

Decision as to the appropriateness of the sanction imposed by La Chambre de Discipline following the finding of professional misconduct.

[2020]GCA083

IN THE COURT OF APPEAL OF GUERNSEY

CIVIL DIVISION – APPEAL NO: 541

Before: James McNeill, QC
Jonathan Crow, QC
David Perry, QC

Between: An Advocate Appellant
-and-

REGISTRAR OF LA CHAMBRE DE DISCIPLINE Respondent

Advocate G Dawes for the Appellant
Advocate G K Bell for the Respondent

Decision handed down: 5th November 2020

Crow JA

This is the judgment of the court to which all members have contributed.

1. This judgment addresses the appropriate sanction. It is to be read together with the main judgment, and the same definitions and abbreviations will continue to be used.
2. As noted in paragraph 43 of the main judgment, the Chambre held that the purpose of any sanction was laid down in *Registrar of La Chambre de Discipline v. An Advocate* (11 May 2017, judgment 22/2017) by reference to the English decisions in *Bolton v. The Law Society* [1993] EWCA Civ 32 and *Fuglers LLP v. The Solicitors Regulatory Authority* [2014] EWHC 179 (Admin). This is not controversial. It is clear that the purpose of any sanction is (i) to prevent any repetition by the offender, (ii) to deter others from similar breaches, (iii) to maintain high standards of professional conduct and thereby (iv) to maintain public confidence in the reputation of the legal profession.
3. Accordingly (as the Chambre also recognised) each case will turn on its own facts. Any assessment of the appropriate sanction will necessarily involve consideration of (i) the purpose for which sanctions are imposed, (ii) the seriousness of the misconduct (including both culpability and harm), and (iii) the appropriateness of the sanction having regard to the misconduct in question. Applying that approach, the Chambre decided to impose a public rebuke (Chambre judgment, §180 – 205).
4. The fixing of an appropriate sanction is a matter of judgment on which different conclusions can reasonably be reached. For this reason, and also for the reasons discussed in paragraph 63 of the

main judgment, a non-specialist appellate tribunal should generally be slow to interfere with any expert assessment made by a specialist, disciplinary tribunal such as the Chambre in relation to sanction. That stricture would normally apply with even greater force in relation to a second appeal, particularly one which is limited (as are appeals to this court under s. 30(1) of the 2007 Law) to points of law. If this had been an appeal only against sanction and nothing else, the question at this level would have been not whether the Chambre fixed the right sanction, but whether the Royal Court made an error of law in refusing to overturn that sanction. That would have been an extremely high threshold.

5. This case is not, however, an appeal only against sanction. The Appellant has also appealed against the findings of misconduct, as he did in the Royal Court. In material respects he has been successful, both in this court and in the court below. As noted in paragraph 53 of the main judgment, the Royal Court allowed the appeal against the Chambre's finding in relation to Count 5 (failing to obtain a second medical opinion). Furthermore, this court has now held (in paragraphs 97 – 103 of the main judgment) that there was no breach of Rule 18 (accepting instructions where an advocate suspects they have been given under duress or undue influence) in relation to Count 1 (the duty to act in the client's best interests). In the circumstances, the basis upon which the Chambre exercised its judgment in fixing the sanction as it did is no longer sound. For that reason, it is in our judgment necessary for this court to assess the appropriate sanction for itself, on the basis of the Counts as proved, and on the basis of the totality of the evidence, and the submissions of the parties to this court. That demands a fresh exercise by this court of its own judgment, not a ruling on whether the Royal Court made an error of law, least of all a reappraisal of the Chambre's judgment in relation to sanction.
6. Applying the approach summarised in paragraph 2 above, the court has reached the conclusion that a private reprimand satisfies the public interest and the demands of justice.
7. The Appellant has been rightly found to have committed professional misconduct, and accordingly some form of sanction is clearly required. In assessing the appropriate severity of that sanction, the court looks first at the purpose for which sanctions are imposed. So far as that is concerned, we are satisfied that (i) the finding of professional misconduct together with a private reprimand is an adequate deterrence against any repetition by this Appellant; (ii) the anonymised publication of the main judgment will deter others from similar breaches by clarifying the responsibility of advocates in comparable situations; (iii) that will achieve the objective of maintaining suitably high standards in the legal profession and hence public confidence.
8. Turning next to the seriousness of the misconduct, it is apparent from the Chambre judgment and the findings of the Jurats in the Royal Court that the Appellant was guilty not simply of an error of professional judgment but that he demonstrated an ignorance or disregard of the relevant Rules or as to how they were engaged in the circumstances. The consequences for the Client's family have been costly and distressing, as they resulted in the litigation discussed in paragraph 13 and the Complaint that led to the judgments in this case. Nevertheless, it should be recognised that there has been no finding that the Client lacked capacity or that the Wife in fact exercised undue influence.
9. Looking finally at the appropriateness of the sanction, we have taken the following matters into consideration: (i) no dishonesty has been alleged or proved; (ii) the Appellant has had a long and previously unblemished career; (iii) the relevant events occurred in a narrow timeframe and did not involve a lengthy or recurrent course of conduct; (iv) the Appellant believed he was looking after the Client's interests as he saw them in executing the Wills while the Client still had capacity; (v) the Appellant took what he thought to be appropriate medical advice as to capacity; (vi) a medical assessment was conducted immediately before the Wills were executed in the absence of the Wife and in the presence of two experienced Jurats who raised no concerns, and it was video recorded; (vii) there was a very significant delay between the relevant events

(September 2004) and the matter being referred to the Chambre (March 2017); (viii) the Appellant has provided impressive testimonials; (ix) finally, in reaching our conclusion that a private reprimand is appropriate, we take into account the fact that the Chambre discounted the utility of a fine and regarded a public rebuke as the right sanction to impose in circumstances where all elements of all five Counts had been established (with two very slight exceptions noted in paragraph 41 of the main judgment). Given that this court is assessing the appropriate sanction for a lesser range of findings, we regard the Chambre's judgment as providing a useful point of reference and supportive of our ruling that a private reprimand is the appropriate sanction.