

Determination by Consent Report

Name of regulated person and call date

James Martin Howard called 26 July 2018 to Middle Temple

Case Reference

2023/3018/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

James Howard, a barrister and BSB regulated individual, behaved in a way which is likely to diminish the trust and confidence which the public places in him or in the profession, in that, on 19 September 2023 he drove a motor vehicle in a public place after consuming so much alcohol that the proportion of it in his breath, namely 77 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 Teesside Magistrates' Court on 20 October 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

James Howard, a barrister and BSB regulated individual, behaved in a way which lacked integrity, in that, on 19 September 2023 he drove a motor vehicle in a public place after consuming so much alcohol that the proportion of it in his breath, namely 77 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 Teesside Magistrates' Court on 20 October 2023.

Statement of Facts

1. On 19 September 2023, Mr Howard was charged by Northumbria Police for driving a motor vehicle after consuming so much alcohol that the proportion of it in his breath, namely 77 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 Teesside Magistrates Court on 20 October 2023 Mr Howard pleaded guilty to the above charges. Mr Howard was sentenced to pay a fine of £1300, plus a surcharge of £520, and costs of £85. Mr Howard was also disqualified from driving for 17 months (to be reduced by 17 weeks upon completion of a Secretary of State approved driving course by 20 September 2024).
3. Mr Howard reported the conduct to the BSB on 22 September 2023.
4. In his response to the BSB's allegations, Mr Howard admitted in full that he had breached Duty 5 and Rule C8 of the BSB Handbook by driving a motor vehicle whilst over the prescribed limit of alcohol in breath.
5. Mr Howard stated in his response that he is deeply ashamed of his actions relating to the charges, and that he will set out mitigating circumstances if it will assist but does not seek to excuse his behaviour.

Previous Disciplinary Findings

6. Mr Howard has not had any previous findings of professional misconduct.

Plea and Mitigation

7. Mr Howard admits the charges.
8. By way of mitigation, Mr Howard states that he is extremely ashamed of his actions and sincerely apologises for them.
9. Mr Howard states he has never previously driven under the influence.
10. There was no one else in the vehicle when Mr Howard drove it. Further, no crash occurred, no one was injured, and there was no damage to property.
11. Mr Howard states he admitted his behaviour at the Magistrates Court at the first opportunity and made prompt report to the BSB and his Chambers.
12. Mr Howard has now completed the rehabilitation course allowing him to have his licence back sooner. The certificate of completion is included in the documents bundle.

Decision of the IDP

Charges found proved: Charges 1 and 2

Charges found not proved:

Reasons for the decision on why charges are proved

The Panel considered all the evidence in the BSB's bundle, including:

- Mr Howard's self-report to the BSB on 22 September 2023;
- the certificate of conviction dated 26 September 2023;
- Mr Howard's responses and admission to the charges;
- the certificate of completion relating to a course for drink-drive offenders dated 20 January 2024.

Also, in reaching its decision, the Panel considered Regulation rE169 of the Disciplinary Tribunal Regulations, which states:

rE169

"In proceedings before a Disciplinary Tribunal which involve the decision of a court or tribunal in previous proceedings to which the respondent was party, or where a wasted costs order was made against the respondent, the following Regulations shall apply:

- 1. a copy of the certificate or memorandum of conviction relating to the offence shall be conclusive proof that the respondent committed the offence;*
- 2. 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."*

The Panel noted that Mr Howard had pleaded guilty to the criminal offence, and it was in possession of the memorandum of conviction confirming the conviction and sentence imposed. Mr Howard had been fined the sum of £1,300.00, ordered to pay a victim surcharge of £520.00, and to pay costs to the Crown Prosecution Service of £85.00. Mr Howard was also disqualified from holding or obtaining a driving licence for 17 months (reduced by 17 weeks if he completed a drink driving course by 20 September 2024).

The Panel acknowledged Mr Howard's email response of 10 January 2024 and his agreement to this matter being dealt with under the DBC process.

Charge 1

In relation to Charge 1, the Panel observed that Mr Howard had admitted the facts set out in the charge as well as the memorandum of conviction. It considered that criminal convictions for offences of this nature, which endanger public safety, were something which could reasonably be seen to diminish the trust and confidence which the public places in the profession and are serious enough to amount to professional misconduct. In relation to this allegation, the Panel was satisfied that there was sufficient evidence, on the balance of probabilities, of a breach of CD5.

Charge 2

The Panel adopted the same reasons for determining that the facts of Charge 2 were proved and noted that Mr Howard had admitted the breach. In considering whether the conduct amounted to a breach of rC8, the Panel also took into account the approach taken by the courts in *Wingate and another v SRA*; *Malins v SRA [2018]*, and *Beckwith v SRA [2020]* to the meaning of integrity. In *Wingate*, the Court stated that: *"the term 'integrity' is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members..."*. In *Beckwith*, the court considered that the conduct must touch realistically upon the individual's practice of the profession and in a way that is demonstrably relevant.

The Panel took the view that lack of integrity was not confined to matters that take place in a professional setting if the conduct is sufficiently serious. The Panel noted that Mr Howard had made the decision to drive with more than twice the permitted limit of alcohol in his breath. The Panel decided that doing so carried a risk of causing serious harm to other people and that his actions therefore could reasonably be seen by the public to undermine his integrity.

Mr Howard had provided no details about the circumstances of the offence which might alter the Panel's initial view that the conduct could be seen to undermine his integrity. Mr Howard's subsequent conduct did not, of itself, diminish the lack of integrity involved in the commission of the offence. Accordingly, the Panel was satisfied that there was sufficient evidence, on the balance of probabilities, of a breach of rC8.

Sanction

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

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

Culpability and Harm

The Panel considered the relevant culpability and harm factors applicable in this case. The Panel determined that there was moderate Culpability as a result of Mr Howard's intentional and reckless conduct, the fact of his criminal conviction and the unknown motivation, if any, for his actions which had the potential to harm others and damage property. The Panel determined that there was low Harm, noting that there was no actual harm to persons or property caused but that Mr Howard's conduct, if known, could harm the trust and confidence the public places in the profession. Accordingly, the Panel concluded the allegations fell into the top of the lower range of seriousness, with an indicative sanction of a low to high level fine.

Aggravating and mitigating factors

In deciding on the appropriate level of fine, the Panel took into account relevant aggravating and mitigating factors. In terms of aggravating factors, the Panel noted that the proportion of alcohol in Mr Howard's breath was 77 micrograms of alcohol in 100 millilitres, over twice the legal limit of 35 micrograms of alcohol in 100 millilitres. In relation to mitigating factors, the Panel noted that Mr Howard had:

- co-operated with the police and BSB;

- entered a guilty plea at the earliest opportunity;
- promptly self-reported to the BSB on 22 September 2023 which was prior to his conviction;
- promptly paid the Court fine;
- completed the drink drive rehabilitation course;
- taken responsibility for the offence and shown remorse; also that
- the incident was a “one off”; and
- although every drink drive case carries a risk of harm to the public, in this case the absence of actual harm caused to persons or property.
- Mr Howard does not have any previous misconduct or disciplinary findings.

The Panel noted the financial information provided by Mr Howard to the BSB on 5 March 2024 including his current net income.

Considering all of the above, the Panel concluded that a fine (in a band of up to £5,000) would be appropriate and that, in the circumstances a fine of £2,000.00 (two thousand pounds) would be proportionate. The Panel accordingly determined the sanction for this incident of professional misconduct to be a fine in the sum of £2,000.00 (two thousand pounds).