



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Report of Finding and Sanction

**Case Reference: 2021/4962/D5 & 2020/0928/D5**

Robert Kearney

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of: Inner Temple

### Disciplinary Tribunal

#### Robert Kearney

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 20 November 2024, I sat as Chairman of a Disciplinary Tribunal on 16 December 2024 to hear and determine the appropriate sanction against Robert Kearney, barrister of the Honourable Society of Inner Temple.

#### Panel Members

2. The other members of the Tribunal were:

Vince Cullen (Lay member)

Geoffrey Brighton (Lay member)

Monica Stevenon (Lay member)

Alexander Horne (Lay member)

#### Charges

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3. The following charges were admitted.

### Charges in Case 2021/4962/D5

#### Charge 2

##### Statement of Offence

Professional misconduct contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9<sup>th</sup> Edition), contained in Part 2 of the Bar Standards Board Handbook (Version 3.3).

##### Particulars of Offence

Robert Kearney, a barrister and BSB regulated person, behaved in a way which was likely to diminish the trust and confidence which the public places in a barrister or in the profession, in that during the course of a mini pupillage between 23 and 26 July 2018 with Person A, in which he was in a position of trust, engaged in conduct set out in Schedule A towards Person A, such conduct, taken either individually or in combination of one or more instance, being sexually discriminatory conduct and conduct of a sexually harassing nature.

#### Charge 3

##### Statement of Offence

Professional misconduct contrary to Rule rC8 of the Code of Conduct of the Bar of England and Wales (9<sup>th</sup> Edition), contained in Part 2 of the Bar Standards Board Handbook (Version 3.3).

##### Particulars of Offence

Robert Kearney, a barrister and BSB regulated person, behaved in a way which could reasonably be seen by the public to undermine his integrity, in that, during the course of a mini pupillage between 23 and 26 July 2018 with Person A, in which he was in a position of trust, engaged in conduct set out in Schedule A towards Person A, such conduct, taken either individually or in combination of one or more instance, being sexually discriminatory conduct and conduct of a sexually harassing nature.

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## Charges in Case 2020/0928/D5

### Charge 1

#### Statement of Offence

Professional misconduct contrary to Core Duty 3 of the Code of Conduct of the Bar of England and Wales (9<sup>th</sup> Edition), contained in Part 2 of the Bar Standards Board Handbook (4<sup>th</sup> Edition, version 4)

#### Particulars of Offence

Robert Kearney, a barrister and BSB regulated person, failed to act with integrity, in that, on 13 and 14 February 2020, at a chambers social event and a subsequent event, he engaged in the conduct set out in paragraphs 1 and 2 of Schedule A.

### Charge 2

#### Statement of Offence

Professional misconduct contrary to Core Duty 3 of the Code of Conduct of the Bar of England and Wales (9<sup>th</sup> Edition), contained in Part 2 of the Bar Standards Board Handbook (4<sup>th</sup> Edition, version 4)

#### Particulars of Offence

Robert Kearney, a barrister and BSB regulated person, failed to act with integrity in that, on 13 and 14 February 2020, at a chambers social event and a subsequent event, he engaged in the conduct set out in paragraphs 3 and 4 of Schedule A.

### Charge 3

#### Statement of Offence

Professional misconduct contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9<sup>th</sup> Edition), contained in Part 2 of the Bar Standards Board Handbook (4<sup>th</sup> Edition, version 4)

#### Particulars of Offence

Robert Kearney, a barrister and BSB regulated person, behaved in a way which was likely to diminish the trust and confidence which the public places in him or in the profession, in

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that, on 13 and 14 February 2020, at a chambers social event and a subsequent event, he engaged in the conduct set out in paragraphs 1 and 2 of Schedule A.

#### **Charge 4**

Statement of Offence

Professional misconduct contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9<sup>th</sup> Edition), contained in Part 2 of the Bar Standards Board Handbook (4<sup>th</sup> Edition, version 4)

Particulars of Offence

Robert Kearney, a barrister and BSB regulated person, 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 13 and 14 February 2020, at a chambers social event and a subsequent event, he engaged in the conduct set out in paragraphs 3 and 4 of Schedule A.

#### **Charge 5**

Statement of Offence

Professional misconduct contrary to Rule rC8 of the Code of Conduct of the Bar of England and Wales (9<sup>th</sup> Edition), contained in Part 2 of the Bar Standards Board Handbook (4<sup>th</sup> Edition, version 4)

Particulars of Offence

Robert Kearney, a barrister and BSB regulated person, behaved in a way which could reasonably be seen by the public to undermine his integrity, in that, on 13 and 14 February 2020, at a chambers social event and a subsequent event, he engaged in the conduct set out in paragraphs 1 and 2 of Schedule A.

