Neutral Citation Number: [2026] EWHC 25 (Admin)

Case No: AC-2025-LON-001641

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 January 2026

Before:

THE HONOURABLE MR JUSTICE CHOUDHURY

- -

Between

MR NAVJOT "JO" SIDHU KC

Appellant

- and –

BAR STANDARDS BOARD **Respondent**

- -

Vikram Sachdeva KC, **Alexis Hearnden** and **Rachael Gourley** (instructed by **Shakespeare Martineau LLP**) for the **Appellant**
Fiona Horlick KC and **Harini Iyengar** (instructed by **Capsticks LLP)** for the **Respondent**

Hearing date: 2 December 2025

- -

JUDGMENT

MR JUSTICE CHOUDHURY :

Introduction

1. On 1 May 2025, Navjot "Jo" Sidhu KC ("**the Appellant**") was disbarred by the Bar Tribunals and Adjudication Service ("**BTAS**") Disciplinary Tribunal ("**the Tribunal**") after three charges of professional misconduct against him were found to be proved. The charges related to events in 2018 when the Appellant invited a mini-pupil (referred to here as "**Person 2**") up to his hotel room, ostensibly to discuss a case he was working on, and then proceeded to insist that Person 2 stay the night in his room and to sleep on his bed instead of the sofa before engaging in sexual kissing and touching. The Tribunal, which comprised a panel of five chaired by HH Janet Waddicor, considered, by a majority of 3 to 2, that such conduct fell within the "Upper range" of seriousness within the BTAS Guidance on Sanctions ("**the Guidance**"), and that having regard to all relevant factors, including the Appellant's seniority, his prominent position within the Bar and the harm to public confidence in the profession, the only just and proportionate sanction was disbarment. The Tribunal's conclusions were set out in a written decision published on 2 May 2025 ("**the Decision**").

2. The Appellant, whilst not seeking to challenge the findings of misconduct, appeals against that sanction of disbarment. He contends that, having regard to the particular circumstances of the misconduct in question and his circumstances, disbarment was a disproportionate sanction and that the Tribunal was wrong to impose that sanction on him, as opposed to a lengthy period of suspension.

3. For the reasons set out below, my decision is that the appeal fails and that the sanction of disbarment remains in place.

4. The Appellant was represented before me by Mr Sachdeva KC leading Ms Hearnden and Ms Gourley. They did not appear for the Appellant below. The Respondent to the appeal is the BSB, represented here (as below) by Ms Horlick KC and Ms Iyengar. I am grateful to all Counsel for their helpful written and oral submissions.

Factual Background

5. The Appellant is of Punjabi Sikh origin. He was raised in Southall, Middlesex. Having overcome a difficult childhood, the Appellant successfully completed his education before being called to the Bar in 1993. He developed a successful practice in criminal law, taking Silk in 2012. In 2013, the Appellant was elected President of the Society of Asian Lawyers, and he served for seven years until 2017 as Vice Chair of the Bar Council's Equality and Diversity Committee. By the time of the events leading to these proceedings, he had also been elected a Bencher of Lincoln's Inn, and was involved in advocacy and other training events for the Inn. Subsequently, in 2021, the Appellant was elected as Chair of the Criminal Bar Association, and went on to lead the Barristers' strike of 2022.

6. The Appellant first made contact with Person 2 in February 2018 when he saw her profile (which included a photograph) on LinkedIn and sent her an unsolicited invitation to connect with him. Person 2, who was then in her mid-twenties, was working as a paralegal but was contemplating a career at the Bar. She had never met the Appellant before and did not know who he was. She saw

from his profile that he was a QC and accepted the invitation. There followed an exchange of messages about their respective professional interests. Some months later, Person 2 wrote to the Appellant saying that she was interested in becoming a Barrister and asked if she could speak to him about life at the Bar. The Appellant offered her a mini-pupillage with him and proceeded to organise this directly with Person 2 without going through his Chambers. Such private arrangements between some Barristers and mini-pupils did take place from time to time. Person 2 had never undertaken a mini-pupillage before and did not know what it entailed. She was not required to sign a confidentiality undertaking as would have been the case with mini-pupils applying formally for a mini-pupillage through Chambers. The mini-pupillage was arranged for a week in November 2018.

7. The mini-pupillage involved shadowing the Appellant in a criminal trial in a city outside London. Person 2 had never been to that city before. She made her own travel and accommodation arrangements at her own expense staying in a different hotel from the Appellant. On the evening before the trial commenced, the Appellant met with Person 2 in the lobby of her hotel to discuss arrangements for the week ahead.

8. The following day, Person 2 shadowed the Appellant at Court. The Appellant had a male junior. At the end of the day, the Appellant suggested that Person 2 should go to his hotel that evening to work on legal arguments. There was no evidence before the Tribunal as to whether the male junior was asked to attend.

9. Person 2 and the Appellant met in the hotel bar at his hotel at around 7pm. The Appellant suggested that they go to his room because they were in a public place

which was not suitable for a confidential discussion about the case. Whilst Person 2 thought it strange to be invited to his room, she understood the need for confidentiality and had no reason not to trust the Appellant.

10. When they got to the Appellant's room, they sat on the sofa to work on the case. They worked for a couple of hours finishing at around 10pm. At that point Person 2 said that it was late and that she should leave. The Appellant said she should stay as it was late. At some point, the Appellant had locked the door. The Appellant's behaviour was not aggressive or threatening. He went in and out of the bathroom and changed out of his clothes into his pyjamas.

11. Person 2 had been expecting to return to her hotel and had not taken anything with her for an overnight stay. She was taken aback by being asked to stay, felt uncomfortable about it and did not want to stay. She said repeatedly that she should leave, but the Appellant persisted in saying that she should stay. Whilst there was nothing physically preventing her from leaving (as the door was easily unlocked), Person 2 felt that she could not leave as the Appellant was insistent that she should stay. She viewed the Appellant as very influential at the Bar, and she did not want to make a fuss which could have had a detrimental effect on her intended career. Person 2 eventually said she could sleep on the sofa. However, the Appellant suggested she sleep on the bed and placed some cushions down the middle which he said would be a "barricade".

12. Person 2 ended up laying on the bed fully clothed. The Appellant then began kissing her. Person 2 could not remember the exact sequence but recalled that at some point, the Appellant was on top of her. Person 2 was lying on her back and did not respond. She felt she could not do anything but lie there and was

shocked and confused at what was happening. At some point some of her clothing was removed. She recalled that the Appellant touched her breasts and the lower parts of her body. She did not say, "No". The Tribunal found that at some point, Person 2 had touched the Appellant's private parts but there was no evidence as to why she had done this or for how long the touching lasted. There was no sexual intercourse.

13. Person 2 left the Appellant's room early next morning and went back to her own hotel to get ready for Court. She did not tell anyone what had happened at the time and did not think about not completing the mini-pupillage because of how it might look. Person 2 thought that the Appellant had "normalised" what had happened. He did not speak about that night other than to tell Person 2 that she not been "very responsive". The Appellant became flirtatious towards her and made comments about her appearance that were of a sexual nature. He told her that he no longer had sex with his wife. Person 2 began to think that the Appellant liked her.

14. The Appellant invited Person 2 back to his hotel for a second time. Person 2 could not recall going to the hotel but there was an Uber receipt on her phone which showed that she went to the Appellant's hotel at 11.30pm or later during the mini-pupillage. She agreed that if she had gone to the Appellant's hotel a second time, she would have expected sexual activity to take place. In fact, the Appellant did not meet with Person 2 on this occasion.

15. After the mini-pupillage ended, the Appellant ceased to mentor Person 2, but the pair remained in communication, sporadically exchanging a few brief messages (some flirtatious) over a period of two years or so. Although there was

discussion about possibly meeting at her flat, they did not meet again. Person 2 accepted that if a visit to her flat had taken place, the expectation was that there would have been sexual activity. After a long gap in contact, there was a further exchange of messages in which Person 2 responded to a text from the Appellant asking her to give him a shout by saying: "Of course darling. I miss you". The last communication between them was in March 2021.

16. Person 2 did not report the Appellant's conduct until December 2022. For a long time, she had blocked the experience from her mind and found it difficult to talk about, blaming herself for what had happened.

17. On 8 September 2023, the Appellant received notice of the BSB's disciplinary proceedings. The Appellant initially faced 28 charges of a sexual nature concerning three female complainants, Persons 1, 2 and 3. The complainants were not known to each other and had made their complaints to the BSB independently of each other. All three were students or at an early stage of their career. P1 was also in her 20s and P3 was aged 19 at the time of the alleged incidents.

18. Thirteen of the original 28 charges were struck out at an early stage, leaving 15 to be determined by the Tribunal.

19. Upon notification of the proceedings, the Appellant took voluntary steps to limit his contact with female students and junior members of the Bar. These steps included ceasing to take any mini-pupils and removing himself from the Register of Pupil Supervisors. The Appellant also ceased accepting new instructions as of 25 October 2023 and subsequently withdrew from his elected

positions on the Bar Council and Lincoln's Inn. The Appellant voluntarily relinquished his practising certificate on 5 July 2024.

