BEFORE THE VISITORS OF THE INNS OF COURT
MR JUSTICE NICOL, MS AMANDA SAVAGE AND DR. TOYIN OKITIKPI

PC/2005/0605/A
PC/2008/0519/A
PC/2009/0271/A & PC/2009/0380/A

ON APPEAL FROM THREE DISCIPLINARY TRIBUNALS

BETWEEN:

YASH MEHEY

APPELLANT

-AND-

BAR STANDARDS BOARD

RESPONDENT

No appearance by or on behalf of the Appellant

Philomena Harrison for the Respondent

Hearing date: 2nd July 2015

Judgment to be handed down: 10th July 2015

Introduction

1. We sat as Visitors of the Inns of Court to hear three appeals by Mr Yash Mehey against three decisions of Disciplinary Tribunals which had upheld a number of complaints against him. The Tribunals, charges, complaints upheld and sanctions were as follows:

    a. A Tribunal chaired by HH Christopher Barnett QC held hearings on 14th and 15th July 2008 and 23rd September 2008. As was explained in the report of the Tribunal dated 1st October 2008, the Tribunal dismissed one charge of discourtesy during a trial in which the Appellant appeared at Solihull Magistrates' Court in July 2005. The Tribunal found proved a second charge of failing to act with reasonable competence during the same trial. A number of different particulars were specified and the Tribunal found one of those particulars not to be proved, but the others were. The Appellant was ordered to be suspended for 9 months. He was also ordered to undergo an additional 20 hours of Continuing Professional Development ('CPD') in the field of criminal law and practice. The suspension has not been implemented pending the present appeal and, for reasons

which will become apparent, is presently academic. Ms Harrison on behalf of the BSB was not able to tell us whether he undertook the additional CPD.
We will refer to this Disciplinary Tribunal decision as 'DT1'.

b. A Tribunal chaired by HH Dennis Levy QC held a hearing on 28th April 2010. As was explained in a report of the Tribunal dated 10th May 2010 it found all three charges proved. They, and the subsequent sanctions, were:

    i. Failing to complete the prescribed 12 hours of CPD in 2007 or failing to submit details of the CPD undertaken – suspended from practice for 3 months.
    ii. Failing to pay a financial penalty of £300 imposed by a letter of 13th May 2008 – suspended from practice for 3 months consecutive to charge (i).
    iii. Failing to respond promptly or at all to requests for comments or information from the BSB – unless the Appellant completed his outstanding hours for CPD for 2007 and provided proof of compliance and also paid his outstanding fine, suspended from practice for 3 months consecutive to charges (i) and (ii).

    The Appellant was also required to pay costs of £1,178.00 within 56 days. Once again the suspensions have not taken effect pending these appeals and are now also presently academic. Ms Harrison was not able to tell us if the CPD had been completed. The Appellant has not paid the fine.

    We will refer to this decision as 'DT2'.

c. A Tribunal chaired by HH Timothy Ryland held a hearing on 24th January 2011. This was in respect of two sets of two charges. The report of the Tribunal was dated 9th February 2011. It found all four charges proved. They were as follows:

    PC/2009/0271/D5

    i. Causing or permitting a request for an adjournment of a disciplinary tribunal to be sent on the grounds of ill-health when he was in fact well enough to attend the disciplinary tribunal. The Tribunal ordered the Appellant to be disbarred and expelled from Middle Temple.

    ii. Failing to respond to requests from the BSB for comments or information. The Tribunal fined the Appellant £1,000 and ordered him to pay costs of £1,857.25. Both sums were to be paid within 28 days.

    PC/2009/0380/D5

iii. Failing to complete the prescribed 12 hours of CPD in 2008, or failing to provide details in the prescribed form. The Tribunal fined the Appellant £1,000 and required him to complete within the 3 months the minimum 12 hours of CPD and provide proof of compliance.

iv. Failing to respond to requests from the BSB for comments or information. The Tribunal fined the Appellant £1,000. Both fines were to be paid within 28 days.

We will refer to this decision as 'DT3'.

2. These are not the only disciplinary proceedings which the Appellant has faced in the relatively recent past. On 15th -17th September 2010 another Disciplinary Tribunal sat to consider charges against Mr Mehey. Three were upheld and the Tribunal sentenced the Appellant to be disbarred. He appealed to the Visitors of the Inns of Court. A panel chaired by Mr Justice Royce heard the appeal limited to three (more serious) findings on 5th July 2011. In a decision dated 14th July 2011 the appeals against those findings of guilt and against sentence were dismissed.

3. Mr Mehey sought judicial review. On a rolled up hearing of a renewed application for permission to apply for judicial review together with the substantive hearing of the judicial review application the Divisional Court granted permission on one ground, but refused judicial review – *R (on the application of Leathley, Mehey and Hayes) v Visitors to the Inns of Court* [2013] EWHC 3097 (Admin). The Court of Appeal refused permission to appeal - [2014] EWCA Civ 1630.

4. The present appeals were stayed while these other proceedings took their course. That explains the lengthy interval between the dates of DT1, DT2 and DT3 on the one hand and the hearing of the present appeals on the other. The outcome of those other proceedings also means that Mr Mehey is, and will remain, disbarred whatever decision we make on the present appeals.

5. Mr Mehey requested that our decision should remain private. We considered, however, that the public interest did require the decision to be publicly pronounced. The appeal hearing took place in public. The decisions of the three Disciplinary Tribunals are publicly available and it is in the public interest that the outcome of the appeals from those decisions should also be public. The public should know that serious matters involving the profession are properly investigated and adjudicated upon. We reached this view taking account of Rule 15(2) of the Hearings Before Visitors Rules 2010 which provides that,

> "The findings may be pronounced in public or in private but should normally be pronounced in public unless a party to the hearing requests

otherwise and the public interest does not require that the findings be pronounced in public."

