



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Report of Finding and Sanction

Case reference: PC 2018/0165/D3

Rashid Ahmed

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

#### Rashid Ahmed 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 February 2020, I sat as Chairman of a Disciplinary Tribunal on the 13 March 2020 to hear and determine one charge of professional misconduct contrary to the Bar Standards Board Handbook against Mr Rashid Ahmed, barrister of the Honourable Society of Lincoln's Inn.

#### Panel Members

2. The other members of the Tribunal were:

Kathryn King (Lay Member)

Naomi Davey (Barrister Member)

#### Parties Present and Representation

3. The Respondent was present and was represented by Mr Jeremy Dein QC. The Bar Standards Board ("BSB") was represented by Mr Winston Jacobs.

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## Charge and Plea

4. The Respondent, Mr. Rashid Ahmed, faced a single charge of professional misconduct contrary to Core Duty 5 of the Bar Standard Board's Handbook, which he admitted.

5. Core Duty 5 provides:

"You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession"

6. The particulars of the offence were that:

"Rashid Ahmed, 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 the 5th of April 2018, Mr Ahmed assaulted another. As a result of the assault, on the 7th of April 2018, Rashid Ahmed was convicted at Westminster Magistrates Court on admission of assault by beating contrary to s 39 Criminal Justice Act 1988, for which conviction, Rashid Ahmed was sentenced, (as varied on appeal to Isleworth Crown Court), to a 12-month community order with the requirement of rehabilitation activity for 35 days and 180 hours of unpaid work, £85 costs and £85 victim surcharge.

## Preliminary Matters

7. There were no preliminary matters.

## Submissions

8. Mr Jacobs presented the case on behalf of the BSB, setting out the background to the offence.

9. Mr Dein responded on behalf of the Respondent.

10. We are grateful for the helpful submissions of both counsel. We record, in particular, our gratitude to Mr Dein, who appeared pro bono on behalf of Mr Ahmed. We address the submissions made by Mr Dein in mitigation in our reasons below.

## Evidence

11. We considered the documents contained in the BSB bundle and correspondence bundle and additional documents sent on the 12 March 2020 by the Respondent, namely, a witness statement and a Curriculum Vitae.

12. It was agreed by both parties that the sentencing remarks of Her Honour Judge Holt, who dealt with the matter on appeal at the Isleworth Crown Court on 19<sup>th</sup> October 2018,

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helpfully set out the relevant factual framework. Mr Dein, in addition, invited us to have regard to the various accounts, in the papers provided to us, given by the victim of the assault (who we shall refer to as “X”) which we did.

13. We cite below the relevant parts of the Learned Judge’s sentencing remarks. (We have corrected some of the punctuation and obvious errors in the unperfected transcription of those remarks.)

*“On 5 April, multiple members of the public flagged down police because they viewed, and were viewing, a thoroughly unpleasant incident in the street. It was 6.00, early evening, in Lincoln Street. They were, as was described to us, ‘in panicked state’; and when officers arrived, they could see the victim in this case, on the pavement, on her back. She had blood on her face, indeed, blood all over her face, and surrounded by members of the public. You were close by, still being restrained and still clenching his fists. What appears to have happened, is the two of you, who in the past have had a close relationship – now, we are told, purely professional – had been out for a meal together, and an alcohol-fuelled argument then occurred. It started with you throwing water and an ashtray, and the victim left. It appears that you were then seen shouting down a telephone and entering a shop where she was. It appears that she may well have been expecting you. You shouted at her and, outside Calvin Klein, you were seen to grab her, to shake her, push her up against a pillar between two of the shop windows. That was what one of the witnesses saw. Another witness then saw, and indeed, we ourselves have seen on CCTV, how you pushed her up against a parked car. You put her in a position where she could not back away, indeed, she was leaning back, trying to get away from you; and when you went, as we saw on the footage, close up to her and there was a headbutt that missed – that may well have been something to do with the amount of alcohol that you had been drinking. She, of course, accepts she was also heavily intoxicated. You, however, did then do a second headbutt to her face and contact was made just above her nose close to the eye. This was, as we saw, a very fast motion. You are taller than her, and so the downward motion was seen by the witnesses. One witness, because of what he could see, intervened, and indeed pushed you away from her, and, as I have already indicated, was still restraining you when the police arrived. You were handcuffed after a short struggle. It appears that the victim suffered a bloodied nose. Although she was not unconscious.*”