20. The three cases involving P1, P2 and P3 were joined and heard together over several days in November and December 2024. The Tribunal heard oral evidence from all three complainants, amongst others. The Tribunal judged all three to be honest and straightforward witnesses. The Appellant did not give evidence and did not call any witnesses of fact. He gave no evidence at all about any of the complaints. There was medical evidence as to the Appellant's condition which was heard in private. In the light of that evidence, the Tribunal did not draw any adverse inference from the Appellant's failure to provide a written statement.

21. The only evidence adduced by the Appellant was character evidence running to some 143 pages from 91 persons, including 4 judges, 21 silks and 25 female mentees. These references attested to the Appellant's good character, dedication to public service and his commitment to the criminal bar and the promotion of equal opportunities and diversity at the Bar. The Tribunal did note, however, that the Appellant, rather than his Solicitors, had obtained these references and that it was not clear in relation to many of them, what, if anything, they had been told about the nature of the allegations before the Tribunal. Notwithstanding that observation, the Tribunal took all of the references at "face value" and noted that the weight to be attached to them was a matter for the Tribunal.

The Charges

22. The actual terms of the three charges relating to P2 (Charges 2, 4 and 6) found proved are cumbersome and repetitive. The Tribunal set them out in full at

paragraph 2 of the Decision and they are not repeated here. Each charge alleged "professional misconduct contrary to Core Duty 5 of the Code of Conduct of the Bar of England and Wales (9th edition), contained in Part 2 of the Bar Standards Handbook (Version 3.4)".

23. Core Duty 5 ("CD5") provides that a Barrister:

> "… must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession."

24. The particulars of each charge relate to the Appellant's conduct in November 2018. They were, in broad summary, as follows:

i) Charge 2: Whilst in a position of trust, he invited Person 2 to stay overnight in his hotel room during a mini-pupillage, such conduct being of a sexual nature, and which invitation he knew or ought to have known was inappropriate and/or unwanted;

ii) Charge 4: Whilst in a position of trust and despite Person 2 stating that she wished to and/or should leave the hotel room, he insisted that Person 2 should sleep on the bed rather than on the sofa, which conduct was of a sexual nature and which he knew or ought to have known was inappropriate and/or unwanted; and initiated sexual contact with Person 2 when he knew or ought to have known that she did not wish to engage in sexual activity with him and that such activity between them was inappropriate;

iii) Charge 6: Whilst in a position of trust, he initiated sexual contact with Person 2 when he knew or ought to have known that such contact was

inappropriate and/or unwanted in that, amongst other matters, he knew or ought to have known that Person 2 did not want him to initiate sexual contact with her.

25. There is a large degree of overlap between the charges, and in particular, between Charges 4 and 6.

26. Charge 8, which was not found proven, also alleged a breach of CD5 and concerned the Appellant's comment about Person 2's appearance, namely, "Your bum looks good in that dress"; and the remark, " I no longer have sex with my wife", both of which were made after the events relating to the other charges.

The Tribunal's Conclusions

27. At the close of the Respondent's case, a submission of no case to answer was accepted in respect of 4 of the charges, leaving 11 to be determined by the Tribunal, which number included the 4 charges in respect of P2.

28. On 9 December 2024, the Tribunal gave an *ex tempore* oral decision on liability. The single charge in relation to P1 was dismissed because the Tribunal was not satisfied that the conduct in question – the sending of an inappropriate text message - amounted to professional misconduct. Charges 2, 4 and 6 in relation to Person 2 were found proven. More is said about those charges below. Charge 8 was dismissed as the Tribunal could not be sure that the Appellant's comments, whilst undoubtedly sexual in nature, were made within a professional as opposed to a personal context given the change in the nature of

the relationship with Person 2 by this stage; or that the conduct was sufficiently serious to amount to professional misconduct.

29. The charges in relation to P3 were all dismissed because the Tribunal found that the relevant conduct, which also involved inappropriate text communications, was part of the Appellant's personal life and did not concern his professional position.

30. On 19 March 2025, the hearing reconvened for submissions on sanction with the Tribunal announcing its oral decision later the same day ("the oral decision"). The Decision was issued on 2 May 2025.

31. Having set out its findings of fact, the Tribunal considered a submission made on the Appellant's behalf that the sexual activity in question was consensual and did not amount to a breach of CD5. The Tribunal noted the terms of Paragraphs 20 and 21 of the Guidance, which strongly discourage sexual relationships between a pupil and any member of chambers who could be perceived to have any influence over that pupil's professional future and the pupil is "inevitably in a very vulnerable position" with there being a real risk of the pupil feeling under pressure to enter into a sexual relationship in such circumstances. The Tribunal rejected a submission that being a mini-pupil, as opposed to being a pupil, made Person 2 any less vulnerable. The Tribunal went on to conclude as follows:

> "80. It is important to record that the BSB did not allege that the sexual activity was non-consensual. The allegation was that it was "inappropriate and/or unwanted". Person 2, whom the Tribunal found to be honest, repeatedly said that she did not want sex that night in the hotel. She did not respond, save for touching the Respondent's private parts, and she did not resist. On the one hand, it was not suggested to her that the Respondent had asked

her if he could kiss her and touch her. On the other hand, it was not part of her evidence that he took her hand and forced her to touch his penis. Her evidence was that at all times that night she was confused and did not know what to do. Mr Williamson suggested that this willingness to touch the Respondent's private parts must cast doubt on the notion that the sexual touching was unwanted. Ms Horlick suggested that the fact that Person 2 volunteered this information – which was against her interest – both during her interview and in her statement highlighted Person 2's honesty and candour.

81. The issue of wanted/unwanted sexual activity was not clear cut. There was evidence that, at least initially, it was unwanted. The Respondent did not challenge Person 2's evidence that was on top of her, kissed her and that she did not respond to his kisses. Nor did he challenge her evidence that later that week he commented on her lack of enthusiasm that night. The Tribunal considered the possibility that Person 2 did not want any sexual activity and that, when she touched the Respondent, she was simply going along with the sexual activity, albeit without enthusiasm, because she was confused and, as she said, she felt trapped. Against that, the Tribunal bore in mind that later that week she was willing to spend time alone with the Respondent and she was prepared to return to his hotel on another night expecting that there would have been sexual activity.

82. The Tribunal accepted Person 2's evidence that she was confused and that she lacked confidence. The Tribunal was wary of approaching this evidence by adopting what are sometimes called "rape myths". The Tribunal was mindful of the need to avoid leaping to the conclusion that the sexual activity must have been wanted because there was no violence or threat of violence and because she did not leave the room, even though it would have been physically possible for her to do so. The Tribunal bore in mind that Person 2 had gone to the hotel, not expecting anything untoward to happen. She had not taken any night clothes, or any change of clothes for the following day. The Tribunal accepted her evidence that she trusted the Respondent and took into account that she had no previous experience of work at the Bar and no connections with the Bar and that she was a woman on her own in an unfamiliar city.

83. The Tribunal read a redacted version of Person 2's personal impact statement in which she said she had relived the episode, over and over in her memory, and had questioned whether she was somehow at fault for what happened. Overall, it seemed she was embarrassed and upset about what happened and she came to blame it on herself.

84. Having grappled with the issue of whether this sexual activity was unwanted, and applying the criminal standard, and having

> taken all of the evidence into account, the Tribunal could not rule out the possibility that over the years, Person 2 has reframed the incident in her mind and that, in so doing, she has seen and interpreted this incident through the prism of exploitation which is how she has come to characterise her relationship with the Respondent. In the end, the Tribunal could not be sure that the sexual activity was unwanted." (Emphasis added)

32. Having so found, the Tribunal went on to set out its conclusions on Charges 2, 4 and 6:

> "**Findings and Decisions on Charges 2,4, and 6 re Person 2 – the hotel bedroom**
>
> 85. **Charge 2** The Tribunal applied the criminal standard of proof and was unanimous in making the following findings. The Respondent was acting in a professional capacity when he invited Person 2 to go to his hotel that evening to work on legal arguments. Up until the invitation to stay, all interactions between the two had been professional not personal. He had invited her to do a mini-pupillage. He knew that she had no previous experience of the Bar and was interested in a career at the bar. He held himself out as someone who could help. In the circumstances, the Respondent was in a position of trust. There was a power imbalance between the Respondent and Person 2 by virtue of his professional status as senior silk and her status as an aspiring barrister. Person 2 had gone to the room expecting to work and nothing had prepared her to expect to be invited to stay the night in the Respondent's hotel room. Despite Person 2's repeatedly expressed wish to leave, the Respondent persisted with the invitation to stay in his room. The Respondent insisted that Person 2 should sleep on the bed rather than the sofa. The Respondent changed into his night clothes while Person 2 was in the room. The invitation to stay the night and to sleep on the bed was sexually motivated, inappropriate and unwanted and the Respondent knew or ought to have known that it was inappropriate and unwanted. The Respondent's conduct is likely to diminish the trust and confidence which the public places in him or the profession. Accordingly, Charge 2 was proved. The decision was unanimous.
>
> 86. **Charge 4** The above findings of fact apply to Charge 4. In addition, having applied the criminal standard of proof, the Tribunal was unanimous in finding that the Respondent initiated sexual activity, that the sexual activity was inappropriate and that the Respondent knew or ought to have known that it was inappropriate. The Respondent's conduct is likely to diminish

the trust and confidence which the public paces in him or the profession. Accordingly, Charge 4 was proved. The decision was unanimous.