#### **Charge 6**

Statement of Offence

Professional misconduct contrary to Rule rC8 of the Code of Conduct of the Bar of England and Wales (9<sup>th</sup> Edition), contained in Part 2 of the Bar Standards Board Handbook (4<sup>th</sup> Edition, version 4)

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## Particulars of Offence

Robert Kearney, a barrister and BSB regulated person, behaved in a way which could reasonably be seen by the public to undermine his integrity, in that, on 13 and 14 February 2020, at a chambers social event and a subsequent event, he engaged in the conduct set out in paragraphs 3 and 4 of Schedule A.

4. What follows is the unanimous decision of the Tribunal at the conclusion of the sanctions hearing on 16 December 2024. The decision, together with brief reasons, was announced at the end of the hearing. This judgment sets out more detail of the background and the history of the two consolidated cases with which we were concerned.
5. We are grateful to Miss Iyengar and Mr Scamardella KC for their considerable assistance in this matter.
6. We are concerned with case 2020/0928 and case 2021/4962. The first numbers refer to the years in which the misconduct was reported to the BSB. Case 2020/0928 contains six charges involving two complainants who were pupil barristers in February 2020 when the misconduct took place. Case 2021/4962 contains three charges relating to misconduct in July 2018 towards one complainant who was a mini pupil at the time.
7. All of the charges concern professional misconduct of a sexual nature. The Respondent admitted all the above charges at a hearing in October 2022 before a differently constituted Tribunal. The reason for the gap of over two years between that hearing and this sanctions hearing will become clear in the chronology below.
8. This sanctions hearing proceeded on the basis of oral submissions. There was no live evidence. The Respondent had indicated that he might be calling character witnesses, and it would have been possible for him to do so. Two potential witnesses attended part of the hearing and could have given evidence, but they were not called.

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9. The material before the Tribunal consisted of an agreed main bundle; CCTV footage obtained by the Respondent from a bar on the night when some of the incidents in the 2020 case took place; an additional bundle provided by the Respondent containing bases of pleas, numerous character references, commentary on the CCTV footage, a reflective statement dated August 2024; and transcripts of the judgments from disciplinary proceedings in 2018 and 2021.
10. We have been assisted by an Opening Note prepared by Miss Iyengar and by two detailed chronologies, one produced on behalf of the BSB and the other on behalf of the Respondent. The chronologies are not disputed. There is no statement by the Respondent as to the circumstances of the misconduct in either of the cases we are considering.
11. For reasons that are unknown to us, we did not have copies of any rulings or directions made within these proceedings. It is possible that sight of the directions might have defeated the purpose of ensuring that members of this Tribunal had had no previous involvement in the case. All references in this judgment to directions have been taken directly from the Chronology prepared on behalf of the BSB and have not been checked for accuracy.
12. The relevant Sanctions Guidance is Version 6 which came into effect on 1 January 2022, and which applies to all misconduct regardless of the date on which it occurred.
13. Both parties drew attention to the previous disciplinary proceedings, albeit for different reasons. The BSB relied on them as a relevant aggravating factor. Mr Scamardella argued that the BSB's investigation and conduct of the 2020 case has been dilatory and unhelpful and that this has caused serious prejudice to the Respondent by depriving him of the opportunity to have that case dealt with in 2021 and for the sanctions to have been "rolled up". He urged the Tribunal to bear in mind the delay for which he criticises the BSB when deciding the appropriate sanction.

### **The November 2018 disciplinary hearing (misconduct in October 2017)**

14. On 20 November 2018, the Respondent (RK) appeared before a three-person Tribunal chaired by Mr Alan Steinfeld KC. He admitted one charge of breach of CD5 in that on 10 October 2017, at a Bar Mess function, he put his arm around a male pupil whom he had never previously met,

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engaged in unwanted and excessively physical contact with him, and made hostile and intimidating statements which included stating that he (RK) had *“butt fucked another chambers dry”* and asking the pupil if he *“had ever taken a woman dry from behind”*.

15. Within a matter of days the misconduct was reported by the pupil to his own Head of Chambers who in turn reported it to the BSB. RK promptly admitted the allegations and apologised. In January 2018, RK responded to the BSB admitting the charges and apologising. The disciplinary hearing followed in November.
16. The complainant felt embarrassed, intimidated, and shocked by the behaviour which left him feeling violated, belittled, and disgusted and reluctant to attend further Bar Mess events. In mitigation it was said that the Respondent’s behaviour was an isolated incident for which he had apologised promptly and for which he had expressed genuine remorse and that there was no reason to think he would act in that way again. Having considered all the facts and the aggravating and mitigating factors including that this was *“an isolated incident,”* the Tribunal concluded that it was satisfied that the Respondent *“was not going to repeat this sort of conduct again.”*
17. The Tribunal reprimanded the Respondent and ordered him to pay £1,000. In delivering the reprimand, the Chairman said he trusted that the Respondent had learned the lesson that, if he is already inebriated, he should not attend professional occasions.

