

Determination by Consent Report

Alan Maclean QC

(Gray's Inn, October 1993)

A. Background

1. Alan Maclean was called to the Bar by Gray's Inn in 1993. He was at the material time, and continues to practise as, a self-employed barrister. He was therefore a Bar Standards Board (BSB) regulated person to whom Core Duty 5 of the BSB Handbook applies.
2. On 3 April 2019, Mr Maclean drove a motor vehicle, namely a black Ford Fiesta, on a public road after consuming so much alcohol that the proportion of it in his breath, namely 92 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed legal limit of 35 microgrammes. On 01 May 2019, in the Oxford Magistrates' Court Mr Maclean pleaded guilty to an offence under the Road Traffic Act 1988.
3. On 5 April 2019, Mr Maclean sent an email to the BSB attaching a self-referral form and a copy of the charge sheet which confirmed Mr Maclean had been charged with an offence of 'driving a motor vehicle when alcohol level above limit'.
4. On 2 May 2019, Mr Maclean sent an email to the BSB to confirm that he had appeared before Oxford Magistrates' Court and pleaded guilty to an offence of driving with excess alcohol on 3 April 2019.
5. At its meeting on 19 June 2019, the Professional Conduct Committee (PCC) referred the matter to the Determination by Consent procedure. Mr Maclean confirmed his acceptance of the DBC procedure on 1 July 2019.

B. Charge(s)

6. As a consequence of the failures outlined in paragraph 2 above, the BSB has charged Mr Maclean with a breach of the Code of Conduct capable of amounting to professional misconduct. The charge is :

Charge 1

Statement of Offence

Professional misconduct contrary to Core Duty 5 of the Code of Conduct of the Bar Standards Handbook (4th edition)

Particulars of Offence

Alan Maclean, acted in a way likely to diminish the trust and confidence which the public places in him or in the profession in that on 3 April 2019, he drove a motor vehicle on a road after consuming so much alcohol that the proportion of it in his breath, namely 92 microgrammes per 100 millilitres of breath, exceeded the legal limit of 35 microgrammes, for which conduct he was on 1 May 2019 convicted at Oxford Magistrates' Court of an offence under section 5(1)(a) of the Road Traffic Act 1988 and schedule 2 to the Road Traffic Offenders Act 1988 and sentenced to a fine £17,833.00, he was ordered to pay a victim surcharge of £120.00 and costs of £85.00 and disqualified from driving for a period of 23 months (to be reduced by 23 weeks on satisfactory completion of a course approved by the Secretary of State).

C. Summary of Facts

7. Core Duty 5 states that a barrister must not behave in a way which is likely to diminish the trust and confidence which the public places in him or in the profession.
8. On 5 April 2019, Mr Maclean sent an email to the BSB attaching a self-referral form and a copy of the charge sheet which confirmed he had been charged with an offence of drink driving. Mr Maclean stated in his email that he was self-reporting as per rC65.1 but as it is not an indictable offence there was no requirement for him to report the fact that he had been charged and so he reported the matter even sooner than he was required to under rC65.2.
9. On 2 May 2019, Mr Maclean sent an email to the BSB to confirm that he had appeared before Oxford Magistrates' Court and pleaded guilty to an offence of driving with excess alcohol on 3 April 2019. He stated :

"For this offence I was fined £17,833, ordered to pay a victim surcharge of £120 and a contribution of £85 towards prosecution costs. In addition I was disqualified from driving for a period of 23 months although this will be reduced by 23 weeks if I attend and complete a drink drive rehabilitation course by 21/08/20, which I intend to do.

I understand that the BSB is likely to take some action against me, and I trust that it will conclude that this matter is suitable to be dealt with via the Determination by Consent process".

10. On 17 May 2019 the BSB received, by email from Oxford Magistrates' Court, a memorandum of conviction which confirmed the details provided by Mr Maclean and that the level of alcohol was 92 microgrammes of alcohol in 100 millilitres of breath. The legal limit is 35 microgrammes of alcohol in 100 millilitres of breath.

11. On 3 June 2019, the BSB received a response from Mr Maclean which confirmed that he admitted the facts of the charge and conviction and his actions amounted to behaviour likely to diminish the trust and confidence which the public places in the profession, contrary to Core Duty 5.
12. On 5 May 2019, Mr Maclean sent an email to the BSB enclosing the MG5 form (case summary), as requested by the BSB. The MG5 confirmed that police attended the scene of an accident at approximately 23:47 on 3 April 2019 where Mr Maclean had admitted being the driver of a vehicle driven into a ditch, no other vehicles were involved, there were two witnesses to the aftermath of the accident. A roadside breath test revealed that he was over the prescribed limit and he was taken to the police station where another test was taken and was found to be 92 microgrammes. When Mr Maclean was interviewed the following day, he stated he had swerved to avoid another vehicle.

D. Previous Disciplinary Findings

13. Mr Maclean has no previous BSB disciplinary findings.

E. Plea

14. By letter dated 7 August 2019, Mr Maclean admitted the charge.
15. By reason of the admission by Mr Maclean and the memorandum of conviction, the Professional Conduct Committee found the charge proved.

G. Sanction information

16. The Bar Tribunal and Adjudication Service Sanctions (BTAS) Guidance sets a starting point for a first time conviction of this nature as a reprimand and a low level fine. A low level fine is defined as up to £1,000.
17. The incident did not involve any injury to persons or a lack of cooperation with police. Therefore the only aggravating factor taken from BTAS guidance, is a high level of alcohol. The level of alcohol was 92, the legal limit is 35.
18. The Committee has considered the general mitigating factors within the same document and consider that the following apply:
 - a) Admission of the charge
 - b) Genuine remorse
 - c) Single incident
 - d) Co-operation with the investigation
 - e) Previous good character
 - f) Good references
19. Accordingly, the Committee considers that the appropriate sentence for this matter is a Reprimand and a fine of £600.