



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case Reference:

Mr Robin Edward Jacobs

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of: Middle Temple, 2006.

Disciplinary Tribunal

Mr Robin Edward Jacobs

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 3 October 2024, I, HHJ Nicholas Ainley, sat as Chairman of a Disciplinary Tribunal on 22 October 2024 to hear and determine 1 Charge of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Mr Robin E Jacobs, barrister of the Honourable Society of Middle Temple.

Panel Members

2. The other members of the Tribunal were:

Geoffrey Brighton (Lay Member)

Yusuf Solley (Barrister Member)

Alexander Horne (Barrister Member)

Charges

3. The following charge was admitted.

Charge 1

Statement of Offence

Professional misconduct, contrary to Core Duty 5 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook – version 3.0).

Particulars of Offence

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9 Gray's Inn Square,
London
WC1R 5JD
T: 020 3432 7350
E: info@tbtas.org.uk

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Robin Jacobs, a barrister, behaved in a way which was likely to diminish the trust and confidence which the public places in him or in the profession, in that, on or about 17 September 2017, he anally penetrated with his penis a woman, W, when she did not consent, and he did not reasonably believe that she consented to such penetration. As a result of the above conduct, on 15 September 2022, Mr Jacobs was convicted of one count of rape (contrary to section 1 of the Sexual Offences Act 2003) and sentenced to four years' imprisonment.

Parties Present and Representation

4. The Respondent was present via Video Link and was represented by Mr Peter Jacobs. The Bar Standards Board ("BSB") was represented by Nicholas Bard.

The Hearing:

5. The respondent Robin Jacobs was called to the Bar (Middle Temple) on 13th October 2006. He practised initially as a self-employed barrister in Chambers but at all relevant times was working as an employed barrister with Sinclair Law, a firm of solicitors.
6. He has accepted an allegation of professional misconduct contrary to Core Duty 5 of the Conduct Rules of which the particulars were that he:

"Behaved in a way which was likely to diminish the trust and confidence which the public place in him or in the profession, in that, on or about the 17th of September 2017 he anally penetrated with his penis a woman when she did not consent and he did not reasonably believe that she consented to such penetration. As a result of the above conduct, on the 15th of September 2022 he was convicted of one count of rape contrary to section one of the Sexual Offences Act 2003 and sentenced to 4 years imprisonment."

7. This matter was heard by us sitting as a four person tribunal on the 22 October 2024, one of the original panel having recused himself. The respondent consented to us continuing to sit and also consented to the proceedings taking place remotely, as far as he was concerned, as he is still a serving prisoner. He was represented by his father who made full written and oral submissions to us.

The Facts of the Rape Offence

8. We take these from the sentencing remarks of the trial judge and from the judgment of the Court of Appeal. HHJ Hillen said in sentencing:

Robin Jacobs, on 17 September five years ago, whilst having consensual vaginal sex with L, you withdrew your penis from her vagina and without telling her what you were about to do, without checking if she consented, you forced your penis into her anus, causing injury and pain. When she told you to stop, such was your lust that you did not immediately, on her evidence, do so. You caused her distress. I accept that your [inaudible] was involuntary and that you in an uncharacteristic state of mind, were bemused by her reaction. That bemusement was caused by your belief that she consented and, indeed, in your mind she

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would have wanted you to penetrate her anus with your penis. I'm satisfied on your evidence that you did genuinely believe that your victim would consent. That, consistent with the jury's verdict, that belief was unreasonable, wholly unreasonable in the circumstances. ...part of what you said in evidence and say was the truth was that you did not ask for or discuss anal sex with her, and the jury found that to be unreasonable. Whilst the descriptions of both you and [L]'s sexual activities as being indicative of a sordid and disordered lifestyle, I follow my own directions in not imposing a moral view of your sex life. The fact is that sexual [activities were being?] in your case as told to the jury many partners of both sexes, risked the possibility that you might overstep the boundaries and that is what happened with L. Those boundaries you should realise, as an intelligent man, are obvious, particularly in respect of the penetration of the anus. That is an exceptionally intimate act. You recognised that in your evidence. You said that although you regard anal intercourse as being much more mainstream than some might think, it is still something you – to use your words – which carries in some minds 'stigma'. You did not pause to check to see if L was one such person who might think it unacceptable. I make it clear that the fact that this was anal rape is not an aggravating factor itself. In the circumstances which you acknowledged that some might not want anal sex, it was only reasonable that before you in your lust sought to satisfy your self in that way, that you should discuss or at least ask your sexual partner if she agreed to that activity. You failed to do so and that was not only a failing of courtesy, politeness and care, which would be your normal behaviour, that failure was a criminal act. The failures by the police and the Crown Prosecution Service, the lack of diligence and the consequential delay in bringing this case, aggravated, of course, by the delay caused by the pandemic, is a major mitigating feature.