### **The March 2021 disciplinary hearing (misconduct in January 2015)**

18. In December 2020 and March 2021 RK appeared before a five-person Tribunal chaired by HH Andrew Goymer to decide three charges of professional misconduct, namely inappropriate behaviour of a sexual nature towards a mini-pupil (Person A) in January 2015. The allegations were not reported to the BSB until late in 2018 when Person A became aware of the report of the disciplinary hearing in November of that year when the misconduct was said to have been *“an isolated act”*.

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19. The Respondent denied all of the allegations. The Tribunal heard evidence from a number of witnesses including Person A and the Respondent and found all three charges proved to the criminal standard of proof.
20. The findings of fact were as follows:
- i. RK told Person A that he kept his nails short because you can't finger a woman with long nails;
  - ii. Asked Person A if she had ever had sex at her parents' house and the details of it;
  - iii. Told Person A that eating pineapple makes semen taste better;
  - iv. Said to Person A she should wear skirts and heels instead of trousers and asked what her bra size was;
  - v. Leant into Person A when the two were alone in a lift, smelt her neck and asked what perfume she was wearing;
  - vi. Spoke about sex with his wife and was physically too close to Person A.
21. The Tribunal imposed a 6 month suspension coupled with a fine of £3,000.
22. In April 2021, the Respondent appealed the sanction. In January 2022, the appeal was dismissed.

## The Facts of the instant cases

### July 2018 misconduct (Case 2021/4962)

23. In July 2018, the complainant undertook a mini-pupillage with RK. The complainant was an undergraduate student who was interested in a career at the Bar and in obtaining a pupillage in the future. In the few days, that RK supervised her mini-pupillage, RK spoke to her and behaved towards her in a way that amounted to sexual harassment. The behaviour included inappropriate comments on her appearance, unwanted touching by pulling down the back of her dress to read the label, telling the complainant that it was a shame she would not be attending a social event with other barristers because he had *"put on clean boxers just for you."*

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24. The impact on the complainant of RK's misconduct at the time was significant. She felt extremely uncomfortable when he commented on her appearance. She found his comment that he had put on clean boxers just for her repulsive. She spoke to her parents about the misconduct, and they wanted her to report it, but she did not do so at the time because she was worried that it might jeopardise her chances of obtaining a pupillage in the future. She also spoke to a family friend who practised at the Bar but when he said that he knew RK, Person A felt unable to confide in him.
25. The complainant's decision to report RK was prompted by reading a report of a previous disciplinary finding against him. She felt that that if another pupil had been brave enough to report misconduct, then she too should report what had happened to her.
26. Apart from RK's misconduct, the complainant said that her experience at his Chambers was positive. She asked if she could return to see a sentencing hearing in a case she had observed and she asked RK to provide a reference.
27. RK's initial response to the allegations was to say he had no recollection of the alleged incidents and that, given the delay of over three years until they were reported and that he had already been suspended for a different matter, it was not in the public interest to pursue the matter.
28. In October 2022 RK admitted the misconduct. His basis of plea was as follows:
29. His comments were a poor attempt at humour and were not sexually driven or motivated. However, when taken together and with a much-enhanced level of understanding regarding acceptable conduct towards women, and particularly pupils or junior tenants, he accepted that the words used did amount to conduct of a sexually harassing nature. The touching of the complainant's dress to read the label was inappropriate and on reflection should never have happened. At the time RK failed to recognise the upset he had caused. Had he known, he would have apologised unreservedly. He continued to assist the complainant for some months after her mini-pupillage with matters pertaining to her professional development.

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## The February 2020 misconduct (Case 2020/0928)

30. On 13 February 2020 RK attended a Silks' congratulatory event at Chambers followed by a visit to Mojo Bar. Pupils A and B from another set of Chambers also attended. RK was already inebriated when he arrived.
31. The misconduct to Pupil A consisted of commenting on her eyes and her figure and then asking her how many older men she had slept with, how many senior members of the bar she had slept with, telling her she needed to have sex with an older man with experience, staring at her and telling her that she was "beautiful" and "gorgeous", placing his arm around her waist, squeezing it, and stroking her back.
32. Pupil A felt uncomfortable and tried to move away from RK. She said she did not want to say anything at the time because she did not want to make a scene and spoil what was a celebratory event for other people. She was very aware that she was at a professional network event, and she wanted to make a good impression. In her impact statement dated November 2021 she describes herself as a resilient person who was disappointed rather than distraught by what happened. However, she was worried and stressed about reporting RK and the prospect of having to give evidence. She was concerned that other members of the Bar would disapprove of her decision to report RK and that her career might be harmed.
33. Whilst at Chambers, the Respondent had inappropriate physical contact with Pupil B. Later at Mojo, RK commented on her eyes and her figure, asked her how many men she had slept with and the age of the oldest man she had had sex with, asked her if she was in a relationship, told her repeatedly that she needed to "*fuckin*g have sex" with a man standing near her and with an older man. He told her that he, RK, was a sexually experienced older man and that she was frigid.
34. Pupil B said she felt very vulnerable. She described herself as very timid, nervous, and shy. She had been told by her pupil supervisor that she was coming across as shy and quiet and that she needed to be more social. Accordingly, she felt she should go to the Silks' event. She was sent home and given time off because she was so obviously upset when telling her supervisor about

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what had happened. The misconduct knocked her confidence and put her off attending future events on Circuit in case RK was there. For over two years after the incident, she continued to find professional events stressful, albeit less so. She felt that she would always feel anxious because of RK's behaviour. She did not want to take part in these proceedings, but felt she had to do so because she felt that the Respondent should not be able to conduct himself in this way without consequences.

