



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2017/0306/D3

Peter Moss Esq

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

Peter Moss Esq

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 3rd May 2018, I sat as Chairman of a Disciplinary Tribunal on 17th September 2018 to hear and determine one charge of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Peter Moss, barrister of the Honourable Society of the Middle Temple.

Panel Members

2. The other members of the Tribunal were:

Mr Paul Robb (Lay Member)

Ms Isabelle Watson (Barrister Member)

Charges

3. The following charge was admitted:

Statement of Offence:

Professional misconduct, contrary to Core Duty 5 of the Bar Standards Board Code of Conduct (9th edition).

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Particulars of Offence:

Peter Moss behaved in a way which was likely to diminish the trust and confidence which the public places in the profession, contrary to Core Duty 5, in that on 30th April 2016 he drove a motor vehicle after consuming so much alcohol that the proportion of alcohol in his breath, namely 99 microgrammes of alcohol per 100 millilitres of breath, exceeded the prescribed limit of 35 microgrammes of alcohol per 100 millilitres of breath. Peter Moss was subsequently convicted at Chester Magistrates' Court on 17th May 2016 of an offence under section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988 and sentenced to a 40-month disqualification from holding or obtaining a driving licence, 100 hours of community work, £85 costs and an £85 surcharge to fund victim services.

Parties Present and Representation

4. The Respondent was not present and was represented by Karl Scholz Esq. The Bar Standards Board ("BSB") was represented by David Callow Esq.

Preliminary Matters

5. The Tribunal were aware that the Respondent is a serving prisoner at HMP Leeds but stated at the outset that for the purposes of consideration of this hearing that is irrelevant, unless the Respondent, through his counsel, should have wished the Tribunal specifically to take account of it, which he did not. The Tribunal therefore took the view this was an entirely neutral factor.

Pleas

6. Mr Scholz entered an admission to the charge on the Respondent's behalf.

Submissions

7. The BSB addressed the Tribunal in relation to the offence. The Tribunal indicated that they had read the hearing bundle. The BSB highlighted that the Respondent is currently an unregistered barrister, and so if he sought to return to practice in the near future he would have to apply for a practising certificate, and the BSB would have the possibility to apply for an interim suspension.
8. There is a relevant previous finding at p. 3-5 against the Respondent where in 30th October 2009 the Respondent also drove after consuming excess alcohol. This was a

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matter dealt with by consent and took until 14th December 2011 to get before the PCC. The Respondent was reprimanded and fined £600, with the sanction coming into effect on 4th January 2012.

9. The BSB are content with the version of events set out by the Respondent but highlighted the amount of alcohol consumed – on the Respondent’s own case, half a bottle of whisky – and the fact that the Respondent seems not to have sought to find out the time after he had been asleep before driving. The BSB made no submissions in respect to the Respondent’s financial position.
10. The BSB opened the relevant sentencing guidelines (4th Edition) to the Tribunal.
11. Mr Scholz for Mr Moss accepted that there were two aggravating factors, namely that this was the second conviction for drink-driving (although Mr Scholz submitted that the first offence and conviction were now very historic) and that the level of alcohol on this occasion was more than twice the permitted level.
12. Mr Scholz put forward six separate grounds of mitigation. These were:
 - a. Expression of remorse and regret;
 - b. No pattern of wrongdoing, notwithstanding the earlier historic conviction;
 - c. No premeditation, in the sense that Mr Moss had not planned to drive home that evening after having drunk alcohol;
 - d. No harm or loss to any person other than Mr Moss;
 - e. Previous good character, supported by many character references;
 - f. Delay in prosecuting this offence.
13. Mr Scholz addressed the Tribunal as to the Respondent’s financial means.

Sanction and Reasons

14. Mr Moss was convicted upon his own plea at Chester Magistrates’ Court of one charge of driving after consuming so much alcohol that it exceeded the proscribed limit. He was sentence to 100 hours of community work and was disqualified from driving for 40 months.

