SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11149-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RITESH JAYENDRA BRAHMBHATT Respondent

Before:

Mr S. Tinkler (in the chair)
Mr K. W. Duncan
Mr S. Hill

Date of Hearing: 24 June 2014

Appearances

Mr Alastair Willcox, solicitor, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent, Mr Ritesh Jayendra Brahmbhatt was not present or represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Ritesh Jayendra Brahmbhatt, made in a Rule 5 Statement dated 23 April 2013, were that he had breached Rules 1.01, 1.02 and/or Rule 1.06 of the Solicitors Code of Conduct 2007 in that he was convicted of the following criminal offences:

1.1 Conspiracy to convey a List B Article into or out of a prison, contrary to section 40 C(1) Prison Act 1952, contrary to section 1 (1) Criminal Law Act 1977;

1.2 Conspiracy to convey a List A Article into or out of a prison, contrary to section 40 B(1) Prison Act 1952, contrary to section 1 (1) Criminal Law Act 1977;

1.3 Conspiracy to convey a List B Article into or out of a prison, contrary to section 40 C(1) Prison Act 1952, contrary to section 1 (1) Criminal Law Act 1977

Documents

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

Applicant:-

- Application dated 23 April 2013
- Rule 5 Statement, with exhibit "AHJW1", dated 23 April 2014
- Supplemental bundle, comprising 35 pages
- Transcript in R v Brahmbhatt (2012/02112/B4), following hearing on 25 to 27 February 2014

Respondent:-

- Correspondence with the Tribunal and the Applicant, included within the Applicant's supplemental bundle.

Preliminary Matter – proceeding in the absence of the Respondent

3. The Tribunal noted that the Respondent was not present or represented. The Tribunal therefore considered as a preliminary matter whether the hearing should proceed.

4. The Tribunal was referred to correspondence between the Applicant, the Tribunal and the Respondent and to the papers in the proceedings.

5. The application and Rule 5 Statement were made in April 2013. On 13 May 2013 the Respondent wrote to the Applicant and to the Tribunal to indicate, amongst other matters, that he had been granted permission to appeal against his conviction. Further correspondence during 2013 indicated that the Respondent's appeal would be heard in November 2013 but under cover of a letter of 30 October 2013 the Respondent provided notification that his appeal would not be heard until February 2014. Listing of the substantive hearing was stayed, with the agreement of the Applicant, until the outcome of the appeal was known. On 5 March 2014 the Respondent wrote to the Applicant stating, amongst other matters, that the appeal had been dismissed. This hearing was then listed and notice of the hearing was served by the Tribunal.

6. Mr Willcox referred to his letter to the Respondent of 29 May 2014, which included the hearing date. The Applicant wrote to the Respondent again, on 6 June 2014, and again referring to the hearing date (as well as forwarding a schedule of costs). Mr Willcox told the Tribunal that the Applicant had written again, enclosing a supplemental bundle of documents, on 12 June 2014. As it was then learned that the Respondent had been moved to a different prison address, a further copy of the supplemental bundle was sent by special delivery to his new address.

7. On 12 June 2014 the Respondent had written to the Applicant, enclosing financial information and the Respondent's representations. That letter referred to the Applicant's letters of 29 May and 6 June, both of which had stated the hearing date. Further, the Respondent stated:

> "I will not be present nor represented at the hearing."

8. The Tribunal noted that it had the power, under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 to hear and determine the application, notwithstanding that the Respondent was not present or represented, if it was satisfied that notice of the hearing was served on the Respondent. The Tribunal was satisfied that the Respondent had been served with notice of the hearing and was actually aware of it. The Respondent had stated in his letter of 12 June 2014 that he would not attend or be represented. In these circumstances, the Tribunal was satisfied that it was just and proportionate to proceed in the absence of the Respondent. The Tribunal would, of course, be scrupulous in ensuring that matters were considered fully in the Respondent's absence, and that his representations would be taken into account.

Factual Background

9. The Respondent was born in 1980 and was admitted as a solicitor in 2008.

10. At the material times, he Respondent carried on practice as an assistant solicitor at Mordi & Co Solicitors of First Floor, 402 Holloway Road, London N7 6PZ. The offences of which the Respondent was convicted were committed during the course of that practice.