35. Both Pupil A and B reported the incident and made statements within days. Their Chambers reported the matter to RK's Chambers and to the BSB. RK's own Chambers also reported the matter to the BSB and began an internal disciplinary investigation. On 19 February 2020, RK's head of Chambers emailed the statements by Pupils A and B to RK and encouraged RK to set out in writing his version of events. On 23 February RK wrote to the Chambers of Pupil A and B confirming that he had read and digested the statements and apologising for upsetting the pupils. RK wrote: *"Whilst my recollection of the evening is different from what I have read, the most important issue is the fact that there are two people who have been upset by my conduct and that is of great shame to me."* He acknowledged that alcohol had played a part and said he had approached organisations to help him overcome his problem drinking. He did not address the factual allegations.
36. On 25 February RK's Chambers sent him full details of the allegations and required a written response by a set date of 28 February 2020. In particular, RK was required to say whether or not he accepted the factual allegations and, if not, to detail precisely which parts were disputed. He was also told that, in the event of any significant factual dispute Chambers would appoint an independent disciplinary panel to conduct a hearing. The Head of Chambers observed, correctly in our view, as follows: *"The allegations against you are serious but they are factually straightforward. They will not require a lengthy investigation. It is in the interests of all parties that the facts are established through a process which is fair, but which is conducted without unreasonable delay."* At RK's request, an extension of time to provide an outline response was granted to 6 March. In fact no response was received. What happened was that on 5 March the silk consulted by RK rang Chambers to inform them that RK had decided to resign with immediate effect and without responding to the charges. RK wrote a letter of resignation in

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which he said he had been advised that participation in the internal disciplinary proceedings in Chambers would prejudice any future hearing before the BSB.

37. On 11 October 2022, at a Tribunal hearing that had been listed as a contested hearing of case 2021/4962, the Respondent indicated that he would admit six of what were at that stage nine charges on 2020/0968.
38. On 9 November 2022, the Respondent provided a written basis of plea to the charges with which we are concerned.

### **Basis of plea re February 2020 Misconduct**

39. The Silks' event was well attended; there was a lot of alcohol; spirits were high. RK was told by MH, a former pupil of his and close friend, that Pupil A and or Pupil B had referred to RK that evening as "a DILF" (meaning Dad I'd like to fuck). (MH confirmed in a statement that he had told RK this.) Without a better understanding of his responsibility as a more senior member of the Bar, RK *"entered into jokey conversation about being called a DILF."* RK realised now that as a more senior member of the Bar, he ought to have ignored the comments rather than mention them to the two females. He did not notice that any offence had been caused by his comments. Indeed, Pupils A and B went on to Mojo with RK's "group." His contact with Pupils A and B thereafter was limited as can be seen in the CCTV footage of Mojo.
40. The basis of plea was not accepted by the BSB. The BSB were not in a position to challenge that MH had told RK about an alleged DILF comment, but did not accept that either Pupil had made the alleged comment and did not accept that the Respondent had spoken to either pupil about it. Both Pupils A and B denied ever having made the alleged comment and said that they did not hear the other say this either. In Pupil A's statement dated 26 November 2021 she says: *"I am aware that MH claims that I called Mr Kearney a "DILF". I understand this to mean an older man who I find attractive. I confirm that I did not make this comment. This is not a phrase that I use, let alone at a chambers event. It follows that Robert Kearney did not speak to me about me calling him a "DILF." I cannot speculate as to why MH claims that I said this. In the context of the evening, it does not make sense. Pupil B and I spent most of the time at (the Chambers)*

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*aware of Mr Kearney's behaviour. I did not make this comment."* In her statement dated 20 June 2022, Pupil B says of the alleged "DILF" comment: *"It is quite frankly absurd that I am even having to address this. It feels like an attempt to justify inappropriate behaviour and there is no justification for Mr Kearney's conduct."*

