



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Report of Finding and Sanction

Case reference: PC 2021/4178/D3

Michael Kwame Nkrumah

The Director-General of the Bar Standards Board

The Chair of the Bar Standards Board

The Treasurer of the Honourable Society of Gray's Inn

Disciplinary Tribunal

Michael Kwame Nkrumah

1. In accordance with an appointment made by the President of the Council of the Inns of Court contained in a Convening Order dated 22 November 2022, I sat as Chairman of a Disciplinary Tribunal on the 13 and 15 December 2022 to hear and determine one charge of professional misconduct contrary to the Code of Conduct of the Bar of England and Wales [9th Edition] against Michael Kwame Nkrumah, barrister of the Honourable Society of Gray's Inn (hereafter "the Respondent").

Panel Members

2. The other members of the Tribunal were:

Jonathan Monk [Lay Member]

Siobhan Heron [Barrister Member]

Charges

3. The following charge was found proven:

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Charge 1

Statement of Offence

Professional Misconduct contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales [9th Edition].

Particulars of Offence

Mr Michael Kwame Nkrumah 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 6 September 2020 he drove a motor vehicle in a public place after consuming so much alcohol that the proportion of it in his breath, namely 86 microgrammes of alcohol per 100 millilitres of breath, exceeded the prescribed limit of 35 microgrammes of alcohol per 100 millilitres of breath, for which he was convicted of an offence under section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988 at Leicester and Rutland Magistrates' Court on 7 January 2021.

Parties Present and Representation

4. The Respondent was present but was not represented. The Bar Standards Board ("BSB") was represented by Winston Jacob of Counsel. The Tribunal took place via Zoom.

Preliminary Matters

There was an application by the Respondent for the hearing to be held in private. The Panel retired to consider the matter, including whether the observers present [who were attending as part of their training requirements to become BTAS panel members], would be required to leave any part of the proceedings held in private.

The Tribunal was informed that a direction had been given that evidence and submissions relating to the Respondent's health might be heard in private. Under rE156 of the Disciplinary Tribunals Regulations (DTR) the Tribunal agreed with that direction. The hearing was otherwise to be heard in public. During those parts of the hearing held in private the observers would be, and were, asked to withdraw.

Pleas

The Respondent denied the Charge.

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Evidence

Mr Jacob presented the case on behalf of the BSB and referred the Tribunal to the details contained in the police report of the incident, his skeleton argument and the authorities provided. He also referred to the medical report relied on by the Respondent.

No witnesses were called by either the BSB or the Respondent.

The Respondent gave evidence, explaining why he would not under normal circumstances have committed a drink driving offence. He said that he did not deliberately commit the offence.

Under cross-examination the Respondent explained the circumstances that led to his arrest and the ensuing court proceedings. In submission he referred to the authorities relied upon in his response to the charges.

Findings and reasons

Following retirement to consider the matter, the Tribunal announced their decision that Core Duty 5 had been breached, that the breach was sufficiently serious to constitute professional misconduct, and that the charge was accordingly proved on a balance of probabilities.

The Respondent admitted that he was guilty of the criminal offence set out in the charge. His defence, which was based in part on a medical report, was that he had committed the offence because of a health condition from which he was suffering. He submitted that were it not for that health condition he would not have committed the offence, and that because of the condition he bore no responsibility for the offence, or alternatively he bore so little responsibility for it that he could not properly be found guilty of professional misconduct. He relied in particular on *BSB v Howd* [2017] EWHC 210 (Admin), in which on the facts it was found that the barrister's inappropriate behaviour was a consequence of a medical condition, that it was beyond his control, and that accordingly it was not reprehensible or morally culpable, and therefore unlikely to diminish the trust and confidence of the public in the profession or in the barrister as an individual.

The Tribunal accepted that the Respondent's medical condition had contributed to his excessive consumption of alcohol, and that the medical condition and the consumption of alcohol had contributed to his poor judgment in deciding to drive his car when he knew that he had consumed alcohol. The Tribunal found however that the Respondent was not so impaired, by his health condition or otherwise, that he was not capable of making a judgment. It was clear from the police report and his own evidence that when apprehended he was capable of engaging with the

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police, complying with their instructions, and understanding the implications of what had happened, including potential criminal liability. In this case therefore, unlike in *Howd* (which did not involve the commission of a criminal offence) the Respondent bore some responsibility for his misconduct, despite his medical condition.

The Tribunal heard submissions on sanction on 13 December but was unable to conclude the case because of industrial action on the railways and consequent transport difficulties. The case was therefore adjourned to be heard to a conclusion on 15 December 2022.

Sanction and Reasons

The Tribunal applied Version 6 of the Sanctions Guidance. It had regard to the purposes of sanctions for misconduct as set out at paragraph 2.2 and adopted the structured approach to the determination of sanction set out in the Guidance.

The relevant misconduct group was Group E, Criminal convictions. The Tribunal considered that there was an element of recklessness in the Respondent's conduct, but that no other general factors went to increase his culpability. The offence was a one-off, which counted in the Respondent's favour. Criminal conduct was the defining characteristic of Group E, and therefore no separate weight should be attached to it. As to harm, the Tribunal considered that the only relevant general factor was the risk of harm to others as a result of the offending, no actual harm having occurred. The Tribunal considered that drink driving, although a serious offence in itself, fell on these facts at a relatively low level within the range of offences under Group E. For the purposes of indicative sanction the Tribunal therefore considered that this case fell into the lower range, for which the Guidance contemplates a low to high level fine.

It was an aggravating factor that the Respondent had not shown insight into his own responsibility for the offence. The Tribunal did not consider however that any other general aggravating factor applied. It was not an aggravating factor in the current case that the Respondent had not reported the matter to the BSB. The Tribunal accepted the Respondent's evidence that he understood that the police would report him, which they did, and that he had at all times been open with all dealing with his criminal case that he was a barrister and that his offence may therefore have disciplinary consequences.

Several mitigating factors were found to apply. The Respondent had shown remorse in the form of an apology for his behaviour, which he had described as foolish. He had co-operated with the BSB's investigation. He had taken steps to reduce the risk of re-offending by attending a drink

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driving course and seeking professional help to address his health condition: these rehabilitative steps are identified as a specific mitigating factor in Group E. They, and the evidence that the Respondent had coped successfully with more recent difficulties in his personal life without resorting to alcohol, persuaded the Tribunal that the misconduct was unlikely to be repeated. While his health condition did not absolve the Respondent from responsibility for the offence, it was a factor in his offending. The BSB confirmed that the Respondent had no prior disciplinary history.

The relative absence of aggravating factors and the presence of a significant number of mitigating factors led the Tribunal to conclude that a low level fine of £2,000 was the appropriate and proportionate sanction.

Costs

The BSB applied for Costs in the sum of £2,160.00 inclusive of VAT. The Respondent resisted the application on the grounds that there had been delay in bringing the case to a Tribunal and that the BSB's decision to terminate the Determination by Consent process had been flawed. As a secondary submission he submitted that there had been a breach of rE245 in that the revised Schedule of Costs, which included a claim for the costs of Counsel's attendance on 15 December, had been served outside the prescribed time limit. The Tribunal rejected the Respondent's primary submission but upheld his secondary submission, both on the ground of breach rE245 and on the basis that but for the industrial action and its consequences, the hearing may well have concluded within one day. It therefore ordered the Respondent to pay the BSB'S costs in the sum of £1,560 inclusive of VAT, that sum to be paid within 28 days of the date of the order.

Approved: 20 December 2022

Jonathan Holl-Allen KC
Chairman of the Tribunal

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