9. Having been refused leave to appeal his conviction by the single judge, Mr Jacobs applied to the full court for leave to appeal and leave to adduce fresh evidence. (R v Jacobs [2023] EWCA Crim 1503). Both applications were dismissed. In her judgment delivered on 21 December 2023 Lady Carr of Walton on the Hill LCJ described the rape thus:
 22. L said that she had been looking for a new relationship and had met the applicant on Tinder. On 29 August 2017 they spent some time together getting to know each other and finding that they had things in common. They spent the night together. They had consensual sex several times. In cross-examination L agreed that the sex had been energetic and adventurous. Later text messages indicated that that was expected to continue.
 23. The following week the applicant and L met again for a drink. They did not have sex on that occasion. In cross-examination L accepted that the applicant had been a "perfect gentleman" that evening.
 24. On Sunday 17 September 2017 the applicant and L met for lunch. They went back to his house and had vaginal sex twice. The second time she was on all fours while the applicant entered her vagina from behind for about a minute or so. Then he withdrew and said, "wait there." She thought that he might be repositioning himself. But then, without any discussion or warning, he forced his penis into her anus. There was no touching or foreplay. He used a huge amount of force. She told him twice to stop. He did not. L said he could not have misunderstood what she was saying. She then

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screamed "get off" and he did. Overall, this lasted for 20 to 30 seconds. They had never previously discussed having anal sex.

25. *L said she was in a lot of pain. She went to the bathroom and found she was bleeding. She decided to leave. While she was getting dressed, the applicant was lying down, looking astonished or bewildered that she was so upset. He asked her whether she was going to report him to the police and whether he would see her again. She left and went to see a friend.*

26. *In cross-examination, L did not recall whether she had sucked the applicant's testicles. But she accepted that if she had done so, she would not have asked him beforehand. She would have carried on if he did not object. However, anal sex had not been a progression. There had been no discussion about it. L thought that the applicant had been repositioning himself simply because he was not comfortable. She thought he was going to have vaginal sex with her again. L denied that he had moved her buttocks apart or placed his thumb near her anus. She disagreed that she had said "no" only once and that the applicant had withdrawn his penis immediately. When the applicant penetrated her it "hurt massively." She felt the pain immediately."*

10. The focus of the application for leave to appeal was autism, from which Mr Jacobs has undoubtedly suffered for the whole of his life, and its relevance to whether his belief that L would consent to what he was doing was reasonable. It was submitted that his trial was unfair because the effect that his autism would have upon his perception of consent was not properly put before the court below. This submission was rejected; put simply, the court did not accept that his autism was a relevant factor when assessing whether his belief in consent was reasonable, and it could not have affected his ability to perceive whether L was consenting or not.

The Effect of the Conviction on these Proceedings

11. By rule E169 of the Conduct Rules

"In proceedings before a Disciplinary Tribunal which involve the decision of a court...in previous proceedings to which the respondent was a party,...the following Regulations shall apply...

.2 any court record of the findings of fact upon which the conviction was based (which may include any document prepared by the sentencing judge or a transcript of the relevant proceedings) shall be proof of those facts, unless proved to be inaccurate"

12. There has been no challenge to either the validity of the conviction or to the findings of fact referred to above. Accordingly, it seems to us that Mr Jacob's autism, whilst relevant to personal mitigation, is not itself a mitigating factor when it comes to assessing the gravity of the offence itself. We proceed on the basis that the judge did and that the Court of Appeal did; that he believed that she would consent, that he took no steps to find out if she was consenting, that his belief that she would consent was unreasonable and that in those circumstances, the crime of rape was committed.

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Other Disciplinary Proceedings

13. On the 5th of September 2024, the Solicitors Regulatory Authority made a s43 Solicitors Act 1974 order effectively barring Mr Jacobs, as a non-solicitor, from employment with any firm of solicitors without the prior written permission of the SRA being obtained. The order is of indefinite duration albeit subject to review. It is, of course, entirely up to the SRA to determine whether or when to renew and this ruling is not intended to fetter their discretion in any way. The following reasons were given by them:

6.13 Mr Jacobs 'conduct was serious. He has been convicted of a criminal offence of a sexual nature, resulting in a custodial sentence. Such an offence is likely to damage public confidence in the delivery of its legal services.

6.14 ...In this case, the physical and mental harm caused to the victim by his actions was significant.