41. In a supplementary basis of plea, RK challenged the account given by Pupils A and or B about what happened at Mojo. Here there was a difficulty for the Tribunal because the February 2020 statements by the Pupils had been redacted by agreement to exclude the references to which the Respondent objected. We were told by Mr Scamardella that the redactions (which we never saw) contained an assertion that the Respondent had plied one or both Pupils with drinks at Mojo and that the offensive comments had been relentless. The supplementary basis of plea reads: *"Contrary to the suggestions made by the complainants, Mr Kearney buys just one drink in the entire time he is in Mojo's. If there is any suggestion that he was plying the pupils with alcohol this is wrong and not borne out by the footage."* It was agreed that there was no evidence in the footage that the Respondent had bought more than one drink. It was also agreed that the footage shows that RK only spent a few minutes in the company of the Pupils at Mojo and that there were always other people around. The Respondent's case, when denying the charges, had been that the footage proved that the Pupils were unreliable witnesses who had provided exaggerated accounts.
42. We did not watch the entire footage, merely the sections lasting several minutes, which were played to us in the Tribunal room. However, we read the Respondent's log (which the BSB accept) and the commentary on the footage provided by Pupil B in her second statement. There was no audio on the footage. In the section played to us we saw Pupil B sitting on her own on a bench on one side of a table. She was very close to a wall. Standing near the table was a man who appeared agitated. RK went over and positioned himself right next to Pupil B. RK is a heavily built man and he was very close to Pupil B who looked uncomfortable and who would have found it difficult to remove herself from that position. It was during this time that RK asked Pupil B a series of offensive questions and made several lewd comments.

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43. On RK's behalf it was said that the footage shows him to be a tactile man because he placed his arm around a man or men in a friendly way and that is he was being "appropriately tactile" with many people. Mr Scamardella argued that there was no sexual touching. Given that the touching of the Pupils (which RK admits took place earlier that evening) was accompanied or preceded by lewd sexual comments, it is difficult to understand what exactly is meant by "being appropriately tactile." However, we are conscious that the touching pleaded by the BSB is "inappropriate contact and hand placement" and that is what RK has admitted so we sanction him on that basis.
44. In deference to Mr Scamardella's skilful submissions about prejudice caused by delay on the part of the BSB, it is important to highlight relevant dates from within the parties' Chronologies.

### **The Chronology of the investigation of the two instant cases**

16 February 2020 - Pupils A and B make statements about events on 13-14 February.

19 February 2020 - Statements by Pupils A and B are sent to RK.

23 February 2020 - RK confirms he has read and digested the statements, but says his recollection differs. He apologises for the offence caused.

25 February 2020 - RK's Chambers notifies BSB of serious misconduct by RK. RK is requested to state whether he accepts or disputes the allegations and is told that, in the event of significant factual dispute, Chambers will appoint an independent disciplinary panel to conduct a hearing.

6 March 2020 - RK resigns from chambers without having addressed the factual basis of the allegations. The internal investigation by Chambers goes no further.

17 April 2020 - BSB notifies RK of receipt of complaint about the February 2020 incident.

Subsequently R obtains CCTV footage from Mojo and sends a log to BSB.

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11 May 2020 - RK sends lengthy email to BSB beginning: *"I deny the allegations.... I did not want to put anyone through the difficulty of a contested hearing of fact, where they would have been shown to be mistaken in their evidence.... I was not expecting once the matter had been properly investigated for it to go any further."* The email then speaks of a "jokey conversation" with the Pupils and then concentrates on the Mojo CCTV. It continues *"I do not know what has prompted the statements as alleged against me, it may be due to drink consumed, it may simply be mistake. They are though, not accurate. If they were treated in the fashion they recount in their statements, it was not by me."*

18 June 2020 - BSB write to RK summarising the allegations:

- a. Asking questions about the sexual histories of Pupils A and B.
- b. Making inappropriate comments on their physical appearance.
- c. Unwanted and unnecessary physical touching.

The letter stated that the majority of the conduct alleged relates to conversations to which the CCTV may not be relevant.

There follows a series of emails in which RK insists that the CCTV footage is critical and that the BSB should view it.

29 June 2020 - RK writes to BSB: *"Both of these witnesses have omitted (either deliberately or otherwise) that the conversation about calling me a DILF happened."*

BSB go back to the complainants to check the points raised by RK with them. There is then a lengthy delay in obtaining the second statements. (Pupil A's statement is dated November 2021 and Pupil B's June 2022)

21 December 2020 - BTAS fact finding hearing re 2015 allegations.

7 January 2021 - BSB receive CCTV footage obtained by R, but subsequently misplace it.

10 February 2021 - Independent decision making panel refer the 2020 matter.

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19 March 2021 - BTAS disciplinary hearing re 2015 matter. RK is suspended for 6 months.

25 March 2021 - Complaint made to BSB re what becomes 2021/4962.

9 April 2021 - Notice of appeal v decision of 19 March 2021. Sanction of suspension is suspended pending determination of appeal.

