IN THE MATTER OF

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(Inner Temple, February 1993)

REVIEW PANEL

D E C I S I O N

1. This is the reasoned decision of a Review Panel convened pursuant to rule 22 of the Fitness to Practice Rules ('the Rules'). The panel consists of Michael Blair QC (Chairman), Richard de Lacy QC, Sophia Lambert, lay member, and Jain Holmes, occupational therapist. The appeal is from a decision of a Medical Panel (David Woolley QC (Chairman), Nigel Baker QC, Camilla Wells, barrister, Joanna Sweetland, medical member and occupational therapist, and William Henderson, lay member). Their reasoned decision was dated 3 December 2009, and was given after a very detailed inquiry.

2. The decision of the Medical Panel was that:

   (1) Mr Horan should be prohibited from accepting instructions to appear as advocate in the High Court, Court of Appeal, Supreme Court or Privy Council, or their overseas equivalents, until he had been assessed by an appointed medical assessor who has 'seen the Court of Appeal, Supreme Court or Privy Council in session before conducting the assessment'.

   (2) The prohibition should continue until a Panel convened under the Rules had approved its relaxation.

   (3) Mr Horan be required to give notice in writing of his medical history before accepting instructions to appear as advocate to his client and to the relevant Court or tribunal.

3. In its reasons, the Medical Panel also mentioned that 'it would be right to give formal effect to some of the limits on practice which the barrister imposes on himself.' If these go any further than the matters at paragraph 2(3) above, we have found no trace of a document giving such effect to any such further limits.

Introduction

4. Mr Horan suffered a cerebro-vascular accident (stroke) on 31 December 1999 when he was aged 31. The stroke resulted in impairments identified as a right hemiparesis and dysphasia. These impairments have impacted in how Mr Horan participates in certain activities. The circumstances which gave rise to these proceedings involve both aspects of these impairments to some extent, but principally his dysphasia and readiness of response when conducting oral advocacy.

5. Mr Horan appeared as counsel in the Court of Appeal, acting on the instructions of the Citizens' Advice Bureau (CAB) at the Royal Courts of Justice, for the appellant employee Mrs Bone in *Bone v Newham LBC*, an appeal from the Employment Appeal Tribunal in a case concerning both unfair dismissal and sex discrimination. The hearing took place on 15 April 2008. Mr Horan's client was successful in her appeal: [2008] EWCA Civ 435.

6. The presiding Lord Justice was dissatisfied with Mr Horan's conduct of the oral hearing of the appeal (though not with any aspect of his written argument) and wrote with the support of the other two members of the Court to Mr Horan's head of Chambers, Robin Allen QC, on 30 April 2008 mentioning a number of heads of concern. Mr Allen responded after inquiry into the matter on 11 July 2008. This letter did not satisfy the concerns of the Lord Justice, and he referred the matter to the Complaints Commissioner on 23 July 2008. In the result, the question of Mr Horan's fitness to practice was referred to a preliminary hearing of a Medical Panel appointed by the President of the Council of the Inns of Court (COIC). The Panel directed the making of a medical report on him on 8 May 2009. The further consideration of the matter was fixed for 11 August 2009. In the meantime, in lieu of the imposition of conditions by the Medical Panel, Mr Horan gave an undertaking pursuant to

rule 13(e) not to accept any instructions involving oral advocacy in the High Court, the Court of Appeal, the House of Lords or the Privy Council, until 11 August 2009. In the event, the medical report was not ready for that date, and the hearing was adjourned by order of the President of COIC to 13 October 2009. Mr Horan's undertaking was extended until the disposal of the Medical Panel's hearing.

7. The hearing on 13 October 2009 resulted in the decision of 3 December 2009.

Procedure leading to this decision

8. This decision is rendered nearly a year after the finalisation of the Medical Panel's decision, and this fact in itself requires explanation. We hope that no such delay will occur again in any similar case relating to the health or welfare of a practising barrister whose practice has been restricted or terminated under the Rules.

