

## **Determination by Consent Decision**

### **Name of regulated person and call date**

Roya Luna, Unregistered  
Called to the Bar 16 March 2023

### **Case Reference**

2024/0652/DC

### **Charges**

#### **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**

Ms Roya Luna behaved in a way which is likely to diminish the trust and confidence which the public places in her or the profession, contrary to Core Duty 5, in that on 12 December 2023 she drove a motor vehicle in a public place after consuming so much alcohol that the proportion of it in her breath, namely 62 microgrammes of alcohol per 100 millilitres of breath, exceeded the prescribed limit of 35 microgrammes of alcohol per 100 millilitres of breath for which she was convicted contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988 at Southampton Magistrates Court on 29 February 2024. Ms Luna was ordered to pay a fine of £120.00, ordered to pay a victim surcharge of £48.00 and ordered to pay Crown Prosecution Service costs in the sum of £40.00. Ms Luna was also disqualified from holding or obtaining a driving licence for 17 months unless she satisfactorily completes a course approved by the Secretary of State by 31/01/2025 in which case her disqualification will be reduced by 17 weeks.

#### **Statement of Facts**

1. On the night of 12 December 2023, Ms Luna had been driving a motor vehicle, namely a Silver Peugeot 407 (REG RY55RYX), down a country lane road in St Ives in the County of Cornwall, when the tyre located on the passenger rear side of her vehicle suddenly burst.
2. Ms Luna suddenly lost control of her car due to impacted traction and hit the front bumper section of my car against a hedge. She reported the incident to the AA.

3. Even though the car was damaged, Ms Luna was of the view that it was drivable for a short distance, so she made the decision to drive from the site of collision to her home because her daughter was in the car with her. According to Ms Luna, her intention was to get her daughter home and in bed before turning her attention to dealing with the issue of repair or recovery.
4. As Ms Luna was driving home, she was stopped by the police. They had received an anonymous report from a member of the public stating that someone was driving a damaged car and they had wanted to check that everything is okay.
5. Ms Luna explained what had happened. The Police Officers requested that she provide a breath sample, she complied, and her reading was 62 micrograms per 100 millilitres of breath on the roadside – this exceeded the prescribed limit. The police officers informed her that she would need to go to the station to provide additional breath samples
6. Upon arriving at Camborne police station, she was asked to provide another 2 breath samples. Both readings remained at 62 micrograms per 100 millilitres of breath. It was then that Ms Luna was informed that she would be charged and detained due to the readings.
7. She was charged with the offence of driving a motor vehicle whilst under the influence of alcohol above the legal limit of 35 micrograms per 100 millilitres of breath contrary to S5(1)(a) of the Road Traffic Act 1988 & Schedule 2 of the Road Traffic Offenders Act 1988.
8. On 29 February 2024, Ms Luna pleaded guilty before Southampton Magistrates Court and was sentenced as follows:
  - a. Ordered to pay a fine of £120.00
  - b. Ordered to pay a surcharge to fund victim services in the sum of £48.00
  - c. Ordered to pay costs to the Crown Prosecution Service in the sum of £40.00
  - d. Disqualified from holding or obtaining a driving license for 17 months, unless he satisfactorily completes a course approved by the state by 31 January 2025 in which case her disqualification will be reduced by 17 weeks.
9. On 19 December 2023 Ms Luna informed the BSB of her arrest. On 14 March 2024, following her sentencing hearing Ms Luna updated the BSB with details of her conviction.
10. The Bar Standards Board concluded its investigation and determined that the matter was suitable for referral to the Determination by Consent (“DBC”) procedure. The Bar Standards Board wrote to Ms Luna on 08 July 2024 seeking her agreement to DBC, which she provided by email on 20 July 2024.

## **Previous Disciplinary Findings**

11. Ms Luna has not had any previous findings of professional misconduct.

## **Plea and Mitigation**

12. Ms Luna admits the charge.

13. Ms Luna formally apologises for her actions.

14. Ms Luna says the conduct was due to an error in judgement and that she is truly ashamed of her decisions relating to the conduct.