9 April 2021 - BSB notifies RK of receipt of complaint of what becomes 2021/4962.

16 April 2021 - BSB send charge sheet re 2020/0968. At this stage it contains 9 charges.

28 April 2021 - BSB send further information re 2021/4962.

9 May 2021 - RK responds – re 2021/4962 saying it is an old allegation, should be time barred; cannot remember the complainant specifically, but accepts she was his mini-pupil; queries whether the sanction would have been greater if this matter has been heard alongside the other case in March 2021; queries whether in public interest to proceed given that he has been suspended and been given guidance not to have more pupils.

11 May 2021 - BSB write that they are unable to serve bundle in support of the 2020 charges as they are trying to obtain further witness statements.

8 June 2021 - Ditto. Hope to serve bundle by 30 July.

7 July 2021 - BSB inform RK that IDP have decided to refer 2021 case.

27 July 2021 - BSB write to say they hope to have the statements re 2020 case by 30 September.

31 August 2021 - charges served re 2021/4962.

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24 September 2021 - BSB write to say hope to have statements in 2020 case by 28 October.

27 September 2021 - Bundle of documents re 2021/4962 served.

22 October 2021 - BSB say they hope to finalise statements by 30 November.

22 November 2021 - BSB say statements further delayed.

3 December 2021 - BSB notify R that they wish to have 2020/0928 and 2021/4962 heard together. Ultimately abandoned as it was taking so long to prepare 2020/0928.

5 January 2022 - BSB need more time for statements re 2020 case.

26 January 2022 - BSB decide not to apply to hear both matters together.

26 January 2022 - BSB need more time re 2020 case.

28 February 2022 - Ditto

25 March 2022 - Ditto

28 April 2022 - Ditto

23 May 2022 - Ditto

26 June 2022 - All papers in 2020 case served.

11 July 2022 - BTAS Ruling and Directions. RK's application to adjourn 2021/4962 case listed for trial on 18 July on grounds he is unfit to stand trial because of ill-health is rejected. Application to adjourn on grounds that Mr Scamardella, newly instructed

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Counsel, is unavailable at short notice is granted. RK is required to comply with existing directions including whether he admits or disputes the charges, witness requirements and evidence proposals by 5 August 2022.

30 August 2022 - BTAS further directions given re 2021 case because of RK's substantial failure to engage with previous directions.

27 September 2022 - RK has still not complied with direction to notify witness requirements for 2021 case.

11 October 2022 - Hearing listed for 2021/4962. RK admits for the first time all the charges in that case. He indicates that he will admit charges 1-6 on 2020/0928. The hearing of charges 7-9 (which we have not seen) is adjourned to 7-8 December and the consolidated sanctions hearing is adjourned to 9 December 2022.

26 October 2022 - Written basis of plea re 2021/4962.

9 November 2022 - Written basis of plea re 2020/0928

7-8 December 2022 - Hearing re Charges 7-9 of 2020/0928 is ineffective because RK is feeling ill and applies to adjourn. It is established that RK does not challenge the witness statements and documentary evidence on which the BSB rely. The Tribunal is assured that those statements, documentary evidence and facts could be relied on at the sanctions hearing as background evidence. In the circumstances, the BSB withdraws Charges 7-9 on the basis that it is not in the public interest to continue.

8 December 2022 - RK applies successfully to adjourn the sanctions hearing listed for the following day on the grounds that he is unwell.

5 January 2023 - New date for sanctions hearing.

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We have assumed that the sanctions hearing proceeded on this date. We have not been told the outcome, only that the decision was appealed successfully by the Respondent. Mr Scamardella told us on 16 December 2024 that the effect of the sanction imposed by the previous Tribunal was that until R's appeal was heard and allowed and that "technically the Respondent had been suspended for several months".

3 September 2024 - Sanctions hearing listed. The hearing was ineffective because one member of the Panel had had some previous involvement in the case and there had been a direction to the effect that the Panel dealing with the sanctions should not include any person who had had any previous involvement in the case. None of the Panel members was aware of this earlier direction. The member who had had some previous involvement in the case was kept apart and did not speak to any of the remaining four panel members. Both parties invited the Tribunal to adjourn to a date to be fixed with a newly constituted panel. Both parties were content for the remaining four panel members to continue to sit on the case.

### **The Hearing on 16 December 2024**

45. Miss Iyengar opened the case as per her Opening Note.
  
46. We heard mitigation from Mr Scamardella. He stressed that the breaches were now old. It was now almost five years since the last incident. In the intervening years, the Respondent had reflected on his behaviour and had sought and followed appropriate advice. He had undertaken a number of courses some of which he had found particularly challenging. He had been forced to confront his behaviour and to recognise that, although he never intended to cause upset or offence, regrettably he had done so. He had been a sole practitioner for a number of years and no longer had responsibility for pupils. It was not just the Respondent who was saying that he had changed. There were powerful references from colleagues who had known him for a long time and who spoken to him and worked alongside him more recently and who had witnessed the extent to which he had reflected on his behaviour and had changed. He would not return to his former ways.

