Neutral Citation Number: [2021] EWHC 28 (Admin)

Case Nos: CO/156/2020 & CO/4293/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 January 2021

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

- -

Between :

BARBARA MARY HEWSON

Appellant

- and -

BAR STANDARDS BOARD

Respondent

- -

Elliot Gold (instructed by **3D Solicitors Ltd**) for the **Appellant**
James Stuart (instructed by the **Bar Standards Board**) for the **Respondent**

Hearing date: 7 January 2021

- -

Approved judgment

I direct that no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. Barbara Hewson was called to the Bar by the Honourable Society of Middle Temple in 1985 and practised as a barrister for many years. On 18 December 2019, a disciplinary tribunal chaired by His Honour Alan Greenwood suspended Ms

Hewson from practice for a period of two years following her admission of two charges of conduct that was likely to diminish the trust and confidence which the public placed in both her and the profession, contrary to Core Duty 5 of the Bar's Code of Conduct. She now appeals against her suspension.

2. In August 2020, Ms Hewson was diagnosed with stage 4 pancreatic cancer that had spread to her liver. She underwent chemotherapy in the autumn but her condition deteriorated significantly between Christmas and the New Year. She is now receiving palliative care in a hospice in Galway and tragically the latest medical update is that she is not expected to live beyond the weekend. In view of Ms Hewson's rapid deterioration and very short life expectancy, an urgent request for expedition was referred to me as the immediates judge on 6 January 2021. I ordered an expedited hearing on 7 January 2021. In view of the real possibility that Ms Hewson might not live to hear the result of a reserved judgment, I announced that this appeal would be allowed and Ms Hewson's period of suspension be reduced to one year at the conclusion of the argument on 7 January. This judgment sets out my reasons for allowing her appeal.

3. Before turning to the appeal, I should like to pay tribute to counsel and their instructing solicitors. Elliot Gold and his instructing solicitors, 3D Solicitors Limited, appear for Ms Hewson *pro bono*. As soon as the Bar Standards Board and its counsel, James Stuart, were notified of the significant deterioration in Ms Hewson's medical condition, they dropped everything in order to co-operate in getting this matter listed before her death. Further, I commend both the Bar Standards Board and Mr Stuart for eschewing technical objections in order to ensure that the court could determine Ms Hewson's appeal upon its merits.

THE DISCIPLINARY CASE

4. The disciplinary charges admitted by Ms Hewson concerned her conduct in publishing a series of grossly offensive tweets. Most were directed at a female barrister practising in family law who I shall identify only as C:

   4.1 On 7 February 2017, Ms Hewson tweeted:

      a) "As part of [C's] dishonest lies, she pretends I pose a threat to her 11yo child. This woman is a fantastic liar and manipulator."

      b) "[C] is a manipulative, toxic, crazy person. This is how women in the family courts now operate. She needs a BIG health warning!"

   4.2 On 11 February 2017, she tweeted:

      a) "Think I will put [C's] BSB complaint online. It is embarrassing. Dishonest, malicious gossip (anonymous) drivel about herself."

      b) "Barrister [C] of @[C's chambers] likes threatening via social media – sociopathic bunny boiler! @[H] report me @barstandards."

      c) Responding to a tweet from C, Ms Hewson tweeted: "[C]. NASTY CUNT. HERE IS PROOF."

      d) "It's deeply sad: I have not yet had another blizzard of insane claims from lunatic liar @[C] of @[C's Chambers] making stuff up!"

e) "@[C's Chambers] your lunatic tenant @[C] wants to stop me tweeting you. Why? because she is a nut job?"

f) "Barrister @C of @[C's Chambers] is a person who issues threat on social media – groomed by [R] …"

4.3 On 5 July 2017, Ms Hewson referred to Dr Vanessa Davies, the Director General of the Bar Standards Board in a further offensive tweet: "@[C]. Blame C*nty Vanessa Davies of BSB. She says it's all open. *=u."

5. In late 2017, Ms Hewson was given an administrative warning by the Bar Standards Board in respect of her online behaviour. Notwithstanding such warning, her conduct lapsed again in 2018:

5.1 On 22 January 2018, Ms Hewson tweeted:

a) "[C] regularly tweets an anti-Semitic Twitter troll in Germany obsessed with anal rape and anal tears in young boys who have (allegedly) been anally raped, as well as tweeting disgusting claims about a boy prostitute fellating a ruptured anus. What is wrong with [C]?"

b) "*Correction. It was a prolapsed anus. #[C] hangs out with paedo-porn merchant in Germany and the UK #SRA enforcer … Awkward, m'dear, especially as you met #ToxicNick whacko in [city]. Another crackpot sex obsessive. How does [s/he] collect them?"

