

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Determination by Consent Report

Mr Naveed Akbar

(Lincoln's Inn, March 2003)

A. Background

1. Mr Naveed Akbar was called to the Bar by Lincoln's Inn in 2003 and became an unregistered barrister thereafter. Between 7 October 2013 and 8 April 2014, Mr Akbar completed pupillage and resumed his status as an unregistered barrister as of 9 April 2014. On 3 June 2014, Mr Akbar accepted tenancy and became a self-employed barrister. Mr Akbar was therefore a BSB regulated person to whom the core duties in the BSB's Code of Conduct applied, at the relevant times. Mr Akbar was also a Solicitor and was admitted to the roll of Solicitors on 15 February 2012.
2. On 17 January 2018, Mr Akbar self-reported himself to the Bar Standards Board ('BSB') following an adverse finding made against him by the Solicitors Disciplinary Tribunal ('SDT') in his capacity as a non-executive director of Birleys Solicitors Limited. Following further investigation, the BSB became aware that Mr Akbar held concurrent practising certificates with the BSB and Solicitors Regulation Authority ('SRA').
3. The BSB duly raised an internal complaint and following full investigation, determined to refer this complaint to the Professional Conduct Committee ('PCC') for disposal. Pursuant to rE37, the complaint was considered by the PCC on 16 May 2018 and the PCC determined that there had been a breach of paragraph 301(a)(iii) under the 8th Edition of the Code of Conduct and a breach of CD5, rC10, rC65.8 and rS43 under the 9th Edition of the Code of Conduct, on the balance of probabilities, and the case was suitable for disposal under the Determination by Consent ('DBC') procedure.
4. Pursuant to rE67, the BSB wrote to Mr Akbar via his legal representative on 17 May 2018 to confirm the PCC's decision and asked Mr Akbar whether he agreed, in principle for the complaint to be dealt with under the DBC procedure. Mr Akbar responded via his legal representative on 23 May 2018 and confirmed his agreement.

B. Charges

5. As a consequence of the conduct outlined in paragraph 2 above, the BSB has charged Mr Naveed Akbar with 6 breaches of the Code of Conduct amounting to professional misconduct. The charges are:

Charge 1

Statement of Offence

Professional Misconduct contrary to rule 301(a)(iii) of the Code of Conduct of the Bar of England and Wales (8th Edition)

Particulars of Offence

Mr Naveed Akbar, an unregistered Barrister, in the period between 14 June 2013 and 5 January 2014, engaged in conduct, whether in pursuit of his profession or otherwise, which is likely diminish the public confidence in the legal profession and/or otherwise bring the legal profession into disrepute, contrary to rule 301(a)(iii), by virtue of committing the conduct detailed below, whilst a non-executive director of Birleys Solicitors Limited, resulting in an adverse finding being made against you by the Solicitors Disciplinary Tribunal on 18 October 2017 and being fined £15,000:

- a) Failed to allocate receipts into the client account to a total value of £4,755.12 and withdrawals from the client account to a total value of £108,778 in a client ledger account;
- b) Failed to obtain, or alternatively, preserve bank statements relating to six client accounts operated in the name of Birleys Solicitors Limited;
- c) Permitted a shortage to exist on the client accounts of Birleys Solicitors Limited as at 31 January 2015 which was not shown within the reconciliation statements produced on that date;
- d) Failed to remedy the shortage as of 9 October 2015 despite the SRA notifying you of the shortage on 25 February 2015;
- e) Failed to participate in the management of the practice of Birleys Solicitors Limited and discharge your duties as a Director, either adequately or at all;
- f) Allowed the practice of Birleys Solicitors Limited to be carried out on or subject to the direction, management and control of persons unadmitted to the roll of Solicitors.