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47. A common theme of all the references was the Respondent's deep commitment not just to his own work but to the profession generally. He was a kind man who was generous with his time, helping junior barristers with advice and helping many colleagues with IT. He was a hardworking and skilled advocate. He was a popular figure at the Bar. He was a larger than life character whose sense of humour sometimes crossed the line and was not to everyone's taste, but he was never malicious and never intended harm or to cause offence.
48. We acknowledge the strong references and accept them at face value. We bear in mind the need for caution when deciding the weight to be attached to good references given the nature of all the charges.

### **The Findings of the Tribunal**

49. All of the charges in both cases involved misconduct of a sexual nature. Accordingly they fall to be considered under Group B of the Sanctions Guidance.

### **In relation to the 2020 matters – 2020/4962**

50. We have considered the seriousness criteria under Group B and the criteria in the Annex. Our unanimous view is that all the conduct falls within the Upper Range of seriousness both as to culpability and harm for the following reasons:
51. In terms of Culpability, the following factors apply:
- Culpability - Under Group B.
- a. It took place in a professional context.
  - b. It took place in front of others.
  - c. It was directed at persons in a vulnerable situation.
- Culpability factors in the Annex
- d. The misconduct was reckless.
  - e. It was sustained – it started in one venue and continued at the next venue.
  - f. There was significant disparity in seniority and experience.

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- g. The Respondent was responsible for the circumstances giving rise to the misconduct. He was already inebriated when he attended the event and it was he who approached the Pupils.
- h. The harm caused could easily have been foreseen. In fact the Respondent should have been acutely aware that his conduct was likely to be harmful given what had been said about his behaviour at the previous disciplinary hearings and given his own acknowledgement and regret after those earlier incidents.

52. In terms of Harm the following factors apply:

Harm under Group B.

- a. Both A and B were uncomfortable and embarrassed on the night and felt anxious about making the report. The misconduct caused significant anxiety to Pupil B.
- b. The misconduct added to the stress of pupillage and the beginning of life at the Bar.
- c. It had a marked impact on the psychological wellbeing of Pupil B.
- d. It caused injury to the feelings of both Pupils.

Harm factors in the Annex

- e. The detrimental impact on the public confidence in the legal profession is significant.

53. Miss Iyengar pointed out that the aim of the Bar Council is to encourage inclusivity and diversity amongst recruits to the Bar and that the Bar Council has been concerned for many years about young women experiencing sexual harassment and unwanted sexualised behaviour, the consequence of which has been to deter them from joining or remaining at the Bar. We note that a number of referees say that crude language is prevalent at the criminal Bar in Manchester as a mechanism for letting off steam. It may be, as suggested by some of the referees, that robust individuals of equal seniority do not take offence and are able to laugh off the Respondent's bawdy sense of humour and perhaps give as good as they get. We are in no doubt that the offensive comments directed at the two young female pupils by the Respondent, an older man, are examples of sexual harassment and that such harassment damages the reputation of the Bar.

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54. Aggravating Factors - There are no applicable aggravating factors in Group B.

The following aggravating factors - taken from the Annex - apply:

- a. Previous disciplinary findings for similar offences. At the time of these matters the Respondent had been sanctioned by his Chambers and by BTAS for his misconduct towards the male pupil in 2017 and he was aware that he was under investigation for his behaviour towards the female mini pupil in 2015. The similarities between his behaviour towards the male pupil and Pupils A and B are striking – offensive and lecherous comments and inappropriate touching whilst in drink. In 2018 the Tribunal chairman had warned the Respondent not to socialise professionally if he had been drinking. His head of Chambers had issued a similar warning.
- b. Lack of insight. His initial response was to explain his comments as innocent and harmless banter. He did not realise that Pupils A and B were upset by his behaviour. It was not until late 2022 that he recognised that his behaviour amounted to sexual harassment.
- c. The likelihood of repetition. Notwithstanding Mr Scamardella’s able submissions and the fact that there have been no reports of misconduct since 2020, we cannot ignore the fact that in the five years from 2015 to 2020 the Respondent behaved in a similar way towards five different junior members of the Bar. We are unanimous in our view that there remains a likelihood of repetition particularly if the Respondent is inebriated.
- d. Alcohol misuse was linked to the misconduct.
- e. The Respondent was a barrister of many years experience.

55. Mitigating factors:

There are none in Group B.

In the Annex we identify the following:

- a. The Respondent admitted the misconduct, albeit some 2 years and 10 months after the event.
- b. The Respondent has expressed remorse.
- c. The Respondent has taken voluntary steps to address his behaviour.

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- d. The Respondent has attempted to prevent recurrence.
- e. There are many referees, men, and women, who speak very highly of the Respondent.

56. The factors identified above drive us unanimously to the conclusion that the matters in 2020 fall within upper range of seriousness for which the indicative sanction is disbarment.