5.2 On 22 March 2018, Ms Hewson tweeted: "@barstandards – you have been obsequiously appeasing foreign anti-Semitic #trolls for upwards of three years now – what's wrong with your Board, exactly? Closet Icke fans? Closet Corbynites? Or just terminally stupid?"

5.3 On 18 September 2018, Ms Hewson tweeted:

a) "Is [B] sheltering Nick in [address]? I do hope not. She has a 12yo daughter after all – but never mind! He can babysit, while she goes out in the town ….+Purrfect."

b) "[C] of [C's Chambers] is the cheer-leader for a visious (sic) German anti-Semite – but OF COURSE she (her chambers) don't care about his anto-Semitism (sic) cos … well cos she is as nasty, obsessional and sociopathic as he is. In a nutshell. Her chambers don't care!"

6. The tribunal found that the tweets were very disparaging of another barrister, her chambers, Dr Davies and the Bar Standards Board itself. Further, the tribunal took a particularly serious view of the references to C's daughter. Such conduct, it held, would be liable to cause fear in both the mother and child. In addition, Ms Hewson posted a blog in which she went into great detail about C's daughter. This was, the tribunal found, an intrusion into C's private life and liable to cause her fear as a mother.

7. Against this conduct, the tribunal received many references from eminent practitioners. It observed:

> "They do great credit to [Ms Hewson]. [She] is of great ability and great dedication. She is very able and she had, and has, talent. She is outstanding in terms of academic ability and had dedication to the task of being a barrister when she was practising. She might well have scaled the heights of the profession had it not been for her misconduct outside her practice.
>
> There is no criticism of her conduct in court."

8. The tribunal took into account such matters and other mitigation but observed that it was bound to take a serious view of the case. It determined that disbarment would be too harsh but that Ms Hewson should be suspended from practice for a period of two years. It added that it might well have considered a period of suspension of three years but for her admissions and the mitigation in the case.

THE FIRST APPEAL

9. On 14 January 2020, Ms Hewson filed an appellant's notice by which she sought to argue that the suspension was manifestly excessive in that it did not take into account her age or the fact that she had already not practised for nearly three years at the time of her suspension. Such appeal was rightly abandoned and, on 27 February 2020, the parties signed a draft consent order recording the dismissal of Ms Hewson's appeal with no order as to costs. The order was subsequently made in those terms on 3 March 2020.

THE SECOND APPEAL

10. On 19 November 2020, Ms Hewson again filed an appellant's notice together with applications to appeal out of time and to rely on fresh evidence as to her terminal illness. The new appeal took a single point, namely that evidence of her terminal illness would have caused the tribunal to impose a shorter period of disqualification so as to permit Ms Hewson to die as a full member of the Bar.

THE PROCEDURAL ISSUES

THE PROBLEM OF THE FIRST APPEAL

11. Parties cannot ordinarily bring a second appeal after the first has been abandoned or dismissed. There is limited jurisdiction to consider a second appeal pursuant to rules 52.30 and 3.1(7) of the Civil Procedure Rules 1998, but the authorities make plain that such applications are exceptional.

Rule 52.30

12. Rule 52.30 provides:

> "The Court of Appeal or the High Court will not reopen a final determination of any appeal unless—
>
> (a) it is necessary to do so in order to avoid real injustice;
>
> (b) the circumstances are exceptional and make it appropriate to reopen the appeal; and

(c) there is no alternative effective remedy."

13. The current rule's predecessor was introduced following the decision of the Court of Appeal in Taylor v. Lawrence [2002] EWCA Civ 90, [2003] 2 Q.B. 528. The circumstances of the case are instructive. The trial judge disclosed that the claimants' solicitors had drafted his will. No objection was taken and the trial proceeded. The defendants, who lost at trial, appealed on the basis of apparent bias because of the judge's relationship with the claimants' solicitors. It was then disclosed that the judge and his wife had used the services of the solicitors the night before he gave judgment in order to amend their wills. The appeal was dismissed. Subsequently, it emerged that the judge had not paid for the services provided by the solicitors. In giving the judgment of the court, Lord Woolf CJ identified, at [26], that the Court of Appeal was established with two principal objectives:

> "The first is a private objective of correcting wrong decisions so as to ensure justice between the litigants involved. The second is a public objective, to ensure public confidence in the administration of justice not only by remedying wrong decisions but also by clarifying and developing the law and setting precedents."

