Report of Finding and Sanction


Kevin Barry Esq
The Director-General of the Bar Standards Board
The Chair of the Bar Standards Board
The Treasurer of the Honourable Society of Lincoln’s Inn

Disciplinary Tribunal

Kevin Barry 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 18 February 2019, I sat as Chairman of a Disciplinary Tribunal on 14 March 2019 to hear and determine one charge of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Kevin Barry Esq., barrister of the Honourable Society of Lincoln’s Inn.

Panel Members

2. The other members of the Tribunal were:
   Mrs Alison Fisher [Lay Member]
   Darren Snow [Barrister Member]

Charge

3. Mr Barry admitted the Charge below:

Statement of Offence

Particulars of Offence

Kevin Barrister, barrister, on 3 October 2014, acted 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 he engaged in unwanted sexual conduct towards C in that he:

a) Touched C’s face, telling her that she was beautiful and attempting to kiss her, whilst at the Cellar Door bar, without C’s consent;

b) Placed his hand down the top of C’s skirt and squeezed her bottom on more than one occasion at the Cellar Door bar without C’s consent;

c) Ran his hand up and down C’s thigh, on more than one occasion, in a taxi without C’s consent.

Parties Present and Representation

4. The Respondent was present and was represented by Jeremy Barnett Esq. The Bar Standards Board (“BSB”) was represented by James Counsell QC.

Plea

5. Mr Barry admitted the charge.

The Hearing

6. In accordance with rE141 of the Disciplinary Tribunal Regulations 2017 (“the Regulations”) a three person panel was appointed to determine one charge of professional misconduct. Mr Barry was called to the Bar in 1997.

7. Mr Counsell QC for the BSB told the Tribunal in opening that Mr Barry is a barrister practising in crime with a previously unblemished record, save for failing to complete a prescribed CPD some 14 years ago. He practises from chambers in London.

8. Mr Barry admitted the full facts of the charge. Mr Barry had engaged in unwanted and inappropriate sexual behaviour towards a young female member of his chambers, who had come to him, as her former pupil supervisor, in October 2014 for advice and reassurance. The meeting took place at a bar in Covent Garden and later at another bar in the Strand. Whilst drunk at the bar and later in a taxi when she was trying to escort him home, he repeatedly groped and touched her under her clothing.
9. Mr Barry had accepted that his conduct amounted to a breach of Core Duty 5, namely, acting in a way likely to diminish the trust and confidence which the public has in the profession and that the version of events reported by the complainant, is likely to be accurate.

10. Mr Barnett, on behalf of Mr Barry, offered the complainant his unreserved apology for the hurt and upset that this has caused and accepts that this misconduct had brought himself and the profession into disrepute. Mr Barry had consumed a great deal of alcohol on the night in question and accepts that he was very drunk at the time of the event in question had taken place ad that he had acted in an inappropriate manner. The matters complained of were totally out of his normal character. The complainant accepts that Mr Barry did not have malevolent intentions towards her and that he would never have acted in that way had he been sober. In addition, the complainant states that she did not feel particularly distressed and felt the whole thing was awkward and embarrassing for her.

11. Mr Barry has had a “drink problem” of a very specific type for a number of years. Most of the time he is able to enjoy a drink and can stop himself before he becomes drunk; however, rarely, he loses control of his ability to regulate the amount he drinks and becomes so drunk that he no longer behaves rationally which results in total or partial amnesia. The event is question was such an occasion.

12. Mr Barnett further told the Tribunal that a short time before he received the complaint, he had already commenced seeing a counsellor/therapist who is a specialist in substance misuse and addiction therapy. The therapist has assisted Mr Barry greatly to reduce his alcohol intake and provided him with the mechanism by which he can control his drinking. He now abstains from drinking alcohol altogether.

13. Mr Barnett drew the Tribunal’s attention to the following points:

   a) As a result of the misconduct Mr Barry had resigned from being the Head of the Crime Group at Chambers;
   b) Mr Barry has decided to return all sexual offence cases;
   c) There has been no attempt by him to resist from a full admission of the charge;
   d) He has expressed his unreserved apology for his conduct to the complainant;
e) A short time before Mr Barry received the complaint, he had commenced seeing a counsellor/therapist who is a specialist in substance misuse and addiction therapist about his problem;
f) This was an isolated incident and was out of character;
g) Mr Barry has not sought to minimize his behaviour and entirely accepts the BSB’s account;
h) Mr Barry recognised that he had a drink problem and had taken appropriate steps to address it and was now abstinent from alcohol.

