

Determination by Consent Report

Name of regulated person and call date

Jack Henry Sadler, Unregistered
Called to the Bar 16 March 2023

Case Reference

2023/2333/DC

Charges

Charge 1

Statement of Offence

Professional misconduct, contrary to Core Duty 5 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook, version 4.6)

Particulars of Offence

Jack Henry Sadler, a barrister and BSB regulated individual, acted 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 25 July 2023, while sitting the Professional Ethics Assessment remotely, which was also proctored remotely and formed part of his Bar Training as a pupil, he;

- i. made comments during the exam as set out in Schedule 1,
- ii. used language during the exam as set out in i, ii, iv, and vii of Schedule 1 which was directed towards the proctor,
- iii. made an offensive hand gesture by holding up his middle finger to the camera at the conclusion of the exam.

Charge 2

Statement of Offence

Professional misconduct, contrary to Core Duty 5 and/or Core Duty 6 and/or rC15.5 of the Conduct Rules (Part 2 of the Bar Standards Board's Handbook, version 4.6)

Particulars of Offence

Jack Henry Sadler, a barrister and BSB regulated individual, acted in a way which was likely to diminish the trust and confidence which the public places in him or in the profession and/or failed to keep the affairs of each client confidential and/or failed to protect the confidentiality of each client's affairs, in that, on 25 July 2023, while sitting the Professional Ethics Assessment remotely, which was also proctored remotely and formed part of his Bar Training as a pupil, accessed his work e-mail account during the recorded exam, and clicked into work e-mails in which client information was displayed.

SCHEDULE 1

- i. What is a watch going to do, how the fuck am I going to cheat with a watch, come on.
- ii. What? Fucking piss off, I don't need to start a fucking chat.
- iii. This is annoying, oh my god, this is going to really piss me off.
- iv. Right, go away now, fine, just going to sit there fucking flashing and be annoying.
- v. Fucking finally, a criminal question...This civil shit...How can you have any ethics if you're a civil practitioner, honestly.
- vi. I'm so fucking bored of this.
- vii. You're going to kick up a fuss about me having a fucking ibuprofen aren't you.

Statement of Facts

1. Mr Sadler commenced his pupillage in October 2022. Pupillage is divided into two parts, a non-practising period, usually of six months, and a practising period, also usually of six months. Mr Sadler was in the second part of his pupillage in the practising period.
2. On 25 July 2023, Mr Sadler sat the Professional Ethics Assessment (the "Assessment"). This is a BSB centralised assessment which barristers are required to pass before they can complete their pupillage and which forms part of their training for the Bar.
3. The Assessment can either be taken at a test centre, at which in-person invigilators are present, or remotely, using the online proctoring system. Mr Sadler took the Assessment remotely. This meant that the exam was invigilated remotely by a human proctor which replicates the invigilation that would normally take place in an exam hall. The online invigilation means that candidates are monitored in real time during the entire exam, through their computer via their webcam and microphone. Video and sound recordings are made of the candidate, their workspace and their computer screen while conducting the exam. The proctor invigilating the exam and the candidate are able to communicate through messages via online chat.
4. A Professional Ethics Exam Candidate Guide is available on the Bar Standards Board website for those taking the assessment. This provides information about the Assessment and about taking it with the online proctoring system. Candidates are referred to the Bar Standards Board Exam Rules and Exam Requirements.
5. Video and audio recordings were taken of Mr Sadler while he was conducting the Assessment, and a recording was made of his computer screen.

6. Prior to starting the exam, through the online chat, the proctor asked Mr Sadler to show his desk and surrounding area, ensure that his phone was away from him and on silent, and to ensure that he was not wearing any kind of watch. During the exam, the proctor asks Mr Sadler to show his desk area properly with his webcam.
7. In the recording of the exam, Mr Sadler can be heard to state the following:
 - i. What is a watch going to do, how the fuck am I going to cheat with a watch, come on.
 - ii. What? Fucking piss off, I don't need to start a fucking chat.
 - iii. This is annoying, oh my god, this is going to really piss me off.
 - iv. Right, go away now, fine, just going to sit there fucking flashing and be annoying.
 - v. Fucking finally, a criminal question...This civil shit...How can you have any ethics if you're a civil practitioner, honestly.
 - vi. I'm so fucking bored of this.
 - vii. You're going to kick up a fuss about me having a fucking ibuprofen aren't you.
8. During the exam, the proctor sent a message to Mr Sadler stating that "Accessing mail is not permitted. I will kindly ask you to close it".
9. In the recording of the exam, Mr Sadler can be heard to say, "Don't worry I'm not cheating, this is the middle of a workday, I have work to do".
10. During the exam, in line with the usual processes, the activity on Mr Sadler's computer screen was recorded. The recording shows Mr Sadler's inbox for his work e-mail account being accessed. E-mails received into that inbox are visible and show the sender of the e-mails and names which are in the title of the e-mails. Mr Sadler clicked into two of the e-mails which are from solicitors' firms. The e-mails related to matters in which Mr Sadler was instructed and contained client names.
11. At the conclusion of the recording and the exam, Mr Sadler can be seen to hold up his middle finger to the camera.
12. The BSB received an internal report as regards Mr Sadler's conduct from the Examinations Team.

Plea and Mitigation

13. Mr Sadler accepts each of the charges on the facts.
14. By way of mitigation, Mr Sadler states that he did not realise that his words and actions could be heard and were being recorded.