Charge 2

Statement of Offence

Professional Misconduct contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9th Edition)

Particulars of Offence

Mr Naveed Akbar, an unregistered Barrister, in the period between 6 January 2014 and 16 February 2015, behaved in a way which is likely to diminish the trust and confidence which the public places in you or in the profession, contrary to CD5, by virtue of committing the conduct detailed below, whilst a non-executive director of Birleys Solicitors Limited, resulting in an adverse finding being made against you by the Solicitors Disciplinary Tribunal on 18 October 2017 and being fined £15,000:

- a) Failed to allocate receipts into the client account to a total value of £4,755.12 and withdrawals from the client account to a total value of £108,778 in a client ledger account;
- b) Failed to obtain, or alternatively, preserve bank statements relating to six client accounts operated in the name of Birleys Solicitors Limited;
- c) Permitted a shortage to exist on the client accounts of Birleys Solicitors Limited as at 31 January 2015 which was not shown within the reconciliation statements produced on that date;

- d) Failed to remedy the shortage as of 9 October 2015 despite the SRA notifying you of the shortage on 25 February 2015;
- e) Failed to participate in the management of the practice of Birleys Solicitors Limited and discharge your duties as a Director, either adequately or at all;
- f) Allowed the practice of Birleys Solicitors Limited to be carried out on or subject to the direction, management and control of persons unadmitted to the roll of Solicitors.

Charge 3

Statement of Offence

Professional Misconduct contrary to rule 301(a)(iii) of the Code of Conduct of the Bar of England and Wales (8th Edition)

Particulars of Offence

Mr Naveed Akbar, an unregistered barrister, between 1 July 2013 and 5 January 2014, whilst acting as a non-executive director of Birleys Solicitors Limited, engaged in conduct, whether in pursuit of his profession or otherwise, which is likely to diminish the public confidence in the legal profession and/or which otherwise brings the legal profession into disrepute, contrary to rule 301(a)(iii), by permitting and/or facilitating the payment of referral fees to Mr H in return for claims work received by Birleys Solicitors Limited.

Charge 4

Statement of Offence

Professional Misconduct contrary to rC10 and Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9th Edition)

Particulars of Offence

Mr Naveed Akbar, an unregistered Barrister, in the period between 6 January 2014 and 8 April 2014, and 3 June 2014 and 16 February 2015, as a non-executive director of Birleys Solicitors Limited, permitted and/or facilitated the payment of referral fees to Mr H in return for claims work received by Birleys Solicitors Limited, contrary to rC10, and in doing so, you behaved in a way which is likely to diminish the trust and confidence which the public places in you or in the profession, contrary to CD5.

Charge 5

Statement of Offence

Professional Misconduct contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9th Edition)

Particulars of Offence

Mr Naveed Akbar, an unregistered Barrister, between the period between 9 April 2014 and 2 June 2014, as a non-executive director of Birleys Solicitors Limited, behaved in a way which is likely to diminish the trust and confidence which the public places in you or in the profession, contrary to

CD5, by permitting and/or facilitating the payment of referral fees to Mr H in return for claims work received by Birleys Solicitors Limited.

Charge 6

Statement of Offence

Professional Misconduct contrary to rule rS43 and rC65.8 of the Code of Conduct of the Bar of England and Wales (9th Edition)

Particulars of Offence

Mr Naveed Akbar, a Barrister, between 3 June 2014 and 31 October 2015, failed to report to the Bar Standards Board that he was authorised to practise by another approved regulator, the Solicitors Regulatory Authority, contrary to rC65.8, and by virtue of this failure, practised as a barrister and obtained a practising certificate, contrary to rS43, when in fact he was not eligible to apply for a practising certificate as he already held a Solicitors Regulation Authority practising certificate.

C. Summary of Facts

6. On 17 January 2018, Mr Akbar self-referred himself to the BSB and stated *"I write to notify and confirm the sanction delivered by the SRA pursuant to disciplinary proceedings issued against myself. I am a former Solicitor and proceedings were issued due to my short involvement with a Solicitor's firm in 2013....I write to confirm and notify you that the SRA administered a £15,000 fine against me. No other sanction or condition was imposed. In any event, I have removed myself from the Roll of Solicitors subsequent to the conclusion of the proceedings against me"*.
7. The SDT hearing took place on 17-18 October 2017; with the determination being delivered on 13 November 2017, and Mr Akbar admitted the allegations raised against him by the SRA in his capacity as non-executive director of Birleys Solicitors Limited. The SDT found the allegations proven and determined that Mr Akbar's conduct was *"more serious bordering on very serious"* and determined to issue him with a £15,000 fine.
8. The SDT hearing arose following an inspection by a SRA Forensic Investigator who; on completion of a book, accounts and document inspection on 18 February 2015, noted an apparent shortage of £109,138.00 within the client account of Birleys Solicitors Limited as of 31 January 2015. Following further investigation, and interviews with Mr Akbar and the other director respectively, the SRA determined to intervene in Birleys Solicitors Limited on 7 April 2015 and the Forensic Investigator produced a final report on 9 October 2015. During the Investigator's interview with Mr Akbar, Mr Akbar confirmed that he was brought in to Birleys Solicitors Limited, as a non-executive director, to intervene should there be a problem with the referral fees being paid to Mr H. The SRA duly notified the BSB of the investigation.
9. The BSB contacted the SRA on 23 January 2018 and sought confirmation of Mr Akbar's practising certificate status between 2014 and 2018. The SRA confirmed that Mr Akbar held a SRA practising certificate in the authorisation to practise periods spanning 1 November 2013 to 31 October 2014, and 1 November 2014 to 31 October 2015 (terminated on 7 December 2015) amongst others. Mr Akbar held a BSB practising certificate in the authorisation to practice periods covering 3 June 2014 to 31 October 2015.
10. The BSB wrote to Mr Akbar on 24 January 2018 notifying him that a complaint had been raised against him and asked him to provide a response to the complaint. Mr Akbar responded

