



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Report of Finding and Sanction

Case reference: PC 2019/1478/d3/d5

Jonathan Rodger

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of the Middle Temple

### Disciplinary Tribunal

#### Jonathan Rodger

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 22<sup>nd</sup> September 2022 and 30 March 2023, I sat as Chairman of a Disciplinary Tribunal on the 5, 6 and 28 June 2023 to determine the sanction on 4 charges of professional misconduct which were admitted before a 3 person tribunal on 14 October 2022 and thereafter referred to a 5 person tribunal for sanction.

#### Panel Members

2. The other members of the Tribunal were:

Tracy Stephenson [Lay Member]

John Vaughan [Lay Member]

Hayley Firman [Barrister Member]

Siobhan Heron [Barrister Member]

#### Charges

3. The following charges were admitted on the 14 October 2022.

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## Charge 1

### Statement of Offence

Professional misconduct, contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9th Edition) Bar Standards Board's Handbook

### Particulars of Offence

Mr Jonathan Rodger, 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 between mid-September 2018 and 29 January 2020 he engaged in conduct as particularised in Schedule 1.

The conduct amounts to:

Unwanted direct and/or indirect contact with Person A which amounted to unwanted conduct related to Person A's sex, which had the purpose or effect of violating Person A's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Person A.

## Charge 2

### Statement of Offence

Professional misconduct, contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9th Edition) Bar Standards Board's Handbook

### Particulars of Offence

On 21 September 2018, Mr Jonathan Rodger, 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 by eavesdropping on a meeting of his Chambers Management Committee

(a) without permission; and

(b) listened into the call without the knowledge of call participants.

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### Charge 3

#### Statement of Offence

Professional misconduct, contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9th Edition) Bar Standards Board's Handbook

#### Particulars of Offence

Mr Jonathan Rodger, 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 in or around October 2016, he disclosed Person B's personal mobile telephone number to a male friend without her consent.

### Charge 4

#### Statement of Offence

Professional misconduct, contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9th Edition) Bar Standards Board's Handbook

#### Particulars of Offence

Mr Jonathan Rodger, 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 16 November 2018, in Person B's Chambers office ("the Office") and following a heated discussion with Person B and when told by her to "get out of my office", or words to that effect, Mr Rodger then: (1) kicked a book away from the office door which was holding the door shut; (2) refused to leave the office and Person B had to yell at him to leave her office and not close the door; and (3) left the office, slamming the office door on his way out.

### Parties Present and Representation

4. The Respondent was present. He was represented by Selva Ramasamy KC. The Bar Standards Board ("BSB") was represented by Sarah Clarke KC.

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## Preliminary Matters – 14 October 2022

5. The Parties and the Panel, of their own motion, raised the issue as to whether the matter of sanction should be dealt with by a 3-person or by a 5-person Panel. Before hearing submissions, it was agreed that matters as to the Respondent's mental health could be raised openly but on the understanding that those present (the Respondent's wife and three potential BTAS Tribunal members observing the proceedings) would observe the Respondent's wish that the detail of his conditions remain private.
6. The Panel – whilst making it plain that they had come to no view as to sanction – observed that, in brief, even allowing for a reduction in his culpability (because of his mental state at the time) the Respondent was still in jeopardy (on Charge One alone, assuming that Category C of the BTAS Sanctions Guidance Version 6, January 2022 was engaged) of being suspended for between 12 and 24 months. A 3-person Panel has no power to impose a suspension in excess of 12 months. The above considerations applied to Charge One considered in isolation; the Respondent faced three further charges; the proceedings concerned two different Complainants; Charges 2, 3 and 4 were, most likely, going to aggravate sanction rather than reduce it. The Panel were concerned that:
  - (i) if they heard the matter, they would – from the outset – be restricting themselves to a maximum sanction of 12 months suspension when the Guidance might demand otherwise;
  - (ii) if they heard the matter, retired to consider sanction and concluded that a suspension in excess of 12 months (or worse) was required and consequently needed to be referred to a 5-person Panel, then the whole case would need to be re-heard. This would involve a gross waste of resources, cause undue anguish and unnecessary further delays.

