SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11171-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

HUGH ROBERT WOTHERSPOON Respondent

Before:

Miss N. Lucking (in the chair)
Mr A. Ghosh
Mr M. R. Hallam

Date of Hearing: 10 December 2013

Appearances

Sara Dickerson, Barrister employed by the Solicitors Regulation Authority, of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent appeared in person.

JUDGMENT

Allegation

1. The allegation against the Respondent was that by virtue of his conviction and sentence at Carlisle Crown Court on 31 August 2012, he had failed to behave in a way which maintains the trust the public places in him and in the provision of legal services contrary to Principle 6 of the Solicitors Regulation Authority ("SRA") Principles 2011.

Documents

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

Applicant

- Application and Rule 5 Statement dated 30 July 2013 and Exhibit "SD 1";
- Applicant's Schedule of Costs dated 20 November 2013.

The Respondent did not produce or rely upon any documents other than those exhibited to the Rule 5 Statement.

Factual Background

3. The Respondent was born on 19 February 1958 and admitted as a solicitor on 1 November 1985. He had worked as an Associate at US law firm LP since 11 January 1991. At the material time he practised at the London office of LP and at a UK patent attorney practice, also known as LP for the purposes of this Judgment. The Respondent resigned from this employment on 11 August 2012. His practising certificate for 2011/2012 was terminated on 11 March 2013 but his name remained on the Roll of Solicitors.

4. On 8 August 2012 in the Carlisle Crown Court, the Respondent was tried and convicted upon indictment of the charge of sexual assault on a female. On 31 August 2012, the Respondent was sentenced to a three-year Community sentence which included:

- A supervision requirement for that period;

- An accredited programme requirement to attend the community sex offender group programme and to sign the sex offenders' register for 5 years.

The Respondent was also ordered to pay compensation of £1,000 to the victim of the assault and £2,500 in prosecution costs within 9 months of the order.

5. On 20 March 2013 the SRA wrote to the Respondent seeking a response in relation to his conduct. He replied by letter dated 1 April 2013, referring to various enclosures, some of which had been produced as evidence at his trial, and references placed before the sentencing judge.

6. On 25 April 2013, an Authorised Officer of the SRA considered the relevant material and referred the Respondent's conduct to the Tribunal. The Respondent was

informed of this decision by letter dated 26 April 2013. Proceedings were received at the Tribunal from the SRA on 31 July 2013 and issued and served the same day.

Witnesses

7. None.

Findings of Fact and Law

8. The Respondent admitted the allegation. 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.

9. **The allegation against the Respondent was that by virtue of his conviction and sentence at Carlisle Crown Court on 31 August 2012, he had failed to behave in a way which maintains the trust the public places in him and in the provision of legal services contrary to Principle 6 of the SRA Principles 2011.**

9.1 Ms Dickerson referred the Tribunal to the Certificate of Conviction dated 14 March 2013 and the Sentencing Remarks of His Honour Judge Batty QC (the Recorder of Carlisle) on 31 August 2012. In particular she drew the Tribunal's attention to the following points:

- The Judge observed that the victim was obviously very distressed by the Respondent's behaviour, added to by the fact that she had to come back to Carlisle to give evidence in the Respondent's trial of matters that, the Judge was sure, she would have much preferred to put behind her;

- The Respondent's conduct had had an impact, not only on the Respondent, but also on his family;

- Specifically the Judge stated that:

> "It will be a matter for your professional body to decide what the consequences are of your conviction, but the likelihood is that you will pay a heavy price for your offence, quite apart from the sentence of the court, and that already is happening, by the fact that you have resigned your position as a patent agent."

9.2 The Judge considered all the submissions made on the Respondent's behalf, as well as the contents of the Probation Pre-Sentence Report before sentencing the Respondent.

9.3 The Respondent informed the Tribunal that he had decided to admit the allegation and wished to mitigate on his own behalf. He indicated that he was willing to make himself available to answer questions from the witness box because he did not wish the Tribunal to draw adverse inferences if he did not do so. The Chairman explained that there was a difference between denying the allegation and giving evidence and admitting the allegation and providing mitigation. In the light of that explanation, the

Respondent decided to make submissions in mitigation from the advocates' bench at the appropriate time.

9.4 The Tribunal retired to consider its decision on the allegation admitted by the Respondent. The Tribunal reminded itself that, as stated at paragraph 8 of the Rule 5 Statement, the SRA Principles 2011 were mandatory Principles which applied to all under Principle 1. Principle 6 stated;

> "You must:
>
> 6. Behave in a way that maintains the trust the public places in you and the provision of legal services".

The (non-mandatory) Guidance Note which accompanied Principle 6 provided that:

> "2.10 Members of the public should be able to place their trust in you. Any behaviour either within or outside your professional practice which undermines this trust damages not only you, but also the ability of the legal profession as a whole to serve society."