9. The Review Panel was originally convened to conduct the rehearing on 15 and 16 March 2010. In February 2010, solicitors on behalf of Mr Horan sought an adjournment, on the ground that they intended to issue proceedings for judicial review directed to the Bar Standards Board (BSB), seeking principally the quashing of the decision of the Medical Panel. The Chairman of the review panel refused the adjournment by a letter dated 4 March 2010 addressed to Mr Horan's solicitors, indicating that the question whether the review panel should proceed could be addressed at the hearing fixed for 15 March.

10. Mr Horan then proceeded with his judicial review application, and also sought an interim order from the Administrative Court, which made an order 'staying' the proceedings of the BSB. Although the proceedings of the review panel are not proceedings of the BSB, but those of an independent panel, which had not been joined in the judicial review proceedings, the Chairman determined that the making of the order against the BSB made it sensible for the Review Panel to grant an adjournment of the review panel proceedings.

11. The Administrative Court refused permission for judicial review in September 2010. (At this point the solicitors then acting for Mr Horan left the scene.) It then became necessary for the hearing to be reconvened. The Review Panel considered that the matter should be considered urgently. By reason of the

commitments of counsel representing Mr Horan, it proved impossible to agree a date for that hearing before December 2010. We were informed by the BSB's solicitors by letter of 17 September 2010 that Mr Horan had received instructions to appear in the Court of Appeal, and that the proposed hearing date might prove to be too late to enable him to undertake the work. The BSB proposed, with the agreement of Mr Horan's representative acting for him through the Bar Mutual Indemnity Fund (BMIF), that we should consider the review in the first instance on paper, and make a decision whether the review could and should result in removal of the restriction imposed by the Medical Panel, or should continue with an oral hearing on the basis that we were not satisfied merely on the papers that the restriction ought to be removed. Our thought was that, in this way, it might be possible to reach a decision before Mr Horan was due to appear in the Court of Appeal.

12. We agreed to take that course and the Chairman gave directions for the lodging of a bundle of all the relevant papers (to be certified as complete by both the BSB and Mr Horan's advisers).

13. The BSB made no submissions to the Medical Panel or to us, and because of the extent and nature of the submissions which had been made to the Medical Panel and the Administrative Court, we had already determined that the services of an advocate to the review panel would be desirable, to ensure that we had the benefit of an independent analysis of, in particular, the legislation on Disability Discrimination.. Pursuant to our request, Antony White QC undertook that task and prepared a submission in writing for the purposes of our consideration of the review on paper. We are most grateful to him for all that he has done to assist us in carrying out our task.

14. After the receipt of Mr White's submission, it appeared that he had originally included, in response to the Chairman's directions, a passage concerning the possibility of our making an interim order, and had analysed the rules with a view to demonstrating that we might make such an order pending an oral hearing if we had any doubts about the wisdom of proceeding with the 'on paper' consideration of removing the Medical Panel's restriction. The BMIF representative then, in our view regrettably, sought to remove this aspect of Mr White's submissions from our consideration. A letter from BMIF of 12

November 2010 to the Chairman characterised the work of Mr White as 'advice' and argued that the possibility of interim determination should not be within our purview.

15. The Chairman rejected this approach and required the production to the review panel of the further submission on the topic of interim relief together with any further submissions which Mr Horan wished to lodge on that question. In the event, however, in view of the conclusion which we have formed, (and because we were informed on 19 November that Mr Horan was no longer instructed to appear in the Court of Appeal case), the issue about an interim determination does not arise.

16. We have now considered all the material put before us and have reached a conclusion on which we are unanimous.

The regulatory context and the issues

17. The power to impose conditions on the practice of a barrister depends upon a finding that 'the Defendant is or may become unfit to practise' (rule 16). 'Unfit to practise' in relation to a barrister means (rule 4) that he is

'incapacitated by reason of ill health and:

(1) The barrister is suffering from serious incapacity due to his physical or mental condition … and

(2) As a result the barrister's fitness to practise is seriously impaired; and

(3) His suspension or the imposition of conditions is necessary for the protection of the public.'

18. 'Incapacitated' in this rule clearly does not bear its ordinary meaning of 'completely disabled'. The sub-paragraphs in the definition import the meaning that the barrister's ability to carry on practice to the standards expected of a barrister is seriously impaired by his physical or mental condition.

