



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2017/0431/D3

Robert Kearney Esq
The Director-General of the Bar Standards Board
The Chair of the Bar Standards Board
The Treasurer of the Honourable Society of the Inner Temple

Disciplinary Tribunal

Robert Kearney 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 25 October 2018, I sat as Chairman of a Disciplinary Tribunal on 20 November 2018 to hear and determine one charge of professional misconduct contrary to the Bar Standards Board's Handbook against Robert Kearney Esq., barrister of the Honourable Society of the Inner Temple.

Tribunal Members

2. The other members of the Tribunal were:

David Crompton [Lay Member]

Catherine Taskis [Barrister Member]

Charges

3. The following charge was admitted.

Statement of Offence

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Professional misconduct contrary to Core Duty 5 of the Bar Standards Board's Handbook.

Particulars of Offence

Robert Kearney, a self-employed barrister, behaved in a way which was likely to diminish the trust and confidence the public places in a barrister or in the profession, in that on 10 October 2017, he attended an informal Bar Mess event in a restaurant, and at that event, Mr Kearney [i] in a clearly drunken state, sat uncomfortably close to one of the pupils, whom he had never met before, put an arm around him, engaging in excessively physical and unwanted contact; ii] made uncomfortable, hostile and intimidating statements including that he, Mr Kearney, had "butt fucked another chambers dry"; and iii] directed an uncomfortable, hostile and intimidating question to the pupil, after first asking his age, namely whether he had, "ever taken a woman dry from behind".

Parties Present and Representation

4. The Respondent was present and was represented by Patrick Gibbs QC. The Bar Standards Board ("BSB") was represented by Donald Ramble Esq.

Preliminary Matters

5. Upon consideration of the charge, in accordance with rE161, the charge was by consent slightly amended by deleting certain words so that it read as stated above.

The Hearing

5. Mr Kearney admitted the charge.
6. Mr Ramble for the BSB drew the Tribunal's attention to:
 - a. A letter in the hearing bundle from the complainant's pupil supervisor which contained within it a statement by the complainant describing the serious impact that Mr Kearney's behaviour had had upon the complainant. It had made the complainant embarrassed, intimidated and shocked by the comments made. Further, the complainant felt violated, belittled and disgusted that this behaviour occurred. The event had left a bad memory upon the complainant and a reluctance to attend any further Bar Mess events.

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- b. The fact that this was a single incident that occurred in an otherwise unblemished career at the Bar.
 - c. The fact that Mr Kearney's Chambers are treating this incident very seriously and that he is subject to internal disciplinary proceedings.
 - d. The fact that Mr Kearney had provided a full admission as to the conduct and had made a full written apology which recognised that his behaviour, which had occurred because he was in a drunken condition, was unwarranted and unpleasant and that he felt ashamed and embarrassed by it.
 - e. The fact that Mr Kearney had written a letter of apology to the complainant's pupil supervisor expressing his remorse for his unacceptable conduct and had agreed with his own head of chambers not to attend Bar messes for 12 months.
7. Mr Gibbs QC, on behalf of Mr Kearny, told the Tribunal how sorry Mr Kearney has felt for his behaviour and made in summary the following submissions:-
- a. Whilst not contesting that Mr Kearney had breached core duty 5 by having behaved in a way that which was likely to diminish the trust and confidence the public places in a barrister or in the profession, as he admits that it is entirely unacceptable for a member of the Bar to get drunk and exhibit behaviour of this sort given that the public would expect members of the Bar not to get drunk and behave inappropriately,. nevertheless the drunken comments were not heard by members of the public as the event had taken place in a private part of a restaurant.
 - b. This behaviour, boorish though it was, did not take place in the provision of legal services and does not detract from Mr Kearney's dedication to the profession. Mr Kearney, as a senior member of the Bar, was making an effort to mingle with junior members of the profession, which was intended to be a friendly act but which because of for his drunken state had had exactly the opposite effect.