15. Mr Sadler is aware that the exam briefing set out that his video and audio would be recorded and admits that he did not read the briefing material thoroughly before sitting the exam. Mr Sadler honestly believed he was in private, and behaved as such, voicing opinions that he thought no one else would hear of.
16. Mr Sadler states that nothing he said or did was directed at any individual, especially the exam proctor.
17. Mr Sadler states that if he had thought for a moment that he was in public, then he would have behaved accordingly, and not in the manner seen in the exam recording.
18. In relation to the second charge, Mr Sadler states that he did not think at the time, that accessing his Outlook would risk a GDPR breach and that this arose from both a lack of knowledge and a lack of thought on his part. The necessary steps were taken by him and Chambers to address any potential breach.
19. Mr Sadler invites that his behaviour is viewed as a catastrophic lapse in judgment, for which he is deeply ashamed and deeply sorry, and not as anything more insidious.
20. Mr Sadler provides a character reference that was submitted on his behalf.

Decision of the IDP

Charges found proved: Charge 1 and Charge 2

Charges found not proved: N/A

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

Charge 1

The Panel found Charge 1 proved by reason of;

- (1) B's admission to the conduct and breaches alleged, as set out in his email to the BSB of 14 January 2024 and further confirmed in his email of 8 April 2024.
- (2) As noted by the previous Panel:
 - a. The conduct is supported evidentially by the videorecording of B taking the exam and the log of the chat with the proctor, which supported the list of comments made by B and provided to the Panel; and
 - b. The still photo image of B holding up his middle finger to the camera on his computer monitor at the conclusion of his exam.

The Panel agreed with previous Panel's assessment that this conduct was likely, if known by the public, to bring the profession into disrepute and was satisfied that there was sufficient evidence, on the balance of probabilities, that there had been a breach of CD5 of the Handbook.

Charge 2

The Panel found Charge 2 proved by reason of;

- (1) B's admission to the conduct and breaches alleged as set out in his email to the BSB of 14 January 2024 and further confirmed in his email of 8 April 2024.
- (2) The material before the Panel showed:
 - a. The information available to B that his screen would be visible to the online proctor;
 - b. a screen shot of B's computer showing him accessing his work emails during the assessment and which showed lay clients' names and other information related to live cases.
 - c. The transcript of the online proctor's comments which alerted B to the fact that the email could be seen and which stated 'Accessing mail is not permitted. I will kindly ask you close it'.

The Panel considered that accessing these emails in a situation where they could be seen amounted to a breach of B's duty under GDPR and his duty of client confidentiality. It was satisfied that, as a second six pupil who was taking on cases, he would have received appropriate and recent training in relation to GDPR and confidentiality. In relation to this Charge the Panel was satisfied that there was sufficient evidence, on the balance of probabilities, that there had been a breach of CD5, CD6 and rC15.5 of the Handbook.

Sanction

In deciding the appropriate sanction to impose the Panel had regard to;

- the Bar Tribunal and Adjudications Services (BTAS) sanctions guidance, (version 6 the Guidance) and
- LED10 - Determination by Consent ('DBC') policy and procedure issued 15 October 2019.

In respect of the BTAS Guidance, the Panel identified that B's conduct could be said to fall within two misconduct groups, namely Misconduct Group I (Behaviour Towards Others) and Misconduct group K (Formal Obligations to Clients).

Culpability, Aggravating/Mitigating Factors:

The Panel considered the levels of culpability and harm and the aggravating and mitigating factors:

Group I: The Panel considered that the conduct fell within the lower range of culpability and harm. It was not obvious to the Panel that B was intentionally directing his comments to the proctor, but he clearly should have been aware that they could be heard and were highly likely to cause offence to the proctor. The Panel regarded B's failure to have regard to the very clear information he had received about the conduct of the examination as an aggravating factor.

Group K: The Panel again considered that the conduct also fell within the lower range of culpability and harm. In particular, there was no evidence of harm caused to any clients and B closed his email as soon as he was asked to do so. Equally, B should have been aware of his duties and it was a serious breach and the proctor had to intervene to minimise the risk of further exposure of confidential information.

In terms of mitigation the Panel also had regard to the positive character reference in respect of B from Michael Turner KC of Garden Court Chambers dated 6 October 2023.

The Panel agreed that B has shown contrition and remorse and furthermore B's conduct was an isolated incident during one occasion. B does not have any previous disciplinary findings.

The character reference given assisted the Panel in understanding more widely B's general professional and ethical approach to his work and was satisfied that his actions on 25 July 2023 constituted a single serious misjudgement and did not suggest habitual behaviour by B.

The Panel considered that advice as to future conduct was inappropriate in the light of its view that this was an isolated incident and there was a low risk of repetition. It decided that the most appropriate sanction, having regard to this and to the fact that there was no evidence of harm, was a low level fine.

The Panel had not been provided with any information regarding B's means. It noted that he had left the Bar and had gained other employment. It was mindful that, as a recent pupil and someone in the early stages of his career, it was likely that B's means were limited and took this into account. It recorded that, should B make representations as to affordability of the fine imposed that they would encourage the Executive to accommodate a payment plan to ensure that B can pay the fine in instalments which do not cause hardship.

Considering all of the above, the Panel concluded that a low level fine in the sum of £500.00 (five hundred pounds) would be proportionate in all of the circumstances.