

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JOHN ROBERT CANK, solicitor (Respondent)

Upon the application of Paul Robert Milton
on behalf of the Solicitors Regulation Authority

Mr D Glass (in the chair)
Mr A Gaynor-Smith
Mr M Hallam

Date of Hearing: 11th March 2010

FINDINGS & DECISION

Appearances

Mr Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts, SG14 1BY for the Applicant.

The Respondent did not appear and was not represented.

The application to the Tribunal on behalf of the Solicitors Regulations Authority (“SRA”) was made on 6th October 2009.

Allegation

The allegation against the Respondent, John Robert Cank, was that contrary to Rule 1.06 of the Solicitors Code of Conduct 2007 he had behaved in a way that was likely to diminish the trust of the public in him and in the reputation of the solicitors’ profession following his conviction on 6th June 2008 at Burnley Crown Court of assault occasioning actual bodily harm.

Preliminary matter

Mr Battersby asked the Tribunal to proceed in the Respondent’s absence. In his submission even if the allegation did not create concern then the correspondence from the Respondent before the Tribunal did. It was clear from the correspondence that the Respondent was fully

aware of the application and of the hearing date. Attempts had been made to try to explain matters to him. He had been told the Application was to proceed. No medical evidence had been put before the Tribunal concerning his state of health.

The Respondent was not practising currently. It was in the public interest to deal with this matter sooner rather than later. In addition, in Mr Battersby's submission, the certificate of conviction proved the fact that the Respondent had been convicted of ABH. It would be very difficult for him to contest the allegation.

The Tribunal was referred to the cases of R v Hayward [2001] QB 862 and Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 and to the Tribunal's own practice note on adjournments. The Tribunal retired to consider the matter. Having taken into account the matters to which it had been referred, it was minded to proceed in the absence of the Respondent. The Respondent clearly knew about the proceedings. It had been made clear in a letter dated 19th November 2009 from Mr Paul Milton (the Applicant) to the Respondent that these proceedings were separate from the criminal proceedings in Burnley Crown Court. The Tribunal was satisfied that the Respondent had been properly served and given notice of the hearing. There was no indication that he would be likely to appear if the matter was adjourned. The certificate of conviction from Burnley Crown Court would be difficult to go behind. In addition there was the overriding public interest in bringing the matter to a conclusion as soon as possible given the circumstances of this Respondent and the duty of the Tribunal to safeguard and protect the public. Therefore having given the matter anxious and careful consideration the Tribunal decided to proceed in absence for the reasons already given.

Factual Background

1. The Respondent, born in 1974, was admitted as a solicitor in 2000. His name remains on the Roll of Solicitors although he does not hold a current practising certificate.
2. On 6th June 2008 the Respondent was convicted at Burnley Crown Court of assault occasioning actual bodily harm to his mother.
3. On 31st July 2008 the Respondent was sentenced to 36 weeks imprisonment which was suspended for 2 years. The Respondent was also made the subject of an exclusion requirement, was ordered to participate in the CALM programme and was ordered to pay prosecution costs in the sum of £250.00.
4. On 9th October 2008 the SRA wrote to the Respondent asking him for an explanation of his conduct. The Respondent responded by way of letter dated 10th October 2008. In his letter the Respondent stated that:-
 - (i) Burnley Crown Court had imposed a conviction and sentence for assault occasioning actual bodily harm as a result of a "small accident" at his mother's house.
 - (ii) He was not currently employed but formerly practised as a civil and criminal litigator. He was looking for legal employment and wished to return to private practice as soon as possible.

- (iii) He had not breached the Solicitors Practice Rules governing the Professional Conduct of Solicitors and therefore should not be subject to this disciplinary action.
 - (iv) He had lodged an appeal against conviction and sentence. (This was heard on 12th January 2009. The Respondent confirmed by a further letter dated 17th January 2009 that the Court of Appeal had not granted the Respondent permission to appeal against the conviction or the sentence.)
5. By way of further explanation in a letter dated 20th April 2009 the Respondent, inter alia, maintained that by virtue of his conviction he had not breached the rules of professional conduct and had not behaved in a way likely to diminish the trust that the public placed in him or the solicitors' profession.
 6. The Tribunal reviewed the Rule 5 Statement of the Applicant together with accompanying bundle, which included a certificate of conviction upon indictment of assault occasioning actual bodily harm of the Crown Court at Burnley dated 6th June 2008, the sentencing remarks of the judge on that occasion and correspondence with the Respondent.

Findings as to fact and law

7. The allegation related to the conviction of the Respondent in the Burnley Crown Court for assault occasioning actual bodily harm. Mr Battersby told the Court that the Respondent was a relatively young man. It appeared he had not practised for some time and was living on benefits. He had a good record with the SRA. The offence did not arise from his practice as a solicitor. The impact of his conviction for such an offence would be on the reputation of the profession. It could be seen from the judge's sentencing remarks that he took a serious view and that this had not been the first time that the Respondent had been involved in such an assault as he had received a previous police caution. In Mr Battersby's submission the conviction gave the Tribunal good ground for finding the allegation against the Respondent to be proved.
8. The Tribunal found this allegation to have been substantiated on the facts.

Costs application

9. Mr Battersby applied for £1,550.24 in respect of costs. As far as Mr Battersby was aware the Respondent was in receipt of benefits and not working.

Previous disciplinary sanctions of the Tribunal

10. None.

Sanctions and Reasons

11. The Tribunal had given the matter anxious and careful consideration and in view of the facts surrounding the allegation, which they had found to be substantiated and the Respondent's apparent state of mind as indicated by the documents produced by the

Applicant decided that the Respondent should be suspended from practice indefinitely.

Decision as to costs

12. The costs would be awarded in full but in view of what the Tribunal had been told about the Respondent's current financial circumstances these were not to be enforced without the consent of the Tribunal.

The Order of the Tribunal

13. The Tribunal Ordered that the Respondent, JOHN ROBERT CANK, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 11th day of March 2010 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,550.24, such order for costs not to be enforced without the consent of the Tribunal.

Dated this 13th day of May 2010
On behalf of the Tribunal

D Glass
Chairman