14. Holding, at [50] that the Court of Appeal has the implicit power to do that which is necessary to achieve such objectives, Lord Woolf concluded that the court could take the exceptional course of reopening appellate proceedings which it had already heard and determined. He added, at [55]:

> "What will be of the greatest importance is that it should be clearly established that a significant injustice has probably occurred and that there is no alternative effective remedy. The effect of reopening the appeal on others and the extent to which the complaining party is the author of his own misfortune will also be important considerations …"

15. The editors of the 2020 edition of Civil Procedure (the White Book) observe, at para. 52.30.2, that r.52.30 is drafted in highly restrictive terms and calls for truly exceptional circumstances. Cases of the jurisdiction being successfully invoked are rare and principally arise where there is evidence that the original appeal decision was achieved by fraud: see, for example, Couwenbergh v. Valkova [2004] EWCA Civ 676, [2004] C.P. Rep. 38; Feakins v. DEFRA [2006] EWCA Civ 699, [2006] N.P.C. 66; Jaffray v. Society of Lloyds (Practice Note) [2007] EWCA Civ 586, [2008] 1 W.L.R. 75; and Bassi v. Anas [2007] EWCA Civ 903.

16. In Re. Uddin (a child) [2005] EWCA Civ 52, [2005] 1 W.L.R. 2398, Butler-Sloss P said, at [18], that the jurisdiction could only be invoked "where it is demonstrated that the integrity of the earlier litigation process, whether at trial or at the first appeal, has been critically undermined." Equally in Lawal v. Circle 33 Housing Trust [2014] EWCA Civ 1514, [2015] H.L.R. 9, Sir Terence Etherton C (as he then was) observed, at [65]:

> "The paradigm case is where the litigation process has been corrupted, such as by fraud or bias or where the judge read the wrong papers. Those are not,

> however, the only instances for the application of r.52.30. The broad principle is that, for an appeal to be reopened, the injustice that would be perpetrated if the appeal is not reopened must be so grave as to overbear the pressing claim of finality in litigation. … it also follows that the fact that a wrong result was reached earlier, or that there is fresh evidence, or that the amounts in issue are very large, or that the point in issue is very important to one or more of the parties or is of general importance is not of itself sufficient to displace the fundamental public importance of the need for finality."

17. One of the threshold conditions for an application under r.52.30 is, however, that the first appeal was "finally determined." The meaning of this expression was considered by the Court of Appeal in McWilliam v. Norton Finance (UK) Ltd [2014] EWCA Civ 818. As in the instant case, the first appeal in McWilliam was dismissed by consent. Floyd LJ said that he had "very grave doubts" as to whether the case fell within what is now r.52.30. He observed, somewhat tentatively, that there did not appear to be a final determination at all since the court had never adjudicated finally upon the merits of the appeal. He then determined that the court could in any event revoke the consent order and proceed under r.3.1(7). Maurice Kay LJ agreed.

18. Both counsel agree that McWilliam is not a binding decision upon the scope of r.52.30 given that the Court of Appeal did not reach a definitive conclusion upon its doubts, but rather chose to proceed under r.3.1(7). Mr Gold submits that Floyd and Maurice Kay LJJ were wrong to limit the power under r.52.30 to cases in which the case had been finally determined by the court upon the merits while Mr Stuart contends that McWilliam is strong persuasive authority and in any event rightly decided.

19. I am entirely satisfied that Floyd LJ was right in his preferred construction of the rule. An appeal might be finally disposed of or concluded by settlement or withdrawal, but it is not "determined" unless the court has ruled upon the appeal or dismissed an application for permission to appeal. Accordingly, Ms Hewson's appeal cannot in my judgment be reopened pursuant to r.52.30. It is therefore unnecessary to consider whether this might be a proper case for exercising the very limited jurisdiction under r.52.30 had there been an earlier decision of the High Court dismissing Ms Hewson's appeal upon its merits. Given, however, the very strict approach to appeals under r.52.30 I should, if necessary, have concluded that it is not.

Rule 3.1(7)

20. Rule 3.1(7) provides:

> "A power of the court under these Rules to make an order includes a power to vary or revoke the order."

