IN THE JUDICIAL OFICE
VISITORS TO THE INNS OF COURT
27 March 2013

PC 2010/0185/A

BEFORE:

SIR RAYMOND JACK
Mr KENNETH CROFTON-MARTIN
MR JEFFREY JUPP

BETWEEN:

RIZWAN ASHIQ — Petitioner

- and –

THE BAR STANDARDS BOARD — Respondent

Mr Iain Morley Q.C. for the Petitioner
Mr John Lyons for the Respondent

Hearing Date 14 March 2013

JUDGMENT

1. On 19 May 2011 Mr Rizwan Ashiq was found guilty of professional misconduct as a barrister by a Disciplinary Tribunal of the Council of the Inns of Court. He was ordered to pay a fine of £2,000 and costs of £195. He appealed against the finding of guilt and sentence by notice dated 7 June 2011. We were appointed to hear the appeal pursuant to the Hearings before the Visitors Rules, and did so on 14 March 2013. The long interval between the hearing before the Disciplinary Tribunal and the hearing of the appeal was caused by questions as to the constitution of the Disciplinary Tribunal, which are now no longer pursued.

2. Mr Ashiq was charged with "professional misconduct contrary to paragraph 301(a)(iii) and pursuant to paragraph 901.7 of the Code of Conduct of the Bar of England and Wales (8th Edition)." The Particulars of Offence were as follows:

"Rizwan Ashiq engaged in conduct likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute, in that he failed to pay a judgment debt against him in the sum of £455.86, despite the Bar Standards Board drawing the order to his attention by a letter and enclosures sent to him on or about 15 April 2010."

3. Paragraph 301 of the eighth edition of the Code of Conduct provides in part:

"301. A barrister … must not:

(a) engage in conduct whether in pursuit of his profession or otherwise which is:

…

(iii) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;"

Paragraph 901.7 provides:

"901.7 Any failure by a barrister to comply with any provision of this Code other than those referred to in paragraph 901.1 above shall constitute professional misconduct."

4. The facts giving rise to the charge were in outline as follows. Following his moving chambers in February 2007 there was litigation in the county court between Mr Ashiq and his old chambers. The old chambers in the shape of a company, Mayfax Limited, sued Mr Ashiq, and he counterclaimed. On 29 July 2008 judgment was given in favour of Mayfax for a net sum of £410.86. On 30 September there was a further order against Mr Ashiq for costs in the sum of £45. That made the total of £455.86 referred to in the particulars of offence. On 17 October solicitors for Mayfax wrote asking Mr Ashiq for payment. It was Mr Ashiq's case that on 20 October he wrote to the solicitors enclosing a cheque. The solicitors were to say that they had no trace of letter or cheque having been received. No cheque was presented for payment. The Tribunal rejected Mr Ashiq's evidence that he had written enclosing a cheque. Nothing then happened for over a year. On 24 February and 4 March 2010 letters were delivered to Mr Ashiq's chambers and were signed for by members of the staff. The letters requested payment. Mr Ashiq said he did not receive them. On 11 March a complaint was made to the Bar Standards Board, and on 15 April the Board wrote to Mr Ashiq. Mr Ashiq replied on 17 May saying that the debt had been paid. He enclosed a copy of a cheque and of an accompanying letter, each dated 20 October 2008. On 9 July the Board asked by email for evidence from Mr Ashiq's bank statements that the cheque had been paid. Mr Ashiq said that about this time he asked his bank whether the cheque had been paid and two or three weeks later he heard that it had not. On 15 July the Board sent an email requesting a response. On 30 July the Board telephoned Mr Ashiq's chambers and was told that he was in court. An email was sent to be passed to Mr Ashiq. On 4 August the Board telephoned the

chambers again and was told that the email had been passed on. Later that day Mr Ashiq responded. He said that he had been on leave and out of the country. He said his banking records were confidential. He said he had sent the cheque and it was up to Mayfax whether to cash it. He did not say, as he by then knew, that it had not been cashed, but the reference to it being Mayfax's choice whether to present it hints at that. On 5 August Mr Ashiq gave instructions to a firm of solicitors to pay Mayfax. There were problems with finding an address – the chambers seems to have broken up, and this was finally achieved on the day before the hearing before the Disciplinary Tribunal. On 24 September 2010 the Board gave notice to Mr Ashiq that he would be charged.