6.15 Given the nature of the offence, I have had careful regard to the topic guide "Criminal offences outside of practice". The topic guide makes clear that offences outside of practice raise questions of integrity and are likely to damage public confidence. There are mitigating features in that Mr Jacobs, whilst maintaining his innocence, has shown remorse, and is unlikely to reoffend. As referred to above the judge in his sentencing remarks refers to Mr Jacobs as a man of 'exemplary character'. There are also however significant aggravating factors particularly that the offence was of a sexual nature, and the immediate custodial sentence received.

6.16 Furthermore, Mr Jacobs 'conviction was reported in the press, as were the details of the offence and his employment. His conviction was likely to undermine the trust the public place, and are entitled to place, in the profession.

Conclusion

6.17 Mr Jacobs 'conduct warrants imposing a section 43 order. For the reasons set out above, the nature and severity of his conduct justifies prohibiting him from being involved in a legal practice in the ways set out in section 43(2) of the Solicitors Act 1974 without the SRA's permission.

6.18 ...The restriction imposed on his ability to work and to be involved in a legal practice will also maintain public confidence in the legal profession. This is necessary in this case given the seriousness of his criminal conviction and the impact it would likely have on the public trust and confidence in the profession.

6.19 For the above reasons, I am satisfied that the decision to make a section 43 order is an effective regulatory outcome which will protect and promote the public interest.

6.20 I have decided that the section 43 order shall have effect from the date of the letter or email notifying Mr Jacobs of this decision. I am satisfied that it is in the public interest

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for this order to have immediate effect because of the seriousness of Mr Jacobs misconduct.

Mitigation

14. It cannot be denied that there is considerable personal mitigation in this case. This has been advanced both orally and in writing on Mr Jacobs behalf. We include here the powerful support given to him by professional colleagues at Sinclair Law. He has shown unimpeachable honesty through a number of years of employment. His personal qualities, in particular those of loyalty and honesty, his high intelligence, the fact that these proceedings were, through no fault of his, protracted to a degree that anyone would find a dreadful strain, and the appalling effect that this has had on his personal and professional life, regardless of any sanction that this tribunal could impose, have all been taken into consideration by us. We also take into account the fact that he does genuinely, unchallengeably suffer from autism and, whilst this does not provide any excuse for the offence that was committed, it points to difficulties that exist in Mr. Jacobs pursuing any career, difficulties which most people simply never have to face up to but that he has confronted. Finally, we accept that he poses only a low risk of ever reoffending again.

Sanction

15. The appropriate approach to sanction is set out in the Sanctions Guidance published by BTAS.
The general principle was set out in *Bolton v The Law Society* [1994] 1 WLR 512, in which Sir Thomas Bingham, Master of the Rolls, stated that

"Because the sanction imposed by the tribunal needs to maintain the reputation of the profession as a whole, matters of personal mitigation will carry less weight than they might in a criminal case."

He also stated:

"It is required of lawyers in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... A profession's most valuable asset is its collective reputation and the confidence which that inspires... The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price"

16. Under the heading "Purpose of Sanctions", the Guidance states

2.2 The purposes of applying sanctions for professional misconduct are to:

- i. Protect the public and consumers of legal services.
- ii. Maintain public confidence and trust in the profession and the enforcement system.
- iii. Maintain and promote high standards of behaviour and performance at the Bar, and
- iv. Act as a deterrent to the individual barrister or regulated entity, as well as the wider profession, from engaging in the misconduct subject to sanction.

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2.3 The purposes above are non-hierarchical and any or all may apply in a particular case. Sanctions under a regulatory enforcement regime should not be imposed to punish. It may be that the impact of a sanction will have a punitive effect, but panels must ensure that any sanctions are only imposed to meet the purposes listed above.

17. Under the heading “Personal Mitigation” the guidance goes on to state

4.4 Panels should note that personal mitigation (the personal circumstances of the barrister), such as ill health, must always be considered in assessing the appropriate sanction. However, in regulatory proceedings, where the purpose of sanctions is to protect the public and maintain confidence in the profession, personal mitigation is usually less relevant than it would be to punishing offenders in the criminal justice system. It should therefore be given less weight in the balancing exercise with the need to maintain public trust and confidence in the profession.

Character evidence is likely to hold little weight where it relates to dishonesty, misconduct of a sexual nature or discrimination, non- sexual harassment and bullying. This is because it is very possible that when instances of such proven misconduct come to light, they will be perceived by many as “out of character” but this does not mitigate the conduct itself or the harm it will have caused.