21. In Lloyds Investment (Scandinavia) Ltd v. Ager-Hanssen [2003] EWHC 1740 (Ch), Patten J (as he then was) observed, at [71]:

> "Although this is not intended to be an exhaustive definition of the circumstances in which the power under CPR r.3.1(7) is exercisable, it seems to me that, for the High Court to revisit one of its earlier orders, the applicant must either show some material change of circumstances or that the judge who made the earlier order was misled in some way, whether innocently or otherwise, as to the correct factual position before him. The latter type of case would include, for example, a case of material non-disclosure on an application for an injunction. If all that is sought is a reconsideration of the order on the basis of the same material, then that can only be done, in my judgment, in the context of an appeal. Similarly it is not, I think, open to a party to the earlier application to seek in effect to reargue that application by relying on submissions and evidence which were available to him at the time of the earlier hearing, but which, for whatever reason, he or his legal representatives chose not to deploy."

22. The jurisdiction is most often involved to set aside interim orders; as to which see Tibbles v. SIG plc [2012] EWCA Civ 518, [2012] 1 W.L.R. 2591 and, in particular the judgment of Rix LJ at [39]. This case, however, involves a final order disposing of the first appeal. In Roult v. North West Strategic Health Authority [2009] EWCA Civ 444, [2010] 1 W.L.R. 487, a claimant sought to reopen a final order made by consent in settling his personal injury claim. Hughes LJ (as he then was) confirmed that r.3.1(7) could not be used to allow a judge to hear an appeal from himself or another judge sitting at the same level, and added at [15]:

> "It may well be that, in the context of essentially case management decisions, the grounds for invoking the rule will generally fall into one or other of the two categories of (i) erroneous information at the time of the original order or (ii) subsequent event destroying the basis on which it was made. The exigencies of case management may well call for a variation in planning from time to time in the light of developments. There may possibly be examples of non-procedural but continuing orders which may call for revocation or variation as they continue – an interlocutory injunction may be one. But it does not follow that wherever one or other of the two assertions mentioned (erroneous information and subsequent event) can be made, then any party can return to the trial judge and ask him to reopen any decision. In particular, it does not follow, I have no doubt, where the judge's order is a final one disposing of the case, whether in whole or in part. And it especially does not apply where the order is founded upon a settlement agreed between the parties after the most detailed and highly skilled advice. The interests of justice, and of litigants generally, require that a final order remains such unless proper grounds for appeal exist."

23. In Kojima v. HSBC Bank plc [2011] 3 All E.R. 359, Briggs J (as he then was) said, at [33], that "a line has to be drawn between orders for which revocation may be sought under CPR r.3.1(7) upon the alternative grounds first identified in Ager-Hanssen … and approved in Collier v. Williams [2006] 1 W.L.R. 1945 on the one hand, and final orders, to which the public interest in finality applies, on the other." Indicating the scale of the difficulty facing applicants seeking to set aside final orders, the judge added, at [34]:

> "It is unnecessary for me to conclude whether exceptional circumstances may none the less justify the revocation of a final order within that second category, still less to prescribe in advance what those circumstances might be …"

24. In Terry v. BCS Corporate Acceptances Ltd [2018] EWCA Civ 2422, Hamblen LJ (as he then was) observed, at [75], that the circumstances in which the court might vary or revoke a final order would be "very rare." Summarising the principles in Re. Khan and Khan [2019] EWHC 2683 (Admin), I said, at [16]:

> "16.1 Criticism of a judge's decision is a matter for an appeal and not an application pursuant to r.3.1(7).
>
> 16.2 The public interest in finality and in not undermining the concept of an appeal requires that the court's discretion pursuant to r.3.1(7) should be sparingly exercised.
>
> 16.3 The power under r.3.1(7) is a discretion to be exercised in accordance with the overriding objective. While judges should not treat the factors identified by Patten J as either sufficient of themselves or as the only circumstances in which the court can exercise the discretion, relief under the rule will only normally be given where:
>
> (a) there has been a material change of circumstances; or
>
> (b) the facts on which the original decision was made were misstated.
>
> 16.4 The public interest in finality will be particularly significant where the application is to vary or revoke an order finally deciding the case or an issue in the case. Exceptional circumstances would be required to justify varying or revoking such final order.
>
> 16.5 The court should be even more cautious about exercising the power to vary or revoke a consent order. Since such orders are based on an underlying contract of compromise, in my judgment the court should only exercise its power under r.3.1(7) to vary or revoke a consent order where there are vitiating grounds for avoiding the compromise itself."