Application for an adjournment

6. In an email to the Clerk to the Visitors on the day before this hearing (i.e. on 1st July 2015) and timed at 14.58, Mr Mehey applied for the hearing of the present appeals to be adjourned on health grounds. He provided a report of Dr. V.K. Singh dated 1st July 2015. Dr Singh said that he had been treating the Appellant since 2007 and that the Appellant was suffering from a moderately severe depressive illness. He had last seen Mr Mehey on 29th June 2015. In Dr Singh's view the Appellant was unfit and unwell to prepare his case and unfit to attend the hearing on 2nd July. He should not be burdened with the proceedings until his condition was stable. That was likely to take around 8 -10 weeks when Dr Singh would be able to provide an update. Dr Singh referred to a report of another consultant psychiatrist, Dr Usman Anjum, and Mr Mehey provided a copy of this report dated 3rd December 2014. This had been prepared in the context of some outstanding VAT affairs of the Appellant. Dr Anjum's opinion was that Mr Mehey suffered from features of a depressive illness which he listed.

7. The BSB was asked to comment on Mr Mehey's application for an adjournment. They responded that they were neutral, if sceptical, as to the application and said that it was unclear whether Mr Mehey would ever be in a position to attend a court hearing.

8. At 19.10 on 1st July the Visitors responded to Mr Mehey's application. After referring to the application and the BSB's position, we said,

> 'The Visitors share the scepticism and concern of the BSB. The frequency with which the Appellant has sought adjournments is striking. On a previous occasion when an adjournment was sought the BSB had noted that Mr Mehey had ignored their request for him to give his consent to them having access to his medical advisers. On this occasion, it seems to the Visitors that an adjournment should be dependent on Mr Mehey agreeing to give such consent in the terms attached. If he does so by returning the signed attachment by 09.00 hours tomorrow morning, the hearing will be adjourned. If he does not, it will go ahead.'

The form attached said,

> 'I Yash Mehey, hereby consent to Dr V.K. Singh, Dr Usman Anjum, or any other medical practitioner who has treated or advised me about my medical condition providing to the Bar Standards Board any records or information about me which they may request.'

9. During the course of 1st July 2015 a Ms Anal Sheikh communicated with the Clerk to the Visitors and gave the impression that she was instructed on behalf of Mr Mehey. However, Mr Mehey emailed the Clerk at 14.45 (and Ms Sheikh) to say that she was not authorised to act on his behalf. Ms Sheikh nonetheless offered to make submissions to the Visitors. In the event, she did not appear at the hearing. Had she done so, we would have informed her that she was not a party to the appeal and was not representing a party to the appeal and that she therefore had no standing to make any submissions.

10. By the time the hearing was called on, the Appellant had not returned the consent form. He did not appear. He sent no representative. We asked the Clerk to see if it was possible to phone Mr Mehey to discover what his position was. The Clerk tried, but was unable to speak to Mr Mehey whom, he was told, was asleep.

11. Although the condition which we had set the night before had not been fulfilled, we thought it right in fairness to Mr Mehey and with the assistance of Ms Harrison to review whether the hearing of the appeals should continue despite Mr Mehey's absence.

12. We were satisfied that Mr Mehey had been served with notice of the hearing as required by the Hearings before Visitors Rules 2010 (as updated on 1st November 2011) – 'the 2010 Visitors Hearings Rules' r.13(3). Indeed, Mr Mehey's communications with the Clerk on 1st July showed that he was aware of the hearing.

13. Ms Harrison did not ask us to reject Dr Singh's report. She submitted that we should proceed on the basis that, as Dr Singh said, in his present state, the Appellant was unfit and unwell to prepare his case and was unfit to attend today's hearing and participate in the proceedings. However, Ms Harrison argued, this did not mean that the hearing had necessarily to be adjourned.

14. Ms Harrison referred us to *Teinaz v London Borough of Wandsworth* [2002] EWCA Civ 1040. In that case, an Employment Tribunal had continued to hear a claim despite medical evidence that the applicant had been unwell and unfit to attend. Since the burden of proof was on the applicant, the consequence of continuing in his absence was a foregone conclusion. His application was dismissed. The Employment Appeal Tribunal allowed the appeal and the employer then appealed to the Court of Appeal which upheld the decision of the EAT. Peter Gibson LJ gave the leading judgment. He said,

> '[20]…Where the consequences of the refusal of an adjournment are severe, such as where it will lead to the dismissal of the proceedings, the tribunal or court must be particularly careful not to cause an injustice to the litigant seeking an adjournment…

> [21] A litigant whose presence is needed for the fair trial of a case, but who is unable to be present through no fault of his own, will usually have to be granted an adjournment, however inconvenient it may be to the tribunal or court and to the other parties. That litigant's right to a fair trial under Article 6 of the European Convention on Human Rights demands nothing less. But the tribunal or court is entitled to be satisfied that the inability of the litigant to be present is genuine, and the onus is on the applicant for an adjournment to prove the need for such an adjournment.
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> [22] If there is some evidence that a litigant is unfit to attend, in particular if there is evidence that on medical grounds the litigant has been advised by a qualified person not to attend, but the tribunal or court has doubts as to whether the evidence is genuine or sufficient, the tribunal or court has a discretion whether or not to give a direction such as would enable the doubts to be resolved. Thus, one possibility is to direct further evidence be provided promptly. Another is that the party seeking the adjournment should be invited to authorise the legal representatives for the other side to have access to the doctor giving the advice in question. The advocates on both sides can do their part in assisting the tribunal faced with such a problem to achieve a just result. I do not say that a tribunal or court necessarily makes any error of law in not taking such steps. All must depend on the particular circumstances of the case. I make these comments in recognition of the fact that applications for an adjournment on the basis of a medical certificate may present difficult problems requiring practical solutions if justice is to be achieved.'

