

Determination by Consent Report (Final)

**Mr Barnabas Lams
1 MCB
3rd Floor, 15 New Bridge Street
LONDON
EC4V 6AU**

(Gray's Inn, October 1995)

A. Background

1. Barnabas Lams was called to the Bar by Gray's Inn in 1995 and during the relevant period of May 2015 to April 2018, he was practising as a self-employed barrister. Mr Lams is regulated by the Bar Standards Board (BSB) to whom the Code of Conduct and the Bar Standards Board's Handbook apply.
2. On 10 May 2018, Mr Lams self-reported to the BSB for practising outside the scope of practice of a self-employed barrister, by accepting instructions directly from an Office of the Immigration Services Commissioner (OISC) individual who had not been authorised as a Licensed Access client.
3. Following an investigation into the complaint, the Professional Conduct Committee (PCC) met on 17 October 2018 and decided that there was sufficient evidence of a breach of the Code of Conduct and it was in the public interest to warrant disciplinary action and that the case was suitable for disposal under the Determination by Consent (DBC) procedure.
4. The BSB wrote to Mr Lams on 19 October 2018 to confirm this decision and to ask whether he agreed in principle for the complaint against him to be dealt with under the DBC procedure. Mr Lams provided his written consent to the DBC procedure on 6 November 2018.

B. Charge(s)

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

Charge 1

Statement of Offence

Professional misconduct contrary to rS24 and/or Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9th Edition)

Particulars of Offence

Barnabas Lams, being a barrister, behaved in a way likely to diminish the public's trust and confidence in him or in the profession in that, on or around May 2015 until on or around April 2018, having been instructed by [**X Firm**], supplied legal services to lay clients without being instructed by a professional client or licensed access client.

Charge 2

Statement of Offence

Professional misconduct contrary to rS24 and/or Core Duty 10 of the Code of Conduct of the Bar of England and Wales (9th Edition)

Particulars of Offence

Barnabas Lams, being a barrister, failed to take reasonable steps to manage his practice and to carry out his role in such a way as to achieve compliance with his legal and regulatory obligations in that, on or around May 2015 until on or around April 2018, having been instructed by [**X Firm**] supplied legal services to lay clients without being instructed by a professional client or licensed access client.

C. Summary of Facts

6. rS24 states you may only supply legal services if you are appointed or instructed by the *court* or instructed:
 1. by a *professional client* (who may be an employee of the client); or
 2. by a *licensed access client*, in which case you must comply with the *licensed access rules*; or
 3. by or on behalf of any other client, provided that:
 - a. the matter is *public access instructions* [...]
7. Core Duty 5 states 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.
8. Core Duty 10 states you must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.
9. Between May 2015 and November 2017, Mr Lams accepted instructions from an individual working within an OISC firm. Within that period, he was instructed in approximately 13 cases, and the work associated with those instructions continued until April 2018.

10. At the time at which Mr Lams accepted the instructions, he believed OISC firms and/or the relevant individual was a professional client for the purpose of Rule 41.1 of the Handbook. Mr Lams subsequently became aware that rather than being professional clients, OISC firms and/or individuals are licensed access clients, subject to authorisation under the Licensed Access Recognition Regulations.
11. Mr Lams raised his concern with his contact at the OISC firm and stopped accepting instructions. Mr Lams also transferred instructions in an imminent hearing to a direct access basis.
12. On 10 May 2018, Mr Lams self-reported to the BSB.
13. The BSB wrote to Mr Lams on 19 June 2018 to notify him that a complaint had been raised and asked for a response to the complaint.
14. In response, Mr Lams relies on the submissions made during his self-report covered at paragraph 9 – 11 above.

D. Previous Disciplinary Findings

15. Mr Lams has no previous finding of professional misconduct.

E. Plea and mitigation

16. On 3 December 2018, Mr Lams advised the BSB by email that he:
 - (a) did not dispute the facts as set out in sections A and C of this report; and
 - (b) admits the charges as set out in section B of this report.
17. In mitigation, Mr Lams wishes the committee to consider that his self-reported this matter and has no previous findings of professional misconduct. It has been a very stressful period and is deeply embarrassed at finding self in this position after many years at the Bar. Mr Lams wishes the Committee to know that he would be more vigilant in respect of his professional duties and has learnt a very painful lesson.
18. Mr Lams has provided financial information.

F. Committee decision

19. On the material evidence and admission before the committee, the Professional Conduct Committee find the charge proven.

G. Committee sanction

20. In Sanctioning Mr Lams, the Committee has had regard to the enforcement strategy as well as Version 4 (Revised) of the BTAS Sanctions Guidance (February 2018).

21. The sanctions guidance indicates under C.1, at page 43 that the starting point should normally be a reprimand and/or a medium level fine or for breaches over a lengthy period, suspension. The main factors in determining the sanction will be the risk posed to the client, whether the breach involved a level of exploitation of the client and/or whether the behaviour was motivated by financial gain. The sanctions guidance also states the level of fine at page 17 (paragraph 5.4) which is that “A fine of up to £50,000 (for acts or omissions that took place on or after 6th January 2014).
22. The Committee has considered the lengthy period of the breach (over two years) and that, but for a chance conversation with a caseworker, the breaches may well have continued for some time thereafter.
23. With regards to mitigation the Committee has considered that Mr Lams self-reported the matter, his guilty plea, the misconduct involves a single incident (albeit spanning several cases until he realised the error) and he has co-operated with the BSB’s investigation. There is no evidence that the breach was financially motivated and some evidence that there was wider misunderstanding of the requirements applying to OISC firms and further guidance has been issued. Mr Lams has shown genuine remorse.
24. In all the circumstances Mr Lams is sanctioned as follows:

Charges 1 and 2 – A reprimand and fine of £750.00 total