via his legal representative on 15 February 2018, and 13 March 2018 respectively and his responses can be summarised as follows:

- a) Mr Akbar admits the conduct arising out of the SDT finding and the payment of referral fees.
 - b) Once a specific breach of rS43 was put to him, Mr Akbar admitted his failure to notify the BSB that he had become authorised to practice by the SRA. Mr Akbar states that he was not aware that this rule existed and accepts that he should have undertaken further investigations into the correct approach. Mr Akbar asserts that the period of overlap was not in fact a period when he was practising as both a Solicitor and a Barrister.
 - c) Mr Akbar states that he intended to remove himself from the roll of Solicitors however due to the regulatory investigation, he was unable to do so until proceedings had been concluded. Had Mr Akbar been able to remove himself as intended, he would not have been in breach of rS43.
 - d) In mitigation, Mr Akbar states that he has no previous disciplinary history (apart from the SDT finding) and his actions relate to acts of omission rather than any planned action. Mr Akbar says that he has already been sanctioned, financially by the SRA and believed that his conduct could best be dealt with by way of administrative sanction as the SDT finding would have already *“served as a deterrent to both him personally and also to other professionals and the public”* and related to his *“role in the operation of a SRA authorised firm which has been dealt with by the SDT”*. Further, Mr Akbar was not a Compliance Officer for Legal Practice (‘COLP’) nor Compliance Officer for Finance and Administration (‘COFA’) at Birleys Solicitors Limited, and therefore it would *“seem harsh for a significant penalty to be placed on him, by the BSB, when the other director in the SDT proceedings; who was COLP and COFA and therefore more culpable for the breaches in the SDT, will not be punished beyond sanction imposed by the SDT”*;
11. On 11 May 2018, the BSB asked Mr Akbar to clarify his knowledge of the referral fees paid to Mr H. Mr Akbar responded via his legal representative on 15 May 2018 and stated that *“Mr Akbar is not aware of any referral payments being made to Mr H by Birleys Solicitors Limited but knew that Mr H was referring work to Birleys Solicitors Limited”*.
 12. The BSB have copies of the SDT finding and the final investigation report compiled by the SRA Forensic Investigator dated 9 October 2015.
 13. The relevant applicable rules from the Code(s) of Conduct are as follows:
 - a) **Paragraph 301(a)(iii)** - A barrister must not engage in conduct whether in pursuit of his profession or otherwise which is...likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
 - b) **CD5** - You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.
 - c) **rC10** - You must not pay or receive referral fees;
 - d) **rC65.8** – You must promptly report to the Bar Standards Board if...you become authorised to practise by another approved regulator;
 - e) **rS43** – If you are authorised by another Approved Regulator to carry on reserved legal activity and currently permitted to practise by that Approved Regulator, you must not practise as a barrister and you are not eligible for a practising certificate.

D. Previous Disciplinary Findings

14. Mr Naveed Akbar has no previous disciplinary findings.

E. Plea and Mitigation

15. Mr Akbar, via his legal representative, advised the BSB by letter dated 7 July 2018 that he:
- (a) did not dispute the facts set out in sections A, C and D of this report;
 - (b) admitted the charges set out within section B of this report.
16. By way of mitigation, Mr Akbar, via his legal representative, has stated as follows:

"...I adopt the mitigation advanced on behalf of Mr Akbar in respect of the proceedings before the SDT and refer you to the mitigating comments detailed within the Judgment. The substantive complaints relate to Mr Akbar's conduct at an SRA authorised firm. The SRA referred Mr Akbar's conduct in respect of his involvement with Birleys Solicitors Ltd to the SDT where Mr Akbar made admissions to a variety of allegations. The SDT dealt with the matters by way of a financial penalty. Whilst it is accepted that the BSB can impose additional sanctions to those imposed by the SDT, albeit for the same conduct, it is submitted on behalf of Mr Akbar that as he has already been sanctioned by the SDT any sanction imposed should be reduced accordingly.

