

## **Determination by Consent (DBC) – 14 October 2021**

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

Mr Joseph Michael Barry, November 1987

### **Case Reference**

PC 2021/3762/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 (Part 2 of the Bar Standards Board's Handbook – Version 4.4).

#### **Particulars of Offence**

Joseph Barry behaved in a way which was likely to diminish the trust and confidence which the public places in him or in the profession in that, on 12 July 2020 he drove a motor vehicle on a public road after consuming so much alcohol that the proportion of it in his breath, namely 93 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit of 35 microgrammes of alcohol per 100 millilitres of breath. For which conduct Joseph Barry was convicted at Medway Magistrates' Court on 27 October 2020 contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988, he was disqualified from holding or obtaining a driving license for 24 months, fined £1,200 and ordered to pay a victim surcharge of £120 and CPS costs of £85.

### **Statement of Facts**

1. The Police MG05 document records that two Police Officers who were off duty and travelling together on the M2 on 12 July 2020 were concerned regarding the manner of Mr Barry's driving and that they witnessed Mr Barry almost cause a number of collisions whilst he was travelling along the M2 until he came off at Farthing Corner Services. They stopped and spoke to Mr Barry, who was the driver and sole occupant of the vehicle and formed the view that he was intoxicated. They completed a roadside breath test on Mr Barry, which gave a positive result. Mr Barry was arrested and charged with an offence of driving a motor vehicle when the alcohol level was above the limit contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

2. A further test was conducted when Mr Barry was taken to the police station. Mr Barry gave two specimens of breath, and the lowest reading was 93 microgrammes of alcohol in 100 millilitres of breath, which exceeded the prescribed limit of 35 microgrammes of alcohol per 100 millilitres of breath.
3. On 27 October 2020, Mr Barry appeared before Medway Magistrates' Court where he entered a guilty plea. Mr Barry received the following sentence:
  - disqualified from holding or obtaining a driving license for 24 months (disqualification to be reduced by 183 days if by 26/02/2022 he satisfactorily completes a course approved by the Secretary of State);
  - fined £1,200;
  - ordered to pay a victim surcharge of £120; and
  - CPS costs of £85.
4. Mr Barry self-reported to the BSB on the day he received the conviction.
5. The BSB wrote to Mr Barry by letter dated 6 April 2021, to seek his comments on the following allegation:

*Allegation 1: Driving a vehicle when over the legal alcohol limit, conduct which Mr Barry later received a criminal conviction for, in potential breach of Core Duty 5 and rule rC8.*

6. Mr Barry responded to the allegation the same day. In summary Mr Barry confirmed:
  - that he admitted the allegation;
  - that he was deeply ashamed and appalled that he may have put others in danger;
  - that he had drunk the alcohol in grief of a close relative that had recently passed away;
  - that he has reflected on his behaviour and is "truly sorry".
7. The BSB requested the following further information from Mr Barry on 8 April 2021:
  - (i) Where he was driving from/to when he was stopped by the police on 12 July 2020.
  - (ii) Whether he had attended a course to reduce the driving disqualification.
  - (iii) Whether the fine and costs ordered (£1,405) had been paid by the deadline of 24 November 2020.

8. Mr Barry responded as follows:
  - (i) "I was driving from near Lydden about 11 miles south of Canterbury to East London. However once on the M2 I realised it was completely wrong to continue so terminated my journey at Medway Service Station. I intended to leave the vehicle and get my wife to pick me up or

get a taxi for the rest of the journey. I was actually stopped in the Service Station, when the car was stationary.”

- (ii) “I have not yet booked a place on the course to reduce my disqualification.”
- (iii) “All fines and costs were paid promptly, well before the deadline of the 24<sup>th</sup> November 2020.”

9. The BSB referred the case to the DBC procedure on 12 July 2020. Mr Barry confirmed his agreement on the same day to the case being referred to the DBC procedure.

## **Previous disciplinary findings**

None

## **Plea**

Mr Barry advised the BSB by email dated 5 August 2021 that he admitted charge 1.

## **Mitigation**

In addition to the mitigation mentioned at paragraphs 6 and 8(iii) above, Mr Barry has asked that the following be taken into consideration:

- With effect from 1 August 2021 he has retired and resigned from chambers. Mr Barry says that he does not intend to renew his practicing certificate when it expires. Chambers have allowed him to hold a door tenancy in the possibility that he may write some articles in the future.
- Mr Barry has now completed the drink drive rehabilitation course and has provided a copy of the certificate of completion.

## **Decision of the IDP**

Charge 1 was found proved by virtue of the Certificate of Conviction and Mr Barry’s admission. The Panel was satisfied that the conduct for which Mr Barry received a criminal conviction was in breach of Core Duty 5. However, it did not consider that rule rC8 was engaged in this case as Mr Barry’s honesty, integrity and independence were not in question.

## **Sanction**

In considering a sanction against Mr Barry, the IDP had regard to the Sanctions Guidance (the Guidance) issued by the Bar Tribunal and Adjudication Service (BTAS) dated 15 October 2019, particularly Section B.1 (Conviction for drink driving and related offences). The Panel bore in mind the mitigating and aggravating factors.

In terms of the mitigating factors, the Panel had regard to Mr Barry’s admission to the charge, his co-operation with the police and the BSB in relation to this matter, his expressions of remorse and that this was an isolated incident at a time when he was going through personal difficulties. It noted that Mr Barry had paid the fine and has

seen a copy of the Certificate of Completion for Drink-Driving Offenders, dated 8 June 2021, confirming Mr Barry's satisfactory completion of this course.

In terms of the aggravating factors, the Panel had regard to the serious nature of the offence involving him driving a motor vehicle whilst being well in excess of the prescribed limit of alcohol, on a motorway for some distance. Mr Barry was witnessed by two Police Officers as almost causing a number of collisions until he came off at Farthing Corner Services.

In considering the sanction, the Panel recognised that the starting point of this type of conduct (for a first-time conviction for drink driving only) was a reprimand and a low level fine, going up to a medium level fine and/or short suspension for a conviction that involves an element of dangerous driving. It noted from the Guidance that a medium level fine is defined as a fine of between £1,000 and £3,000. The Panel noted that it had not been provided with any information as to Mr Barry's financial circumstances.

The Panel considered that the conviction, although serious, was not so serious as to warrant a short suspension. Having regard to the manner of Mr Barry's driving and the recorded level of alcohol on his breath, it was satisfied that a medium level fine of £1,500 was sufficient and proportionate in all the circumstances.

The decision of the Panel is therefore to impose a fine of £1,500, to be paid within 8 weeks of this decision coming into effect.