87. **Charge 6** Neither Ms Horlick nor Mr Williamson addressed the Tribunal on the difference between the allegations in Charge 6 and Charge 4. Both Charges include the allegation that the Respondent initiated sexual activity and that he knew or ought to have known that sexual activity was inappropriate. The Tribunal found that allegation proved. The only discernible distinction between the allegations in Charge 4 and Charge 6 is that:

Charge 4 reads:

e) He initiated sexual contact with Person 2 when they were alone together in the bedroom;

f) He knew or ought to have known that Person 2 did not wish to engage in sexual activity.

Charge 6 reads:

b) He initiated sexual contact with Person 2 when they were alone together.

c) He knew or ought to have known that Person 2 did not want him to initiate sexual contact with her.

d) He knew or ought to have known that Person 2 did not wish to engage in sexual activity.

Thus, Charge 6 contains an additional allegation that the Respondent knew or ought to have known that Person 2 did not want him to initiate sexual activity. The distinction between not wanting sex to be initiated, and not wanting any engagement in sex, was not addressed in submissions. The Tribunal could not be sure that the evidence established that there was a distinction. In the circumstances, given that the Tribunal could not be sure that the sexual activity per se was unwanted, it followed that the question of whether or not the Respondent knew or ought to have known that, at any stage, the sexual activity was unwanted fell away. However, the Tribunal's unanimous finding applied equally to Charge 6.

Charge 6 was proved, but on the basis set out above in relation to Charge 4 i.e. that the initiation of sexual activity and the engagement in sexual activity were inappropriate and that the

> Respondent knew or ought to have known that they were inappropriate.
>
> The Tribunal's findings of fact mean that there is no distinction between Charges 4 and 6." (Emphasis added)

33. The Tribunal's conclusions on sanction are set out in paragraphs 91 to 103 of the Decision. It is helpful to set these passages out in full:

> **"Sanction**
>
> 91. The Tribunal applied the Sanctions Guidance Version 6 issued on 1 January 2022 (the "Guidance") applicable to all decisions on sanctions regardless of when the misconduct occurred. The Tribunal bore in mind the purpose of sanctions for professional misconduct. The following were of particular importance: the maintenance of public confidence and trust in the profession and the enforcement system; the maintenance and promotion of high standards of behaviour and performance at the Bar; the deterrence to the individual barrister and to the wider profession from engaging in the misconduct subject to the sanction.
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> 92. The misconduct falls within Group B – misconduct of a sexual nature. The Guidance points out that such behaviour, which is prevalent at the Bar, seriously undermines public trust and confidence in the Bar and has a negative impact on recruitment and retention at the Bar.
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> 93. The Tribunal was unanimous in identifying the following factors from the list in Group B and in the Annex 2 in relation to culpability and harm:
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> • The misconduct took place in a professional context;
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> • The misconduct was intentional;
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> • The Respondent's motivation was his own sexual gratification;
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> • The use of his position to pursue an inappropriate relationship;
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> • The misconduct was directed at a person in a vulnerable situation;
>
> • There was sexual touching;
>
> • The misconduct involved elements of planning at least on the day it happened if not earlier;

• It was a one-off incident but it was sustained;

• The Respondent acted in breach of a position of trust;

• There was a significant disparity in seniority and experience between the Respondent and Person 2;

• The Respondent had sole responsibility for the circumstances giving rise to the misconduct;

• The harm to Person 2 could have reasonably been foreseen;

• The misconduct caused injury to Person B's feelings;

• The misconduct impacted on Person 2's emotional well-being.

• The misconduct had a detrimental impact on the public confidence in the legal profession.

94. Having taken all of the above factors into account, the conclusion of the Tribunal, by a majority of 3 to 2, was that the misconduct involved significant culpability and significant harm and that it fell within the upper range of seriousness. The majority considered that misconduct caused significant harm to public confidence in the profession and was particularly serious in view of the Respondent's seniority and prominent position at the Bar. The conclusion of the minority of the Tribunal was that the misconduct fell within the middle range of seriousness and involved moderate culpability and moderate harm which included harm to the confidence in the profession. There was consensus that the fact that the misconduct took place six years ago had no bearing on culpability or harm. The indicative sanction for upper range seriousness is disbarment and for middle range seriousness is suspension for over 24 months up to disbarment.

95. The Tribunal then considered aggravating and mitigating factors and was unanimous in its conclusion that there were no aggravating or mitigating factors under Group B.

96. With reference to aggravating factors in Annex 2, the Respondent's senior level of experience was relevant.

97. There was no reflective (or indeed any) statement from the Respondent so it was not possible to draw any conclusion favourable or unfavourable on the questions of remorse and insight.

98. With reference to mitigating factors in Annex 2, the Tribunal had medical evidence and evidence about the personal circumstances of the Respondent. It was not suggested that these

> caused or influenced the misconduct. The Tribunal was informed that the Respondent was undertaking therapy.
>
> 99. The relevant mitigating factors were the previous good character and good references. The Tribunal took account of the fact that not only had there been no previous disciplinary findings but also that he was highly regarded as a talented and hardworking advocate who was committed to the profession and to encouraging aspiring barristers from underrepresented groups. There were many excellent references from male and female colleagues and from mentees past and present all of whom spoke of the Respondent's dedication to the profession and to his commitment to the promotion of diversity and inclusivity at the Bar. The Tribunal accepted all the references.
>
> 100. The Tribunal was mindful of the need to treat areas of mitigation with caution when dealing with misconduct of a sexual nature.
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> 101. The Tribunal applied the principle of proportionality which requires sanctions to be no more than is necessary to achieve the purposes of sanctions.
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> 102. Having considered all of the above matters, the majority decision (by 3 to 2) was that the indicative sanction of disbarment was the only just and proportionate sanction in all the circumstances. The minority decision was that the just and proportionate sanction was a term of suspension of 25 months less credit for the time spent under the interim suspension order imposed on 9 December 2024.
>
> 103. The Tribunal imposed a sanction of disbarment on Charge 2 and 4. The Tribunal imposed no separate penalty on Charge 6 since the findings of fact on which it was proved did not differ from those in Charge 4 with the result that the Charges as proved were indistinguishable." (Emphasis added)

Legal Framework

34. A barrister may appeal against a finding of liability and sanction imposed following disciplinary proceedings. Section 24(2) of the *Crime and Courts Act 2013* confers a right of appeal to the High Court, with subsection (6) providing that the High Court may make any such order as it thinks fit on appeal. Pursuant to CPR Part 52.20, the High Court may affirm, set aside or vary the order(s) of the Tribunal. CPR 52.21 provides that:

> "(1) Every appeal will be limited to a review of the decision of the lower court unless - … the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing."

35. The Appellant does not seek a re-hearing. CPR 52.21(3) provides that the appeal court will allow the appeal if the decision of the Tribunal was:

> (a) Wrong; or
>
> (b) Unjust because of serious procedural or other irregularity in the proceedings below.

36. The principles to be applied on an appeal of this nature were recently summarised by Sweeting J in *Dean v Bar Standards Board* [2025] EWHC 1860 (Admin):

> "11. The applicable legal framework for appeals of this nature was considered by Calver J, in *Owusu-Yianoma v Bar Standards Board* [2023] EWHC 2785 (Admin). His judgment provides a comprehensive review of the relevant provisions and case law. My summary of these principles draws directly from that review.
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> …
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> 12. The nature of an appeal by way of review is flexible. As Lang J stated in *Bar Standards Board v Stephen Howd* [2017] EWHC 210 (Admin) at [16]:
>
> > "an appeal against the decision of a Disciplinary Tribunal is by way of review, not re-hearing. However, the nature of an appeal by way of review under rule 52.11 is flexible and differs according to the nature of the body, which is appealed against, and the grounds upon which the appeal is brought."
>
> 13. The review will engage the merits of the appeal, but it "will accord appropriate respect to the decision of the lower court". Aldous L.J. in *E I Dupont de Nemours & Co v S T Dupont* [2003] EWCA Civ 1368; [2006] 1 WLR 2793, at [94], clarified that:
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> > "A review here is not to be equated with judicial review. It is closely akin to, although not conceptually identical with, the scope of an appeal to the Court of Appeal under the former RSC. The review will engage the merits of the appeal. It will accord appropriate respect to the decision of the lower court.

