

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10993-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JOHN JAMES HOBART BURDEN

Respondent

Before:

Mr I. R. Woolfe (in the chair)

Mr K. W. Duncan

Mr M. Palayiwa

Date of Hearing: 12th November 2012

Appearances

Mr Inderjit Johal, Counsel, Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegation against the Respondent was that:
 - 1.1 On 20 September 2011, at the Croydon Magistrates' Court, he was convicted of 5 counts of making indecent photograph or pseudo-photograph of a child, in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 10 May 2012;
- Rule 5 Statement dated 10 May 2012 with exhibit "ISJ1"
- Schedule of costs dated 25 October 2012;
- Letters from the Respondent dated 23 May 2012, 6 August 2012 and 29 October 2012.

Respondent:

- None.

Preliminary Matter (1)

3. The Tribunal was told that the Respondent was aware of the date of the hearing and had chosen not to attend. Mr Johal said that the Tribunal had sent the Respondent notification of the hearing date on 20 July 2012. In addition, Mr Johal said that he had written to the Respondent on 2 August 2012 when he had confirmed the date of the hearing. The Tribunal noted that the Respondent had acknowledged receipt of that letter in his own correspondence to Mr Johal dated 6 August 2012. Accordingly, the Tribunal was satisfied that notice of the hearing had been served on the Respondent. In accordance with Rule 16 (2) of The Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") the Tribunal decided to hear and determine the application notwithstanding that the Respondent had not attended in person and was not represented at the hearing.

Preliminary Matter (2)

4. Mr Johal told the Tribunal that the Respondent had admitted the allegation against him which was based on his conviction for a criminal offence. He referred the Tribunal to the Respondent's letter dated 23 May 2012 in which the Respondent had confirmed that none of the facts set out in the Rule 5 Statement were in dispute. He said that the Respondent had also admitted the allegation in the Tribunal's pre-listing questionnaire.
5. The Tribunal noted that the pre-listing questionnaire had not been signed or dated. Furthermore, the Respondent's letter to Mr Johal of 23 May 2012 confirmed that he

admitted the facts in the case but did not state that he admitted the allegation. Accordingly, the Tribunal decided that it could not be assumed that the Respondent had admitted the allegation and decided to proceed on the basis that the allegation had been denied.

Factual Background

6. The Respondent was born on 5 November 1943 and admitted as a solicitor on 1 December 1968. His name remained on the Roll of Solicitors. He had retired as a solicitor but still held a current Practising Certificate. The Respondent was a partner in the firm of Veale Wasbrough Vizards until his retirement in April 2011.
7. On 20 September 2011, the Respondent pleaded guilty to five counts of making indecent photographs or pseudo-photographs of a child at Croydon Magistrates' Court. The Magistrates' Court sent the Respondent to Croydon Crown Court for sentencing.
8. On 12 October 2011, the Respondent was sentenced to the following:-
 - A total custodial sentence of nine months suspended for 24 months;
 - A total of 100 hours of unpaid work;
 - A Forfeiture Order relating to his computer;
 - Participation in a Sex Offender Programme for two years;
 - A Sexual Offences Prevention Order (SOPO) indefinitely;
 - Placed on the Sex Offenders Register for 10 years.
9. The conviction related to the Respondent accessing 585 indecent images of children on his home computer over a period of some seven to eight months. The images related to young children committing sexual acts on each other, exposing their genitalia and being required to commit sexual acts on males, sometimes whilst being tied up.
10. The Crown Prosecution Service had produced guidelines for determining the mode of trial and for the sentencing of offenders found guilty of offences relating to indecent images of children. The guidelines categorised the images of children into five levels of seriousness, with level 5 being the most serious.
11. The majority (432) of the images accessed by the Respondent were at level 1 which related to images of erotic posing with no sexual activity. There were 152 images that fell within the more serious categories of levels 2 to 5.
12. The Respondent pleaded guilty to the offences at the earliest opportunity before the Magistrates' Court. He had made repeated initial denials to the police about his involvement in the offences which had included intimating that the images were of children over the age of 18. He had claimed that he had accessed the images for research purposes.

