

## **Determination by Consent Decision**

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

Mr David Abberton, called to the Bar in November 1994.

### **Case Reference**

2021/6267/DC

### **Charge 1**

#### **Statement of Offence**

Professional Misconduct contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9<sup>th</sup> edition).

#### **Particulars of Offence**

Mr David Abberton behaved in a way which was likely to diminish the trust and confidence which the public places in him or in the profession, contrary to Core Duty 5, in that on 09 May 2021 he drove a motor vehicle in a public place after consuming so much alcohol that the proportion of it on his breath, namely 80 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 contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act at Chester Magistrates Court on 27 May 2021. Mr Abberton was ordered to pay a fine of £1,100.00, ordered to pay a victim surcharge of £111.00 and ordered to pay the Crown Prosecution Service costs in the sum of £85.00. Mr Abberton was also disqualified from holding or obtaining a driving licence for 3 years unless he satisfactorily completes a course approved by the state by 19/2/2022 in which case his disqualification will be reduced by 39 weeks.

#### **Statement of Facts**

- 1) On 9 May 2021, the police were made aware of a possible drink driver.
- 2) A staff member at Tesco has seen the suspect enter their store to buy some alcohol and they were then seen drinking from what looked like a bottle of whiskey in a vehicle. Local Authority CCTV followed the vehicle on camera, it appeared as though a male was driving the car.
- 3) The police attended the residential to which the car was registered and requested a sample of breath for analysis. At 13.55 Mr Abberton provided a roadside breath sample of 78 microgrammes of alcohol per 100 millilitres of breath and was arrested on suspicion of driving a motor vehicle whilst over the prescribed limit for alcohol. He was cautioned.
- 4) Two further samples of 81 and 80 microgrammes of alcohol per 100 millilitres of breath were provided.

- 5) On 27 May 2021, Mr Abberton pleaded guilty before Chester Magistrates Court to a charge under s5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988 and was sentenced as follows:
  - a. Ordered to pay a fine of £1,100.00
  - b. Ordered to pay a surcharge to fund victim services in the sum of £111.00
  - c. Ordered to pay costs to the Crown Prosecution Service in the sum of £85.00
  - d. Disqualified from holding or obtaining a driving licence for 3 years, unless he satisfactorily completes a course approved by the state by 19/2/2022 in which case his disqualification will be reduced by 39 weeks.
- 6) On 07 June 2021 Mr Abberton informed the Bar Standards Board (BSB) of his conviction.
- 7) During the course of the BSB's investigation, Mr Abberton responded by confirming that he had been convicted on 27 May 2021 as particularised in allegation 1 and apologised for his actions. Mr Abberton also disclosed details of adverse life events that had impacted him at the time of the offence. Mr Abberton confirmed that he had completed a 28-day residential rehabilitation programme that was designed to provide him with a holistic evaluation of his alcohol issues and the causes underlying them. As a result of the programme he has remained entirely abstinent from alcohol and since leaving he has attended regular AA meetings.
- 8) The BSB 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 Mr Abberton on 27 January 2022 seeking his agreement to the DBC, which he provided by email on 13 February 2022.

### **Previous disciplinary findings**

None recorded.

### **Decision of the IDP**

Charge 1 was found proved by virtue of the Certificate of Conviction and Mr Abberton's admission. The Panel was satisfied that the conduct for which Mr Abberton received a criminal conviction was in breach of Core Duty 5.

### **Sanction**

In considering a sanction, the Panel had regard to the BSB's Enforcement Strategy, the Bar Tribunals & Adjudication Service (BTAS) Sanctions Guidance (the Guidance) (January 2022), as well as its powers in relation to the DBC procedure, as set out in rE41. It considered that the conduct which is the subject matter of Charge 1 fell into misconduct group E (Criminal Convictions).

The Panel had regard to the culpability and harm factors in this case, noting that the offence for drink driving is of itself a serious matter, which could cause harm to others. In this case Mr Abberton was twice over the legal limit and he was disqualified from holding or obtaining a driving licence for 3 years. However, the Panel bore in mind the following:

- the distance driven was relatively short;
- no other people were directly affected by the offence;
- Mr Abberton co-operated with the Police on arrest; and
- Mr Abberton pleaded guilty to the offence at the first opportunity.

Taking these factors into account, the Panel considered that the misconduct fell within the lower range of seriousness. It recognised that the indicative sanction for this range is a low to high level fine.

In determining the particular level of the fine, the Panel had regard to Mr Abberton's compelling mitigating circumstances, noting specifically the residential rehabilitation course he has undertaken subsequent to his conviction in May 2021 at considerable personal expense. Taking these factors into account, the Panel was satisfied that this matter falls towards the lower end of the fine range and, as such, it determined that a fine of £2,000 is appropriate, payable within 28 days of the acceptance of the decision.

In addition to the fine, the Panel further decided to issue Mr Abberton with a reprimand to reflect its view that the proven misconduct was unacceptable and should not happen again.

*[Text marked in red = not for publication]*