



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2019/1532

Kevin Farquharson

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

Kevin Farquharson

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 23 September 2021, I sat as Chairman of a Disciplinary Tribunal on 21 October 2021 to hear and determine three charges of professional misconduct contrary to the Bar Standards Board Handbook against Kevin Farquharson, barrister of the Honourable Society of the Middle Temple.

Panel Members

2. The other members of the Tribunal were:

Kathryn King – Lay Member

Janine Green – Lay Member

Siobhan Heron - Barrister Member

Thomas Williams – Barrister Member

Charges

3. The following charges were found proven.

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Charge 1

Statement of Offence

Professional Misconduct contrary to Core Duty 5 and/or rC8 of the Bar Standards Board Handbook.

Particulars of Offence

Kevin Farquharson engaged in conduct which was likely to diminish the trust and confidence which the public places in him or in the profession contrary to Core Duty 5 and/or did something which could reasonably be seen by the public to undermine his integrity contrary to rC8 in that in the early hours of 28 September 2019 he sexually assaulted A and as a result on 18 March 2021 appeared before the Magistrates Court and was convicted of one offence of Sexual Assault against A, contrary to section 3 of the Sexual Offences Act 2003, and was sentenced to six months imprisonment, suspended for 18 months, with a Rehabilitation Activity Requirement, ordered to pay £1800 compensation, a victim surcharge of £128 and made subject to the Notification Requirements of ss.80 of the Sexual Offences Act 2003 for a period of seven years.

Charge 2

Statement of Offence

Professional Misconduct contrary to Core Duty 5 and/or rC8 of the Bar Standards Board Handbook.

Particulars of Offence

Kevin Farquharson engaged in conduct which was likely to diminish the trust and confidence which the public places in him or in the profession contrary to Core Duty 5 and/or behaved in a way which could reasonably be seen by the public to undermine his integrity contrary to rC8 in that having been informed on the 28 September 2019 about his conduct toward A in the early hours that day, sent A text message asking her to respond to a future text from him with a scripted message he had prepared which was not a truthful account of the events in the early hours of the 28 September 2019.

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Charge 3

Statement of Offence

Professional Misconduct contrary to Core Duty 5 and/or rC8 of the Bar Standards Board Handbook.

Particulars of Offence

Kevin Farquharson engaged in conduct which was likely to diminish the trust and confidence which the public places in him or in the profession contrary to Core Duty 5 and/or behaved in a way which could reasonably be seen by the public to undermine his integrity contrary to rC8 in that he, having been informed on the 28 September 2019 about his conduct toward A in the early hours that day, sent Z [another barrister] messages asking him to lie about events in the early hours of 28 September 2019.

Parties Present and Representation

4. The Respondent was present but was not represented. The Bar Standards Board (“BSB”) was represented by Mark Ruffell. The hearing took place via the Zoom platform.

Pleas

Mr Farquharson admitted Charge 1 and denied Charges 2 and 3.

Evidence

The BSB presented its evidence in a bundle of documents and called no witnesses. The Respondent gave evidence and made submissions. The decision of the Tribunal refers to the written evidence and is as follows.

1. The Respondent, Kevin Farquharson, was admitted as a student member of the Middle Temple on the 2 December 2009 and was called to the Bar on 13 October 2011. He is 45 years old. He has practised on the Western Circuit and was in chambers there.

2. On 24 February 2021 the Respondent pleaded guilty at Cardiff Magistrates Court to an offence contrary to section 3 of the Sexual Offences Act 2003 of touching intentionally a woman aged 16 or over on the 28 September 2019, which touching was sexual, when she did not consent, and he did not reasonably believe she was consenting. On 18 March 2021 he was sentenced to 6 months custody suspended for 18 months, with a Rehabilitation Activity Requirement up to 40 days, ordered to pay £1,800 in compensation and required to register

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with the police for 7 years in accordance with the Notification Requirements of section 80 of the Sexual Offences Act 2003.

3. The Memorandum of Conviction records that the reasons for custody were “prolonged and predatory behaviour with a professional work colleague after she made her thoughts abundantly clear, in drink with far-reaching emotional consequences for the victim. However, previous good character, extensive mitigation in support of his family situation and his emotional background, his having lost his career and having sought help himself since being charged, a realistic prospect of rehabilitation so therefore can suspend.”

4. Rule E169 provides that a copy of the memorandum of conviction shall be conclusive proof that the Respondent committed the offence, and that any court record of the findings of fact upon which the conviction was based (which may include any document prepared by the sentencing judge or a transcript of the relevant proceedings) shall be proof of those facts unless proved to be inaccurate.