## Preliminary Issue – Decision:

7. The Panel heard submissions. They retired to consider the matter. The Panel decided that – pursuant to rE210 and 211 – the matter of sanction in this case should be referred to a 5-person Panel;
  - (i) because of the complexity of the case, and;

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- (ii) because the case may merit the suspension of the Respondent's practising certificate for a period longer than 12 months or worse (r.E210.1).

The Panel took the decision to refer in the interests of justice and in order to ensure a fair and just outcome for the public, the profession, Persons A and B and for the Respondent. The Panel repeated that they remained entirely open-minded as to what sanction might, in due course, be imposed.

**Directions:**

8. The Panel heard submissions and duly retired to consider the future progress and listing of this case. It was agreed that the matter warranted a 2-day time estimate. Neither Party envisaged the need for live evidence to be called.
9. The Parties had proposed the 24th and 25th October 2022. This date – five working days hence – was, with regret, simply impractical. The Panel gave the following directions;
  - (i) that, within 14 days, the Parties and BTAS should agree upon a date for the hearing of this matter before a 5-person Panel prior to the end of January 2023;
  - (ii) that any further documents or written legal submissions were to be served no later than 7 days before the date of the next Hearing;
  - (iii) that the issue of costs should be reserved to the 5-person Panel.

The Parties took no objection to any/all the members of the currently constituted 3-person Panel duly serving, subject to their availability, on the subsequent 5-person Panel.

10. The Panel had at the start of the Hearing, expressed their frustration at receiving voluminous and important documents late in the afternoon on the eve of the Hearing. The late service of such material does not assist Panels. It creates the risk that the material will not be properly digested and considered and, thereby, that the documents become ineffective or less effective. That is not in the interests of justice. The Parties offered their sincere apologies for the late service which, it was said, could be explained, in part, by sensitive and ongoing discussions that had only recently concluded.

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## Preliminary Matters – 5, 6 and 28 June 2023

11. Prior to the hearing on 5 June it was directed, with the consent of the parties, that the hearing be conducted in private, save that the Respondent's wife be permitted to attend.

On 28 June 2023, the Panel considered a suggestion made in correspondence by the BSB to Person A's solicitors that the BSB be permitted to send a draft report of the findings and sanctions to the witnesses, Person A and B, and to invite their observations prior to publication. The Panel rejected that suggestion.

## Plea

12. At the hearing on 14 October 2022 the Respondent had admitted all 4 charges and had admitted the particulars of the misconduct covered by Charge 1 as set out in a Schedule containing 70 separate incidents which incidents were agreed to be representative of the nature and gravamen of the misconduct over the relevant period.

## The Evidence

13. In advance of the hearing, the Panel had been provided with two large bundles of evidence. These included several statements by Person A and by the Respondent, a statement by Person B, extensive expert medical reports, and twenty-eight character references.

On 6 June 2023, at the request of the Panel, the Respondent gave oral evidence on matters postdating the period covered by the charges but about which there was evidence in the witness statements and character references.

## Findings

14. There were no disputed questions of fact relating to the Charges and no dispute as to the applicable Misconduct Groups.

## Sanction and Reasons

15. The Panel was mindful throughout that the purpose of the sanctions is not to punish the Respondent but to maintain public confidence and trust in the profession. The Panel was mindful of the principle of proportionality which involves balancing the public interest in maintaining the reputation of the profession with the interests of the

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Respondent. When deciding on the appropriate sanction for the individual charges the Panel had in mind the totality of the sanctions.

