



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC2019/1261/D3

Mr Craig Tipper

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of Middle Temple

Disciplinary Tribunal

Mr Craig Tipper

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 9th December 2020, I sat as Chairman of a Disciplinary Tribunal on 22nd January 2021 to hear and determine 2 charges of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales against Mr Craig Tipper, barrister of the Honourable Society of Middle Temple.

Panel Members

2. The other members of the Tribunal were:

Stephanie McIntosh (Lay Member)

Isabelle Watson (Barrister Member)

Charges

3. The charges were as follows:

Charge 1

Statement of Offence

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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 (version 4.0)

Particulars of Offence

Craig Charles Tipper, a practising barrister, on or around the 21st day of June 2019, 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 he intentionally touched A, the touching was sexual, A did not consent to the touching and Craig Charles Tipper did not reasonably believe A was consenting.

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 Handbook (version 4).

Particulars of Offence

Craig Charles Tipper, a practising barrister, on or around the 21st day of June 2019, 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 he intentionally touched C, the touching was sexual, C did not consent to the touching and Craig Charles Tipper did not reasonably believe C was consenting.

Parties Present and Representation

4. The Respondent was present and was represented by Mr Jamas Hodiala QC. The Bar Standards Board ("BSB") was represented by Miss Lesley Bates. We should like to record our gratitude for the helpful submissions of both counsel.

Preliminary Matters

5. There was a joint application by Miss Bates and Mr Hodiala QC for parts of the hearing to be dealt with in private. These were parts that related to the health of Mr Tipper or members of his family or which, if held in public, would lead to the identification of either of the complainants. A joint position on how this could be achieved was reached, and

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such details as are required to preserve the anonymity of the complainants or the privacy of health matters are set out in a confidential annex to this report.

Pleas

6. Mr Tipper accepted both of the charges.

Evidence

7. The events with which the Tribunal was concerned took place in June 2019. At a Bar-related evening social event, the respondent barrister inappropriately touched two female attendees (Persons 'A' and 'C'), also members of the Bar, who were junior to him.
8. The Panel considered the documents contained in the BSB bundle and a Respondent's Bundle.
9. The detail of this conduct is set out in the BSB's 'Explanatory Note' of the charges, which is annexed to this report and which Mr Tipper accepted as accurately describing his admitted conduct. The detailed particulars set out with respect to charge 1 indicate that, on the date in question, there were five separate instances of intentional sexual touching of Person A by Mr Tipper and one instance of intentional sexual touching of Person C by Mr Tipper. Each of those instances involves a number of intentional sexual acts over a short period of time. The touching of Person C was subsequent to the touching of Person A.
10. The BSB made submissions to the Panel as to the applicable parts of the Sanction Guidelines and, in particular, the aggravating and mitigating factors. Some of those submissions were made in a private session of the hearing (but in the presence of the complainants) in order to maintain their anonymity.
11. Mr Hodivala QC mitigated on Mr Tipper's behalf and addressed the Panel on the Sanction Guidelines and, in particular, the aggravating and mitigating factors. Some of those submissions were made in a private session of the hearing (but with the complainants' present) in order to maintain their anonymity. A second part was heard fully in private as it related to health matters.
12. An application was made by the BSB for costs of £900.

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Sanction and Reasons

13. It was accepted by Mr Tipper that the facts in Miss Bates' opening accurately reflected the evidence. We note the evidence given by the complainants of the impact of these events on them immediately after the acts that are the subject-matter of the charges. It is clear from both of their accounts that a common feature is that they understandably felt inhibited from reacting as strongly as they would have wished as a result of a combination of factors: their status as junior members of the Bar; the presence of senior members of the Bar; and their reluctance to 'make a scene'.
14. Person A stated that due to the presence of senior members of the Bar she felt mortified and unable to say anything and did not want to make a scene. She described what happened when she went to the female toilets at the venue: *"I sat there for a few minutes, upset and completely overwhelmed by what had just happened"*. She stated that when she came out of the cubicle and saw a female colleague, she burst into tears.
15. Person C stated: *"[I]nitially my main feeling was that of confusion I couldn't believe it had happened ... I felt gross and violated and I was also upsetting myself because before this happened to me I thought I would have dealt with something like this differently. However, in the situation I felt as if I had been preyed upon and targeted ... and that perhaps [he] had thought that he could get away with it and that I wouldn't do anything about it. I feel angry at him and at myself for not calling it out. I felt embarrassed for me and for him."*
16. There is no doubt that Mr Tipper became very drunk in the course of the evening in question. The account given by the complainants was that he was violently sick and that another member of the Bar took him home.
17. In the course of an investigation by Mr Tipper's chambers, he was given the opportunity to take steps to gain insight into his behaviour. He undertook a number of courses, all completed on one day in October 2019, designed to enable him to acquire an understanding of the following matters: "Sexual Harassment Awareness", "Equality and Diversity", and "Bullying and Harassment for Employees". The Panel was provided with copies of the certificates that he obtained. In addition, he indicated that he had sought out and watched and considered the Gresham College lecture of Professor Joe Delahunty QC, which provided an insight into the history of sexual harassment at the Bar.