5. Notwithstanding this Rule, Counsel for the BSB emphasised that we should reach our own decision in relation to Charge 1 and, as it were approach the evidence afresh, which is what we did.

6. By a response to the charges dated 23 September 2021 the Respondent has admitted Charge 1 namely professional misconduct contrary to Core Duty 5 and/or rC8 of the Code of Conduct of the Bar of England and Wales (9th Edition) Bar Standards Board Handbook (version 4.2) in that he engaged in conduct which was likely to diminish the trust and confidence which the public places in him or in the profession, and/or did something which could reasonably be seen by the public to undermine his integrity, contrary to rC8, in that he sexually assaulted A on the 28 September 2019. We repeat the direction already given in these proceedings that neither A’s identity or name nor any information which could identify her is to be reported and that any reference to her is to be anonymised or redacted in all publicly available documents. This includes identifying the name or the address of the chambers to which she belonged.

7. The explanatory note to the charge sheet states as follows: i. Touching A’s breast while in the photobooth, ii. Touching A’s buttocks while at the bar getting a drink, after A had told the Respondent to stop touching her, iii. Touching A’s buttocks while dancing, on more than one occasion, including after A moved away from him, iv. Touching A’s breasts while dancing on more than one occasion including after A moved away from him and while at the bar after

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leaving the dance floor v. pressing against A's back pinning A's arms to her side touching A's vaginal area over her clothing with both hands vi. Pinning A's arms to her side and trying to kiss A, before and after A made it clear she did not want to kiss. After A shouted that he was sexually assaulting her and should stop vii. Standing behind A at the bar and touching her vaginal area over her clothing with both hands.

8. The night club to which the Respondent and A had gone, and where they were eventually joined by her flatmate, had a photo booth in which those in the night club could photograph themselves, which is what A, and the Respondent did together.

9. Core Duty 5 states "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."

10. Rule C8 states "You must not do anything which could reasonably be seen by the public to undermine your honesty integrity and independence."

11. Charges 2 and 3 allege professional misconduct contrary to Core Duty 5 and/or rC8 of the Code of Conduct, in that (charge 2) the Respondent having been informed on 28 September 2019 about his conduct towards A in the early hours that day sent A a text message asking her to respond to a future text from him with a scripted message he had prepared which was not a truthful account of the events in the early hours of 28 September 2019 and (charge 3) that on the same day he sent Z (another barrister) messages asking him to lie about those same events. He had not been at the night club with the Respondent and A. Similarly, to A he is not to be named or identified.

12. In relation to Charges 2 and 3 the Respondent said in his response dated 23 September 2021 that they were disputed "on the basis of the medical evidence-----that due to my physical, psychological and clinical conditions I was incapable of clear or rational thought at the time the messages were sent. In addition to the medical evidence, although I accept what I did was wrong, I was not asking A to provide an untruthful account in the text, but rather a partial account, confirming truthfully what time I had left and that I had not left with her. I do however totally accept that at that very confusing shocking and difficult time I was trying to conceal all of what I did know from my partner, which came from the partial and what I found to be very confusing account A had provided at around 12pm on 28.09.19 on the telephone."

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13. The Respondent said he had no recollection of his behaviour in the night club due to the quantity of alcohol he had consumed. Witnesses confirmed he was heavily intoxicated by the time of his departure. The Respondent had been asked to come outside the club by a member of the security staff, and outside the club he was told that he was being removed because of his behaviour towards A. He denied that his behaviour had been inappropriate. The police were called because apparently the Respondent told the door staff, he wanted to fight with them, although he did not actually attempt to do so. Another statement at B38 says: Police attended the incident due to receiving a report from staff saying that Farquharson is under the influence of alcohol, had been rude and potentially has sexually assaulted his colleague by touching.

14. In the night club the Respondent touched A sexually repeatedly despite A making it clear to him that she did not want to be touched in that way. In her police statement she describes his behaviour as persistent and relentless. For example, when she went to the bar, he followed her. "I suddenly felt him pressed up against my back. He was standing behind me in very close proximity. I had my hands by my side, and he put his arms around my arms pinning them down to my sides. I resisted this, but he is stronger than me and was applying force pinning them down to my sides. I was completely stuck and could not get out. From here he started reaching his hands down my front and began touching me. He was putting both hands against my vagina, whilst I was continuing to wriggle free. He was touching me over my jeans. Luckily the bar man then came to take the drinks order, which made Kevin get off me." Eventually A was able to speak to staff, who had already noticed that she was uncomfortable with the behaviour of the Respondent. A's friend who had joined them in the club, saw that the Respondent was touching and "groping" A and aggressively grabbing her breasts despite A looking scared. He told her to run to the toilets to escape the Respondent's attention which she did, and it was there that a member of staff came to speak to her.