11. On 22 July 2011 at the Crown Court at Blackfriars the Respondent was convicted upon indictment and upon his own confession of the following criminal offences:

11.1 Conspiracy to convey a List B Article into or out of a prison, contrary to section 40 C(1) Prison Act 1952, contrary to section 1 (1) Criminal Law Act 1977;

11.2 Conspiracy to convey a List A Article into or out of a prison, contrary to section 40 B(1) Prison Act 1952, contrary to section 1 (1) Criminal Law Act 1977;

11.3 Conspiracy to convey a List B Article into or out of a prison, contrary to section 40 C(1) Prison Act 1952, contrary to section 1 (1) Criminal Law Act 1977.

At the time these offences were committed, the Respondent was 29 years old and had approximately one years experience as a criminal law solicitor.

12. On 12 March 2012 the Respondent was sentenced to a period of 6 years imprisonment. The trial Judge's sentencing remarks, together with the certificates of conviction, were relied on by the Applicant.

13. An application for leave to appeal against conviction was lodged with the Court of Appeal Criminal Division on 11 April 2011 and leave to appeal was granted by that Court on 3 December 2012. The appeal was heard on 25 to 27 February 2014 by Lady Justice Hallett, Mrs Justice Cox and Mr Justice Eder and was dismissed.

Witnesses

14. There were no witnesses of fact.

Findings of Fact and Law

15. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights 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.

16. **Allegation 1- He had breached Rules 1.01, 1.02 and/or Rule 1.06 of the Solicitors Code of Conduct 2007 in that he was convicted of the following criminal offences:**

1.1 Conspiracy to convey a List B Article into or out of a prison, contrary to section 40 C(1) Prison Act 1952, contrary to section 1 (1) Criminal Law Act 1977;

1.2 Conspiracy to convey a List A Article into or out of a prison, contrary to section 40 B(1) Prison Act 1952, contrary to section 1 (1) Criminal Law Act 1977;

1.3 Conspiracy to convey a List B Article into or out of a prison, contrary to section 40 C(1) Prison Act 1952, contrary to section 1 (1) Criminal Law Act 1977

16.1 The allegations were admitted by the Respondent, in that in his representations dated 12 June 2014 he had stated:

> "I do not contest the proceedings against me by virtue of the fact that I have a criminal conviction against me."

The Respondent went on to state:

> "I accept that the nature of my conviction means I will not be able to practice as a solicitor for a significant period of time, if ever. However, I continue to assert my innocence on the basis that I performed counts 1 and 2 on the indictment under duress. Count 4 was committed on the basis of forgetfulness (due to mental health issues…) Even though my appeal failed in overturning my conviction, I intend to apply to the CCRC on release for a review into the safety of my conviction."

16.2 Although the admission appeared to be qualified, the Tribunal was satisfied that the Respondent understood the nature of the allegations in these proceedings and had admitted that he had been convicted of various matters and that in the light of the convictions he was in breach of several of his core duties as a solicitor.

16.3 In any event, the Tribunal considered whether the allegations had been made out to the required standard. The Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules") at Rule 15(2) state:

> "A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances."

16.4 The Tribunal was satisfied on the production of the certified copy of the certificate of conviction that the Respondent was guilty of the offences listed in that certificate. It also noted the trial Judge's sentencing remarks. These remarks included the following, which explained something of the circumstances of the convictions:

> "The facts of the conspiracy to take articles into prison are relatively straightforward. At the relevant time you, S and B, were serving prisoners at HMP Pentonville. Between March and September 2009 you [Respondent], C and P together with each other and no doubt with others not before this court and with S and B conspired to take into Pentonville contraband in the form of cannabis, mobile telephones and its constituent parts as well as other drug paraphernalia. The contraband thus secreted into prison was then used by you, S and B, to conduct within the confines of prison an illicit trade whereby these items were either sold on or hired out to other prisoners…
>
> [Respondent], you were at the relevant time a solicitor of the Supreme Court practising in crime. You enjoyed the privileges and trust which befits that office. In keeping with that trust, you frequently were not subjected to the rigorous search procedures which ordinary members of the public are. You abused that trust by secreting contraband about your person and under the guise of professional privilege, passed on the contraband to S and B, thus completing the circle. The frequency of your visits to S and B in custody, coupled with the frequent discovery of contraband in the cells of S and B drew the suspicion of prison officers who set about investigating your attendances at Pentonville.
>
> On 17 September 2009 and extended and thorough search procedure was conducted of all visitors to the prison. Those searches soon revealed that you had hidden about your person contraband, namely two Clingfilm packages at the toe end of each shoe, a package hidden down your trousers and another package in [a] locker including £300 in cash. Following your arrest, you proffered the explanation that you had been forced to do it at gun point, a defence of duress which plainly turned out to be a blatant fabrication. The