57. We have considered very carefully whether delay on the part of the BSB in investigating and prosecuting the complaint has prejudiced the Respondent. We are unanimous in our view that, although there was clearly delay on the part of the BSB, the Respondent's own stance has contributed a great deal to the delay. He was aware of the allegations within days of the misconduct but, at no stage prior to October 2022, did he indicate a preparedness to admit any misconduct. We are not persuaded that the fact that it was not until June 2022 that the statements were served alongside the charges has caused any prejudice. The Respondent received the most important statements in February 2020 and confirmed that he had read and digested them. In June 2020, the allegations were summarised and in April 2021 the charges were served. We judge that the Respondent's insistence that the BSB should view the footage was understandable and reasonable since it might have been relevant to any allegations of misconduct in Mojo. (We have not seen Charges 7-9 so we do not know if they relate to the time spent at Mojo.) However, we judge that it was open to the Respondent to indicate back in 2020 that he would admit the misconduct in the earlier part of the evening and that it was his choice, for whatever reason, not to admit anything until well over 2 years after the event. On a practical level, it is difficult to see how the 2020 charges could have been "rolled up" at the sanctions hearing in 2021 unless by then the Respondent had admitted at least some of the 2020 allegations and had sought to have a consolidated sanctions hearing.

58. It is important to bear in mind the purposes of sanctions. The following are particularly relevant to this case:

- To maintain public confidence and trust in the profession and the enforcement of the system.
- To 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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As mentioned above, there have been long standing concerns about sexual harassment at the Bar. Behaviour that might have been tolerated and even expected in the past is no longer acceptable. Regrettably, such behaviour is still widespread. Misconduct such as that exhibited by the Respondent needs to be deterred. We have borne in mind the fundamental principle of proportionality. We have considered with care whether, in all the circumstances, a term of suspension would suffice to mark the gravity of the offending. We have also considered whether the delay by the BSB together with the mitigating factors renders the indicative sanction unfair or disproportionate. We have concluded unanimously that they do not. In all the circumstances of this case, we judge that the only just and proportionate sanction is disbarment.

### **In relation to the 2018 matters**

59. The misconduct was towards a mini-pupil whose position might well have rendered her more vulnerable. It is not clear what, if any, recourse she had to complain within Chambers about the behaviour. We have borne in mind that the complainant subsequently contacted the Respondent to ask if she could go back to the sentencing hearing following the case in which she had observed Mr Kearney and that she also asked him for a reference. In our judgement, that serves to show what a difficult position she was in. She wanted to become a barrister and she would have been expected to obtain references and to make use of contacts at the Bar.

60. We identify the following factors in determining seriousness:

#### **Culpability Under Group B**

- a. The misconduct took place in a professional context.
- b. It was directed at a person in a vulnerable position.

#### **Culpability From the Annex**

- c. The comments and behaviour were intentional.
- d. The misconduct was repeated over a few days.
- e. The Respondent acted in breach of a position of authority.

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- f. There was significant disparity in seniority between the Respondent and the complainant.
- g. The harm could have reasonably been foreseen.
- h. The Respondent had control over and was responsible for the circumstances.

#### Harm from Group B

- a. It caused the complainant to feel humiliated and she was anxious about reporting the matter.

#### Harm from the Annex

- b. The impact on public confidence in the legal profession is significant.

#### Aggravating Factors

##### None under Group B

##### Aggravating Factors from the Annex

- a. Previous disciplinary findings for similar offence (i.e. the mini-pupil in 2015). The instant offence took place just a few months after the Respondent's misconduct towards the male mini-pupil for which he had apologised and had promised that it would not recur.
- i. Lack of insight until admission in 2022.
- j. Likelihood of repetition (as demonstrated by the misconduct in February 2020).
- k. The Respondent was a senior member of the Bar.

#### Mitigating factors

##### None under Group B

##### Mitigating Factors from the Annex:

- a. Admission of misconduct.
- l. Expression of remorse.
- m. Good references.

61. In our judgement, taken individually, the incidents do not fall within the upper range of seriousness. However, we conclude that cumulatively they do cross that threshold. We have

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reached this conclusion taking into account the number of incidents over the days that the complainant spent as the Respondent's mini-pupil and especially the fact that this episode of misconduct followed so closely in time the misconduct in 2017 and occurred at a time when the Respondent was subject to a disciplinary process in his Chambers and when he knew that he had been reported to the BSB. It may be that in July 2018 the Respondent felt there was nothing wrong with his conduct towards the mini-pupil or that he felt he would not be reported.

62. We have again borne in mind the purposes of sanctions. The purposes identified above as particularly relevant to the 2020 matters apply equally here. We have considered whether a period of suspension would be a just and proportionate sanction. We have concluded unanimously that a period of suspension would not suffice to mark the gravity of the offending. We judge that the only just sanction is disbarment and that it is a proportionate sanction in all the circumstances of this case.

**Dated 7 January 2025**

**HH Janet Waddicor (Chair)**

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