13. In passing sentence, the Judge commented that he accepted that the material that the Respondent had accessed was for his own personal use and did not include any moving images and had not been retained by the Respondent or distributed to others.
14. The Solicitors Regulation Authority (“SRA”) wrote to the Respondent on 25 November 2011. The SRA requested a response to the allegation that the Respondent had breached Rule 1.06 of the Solicitors’ Code of Conduct 2007 by virtue of his conviction.
15. On 5 November 2011, the Respondent replied and confirmed his conviction. In relation to the allegation, the Respondent said:

“I would like to state that none of the images were stored on my computer and that they resulted from my concern, as a father with four, now adult, children that sites containing such images could be accessed on the internet; I have paid a..... penalty for this social concern.”

16. It was clear from the Judge’s sentencing remarks that the Respondent had given a similar explanation to the police. The Judge had stated:

“For you to give the classic, trite explanation to the police officers that you were intrigued by a recent particularly high profile child abuse case and wanted to research and see what was available on the net and what you could access and wanted thereby to try to change its availability in some unspecified way was both woeful and highly disingenuous, in my judgment”

and

“To say also that you gained no sexual satisfaction or felt any urge towards the children, again was, very probably, pulling the wool over your own eyes, that denial that prosecution counsel spoke about and, again, highly disingenuous, in my perception”.

17. On 6 February 2012, a decision was made by an authorised officer at the SRA to refer the Respondent’s conduct to the Solicitors Disciplinary Tribunal.

Witnesses

18. None.

Findings of Fact and Law

19. The Tribunal determined the allegation to its usual standard of proof, that is beyond reasonable doubt.
20. **Allegation 1.1: The allegation against the Respondent was that on 20 September 2011, at the Croydon Magistrates’ Court, he was convicted of 5 counts of making indecent photograph or pseudo-photograph of a child, in breach of Rule 1.06 of the Solicitors’ Code of Conduct 2007.**

20.1 Mr Johal referred the Tribunal to the certificate of conviction and to the judge's sentencing remarks. The Respondent's conviction had involved the exploitation and abuse of children. Mr Johal said that this was a most serious matter and undermined the public's trust in him as a solicitor and in the profession generally.

20.2 The Tribunal found allegation 1.1 to be substantiated on the facts and documents before it.

Previous Disciplinary Matters

21. None.

Mitigation

22. None.

Sanction

23. The Tribunal considered its own Guidance Note on Sanctions when deciding the appropriate penalty in this case. The Respondent's conduct had occurred outside of the course of his practice as a solicitor but his behaviour had shown personal failings together with a considerable lack of integrity. This was a most serious case of misconduct and the Respondent had not shown the standards of integrity, probity and trustworthiness that were required of any solicitor. Allowing the Respondent to remain on the Roll of Solicitors would have a detrimental effect upon the public's confidence in the reputation of the profession. The Tribunal decided that the Respondent's misconduct was such that the appropriate and proportionate sanction was that he should be struck off the Roll of Solicitors. Indeed, any lesser sanction would be inappropriate. Accordingly, the Tribunal ordered that the Respondent should be struck off the Roll of Solicitors.

Costs

24. The Applicant's claim for costs was £1,296.90. Mr Johal confirmed that the Respondent had agreed to pay costs in that sum.

25. The Tribunal noted that the time spent in attendance at the hearing had been less than anticipated. In addition, the Tribunal considered that economies could have been made if the SRA advocate, who had been dealing with another matter on the same day before the Tribunal, had dealt with this case. Mr Johal explained that he had worked on this case from the beginning. He said that additional costs would have been incurred if another advocate had spent time familiarising himself with the matter. Notwithstanding this, the Tribunal felt that it would have been more cost effective for one SRA advocate to have dealt with both matters and accordingly, the Tribunal made a summary assessment of costs in the sum of £1,000. It was appropriate that the Respondent should pay costs fixed in that amount.

Statement of Full Order

26. The Tribunal Ordered that the Respondent, John James Hobart Burden, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

Dated this 6th day of December 2012
On behalf of the Tribunal

I. R. Woolfe
Chairman