19. The standards expected of a barrister are to be found in the Code of Conduct and the written standards of work. Paragraph 5.4 of those standards provides:

5.4 A barrister must in all his professional activities act promptly, conscientiously, diligently and with reasonable competence and must take all reasonable and practicable steps to ensure that professional engagements are fulfilled. He must not undertake any task which:

(a) he knows or ought to know he is not competent to handle;

(b) he does not have adequate time and opportunity to prepare for or perform; or

(c) he cannot discharge within a reasonable time having regard to the pressure of other work.

20. We therefore consider that the threshold questions are whether on the evidence:

(1) Mr Horan is suffering from a serious incapacity due to his physical and mental condition; and

(2) Mr Horan's ability to meet the relevant standard has been seriously impaired by reason of that condition.

In relation to the second question, we will have to consider whether and to what extent the relevant legislation on disability requires us to determine that his ability is not, or is not seriously, impaired because reasonable modifications can be made to compensate for the impairment.

21. If the answers to both these questions are 'yes', but only in that event, we must consider whether that impairment means that his suspension or the imposition of conditions on his practice is necessary for the protection of the public.

22. We consider the evidence in the following order:-

(1) The medical and occupational therapy evidence.

(2) Mr Horan's evidence as to the conduct of his practice since the stroke.

(3) The evidence of his actual performance as observed by others.

The medical and occupational therapy evidence

23. The Appointed Medical Advisor is Sue Barnard Gillmer, an occupational therapist and vocational rehabilitation consultant. We will refer to her (we

hope without disrespect) as 'the AMA'. Her report was submitted in July 2009, and she answered a series of questions raised by the Medical Panel at its preliminary hearing. Mr Horan had exhibited to his witness statement dated 7 May 2009 a report from a consultant neuropsychologist, Dr Nathaniel-James ('the consultant'), which was prepared at the insistence of Mr Horan's head of chambers on 14 February 2006 in order to assess whether Mr Horan could effectively return to full-time practice.

24. Dealing first with the consultant's report, he found that Mr Horan's performance in tests of intellectual ability provided evidence of 'mild but significant under-functioning in his working memory abilities. However, there is no other evidence of under-functioning in his general intellectual abilities'. He further found that Mr Horan was functioning for the most part at pre-injury expectations, with two exceptions, namely working memory and expressive language during conversational speech. The weakness in working memory was a relative weakness, since his working memory abilities were as good as 50% of his age peers in the general population. In this context of course we observe that one's "age peers" are not those of any particular intellectual attainment, but part of the population as a whole.

25. The consultant expressed an overall opinion that the impairment which Mr Horan has suffered was not such as to prevent his functioning as a barrister. He offered suggestions to improve Mr Horan's performance which include the use of gesture, facial expressions and drawings in order to put across his arguments. Like the Medical Panel, we do not consider that the last part of this evidence assists, as it is not based on a realistic assessment of the function of an advocate performing oral advocacy.

26. The AMA's evidence on Mr Horan's functioning accorded substantially with that of the consultant. Her material findings are that Mr Horan's speed of oral delivery and formulation of certain words and phrases are significantly impaired due to his permanent expressive dysphasia. In respect of functional memory, concentration and attention, the AMA found a good but not exceptional performance, and that Mr Horan had learned compensatory strategies which improved his practical memory presentation over the scores in tests. Accordingly the AMA remarked that the consultant's finding of

significant underfunctioning in measured working memory abilities had not taken into account compensatory strategies.

Mr Horan's evidence

27. The process in which we are engaged is not adversarial. We therefore approach Mr Horan's evidence on the basis that we should accept it unless it is inherently improbable or contradicted by other material put before us. His account of his medical and professional history is candid and coherent, and he has not attempted to brush aside or belittle the real difficulties which he has faced and the consequences of his condition. We accept his evidence.

28. There is no doubt that before the stroke, Mr Horan was an individual fully qualified by reason of his intellect and training to be a fully competent barrister and, in particular, a practitioner of oral advocacy.