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*You were interviewed the following afternoon, and you had a solicitor present, and you exercised your right of making no comment. It is right to note, however, that you were shown the CCTV footage. However, at your first appearance at the Magistrates' Court, having originally been charged with an offence alleging assault occasioning actual bodily harm, the charge of common assault was put in its place, and you entered your guilty plea at the first opportunity, and accordingly, we do give you full credit.*

*We have helpfully been referred to the guidelines by both counsel. It is submitted on behalf of the prosecution that this is a clear Category 1 case. As far as the defence are concerned, or rather the applicant's counsel is concerned, that we should consider this to be a Category 2 matter. We considered the matter very carefully, and it is our firm view that this is a Category 1 offence for two reasons. Primarily, the aspect of, as far as greater harm is concerned, the sustained nature of the assault. I have already dealt with it, so therefore, I summarise it now; but it involved the pushing, the grabbing, the shaking outside, and then, what we saw on CCTV, the pushing against the car which involved the element of restraint, and the two headbutts, with the second one making contact. And the period of time we could see on the CCTV alone, showed events lasting some 40 seconds, and that, of course, did not show the start of the incident. As far as the injury is concerned, as the prosecution counsel quite rightly pointed out, common assault often does not involve any – result in any – injury; and in this case, of course, there was a bloodied nose. As far as the higher culpability, we can deal with that fairly succinctly, because headbutting is clearly stated as a weapon equivalent, and that happened in this case.*

*And so, as far as the categorisation for this offence, in our view it is clearly a Category 1 matter. That means, as you are well aware, that the starting point is a high-level community order, but with the range of a low-level community order leading up to 26 weeks' custody; and, as you know, you were given an 8-week term of imprisonment, suspended for 18 months with an RAR requirement of 35 days, and unpaid work of 40 hours.*

*We, of course, have to deal with further matters which we have very carefully considered. Factors increasing seriousness, as your counsel conceded, this was a matter that took place in a public location, as I have indicated, in the presence of numerous members of the public who, again, as I have already said, panicked and felt*

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*so strongly about what they saw, that a number of them called the police; and, of course, the offence was committed under the influence of alcohol; indeed, you were drunk.*

*There are, however, a number of factors reducing the seriousness and, indeed, reflecting your personal mitigation. You have no previous convictions. In fact, you are of exemplary character, and we have read the number of very helpful references, both from people who know you through chambers and your profession, as well as people who know you as members of your family, and, indeed, in the wider community. It is clear to us that you have shown remorse and that is genuine remorse; that you have attempted to address your problems, shown by the counselling and referred to in the presentence report, and indeed, shown by the way you carried out the order that was imposed upon you, thus far. And we also accept that this was entirely out of character and was an isolated incident.*

*There is also, and we do accept, an element of further punishment that we have taken into account, in that you were, as we have heard, retained in a – or detained in - a police cell for some 48 hours. No doubt, some of the hours were so you could sober up but, even so, still for anybody, a difficult aspect that you have had to deal with.*

*We carefully read all the material relating to the Bar Standards Board proceedings, which, of course, is an inevitability following your conviction; and we accept and take into account, that by virtue of the sentence imposed by the Magistrates Court, for some six months you have been in clear jeopardy of disbarment, and that impacts not only on you and your immediate family, but also in the circumstances of your particular set of chambers, on a number of colleagues, and that must have caused a great deal of concern to them.*

*You are a 40-year-old-man. You have had a difficult upbringing to the extent of losing your father at an early age and taking on responsibilities that many of your age wouldn't and shouldn't have to deal with; and you have clearly been very successful in your work. You are Deputy Head of Chambers from, we are told, 2012. You have done more than just practise; and we have read the material and taken into account, as you have been described as 'stalwart' in securing the wellbeing of practitioners, and indeed, in your work within the community; and I refer to the letters from Muslim Trust that we have read.*

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*It is accepted that, as I have said, this was a matter very much out of character, and therefore, the – really the primary submission from your counsel - although he sought to persuade us that this was a Category 2 offence. I hope I have explained in sufficient detail why we do not accept that submission. However, really, the primary submission to us in relation to this appeal, is that it is manifestly excessive to have imposed the custodial element, when one looks at the circumstances of the offence, as serious as indeed they are, as we found in our findings as far as Category 1. But when we look at the overall matter and we take into account and follow the process that we should do, that it would be wrong to impose a custodial element, and that the more appropriate punishment would and should have been the recommendation in the presentence report; and we accept that submission.*