The Panel paid very close attention to the detailed medical evidence and considered with care the submissions relating to the impact of the Respondent's ill-health on his conduct. The extent to which the Respondent's ill-health contributed to his admitted misconduct lay at the heart of the case. Charge 3 was the first in time, namely late 2016. It was agreed that there was no evidence to suggest that, at the time of Charge 3, the Respondent was unwell. The Panel accepted that the Respondent's ill-health was a significant factor in relation to Charges 2 and 4 both of which concerned incidents in the autumn of 2018. In relation to the most serious charge, namely Charge 1, which spanned a period of sixteen months from September 2018 to January 2020, the Panel was satisfied that, notwithstanding some periods of ill-health, the Respondent's conduct was deliberate, that it sometimes involved a degree of planning, and that he was aware at the time that his conduct was unwanted and that it was causing anxiety and distress to Person A.

The Panel took into account the very many excellent character references from senior members of the Bar, instructing solicitors and full and part-time members of the judiciary. The Panel also took into account the difficult family circumstances of the Respondent.

The Panel applied the Sanctions Guidance Version 6 of January 2022.

The oral submissions on sanctions concluded on the afternoon of 6 June 2023. The Panel commenced its deliberations on the afternoon of 6 June and resumed its deliberations on the morning of 28 June. An ex-tempore judgment was delivered on 28 June. A full written judgment has been provided to the parties setting out the background and the Panel's detailed reasons. For reasons of confidentiality, it is not appropriate to set out detailed reasons in this Report.

### Charge 1 – General

16. The misconduct was serious. It consisted of persistent harassment of Person A over a period sixteen months. It included stalking and spying on Person A. It could have led to criminal charges. The Respondent even referred to himself as a “full on criminal stalker”. The Respondent ignored repeated requests made both orally and in writing by Person A

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to desist. Person A felt compelled to instruct solicitors who wrote to the Respondent in September 2019 urging him to desist and warning him in the clearest of terms of the possible consequences of failure to do so. The Respondent's misconduct continued.

17. Throughout the period of misconduct the Respondent expressed regret and remorse for his behaviour and promised to desist. He has continued to express remorse. The Panel found that the expressions of remorse were undermined by the persistence of the misconduct. The Panel was concerned by aspects of the Respondent's conduct during the period of the proceedings which further called into question the genuineness of his remorse.
18. In July 2022 agreement was reached between the Respondent and the BSB as to the charges that he would admit. The following day a senior member of the Bar contacted Persons A and B, at the request of the Respondent, to ask them to meet, in the absence of the Respondent, to discuss the Respondent's case. Persons A and B declined to do so. In oral evidence the Respondent admitted that he had asked the third party to intercede in the hope that Persons A and B might be able to help him to receive a less serious sanction. At the time of the approach by the third party, both Persons A and B considered that the Respondent was trying to manipulate them. More recently they have each asked the Tribunal to treat the Respondent leniently.
19. At some point prior to 15 May 2023, the date of Person A's fifth statement, the Respondent provided Person A with many of the papers in the proceedings. In our judgment this was completely improper. The papers provided to Person A included the 20 character references that had been supplied at that stage (many of them from people such as solicitors and members of the judiciary who must have been known to Person A) as well as the BSB's submissions on sanctions. In cross-examination the Respondent conceded that he had provided the papers to Person A because he hoped that it might help him to achieve a less serious sanction.
20. Notwithstanding the Respondent's professed wish to protect the professional and personal reputations of Person A and B and to protect their privacy, he told the Panel that he had discussed the case with a number of people whom he named. He had also provided sight of some of the papers to one of his character witnesses.

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### Charge 1 - Sanction

21. Charge 1 comes within Misconduct Group C – discrimination, non-sexual harassment and bullying.

The Panel concluded unanimously that this was within the Upper Range of seriousness for which the indicative sanction is disbarment. By a majority, the Panel decided to depart from the indicative sanction and to impose a sanction of suspension for 2 years and 6 months.

