

Determination by Consent Decision

Name of regulated person and call date

Robert John Gilbert was called to the Bar by Middle Temple in April 1986. He is a self-employed barrister.

Case Reference

2020/1939/DC

Charges

Charge 1

Statement of Offence

Professional misconduct contrary to rule rC65 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Robert John Gilbert, a self-employed barrister, failed to report promptly to the Bar Standards Board that he was made bankrupt, in breach of rC65.6, in that having been made bankrupt on 26 February 2018, Mr Gilbert failed to report the bankruptcy to the Bar Standards Board until 7 November 2019.

Charge 2

Statement of Offence

Professional misconduct contrary to CD5 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Robert John Gilbert, a self-employed barrister, in failing to report promptly the bankruptcy as set out in charge 1 above, behaved in a way which was likely to diminish the trust and confidence which the public places in him and in the profession.

Charge 3

Statement of Offence

Professional misconduct contrary to rC8 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Robert John Gilbert, a self-employed barrister, in failing to report promptly the bankruptcy as set out in charge 1 above, behaved in a way which could reasonably be seen by the public to undermine his integrity.

Charge 4

Statement of Offence

Professional misconduct contrary to CD5 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Robert John Gilbert, a self-employed barrister, 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 26 March 2018 Mr Gilbert on the A1(M), Northbound carriageway, Junction 63:

- a) drove a motor vehicle after consuming alcohol such that the proportion of it in his breath, namely 51 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limited, contrary to section 5(1)(a) of the Road Traffic Act 1988; and
- b) drove a mechanically propelled vehicle without due care and attention, contrary to section 3 of the Road Traffic Act 1988.

For which two matters Mr Gilbert pleaded guilty at West Yorkshire Magistrates' Court on 25 October 2018

Charge 5

Statement of Offence

Professional misconduct contrary to rC8 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Robert John Gilbert, a self-employed barrister, behaved in a way which could reasonably be seen by the public to undermine his integrity, in that on 26 March 2018 Mr Gilbert on the A1(M), Northbound carriageway, Junction 63:

- a) drove a motor vehicle after consuming alcohol such that the proportion of it in his breath, namely 51 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limited, contrary to section 5(1)(a) of the Road Traffic Act 1988; and
- b) drove a mechanically propelled vehicle without due care and attention, contrary to section 3 of the Road Traffic Act 1988.

For which two matters Mr Gilbert pleaded guilty at West Yorkshire Magistrates' Court on 25 October 2018

Charge 6

Statement of Offence

Professional misconduct contrary to rC65.2 of the Code of Conduct of the Bar of England and Wales (9th Edition).

Particulars of Offence

Robert John Gilbert, a self-employed barrister, failed to report promptly to the Bar Standards Board that he had been convicted of the offences set out in charges 4 & 5 above in that, having been convicted on 25 October 2018, Mr Gilbert reported the convictions to the Bar Standards Board on 22 December 2019.

Statement of Facts

1. On 26 February 2018 Mr Gilbert was made bankrupt at the instance of the Commissioners for HMRC.
2. At 9.35am on 26 March 2018, Mr Gilbert collided with another car on the A1(M). The police arrived and required Mr Gilbert to provide a roadside breath test. He complied and failed the test.
3. Mr Gilbert was arrested and taken into custody at Durham. Two further samples of breath were provided, the lower showed a reading of 51 microgrammes of alcohol per 100 millilitres of breath.
4. On 25 October 2018, at West Yorkshire Magistrates' Court, Mr Gilbert pleaded guilty to:
 - a) Driving a motor vehicle after consuming so much alcohol that the proportion of it in his breath, namely 51 microgrammes 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 Act Offenders Act 1988; and
 - b) Driving a mechanically propelled vehicle without due care and attention, contrary to section 3 of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.
5. He was convicted and sentenced on the same day:
 - Fine of £850
 - Ordered to pay a victim surcharge of £85
 - Ordered to pay £85 CPS costs
 - Disqualified from holding or obtaining a driving licence for 16 months (to be reduced by 16 weeks if by 4 September 2019 he satisfactorily completed a course approved by the Secretary of State).