> packages discovered on you contained inter alia 53 grams of skunk cannabis, a mobile phone and telephone parts.
>
> The detailed evidence in this trial revealed the very extensive scale of this conspiracy between all five of you…
>
> Quite surprisingly and despite these charges having been committed to this court for trial by September 2010, you were allowed to continue practising as a solicitor with unsupervised access to prisoners. In terms of what can only be regarded as an arrogant and contemptuous disregard for the rule of law, and the office of solicitor and in breach of your bail, on Wednesday 23 February 2011 you again attempted to smuggle a mobile phone into HMP Winchester…
>
> As a solicitor of the Supreme Court, you owed your clients, these courts and your profession a high moral and professional duty. By virtue of your office you enjoyed privileges not open to the public when visiting clients in prison. It is clear from the evidence in this case that you seriously and serially breached that high office. You breached it by smuggling contraband into prison and you have breached it by having almost at will unlimited and uninterrupted telephone communications with prisoners.
>
> …I express the hope that the Law Society will review the facts of this case and your involvement in it and will think long and hard before ever granting you again a licence to practice as a solicitor. You are a devious, conniving and unprincipled individual who would stop at nothing nor allow anyone to get in your way in furthering your selfish and at time undoubtedly criminal ambitions. You would not hesitate to abuse the due process of these courts…"

16.5 The convictions, and the trial Judge's sentencing remarks, made it clear that the Respondent had failed to uphold the rule of law; indeed, he had conspired with others to smuggle contraband into prison, which was a serious breach of prison discipline and an abuse of his role as a solicitor. The Respondent had taken advantage of not being searched in the same way as members of the public were searched, and had shown a lack of integrity in that regard. There could be no doubt that smuggling items into prison would damage the trust the public would place in the Respondent and the provision of legal services. Although the Respondent continued to assert his innocence, the Tribunal was satisfied that the fact of the conviction and the underlying facts were proved, in accordance with Rule 15(2) of the Rules.

16.6 In all of the circumstances, the Tribunal was satisfied on the facts and on the admission that the allegations had been substantiated in their entirety.

Previous Disciplinary Matters

17. There were no previous matters in which findings had been made against the Respondent.

Mitigation

18. The Tribunal noted that Respondent's comments in his correspondence and his representations. It was clear that the Respondent continued to assert his innocence,

although he accepted the fact of the convictions and that his appeal had been unsuccessful.

19. The Tribunal further noted that the Respondent stated he suffered mental health difficulties since his arrest, since which time he had spent nearly three years in custody. The Respondent stated that count 4 on the indictment had arisen as a result of his mental health problems and the medication he was taking. (It appeared from the papers that count 4 related to the events in February 2011).

Sanction

20. The Tribunal had regard to its Guidance Note on Sanctions (September 2013).

21. The offences for which the Respondent had been convicted, and sentenced to six years imprisonment, were very serious offences. The Respondent had admitted that he had been convicted, and the Tribunal had found it proved that he had committed these offences. The Respondent had acted with a complete lack of integrity and had damaged the reputation of the profession. He had failed to uphold the rule of law; indeed, he had acted in a way which undermined the rule of law. The Respondent's behaviour was at the upper end of improper conduct.

22. The Tribunal noted in particular that the trial Judge, who had had the advantage of hearing the evidence and seeing the Respondent, had stated that he was:

> "a devious, conniving and unprincipled individual who would stop at nothing nor allow anyone to get in your way in furthering your selfish and at time undoubtedly criminal ambitions. You would not hesitate to abuse the due process of these courts…"

23. The Tribunal further noted that in dismissing the appeal against conviction, Lady Justice Hallett had stated (at paragraph 26 of the transcript of the judgment):

> "We have concentrated on [the Respondent's] mental state as requested. We have no hesitation in finding that there was no basis whatsoever for the application to vacate the pleas of guilty. Unfortunately we found little in what the appellant said remotely credible. He gave us the clear impression of someone prepared to say or do anything to escape the consequences of his actions."

24. The Respondent had shown no sign of remorse, nor any readiness voluntarily to make restitution. It noted that he faced confiscation proceedings in relation to the convictions. There was no medical evidence before the Tribunal either concerning the time of the offences or the present.