29. The cerebro-vascular accident occurred on 31 December 1999. Its immediate aftermath was disastrous: according to Mr Horan's brother (as reported by the consultant) it was doubtful whether Mr Horan would survive, and if he did, whether he would recover any speech or (possibly) mobility. In the event Mr Horan recovered both mobility and, by virtue of intense therapy, his speech and was able to resume limited work as a barrister from April 2001. As we have recorded above, he submitted to a detailed investigation by the consultant in February 2006, after which his head of chambers was presumably satisfied that he was capable of returning to full-time practice, as he did.

30. Mr Horan's witness statement of 7 May 2009 addresses the numerous points made about his performance in Mrs Bone's case in the letters of the presiding Lord Justice and in the letter of the Complaints Commissioner of 7 January 2009 to the President of COIC. We do not need to deal with any points other than those which relate to his general ability to conduct oral advocacy in any court. We deal with those matters when considering the perception of Mr Horan's performance as perceived by others.

31. Mr Horan accepts that his speech ability has reached a plateau and is unlikely to improve further, and also that it is impaired. He states that he has appeared both without complaint and with success in numerous cases since 2006 and has re-established a regular client base of solicitors.

The evidence of Mr Horan's performance as perceived by others

32. We are in no doubt that Mr Horan's professional performance has in general been up to an adequate standard since his resumption of full time practice in 2006. Numerous witnesses attest to his continuing ability. They include judges and practitioners. We do not propose to lengthen these reasons by reciting their evidence in full.

33. The critical event is the hearing of Mrs Bone's appeal on 15 April 2008. We have listened (separately) to the recording of this hearing, and we have read the transcript. There is no doubt that Mr Horan's narrative and argumentative advocacy are impeded by the impairment of his speech. The hesitations which his dysphasia imposes are evident.

34. Mr Horan's performance led the three judges of the Court of Appeal to conclude (enclosure to the letter of 23 July 2008) that his oral submissions 'were effectively of no help at all in moving the case forward'. The Medical Panel said (substantive decision para 16) that the account of the hearing given by the judges, the recording and the transcript persuaded them that on that day, at least, 'the barrister's fitness to practise was seriously impaired to the point where it had virtually disappeared'.

35. These are extreme conclusions. As they would in principle support a decision that Mr Horan should not practise advocacy *at all* (whereas the Medical Panel were prepared to allow him to practise under conditions) we have considered them carefully.

36. This requires some consideration of the questions which the Court of Appeal had to consider in Mrs Bone's case. They were not simple.

    (1) The Employment Tribunal (ET) at first instance had rendered a decision which found as a fact that Mrs Bone had been the victim of sexual discrimination and victimisation.

    (2) The ET had summarised its findings at the end of its written decision to the effect that Mrs Bone had been unfairly dismissed, but it did not transpose its findings as to discrimination or victimisation into the relevant conclusion.

(3) When it came to consider the remedies to be awarded to Mrs Bone, the ET realised that (or perhaps was asked to consider whether) it should correct the summary of findings to show that Mrs Bone was not merely unfairly dismissed (the employer having shown no reason for dismissal) but was dismissed by reason of direct sexual discrimination or victimisation. It did so by means of a Certificate of Correction under rule 37 of the Employment Tribunal rules.

(4) The employer appealed to the Employment Appeal Tribunal (EAT) on the ground that the ET had no power to make the rule 37 certificate at that stage in the proceedings (and on other grounds which failed). The EAT decided that the ET was not entitled to make the certificate but made no consequential order which would enable Mrs Bone to have her remedies determined on the basis of a dismissal by reason of discrimination or victimisation.

37. Mr Horan's task was to advocate Mrs Bone's appeal against this decision. His fundamental point was, as we see it, expressed at page 12 of the transcript, where he pointed out that the ET had realised that there had been an error which resulted from the expression of the decision, which in its correct form, as he vividly put it 'was their judgment, and had ever been their judgment'.