18. The approach to criminal convictions in general is as follows:

4.13 In general, a criminal conviction is a serious matter for barristers given their role in the administration of justice and the need to maintain public confidence in the profession. The sanction imposed should relate to the breach of the BSB Handbook and the impact of the conduct in the regulatory context, which may differ to the impact in the criminal context particularly the role of punishment in the criminal justice system, which is not a direct purpose of regulatory sanctions. Therefore, panels should always look to the nature of the misconduct and the factors relevant in the context of the Bar, to determine the appropriate sanction, rather than focusing on the sanction imposed by another regulator.

19. And with misconduct of a sexual nature:

5.8 Misconduct of a sexual nature encompasses a wide range of conduct from criminal convictions for sexual offences to misconduct, that may or may not amount to a criminal offence. The misconduct could involve colleagues, clients or others. It is particularly serious where there has been an abuse of trust by the barrister, the misconduct involves a vulnerable person or there has been an abuse of their professional position.

5.9 The starting point for proved misconduct of these types is a suspension from practice of over 12 months. However, panels may form the view that disbarment is appropriate given the particular circumstances of the misconduct, for example

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the nature of an abuse of trust or professional position by the barrister or misconduct involving a vulnerable person.

5.10 When deciding on sanctions for sexual misconduct, discrimination, harassment and bullying, panels should be mindful not only of the serious harm that can be caused to the recipient's emotional and mental well-being but also the impact on others at the Bar, those considering entering the profession and wider society. A single incident can have a significant harmful impact and misconduct of this nature should not be regarded as less serious because it did not form part of a course of conduct.

5.11 Mitigation based on the respondent's personal circumstances, health, good character/references needs to be treated with caution in the context of sexual misconduct, discrimination and harassment. The nature of such misconduct means that serious sanctions are required to protect others and promote standards regardless, in most instances, of the respondent's own circumstances. Many practitioners will face personal challenges, such as ill-health, bereavement and divorce, but do not resort to committing misconduct.

5.12 Where a respondent has been convicted of a criminal offence, they should generally not be allowed to return to practice until the criminal sentence has been satisfactorily completed, or whilst the respondent remains on the Sex Offenders Register.

20. . And finally, under disbarment

6.38 Disbarment can be appropriate for a first offence and will be so in cases of dishonesty and criminal convictions attracting a custodial sentence. It will also be appropriate in serious cases of misconduct of a sexual nature, discrimination, harassment or misleading the court.

Categorisation of this offence

21. This topic is dealt with in part B of the misconduct groups. A four step approach is indicated.

Step 1 deals with the description of misconduct of a sexual nature. That has obviously occurred in this case and need not be considered further.

Step 2 deals with seriousness, and contains a number of specific indicators of serious culpability and serious harm including penetration by a body part, misconduct occurring against a background of requests to stop and the impact on physical well-being. All of these are, it seems to us, relevant to this particular case.

Step 3 is concerned with indicative sanctions, and, where, as here, there is significant culpability and in our judgement significant harm the indicative sanction is disbarment.

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Step 4 involves the application of aggravating and mitigating factors, bearing in mind always that mitigating factors assume less importance than they would in a criminal case. Here the aggravating factor is that the respondent is on the sexual offenders register for the rest of his life. It was put to us in mitigation that this should not be a factor that assumes undue importance because with a sentence of four years imprisonment lifelong registration automatically follows rather than being an additional punishment in particular circumstances. We do not agree. Parliament has decided that it is important for public protection that anybody convicted of a particularly serious sexual offence should remain on the register, which is therefore an indication of the fact that a particularly serious sexual offence has been committed.

As to mitigation we bear in mind all the matters that have been put before us orally and in writing, and if they are not specifically referred to in this decision they have still been considered by us, as have the authorities that were referred to in the written and oral submissions.

Conclusion

22. We have come to the clear conclusion, applying the Guidance to the facts of this case and adhering to the approach that we have set out above that, despite the mitigation put before us, the only appropriate sanction in this case is disbarment. The reputation of the profession and the importance of maintaining public confidence in it render such a sanction unavoidable. If a member of the public, fully informed about the facts of the offence and the sentence that has been imposed, were to be asked whether confidence in the profession would be damaged by knowledge that a person convicted and sentenced as Mr Jacobs has been was permitted to continue in practice, the answer could only be “yes”. Accordingly disbarment is the sanction that we impose.
23. The Treasurer of the Honourable Society of Middle Temple is requested to take action on this report in accordance with rE239 of the Disciplinary Tribunal Regulations 2017.

Dated: 29 October 2024

HHJ Nicholas Ainley
Chairman of the Tribunal

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