15. Ms Harrison referred us also to the decision of the House of Lords in *R v Jones* [2003] 1 AC 1 which had considered when a defendant in criminal proceedings could be tried in his absence. Lord Bingham, giving the leading speech, recognised that the trial judge had a discretion, but, he added at [6],

> 'it is of course a discretion to be exercised with great caution and with close regard to the overall fairness of the proceedings; a defendant afflicted by involuntary illness or incapacity will have much stronger grounds for resisting the continuance of the trial than one who has voluntarily chosen to abscond.'

With a qualification to which we will come, Lord Bingham approved the check list of relevant matters which the Court of Appeal had set out at [2001] QB 862 [22(5)],

> 'In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular: (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was

> deliberate, voluntary and such as plainly waived his right to appear; (ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings; (iii) the likely length of such an adjournment; (iv) whether the defendant, although absent is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation; (v) whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence; (vi) the extent of the disadvantage to the defendant in not being able to give his account of the events, having regard to the nature of the evidence against him; (vii) the risk of the jury reaching an improper conclusion about the absence of the defendant; (viii) the seriousness of the offence which affects defendant, victim and public; (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates; (x) the effect of delay on the memories of witnesses; (xi) where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present.'

The qualification added by Lord Bingham at [14] of his speech was that the seriousness of the charge was not a relevant consideration. The judge's overwhelming consideration was that the hearing should be fair and just. Those objects were equally important whether the charge was serious or relatively minor.

16. Ms Harrison referred us as well to the decision of the Divisional Court in *Giles Norton v Bar Standards Board* [2014] EWHC 2681 (Admin). This was an appeal by a barrister against a decision of the Disciplinary Tribunal in accordance with the procedure which is the legislative successor of appeals to Visitors of the Inns of Court. The issue was whether the Disciplinary Tribunal had been right to continue to hear the case against Mr Norton despite evidence of his inability to attend. Fulford LJ in his leading judgment apparently accepted the submission of counsel for Mr Norton at [43] that the approach in *Jones* should be adopted 'given particularly the serious consequences that were likely to result from an adverse conclusion against the appellant'. Counsel's submission was indeed supported by the authorities which he cited. Thus in *Tait v The Royal College of Veterinary Surgeons* [2003] UKPC 34 the Privy Council allowed an appeal against the Disciplinary Committee of the Royal College. In deciding that the Committee had wrongly refused an adjournment, the Privy Council applied *Jones*, noting the seriousness of the penalty which the appellant faced (striking off for dishonesty) and that the Committee was at risk of reaching the wrong conclusion if it proceeded in the absence of the appellant.

17. Returning to *Norton*, Fulford LJ said (at [52]) that the Tribunal

> 'was obliged to focus on the *Jones* criteria, amongst which is the need for the tribunal to bear in mind the extent of the disadvantage to the

defendant in not being able to give his account of events, having regard to the nature of the evidence against him.'

18. Ms Harrison submitted that the present proceedings were critically different from all of these other cases. In all of them, the application to adjourn was made at the first instance stage. In *Teinaz* factual assertions were made by the employee. Since the hearing before the Employment Tribunal had continued in his absence there was no evidence to support them, and his claim was necessarily dismissed. In the professional disciplinary cases, factual assertions were made against the professionals concerned. If the first instance hearing proceeded in his absence there was a risk that the committee or tribunal would come to the wrong conclusion. The present, appellate, proceedings were different. The Appellant had set out his grounds of appeal (as he was required to do) in his petitions of appeal. The Visitors could consider their merits even in the Appellant's absence. It did not follow that the appeals would inevitably be dismissed if the hearing continued without his presence.

19. Ms Harrison also submitted that the appellate nature of the proceedings was relevant in another way. The Appellant's illness and absence would have been immaterial if he had instructed a representative. The Visitors have had only very limited information as to why he had not done so. In his email to the Clerk to the Visitors on 1st July at 14.58 (which was the email that had asked for an adjournment) Mr Mehey said that he had been refused assistance by the Bar Mutual Indemnity Fund, even though he had been insured as a barrister at the relevant time. Ms Harrison submitted that, even if the BMIF would not provide assistance, Mr Mehey had said nothing about whether he had sought assistance from the scheme which provides *pro bono* assistance for barristers facing disciplinary proceedings. He had been told about this scheme on numerous occasions – see for instance the letter of 8th August 2005 from the Professional Conduct and Complaints Committee in connection with the matters which led to DT1 and the letter from the BSB of 16th July 2009 in connection with the matters which led to DT 3. Furthermore, in the Visitors Appeal which Royce J chaired, an argument was mounted that the Disciplinary Tribunal was wrong to refuse a request for an adjournment that had been supported by a medical report from Dr Prasad who had said that, while Mr Mehey was well enough to conduct simple cases, the complexities and heightened stresses of defending himself and being cross examined was another. The Visitors said this [42],

> 'We consider that if he was well enough to conduct simple cases he was well enough to assemble a bundle of documents and prepare for the long delayed hearing. *Alternatively he could have obtained assistance for such tasks. There is a list of members of the Bar who are willing to conduct such hearings pro bono. We note [the Appellant] had taken advantage of this facility to be represented by a QC at previous Disciplinary hearings.´* [our emphasis]

20. Furthermore, it was of some relevance that the outcome of these appeals could not lead to the immediate restoration of Mr Mehey's right to practice as a barrister. He was, and would remain, disbarred as a result of the sentence of the Disciplinary Tribunal whose (three) findings and sentence had been upheld by the Visitors chaired by Royce J. What had led the Privy Council in *Tait* and (it appears) the Divisional Court in *Norton* to treat the *Jones* case as a useful analogy was the seriousness of the consequences of proceeding at the first instance stage in the absence of the professional concerned. The findings of DT1, DT 2 and DT 3 could in principle have some relevance if, at some stage in the future Mr Mehey was to apply to be restored to his position as a barrister. But that was a significance of a quite different order to what had been at stake at the stages when Mr Norton and Mr Tait applied for their disciplinary hearings to be adjourned.