38. This remark appears after about 45 minutes of the hearing, after Mr Horan has made his submissions on the authorities relating to the 'slip rule', which he has sought to apply to the making of a certificate under the Tribunal rule 37. We consider that a barrister who did not have Mr Horan's disability would have made a submission to that effect at some time in the hearing: but we cannot say when.

39. The issue in the appeal can be seen (with the benefit of the Court of Appeal's judgments) to have been whether the EAT was entitled to require the ET to reconsider its decision *without reliance on the 'slip rule'*. We accept that Mr Horan did not take this point expressly in the terms which we have formulated. Importantly, however, his opponent did not refer the Court of Appeal to the authority which justified that power. That line of authority was referred to in, and was the basis of, the judgment of Lord Justice Wall in the disposition of

the appeal in favour of Mrs Bone, with the agreement of the other members of the Court. The reasoning is to be found at [2008] EWCA Civ 435 para 27ff.

40. We think it important that Wall LJ said this (para 27):

> "Although a great deal of erudition was on display both in the submissions made to the EAT and in this court, neither we nor, we think, the EAT was [*sic*] referred to the decision of this court in *Barke* or to the decision of the former President of the EAT, Burton J in *Burns v Consignia (No 2)* [2004] IRLR 425, (also reported as *Burns v Royal Mail Group* [2004] ICR 425) or to the *Employment Appeal Tribunal Practice Direction and Practice Statement* made under the *Practice Direction (Employment Appeal Tribunal – Procedure) 2004* which came into effect on 9 December 2004."

41. The evidence before us is therefore that neither counsel had been able to identify the crucial power of the EAT to invite the ET to amplify or correct its findings. This power, in the judgment of the Court of Appeal, would have enabled the EAT to require the ET to make further findings which would remedy the apparent injustice to Mrs Bone which had resulted from a purely procedural problem.

42. We can well understand the frustration created by Mr Horan's obvious inability to arrive at this conclusion in his oral argument. But this was not in our view the result of his dysphasia, but of his ignorance of the relevant authority, which we must assume he shared with his opponent who, if she had known of this line of authority, was obliged to refer to the Court to it.

43. Because of the procedure which we have agreed to adopt, we do not have the benefit of having seen and heard Mr Horan in person. We have, however, been able to form a view of his deportment and fluency from the recording, and the evidence of the witnesses, including the medical witnesses.

Conclusions on the evidence

44. There is no doubt that Mr Horan's stroke has left him with a significant impairment of his faculties of working memory and speech. On this the consultant and the AMA are agreed and, we think, Mr Horan accepts that this

is so. In relation to a barrister practising oral advocacy this is in our judgment an important impairment of his abilities.

45. The question remains whether that impairment has had the effect of rendering him incapable in oral advocacy of meeting the standard of reasonable competence as an advocate. On this point, the evidence is virtually all one way: he is capable of meeting that standard, provided that suitable adjustments and allowances are made to accommodate his disability thus enabling satisfactory functioning. The only point of dissent arises from his conduct of Mrs Bone's case.

46. In our judgment, while the delivery and fluency of Mr Horan's addresses to the Court of Appeal were obviously impaired, we cannot characterise that performance as 'of virtually no help in moving the case forward' or conclude that his ability as an advocate had virtually disappeared. So far as the progress of the case is concerned, by comparison with that of Mr Horan, the performance of counsel for the respondent local authority, while fluent and unimpaired, did not, to our minds, lead the Court to any new insight into the solution of the problem posed by the procedural errors of the Tribunals below.

47. On analysis, we have concluded that Mr Horan's advocacy did provide some assistance to the Court of Appeal in revising its view of the substance of the ET's decision (in particular the passage at pp 12 and following of the transcript) and the nature of the error below in expressing their conclusion. As we have said, none of the participants in that hearing had at that stage alighted on the key process of referral of questions by the EAT to an ET which the Court ultimately held to be an appropriate way of doing justice on the basis of the ET's findings.

48. We also note that, until well into the hearing (when he mentioned that he had suffered from a stroke), the Court of Appeal was unaware of Mr Horan's disability. If they had been aware from the outset, they might have made adjustments for it which might have led to smoother proceedings. For example, we consider that the fact that the presiding Lord Justice was obviously irritated at the beginning by Mr Horan's late appearance and early

presentation of the case may well have made him less able to perform up to his normal standard.