> Appropriate respect will be tempered by the nature of the lower court and its decision-making process".
>
> 14. Deference to specialist tribunals is a significant consideration. Pepperall J in *Hewson v Bar Standards Board* [2021] EWHC 28 (Admin) observed that:
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> > "Appeal courts should not lightly interfere with decisions of specialist disciplinary tribunals as to the appropriate sanction for professional misconduct. First, the appeal is by way of review and not re-hearing. The discretion as to sanction is therefore reposed in the tribunal and not the court. Secondly, the court should accord deference to the evaluative decision of the specialist tribunal".
>
> 15. An appeal court should only interfere with a Tribunal's evaluative decision on sanction if it made an error of principle or if it fell outside the bounds of what it could properly and reasonably decide. This principle was reiterated in *Bawa-Garba v The General Medical Council* [2018] EWCA Civ 1879, where the Court of Appeal said there was "limited scope" for overturning such decisions, stating that an appellate court should interfere:
>
> > "only if (1) there was an error of principle in carrying out the evaluation, or (2) for any other reason, the evaluation was wrong, that is to say it was an evaluative decision which fell outside the bounds of what the adjudicative body could properly and reasonably decide". Heather Williams J in *Farquharson v BSB* [2022] EWHC 1128 (Admin) stated at [§63] that the Court would interfere if the sanction imposed was "clearly inappropriate".
>
> 16. The process for determining sanctions involves assessing the seriousness of the misconduct, keeping in mind the purpose of sanctions (protection of the public and maintenance of public confidence), and choosing a sanction that most appropriately fulfils that purpose. This staged approach to sanction was also endorsed by Kerr J in *Wareing v Bar Standards Board* [2024] EWHC 2946 (Admin) at [3]." (Emphasis added)

37. I agree with and gratefully adopt that summary.

38. In relation to cases of sexual misconduct in particular, Mr Sachdeva reminds me that the regulatory system is not so inflexible as to require erasure or disbarment after every instance of sexual misconduct and that there must be an assessment of where an act of sexual misconduct, albeit inherently serious, falls on the scale

of gravity: see *Arunachalam v General Medical Council* [2018] EWHC 758 (Admin) at [79]; *GMC v Shah* [2025] EWHC 899 (Admin) at [82-83] and *GMC and The Professional Standards Authority for Health and Social Care v James Gilbert* [2025] EWHC 802 (Admin) at [120].

Grounds of Appeal

39. The Appellant pursues four grounds of appeal:

i) Ground 1 – The Tribunal's assessment of the seriousness of the misconduct was wrong;

ii) Ground 2 – The Tribunal's approach to the aggravating and mitigating factors was wrong;

iii) Ground 3 – The Tribunal's decision on sanction was disproportionate; and

iv) Ground 4 – The reasons given for the Tribunal's decision were inadequate.

40. I shall deal with each ground in turn.

Ground 1 – The assessment of the seriousness of the misconduct was wrong.

Submissions

41. Mr Sachdeva submits that the Tribunal's approach in simply listing the relevant factors going to culpability and harm was wrong in that by so doing the Tribunal failed to grapple with and/or explain the relative seriousness and/or importance of each in the overall evaluation. Reliance is placed on *R (O'Connor) v Panel*

Chair (Police Misconduct Panel) [2025] EWCA Civ 27 at [54] in which Nicola Davies LJ held that the mere listing of aggravating and mitigating factors amounted to a failure to provide an adequate analysis of the Panel's findings on seriousness. Mr Sachdeva also takes issue with the Tribunal's assessment that the incident was "sustained" given that it was also described as a "one-off"; that Person 2 was said to be in a "vulnerable situation" given that there was evidence she "knew her own mind" and had been involved with a schools-based consent project since 2016; and that the misconduct causing significant harm to the profession "was particularly serious in view of the [Appellant's] seniority and prominent position at the Bar", given that the Appellant did not, at the relevant time, hold the position of Chair of the CBA.

42. Similarly in relation to harm, Mr Sachdeva submits that the Tribunal's approach involved double-counting some factors; and the harm to Person 2 was overstated given that it was only subsequently that Person 2's reaction to the incident evolved to the point where she considered the Appellant's conduct to have been clearly inappropriate.

43. In Mr Sachdeva's written submissions, it was submitted compendiously that, "The relevant misconduct concerned behaviour on a single evening and sexual touching which was found to be consensual, and after which a friendly and "flirtatious" relationship persisted between the Appellant and Person 2 for around two years". Those factors supported the minority conclusion that there was moderate culpability and harm thereby placing the misconduct in the Middle Range for seriousness.

44. In his oral submissions, Mr Sachdeva placed considerably greater emphasis on the issue of consent, stating that if, as the Tribunal found, the sexual activity was "not unwanted" then it must be regarded for the purposes of these proceedings as consensual, and that this was an important factor that was wrongly omitted from the Tribunal's assessment of seriousness. Reliance is placed on the following passage in *Re B* [2008] UKH 35 as to the "binary" nature of findings during legal proceedings:

> " 2. If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are zero and one. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of zero is returned and the fact is treated as not having happened. If he does discharge it, a value of one is returned and the fact is treated as having happened."

45. Ms Horlick submits that this specialist tribunal reached a decision that was open to them on the Guidance and the law and that there is nothing in it that would entitle this Court to interfere. There was no obligation to rank the factors, and a holistic reading of the Decision enables one to understand precisely why the Tribunal concluded as it did. Furthermore, it did not follow that if the Tribunal could not be sure that the conduct was unwanted, it must have been consensual.

Ground 1 – Discussion.

46. The Guidance sets out a six-step process for determining sanction:

    i) Determining the Misconduct Group. In this case, the relevant group is "B: Misconduct of a Sexual Nature".

ii) Determining the seriousness of the conduct. It is at this stage that the Tribunal will consider the factors relevant to culpability and harm both under the relevant misconduct group and under the general factors set out at Annex 2 of the Guidance. Culpability and Harm may be assessed as being "significant", "moderate" or "low". For Group B conduct, where both culpability and harm are assessed to be significant, seriousness falls in the "Upper range"; where both culpability and harm are assessed to be moderate or one is significant and the other low, the seriousness falls in the "Middle range"; and low culpability and limited or no harm places the seriousness in the "Lower range".

iii) Determining the indicative sanction level for the misconduct. Conduct assessed to fall in the "Upper range" of seriousness has an indicative sanction of disbarment; that in the "Middle range" has an indicative sanction of over 24 months' suspension to disbarment; whereas the "Lower range" has an indicative sanction of 12 to 24 months' suspension.

iv) Applying aggravating and mitigating factors.

v) Considering Totality;

vi) Giving full reasons for the sanction imposed.

47. Ground 1 is concerned with Step 2 and the assessment of seriousness. The Guidance provides that the factors are "not listed in any order and are not intended to imply a hierarchy": para 3.9. At 3.12, the Guidance states that:

> "Applying the culpability and harm factors is not a science. Generally, the greater the number of applicable factors, the greater the level of assessed culpability and/or harm will be. However, it is possible that only one, or a couple of factors, will be so serious as to result in an assessment that there is significant overall culpability and/or harm and the sanction should be in the upper range for the relevant misconduct." (Emphasis added)

48. The Guidance provides further guidance which highlights the inherently serious nature of sexual misconduct and the effect of such conduct on public trust and confidence in the profession:

> "5.7 Numerous studies have shown that incidents of sexual misconduct, discrimination, harassment and bullying are prevalent in the professions, including the Bar. Such behaviour seriously undermines public trust and confidence in the Bar and has a negative impact on diversity, recruitment, and retention at the Bar. It is therefore important that misconduct of these types is marked by serious sanctions to maintain public confidence, act as a deterrent and encourage the reporting of such misconduct.
>
> 5.8 Misconduct of a sexual nature encompasses a wide range of conduct from criminal convictions for sexual offences to misconduct, that may or may not amount to a criminal offence. The misconduct could involve colleagues, clients or others. It is particularly serious where there has been an abuse of trust by the barrister, the misconduct involves a vulnerable person or there has been an abuse of their professional position.
>
> 5.9 The starting point for proved misconduct of these types is a suspension from practice of over 12 months. However, panels may form the view that disbarment is appropriate given the particular circumstances of the misconduct, for example the nature of an abuse of trust or professional position by the barrister or misconduct involving a vulnerable person.
>
> 5.10 When deciding on sanctions for sexual misconduct, discrimination, harassment and bullying, panels should be mindful not only of the serious harm that can be caused to the recipient's emotional and mental well-being but also the impact on others at the Bar, those considering entering the profession and wider society. A single incident can have a significant harmful impact and misconduct of this nature should not be regarded as less serious because it did not form part of a course of conduct.
>
> 5.11 Mitigation based on the respondent's personal circumstances, health, good character/references needs to be

> treated with caution in the context of sexual misconduct, discrimination and harassment. The nature of such misconduct means that serious sanctions are required to protect others and promote standards regardless, in most instances, of the respondent's own circumstances. Many practitioners will face personal challenges, such as ill-health, bereavement and divorce, but do not resort to committing misconduct." (Emphasis added)

49. Mr Sachdeva's first point is that the analysis of the seriousness of the misconduct in this case was inadequate because, like the *O'Connor* case, it merely comprised the listing of factors. In my judgment, the comparison with the *O'Connor* case is inapt. A degree of caution must always be exercised when drawing comparisons with cases decided in different professional contexts subject to different regulatory regimes and procedures:

> "As we have said, each regulatory scheme, for solicitors, for doctors, for barristers, and so on, must be construed and applied on its own terms. Great care must always be taken when seeking to apply an authority under one scheme to an appeal under a different scheme. Regulation of the professions is established under a series of discrete statutory codes; principles developed in one scheme may say little that informs the approach required in a different scheme." (per Sharp LJ and Swift J in *Beckwith v Solicitors Regulation Authority* [2020] EWHC 3231 (Admin) at [19])

50. In the *O'Connor* case, the Police Misconduct Panel was found to have failed to provide adequate reasons for its findings in respect of seriousness and the levels of culpability and harm. Instead, the Panel in that case merely said that "[t]he seriousness of the conduct appears from the list of aggravating factors mentioned above": *O'Connor* at [20]. The deficiency in the Panel's decision in that case is explained by the Court of Appeal in the following passages:

