

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11116-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

PRITESH NAIK

Respondent

Before:

Mr A. Spooner (in the chair)

Miss K. Thompson

Mr D. Marlow

Date of Hearing: 18th June 2013

Appearances

Ms Lorraine Trench, a solicitor employed by the Solicitors Regulation Authority at The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent appeared and was not represented.

JUDGMENT

Allegations

1. The allegation against the Respondent, Pritesh Naik, was that:-
 - 1.1 He has breached Principles 2 and 6 of the SRA Principles 2011, as he failed to act with integrity and failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, as he was convicted upon indictment of 5 counts of without authority transmit/cause transmission of an image/sound from inside a prison for simultaneous reception outside and conspiracy to pervert the course of public justice at the Central Criminal Court on 10 May 2012 and 23 May 2012 respectively.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included:

Applicant:

- Application dated 20 December 2012
- Rule 5 Statement dated 20 December 2012 together with Exhibit LPT1
- Letter from the Respondent to Ms Trench dated 14 January 2013
- Letter from the Respondent to Ms Trench dated 5 February 2013

Respondent:

- None

Factual Background

3. The Respondent was born on 14 March 1979 and was admitted as a solicitor on 3 November 2008. His name remained on the Roll of Solicitors but he was not currently practising as a solicitor. The Respondent's last Practising Certificate for the practice year 2009/2010 was terminated on 5 January 2011.
4. On 10 May 2012, the Respondent was upon his own confession convicted upon indictment of 5 counts of without authority transmit/cause transmission of an image/sound from inside prison for simultaneous reception outside. On 23 May 2012, he was tried and convicted upon indictment of conspiracy to pervert the course of public justice.
5. The Respondent was sentenced on 23 May 2012 to 5 years imprisonment, less 45 days spent on remand.

Witnesses

6. None.

Findings of Fact and Law

7. The Tribunal had due regard to the Respondent's right to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
8. **Allegation 1.1 He has breached Principles 2 and 6 of the SRA Principles 2011, as he failed to act with integrity and failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, as he was convicted upon indictment of 5 counts of without authority transmit/cause transmission of an image/sound from inside a prison for simultaneous reception outside and conspiracy to pervert the course of public justice at the Central Criminal Court on 10 May 2012 and 23 May 2012 respectively.**
 - 8.1 The Respondent admitted the allegation.
 - 8.2. Ms Trench took the Tribunal through the facts of the case. The conspiracy had involved the agreement with others that Samuel Ogunro, a person charged with a serious firearms offence, should plead guilty on a false basis; the false basis being that he should take the full blame for the possession of a handgun and so ease the position of his co-defendants.
 - 8.3. In sentencing the Judge had said that:

“It was a serious conspiracy hatched from prison, facilitated by the use of mobile phones, and for a solicitor to be involved in such matters it is plainly very serious.”
 - 8.4. The Judge had also identified an aggravating feature:

“... the fact that you were a solicitor is a very serious aggravating feature... bearing in mind that you were a solicitor I have to pass a substantial sentence”.
 - 8.5. In Ms Trench's submission, this was a serious offence which had attracted a custodial sentence; the gravity of the matter was reflected in the Judge's sentencing remarks.
 - 8.6. The Respondent had written to her on 5 February 2013 and that letter was before the Tribunal. In that letter he accepted that a solicitor convicted of perverting the course of justice had no place in the legal profession. The conviction had had a serious impact on the reputation of the profession as could be seen from the press cuttings that were included in the exhibit LPT1. The public expected high standards from solicitors, including integrity and probity and trustworthiness. A solicitor should be beyond reproach and it was clear in this case that the Respondent had failed to act with integrity and that his conduct had fallen below the high standards expected by the public of the profession.
 - 8.7. The Tribunal found the allegation against the Respondent to have been substantiated beyond a reasonable doubt on the facts and documents before them, indeed it had been admitted by the Respondent.

Previous Disciplinary Matters

9. None.

Mitigation

10. The Respondent told the Tribunal that he admitted the breach based upon his conviction. However, in his submission, there had been a grave miscarriage of justice and he was appealing the conviction. He had never understood the particulars of the offence and did not understand how it could be committed. As an analogy, he cited a case where an individual had been tried and convicted and then his solicitor was convicted on the basis that he knew he was guilty.
11. In this case his client had wanted to plead guilty and he said that other criminal law practitioners would be extremely concerned if they heard about what had happened to him; he felt that he had been “thrown to the wolves”. The alleged conspiracy could never have worked. In addition, guidance had not been given to solicitors until 2011 concerning the use of mobile telephones in prisons and his offence had been committed in 2009. However, he acknowledged that these were matters for the Court of Appeal and if his appeal was successful then he may return to the Tribunal.

Sanction

12. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
13. The Tribunal had reviewed all of the documentation before them and had listened very carefully to what had been said by both Ms Trench and the Respondent.
14. The Tribunal gave the Respondent credit for attending the hearing and for his previous good character. They noted that he was newly qualified at the time of the events in question and that he intended to appeal the conviction. However, the conviction stood and this had clearly been a very serious offence, striking as it did at the heart of the system of justice. Since the function of the Tribunal was to protect the public from harm, to maintain public confidence in the profession and to preserve the reputation of the solicitors’ profession for honesty, probity, trustworthiness, independence and integrity, the only fair and proportionate penalty in all of the circumstances was that the Respondent be struck off the Roll of Solicitors.

Costs

15. Ms Trench told the Tribunal that that the Applicant’s application for costs was in the total sum of £2,032.18 and she asked that a fixed costs order be made. She acknowledged that the hearing time was less than the estimated time on the Applicant’s schedule and that an allowance should be made in that respect. In questioning from the Tribunal she said that preparation of the case had included time to look into matters raised by the Respondent and to deal with letters from him. She had also had to obtain a transcript of the Judge’s sentencing remarks.
16. Ms Trench also told the Tribunal that she appreciated the reasons why the Respondent was not able to provide a financial statement to the Tribunal at present and she was

not in a position to dispute any representations the Respondent might make as to his financial situation. However, the SRA did take the sensible and pragmatic approach to costs and it was not the practice of the SRA to pursue impecunious Respondents for costs; if an order was made then the SRA would make their own enquiries as to the Respondent's financial situation. Accordingly, she asked that the Tribunal did not make a "Football pools order" against this Respondent.

17. The Respondent told the Tribunal that at the time of the events in question he had been new to the profession and had not earned a great deal of money. His training contract had been a low-paid one and he had incurred a lot of debts in qualifying as a solicitor. He had no income or assets and would live with his parents upon his release from prison.
18. In the Tribunal's determination the costs were too high for a straightforward case with a single page Rule 5 Statement based on a conviction. The Tribunal had summarily assessed costs in the sum of £1,000. The Tribunal had heard from the Respondent concerning his financial position and was aware that he had not held a Practising Certificate since January 2011. Whilst the Respondent had been unable to produce any evidence concerning his income and assets, the Tribunal had accepted what he had to say on the matter.
19. The Tribunal noted Ms Trench's observations concerning the SRA's practices with regard to enforcement of the costs against impecunious Respondents but, having heard from the Respondent about his financial circumstances, the Tribunal decided it was appropriate to make an order that costs were not to be enforced without its leave.

Full Order

27. The Tribunal Ordered that the Respondent, Pritesh Naik, 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, such costs not to be enforced without leave of the Tribunal.

Dated this 19th day of July 2013
On behalf of the Tribunal

A Spooner
Chairman