. The Tribunal was referring, in effect, to the reasonableness of the Appellant's belief which is forbidden reasoning.

62. There is no dispute that the Tribunal correctly directed itself to the legal test for dishonesty (set down in Ivey v Genting Casinos (UK) Ltd [2018] AC 391 and confirmed in R v Barton [2021] QB 685). When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.

63. During the hearing, the Appellant sent my clerk the following extract taken from the video recording of the hand down of judgment, in Ivey v Genting, in which Lord Hughes summarised the position as follows:

> 'In any event the notion that a person is only dishonest if he himself knows that other people would think that he was, is wrongly based in law. …..The test for dishonesty involves first deciding what the individual knew about what he was doing and about what the surrounding circumstances were and then assuming that state of knowledge deciding whether the ordinary decent member of society would say that what was done was dishonest. If that is what the ordinary person would say, the behaviour does not become honest because the individual in question has different or lower standards so Mr Ivey's genuine belief that he was entitled to do what he did doesn't prevent it from being dishonest. Quite a lot of confidence tricks which any ordinary person would call dishonest involve exploiting knowledge which the perpetrator has and the target hasn't.'

64. I do not consider there to be any material difference in content between the judgment and the oral summary.

65. In its application, the Tribunal expressed the test for dishonesty as follows

> *'This involves two questions:*
> *1) what did the (respondent) himself actually know at the time?*
> *2) if that is what he knew would an ordinary decent law abiding person regard his conduct as dishonest'.*

66. The Appellant's case, that the SRA investigation and conditions imposed on his practicing certificate, were not relevant to his call to the Bar and he did not believe them to be so, is to be assessed as part of the first (subjective) stage of the Ivey test – namely what did the Appellant genuinely believe at the time.

67. However, the Tribunal took matters as follows:

> *'The Respondent, in our judgment, plainly knew that these matters were pending and he also knew of the imposition of conditions. In his evidence he has almost admitted as such.*
>
> *The Respondent submits that these matters were not relevant and that he did not believe them to be relevant. We have to factor this into our decision when we consider the 2nd question in the test of dishonesty.'* (underlining is the Court's emphasis)

68. In the underlined sentence, the Tribunal appears to have directed itself that the Appellant's view (that the SRA proceedings were not relevant) goes to the second stage of the Ivey test, which is the objective test of what would ordinary, decent, people think about the Appellant's conduct. In addition, the Tribunal's reasoning does not specifically refer to what the ordinary, decent, person would make of the Appellant's belief which is the second stage of the Ivey test.

69. I was not addressed on these aspects by the parties at the hearing although Counsel for the BSB appeared to concede the potential error in relation to the Tribunal's reference to the '2nd question' in his skeleton argument, without saying so expressly. I queried the points with the parties in writing after the hearing. In response, the Appellant submitted that the Tribunal had indeed fallen into error. On behalf of the BSB it was said that whilst there is some ambiguity in the ruling, the Tribunal properly directed itself on the law and its reasoning can be properly inferred.

70. Having reflected carefully on this aspect of the Tribunal's reasoning, I have reached the following views.

71. It is apparent from reading the relevant section of the ruling in full that the Tribunal rejected the Appellant's submission that he genuinely did not consider the SRA actions to be relevant:

> *'We are wholly unable to accept the Respondent's assertion that it was not relevant. It must have been obvious to him that he should have informed the Benchers and*

the BSB of these matters. He failed to inform the Benchers of the Inn or the BSB of them.

We make every allowance that we can but, in the end, as far as charges 1 and 2 are concerned we are driven to the conclusion that he knew perfectly well about these matters and made a conscious decision to withhold them. On Charge 1 this would diminish the trust and confidence that the public has in the profession.'

72. The Tribunal provides reasons for its finding in this regard. They include that the Appellant is not uneducated; he has 10 years experience as a solicitor; he was aware of what the SRA was investigating and any depression he was experiencing did not mean he was unable to make relevant judgments. These findings were arrived at after hearing evidence from the Appellant and they are not, in my view, an assessment that the Court should interfere with lightly.

73. The Tribunal's reference to 'We have to factor this into our decision when we consider the 2nd question in the test of dishonesty' is ambiguous. Counsel for the BSB suggested in his written submissions provided after the hearing that the intention of the Tribunal may have been for the word 'this' in the underlined sentence (see paragraph 67 above) to refer to the first limb of the Ivey test as a whole, which the Tribunal went on to consider in the subsequent paragraphs and then 'factors into' the final decision on dishonesty at which point the second limb is applied. Alternatively, the reference to '2nd' may have been a typo or a slip. I agree with this analysis.