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- c. This was an isolated incident and there is no reason to think Mr Kearney would behave in such a way again. He was intending to become a pupil supervisor but has now voluntarily suspended himself from that process.
 - d. Mr Kearney does not dispute any of the contents of the complaint as he is not in a position to dispute the facts as he was so drunk that he cannot remember what happened. For Mr Kearney it had been an unusual day in that earlier that day he had met an old friend for a drink. Some deeply sad news was imparted to him which he had not come to terms with. Mr Kearney tried to cover up this deeply sad news by having consumed too much alcohol and he was clearly drunk. Mr Kearney does not put that forward as an excuse but to provide an explanation for the behaviour.
 - e. Mr Kearney's response has been prompt and he had fully cooperated with the process. There is genuine remorse demonstrated.
8. On being pressed by the Chairman both Mr Ramble and Mr Gibbs accepted that there is not an applicable sanctions guidance which specifically addresses this sort of complaint and that the 'Discourtesy' Guidance (which both of them had previously thought was the nearest) was not applicable. The Tribunal observed that the complainant felt harassed by unwanted conduct of the most unattractive type with a sexual connotation. Whilst it was agreed that there was no intention to cause harassment, Mr Gibbs accepted the Chairman's suggestion that the relevant guidance lay somewhere between B6 'Discrimination and harassment' and B7 'Misconduct of a Sexual nature', pages 41 and 42 of the Sanctions Guidance: Breaches of the BSB Handbook, Version 4, 1st February 2018.
9. Consistent with those guidelines Mr Gibbs submitted the following by way of mitigation of any sanction :
- a. No risk of repetition;
 - b. Evidence of learning and reflection of what he has done;
 - c. Behaviour/conduct not intended;

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- d. Previous good history;
- e. Regret and remorse;
- f. Immediately addressed the complaint sensitively;
- g. Regrets today his behaviour.

and submitted that the appropriate sanction was a reprimand only if the Tribunal was satisfied that the conduct was unlikely to be repeated. In case the Tribunal was considering a fine he produced for the Tribunal a statement of Mr Kearney's net income after expenses.

Sanction and Reasons

10. Taking into account the factors stated below, and having regard to the Sanctions Guidance, the Tribunal imposed the following sanction in accordance with rE157 namely that **Mr Kearney be reprimanded by the Chairman and that he pay a fine of £1,000.00 within 28 days.**
11. In summary the Tribunal took into account the following factors:

Aggravating Factors

- a) The language used was crude in the extreme;
- b) Mr Kearney should not have attended the Bar Mess in a drunken state;
- c) Mr Kearney's conduct has had a serious effect upon the complainant;
- d) As a more senior Member of the Bar Mr Kearney had acted in a most inappropriate way to a very junior Member of the Bar

Mitigating Factors

- a) Mr Kearney's previous good character;
- b) This was an Isolated act;

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- c) Mr Kearney had immediately accepted the charge and had apologised for his conduct;
- d) Mr Kearney had suspended his application to become a pupil supervisor and had agreed to absent himself for 12 months from attending future Bar Mess events;
- e) There is clear evidence of remorse on the part of Mr Kearney;
- f) Mr Kearney is clearly an asset to the Bar;
- g) There were unhappy circumstances of a serious kind which contributed to his becoming drunk and which led to the misconduct;
- h) The behaviour did not occur in a public place;
- i) Mr Kearney has cooperated fully with the investigation.

12. The Tribunal considered very carefully whether – given that it was satisfied that Mr. Kearney had learned his lesson and was not going to repeat this sort of conduct again – within the Guidelines it would be appropriate to leave the matter at a reprimand. It decided, however, that that would not be a sufficient sanction for the misconduct that had occurred having regard to the effect that it has had on the complainant and other colleagues of his who were present when this behaviour occurred and who were clearly shocked by it. On the contrary, it took the view that for the Tribunal to merely restrict itself to reprimanding Mr. Kearney would send out the wrong message that this sort of misconduct is not treated by the Bar as seriously as plainly it needs to be.

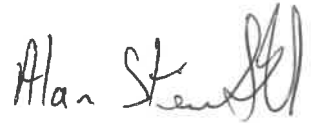
13. The Chairman accordingly delivered a reprimand to Mr Kearney pointing out to him that his behaviour was disgraceful, that he should never have gone to the Mess that evening and that he trusted that he has learned the lesson that, if he is already in an inebriated state, he should not attend professional occasions like this. Mr. Kearney must remember

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that he is a Barrister and that he attends these occasions as a Barrister and must conduct himself accordingly.



**Alan Steinfeld QC
Chairman of the Tribunal**

29 November 2018

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