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18. Mr Tipper was given by his chambers the opportunity to self-report his conduct to the BSB in accordance with his duties under the BSB handbook, which he took. At the disciplinary hearing conducted by his chambers he admitted without reservation the allegations, asserting that he had a very limited memory of the events of the night due to his excessive consumption of alcohol. The sanction imposed by his Head of Chambers, at the conclusion of the internal proceedings and on the recommendation of the Chambers disciplinary panel, was the imposition of a financial penalty of £2000 and the reimbursement to chambers of its costs incidental to those proceedings, in the sum of £500.
19. Mr Tipper made two written personal representations that were provided to the Panel in connection with these proceedings: a letter to the BSB dated 2 April 2020 and a written personal reflection. Both are similar in content. The essential assertions that he made are these. He accepted the BSB's summary of facts but stated that he could not remember the events due to his alcohol consumption. He had not consumed alcohol for a substantial period of time before the incident, following the birth of his son. He referred to a personal health condition which he said could have contributed to his behaviour on the night in question. He recognised that his behaviour was utterly unacceptable and stated that he was deeply ashamed and apologetic. He expressed his apology to the complainants. He had stopped drinking alcohol. He invited the BSB to conclude that he had already been proportionately punished for his behaviour and that any further sanction would be disproportionate.
20. The Panel was provided with a quantity of material that attests to Mr Tipper's good character and its necessary corollary: that his behaviour on the night in question was completely out of character. Letters from professional colleagues and former colleagues emphasise his remorse, and empathy for the distress caused to the complainants. A letter from a counsellor from whom he sought help describes his distress and anxiety about the allegations, his regret at the suffering caused and his expression of deep remorse.
21. Miss Bates in her opening described the conduct in this case as extremely serious: the unwanted sexual touching of two junior members of the Bar in a situation which inevitably involved an imbalance in power. She added, and we agree, that it is conduct that is capable of amounting to, and contains elements of, both a sexual assault and/or unlawful harassment.

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22. The parties agreed that the correct framework for our consideration of the matter was section B.7 in the Sanctions Guidance (2019) (“the Guidance”), a section which bears the title “Misconduct of a sexual nature”. We bear in mind that, although the Guidance is intended to promote proportionality, consistency and transparency in the imposition of sanctions, it is not intended that the Guidance should interfere with the Panel’s independent judgement as to the sanction that is most appropriate in the circumstances of the individual case.

23. From the list of aggravating and mitigating factors set out at section B.7, we consider that the aggravating factors are:

- that the ‘offences involved young or vulnerable victims’; and
- the ‘effect on the victim’[s].

24. The mitigating factor is that Mr Tipper co-operated with the investigation.

25. We then considered the aggravating factors set out in Annex 1 of the Guidance.

- a. It was an agreed position between the parties that this was a ‘one-off incident’ in the sense that all the events occurred on a single evening but that it was nonetheless proper to regard it as ‘persistent conduct’ (an identified aggravating feature in Annex 1) in that there were a number of separate instances in respect of person A and Mr Tipper then went on to engage in similar conduct with respect to Person C. Moreover, despite the clear signals given to him by Person A that his conduct was both unwelcome and unacceptable, he persisted with similar conduct with respect to her.
- b. As we have noted, there is an element of the conduct which is capable of being described as ‘harassment’, which is a separately identified aggravating factor in Annex 1. However, it is common ground between the parties that the harassment element is dependent on the same factual allegations as the aggravating feature of ‘persistent conduct’ that we have already identified. Accordingly, we agree with the submissions of Mr Hodivala QC that we should not count it as a separate aggravating factor.

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- c. Both parties agreed that it was an aggravating factor that the conduct had the effect of ‘undermining of the profession in the eyes of the public’. Mr Hodivala QC rightly pointed out to us that such an effect is explicit in the allegation itself; and so we should be conscious of the need not to double count this as an additional aggravating factor.
- d. We consider that an additional aggravating factor is that Mr Tipper, in comparison to the complainants, occupied a ‘position of responsibility within the profession’, a further identified aggravating factor within Annex1. However, we bear in mind that Mr Tipper was a comparatively junior member of the Bar at the time. For the same reason we conclude that there is an element of the separate aggravating feature ‘breach of trust’ identified in Annex 1. However, since it is dependent upon the same factual basis as his ‘position of responsibility’, we remind ourselves of the need not to double count it as an aggravating factor.
- e. A further aggravating feature is described as the ‘effect on complainant or particular vulnerability of the complainants’. We referred above to the impact of the events on the complainants in the immediate aftermath of the incident. We also bear in mind the inevitable distressing impact on the complainants of having to report the conduct and thereafter being involved in both the chambers and BSB investigations.