21. In our decision of 1st July 2015 we expressed scepticism about the very late application for an adjournment. Before almost every one of the very many disciplinary hearings which have taken place in connection with complaints against Mr Mehey there has been an application for an adjournment. Almost all of them have been made on the very eve of the hearing. His application on 1st July was no exception. There was no explanation as to why the application was made at such a late stage. We took the course which the Court of Appeal in *Teinaz* said was appropriate. Our proposal that Mr Mehey provide a consent to allow the BSB to make their own inquiries was met with silence, even though Mr Mehey was emailing the Clerk to the Visitors almost simultaneously with the Clerk emailing Mr Mehey with our decision.

22. Nonetheless, we consider that Ms Harrison was correct to submit that we should proceed on the basis of Dr Singh's report. It is a more detailed account of Mr Mehey's condition than his earlier reports which we have seen. We therefore agreed that we should make a decision as to whether to adjourn the hearing or not on the footing that Mr Mehey is presently unwell and, for that reason, his non-attendance at the hearing was involuntary.

23. However, we also accepted Ms Harrison's submission that Mr Mehey's illness and involuntary non-attendance was not determinative. We agree that this appellate hearing is different from a first instance hearing. The Appellant's absence does not necessarily mean that the appeals will be dismissed. We know from the grounds of appeal the basis on which he challenges each of the decisions of the Disciplinary Tribunal. We can make our assessment of those grounds even in Mr Mehey's absence.

24. We also agree that, had Mr Mehey been represented, his personal attendance would have been unnecessary. He is not represented, but he has failed to give a complete explanation as to why that is. Without such an explanation, the absence of such a representative carries very little weight. The Visitors cannot assess whether Mr Mehey finds himself in this

predicament through no fault of his own, or because he has not taken a course which (on the face of it) would have been open to him.

25. In summary, therefore, we did not consider that fairness to Mr Mehey required the hearing of the appeal to be adjourned. Having reached that view, our conclusion that the hearing of the appeal should proceed was reinforced by other matters. In particular, there had already been very considerable delay in dealing with these appeals. DT1 had been decided in 2008 and concerned a criminal trial that had taken place in the Magistrates Court 10 years ago. We bore in mind the point made by Ms Harrison as to the fact that the outcome of the appeal would not have an immediate consequence for Mr Mehey's ability to practice as a barrister, but that did not carry the argument very much further. While there is a general public interest in resolving litigation expeditiously, the very fact that Mr Mehey is anyway disbarred means that there is not the particular public interest in deciding quickly whether (as DT3 resolved) his ability to practice as a barrister should come to an end.

26. For all of these reasons we decided that the hearing should continue.

DT1

Conviction

27. The Tribunal sat first on Monday 14th July 2008. In a fax received by the BSB on the working day before that hearing (but transmitted after close of business on 10th July 2008) Mr Mehey applied for an adjournment on health grounds. He attached a certificate from Dr Deng dated the same date saying that Mr Mehey should refrain from work for a month because of 'clinical depression'. On the morning of 14th July 2008 (or possibly the morning of the 15th July) the Tribunal received a fax from Mrs Mehey to say that her husband was still too ill to attend. She said that she going to fax another note, but none was received.

28. The Tribunal decided to refuse an adjournment and to proceed. It set out its reasons in a written decision the following day (although dated 14th July). It noted that Dr Deng had not spoken of Mr Mehey's inability to attend the hearing. Dr Deng had referred to an unidentified psychiatrist and there had been nothing from any such psychiatrist. The Tribunal was not satisfied on the balance of probabilities that the Appellant was unable to attend the hearing. It also noted that he had failed to comply with directions for the hearing. The hearing continued on 15th July 2008 when the BSB closed its case. There was not then sufficient time for the remaining proceedings (the Tribunal to deliberate on its decision and, if necessary, hear submissions on and decide the appropriate sentence). The hearing was adjourned to 23rd September 2008.

29. On this occasion Mr Mehey did attend (as Ms Harrison noted, this was the only occasion during the whole proceedings which led to DT1, DT2 or DT3 when he did attend a hearing). He provided a brief undated and

handwritten letter from Dr V.K. Singh. He asked the Tribunal to re-open the hearing. The Tribunal considered that it did not have power to take that course, but, if it did have such a discretion, it would not have exercised it to allow the evidence to be re-opened. It said there was still no adequate reason for the failure to meet the Tribunal's request for fuller information as to the Appellant's medical condition.

30. The Appellant's ground of appeal concerning the refusal of adjournment is unsubstantiated. Contrary to what is said in his petition, his wife's letter was before the Tribunal. They quoted from it in their written decision refusing to adjourn. The Tribunal was correct that the medical information before it was sparse. It was entitled to conclude Mr Mehey had not shown on the balance of probabilities that he was too ill to attend the hearings in July.

31. The Tribunal heard oral evidence from the Legal Advisor to the magistrates (Ms Chohan who, after her marriage, became Mrs Surti) and from one of the magistrates, Mr William Smith JP. Like any appellate body hearing an appeal from a first instance body that based its decision in part on oral evidence, the Visitors will be slow to disagree with the findings of primary fact to which the Tribunal came. There is no ground for us to do so in the present case.