> "50 The Panel found that the interested party had breached the Professional Standards relating to Authority, Respect and Courtesy, Integrity and the Standard relating to Discreditable Conduct. It identified the breaches of the Standards as representing a significant departure by Mr Mason from the behaviour expected of a police officer and found that he had

> behaved in such a fundamentally inappropriate way that his behaviour constituted gross misconduct. In my view, what the Panel did not do in making its findings was to provide any analysis of the seriousness of Mr Mason's misconduct, in particular in respect of culpability and harm. I accept the appellant's contention that listing the aggravating and mitigating factors does not of itself represent the required analysis, indeed counsel on behalf of Mr Mason did not seek to suggest otherwise.
>
> 51 This was deliberate and targeted misconduct by a police officer holding a position of trust and authority. It involved sexual impropriety towards a vulnerable victim. No reference is made by the Panel to the fact that misconduct involving sexual impropriety, of itself, is serious (para 4.39) and that more serious action is likely to be appropriate where the officer has demonstrated predatory behaviour motivated by a desire to establish a sexually inappropriate emotional relationship with a member of the public (para 4.40). The Panel recognised the vulnerability of the victim but did not identify the part this played in its assessment of seriousness and harm. The Panel did identify aggravating factors, but it failed to properly assess or identify the weight to be attached in terms of harm or culpability to such factors and ultimately to the issue of the seriousness of the misconduct." (Emphasis added)

51. By contrast, the Tribunal in the present case, applying the structured and detailed approach set out in the Guidance, expressly recognised the seriousness of sexual misconduct and made express assessments as to the seriousness of culpability and harm, finding that both were "significant". The Tribunal, having identified, correctly, that a large number of the factors under Group B and the General Factors were applicable, was entitled to conclude that culpability and harm were significant. As stated in the Guidance at 3.12, "Generally, the greater the number of applicable factors, the greater the level of assessed culpability and/or harm will be." The Tribunal was not required, in the circumstances, to do more. The identification of such factors and the assessment of seriousness is "not a science" but a matter of judgment. Where the Tribunal was in a position to identify so many culpability and harm factors, its conclusion that culpability

and harm were "significant" cannot be said to be wrong or outside the band of reasonable assessments open to them. That conclusion then enabled the Tribunal, applying the Guidance, to reach a determination that the seriousness of the misconduct overall fell into the "Upper range". In other words, there was, unlike the position in *O'Connor*, a clear basis for the finding that seriousness fell in the Upper range, before any consideration of aggravating and mitigating factors.

52. It is also important to bear in mind that the Decision should be read as a whole and not by reference only to the factors listed at [93]. On analysis, each of the factors identified and its relative seriousness is readily explained by the Tribunal's findings in other parts of the Decision. For example, the identification of the culpability factor, "Whether the misconduct was a one-off incident, sustained / repeated…", is supported by the detailed findings as to the Appellant's invitation to Person 2 to go up to his room, the persistent nature of the Appellant's requests some two hours later that Person 2 stay the night in the face of repeated indications from her that she wished to leave, and his various inappropriate acts such as locking the door, changing into pyjamas in front of a mini-pupil and placing pillows on the bed as a "barricade". There is, in my judgment, no contradiction in finding that this was a "one-off" but also a sustained incident. The sustained nature of the Appellant's conduct emerges from his demonstrable persistence throughout the evening and the numerous inappropriate acts in which he engaged culminating in the sexual kissing and touching. It is not the case that in order for an act to be sustained it needs to be carried out over days. An act can be said to be "sustained", as opposed to fleeting, over a much shorter span of time.

53. Mr Sachdeva submits that the Tribunal failed to recognise that several of the culpability factors overlapped thereby giving rise to double-counting. Whilst it is correct to say that some of the factors cover similar territory, whether or not counting two or more of them would actually amount to double-counting would depend on the circumstances. In the present case, not only was there a breach of trust - the Appellant having held himself out as someone who could assist with Person 2's career - there was also a huge gulf between their respective levels of seniority and experience. It would be quite possible for there to be a breach of trust even where the difference in seniority was far less or where Person 2 was not in a vulnerable position. That the disparity was so great in this case, and where Person 2 had accepted an offer of a mini pupillage in the hope of advancing her career aspirations, meant that those matters clearly warranted being counted as separate factors in their own right.

54. In any case, it is clear that the Tribunal was alive to the possibility of overlap as that is something that was expressly referred to, albeit in the course of the oral decision, where the Tribunal said as follows:

> "The next factor is the extent to which he acted in breach of a position of trust, power and authority. Well, he did. He was mentoring her. She was a mini-pupil, and he was a senior barrister. <u>There is some overlap with the next point, but it is relevant.</u> There was a significant disparity in seniority and experience between the two of them. She was in her mid-twenties, and he was in his fifties. He was a senior Silk. She had not had any experience of Bar before, and this was her first experience of mini-pupillage. <u>The disparity could not have been more striking.</u>" (T/S at 37H to 38B)

55. The level of disparity rendered that factor relevant on its own account notwithstanding the existence of some overlap with being in a position of trust. Mr Sachdeva urged the Court not to have regard to the oral decision on the basis

that it is the Decision which stands as the final judgment. Mr Sachdeva is of course correct that the Decision takes precedence, but that does not negate the relevance of the oral decision in ascertaining whether it is likely that the Tribunal had the risk of double-counting in mind. The extract from the transcript clearly indicates that it did. The absence of that precise reference to the existence of an "overlap" in the Decision does not mean that the Tribunal should be assumed not to have given any thought to the risk of overlap when setting out the same conclusions in writing that it had earlier delivered orally. Such an approach appears to me to be somewhat unreal.

56. The Guidance itself, which the Tribunal demonstrably applied, also refers to the avoidance of double-counting (see 3.32 of the Guidance) although that is in the context of overlap between factors relating to culpability and harm and to those which are aggravating and mitigating, rather than to factors within the categories of culpability and harm themselves. It can safely be inferred that the Tribunal had that Guidance in mind: see *Ali v Solicitors Regulation Authority* [2021] EWHC 2709 at [94].

57. Complaint is made about the Tribunal attaching weight to the fact that the misconduct took place in a professional context. It is said that where sexual misconduct is not criminal, it will "almost invariably" concern conduct in the professional context. I reject that submission. Whether or not conduct took place in a "professional context" is clearly highly relevant to the professional regulator in any assessment of seriousness, which no doubt explains its inclusion in the list of potential factors: sexual misconduct (falling short of a criminal offence) could be committed by a Barrister in a private context or one

that is not clearly a professional one. Indeed, the Appellant was treated favourably by the Tribunal in respect of all charges in relation to Person 3 (as well as Charge 8 in relation to Person 2) on that very basis. Such conduct if perpetrated in the private sphere does not, for obvious reasons, attract the same degree of opprobrium or cause as much potential harm to the profession as misconduct in a professional setting.

58. Mr Sachdeva submits that the Tribunal erred in concluding that the conduct was particularly serious by reason of the Appellant's "seniority and prominent position at the Bar" because as of November 2018, he held "no leadership or representative positions at the Bar". I do not accept that argument. The Appellant was a successful Silk of six years' standing, which was in itself a significant indicator of seniority and the esteem in which he was held within the profession. As already stated, he had previously been elected President of the Society of Asian Lawyers, and held senior roles in the Bar Council (Vice Chair of the Equality and Diversity Committee) and his Inn. On any reasonable, objective view, the Appellant was, even in November 2018, a very senior and prominent Barrister; that he became even more so upon being elected to the Chair of the CBA and leading the Bar strike some years later does not diminish his many impressive achievements up to that point. A Silk is a role model for more junior and aspiring members of the profession. As the Tribunal found, Person 2 was "awed by his status as an influential senior member of the Criminal Bar and she feared that he could damage her career": Decision at [78]. It is particularly egregious when the Bar is let down by someone who has attained a rank that will remain elusive for the majority. That is not to apply a different standard of conduct depending on rank, but merely to recognise that those in

elevated positions can cause even greater harm to the profession by their misconduct. It was certainly not wrong of the Tribunal to regard the Appellant's status within the profession as rendering his conduct "particularly serious".

59. As to harm factors, Mr Sachdeva submits that the Tribunal erred by listing all the factors for culpability and harm together instead of separately. Whilst it might have been preferable to keep the factors for each of the two categories separate, as is the case in the tables set out in the Guidance, there is no error in failing to do so, as long as the Tribunal remains clear which factors are being taken into account under each of culpability and harm. It is clear from the oral decision that the Tribunal did approach the task with that separation in mind:

> "I think that I have identified all of the factors there. But I will be corrected at the end if there are more that I have omitted in error. There, we identified a total of eight factors in the annex relating to culpability.
>
> In relation to harm now, going back to page 41, we identify the following factors…" (T/S 38D-F)

60. Far from muddling the factors up, the Tribunal first identified the culpability factors and then the harm factors, and listed them in that order. It then went on to make an assessment of seriousness for both culpability and harm. It can be inferred in these circumstances that the Tribunal kept the assessments separate, notwithstanding the creation of a single composite list of factors in the Decision.