26. We consider that the following mitigating factors set out in Annex 1 of the Guidance apply.

- a. Mr Tipper admitted the charges unreservedly and from the very outset of the chambers’ investigation.
- b. We accept that he has shown genuine remorse both in the sense of being ashamed of his conduct and in the sense of showing an early willingness to apologise to the complainants. We accept Mr Hodivala’s submission that Mr Tipper has shown insight and recognises the harm caused to the complainants and the profession. He has not sought to excuse his conduct on the basis of his drunkenness or his lack of recollection of the events.

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- c. This was a single incident, in the sense that we describe above; and we note also that it was isolated in that there was no preceding instance of similar behaviour and no evidence of any recurrence of the same kind of behaviour.
- d. We accept that Mr Tipper co-operated fully with both the internal chambers' and BSB investigations.
- e. We accept that there is evidence of his attempts to prevent a recurrence of the conduct. He has reduced his consumption of alcohol. He has taken positive steps to find ways to acquire insight by undertaking structured learning and engaging in reflection.
- f. We consider that Mr Tipper has 'good references' that speak in his favour but we bear in mind the caveat contained in the bullet point alluding to this mitigating factor and further explained in paragraph 7.2 of the Guidance that this consideration should be treated with caution and should not unduly affect the sanction imposed.
- g. We accept Mr Hodiala's submission that Mr Tipper acted with honesty and integrity in acknowledging the truth of the allegations from the outset.

27. We have taken into account Mr Tipper's particular personal circumstances as outlined by Mr Hodiala QC in his submissions to us; and, in particular, the personal issues affecting both Mr Tipper himself and his family. We do not, however, consider that these matters provide a reasonable or adequate explanation for his behaviour on that evening.

28. In addition, we take into account that Mr Tipper has already been subject to sanction by his chambers. We further accept that the inevitable lapse of time will have been stressful for Mr Tipper and also for the complainants.

29. With those aggravating and mitigating factors in mind, we turn back to the sanctions' guidance contained in section B.7 of the Guidance. We conclude, and it was common ground between the parties, that the facts of this case do not fit neatly within any of the categories stated in this section. However, it was agreed between the parties that this case is most similar to the circumstances described in category 'a', 'inappropriate sexual conduct in a professional context', although it was submitted by Miss Bates that there are some elements that would tend to make it more serious. In the final analysis, we

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accept Mr Hodivala's submission that the proper assessment is that these facts fit within category 'a', which provides a starting point of a 'reprimand and medium level fine, to a short suspension'.

30. In considering the range of possible sanctions prescribed by category 'a', we have had regard to the specific guidance that falls under the heading of 'suspension from practice' contained in paragraphs 6.5 and 6.6 of the Guidance. Paragraph 6.5 materially provides: "... [S]uspension from practice is a serious matter and should be reserved for cases where the barrister represents a risk to the public which requires that he/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 do not consider that the first limb applies in this case, but we consider that the second limb plainly does. Accordingly, we conclude that a short period of suspension is unavoidable.
31. We have had regard to the 'levels of fines and suspensions' guidance, at page 34 in the Guidance, which indicates that a short period of suspension is a period up to 3 months in duration.
32. It is the unanimous decision of this Tribunal that Mr Tipper be suspended for a period of 3 months with respect to each charge, and that those periods of suspension shall run concurrently.
33. The BSB applies for £900 in costs, and that application is not resisted by Mr Tipper. Accordingly, we order that costs should be paid in that sum.

Approved: 02 February 2021

Mr Paul Ozin QC

Chairman of the Tribunal

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**BEFORE A THREE PERSON DISCIPLINARY TRIBUNAL
OF THE BAR TRIBUNAL AND ADJUDICATION SERVICE**

**Mr Craig Charles Tipper
East Anglian Chambers
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CHARGE SHEET - EXPLANATORY NOTE (09/11/2020)

CHARGE 1- Intentional sexual touching of A by:

- i. Placing his hand on A's back over her dress
 - ii. Moving his hand from outside to inside A's dress
 - iii. Moving his hand down the back of A's tights so his hand was inside her tights
 - iv. Putting his hand on the left side of A's buttocks
- a) On an occasion on the same date, other than a. above, and after A had removed his hand from inside her tights, intentionally sexually touched A by:
- i. Putting his hand up the back of A's dress so his hand was inside her dress
 - ii. Moving his hand down the back of A's tights so his hand was inside her tights
 - iii. Putting his hand on the left side of A's buttocks
- b) On an occasion on the same date, other than a. and b. above, and after A had removed his hand from inside her tights, intentionally sexually touched A by:
- i. Putting his hand up the back of A's dress so his hand was inside her dress
 - ii. Grabbing A's breast over her bra
- c) On an occasion on the same date, other than a. b. and c. above, and after A had removed his hand from her breast, intentionally sexually touched A by:
- iv. Putting his hand up the back of A's dress so his hand was inside her dress
 - v. Moving his hand down the back of A's tights so his hand was inside her tights

- vi. Putting his hand on the left side of A's buttocks

CHARGE 2

- a) Intentional sexual touching of C by:
 - i. Running his fingers up and down her back
 - ii. Stroking her bare leg
 - iii. Placing his hand on her bottom