49. So far as we differ from the views of three judges of the Court of Appeal and of the Medical Panel, we do only after careful thought and with proper respect for their opinions. We consider that there are reasons of principle for doing so.

(1) The presiding Lord Justice had arrived at the conclusion that it was questionable whether Mr Horan should be practising at all: see the fourth paragraph of his letter to Mr Allen of 30 April 2008. However, he used the word "questionable", and the purpose of the later reference which the Lords Justices made to the BSB was to ensure that the matter was considered in the appropriate way; neither he nor they were expressing a concluded view on the matter.

(2) The Medical Panel itself differed from what may have been the preference of the Court of Appeal in that they considered that Mr Horan's abilities were not impaired so far as concerned all Courts and tribunals other than the High Court and Court of Appeal, etc.

(3) There is only one standard for the professional conduct of barristers and it applies in all Courts. The standard is reasonable competence and the variable factor is the difficulty of the case: see the written standards para 5.4.

(4) Employment Tribunals and the Employment Appeal Tribunal may be intended to be relatively informal in procedure, but the competence required of counsel is the same as in the High Court and the Court of Appeal. The same is also true of other Courts and Tribunals, such as for example, the Crown Court itself, and other Tribunals, whether "Upper" or otherwise, though we accept that Mr Horan may not ever wish to practice there.

50. On the medical and legal professional evidence we find that Mr Horan's ability to discern accurately whether he should or should not accept instructions to perform oral advocacy in a given matter (the only faculty which is in question in his case) is not impaired at all. Neither is his intellectual

ability to give sound advice. Indeed there is evidence to suggest that he is an innovative legal thinker in the field of disability law.

51. We have concluded that Mr Horan's abilities and faculties are substantially impaired by reason of dysphasia, but that that impairment is not incapacity within the meaning of the Rules and his fitness to practise is not seriously impaired. This conclusion is the stronger when account is also taken of the facts that those concerned are made aware of his disability and that appropriate adjustments have to be made to assist him. We note that Mr Horan has already, in consultation with his Head of Chambers, imposed some special requirements in his Chambers and on himself in relation to his practice, in the interests of giving both his clients and the relevant Court or Tribunal some advance knowledge of his disability. These seem to us to be sensible and not unduly onerous. For example, the courts would naturally expect to be made aware of his disability, so that they understand why his advocacy is as it is, and can make whatever adjustments they consider necessary in the conduct of the case.

52. In view of the careful and helpful submissions made by Mr White, we go on briefly to consider what impact the legislation would have if we had reached the conclusion that the first threshold test had been met. For this purpose we will assume that Mr Horan's disability meant that his discourse required to be listened to over a longer time than a barrister in the same case without his disability, and without undue pressure of questions.

53. We accept Mr White's submission that the Equality Act 2010 is the relevant Act, even though it has only recently come into force, as our decision must be made as a rehearing of the question whether Mr Horan is or may become unfit to practise.

54. Our findings mean that Mr Horan is a person with a disability within the meaning of the 2010 Act and we accept the submission to that effect. We also accept that the BSB is both a qualifications body within the meaning of the 2010 Act and a public authority within the meaning of the 1995 Act. A decision as to fitness to practise is not, however, a decision of the BSB, but of a body in the nature of a judicial body (a Medical or a Review Panel). The

relevant decision of the BSB is either that of the Complaints Commissioner to refer the matter to a panel under rule 7(a) or the standing requirement to refer in some of the circumstances set out in rules 7(b) or (c).