61. Mr Sachdeva submits that the Tribunal double-counted by relying on both injury to feelings and harm to emotional well-being. The basis for that submission is that the Guidance cites injury to feelings as an example of harm to well-being and thereby subsumes these factors together. The first point to note is that the

Guidance itself includes harm to well-being and injury to feelings as two separate potential harm factors under Group B:

> **"Harm**
>
> - Causing fear, humiliation and/or anxiety.
> - Impact on working life/career of those affected by the misconduct.
> - Impact on mental health/wellbeing, whether physical or psychological, of those affected by the misconduct.
> - Injury to feelings."

62. Furthermore, an act of sexual misconduct could readily affect the victim's sense of emotional well-being as well as cause injury to feelings. Person 2 has described the way in which the Appellant's conduct has "sadly impacted every aspect of my life, including destroying my faith in men, especially in a professional capacity". She has also had to undergo therapy. The adverse effect on emotional well-being is obvious. The Tribunal's finding that Person 2 was a victim of sexual misconduct means that there is also injury to feelings. The knowledge that the Appellant treated her in the way that he did because she was a young woman is liable to cause hurt, anger and upset that is quite distinct from the harm to emotional well-being already described. As the Tribunal found, Person 2 felt a sense of pride at having obtained a mini-pupillage, but her experience was ruined by what had happened, i.e. being seen by the Appellant as a target for sexually motivated conduct rather than as an aspiring professional colleague. The fact that injury to feelings could in some instances also be viewed as an aspect of harm to emotional well-being does not prevent such injury from being treated as a separate category of harm altogether. Indeed, their separate treatment is suggested by the terms of the Guidance itself, and, on the

facts found in the present case, the Tribunal's identification of these as separate factors cannot be said to be wrong.

63. There is complaint about the Tribunal's failure to refer to the absence of physical, mental or financial harm. This is a non-point: it seems to me that the fact that physical, mental or financial harm were not identified as factors is sufficient. The Tribunal is not required to engage in the futile exercise of listing all the factors that are not relevant as well as those that are.

64. It was submitted that Person 2's ongoing and friendly contact with the Appellant after the incident militate against a finding that the harm at the time was "significant". However, the Tribunal is not bound to consider a snapshot in time when assessing harm. Person 2 was shocked and confused by what had happened on the night, but over time came to realise how improperly the Appellant had conducted himself, and this had caused her emotional distress in the ways described. I can see no error in the Tribunal taking into account that delayed reaction, which is not untypical in cases of this sort. It is apparent from the Decision that this was a matter that the Tribunal considered very carefully, as Person 2's behaviour in the immediate aftermath of the incident was a factor that led to the Tribunal not being sure that the sexual activity was unwanted.

65. That takes me to Mr Sachdeva's next point, which is that the sexual activity was or ought to have been found to have been consensual. The submission is that, as the Tribunal found that the sexual activity was not unwanted, it ought to have proceeded on the basis that the activity was wanted or consensual. Mr Sachdeva sought to rely on extracts from the transcript of the oral decision to support a contention that the Tribunal had agreed that that was the correct approach:

> THE CHAIR: You had to prove – sorry the BSB had to prove that it was unwanted. We applied the criminal standard of proof we could not be sure it was unwanted. So, it was not proved that it was unwanted.
>
> MR WILLIAMSON: Exactly. And the consequence of that must be, as a matter of law, that it is not unwanted.
>
> THE CHAIR: Yes. (T/S at 12C-E)

66. The difficulty with that submission is that it disregards the standard of proof that applied in this case. The standard of proof for conduct occurring before April 2019 was the criminal standard of "beyond reasonable doubt" or being "sure". The rules were amended in April 2019 such that for conduct after that date, the relevant standard is the civil one, namely whether it is "more likely than not" that the conduct occurred.

67. In determining whether the sexual activity was unwanted, the Tribunal concluded that, "In the end, the Tribunal could not be sure that sexual activity was unwanted." That means that the Tribunal could not be satisfied to the high standard of proof required that the activity was unwanted. However, it does not follow from that conclusion that the Tribunal must be taken to have found that the activity was wanted or consensual.

68. The case of *Re B*, which talks of the "binary" nature of factual findings, does not assist the Appellant. That was a case dealing with the civil standard of proof where a legal rule (in that case, s.31(2) of the *Children Act 1989*) requires a fact to be proved (the fact in that case being whether a child "is likely to suffer significant harm": see [22]), and the House of Lords emphasised that no other standard, such as a "heightened civil standard" or the criminal standard, applied: see *Re B* at [69] and [70]. Where a party on whom the burden of proof lies fails to establish that it is more likely than not that an event occurred, then one can

generally proceed on the basis that it did not occur. That is simply a function of the civil standard of proof, namely the balance of probabilities. If the balance is not tipped one way, then it must be treated as having tipped in the other. However, that same approach cannot apply where the standard of proof is not the balance of probabilities, but the much higher criminal standard. It is quite possible for example, for one to be unable to be sure to the criminal standard that something has occurred, but at the same time being satisfied that it probably did.

69. Although the Tribunal ultimately concluded that it could not be *sure* that the activity was unwanted, there was evidence to suggest that it was unwanted:

i) The Tribunal said that the issue of wanted/unwanted sexual activity was "not clear cut":

ii) There was evidence that, at least initially, the sexual activity was unwanted. Person 2, whom the Tribunal found to be honest, "repeatedly said that she did not want sex that night in the hotel".

iii) The Tribunal found that Person 2 did not respond to the Appellant's kisses.

iv) The Tribunal considered the possibility that Person 2 was simply going along with what happened because she was confused and felt trapped: Decision [81-82]

70. Furthermore, the earlier part of the same exchange between the Tribunal and Counsel referred to above makes it clear that the Tribunal did not find that the sexual activity was wanted:

> MR WILLIAMSON: …it is important that we bear in mind that your finding is that whilst the invitation was unwanted, the sexual activity itself was not unwanted.
>
> THE CHAIR: No. Our finding was that we could not be sure that it was unwanted.
>
> MR WILLIAMSON: Yes.
>
> THE CHAIR: It maybe we are saying the same thing. Our finding is not that the sexual activity was wanted. It was we could not be sure it was unwanted.
>
> MR WILLIAMSON: That is why I say it is not unwanted.
>
> THE CHAIR: Right, okay. (T/S at 11G to 12B) (Emphasis added)

71. Notwithstanding that evidence and that finding, the fact that the Tribunal could not be sure that the activity was unwanted operated in the Appellant's favour in that the additional element in Charge 6, namely that Person 2 did not want the Appellant to initiate sexual activity and that the Appellant knew or ought to have known that the sexual activity was unwanted, "fell away". In other words, the element of Charge 6 alleging that the sexual activity was unwanted was not made out. That finding meant that there was no distinction between Charges 4 and 6, and no separate penalty imposed for the latter: Decision at [87] and [103].

72. Mr Sachdeva contends, however, that the Tribunal ought to have gone further and to have treated the activity as "consensual" for the purposes of assessing seriousness. However, the fact remained (and the Tribunal found) that such activity was inappropriate, and that the Appellant knew or ought to have known that was the case. The Tribunal was required to assess the seriousness of the charges proved and that is what it did. Whether or not sexual misconduct was "consensual" is not a potential factor in the list of factors to be considered for a

Group B offence, and the Tribunal did not identify the conduct as having been committed "against a background of requests to stop". Moreover, the establishment of Charges 2 and 4 meant that all of the Appellant's conduct up to the initiation of sexual activity was inappropriate *and* unwanted: see Decision at [85]. In those circumstances, and in light of the evidence that the sexual activity was also unwanted (albeit that the Tribunal could not be sure that it was), the Tribunal cannot be said to have erred in not treating "consent" as an expressly ameliorating factor.

73. For these reasons, Ground 1 of the appeal fails and is dismissed.

Ground 2 – Tribunal erred in its approach to Aggravating and Mitigating Factors

Submissions

74. Mr Sachdeva's first point under this Ground is that the Tribunal failed to take account of and/or attach sufficient weight to the Appellant's personal circumstances and previous good character in considering mitigating factors. He submits that the Appellant's personal circumstances, including overcoming a difficult childhood, losing his father in 2018, the evidence as to his mental health and the significant contribution made to the profession, ought to have been treated as "exceptional" personal mitigation. He contrasts the approach taken here with that taken in the case of *BSB v King* (2024/0036) in which a Tribunal comprised of the same Chair and one of the same lay members took account of Mr King's overcoming of significant adversity to achieve success at the Bar and contributing to the profession in deciding to reduce the indicative sanction of disbarment to one of three months' suspension.