5. At the hearing before the Disciplinary Tribunal on 19 May 2011 the Bar Standards Board were represented by Mr John Lyons. Mr Ashiq represented himself. In opening on behalf of the Board Mr Lyons said that it was Board's case that the cheque, a copy of which had been sent by Mr Ashiq to the Board on 17 May 2010 purportedly dated 20 October 2008 and bearing number 100224, had not been sent to Mayfax's solicitors on that date (or at all) and the date was false. He said that before the Tribunal sat he had asked Mr Ashiq whether the Board could have access to his bank statements and cheque book stubs so the dates of the cheques either side of 100224 could be seen. He said Mr Ashiq had refused. Mr Ashiq gave evidence. He said that he had sent the letter enclosing the cheque to Mayfax's solicitors in October 2008. He had not checked to see whether it had been paid. He thought that the matter was closed. When it came alive again in 2010 he thought that his old chambers

were harassing him for no reason. He found out from his bank that the cheque had not been paid. He knew that when he wrote to the Board on 4 August.

6. Mr Ashiq was asked some questions by the Tribunal and was then cross-examined by Mr Lyons. He was asked a number of questions about the events of 2010 with the aim of showing that he had not been frank as to what had happened and that he had intentionally failed to respond to the communications he had received. Mr Lyons put to him that the cheque, a copy of which Mr Ashiq sent to the Board on 17 May 2010, had not been written in 2008 but in 2010. Mr Lyons put to Mr Ashiq that if cheque 100223 was written in 2009 or 2010 and paid out in 2009 or 2010, Mr Ashiq must be lying. Mr Ashiq agreed. Mr Lyons put to him that it was easy to establish where the truth lay and that Mr Ashiq's unwillingness to permit limited access to his account for this purpose was because Mr Ashiq knew that it would reveal that he was not telling the truth. Mr Ashiq said in answer to the Chairman that he did not want to reveal the details of all his bank transactions. The Chairman said that only limited access was required. Mr Ashiq said that he could see no reason why he should give his bank accounts and that he had no reason to evade the debt of £455. The questioning continued and Mr Ashiq confirmed that he would not give access to his bank records. Finally the Chairman said that Mr Ashiq should think very carefully whether he was not going to produce the bank records which might support his case. He offered Mr Ashiq time to consider his position, which Mr Ashiq accepted. But when the hearing resumed his position was unchanged.

7. At the end of the hearing the Chairman gave a summary of the Tribunal's findings in advance of full written reasons. He said that the central issue as the case had developed was whether the cheque had been sent to Mayfax's solicitors. He referred to Mr Ashiq's refusal to produce redacted bank documents. He said:

> "He takes this stance against the background that, as I have mentioned, his case is based on his own oral evidence supported by the photocopies. He has done so despite, as he must appreciate, the possibility that his failure to produce obviously relevant documentary material which could support his case – if he is telling the truth – could lead the Tribunal to draw the inference that the documentary material would not support his case and that he is not telling the truth. And he has done so despite the obligation he has as a barrister under the Code of Conduct to provide information as requested by the Bar Standards Board in connection with a charge of professional misconduct."

The Chairman then referred to other matters which led the Tribunal to regard Mr Ashiq as an unsatisfactory witness. The Tribunal's conclusion was that no cheque had been sent.

8. The Tribunal's written reasons are dated 1 June 2011. In paragraphs 18 and 19 the Chairman set out the issue as to cheques with adjacent numbers and Mr Ashiq's reason for refusing to produce the records. He said that having regard to the possibility of redaction, the Tribunal could not regard confidentiality as a good ground for refusing, especially as it was Mr Ashiq's duty under

paragraph 905(d) of the Code of Conduct to respond promptly to a request for information. He continued:

> "21. In those circumstances the BSB argued that it was open to the Tribunal to infer, and that we should infer, that the true reason why the Defendant was unwilling to produce his bank statements was that he knew that they would not support his story that he had sent a cheque in October 2008.
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> 22. We accepted that submission and unhesitatingly drew that inference."