25. The offences to which the Respondent had pleaded guilty were of a very serious nature, particularly so when committed by a solicitor. The Tribunal had a duty, in considering sanction, to protect the reputation of the profession; a severe sanction should be expected where a solicitor had departed in such a serious way from the standards of honesty, trustworthiness and probity which were expected of members of the profession.

26. Having taken into account all of the relevant circumstances, the Tribunal determined that the only proportionate and just sanction in this case was to impose an order striking the Respondent from the Roll of Solicitors.

Costs

27. Mr Willcox submitted a costs schedule in the total sum of £2,941 and applied for an order that the Respondent should pay those costs. Mr Willcox told the Tribunal that the schedule had been sent to the Respondent on 6 June 2012 and he had been informed of the requirement arising from the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) to provide information concerning his financial circumstances if he wished his means to be taken into account by the Tribunal in determining cost and/or sanction.

28. The Respondent had written to the Applicant and had completed a form concerning his means. He had asked the Tribunal to disregard his wife's income, as this was separate from his own income and assets.

29. The Tribunal reviewed the costs schedule and determined that most of the costs claimed were generally reasonable, both as to the rate claimed and the time spent. However, it was noted that the schedule had estimated the length of hearing at about 3.5 hours, whereas it had taken about one hour.

30. Further, the Tribunal noted that in its list for the day it had a total of 8 matters being 6 Case Management Hearings ("CMH") and 2 substantive matters, of which this was one. One of the matters was to take place by telephone. It was noted that in the seven in which advocates would appear, the Applicant had instructed one external advocate (on a CMH) and that 5 different advocates from the Applicant had (or would) attend. All of the "internal" advocates were based in Birmingham.

31. The Tribunal wished to make it clear to the Applicant, in relation to all of the cases listed for the day, that it had a duty to ensure that no individual Respondent should be unduly prejudiced by claims for costs where it may well have been possible for the Applicant to instruct just one advocate for the day. This case had not been complex, and it was not anticipated that any of the other cases would be unduly complex.

32. The Tribunal noted that the Applicant had claimed £182 in travel expenses for today, for this hearing, together £185 for hotel accommodation and two hours for travel and waiting. Had the Applicant consolidated its representation for the day it would have been able to seek just one set of travel expenses and one set of travel and waiting time to be apportioned between a number of cases. Accordingly, the Tribunal determined to reduce the allowance for travel expenses and travel/waiting time to £150 for this case (as it would for other cases in the list for the day). In response to a question, Mr Willcox had informed the Tribunal that the Applicant had a policy of allowing its advocates to travel the day before the hearing and have overnight accommodation in London where a matter was listed for the morning. It was noted that this matter was listed as "Not before 12pm"; Mr Willcox told the Tribunal that the accommodation had been booked before the list had been updated to specify this case would not be before noon. The Tribunal determined that whilst the Applicant might have a policy on allowing advocates to travel and stay in a hotel where they travelled from

Birmingham and the matter was listed for the morning, this was not a cost which should ordinarily be visited on an individual Respondent. This was particularly the case given that if the Applicant had used only one advocate for the day the overall travel expenses would have been lower. Taking into account the deduction for travel and hotel expenses, and for the hearing being shorter than estimated, and all other relevant factors the Tribunal summarily assessed the reasonable costs of the case at £2,149.

33. The Tribunal then considered whether the costs ought to be further reduced or should not be enforced without the Tribunal's permission. The Respondent had provided some information about his means, and it was noted that as he was in prison he presently had no income. He did not appear to have any significant assets. However, the Respondent had the prospect of being able to obtain some paid work on release from prison. Further, the Respondent had been found by the trial Judge and by the Court of Appeal to have some history of abusing the process of the courts and of being unreliable. The Respondent had given no indication in his statement of means of the whereabouts of the payments he had received for smuggling contraband into prison; it was clear from the Court of Appeal transcript that in the period March to September 2009 just under £23,000 had been paid into the Respondent's bank account at a time when his gross salary was £14,358.14 per annum. The Tribunal was not satisfied that there was any reason either to reduce the costs payable or to delay the enforcement of the order for costs; the Applicant should have the opportunity to seek to enforce it by reasonable means. The Respondent was ordered to pay costs of £2,149.

Statement of Full Order

34. The Tribunal Ordered that the Respondent, RITESH JAYENDRA BRAHMBHATT, 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 £2,149.00.

DATED this 3rd day of July 2014
On behalf of the Tribunal

S. Tinkler
Chairman