15. Later, on the Saturday the 28th at about mid-day the Respondent telephoned A to ask A what had happened the night before as he said he did not remember. A told him "exactly what he had done" and he said he was shocked and could not believe it and apologised repeatedly.

16. At 01.46 am on the next day, Sunday, the Respondent sent A a text saying "I'm in real trouble with X (his partner). Would you help by responding to my text tomorrow by simply stating: "we lost sight of you at about 1.45. I think you left after you had a run in with one of the bouncers. I hope you're feeling ok." X thinks I've been with someone, possibly you!!!! I'm

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such an idiot. I'd be grateful if you could help dig me out of this hole. Please don't respond to this text as X is monitoring my phone. So sorry! I hate myself a lot right now." This text was preceded by texts which were intended for his partner to read as part of his cover story for where he had been and what he had been doing. This message quite plainly implied that nothing of a sexual nature had gone on and that it had just been a meeting of friends.

17. In written submissions prepared by the Respondent and sent to the Tribunal on 19 October 2021 the Respondent said as follows in relation to Charge 2.

"My response to this charge is also at p2 of my bundle. I question this charge purely on the basis of the medical evidence filed, albeit I absolutely accept that my intention in sending the text message was to conceal the truth of what I knew from my ex-partner at that time, which was a shameful thing to do, and I should not have put Ms A in that position. The only factual clarification I would like to make with regards this charge is that Ms A talks about being upset by this text message because I had no consideration for the upset I had caused her. The fact is that at the time of sending this text, I had no idea Ms A was upset." He now says he was in a state of panic and hugely anxious about losing his family.

18. The medical evidence relied on is principally a report from [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

19. The text, the subject of Charge 2 appears to us to be entirely clear and rational in that, appreciating he was having a problem with his partner, having returned home around 4am, over where he had been and with whom, he was asking the victim of his sexual touching to lie about when and where she had last seen him in order to help him with his problem with his partner who suspected him of having been with someone for much of the night. Although the

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Respondent said he did not remember anything about his behaviour, by the time of this text he had been told about his behaviour inside the club by A. As A said in one of her statements “His message was completely fake, implying that we were just two friends on a night out and that nothing had happened. He knew exactly what happened.”

20. Z relates in a statement made 27 January 2020, that on 27 September 2019 he gave both A and the Respondent dinner in a restaurant after which they all went to a public house for a drink and around 10.30pm he went home. It may have been later, but he did not go to the nightclub. His next contact with the Respondent was about 48 hours later when he received one or two text messages asking him to say something like “you were with me in the nightclub when the bouncers came” should his partner X ask about what happened. “I suspected from the tone that he did not want X to know that he was with A by himself late at night.”

21. It is clear that each person A and Z was asked by the Respondent to lie about the evening in order to deceive X but not specifically in relation to whether the Respondent had touched A sexually. Z was being asked to tell an obvious lie, whereas A was being asked to obfuscate the circumstances of the night. We note that the Respondent appears to have been more concerned about X than his behaviour towards A. In one of his statements (B219) the Respondent says: “I accept that in order to try to reduce the tension at home I was minimising what A had told me on the phone.” He was in fact ignoring it.

22. On the 11th October 2019 A made a formal complaint to chambers.

23. On the 20th October 2019 the Respondent self-referred the complaint to the BSB.

24. In November 2019 a disciplinary hearing took place in the Respondent’s chambers. It was decided that he would not be expelled from chambers but that restrictions would be placed on the Respondent’s involvement in chambers activities and his use of the chambers’ facilities. We note that in its written decision the chambers panel observed as follows “We should add that we recognise that this incident placed A in an exceedingly difficult position both generally and specifically in relation to whether she should make any complaint either to chambers, the police or both. We regard A’s decision to report this matter to chambers as both courageous and entirely right and proper. We are very grateful to her for raising the matter in very difficult circumstances and for her considered involvement throughout.” In the event, although he continued to practise for some time, around 2 October 2020 the Respondent resigned and has not practised since then.

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25. In his statement made for the self-report, the Respondent said (B232) “I have absolutely no recollection of behaving in the ways alleged but accept that the evidence suggests I behaved terribly, causing a friend and colleague considerable distress and upset. Words cannot adequately describe the shame and upset I feel when thinking about the impact the complainant states my behaviours had, and to an extent, continue to have on her.”