55. In relation to the conduct of proceedings in a Court, Mr White submits that the management of the hearing by a judge (as opposed to a decision in a case before the judge on the evidence adduced) is not the exercise of a judicial function for the purpose of the exception in sch 3 para 3 to the 2010 Act. We are not persuaded by this submission. It is extremely difficult to distinguish between the management of a hearing and the decision-making process. We derive no assistance from the express provision relating to entry to and practice in the barristers' profession. Mr White suggests that Parliament cannot have intended not to put an obligation on the courts to make reasonable adjustments for disabled barristers, having placed a duty on the profession. We think that the answer is that Parliament has indeed put some obligations on the courts by placing the relevant duty on a public authority, HM Courts Service, which provides the physical environment in which the judicial function is normally carried out. It does not follow, however, that Parliament intended to place a statutory duty on judges to make adjustments in all and any facets of the hearing process. Mr White's submission appears to overlook the fact that an act of discrimination affecting the outcome of a case can be made a ground for appeal or review of the decision or of a complaint about judicial conduct. The decision which he cites (*R v Isleworth Crown Court*) is itself an example of this. The decision of the Administrative Court in that case enjoined observance of the Equal Treatment Bench Book on judges and magistrates as a matter of judicial conduct, but did not (and, we think, could not) elevate observance of that Book into a statutory duty. As Parliament can be taken to have known of these principles of law, the exception for the performance of judicial functions can be taken to have been enacted in the knowledge that the judiciary imposes a parallel duty of compensation for disability.

56. It does not follow, however, that a barrister should be treated as unfit to practise in a given Court merely because he does not have a statutory right to treatment which compensates for his disability. We accept that in

determining the question of fitness to practise the relevant panel must take account of adjustments which judges can be expected reasonably to make in compliance with the Equal Treatment Bench Book. We therefore differ from the Medical Panel in their treatment of the submission of Ms Foster QC on behalf of Mr Horan before them, as set out in para 28 of Mr White's submission. Equally we accept the submission of Ms Foster, provided that it is understood as grounded on the judicial obligation to make reasonable adjustments when hearing a case presented by a barrister with a disability, a duty imposed otherwise than by the statute.

57. Apart from this single point of difference, it will be apparent from the substance of this decision that we have in general followed the remainder of Mr White's helpful submissions.

58. We also wish to make some observations about the form of the restriction imposed on Mr Horan by the Medical Panel. We consider that a partial restriction relating to some Courts only is very hard to justify in principle. Either the barrister in question is or is not unfit to practise. The necessary understanding and competence to conduct a case vary with the complexity of the case, not the level of the Court in the appellate hierarchy. It is as necessary to understand and expound the principles of law accurately and clearly in the ET as in the Supreme Court. This is why the grant of the degree of barrister and the subsequent possession of a practising certificate is unique: it authorises the conduct of cases in any Court in England and Wales, subject, as we have said, to observance of the overriding rule of conduct that the barrister must not accept instructions in a case if it is beyond his competence.

59. This leaves for comment the Medical Panel's requirement for formalisation of the arrangements that Mr Horan has imposed on himself in relation to his practice (which we mentioned at paragraph 51 above). We have already expressed our approval of his decision to give both to his clients and to the relevant Court or Tribunal advance knowledge of his disability. In Mrs Bone's case he can be said to have brought many difficulties on himself by failing to inform the Court of Appeal of this before the hearing. It should be obvious to him that a person with a disability which is 'invisible' must make known the disability in order that reasonable adjustments can be made. We

urge him to be mindful that it is incumbent upon him to secure such adjustments in the interests of his client, the proper use of Court time, and the public.

60. We are in no doubt of Mr Horan's ability to measure his own competence within the Code of Conduct. He has, with help from his very experienced Head of Chambers, decided what should be done about an appropriate supply of information. We have no power to 'formalise' the limits on his practice which he has imposed on himself, in the absence of a finding of unfitness. Even if we had found a degree of unfitness to practice, however, the imposition of detailed conditions as to the work he should take would pose a significant problem. The conditions would have to have a degree of precision, as they are intended to be enforceable as part of the Code of Conduct, which we think very difficult to achieve. A condition requiring Mr Horan, or an undertaking by him, to notify relevant courts in advance of his disability does not pose this problem.

61. Our conclusion in paragraph 51 above means that neither of the threshold tests imposed by the Rules has been met and we must allow the appeal and discharge the restrictions. We take no further action.

Michael Blair QC
Richard de Lacy QC
Sophia Lambert
Jain Holmes

22 November 2010