*And therefore, the appeal against sentence is successful, to the extent that the custodial element is removed, and this sentence will be as follows: a 12-month community order with the requirement of the rehabilitation activity requirement for 35 days; 180 hours of unpaid work. The victim surcharge, accordingly, should be reduced to £85 and the costs should be £85.”*

## Sanction and Reasons

14. Mr Dein invited us to consider the current iteration of the Bar Tribunals and Adjudication Service Sanctions Guidance: Breaches of the BSB Handbook Version 5 of 15<sup>th</sup> October 2019. Mr Jacobs initially invited us to look at an earlier version. However, the parties were agreed that there was no significant difference in the relevant parts. Accordingly, the subsequent references in our decision to the “Sanctions Guidance” are to the parts of Version 5 that Mr Dein addressed us upon. Mr Dein invited us to have regard to the guidance set out at pages 12 and 13 of the Sanctions Guidance in relation to the steps for determining sanction. Step 1 includes the assessment of the list of aggravating and mitigating factors set out at Annexe 1 of the Guidance. Mr Dein submitted that the only aggravating factor was the bullet point which states: “[U]ndermining the profession in the eyes of the public”. We considered that two other factors had some applicability, namely: “[B]reach of trust” and “[P]osition of responsibility within the profession”. That is because we consider that it is relevant that Mr Ahmed was Deputy Head of Chambers and was, on his own account, meeting X, a junior member of his chambers, for the purpose of discussing with her financial matters pertaining to his chambers.

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15. So far as the mitigating circumstances are concerned, Mr Dein submitted that the majority of the bullet points in that part of the Sanctions Guidance applied, namely: that Mr Ahmed admits the charge; that he demonstrates genuine remorse; that it was a single incident; that it occurred in the heat of the moment; that Mr Ahmed subsequently cooperated with the investigation; that he took voluntary steps to remedy or rectify the breach; that he is of previous good character; that there was evidence of financial hardship; that there were particular personal circumstances of relevance; and that Mr Ahmed provided favourable references.
16. In broad terms, we accept that the identified factors apply, save for the following. In relation to the bullet point referring to *'financial hardship'*, we note that the stated parenthesis indicates that this mitigating factor is *"only applicable when it has had a direct impact on the commission of the offence"*. We accept, and take into account, that there is evidence of Mr Ahmed being under some financial pressure at the time but we do not consider that those circumstances were sufficiently direct in their impact upon the offending as to be contemplated by the stated mitigating factor. We do not consider that the factor described as *"[H]eat of the moment"* applies. Whilst we accept that this was a single incident that was the result of particular circumstances, we note that it occurred over an extended period of time in the early evening and that its context was a continuing episode starting with an alcohol-fuelled argument over lunch. We note, in particular, that, as the Learned Judge summarised the position at page 162H in the transcript of her sentencing remarks, the assault itself *"... involved the pushing, the grabbing, the shaking outside, and then what we saw on the CCTV, the pushing against the car which involved the element of restraint and the two head-butts with the second one making contact; and the period of time we could see on the CCTV alone showed events lasting some 40 seconds and that, of course, did not show the start of the incident."* We do not accept that the factor relied upon by Mr Dein of *"[P]articular personal circumstances that provide a reasonable explanation for the behaviour"* is applicable. We accept and take into account that the matters set out by Mr Dein provide an explanation of the context for the conduct on this occasion; however, in our view, it does not provide a *"reasonable explanation"* for the behaviour.
17. With regard to the other mitigating factors urged upon us by Mr Dein, we place appropriate weight on the large number of strong testimonial endorsements provided. In particular, we note the views of the authors of such material as to the following: that

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Mr Ahmed's conduct was wholly out of character; as to Mr Ahmed's high standing in the profession; and as to the substantial good work that he has done within the profession. However, we bear in mind the injunction at paragraph 7.2 of the Sanctions Guidance that such testimonial material should not unduly affect the sanction imposed.