Ground 2 - Discussion

75. The Tribunal referred to the Appellant's personal circumstances at [96] to [100] of the Decision: see [33] above.

76. It is clear from those passages that the Tribunal did take account of the Appellant's personal circumstances (albeit not set out in detail here) and the fact that he contributed greatly to the profession. However, the weight (if any) to be attached to such matters in a particular case is a matter for the Tribunal. The personal circumstances, such as his difficult childhood, were not said to have had any bearing on the misconduct in question. As stated in the Guidance, one needs to exercise caution about mitigation based on personal circumstances as, "Many practitioners will face personal challenges, such as ill-health, bereavement and divorce, but do not resort to committing misconduct". As such, the relevance of those matters as a mitigating factor in assessing the overall seriousness of the misconduct is severely limited, if indeed they are relevant at all. As to their relevance in determining sanction, the comparison with the case of *BSB v King* is not apposite (as will almost invariably be the case when any such comparison is sought to be drawn between cases decided on their own facts). Mr King was a very junior barrister of about 5 years' call at the time of the incident, who had promptly admitted and apologised for the sexual misconduct in question and expressed great remorse. His personal circumstances at the time, described as being "extremely difficult", were not the same as those of the Appellant, and the context in which that was considered as mitigation was entirely different. To the extent that it might be said that a degree of leniency was exercised in the circumstances of that case, that would not

necessitate a similarly lenient approach in another, where the circumstances are different.

77. As to the character references and previous good character, these were both matters that the Tribunal expressly considered. However, the Tribunal acted entirely correctly, and consistently with the Guidance, in sounding a note of caution in respect of such matters as mitigation in dealing with a case of sexual misconduct. As stated in the Guidance:

> "4.6… Character evidence is likely to hold little weight where it relates to … misconduct of a sexual nature… . This is because it is very possible that when instances of such proven misconduct come to light, they will be perceived by many as "out of character" but this does not mitigate the conduct itself or the harm it will have caused."

78. That is all the more so where, as in this case, the character references were obtained by the Appellant himself prior to the Tribunal's finding on liability, and many of the referees refer only to knowledge of "the general nature" of the complaints against him or to not having been informed of the details. The references, unsurprisingly, speak uniformly of a dedicated, hard-working and committed Barrister who has worked tirelessly for the benefit of others in the profession, especially those from disadvantaged and non-traditional backgrounds. There can be no doubt that the Appellant has made a very substantial and lasting contribution to the Barristers' profession in England and Wales. The Tribunal recognises this at [99] of the Decision. The Appellant's complaint is not so much that there was any error of law or principle on the Tribunal's part when it comes to character references, but simply that it should have attached more weight to them. However, as already stated, the weight to be attached to such matters (which will usually be limited in any event in the

context of a complaint of sexual misconduct) is a matter for the Tribunal, and it is plain from a fair reading of the Decision that the Tribunal did not attach great weight to them or at any rate not sufficient weight to reduce the indicative sanction. That was a course that was open to this specialist Tribunal, and it cannot be said to be wrong.

79. The next key point under this Ground is that the Tribunal failed to include expressly as a mitigating factor the fact that repetition of the misconduct was unlikely. The Tribunal did refer to this in its oral decision:

> "The impact of these proceedings and the fact that they have been widely reported has been very painful for him. It has been shaming and embarrassing not just for him, but almost certainly for his family. We accept that, as a consequence of that, the behaviour is unlikely to be repeated. It would be unwise." (T/S at 40B-F)

80. No express reference was made to the likelihood of repetition in the Decision.

81. It is to be noted that the likelihood of repetition features as both a potentially aggravating and mitigating factor. If, contrary to the view expressed in its oral decision, the Tribunal had formed the view that there *was* a likelihood of repetition, then one could have expected that to be included as an aggravating factor. That it was not suggests that the Tribunal remained of the view that there was no likelihood of repetition. The question then is whether the Tribunal erred by not expressly referring to it as a mitigating factor.

82. The Tribunal found that the unlikelihood of repetition was a consequence of shame and embarrassment; it was not, as might often be the case, found to be related to genuine remorse and/or insight into the wrongdoing. In the present case, the Appellant gave no evidence. He neither admitted nor apologised for

any of his conduct and gave no assistance to the Tribunal at all on questions of insight or remorse. (It was suggested by Mr Sachdeva that the evidence that the Appellant had undertaken over 80 hours of psychotherapy demonstrated insight. However, there was no evidence as to what that psychotherapy entailed – the Tribunal being left to assume it was do with sexual misconduct – or whether the Appellant had thereby gained any insight into his behaviour.) In circumstances where the Appellant did not admit the misconduct and had not apologised, it would have been open to the Tribunal to infer that there was a *lack* of remorse and/or insight and to treat that as an additional aggravating factor. However, the Tribunal did not do so, instead stating - somewhat generously it might be said - that "it was not possible to draw any conclusion favourable or unfavourable on the questions of remorse and insight". In those circumstances, where there was no evidence of insight or remorse, the weight to be attached to the lack of likelihood of repetition is likely to be substantially diminished. Whilst the Tribunal could have made express reference to the likelihood of repetition as a mitigating factor in the Decision, its failure to do so, does not, in the circumstances of this case, give rise to any error and nor does it mean that the Decision was wrong. Even if it had been referred to expressly, it is highly unlikely to have made any appreciable difference to the Tribunal's overall assessment as is evident from the oral decision where the same conclusion was reached after making express reference to the unlikelihood of repetition.

83. For these reasons, Ground 2 fails and is dismissed.

Ground 3 – Proportionality of Sanction.

Submissions

84. Mr Sachdeva submits that sexual misconduct in a professional context should not always result in disbarment or erasure from a profession and that the task which the Tribunal failed to undertake was to assess where on the "spectrum of gravity" the particular sexual misconduct in question lies. Reliance is placed on *Gilbert* - in which the High Court (Calver J) rejected a submission that sexual misconduct cases are inherently serious such that erasure was the only appropriate sanction – and *Arunachalam* (both cited above at [38]) in which the Court of Appeal said:

> "[79] In our system of justice, the law jealously guards the rights of women workers to protection against predatory, ignorant men who feel entitled to prey on female colleagues in the way that this doctor did; but our system is not so inflexible that every transgression of this kind must be met with erasure. This appellant's conduct was not at the very bottom of the scale; it was very serious, but it was not anywhere near the top of that scale. The mitigation, for what it was worth, was there. No patient's safety was endangered. The appellant was of previous good character. He had some insight into his offending behaviour, although it was given slight weight and came late. He had a long record of unblemished service, which included about two and a half years after the second incident without any further offending." (Emphasis added)

85. Mr Sachdeva submits that, similarly, the conduct here "was not anywhere near the top of the scale". He invites me, once again, to compare this case with another Barrister's disciplinary case: *Farquharson v BSB* [2022] EWHC 1128 (Admin), where the High Court allowed Mr Farquharson's appeal against disbarment and substituted a sanction of two years. Mr Farquharson (called in 2011) engaged in sexual misconduct against a more junior colleague (called in 2016) whom he repeatedly touched in an unwanted sexual manner in September 2019 on a night out, described as being "not in any way related to a Chambers event or any business activity": *Farquarson* at [43]. Mr Sachdeva contends that

the conduct in that case, which led to a criminal conviction pursuant to s.3 of the *Sexual Offences Act 2003* and the imposition of a suspended sentence, fell higher on the "spectrum of gravity" than the Appellant's case and yet resulted in a suspension. That disparity, he submits, highlights the disproportionate nature of the disbarment in the present case.

Ground 3 - Discussion

86. Forcefully though those submissions were made, I cannot accept them. There is nothing in the Decision to indicate that a blanket approach was taken such that a finding of serious sexual misconduct would invariably result in disbarment. Instead, the Tribunal faithfully followed the steps in the Guidance, reached a conclusion as to indicative sanction and then expressly considered whether that was the just and proportionate sanction in all the circumstances. The very fact that two of the panel members considered a lesser sanction as appropriate disproves any notion that this Tribunal as a whole took a fettered approach or considered disbarment to be inevitable.

87. The comparison with *Farquharson* is (as with the *King* case and the many other disciplinary decisions drawn to my attention and to which I need not expressly refer) inapposite. Not only were the circumstances in *Farquharson* entirely different – principally because the activity took place outside of any professional setting and the difference in seniority was far less – but the sanctions regime applicable in that case was not that which applies here. The sanctions regime in *Farquharson*, cited by the Court at [72], reserved disbarment for cases where there was a conviction for a serious criminal offence, whereas under the Guidance disbarment can be imposed even in the

absence of a conviction, the latter instead being treated as an aggravating factor. The issue in *Farquharson* was whether the Tribunal in that case had correctly applied the guidance that was then in place; it provides no assistance in the present case as the Guidance is in very different terms.

88. Disbarment remains the most serious sanction and is "reserved for cases where the need to protect the public or the need to maintain public confidence in the profession is of such a level that the only reasonable option is to remove the respondent from the profession." Disbarment can, however, be appropriate for a first offence and "will also be appropriate in serious cases of misconduct of a sexual nature".

89. Some of Mr Sachdeva's submissions on proportionality were premised on the contention that the Tribunal ought to have found that the sexual touching in this case was consensual and therefore incapable of giving rise to a criminal offence, and that the Appellant was not senior or prominent as of November 2018. Neither point is sustainable for reasons already set out.

