

## **Determination by Consent Decision – 14 November 2023**

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

James Robert Bieda, Unregistered

Called to the Bar March 2017.

### **Case Reference**

2023/0719/

### **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**

Mr James Bieda, 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 6 February 2023 he drove a motor vehicle in a public place after consuming so much alcohol that the proportion of it in his breath, namely 53 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, for which he entered a guilty plea to an offence under section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988 at Bromley Magistrates Court on 22<sup>nd</sup> February 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**

Mr James Bieda, 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 6 February 2023 he drove a motor vehicle in a public place after consuming so much alcohol that the proportion of it in his breath, namely 53 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, for which he entered a guilty plea to an offence under section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988 at Bromley Magistrates Court on 22<sup>nd</sup> February 2023.

## Statement of Facts

1. On 5 February 2023, Mr Bieda had a telephone conversation with a family member who had recently been severely unwell and was still recovering from illness. The family member usually resides overseas (where Mr Bieda had recently been caring for them) but the family member had returned to London for a short time. The telephone conversation related to the family member leaving London and returning overseas. Mr Bieda informs the BSB that after the call he had then walked to a nearby shop and purchased some beer. Mr Bieda states that he had no intention of leaving the house again that night.
2. As the evening progressed Mr Bieda states that arthritis which he suffers from began to flare up and began to cause substantial pain. Mr Bieda was concerned that a full arthritic attack was developing but had not eaten anything that evening and had not purchased food from the shop when he had gone there earlier that evening. The medication prescribed for this condition must be taken with food to avoid side effects including stomach ulcers. Mr Bieda therefore left his house to go to the local shop, but could see that it was closed as it was past midnight. The temperature was close to freezing and Mr Bieda therefore made the decision to drive to the local service station, which was within  $\frac{1}{2}$  a mile of his house to purchase food as it was the only open place at that time.
3. Upon arrival at the service station, Mr Bieda was met by police officers who had earlier spotted his car driving at what they perceived to be excess speed on the wrong side of the road. No suggestion of speeding or driving on the wrong side of the road formed any part of the police investigation and Mr Bieda sets out that there may have been a legitimate reason to be on the opposite side of that particular stretch of road due to road works and temporary traffic lights.
4. Upon leaving the car, the officer noted that Mr Bieda appeared to be slow and dazed and also stumbled slightly. The officer requested that Mr Bieda demonstrate that he could walk in a straight line. He was unable to do so. Mr Bieda informs the BSB that given he was experiencing severe joint pain due to an arthritic attack, such a task was not particularly easy to perform.
5. Mr Bieda was then breathalysed and returned a positive sample. Mr Bieda was then arrested at 02:20am on 6 February 2023 for providing a positive sample of breath and driving whilst over the prescribed limit of alcohol. Mr Bieda was then taken to the custody suite at Bexleyheath where he completed the evidential drink drive procedure.
6. At Bromley Magistrates' Court on 22 February 2023 Mr Bieda plead guilty to a single offence under section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. He was fined £120, disqualified from holding or obtaining a driving licence for 12 months (reduced by 3 months following the completion of an approved course completed by 22 September 2023). He was also ordered to pay a victim surcharge of £48 plus £85 costs. Mr Bieda completed the approved course on 24 May 2023 and his disqualification was therefore reduced from 12 months to 9 months, ending on 22 November 2023.
7. Mr Bieda, reported to the BSB following his conviction on 9 March 2023.

8. Mr Bieda deeply regrets his decision to drive and apologises unreservedly. He accepts and fully acknowledges that in so acting he fell short of the standards expected by the profession and admits that his conviction amounts to a breach of Core Duty 5. However, he denies that the same amounts to Professional Misconduct in breach of rC8 (integrity). Mr Bieda cites the BSB decisions of B1 and B2, in addition to Court of Appeal authorities. Mr Bieda notes that in *B1* and *B2* the BSB Panels dismissed charges of Professional Misconduct in breach of rC8 (integrity). In *B1* the Panel concluded that being convicted of driving with excess alcohol does not amount to acting with a want of integrity (or conduct which a reasonable person could conclude amounts to acting with want of integrity). This decision cited the test in *Wingate v SRA*.
9. Mr Bieda sets out general mitigation in his response to the allegation alongside the personal mitigation outlined above and in the confidential annexe.

## **Decision of the IDP**

Charges found proved:

### **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**

Mr James Bieda, 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 6 February 2023 he drove a motor vehicle in a public place after consuming so much alcohol that the proportion of it in his breath, namely 53 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, for which he entered a guilty plea to an offence under section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988 at Bromley Magistrates Court on 22<sup>nd</sup> February 2023.

Charges found not proved:

### **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**

Mr James Bieda, 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 6 February 2023 he drove a motor vehicle in a public place after consuming so much alcohol that the proportion of it in his breath, namely 53 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, for

which he entered a guilty plea to an offence under section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988 at Bromley Magistrates Court on 22<sup>nd</sup> February 2023.

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

### Charge 1

In relation to this allegation, the Panel was satisfied that there was sufficient evidence, on the balance of probabilities, of a breach of CD5. The Panel had regard to B's admission of facts set out in the charges as well as the memorandum of conviction from the Bromley Magistrates' Court.

The Panel considered that criminal convictions for offences of this nature, being offences, 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 accordingly found sufficient evidence of a breach of CD5.

The Panel further considered that, a conviction for this offence, which has the potential to put members of the public at risk of significant harm, is serious enough to amount to professional misconduct.

### Allegation 2

The Panel dismissed Charge 2 on the basis of insufficient evidence.

In his response to the allegation, B cites case law in support of his submission that rC8 is not engaged, namely *Wingate and Malins v Solicitors Regulation Authority* [2018] and *Beckwith v Solicitors Regulation Authority* [2020].

The Panel noted that B referred to previous decisions made under the DBC process which did not find rC8 made out in relation to convictions for drink driving. In particular the following rationale from a previous decision:

*"The Panel dismissed Charge 2 on the basis of insufficient evidence of a breach of the Handbook. The Panel considered the test set out in in Wingate and considered that the concept of integrity there espoused related principally to the conduct of an individual's professional practice, and that, whilst being convicted of driving with excess alcohol undoubtedly undermines the trust and confidence that the public places in B and/or the profession, it does not amount to acting with a want of integrity (or conduct which a reasonable person could conclude amounts to acting with want of integrity)."*

While previous decisions of the IDP do not amount to binding precedent, the Panel considered that the same reasoning equally applied in the facts of this case, and accordingly accepted B's submission for the reasons given by him.

## 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 breach fell within 'Misconduct Group E – Criminal Convictions' of the Guidance.

It could not see that any of the factors indicating increased culpability or harm were engaged. Accordingly, it concluded the allegations fell into the lower range of seriousness, with an indicative sanction of a low to high level fine.

In deciding on the appropriate level of fine, the Panel took in to account relevant mitigating factors, noting that no particular aggravating factors could be identified.

The Panel noted that the proportion of alcohol in B's breath was 53µ g/l, the legal limit being 35µg/l.

In relation to mitigating factors, the Panel considered a number were present:

- co-operation with the police and BSB;
- a guilty plea at the earliest opportunity;
- a prompt self-report to the BSB;
- completion of the drink drive rehabilitation course;
- 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 fact that this appears to have been an isolated incident and
- the fact that B had taken full responsibility for the offence.

The Panel had been provided with information about B's means and noted B's current income as well as the ongoing financial obligations. Considering all of the above, the Panel concluded that a low level fine (in a band of up to £5,000) would be appropriate and that, in the circumstances a fine of £1,000 (one 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 £1,000.00 (one thousand pounds).