It is further submitted that the fact Mr Akbar was not the COLP or COFA of the law firm would mean it would be harsh for a significant penalty to be placed upon Mr Akbar by the BSB when the First Respondent in the SDT proceedings, who was the COLP and COFA and thereby more culpable for the breaches in the SDT, (confirmed at paragraph 91 of the Judgment) will not be punished beyond the sanction imposed by the SDT.

I refer you to the Bar Tribunals & Adjudication Service Sentencing Guidance (the Guidance) in respect of breaches of the BSB Handbook and in particular section 3 – Purpose and principles of sentencing. It is submitted that the action taken by the SDT deals with all of the relevant purposes for applying sanctions and will already have served as a deterrence to both Mr Akbar personally but also to other professionals and the public. I would particularly point to the Guidance which notes that any sanction to be imposed should be proportionate. Given that the substantive complaints relate to Mr Akbar's role in the operation of a SRA authorised firm which have been dealt with by the SDT, it would seem disproportionate that Mr Akbar be dealt severely.

When considering the culpability of Mr Akbar, it should be noted that all of the actions complained of relate to acts of omission rather than any planned action by Mr Akbar. Finally, I have considered part 2 of the Guidance to ascertain whether an Administrative Sanction would be the appropriate sanction in the circumstances of Mr Akbar's case. Given that the conduct relates to his employment with an SRA authorised body, it is difficult to find a comparable example within the Guidance. However, the appropriate guidance in my view would be found at E.1 Poor administration of practice and E.3 Breaches of practising requirements. It is submitted on behalf of Mr Akbar that given the mitigation above, a reprimand is appropriate in the circumstances".

17. Details of Mr Akbar's financial position have been provided to the Professional Conduct Committee.

F. The Committee decision

18. The Professional Conduct Committee find the charges proved.

G. Committee Sentence

19. In sentencing Mr Akbar, the Committee has had regard to the enforcement strategy as well as Versions 2 (April 2013) and 3 (January 2014, and revised in 2015) of the BTAS Sanctions Guidance ('the Guidance') which were in force at the time.
20. Section E.1. 'Poor Administration of Practice' provides examples and states that a 'failure to return papers/proper records' would attract a sanction of advice as to future conduct whilst 'systematic failures to manage a wide-range of areas of practice/chambers in order to save money or increase income' would incur a reprimand and a low to medium fine (dependent on potential financial gain).
21. Section E.3. 'Breach of practising requirements' states that the starting point for a breach of the practising requirements is a low-level fine towards the top end. However, the Guidance further states that "*charges of professional misconduct in relation to breach of the practising requirements will only come before a Tribunal in the case of persistent or uncooperative defaulters*".
22. Section C.7. 'Improper conduct relating to fees' states that "*acceptance of referral fees is likely to fall within this category but the level of sanction will be dependent on the specific circumstances surrounding the breach and its severity*". The starting point is a medium level fine in respect of a privately paying or commercial client to a medium suspension to disbarment for 'knowingly charging for work/hours not completed".
23. A low fine is defined as up to £1,000 whilst a medium level fine is over £1,000 and up to £3,000.
24. The Committee notes that Mr Akbar has no previous disciplinary findings and has considered the following mitigating factors: the admission, the breach being unintentional, cooperation with the BSB's investigation and previous good character. An aggravating factor however is the undermining of the profession in the eyes of the public.
25. The Committee has also had regard to Mr Akbar's specific position within Birleys Solicitors Limited and the sanction imposed by the SRA.
26. In all of the circumstances, and having regard to the principle of totality, Mr Akbar is sentenced as follows:

Charge 1 – A fine of £250

Charge 2 – No separate penalty

Charge 3 – A fine of £250

Charge 4 – No separate penalty

Charge 5 – No separate penalty

Charge 6 – No further sanction

....and a reprimand