25. McWilliam was itself a rare case of setting aside a consent order dismissing an earlier appeal. Mr and Mrs McWilliam were granted permission to appeal the dismissal of their claim for mis-sold payment protection insurance. Shortly before the appeal hearing, the respondent company went into administration. Continuation of the appeal required leave of the court, but instead – fearing that the company was no longer worth powder and shot – the appellants agreed the dismissal of their appeal by consent. Subsequently, the appellants sought to reopen their appeal upon learning that the Financial Services Compensation Commission would be obliged to pay 90% of any judgment obtained against the company, which was by then in liquidation. The liquidators consented to the applications to set aside the consent order and for the appellants to be given permission to reopen their appeal. Upon such facts, Floyd

LJ held that the case for setting aside the earlier consent order pursuant to r.3.1(7) was reasonably compelling.

26. Turning to the present case, Ms Hewson faces the considerable obstacles of seeking to set aside a final order made by consent. Critically, however, the Bar Standards Board consented to her application to set aside. It did so in order that her appeal could be determined on its merits and without undue technicality. In those unusual circumstances and in view of the exceptional circumstances that Ms Hewson seeks to challenge the length of her suspension on the basis of a terminal diagnosis that had not been made at the time of the original consent order, I exercise my discretion pursuant to r.3.1(7) to set aside the consent order.

OTHER MATTERS

27. In view of Mr Stuart's constructive approach in seeking to clear technical objections in order to allow this appeal to be determined on its merits during Ms Hewson's lifetime, I can take the remaining procedural issues very shortly:

    27.1 Having set aside the consent order and reinstated the original appeal, I am dealing with an appeal filed in January rather than November 2020. There was still a time point since the appeal notice was filed a few days late. No point is, however, taken and it is in the interests of justice to grant the short extension of time required pursuant to r.52.15.

    27.2 I grant Ms Hewson permission to substitute her new grounds of appeal for the revived original grounds pursuant to r.52.17.

    27.3 I grant Ms Hewson permission to appeal upon the limited ground that the sanction was unduly harsh in light of her terminal diagnosis.

    27.4 I grant Ms Hewson permission to rely on the fresh evidence necessary to lay the factual foundation for such ground pursuant to r.52.21(2). Such evidence meets the special grounds for admitting fresh evidence in appellate proceedings laid down in Ladd v. Marshall [1954] 1 W.L.R. 1489 in that (1) such evidence plainly could not have been obtained for use before the tribunal since the terminal diagnosis was not made until August 2020; (2) the evidence would, as I explain below, have an important influence on the result of the case; and (3) it is credible.

THE APPEAL

28. Mr Gold argues that since the tribunal clearly took the view that this case did not justify disbarment, it had not intended to disbar Ms Hewson for the rest of her life. Since she now has no more than days to live, that, he argues, would now be the effect of the suspension imposed by the tribunal. Such sanction would, he argues, be unduly harsh in the context of Ms Hewson's bleak prognosis. While the matter is to some extent academic since Ms Hewson may not live beyond the weekend and plainly will never be able to practise again, he argues that Ms Hewson greatly values her membership of the profession and that it is her dying wish to be a full member of the profession upon her death.

29. Mr Stuart expresses enormous sympathy for Ms Hewson's situation but argues that the court should not interfere with an unimpeachable decision upon sanction. To do so after a finding of serious misconduct would, he submits, undermine public confidence in the regulation of members of the Bar. He points to the practice of the Criminal Division of the Court of Appeal generally to regard discretionary release from custody as a matter for the prison authorities but, in exceptional cases, to reduce the sentence following a terminal diagnosis as an act of mercy. He adds that Ms Hewson remains a member of the Bar and also of the Middle Temple. The suspension merely means that she cannot practise. The court should not, he submits, accede to the appeal simply because it is her wish not to be suspended.

30. Appeal courts should not lightly interfere with decisions of specialist disciplinary tribunals as to the appropriate sanction for professional misconduct. First, the appeal is by way of review and not re-hearing. The discretion as to sanction is therefore reposed in the tribunal and not the court. Secondly, the court should accord deference to the evaluative decision of the specialist tribunal.