14. Mr Barnett submitted that these points powerfully demonstrated insight, remorse and remediation. He further pointed out to the Tribunal that any sentence imposed must be proportionate and submitted that this is not a suspension type case but, on the contrary, a reprimand would be a proportionate sanction to impose taking into account genuine remorse, insight and remediation that has been demonstrated by Mr Barry.

15. Turning to sanctions, the BSB relied upon the Sanctions Guidance: Breaches of the BSB Handbook, version 4 February 2018. The BSB identified the range of sanctions available to the panel on pages 17/18. In addition, the BSB referred to page 42 in the Guidance which identifies the specific nature and range of sanctions for sexual offences together with guidance, on page 23, upon the imposition of fines. The BSB did not ventilate any observations as to whether the misconduct amounted to either a minor or serious offence as that was a matter for the Tribunal to determine.

Findings

16. Mr Barry was called in November 1997 and practised in the criminal field from 36 Bedford Row. Mr Barry, in this field, is a very successful and able barrister and, clearly, somebody who could be regarded as a rising star at the Bar. Things all went wrong for him in 2014 because he had a drink problem. Unable to stop drinking, losing his self-control and memory, he now faced and admitted a charge of professional misconduct as a result of that drinking problem which, whatever sanction for it the Tribunal imposed, was likely to have a hugely negative impact on his professional career.

17. Mr Barry behaved in an inappropriate sexual manner. The complainant was his former pupil and she was finding work at the Bar stressful. She had arranged to meet Mr Barry in a wine bar away from Chambers as the complainant did not want the meeting to be
in Chambers as she wanted to discuss leaving Chambers. There was a significant amount of alcohol being drank by Mr Barry which resulted in inappropriate and unwanted sexual conduct towards the complainant.

18. The complainant left Chambers shortly after the incident. It was not until 2018 that the complainant made a formal complainant against Mr Barry. In May 2018, Mr Barry, for the first time, became aware of the complaint made against him.

19. The panel heard full mitigation from counsel on behalf of Mr Barry and had been shown glowing character references in support. Mr Barry accepts that his behaviour constituted professional misconduct and that his behaviour has brought himself and the profession into disrepute. He did not dispute the factual allegations made by the complainant and wished to offer to her his unreserved apology to her for the hurt and upset his conduct has caused. He has cooperated with the investigation and has demonstrated genuine remorse. The Tribunal accepted that Mr Barry had demonstrated remorse, insight and remediation. The Tribunal had careful regard to the guidance on sanctions set in the Sanctions Guidance.

20. Mr Barry admitted the charge, shown genuine remorse and apologised to the complainant. This was a single incident. He has fully cooperated with the investigation. He has taken steps to prevent a reoccurrence of the conduct by obtaining professional help. Mr Barry has given up drinking alcohol altogether. The Tribunal account of all the character references.

21. The Tribunal found that this misconduct does seriously undermine the confidence of the public in the profession. It also probably amounts to a criminal conduct, albeit not of a serious kind.

Sanction and Reasons

22. In accordance with rE206 of the Regulations, the panel’s decision was unanimous upon the following sanctions and reasons. The Tribunal took into account the mitigating and aggravating factors summarised below. The Tribunal did not regard the minor professional misconduct in 2002 in respect of breach of the CPD requirements as a factor to take into account.
Aggravating Factors

a) Undermining of the profession in the eyes of the public;
b) Effect upon the complainant;
c) Position of responsibility in the profession.

Mitigating Factors

a) Admits the charge;
b) Genuine remorse;
c) Single incident;
d) Co-operation with the investigation;
e) Voluntary steps have been taken to remedy the breach;
f) Evidence of attempts to prevent reoccurrence;
g) Previous good character;
h) Good references.

23. Taking all of the above factors into account, the Tribunal imposed the following sentence in accordance with rE157:

a. Reprimanded by the Tribunal;
b. Medium level fine of £3,000 (to be paid within 4 weeks of the expiry of the 21 days appeal period).

24. Whilst a reprimand on its own would be sufficient protection for the public, the Tribunal took the view that it would send the wrong signal to the public that the Bar is not taking this type of misconduct sufficiently seriously if not accompanied by a significant financial penalty.

25. Although Mr Barry has ceased since this charge was brought to take on pupils, he is still registered as an approved pupil supervisor with Lincoln’s Inn. The Tribunal make no recommendation to Lincoln’s Inn as to whether or not in the light of the professional misconduct admitted and the findings of this Tribunal his name should be removed from that register.
Approved: 20 March 2019

Alan Steinfeld QC
Chairman of the Tribunal