9. The primary submission made to us on behalf of Mr Ashiq by Mr Iain Morley Q.C. was that the Tribunal had in effect reversed the burden of proof by requiring Mr Ashiq to prove his innocence. We do not consider that this is what happened. The Tribunal had given Mr Ashiq an opportunity to consider his position and to say that he would provide documents redacted to conceal anything that was not material. If he had said that he would, an adjournment would have been necessary. But he had refused. The Tribunal's considered that his reasons for doing so had no weight, which was plainly correct. It was Mr Ashiq's duty as set out in paragraph 905(d) of the Code of Conduct to "respond promptly to any request from the Bar Standards Board for comments or information on the matter.." "Respond" plainly means to respond positively, not by way of a refusal. The evidence before the Tribunal was thus the unjustified refusal. It was for the Tribunal to consider what inference they should draw from the refusal. That was not a reversal of the burden of proof.

10. Mr Morley submitted that the Tribunal should only have drawn the inference against Mr Ashiq that they did, if it was the only inference to be drawn from the fact of the refusal. We accept that. The inference which the Tribunal drew was that Mr Ashiq was not willing to provide the material because it would establish that the cheque could not have been drawn in October 2008. The Tribunal found that there could be no other explanation for the refusal. Mr Morley referred us to the passages in the Tribunal's oral and written reasons where the Tribunal referred to 'the remote alternative possibilities' that the cheque had been lost in the post or mislaid by Mayfax's solicitors – oral reasons, and in the written reasons:

> "16. If the defendant had sent a cheque as he claimed, then what became of it? There is some possibility that it might have been lost in the post. There is some possibility that it might have been received by Mayfax's solicitors but then mislaid by them. We kept in mind those possibilities. We regard it as inconceivable that Mayfax might have received the cheque deliberately not presented it and then, in 2010, made further demands for payment coupled with a Complaint to the BSB."

These are not alternative explanations as to why Mr Ashiq refused to produce the banking material: they are possibilities as to why no cheque was presented alternative to there being no cheque. The Tribunal was right to have them in mind, but was entitled to reject them when they were considered against the totality of the evidence. Although the reasons do not again refer to the possibilities relied on, it is clear enough that this is what happened. The Tribunal's conclusion in paragraph 26 of the written reasons after reference to

the gravity of the Board's allegation in relation to the cheque was: "We have nevertheless concluded that we could not accept the Defendant's evidence that he sent a cheque in October 2008 and we were sure that he did not do so."

11. Mr Morley suggested that the course of the proceedings before the Tribunal left a feeling of unease. He referred in particular to the facts that Mr Ashiq was representing himself and had not been asked to produce evidence as to the adjacent cheques until he arrived at the hearing. He had of course been asked for his bank statements in July 2010, but had refused. At the hearing the Tribunal took care to ensure that Mr Ashiq understood the serious of his position and adjourned so he could consider what he wished to do. Mr Ashiq stood firm in his refusal. Further it is not as if Mr Ashiq is now saying that under the pressure of the day he made the wrong decision before the Tribunal and would like the Visitors to consider his banking materials as further evidence pursuant paragraph 14(6) of the Hearings before the Visitors Rules. There is no such application. We do not think there is anything in this last submission.

12. Mr Morley also submitted that, if Mr Ashiq had been given more time by the Tribunal to consider his position, he might have taken legal advice and advanced a legal argument as to why he ought not to be required to produce his bank statements. However it was not suggested what such an argument might have been, and none presents itself to us.

13. For these reasons the appeal against the finding of professional misconduct is dismissed.

14. Mr Ashiq appealed against sentence on the ground that the amount of the judgment was small and so the fine was too high. It will be remembered that the charge includes reference to the failure to pay being despite the Bar Standard Board's letter of 15 April 2010. When he got that letter Mr Ashiq knew he had not paid but he still did not pay. The serious nature of his conduct in leaving the judgment debt unpaid after April 2010 justified a fine which was higher than would have been appropriate if the evidence had been limited to his ignoring the request for payment from Mayfax's solicitors in October 2008. The appeal against sentence is dismissed.