18. We turn to the specific guidance on convictions for assault contained within the Sanctions Guidance at page 39 under the title: "*B.2 Conviction for assault and violent acts*". Mr Dein, in his helpful submissions, submitted that '*technically*' the incident fell within paragraph (d) in the table of possible circumstances. That paragraph refers to "*[A] conviction for an act of violence causing injury*". We understand that Mr Dein made that qualified concession because of the admitted presence of bleeding to X, indicating that she was injured. However, he submitted that, in this instance, the conduct was at the lowest level of injury and that there were exceptional circumstances, which meant that the appropriate disposal was a reprimand or a fine. We agree that the incident falls within paragraph (d) in terms of possible circumstances set out in that part of the Sanctions Guidance.
19. As for the specific aggravating factors contained in the table in that part of the Sanctions Guidance, we note that in the Learned Judge's sentencing remarks she said, with reference to the relevant sentencing guidelines applied in the criminal courts, that "*Head-butting is clearly stated as a weapon equivalent and that happened in this case*". We consider that, by parity of reasoning, the aggravating factor stated in the Sanctions Guidance, "*use of a weapon*", has some applicability to this case. We also take the view that, in this instance, there was clearly an "*intent to cause harm*", which is another of the stated bullet points under the aggravating factors.
20. As for the mitigating factors that have been urged upon us, the first stated factor in the table to which we have referred is that it is an "*[I]solated incident with difficult and unusual circumstances*". As we have stated, we accept that this was an isolated incident and we note the context to the incident set out by Mr Dein but, as we have set out above, we do not consider that the circumstances in which the incident took place provide a reasonable explanation for it. Nor do we consider that the circumstances were "*difficult or unusual*" within the meaning of that mitigating factor. The second mitigating factor identified in the table is "*self-protection*", which does not apply on these facts. We were not invited by Mr Dein to take it into account.

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21. Mr Dein then addressed us on the specific guidance contained at page 22 of the Sanctions Guidance as to when suspension from practice is appropriate. In particular, he invited us to have regard to paragraphs 6.5 and 6.6 on that page. Paragraph 6.5 makes the point that such a sanction should be *“reserved for cases where the barrister represents a risk to the public which requires that he or she be unable to practice for a period of time and/or the behaviour is so serious as to undermine public confidence in the profession and therefore a signal needs to be sent to the barrister, the profession and the public that the behaviour in question is unacceptable”*. We accept that the first limb of this test does not apply and that Mr Ahmed does not present a risk to the public, which requires that he should be unable to practice for a period of time. We note that in the pre-sentence report he was assessed as posing a low risk to the public and that subsequently he undertook a programme of rehabilitation as directed by the court. We accept that he has shown insight into his behaviour and expressed remorse for his conduct.

22. We do, however, consider that this case falls squarely within the second of those categories. We regard this as a serious breach of Core Duty 5. The seriousness of the breach follows from the facts that we have described above and, in particular, the following:

- a. This was an extended incident that took place in public, which caused members of the public to be, in the words adopted by the Learned Judge, in a *“panicked”* state.
- b. It was brought to an end by a member of the public’s intervention and Mr Ahmed’s arrest by police officers.
- c. The incident caused harm to X.
- d. Mr Ahmed was subsequently convicted of assault by beating. The inevitable consequence of such a conviction was that facts with a grave impact on the public’s trust and confidence in Mr Ahmed and the profession were ventilated in open court: namely, that he was a barrister involved in an assault upon another barrister who was a junior member in the chambers of which he was the Deputy Head of Chambers, a position of responsibility within the profession.

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23. We, therefore, unanimously consider that, in all the circumstances, a suspension is the appropriate sanction.
24. In section B.2 of the Sanctions Guidance, the starting point for a conviction falling within category (b) is ‘*a medium level suspension*’. Page 34 of the Sanctions Guidance specifies a medium level suspension as one that is “*over 3 months and up to 6 months*”. In all the circumstances of this case, and in particular taking into account our view of the aggravating and mitigating factors that we have set out in this decision, we consider that the appropriate level is 3 month’s suspension. Accordingly, we order that Mr Rashid Ahmed be suspended for 3 months.
25. To summarise, we concluded as follows.
26. The relevant mitigating and aggravating factors set out in Annex 1 of the Sanctions Guidance (subject to our observations above as to the extent to which they apply and as to the additional relevant factors that apply on the particular facts of this case) were as follows:

#### **Mitigating Factors**

- e. The Respondent admitted the charge;
- f. The Respondent showed genuine remorse;
- g. it was a single incident;
- h. The Respondent co-operated with the investigation;
- i. The Respondent had taken steps to remedy or rectify the breach;
- j. The Respondent was of previous good character;
- k. Good references were provided.

#### **Aggravating Factors**

- a. Undermining the profession in the eyes of the public;
- b. Breach of trust;

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c. Position of responsibility within the profession.

27. The Tribunal unanimously agreed that the appropriate sanction should be 3 months suspension.

**Approved: 27 March 2020**

**Paul Ozin QC**  
**Chairman of the Tribunal**

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