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15. Mr Moss admitted the charge of professional misconduct contrary to Core Duty 5 in writing and through his counsel at the hearing.
16. It was explained to the Tribunal that Mr Moss was previously convicted of a similar offence of drink driving relating to driving in 2009, but dealt with in 2012. It was historic but is properly to be taken into account by the Tribunal.
17. The factual situation of the night of 30th April 2016 is described in three different places, namely:
 - a. in the statement of facts submitted by Mr Moss to the BSB;
 - b. in an email from Mr Moss to the BSB in September 2017; and
 - c. most recently in a hand-written letter of Mr Moss addressed to the BSB but designed to be taken into account today which stands as a further account of the events in question.
18. Mr Moss did not attend the hearing. The Tribunal knew the reasons for his non-attendance, but the fact of the non-attendance and the reason for it did not in any way influence the Tribunal's consideration or deliberations in relation to the single charge that was before it.
19. The BSB accepted that the version of events put forward by Mr Moss should be adopted by this Tribunal given that there is no other version of those events, save for the bare facts set out in the official record of the criminal prosecution.
20. Mr Scholz accepted there were two significant aggravating features: (i) this was the second conviction for drink driving and (ii) the level of alcohol at the time the police sample was taken – it is more than 2 ½ times the permitted level. These are serious matters, which affected the decision on sanctions taken by the Tribunal.
21. As to the six mitigating factors put forward on behalf of Mr Moss:

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- a. *Expression of remorse and regret:* the Tribunal accepted that submission and took this factor into account, as well as the fact that Mr Moss pleaded guilty on the first occasion, which caused the criminal justice system minimal cost
- b. *No pattern of wrongdoing, notwithstanding the earlier historic conviction:* the Tribunal regarded this as best a neutral submission but took the view that the fact that this was a second offence of a similar nature was much more important;
- c. *No premeditation, in the sense that Mr Moss had not planned to drive home that evening after having drunk alcohol:*
 - i. Mr Scholz submitted that it may have been that Mr Moss did not plan to drive that evening. In support, the Tribunal was shown a record of taxi rides taken by Mr Moss, with particular reference to Friday nights. On analysis, the record was inconsistent with the submission that Mr Moss takes a taxi home after visiting his elderly friend on a Friday night. It demonstrates no more than that Mr Moss sometimes takes a taxi home.
 - ii. Mr Moss admitted that he drank half a bottle of whisky on the evening in question and that he awoke, having fallen asleep in a chair, to find that the elderly lady he had visited had gone to bed. Mr Moss (in different versions, in different statements) said that he thought that he had been asleep for longer than in fact was the case before he got into his car to drive home. However, when the Tribunal went into the facts, it was accepted by Mr Scholz that Mr Moss must have recognised he was still over the limit at whatever time Mr Moss thought it was when he began to drive. Therefore, the best that can be said is that Mr Moss did not think that being over the limit would affect the way he drove. However, there is no evidence to support this supposition and, in any event, the Tribunal regarded this as an aggravating and not a mitigating factor.
 - iii. In overview, the submissions put forward under this head tended more to aggravate than to mitigate. Mr Moss is an experienced and mature person who is required by his profession to have a high degree of personal insight. He knew how much he had drunk and it has been demonstrated that he knew he could take taxis, because he had done so before. It is

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accepted on behalf of Mr Moss that he must have recognised he was over the limit.

- d. *No harm or loss to any person other than Mr Moss*: this was not accepted as mitigation. The fact that there was no loss or harm to any other person was purely fortuitous. There was a very significant risk of harm.
- e. *Previous good character, supported by many character references*: this was accepted as relevant mitigation, but of little weight. It was recognised that the character references were from people whose opinion was cogent and relevant.
- f. *Delay in prosecuting this offence*: irrelevant to mitigation. There was no evidence that Mr Moss had been affected or prejudiced by any delay. The BSB apologised promptly when they discovered that they had not progressed the case for a little over a year and, after that, the matter progressed within the usual time frame. There have been applications for adjournments, which have been dealt with and do not require repetition.