15. Ms Luna cooperated on the night in question, with the courts process, and with the regulator's investigation.

16. Ms Luna assures the regulator that the conduct will never occur again.

## **Decision of the IDP**

Charges found proved: Charge 1

Charges found not proved:

## **Reasons for the decision on why charges are proved/ not proved**

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

- The Police charge sheet dated 12 December 2023
- Ms Luna's self-report to the BSB on 19 December 2023
- The Certificate of Conviction dated 7 May 2024
- Ms Luna's responses and admission to the Charge dated 30 May 2024 and 22 August 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 Ms Luna had pleaded guilty to the criminal offence on 29 February 2024, and it was in possession of the memorandum of conviction confirming the conviction and sentence imposed. Ms Luna had been fined the sum of £120.00, ordered to pay a victim surcharge of £48.00, and to pay costs to the Crown Prosecution Service in the sum of £40.00. Ms Luna was also disqualified from holding or obtaining a driving licence for 17 months (reduced by 17 weeks if she completed a drink driving course by 31 January 2025).

The Panel noted Ms Luna's email response of 20 July 2024 and her agreement to this matter being dealt with under the DBC process.

### ***Charge 1***

In relation to Charge 1, the Panel was satisfied that the certificate of conviction, together with Ms Luna's admission, was sufficient to prove the facts of the charge. It considered that criminal convictions for offences of this nature, which endanger public safety, could reasonably be seen to diminish the trust and confidence which the public places in the profession. It was of the view that the public would expect barristers, who are crucial participants in the administration of justice, to comply with the law. The offence had the potential to cause significant harm to members of the public, including to the child who was a passenger in the car. In the Panel's view, this made the conduct serious enough to amount to professional misconduct. Accordingly, the Panel was satisfied that there was sufficient evidence, on the balance of probabilities, of a breach of CD5.

### **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 factors***

The Panel were mindful that Ms Luna's actions had the potential to harm others, damage property, and involved a decision to drive a damaged vehicle while intoxicated with a child in the car. However, the Panel acknowledged that this was a single event and decided that the offence was at the lower end of the scale in terms of criminal convictions. It therefore considered that the culpability was also at the lower end of the scale. The Panel determined that there was low harm, noting that there was no actual harm to persons or property caused, but that Ms Luna's conduct, if known, could harm the trust and confidence the public places in the profession.

Accordingly, the Panel concluded that the charge fell into the low range of seriousness with an indicative sanction of a low to high level fine.

### ***Aggravating and mitigating factors***

In deciding the appropriate level of fine, the Panel took into account relevant aggravating and mitigating factors. The Panel considered that there were no specific

aggravating factors beyond the fact of the offence. The Panel considered a number of mitigating factors were present, namely:

- co-operation with the Police and BSB, and Ms Luna's clear contrition
- guilty plea at the earliest opportunity
- a prompt self-report to the BSB on 19 December 2023 which was prior to Ms Luna being convicted
- No attempt by Ms Luna to minimise her behaviour
- prompt payment of a Court fine
- 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
- the incident was a "one off"
- Ms Luna had taken responsibility for the offence and shown remorse
- Ms Luna does not have any previous misconduct or disciplinary findings/ is of previous good character.

### ***Outcome***

The Panel noted the financial information provided by Ms Luna to the BSB on 2 September 2024, setting out Ms Luna's current net income. The Panel determined that a reprimand alone was not sufficient to reflect the seriousness of the offence and that imposing a fine reflected the seriousness of Ms Luna's conduct and, whilst not intending to be punitive, such would send a clear message to the profession that this type of conduct is not acceptable. The Panel noted that the Guidance suggested a fine of up to £5000.

Having regard to the mitigating factors, the Panel considered that any starting point should be at the lower end of the remit of a "low level fine". Taking into account Ms Luna's financial resources, a fine of £250.00 (two hundred and fifty pounds) was an appropriate and proportionate amount to address the public interest in this case and mark that the conduct as unacceptable.