74. I also accept the BSB's submission that, notwithstanding some ambiguity in the judgment, the test in Ivey is set out correctly and its application can be seen from the Tribunal's substantive reasoning which addresses the question of relevance as part of the first stage of the Ivey test (the genuineness of the Appellant's belief). I bear in mind, in this regard, that judgment was given ex-tempore and the recording equipment then failed with the consequent need for the Tribunal to reconstruct its ex-tempore judgment from notes, which may explain any typo. Nonetheless, I emphasise that this would not justify any errors in reasoning were I to be satisfied they were errors of substance.

75. The Tribunal does not specifically address the second stage of the Ivey test. Nonetheless, in my view, it may be inferred from the Tribunal's reasoning that it was of the view that the ordinary member of the public would consider the Appellant's conduct to be dishonest. I note that the second limb of the test does not appear to have been in dispute before the Tribunal. Even if I am wrong in my conclusion, the second stage of the Ivey test is an objective one and I am satisfied that ordinary, decent, people would regard the Appellant's conduct, as found by the Tribunal (of making a conscious decision to withhold relevant matters from the Inn and the BSB), to be dishonest.

76. Accordingly, it follows that the Tribunal's decision on Charges 1 and 2, including the finding of dishonesty, is upheld.

77. Charges 3 – 12 (non-disclosure following call to the Bar) can be taken more shortly as the Appellant accepts that he did not promptly inform the BSB of the imposition of SRA conditions (Charges 3 – 7) and did not inform the BSB of the referral to the SDT on or around 3 April 2018. He contends that his failure to disclosure was careless not

dishonest. However the findings of dishonesty on these charges follows the finding of dishonesty on Charge 2.

Sanction

78. The final ground of appeal is that the Tribunal was wrong to find that the appropriate sanction was disbarment.

79. I remind myself that an appeal court should not lightly interfere with decisions of specialist disciplinary tribunals as to the appropriate sanction for professional misconduct:

> *'While a decision of a disciplinary tribunal of the Council of the Inns of Court is somewhat closer to home for a judge than one of the Medical Practitioners Tribunal, it remains true to observe that the tribunal is a specialist adjudicative body that has greater experience in the field of regulating the Bar than the courts. Its decision on sanction is an evaluative decision that should be accorded respect and the court should only interfere with its decision in the circumstances identified by the Court of Appeal in Bawa-Garba.*' (Hewson v Bar Standards Board at §32)

80. In his skeleton argument, it is said on behalf of the Appellant that disbarment was manifestly excessive, disproportionate, clearly inappropriate and imposed by a slender 3:2 majority. Reliance is placed on the rarity of minority as opposed to a unanimous decision of the Bar Disciplinary Tribunal as referred to by the Court in Farquharson v BSB [2022] EWHC 1128 (Admin) at §144.

81. The sanctions guidance, cited by the Tribunal, explains that once dishonesty is found, the sanction is disbarment, even where the harm is low level as the Tribunal found here. There have to be exceptional reasons for disbarment not to follow. The Tribunal considered mitigating factors outlined in the guidance but concluded they did not materially assist the Appellant. I accept the submission of Counsel for the BSB that a court cannot simply substitute the view of the minority for the majority without some basis on which to do so. I bear in mind the caselaw which emphasises that it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission to the profession in order to maintain the reputation and sustain public confidence in the integrity of the profession. A profession's most valuable asset is its collective reputation and the confidence which that inspires (Bolton v. Law Society [1994] 1 W.L.R. 512 (CA) at §518F). Accordingly, I can see no basis for this Court to substitute the view of the minority as to sanction.

Fresh evidence and additional material

82. In coming to my view on the issues raised by this appeal, I have considered the new evidence, which includes emails exchanged between the Appellant and Mr Williams KC and his clerk and emails exchanged between the Appellant and the investigating officer of the SRA. I have also considered the documents supplied by the Appellant after the hearing, including the judgment of the Supreme Court in R(Cart) v Upper Tribunal; a Judicial College guide to reason writing in Tribunals and an article on Tribunal Justice and proportionate dispute resolution. I have not found the material to be of material assistance to the issues arising.

Conclusion

83. For the reasons set out above, I uphold the findings of professional misconduct and the sanction imposed. I dismiss the appeal.