6. Mr Gilbert self-reported the bankruptcy to the BSB by telephone on 7 November 2019 and self-reported the conviction in a letter dated 22 December 2019 but received on 3 January 2020.
7. The BSB wrote to Mr Gilbert on 9 September 2020 to confirm that the matter would be investigated, and he was invited to provide a response and any further comments.
8. Mr Gilbert responded on 2 October 2020 (having requested a short extension of time in which to respond), he stated (inter alia):
 - He acknowledged that he had not promptly informed the BSB of either his bankruptcy or his driving conviction.
 - He noted that he was over the alcohol limit as a result of his consumption the evening prior to the incident.
 - If at all possible, he wished to avoid publicity of a finding against him and he asked for leniency.
9. Mr Gilbert provided additional comments in a telephone conversation with the BSB Case Officer on 23 November 2020:
 - He did not consider that he was driving fast on 26 March 2018, but he pleaded guilty and did not question the charges against him.
 - He stated that he was over the alcohol limit as a result of alcohol which he had consumed the evening before, he had slept well and did not think there was an issue.
 - He had received an unexpected inheritance and was using this to resolve the bankruptcy.
10. The BSB concluded that this case was suitable for referral to the Determination by Consent ('DBC') procedure. A letter was sent to Mr Gilbert on 5 February 2021 seeking his agreement to DBC. He responded on 11 February 2021 to confirm his agreement.

Previous disciplinary findings

Robert John Gilbert has one previous disciplinary finding (PC 2017/0175/D3), which relates to his conduct on 5 May 2017 (1) shouting at a solicitor and preventing the solicitor from leaving a conference room (in breach of CD5) and (2) failing to treat a client with courtesy and consideration and causing unnecessary distress when ceasing to act (in breach of CD7). Mr Gilbert was reprimanded and fined £750 in respect of (1) and reprimanded in respect of (2).

Plea

By email dated 20 April 2021, Mr Gilbert admitted the charges and did not dispute the facts set out in the report.

Decision of the IDP

The IDP found the charges proved on admission by Mr Gilbert. In addition, the Panel went through each charge and satisfied itself, on the evidence, that the charges were proved.

Sanction

Reasons for sanction, including mitigation considered and reference to any guidelines where applicable.

Where character references have been taken into account this should be noted.

11. In considering a sanction against Robert John Gilbert on the charges, the IDP had regard to the Enforcement Strategy as well as the Sanctions Guidance issued by the Bar Tribunal and Adjudication Service (BTAS).
12. The Panel first considered charges 1, 2 and 3.
13. For failing to report promptly bankruptcy proceedings, the starting point in the Sanctions Guidance is a low level fine or a short suspension. A low-level fine is defined as a fine of up to £1,000. A short suspension is one of up to three months.
14. The Panel considered the length of the time it took Mr Gilbert to report the matter to be an aggravating factor. The Panel considered as mitigating circumstances, the fact that, eventually, Mr Gilbert did report the matter on his own initiative.
15. Taking into account the aggravating and mitigating circumstances, the Panel reprimanded Mr Gilbert and imposed a fine of £750. In determining the level of the fine, the Panel took account of the particular personal circumstances of Mr Gilbert.
16. The Panel then considered charges 4 and 5.
17. For a criminal conviction for drink driving only, the starting point in the Sanctions Guidance is a reprimand and low level fine. For a conviction that involves an element of dangerous driving, the starting point is a medium level fine and/or a short suspension. In this case, there was drink driving that also involved driving without due care and attention.
18. The Panel noted that there were two criminal convictions. The Panel considered as an aggravating factor the fact that driving without due care and attention resulted in an accident and that this may well have been linked to the drink driving. The Panel considered as mitigating factors, Mr Gilbert's admission of the charges, Mr Gilbert's particular personal circumstances and that he had already been fined by the courts (in terms of considering the level of fine). Taking into account the mitigating and aggravating factors, the Panel reprimanded Mr Gilbert and imposed a fine of £600.
19. The Panel then considered charge 6.

20. For failing to report promptly a criminal conviction, the starting point is a low level fine. The Panel considered as a mitigating factor, Mr Gilbert's particular personal circumstances and also that he eventually took the initiative to report the matter to the BSB. The Panel considered as an aggravating factor the length of delay in reporting the matter. Taking into account the mitigating and aggravating factors, the Panel reprimanded Mr Gilbert and imposed a fine of £750.

Decision of IDP on sanction

17. The IDP reprimanded Mr Gilbert and fined him the sum of £2100, to be paid within 28 days of the date of acceptance of the decision.

The Panel considered the principle of totality and was content with the overall figure, taking into account the number of separate offences, the mitigating and aggravating factors and also the need to ensure public trust and confidence is maintained.

Confidential mitigation considered (Not for publication)