32. Mr Mehey complains in his grounds of appeal that Ms Chohan had wrongly advised the bench that a question to which Mr Mehey had objected as leading was not in fact leading. Ms Harrison conceded that on one view the question might have been considered leading, but this did not affect the overall view that the Tribunal was entitled to take of her evidence or of her credibility. We agree.

33. Mr Mehey objects that the magistrates' notes were not available. The Tribunal had evidence that these were destroyed as a matter of course. The Tribunal was entitled to accept this evidence and to attribute nothing sinister to the destruction of the notes on this occasion.

34. The prosecuting lawyer in the magistrates' court had written that he would not himself have made a complaint about the Appellant's conduct, but, he added, that this should not be taken as meaning that he thought the complaint was without merit. The Tribunal was entitled to come to the view that the charge of incompetence did (for the most part) have merit. As we have already noted, the Tribunal found that the other charge (discourtesy) was not made out, nor was one of the particulars of incompetence.

35. We have considered all of Mr Mehey's grounds for challenging the convictions. None of them are made out.

Sentence

36. The Tribunal noted that the incompetence which they had found would have been bad for a novice barrister, but Mr Mehey was called in 2000 and so had 5 years standing at the time of this trial. He had two disciplinary matters against him, in 2004 and 2005. They related to discourtesy to magistrates and the late return of a brief. For the latter matter he had been suspended for 1 month. As we have noted above, the outcome of DT1 was an order of 9 months suspension.

37. There was no sentencing guidance in 2008. In April 2009 the Council of the Inns of Court did publish 'Sentencing Guidance: Breaches of the Code of Conduct of the Bar of England and Wales'. For significant or repeated acts of incompetence which had an adverse impact on the proceedings the recommended starting point is an apology and a medium level fine to a short suspension. Ms Harrison told us that 'short' for these purposes meant less than 3 months.

38. Although the sentencing guidance post-dates the Tribunal, we consider that we can take it into account in conducting our role of hearing the appeal. We recognise that the Guidance gives only starting points. Mr Mehey's experience and years of call were relevant matters, as was his previous disciplinary record. However, it does seem to us that a 9 month suspension was too long in the circumstances. Under the 2010 Visitor Hearings Rules we can vary an order of the Tribunal. We shall do so by substituting a suspension of 4 months.

DT2

Preliminary

39. The Hearings Before the Visitors Rules 2005 were the ones current at the time of DT2 when it made its decision on 28th April 2010. Rule 4(1) required a notice of intention to appeal to be served within 21 days of the decision of the Disciplinary Tribunal. Mr Mehey gave his notice on 27th May 2010. Rix LJ, who was the Directions Judge for the purpose of the appeal, extended time for service of this notice by his decision of 6th July 2010. He added, 'In light of previous delays and in the appeal from [DT1] Mr Mehey should know that time limits will be enforced.'

40. The next stage in the procedure is for the Appellant to lodge his petition of appeal. By Rule 7(1) of the 2005 Hearings Before Visitors Rules this should have taken place within 42 days of the Disciplinary Tribunal's decision. In fact Mr Mehey did not lodge his petition until 6th June 2011. This was about 11 months out of time. Mr Mehey made no application to extend time for the petition. Notwithstanding this, Ms Harrison did not ask us to strike out the appeal and we will not do so.

Conviction

41. This was another case where Mr Mehey applied for an adjournment of the Disciplinary Tribunal hearing. His grounds of appeal against conviction are essentially that the Tribunal erred in refusing to accede to this request.

42. The hearing was due to take place on 28th April 2010. On 23rd April 2010 Mr Mehey sought an adjournment on two bases: his ill health and his intention to travel to India to conduct funeral rites following the death of his father. He sent to the Tribunal (a) a discharge letter from a hospital; (b) booking documentation for his flights to and from India; (c) a report from Dr V.K. Singh dated 23rd April 2010.

43. The chronology is significant and we set it out here:

- On 5th March 2010 the BSB requested a hearing date of 28th April 2010. Mr Mehey was notified of the request.
- On 28th March 2010 the Council of the Inns of Court distributed a convening order.
- On 28th March 2010 Mr Mehey also booked a trip to India flying out on 18th April 2010 and returning to Birmingham Airport at 12.35 on 28th April 2010.
- On 17th April 2010 Mr Mehey had to re-arrange his travel plans. The Icelandic volcano had erupted and this disrupted air travel. He re-booked his departure for 25th April 2010 returning on 10th May 2010.
- On the same day (17th April 2010) Mr Mehey was briefly admitted to hospital. He was seen by Dr Sami Hamid. The main diagnosis was right chest and arm pain, cardiac in description. 'Other diagnoses' were 'depression'.
- On the same day (17th April 2010) he was seen by Dr Singh (see below).
- He was discharged from hospital the following day (18th April 2010) with the recommendation to decrease his stress levels as well as work load because, according to the discharge summary, 'this may have a detrimental effect on his overall health.'
- On 23rd April 2010 Dr Singh wrote his report. It is a self-styled 'Brief Psychiatric Report'. Dr Singh said that Mr Mehey had been anxious and agitated when he was seen and that the severity of the symptoms seemed to have worsened in the last few weeks. He continued to feel low in mood with disturbed sleep pattern, multiple anxiety and poor concentration. In Dr Singh's opinion Mr Mehey was not fit to attend Tribunal hearings.

44. In reaching its decision the Tribunal noted that the Appellant had had the opportunity to apply for an adjournment at the time of his original flight booking and when the flights had been rearranged. He made no such

application. The Tribunal had not been told of the Appellant's dealings with Dr Singh. The Tribunal was referred to *Teinaz v LB of Wandsworth* (see above), but they reached the clear conclusion that Mr Mehey had no intention of attending the hearing and the adjournment request would be refused.

