

Determination by Consent Decision

Name of regulated person and call date

Simon Howard McCann

Gray's Inn 28 November 1996

Case Reference

2023/0390 /DC

Charges

Charge 1

Statement of Offence

Professional Misconduct contrary to Core Duty 5 of the Code of Conduct (Part 2 of the Bar Standards Board Handbook Version 4.6)

Particulars of Offence

Simon McCann, a barrister and BSB regulated individual, behaved in a way which is likely to diminish the trust and confidence which the public would place in him or in the profession, in that, on 13 October 2022 he drove a motor vehicle in a public place after consuming so much alcohol that the proportion of it in his breath, namely 80 micrograms of alcohol in 100 millilitres of breath, exceeded the prescribed limit, 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 Manchester Magistrates Court on 25 January 2023.

Charge 2

Statement of Offence

Professional Misconduct contrary to rC8 (integrity only) of the Code of Conduct (Part 2 of the Bar Standards Board Handbook Version 4.6)

Particulars of Offence

Simon McCann, a barrister and BSB regulated individual, behaved in a way which lacked integrity, in that, on 13 October 2022 he drove a motor vehicle in a public place after consuming so much alcohol that the proportion of it in his breath, namely 80 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, 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 Manchester Magistrates Court on 25 January 2023.

Statement of Facts

1. On 13 October 2022, Mr McCann was charged by Manchester Police with driving after consuming so much alcohol that the proportion of it in his breath, namely 80 micrograms of alcohol in 100 millilitres of breath, exceeded the prescribed limit, contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

2. At Manchester Magistrates Court on 25 January 2023 Mr McCann plead guilty to the above charges. In relation to the charge of driving with excess alcohol, Mr McCann was sentenced to a fine of £1,846, plus costs of £85. Mr McCann was also disqualified from driving for 20 months (disqualification to be reduced by 20 weeks if by 8 March 2024 a driving course approved by the Secretary of State is completed).
3. Mr McCann reported the conduct to the BSB on 4 January 2023.
4. In his response to the BSB's allegations, Mr McCann stated that the conduct happened on a day that he had driven 150 miles back to Manchester from a Court in West London, under pressure to attend a Chambers social event. Mr McCann explained he was tired, had not eaten, and simply did not keep track of his wine glass being topped up. Mr McCann said he did not feel drunk at all when he came to leave the event, otherwise he would not have driven home. However, Mr McCann accepts, in hindsight, that he should have left his vehicle at Chambers.
5. Mr McCann stated that he was apologetic and polite when the Police stopped him near his home and took him to the nearby station.
6. Mr McCann said he has contacted an addiction counselling/therapy organisation and intends to take the recommended course that they offer when he reaches the top of their waitlist.

Previous Disciplinary Findings

7. Mr McCann has no previous findings of professional misconduct.

Plea and Mitigation

8. Mr McCann admits the charges.
9. Mr McCann relies on paragraphs 4-6 above as mitigation.

Decision of the IDP

Charges found proved: Charges 1 and 2

Reasons for the decision on why charges are proved

The Panel considered Charges 1 and 2 and found them proved on the basis of the Memorandum of Conviction, dated 7 March 2023, and Mr McCann's admissions.

Sanction

In deciding on the appropriate sanction to impose, the Panel referred to the Bar Tribunal and Adjudications Service's Sanctions Guidance, version 6 (the Guidance).

The Panel decided that the proved conduct breaches fell within 'Misconduct Group E – Criminal Convictions' of the Guidance.

In deciding on the appropriate sanction, the Panel took in to account relevant aggravating and mitigating factors.

In terms of aggravating factors, the Panel noted that the proportion of alcohol in Mr McCann's breath was over twice the legal limit (80µg in 100ml of breath). The Panel did not identify any further aggravating features.

In relation to mitigating factors, the Panel noted that Mr McCann had:

- no previous regulatory findings;
- co-operated with the BSB and criminal investigations;
- self-reported to the BSB;
- entered early guilty pleas to the criminal offences; and
- expressed remorse.

The Panel noted that Mr McCann had submitted material in respect of her/his personal circumstances, but the Panel was unable to assess Mr McCann's means based on the information available to it.

Considering all of the above, the Panel concluded that a fine of £2,000 was the proportionate and necessary penalty in order to protect the public and the wider public interest.