22. Mr Scholz submitted that whilst the Tribunal should address the gravity of the offence, the appropriate sanction should be a reprimand since Mr Moss:

- a. cannot afford to pay a fine in that he has no assets or savings or income, and that he cannot work; and
- b. cannot be suspended from practice since he does not currently hold a practising certificate.

23. The Tribunal views the matter as being grave. It is a second-time offence and the blood alcohol reading was high.

24. The Tribunal was bound to deal with Mr Moss – who has been co-operative with the BSB – for the offence on which he had been convicted, before adjusting any sanction applied for his personal circumstances.

25. *As to reprimand*: The Tribunal was referred to para. 6.18 of the sentencing guidelines and considered the factors relevant to whether a reprimand is appropriate. The Tribunal

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decided that a reprimand is not an appropriate sanction for a case of this gravity. Ordinarily, the Tribunal would have suspended a barrister for this conduct. The Tribunal was not attracted by the logic of Mr Scholz' submissions that the financial circumstances of Mr Moss and the non-availability of suspension meant that reprimand was the appropriate sanction. We do not accept this.

26. *As to suspension:* The Tribunal noted that Mr Moss did not currently hold a practising certificate. The Tribunal was told by the parties that there was no power to order a barrister without a practising certificate to be suspended from practice. This was correct, on the rules. The parties further submitted that there was no other relevant power of suspension where the respondent did not hold a practising certificate. That submission was rejected, since it appears from rule 9 set out at page 33 of the sentencing guidelines that there is a relevant power of sanction, namely that a barrister can be prevented from applying for or renewing a practising certificate.
27. Given the power, the next questions were whether to exercise it, and if so, over what period.
28. Were this a case where the barrister respondent held a current practising certificate, the Tribunal would have found that the gravity of the offence, viewed in the light of the aggravating and mitigating factors, would have warranted a period of suspension set by reference to the tariff of the medium level (see page 32 of the sentencing guidelines).
29. Since Mr Moss did not hold a current practising certificate, the conclusion of the Tribunal was that he should be prohibited from applying for or renewing his practising certificate until 1 February 2019.
30. *As to fine:* The Tribunal decided that the gravity of the offence, viewed in the light of the aggravating and mitigating factors, warranted the imposition of a fine in addition to the prohibitory order set out above. The appropriate fine was £2,500, being a figure falling towards the upper-end of the medium level as set out in the tariff schedule at page 32 of the sanctions guidelines. In the light of Mr Moss' personal financial and other circumstances (some of which were proved and others of which remained the subject of unsupported submission) payment of the fine would be suspended until 1 February 2019

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with a direction in the meantime the BSB should liaise with Mr Moss or his representatives to see whether or not an appropriate payment plan can be agreed taking into account Mr Moss' personal circumstances, pursuant to paragraph 6.15 on p.25 of the sanctions guidelines.

Summary of sanctions

31. Peter Moss, not being the holder of a current practising certificate, is prohibited from applying for or renewing his practising certificate until 1st February 2019.
32. Peter Moss is ordered to pay a fine of £2,500, suspended until 1 February 2019.
33. The Bar Standards Board is directed to liaise with Peter Moss or his representatives to see whether or not an appropriate plan can be agreed for the payment of the above fine of £2,500, taking into account Mr Moss' personal circumstances, pursuant to paragraph 6.15 on p.25 of the sanctions guidelines.
34. It is further declared in accordance with rE234 of the Disciplinary Tribunals Regulations that the findings and sanctions above were made in the absence of the respondent in accordance with rE183.

Dated 21 September 2018

Paul Lowenstein QC
Chairman of the Tribunal

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