26. In a victim impact statement made to the police A described the way she was affected by the incident and all that followed. [REDACTED]

[REDACTED] The investigation brought another level of stress. She took time off work for significant periods. Her self-confidence was damaged, and she felt like giving up the Bar. She required counselling to help her through this difficult period.

27. On 2 September 2020 the Respondent was notified by the police that he would be charged with sexual assault by touching.

28. On 26 April 2021 a three-person disciplinary tribunal at the Bar Tribunals and Adjudication Service decided that there should be an interim suspension of the Respondent’s right to practise until 17 September 2021 by which time it was thought the final hearing would have taken place, in effect for 5 months.

29. Guidance in the BSB Handbook Sanctions Guidance Version 5 states that on a conviction for a serious sexual offence where there is a custodial sentence the starting point is disbarment unless there are clear mitigating factors which indicate that such a sanction is not warranted. Otherwise, where there is a conviction for a sexual offence the starting point is a medium level suspension that being 3 to 6 months. For inappropriate sexual conduct in a professional context the starting point is a medium level fine to a short suspension. There are none of the listed aggravating factors in this case and there is the mitigating factor of cooperation with the investigation.

30. The Sanctions Guidance states at Part 1 Section 3 under Purpose and principles of sanctions that:3.1 The purpose of applying sanctions for professional misconduct are: a. To protect the public and consumers of legal services: b. To maintain high standards of behaviour and performance at the Bar: c. To promote public and professional confidence in the complaints and disciplinary process.

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31. We accept that the Respondent has no memory of his behaviour that night, save that he remembered seeing a police officer when he was outside the night club, and he remembered being in a taxi on his way home. He was able to deduce from the fact that he had his work bag and suit with him when he got home that he must have gone to his chambers after he left the night club, and therefore he would have unlocked the door of chambers and called for a taxi, but he has no memory of doing so.

32. The Respondent provided the Tribunal with a copy of *Howd v The Bar Standards Board*, Neutral Citation Number (2017) EWHC 210(Admin) and sought to bring himself within the same conclusion reached in that case, namely that on the balance of probabilities his behaviour was a consequence of his medical condition and that his excessive consumption of alcohol was likely to have been a response to his medical condition. As Mrs Justice Lang DBE held in the *Howd* case at paragraph 55: “The medical evidence established, on the balance of probabilities, that his inappropriate, and at times offensive, behaviour was a consequence of his medical condition. It also established that his excessive consumption of alcohol was very likely to have been a response to the onset of his medical condition, and it probably had the unfortunate consequence of exacerbating his disinhibition and loss of judgment. In those circumstances, Mr Howd’s behaviour plainly was not reprehensible, morally culpable or disgraceful, as it was caused by factors beyond his control.”

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Findings

33. By a majority of 4 to 1 we rejected that submission. While the majority accepted the uncontradicted evidence of the three experts as to the condition from which he had suffered for many years, his behaviour that night was the direct result of his excessive consumption of alcohol and over-familiarity with a much younger barrister.

34. In relation to Charge 2 the Respondent said in evidence “I accept it (the script) creates a false impression of what had preceded 1.45am”.

35. In relation to Charge 3 the Respondent said in evidence that what he did “was wrong and I accept that.”

36. With regard to charges 2 and 3 we find by a majority of 4 to 1 that there was a lack of integrity and an element of dishonesty in what he wanted to present to his partner, but it is his seeking to use A and Z, fellow-barristers, to misrepresent the facts to his partner which could reasonably be seen by the public to undermine his honesty and integrity and to diminish the trust and confidence which the public would place in him but more particularly the profession. He was aware of the police involvement and was trying to construct a false narrative.

37. In his closing submissions counsel for the BSB cast doubt on whether the assertion of being unable to remember how he had behaved and what he had done was true. This suggestion had not been put to the Respondent in cross-examination and we allowed the Respondent to give evidence again so that it might be put to him. He denied the suggestion, and, in any event, it was not supported by any expert evidence called by the BSB.

38. By a majority of 4 to 1 we found all three charges proved on the balance of probabilities.

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39. The Respondent, who represented himself at this hearing, in his latest statement has written about the impact on him of what he did and thereafter in the following terms.