45. Although the Tribunal did not say so in terms, the clear inference is that they did not accept that Mr Mehey's inability to attend the hearing was because of his medical condition. He had instead chosen to give preference to his Indian travel plans. His application for an adjournment was made at the last minute and despite earlier opportunities to do so. In our judgment, the Tribunal was plainly entitled to come to this conclusion and to refuse the application for an adjournment. Service on Mr Mehey was proved and the Tribunal was entitled to proceed in his absence.

46. In his petition, Mr Mehey says that the Tribunal erred in not contacting Dr Singh for further information. However, unless Mr Mehey had authorised Dr Singh to disclose information to the Tribunal and BSB, this would have been a pointless exercise since Dr Singh would have been obliged to maintain his patient's confidentiality. There was nothing from Mr Mehey to indicate that he had given such authorisation. Mr Mehey also objects to the Tribunal interfering with the observance of his religious practices in relation to the commemoration of his father's death. In our view, though, the Tribunal was clearly entitled to refuse an adjournment on this ground because the application had been made so late with no explanation for its lateness.

47. In short, there is no merit in the grounds of appeal against his conviction.

48. In any case, these were charges which depended essentially on the documentation. On the documentation before the Tribunal it was clearly entitled to find that Mr Mehey had not submitted a completed record card for his CPD for 2007. Barristers were under an obligation (a) to undertake the minimum 12 hours of CPD and (b) to submit a record card. Whether or not the Appellant had complied with (a), the Tribunal was entitled to find that he had not complied with (b).

49. Likewise the Tribunal was right to find on the evidence before it that the fine remained unpaid and that the Appellant had not responded to a number of requests from the BSB for a response to complaints and/or information.

50. In fixing the sentence, the tribunal had in mind the persistence of Mr Mehey's conduct over a lengthy period of time and the previous disciplinary findings against him. There was an unwillingness to comply with the Code and a lack of remorse.

51. Mr Mehey's petition says virtually nothing as to why the tribunal was wrong to impose the sentences which it did. We have reviewed them. In our judgment, they cannot be criticised.

DT3

Conviction

52. Again, Mr Mehey had applied for the hearing before the Disciplinary Tribunal to be adjourned. Again the Tribunal had refused his request. Again Mr Mehey submits that the Tribunal's refusal was wrong.

53. Again it is necessary to be clear about the chronology.

54. On 25th February 2010, Mr Justice Charles, as the Directions Judge, directed that by 31st March 2010 Mr Mehey should provide copies of the statements of any witnesses on whom he wished to rely and any documents on which he wished to rely. Mr Mehey did not comply with this direction in the time prescribed or at all.

55. The hearing of these complaints was first due to take place on 21st July 2010. On 20th July 2010 at 22.57 Mr Mehey emailed a request for an adjournment and provided a report from Dr Amrita Prasad, a consultant psychiatrist, also dated 20th July 2010. She had carried out an assessment of him, read Dr Singh's report of 23rd April 2010 (see above) and various short reports and medical notes from Dr Deng. She said, 'I feel Mr Mehey is suffering from biological depression'. Although she thought he could engage in simple cases and a complete absence from work would be detrimental to his mental health, she recommended that he was not subjected to the stress levels that may be encountered in his own hearing.

56. The Tribunal that was due to hold the hearing and which considered this request was chaired by HH William Barnett QC. In the report dated 26th July 2010, the Tribunal granted the adjournment. It also referred the matter to the Commissioner under r.8(c) of the Fitness to Practise Rules to consider whether Mr Mehey was medically fit to practise as a barrister. The Tribunal noted that the BSB had not opposed the application bearing Dr Prasad's report in mind and that

> 'there is an allegation of dishonesty upon which the Defendant has a right to be heard.'

57. A convening order setting 24th January 2011 as the next hearing date was sent to the parties on 16th December 2010.

58. Mr Mehey seems to have been under the impression that the hearing date was 14th January 2011. This is apparent from the email which he sent to the Tribunal on 13th January 2011 at 21.57. He asked for an adjournment in view of his health. He attached a medical report from Dr V.K. Singh dated 13th January 2011 which said

> 'This is to state that [the Appellant] has been under my care and is currently being treated for depressive illness (moderate to severe in

nature). Mr Mehey has been reviewed quite regularly and continues to have fluctuations in mood with a disturbed sleep pattern and poor concentration. He is treated with an antidepressant namely Venlafaxine 150mg nocte. It is my opinion that currently he is unfit to attend the hearing which I am informed is due to take place tomorrow.'

59. The BSB opposed the application for an adjournment. It also asked for a direction that Mr Mehey provide his authority for Dr Singh or any other medical adviser to correspond directly with the BSB or the Tribunal as to his medical condition or any report sent to the Tribunal.

60. On 21st January 2011 Mr Mehey made another application to adjourn the hearing which he now understood was due to take place on 24th January 2011. Since 24th January was a Monday this was the last working day before the hearing. Mr Mehey attached another report from Dr Singh dated 20th January 2011. This was in almost identical terms to Dr Singh's report of the week before.

61. At 20.04 on 21st January 2011 Mr Mehey emailed the BSB to say that he would be preparing a skeleton argument in support of his adjournment request. This was supplied on the morning of the hearing (24th January 2011). His skeleton referred to *Teinaz* (above) and to *R (Mardan Mahmood) v GMC* 28th February 2007 and *Alam Awan v Law Society* 10th December 2003.