90. The sanctions regime applicable to the Appellant is undoubtedly more severe than that which applied previously; in particular, there is no need for an act of sexual misconduct to be such as to warrant criminal proceedings for disbarment to be justified. In the present case, the Tribunal's assessment of culpability and harm as being significant led to the misconduct being placed within the "Upper range" of seriousness for which the indicative sanction is disbarment. By doing so, the Tribunal clearly did reach an assessment of where on the "spectrum of gravity", as Mr Sachdeva puts it, the Appellant's conduct lay. In coming to that conclusion, the Tribunal took into account the fact that sexual misconduct

"seriously undermines public trust and confidence in the Bar and has a negative impact on recruitment and retention": Decision at [92]. Moreover, the harm to public confidence in the profession was considered to be "particularly serious in view of the [Appellant's] seniority and prominent position within the Bar". As already discussed, that was a judgment that the Tribunal was entitled to make. As to seniority and prominence, it is to be noted that not one of the many other Barrister disciplinary decisions drawn to my attention involved a Silk, or the level of disparity – Silk and mini-pupil – that was present here.

91. The final point made by Mr Sachdeva under this head is to emphasise that the Tribunal (and this Court) ought not to be influenced by the level of media interest in a particular case or by public opinion, and reference was made to the decision of the House of Lords in *R v SSHD ex parte Venables* [1998] AC 407. This is something of a "straw man" argument as there is nothing in the Decision or otherwise to indicate that the Tribunal was in any way influenced by such matters, and I was not taken to any other material to suggest that it was so influenced.

92. The question for the Court is whether the decision on sanction was wrong or clearly inappropriate or outside the bounds of what the Tribunal could properly and reasonably decide: see *Bawa-Garba* at [67]. Once it was determined that the misconduct fell into the Upper range of seriousness – a determination that was, for reasons already set out, open to the Tribunal to make – disbarment was clearly within the band of sanctions that could reasonably be imposed by the Tribunal. The decision that disbarment was the only just and proportionate sanction in the circumstances was an evaluative assessment of this specialist

tribunal falling well within the bounds of what it could reasonably and properly decide. The decision cannot be said to be one that was "clearly inappropriate" or wrong. Accordingly, it is not a decision with which this Court can or should interfere.

93. For these reasons, Ground 3 fails and is dismissed.

Ground 4 – Inadequacy of Reasons

Submissions

94. Mr Sachdeva submits that the Tribunal failed to give reasons for its conclusion that disbarment was the only just and proportionate sanction and failed to explain why a lesser sanction of suspension was not appropriate. It is said that it is especially important in the event of a majority decision to give full reasons as to why the lesser sanction favoured by the minority was not deemed sufficient to meet the regulatory objectives. Further, the Tribunal is said to have erred in failing to explain why in the majority's view, the Appellant's value as a practitioner, his significant contribution to the profession over 30 years and the absence of a risk of repetition did not affect the assessment of whether disbarment was just and proportionate. Reliance was placed on *Giele v General Medical Council* [2006] 1 WLR at [29] where Collins J held:

> "That confidence [in the profession] will surely be maintained by imposing such sanction as is in all the circumstances appropriate. Thus in considering the maintenance of confidence, the existence of a public interest in not ending the career of a competent doctor will play a part."

Ground 4 - Discussion

95. The following passage in *Ali v Solicitors Regulation Authority* [2021] EWHC 2709 at [94] sums up what has often been said as to what is to be expected of the reasons of a specialist tribunal in the regulatory context:

> "Finally, as regards reasons, decisions of specialist tribunals are not expected to be the product of elaborate legal drafting. Their decisions should be read as whole; and in assessing the reasons given, unless there is a compelling reason to the contrary, it is appropriate to take it that the Tribunal has fully taken into account all the evidence and submissions".

96. The Guidance provides direction to the Tribunal as to the form of decision and its contents. As to the length and level of detail, the Guidance provides:

> "3. Panels should set out their reasons in sufficient detail to enable the parties and the public to understand the basis for the panel's decisions on findings of law, fact, misconduct and sanction. The length of the Report and the level of detail setting out the reasons will vary according to the nature of the matter in question. The Report does not have to rehearse every point arising in the case or the detail of all evidence presented so long as the panel's reasoning is clear and the evidence on which it is based is referred to in the report."

97. The requirement to set out reasons "in sufficient detail to enable the parties and the public to understand the basis for the decision" is clearly consistent with the principles stated by the Court of Appeal in the well-known case of *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605:

> "16 We would put the matter at its simplest by saying that justice will not be done if it is not apparent to the parties why one has won and the other has lost.
>
> …
>
> 19 It follows that, if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he

> resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision. …"

98. Those principles apply to "any tribunal charged with the duty to reach a judicial or quasi-judicial conclusion": see *Phipps v GMC* [2006] EWCA Civ 397 at [78].

99. The Guidance provides a template report with a series of suggested headings, all of which are to be found in the Decision. There is then specific guidance as to the structure and content of the decision on sanction:

> " 13. This section of the Report, if applicable, should set out the sanctions imposed and the reasons for the imposition in line with the expectations of this Guidance. This means that the reasoning on the sanctions imposed should include the following information:
>
> - Reference to the applicable purposes of sanctioning in the individual case, e.g. to protect the public; maintain public confidence in the profession and enforcement system: maintain and promote high standards at the Bar; and act as a deterrent from engaging in misconduct.
>
> - A summary of the submissions and evidence presented in relation to sanction.
>
> - An explanation of the panel's decision on the sanctions imposed for each charge covering the following:
>
> 1. The Misconduct Group/s under which the panel considers the misconduct should be sanctioned.
>
> 2. The general and specific culpability and harm factors applied to the misconduct in determining the seriousness.
>
> 3. Where in the relevant Misconduct Group/s indicative sanction range the misconduct falls, identifying the least severe sanction that is proportionate. Panels should identify where more than one sanction may be appropriate (for example suspension and an order to complete continuing professional development).
>
> 4. The aggravating and/or mitigating factors that have been taken into account in determining the final sanction.

> 5. Where there are multiple charges, any adjustment made to ensure that the totality of the sanctions is proportionate; and
>
> 6. The final sanction(s) imposed.
>
> 14. If, for "good reason", a sanction outside the recommended range is imposed the panel must clearly state why it is appropriate to depart from the normal range and give reasons for the departure."

100. There can be no doubt that the Decision satisfies all of those requirements. The thrust of Mr Sachdeva's complaint is that the Tribunal simply declared the sanction without explaining it. I do not agree. The particular passage criticised by Mr Sachdeva is at [102] of the Decision:

> "102. Having considered all of the above matters, the majority decision (by 3 to 2) was that the indicative sanction of disbarment was the only just and proportionate sanction in all the circumstances. The minority decision was that the just and proportionate sanction was a term of suspension of 25 months less credit for the time spent under the interim suspension order imposed on 9 December 2024. "

101. Read in isolation, it might be said that the reasons for the sanction, and in particular, the reasons for the difference in view, are not explained adequately or at all. However, the Decision must be read as a whole. That means taking account of the Tribunal's earlier analysis of the various culpability and harm factors which gave rise to a finding (by a majority) that the seriousness of the misconduct fell into the "Upper range" and an indicative sanction of disbarment. It is to be noted that that is the sole indicative sanction for that level of seriousness with no other sanction or range of sanctions being mentioned. Further, paragraph [102] must also be read with the rest of the reasons on sanction, including the passage at [94]:

> "Having taken all of the above factors into account, the conclusion of the Tribunal, by a majority of 3 to 2, was that the

> misconduct involved significant culpability and significant harm and that it fell within the upper range of seriousness. The majority considered that misconduct caused significant harm to public confidence in the profession and was particularly serious in view of the Respondent's seniority and prominent position at the Bar. The conclusion of the minority of the Tribunal was that the misconduct fell within the middle range of seriousness and involved moderate culpability and moderate harm which included harm to the confidence in the profession..."

102. That explains not only why the Tribunal considered the misconduct to be particularly serious (i.e. by reason of the Appellant's seniority and prominent position at the Bar) but also the key reason for the difference of view between the majority and the minority. It was not required to do more. Some panels might have gone further and elaborated in more detail, although such detail would probably have done little more than reiterate what is already said in the Guidance as to the importance of addressing sexual misconduct at the Bar and the effect of such misconduct on recruitment and the Bar's reputation, matters to which the Tribunal had already referred elsewhere in the Decision: see Decision at [92]. However, the fact that this Tribunal did not elaborate further does not render its reasoning inadequate or unlawful. The parties, and in particular the Appellant, would know precisely why the Tribunal decided as it did; the difference in the Appellant's case is that he does not accept or agree with that reasoning.

103. The misconduct in this case did not result from an unwise, spontaneous and consensual sexual encounter in a hotel. This was misconduct that involved a senior Silk and prominent member of the Bar using his position effectively to pressurise a young female mini pupil into a compromising situation in order to gratify his own sexual desires. The Tribunal was entitled, as a specialist panel of the professional regulator, to view such conduct as particularly serious and

not adequately addressed by anything less than the indicative sanction of disbarment.

104. The Appellant's successful career at the Bar and his contribution to the profession (and implicitly the public interest in not ending the career of such a person) were taken into account by the Tribunal: see e.g. Decision at [99]. However, the Tribunal was entitled to consider that such matters did not outweigh the public interest in maintaining confidence in the profession as well as the other purposes for imposing sanctions for misconduct; including the maintenance and promotion of high standards and deterrence.

105. For these reasons, Ground 4 of the appeal also fails and is dismissed.

Conclusion

106. For the reasons set out above, the Appellant's appeal fails and is dismissed. The sanction of disbarment stands.