“ Needless to say, the past 25 months have felt like an eternity and the most difficult and challenging time of my life. My actions have impacted me in so many ways:

a) I have felt sadness, remorse, confusion, shame and guilt every single day with regards the impact my behaviours had on Ms A, and the impact the consequences have had on my family.

b) The profession gave me an opportunity which for a long time I thought was totally unattainable ‘for someone like me’. The feelings of having let the profession down have also been quite unbearable.

c) I have lost the one thing I have always cherished more than anything, the unity of my family. I don’t believe I would have achieved anywhere near as much as I have without the love, belief and support of my now ex-partner, who I was with for 22 years, and who I still love very much. This loss is absolutely devastating. Having to share the details of what occurred with my partner, children and family has been very hard, and the impact on my entire family has been significant, in many ways.

d) As recorded in the clinical reports, [REDACTED]

Without the interventions I have been receiving, or the love I have for my boys and ex-partner, I honestly don’t think I would still be here.

e) The financial cost has been in the region of £200,000, taking into account the fact that I have not worked for nearly 13 months (7 months of self-suspension, 6 months interim suspension), and the Chambers sanction regarding private law family work before that time, which represented a penalty of approximately £20,000 - £30,000. I have earned very little money from other sources. I have done some labouring work for my ex-partners father, sold my car and had to sell other personal items. We have not had enough money coming in to meet our outgoings and have used all of our savings. We have reached the point where we have to sell our home, even if my ex-partner and I were not separating. We are currently using what is left of a mortgage we took out before moving to this house to make up the monthly deficit.

f) My self-respect has been massively affected. Self-loathing is something that I have battled with my entire life, but for obvious reasons it has been far worse over the past

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2 years.

g) I pleaded guilty to a deeply unpleasant charge and have been made the subject of notification requirements for 7 years. This will be a stain on my conscience and reputation forever. Had it been a caution, the notification requirements would have still been for 2 years, and 5 if it had been a community order.

h) I have largely withdrawn from the world, and have lost touch with a lot of people who although not close friends, they were friends, and people I liked and respected, and who liked and respected me. I have even struggled to maintain contact with family members. I've largely lost my sense of identity and have had to take medication for anxiety every day for the past two years.

i) Basically, I dropped a bomb on my entire life. "

40. In support of his mitigation the Respondent has provided many glowing references.

41. We had reports from a consultant [REDACTED]

42. There is a collegiate environment at the Bar. The pressure of work produces stresses, and the over-use of alcohol exacerbates the situation. Undoubtedly victims fear that making a complaint may backfire or damage their career prospects. Those who cross the red lines may do so thinking that any unwelcome behaviour is unlikely to result in any sanction or even investigation. Having said that, complaints have to be proper complaints and any investigation has to be fair and thorough. The investigation conducted by the Respondent's chambers was into a proper complaint and it was fair and thorough.

Sanction and Reasons

43. We are conscious of the need for deterrence when considering the sanction in cases of sexual offending. The misconduct occurred "out of hours." The visit to the night club was not in any way related to a chambers event or any business activity. However, it did occur within the context of a professional relationship and there was a significant difference in age and call.

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44. This was in our judgement a conviction for a serious sexual offence for which the starting point is disbarment or in exceptional circumstances a long suspension. The gravity of the offence was his continuing to touch A in public and despite her repeated requests for him to stop, and his taking advantage of their professional relationship. He had insight into how excess alcohol might affect him as demonstrated by his text (B213) sent on 23 September to Z saying, “Don’t mean to be a party pooper but when I’m out it never ends well, and I’d rather not be hungover on the Saturday so I can get some quality time with the family.” We would not describe him as a predator as did the District Judge when sentencing him, but the offence was prolonged and serious and with distressing consequences for A. There is no doubt that the Respondent immediately and thereafter has expressed genuine remorse. His excessive consumption of alcohol on that Friday night came on the heels of a very demanding week of work. His record hitherto has been entirely clean. He self-reported and was entirely co-operative with all three investigations, the police, his chambers and finally with the BSB [REDACTED]

[REDACTED]. The probation service has reported that he poses no particular risk to the public. He gave up drinking alcohol almost immediately after September 2019 and has stayed teetotal ever since. In his own words in mitigation, he stressed how sorry he was for letting A and his chambers down, that he was utterly ashamed of what went on that night and that he has tried to do everything to put it right. There were many references from those who worked with him stating how shocked they were by the allegations and that his behaviour was totally out of character.

45. Nevertheless, we are of the view that there are no exceptional reasons for imposing a period of suspension instead of disbarment. The sanction for each of the charges will be disbarment and therefore the BSB should not issue a practising certificate to the Respondent. There is no reason why he should not pay the costs of the BSB in full, namely £2,100, to be paid within 28 days.

46. The Treasurer of the Honourable Society of the Middle Temple is requested to take action on this report in accordance with rE239 of the Disciplinary Tribunal Regulations 2017.

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Dated: 22 October 2021

His Honour Witold Pawlak
Chairman of the Tribunal

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