62. In its decision the Tribunal explained why it had refused the application. The Appellant had done nothing to set out his case. He had not set out in any communications with the Tribunal or asked Dr Singh or any other medical practitioner to explain the nature of the condition from which he was suffering. The Tribunal was not satisfied as to the nature, content or general description of the Appellant's alleged inability to attend. His illness was vaguely described and there was no information as to when, if ever, it was likely to recede. The Tribunal was not satisfied that he had provided sufficient evidence for it to say that he was suffering from a genuine reason for not attending the Tribunal through illness.

63. In his petition, the Appellant argues that the Tribunal should have contacted Dr Singh if they wished to find out more. The Tribunal was obliged to allow an adjournment on grounds of his ill health.

64. In our judgment there is no merit in these arguments. Dr Singh's reports were cursory. They left the gaps which the Tribunal identified. It was no answer to say that the BSB or the Tribunal could have investigated the matter further with Dr Singh. In the first place it was for the Appellant (whose application it was) to put the necessary material before the Tribunal. Where illness is relied upon in other circumstances that may not be a complete answer. But Mr Mehey was not so incapacitated that he was unable to prepare a skeleton argument over the weekend before the hearing. But secondly, and in any case, the BSB had specifically asked for Mr Mehey to sign a release authorising his medical practitioners to talk to

them. He had not provided that. Without it, Dr Singh would have been entitled (indeed obliged) not to discuss his patient with a third party. The BSB's request was no doubt prompted by the comments of the Court of Appeal in *Teinaz*.

65. It was for the Tribunal to decide whether Mr Mehey was unable to attend through illness. For the reasons which they gave, and on the material before them. they were entitled and right to decide that they could not be satisfied that he was.

66. The Tribunal gave as a second reason for refusing an adjournment that they were not persuaded that the Appellant's attendance was necessary, given the dearth of information which he had provided about his own defence. Had this reason stood alone, we would have been less confident that the Tribunal would have been entitled to refuse an adjournment. However, it did not stand alone. The Tribunal's decision that the medical evidence was inadequate to show that the Appellant was unfit to attend was a separate and sufficient reason for refusing the application.

67. The most serious charge which this Tribunal had to consider was that the Appellant had misled an earlier Tribunal by saying that he was unwell when he was not. This relates back to November 2007 when the charges which culminated in DT1 were being considered.

68. On 5th November 2007 Mrs Mehey wrote to the BSB in these terms,

> 'I am writing on behalf of my husband, Yash Mehey who is to have a disciplinary tribunal hearing on 6/7 November 2007.
>
> Yash has been unwell since 22 October 2007 with a suspected diagnosis of a mild stroke (TIA) (please see doctor's statement attached). He has been prescribed various medications which are giving him unpleasant side effects like dizziness, confusion and tiredness.
>
> Despite the medications Yash is waiting an appointment for an MRI scan and EEG. He has been strongly informed to rest.
>
> Please adjourn the hearing until he has settled down with the medication and when he becomes more stable in himself. Yash is taking leave until the end of the year from next week to assist his condition.
>
> Yash conveys his apologies for any inconvenience he may have caused, but we are presently facing an extremely worrying and difficult time, through this sudden medical problem.'

The doctor's statement to which Mrs Mehey referred was a *pro forma* statutory sick pay note signed by Dr Deng on 24th October 2007 and saying that Mr Mehey should refrain from work for 1 month.

69. The Tribunal considered the application for an adjournment when what was due to be a 2 day hearing began on 6th November 2007. The application was granted and further directions were made.

70. On 7th November 2007 Ms Suong Thi Nguyen was tried in the Birmingham Magistrates Court. It was an all day trial. Mr Mehey acted for Ms Nguyen.

71. The BSB learned about this when the Legal Advisor in the Magistrates Court that day, Jamshed Mohammed, emailed them on 21st November 2007. Mr Mohammed thought that the Appellant was the person about whom his colleague, Mrs Surti, had complained to the Bar Council (see DT1 above). Mr Mohammed spoke to Mrs Surti on 8th November who told him that Mr Mehey had been due to be at a Disciplinary Tribunal hearing on 6th and 7th November but he did not attend the hearing because he was unwell. Mr Mohammed added 'Mr Mehey did not look ill and he did not tell me that he was unwell.'

72. The BSB also received notes of the hearing at Birmingham Magistrates Court from Mr Ray Harris who had been the court usher. This named 'Mr Meahy' as the defence solicitor. The notes included the following,

> 'Continual arguments about leading questions not controlled by Legal Advisor and at one point Magistrates offered to retire for Legal Advisor to explain to defence sol!'

73. The charge which Mr Mehey faced in relation to this was of professional misconduct. The particulars were that he

> 'engaged in conduct likely to diminish public confidence in the legal profession or the administration of justice or otherwise brought the legal profession into disrepute contrary to paragraph 301(a)(iii) in that on 5 November 2007 he caused or permitted to be sent a request for an adjournment of a two-day Disciplinary Tribunal due to commence on 6 November on the grounds of his ill health, when he was in fact well enough to attend the said Disciplinary Tribunal.'

74. In his petition of appeal the Appellant objected that witness statements were read out when he had not agreed to this course. This ground of appeal has no merit. In his directions of 25th February 2010 (to which we have already referred) Charles J said

> 'That the Bar Standard Board's bundle of documents be admitted into evidence without further proof of the authenticity of the documents contained therein.'

Furthermore, at no stage prior to the decision of the Tribunal had Mr Mehey indicated that he wished to cross examine any of the BSB's

witnesses. In all these circumstances the Tribunal was indeed entitled to rely on the witness statements.

75. Mr Mehey then says in his petition,

> 'Vital evidence of [his] condition at the time of November 2007 would have been presented at a hearing, together with expert evidence and evidence from [him] as to why [he] had to go to Birmingham Magistrates Court in the unwell state that he did so. Again the doctors are the persons able to answer what my illness was as they were monitoring my illness at the time.'