31. In the exceptional case of Bawa-Garba v. The General Medical Council [2018] EWCA Civ 1879, Dr Bawa-Garba had been convicted of gross negligence manslaughter following her failure to diagnose and treat septic shock secondary to pneumonia. The Medical Practitioners Tribunal found that her fitness to practise was impaired and suspended her from practice for 12 months. Allowing the GMC's appeal, the Divisional Court quashed the suspension and directed that Dr Bawa-Garba's name should be erased from the medical register. The Court of Appeal (Lord Burnett CJ, Sir Terence Etherton MR and Rafferty LJ) allowed Dr Bawa-Garba's further appeal holding that the Divisional Court had been wrong to interfere with the sanction imposed by the specialist tribunal. In a joint judgment, the appeal court described, at [61], the tribunal's decision on sanction as "an evaluative decision based on many factors." There was, the court observed, "limited scope" for an appellate court to overturn such decisions. They added, at [67]:

> "That general caution applies with particular force in the case of a specialist adjudicative body, such as the Tribunal in the present case, which (depending on the matter in issue) usually has greater experience in the field in which it operates than the courts … An appeal court should only interfere with such an evaluative decision if (1) there was an error of principle in carrying out the evaluation, or (2) for any other reason, the evaluation was wrong, that is to say it was an evaluative decision which fell outside the bounds of what the adjudicative body could properly and reasonably decide."

32. 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.

33. In Fuglers LLP v. Solicitors Regulation Authority [2014] EWHC 179 (Admin), Popplewell J (as he then was) identified, at [28], three stages to the assessment of sanction:

> "The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose a sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question."

34. In Bolton v. Law Society [1994] 1 W.L.R. 512 (CA), Sir Thomas Bingham MR (as he then was) explained the purpose of sanctions in a case against a solicitor, at pp.518B-519E. After referring to the almost invariable practice of the Solicitors Disciplinary Tribunal of striking off solicitors who have acted dishonestly, Sir Thomas observed, at page 518D:

> "If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust."

35. Sir Thomas continued at page 518F:

> "It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention …. In most cases the order of the tribunal will be primarily directed to one or other of both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence … The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

36. Although Fuglers and Bolton concerned solicitors, the same principles and observations apply just as much to disciplinary cases against barristers. In my judgment, Ms Hewson's conduct amounted to a sustained campaign of harassment against C and, most seriously, her young daughter. While the tweets were not all in one direction, I have no doubt that her conduct was thoroughly disgraceful and offensive. It was aggravated by her further offensive tweets about Dr Davies and the

Bar Standards Board and her failure to desist from such conduct when given an administrative warning. While the tribunal concluded that Ms Hewson's conduct did not require her disbarment, it was absolutely entitled to take the view that this was very serious conduct that undermined public trust and confidence in the profession and that it could only be properly met by a period of suspension from practice. Upon the evidence before the tribunal, I have no doubt that it was entirely justified in suspending Ms Hewson for two years. In any event, such conclusion was easily within the bounds of what this specialist tribunal could properly decide. Accordingly, the original appeal, based as it was on no new evidence, was rightly abandoned.

37. I am, however, satisfied that, had the tribunal known of Ms Hewson's terminal illness, it should and indeed would have taken such matter into account as a mitigating factor in her case. Respecting the evaluative judgment of the specialist tribunal that the proper sanction ignorant of the terminal diagnosis was a period of suspension of two years leads, in my judgment, to the inevitable conclusion that some shorter period of suspension was in fact appropriate in view of this further mitigating factor.

38. I do not accept Mr Stuart's submission that such conclusion risks undermining public confidence in the Bar or in the regulation of the profession. Members of the public reading this judgment or any press report will understand that the court wholeheartedly endorses the view of the disciplinary tribunal that this was disgraceful conduct and that, but for the tragedy of Ms Hewson's terminal diagnosis, it thoroughly merited suspension from the profession for a period of two years. Equally members of the public will understand that any court or tribunal takes into account personal circumstances when deciding upon the proper sanction for any wrongdoing. A terminal diagnosis does not expunge somebody's wrongdoing, but it is an important factor that any court or tribunal will take into account when considering the sanction or penalty alongside other aggravating and mitigating features of the case.

39. Accordingly it is, in these highly unusual circumstances, appropriate that the court should allow the appeal and substitute some shorter period of suspension. While perhaps merciful in the face of such disgusting tweets, the court's jurisdiction to allow this appeal is based upon its decision to allow Ms Hewson to rely upon significant evidence of additional mitigating circumstances which were not before the tribunal. I therefore allow this appeal and substitute a period of suspension of one year.