### Charge 2 - Sanction

22. The Charge relates to an incident in October 2018. It falls within Misconduct Group I. This incident amounted to an abuse of trust. It was disrespectful to other members of Chambers and it showed a lack of integrity. However, the Panel was satisfied that the Respondent's poor mental health was a significant contributing factor to the way he behaved. In terms of seriousness, the Panel judged that the incident straddled Low and Middle Range seriousness. It was deliberate and it involved some degree of calculation and planning, and the Panel found, some degree of enjoyment on his part. There were no aggravating features.

By a majority the Panel concluded that the appropriate sanction was a fine. The Panel imposed a fine of £500. That sum is well below the starting point in the Guidance for a medium level fine, but the Panel alighted on the sum of £500 bearing in mind the principle of totality, and the Respondent's current difficult financial difficulties.

### Charge 3 – Sanction

23. Charge 3, which relates to an incident in or around October 2016, comes within Misconduct Group I. It falls into the middle range of seriousness, for which the indicative

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sanction is a medium level fine and up to 12 months' suspension. The Panel judged the appropriate sanction to be a fine. Although the range for a medium level fine is £5,000 to £15,000, having taken into account the Respondent's financial difficulties, the Panel imposed a fine to be £2,000.

#### Charge 4

24. Charge 4, which concerns an incident in or around October 2018, comes within Misconduct Group I. The most significant feature about this particular incident is the fact that the Respondent was extremely unwell at the time. That factor alone means that his culpability was much lower than would otherwise be the case had he been well at the time. The Panel found that the incident did not fit neatly into any of the ranges of seriousness in the Guidance. On balance, the Panel placed this incident in the Lower Range of seriousness for which the indicative sanction is advice as to future conduct or reprimand to a low level fine. The Panel concluded that the appropriate sanction was a fine. The range for a low level fine is up to £5,000. Bearing in mind the Respondent's circumstances, the Panel imposed a fine of £500.

#### Other Sanctions

25. The Panel concluded unanimously that the Respondent should never be allowed to have a pupil in future. The Respondent's behaviour towards Person B was unboundaried – not in any sexual or physical sense - but (to quote Person B) in the sense of “oversharing” and burdening his pupil his own need for emotional support.

#### Further Discussion

26. The BSB Handbook Enforcement Regulations E225 and E227 together provide that where a respondent is sanctioned to a period of suspension of more than 12 months, the

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Disciplinary Tribunal must (unless in the circumstances of the case it appears to the Disciplinary Tribunal to be inappropriate to do so), require the respondent to suspend their practice immediately, in which case the BSB must suspend that respondent's practising certificate with immediate effect.

Mr Ramasamy invited the Panel to defer the period of suspension for such period as it deemed appropriate. The Panel took into account the details of forthcoming hearings in which the Respondent was involved and considered the inevitable inconvenience to the Respondent's professional and lay clients in the event that the suspension were to take effect immediately. The Panel also considered the likely devastating consequences for the Respondent personally and for his family of an immediate suspension. Having considered all the circumstances, the Panel was not persuaded that it was inappropriate to impose the suspension immediately. Accordingly the suspension takes effect immediately.

## Costs

27. The Panel heard submissions on costs. The Respondent was ordered to pay costs of £6,500 to the BSB. There was discussion as to whether the Respondent should be required to pay VAT on the legal fees incurred by the BSB. The Respondent contended that he should not be so liable because the BSB would be able to recover any VAT they had incurred in respect of such fees. The BSB did not believe that this was correct. The Panel required the parties to research this point. The Panel directed that if VAT is recoverable by the BSB, the figure of £6,500 is the final figure for costs. However, if the BSB is not entitled to reclaim VAT, the Respondent must pay £6,500 plus VAT.

The BSB confirmed that they are unable to recover VAT because they are considered an education related organisation in addition to the regulatory aspects, therefore the total amount payable is £7,800 [£6,500 + VAT £1,300].

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The fines and costs must be paid within 3 months.

**Dated: 12 July 2023**

**Her Honour Janet Waddicor  
Chairman of the Tribunal**

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