76. We make the following comments on this part of his petition:

a. It is notable that Mr Mehey appears to accept that he did indeed go to Birmingham Magistrates Court on the day in question.

b. There was no evidence of the kind to which Mr Mehey alludes before the Tribunal. They cannot be criticised for failing to consider evidence which was not before them.

c. Charles J had directed Mr Mehey to provide statements from any witnesses on whom he wished to rely at the hearing. That would have included Mr Mehey himself if he intended to give evidence in his own defence. Such statements were to be provided by 31st March 2010. Mr Mehey had provided nothing by that date and nothing by the time the hearing eventually took place on 24th January 2011.

d. The task of the Visitors is to decide the appeal on the basis of the evidence that was before the Disciplinary Tribunal. Only in exceptional circumstances will they give consent for fresh evidence to be adduced – see 2010 Hearings Before Visitors Rules r.14(6).

e. If the Appellant wished the Visitors to consider fresh evidence, we would have needed to see (a) a witness statement or statements setting out far more clearly than Mr Mehey does in his petition precisely what that fresh evidence was to be and (b) an explanation for why it was not adduced at the proper time i.e. before the Tribunal. We are confronted with a situation where there are no witness statements embodying the proposed new evidence, no explanation for why any such evidence was not adduced before the Tribunal, nor, for that matter, with any application for us to give our consent to further evidence being received in accordance with r.14(6).

f. In the circumstances this part of the petition has no merit.

77. On the evidence which was before the Tribunal there was a sharp contrast. Mrs Mehey painted a picture of her husband as the victim of a recent mild stroke whose doctor had said that he must take a month off work, who had been unwell since 22nd October 2007, and who was continuing to suffer

dizziness, confusion and tiredness as a result of taking his medication. This was said to be a sudden medical problem as a result of which he had been advised to rest. This was said to be the position on 5th November. On the other hand, two days later Mr Mehey was conducting an all day trial in the Magistrates Court. He took multiple points as to whether questions asked by his opponent were leading. It is notable that the petition does not argue that the Tribunal was not entitled to find that the charge was made out on the basis of this evidence. In our view his (uncharacteristic) circumspection in this regard was fully justified. The evidence before the Tribunal manifestly showed that this charge was made out. Indeed, on the evidence before the Tribunal it is hard to see how any other conclusion would have been possible even bearing the criminal standard of proof in mind.

78. Charge 1 in PC/2009/0380/D5 was failing to complete the 12 hours of CPD for the year 2008 and/or failing to provide details to of CPD undertaken in the prescribed form. In his petition of appeal, Mr Mehey effectively argues that he should not have been convicted of this charge because he did undertake 12 hours of CPD in 2008. His submission overlooks the second part of the charge i.e. failing to provide in the prescribed form details of the CPD undertaken. This obligation is contained in the Continuing Professional Development Regulations reg. 7. The Tribunal had ample evidence in the statements and documents before it that Mr Mehey had been repeatedly reminded of this obligation but had not complied with it. Accordingly, this ground of appeal fails.

79. Charge 2 in PC/2009/0271/D5 and Charge 2 in PC2009/0380/D5 both alleged that Mr Mehey had failed to respond promptly to requests from the BSB for comments or information on a complaint. Mr Mehey's petition says nothing about these charges. The documentation before the Tribunal included a number of letters from the BSB in relation to each matter to which Mr Mehey had not responded. There is no doubt that he was rightly convicted of these two charges.

Sentence

80. The most serious charge was misleading the earlier Tribunal about his fitness to attend a hearing. The charge did not expressly use the word 'dishonestly' and it would have been better if it had. In our view, though, that was plainly implicit and the implication would have been apparent to Mr Mehey.

81. If there had been any doubt, it would have been dispelled by the decision of the Tribunal granting the adjournment in July 2010. It took that course, as we have noted above, because there was 'an allegation of dishonesty'.

82. Having found the Appellant guilty of that charge, it is unsurprising that the Tribunal considered that disbarment was the necessary consequence. That would have been the case from the facts of the offence itself. However, the Appellant's poor disciplinary record, the lack of remorse, the involvement

of others and the failure to co-operate with the BSB all made that sanction inevitable. We reject Mr Mehey's submission that the sentence was disproportionate or manifestly excessive.

83. Mr Mehey says nothing in his petition about the sentences imposed for the other charges. In our view they cannot be criticised.

Overall Conclusion

84. Our unanimous conclusion was that we would not agree to adjourn the hearing of these appeals despite Mr Mehey's request that we should do so.

85. As to Mr Mehey's petition in PC/2005/0605/A and the decision of the Tribunal chaired by HH Barnett QC on 23rd September 2008 ('DT1'):

    a. We unanimously dismiss the appeal against conviction.
    b. We unanimously allow the appeal against sentence. The order of the Tribunal suspending the Appellant for 9 months is varied so as to substitute an order of suspension of 4 months. The requirement to complete a further 20 hours of CPD is unchanged.

86. As to Mr Mehey's petition in PC/2008/0519/A against the decision of the Tribunal chaired by HH Levy QC on 28th April 2010 ('DT2'):

    a. We unanimously dismiss the appeal against conviction.
    b. We unanimously dismiss the appeal against sentence.

87. As to Mr Mehey's petition in PC/2009/0271/A and PC/2009/0380/A against the decision of the Tribunal chaired by HH Timothy Ryland on 24th January 2011 ('DT3'):

    a. We unanimously dismiss the appeal against conviction.
    b. We unanimously dismiss the appeal against sentence.

88. The BSB has informed us that they are not making any application in connection with their costs of the appeals.