9.5 Having considered the facts and documents exhibited to the Rule 5 Statement (which were not disputed by the Respondent) and the existence of the conviction following a jury trial in the Carlisle Crown Court, the Tribunal was satisfied beyond reasonable doubt that the Respondent had behaved outside his professional practice in a way which undermined the trust the public places in him, and to a lesser degree, the provision of legal services. The Respondent had failed to behave in a way that maintains that trust contrary to the SRA Principles 2011, Principle 6. The Tribunal therefore found the allegation, which was admitted by the Respondent, proved beyond reasonable doubt.

Previous Disciplinary Matters

10. None.

Mitigation

11. The Tribunal heard submissions from the Respondent.

12. The Respondent informed the Tribunal that his professional work record was exemplary. He had always worked hard for his clients and had been successful in carrying out a difficult job in three jurisdictions. Evidence of this submission could be found in the complimentary comments written about the Respondent after his conviction for the offence. The Tribunal was referred to the references exhibited to the Rule 5 Statement.

13. The Respondent referred to the facts underlying the offence as "a very unfortunate misunderstanding and/or mistake" on his part. He explained his understanding at the time of events which took place over "a prolonged period" and how he misinterpreted the apparent absence of an explicit rejection from the woman as consent to his physical advances. The Respondent categorised those advances as "a brief touch

lasting about a minute on her leg". He noted the woman's response (brushing his hand away) but had in mind the fact that "people do change their minds". The Respondent wished that he had taken the woman's response as indicating "no" but he did not do so. He wanted to tell the "whole story" in respect of the Judge's sentencing remarks. The Respondent's position was that for a prolonged period of about one hour the woman did not say that she was "distressed" by his behaviour and he therefore had "no idea" that she was distressed and concluded that she was "okay" with what he was doing. However, looked at now from the female perspective, the woman might have had a difficulty in articulating what she was going to say and the Respondent did not think about her position from that regard.

14. The Respondent said that "one hopefully learnt from one's mistakes". He felt that he had suffered a great deal from the outcome of the events described. His personal circumstances might have informed his thinking on the night the offence was committed. He could not see why the Judge had found it difficult to understand why the Respondent had gone to a festival travelling there and back by bus.

15. The Respondent had not worked as a solicitor since about 1989. Up until a year ago he would not have thought about ever doing so again. He described what he considered to be unsuccessful work experiences as a solicitor in some detail. Recent events had "sparked his interest" and the Respondent considered that, given the opportunity, he might think about whether there was anything he could do to contribute to the legal profession. He had some expertise in a number of areas, in particular Intellectual Property and matters of finance. He had developed a particular interest in recent problems in the financial services industry, including reading articles and contributing to a tribunal. The Respondent did not consider that he had been a "high-flying lawyer" as had been widely reported in the Press. In answer to questions from the Chairman, the Respondent said that he would like to do something constructive and if someone wanted to employ him as a solicitor he might be interested, although he was pessimistic about his prospects. He confirmed that he had resigned from The Chartered Institute of Patent Attorneys, but this did not prevent him from working as a Patent Attorney. He had been an Associate Member i.e. a not a fully qualified member. The Respondent continued to be a European Patent Attorney and had been a Member of the New York State Bar while he was in the United States. His last few years as a patent attorney had been "rather miserable" and he would have to think carefully before going back to that work. In answer to the Chairman's question, the Respondent said that he was not sure what he was going to do in future.

16. The Solicitor Member asked the Respondent what he had learnt from his mistakes. He said that he had learnt not to make such advances on the bus, and that he had a lot to lose, including his very supportive family for which he should be very grateful. The Respondent stated that "it was not a crime or a matter of misconduct for a married man to have an affair". He was asked by the Tribunal about the relevance of that comment, and described his advances to the woman as being "a bit of light-hearted fooling around on his way back from a festival". He said that he had been through "quite a lot too" and stressed that "this was not the kind of thing" that he was going to do again. He considered that it was right to say "it was not a crime to try something with a woman if she consented [to his advances]". The Chairman asked the Respondent whether, retrospectively, he was happy to admit that his conduct was

a mistake and not something that he would want to do again, not just because of the outcome, but because in this situation his judgement was incorrect? The Respondent replied that his judgement was wrong, that his conduct was a "complete mistake", and that he had learnt his lesson and would not do the same again. "Of course" he appreciated that there were circumstances under which it would be a crime to "try something" with a woman, and that it was a crime to "try something" with a woman in the circumstances giving rise to the offence. He did not appreciate that it was an offence at the time because he assumed that the woman was consenting. He had a reason for believing what he believed at the time however wrong the Tribunal might think his reasoning to be. His belief was that the woman was "okay" with his behaviour.

17. The Respondent confirmed that he had attended the therapy sessions in accordance with the Crown Court's order. Those sessions had almost finished and the authorities believed that there was "a 1% chance of reconviction". The papers were to be returned so that the Probation order could be discharged once he had completed half of the term of supervision, and the necessary reports had already been written.

18. The Respondent had been unemployed since the commission of the offence and had not sought employment.

Sanction

19. The Tribunal referred to its Guidance Note on Sanctions (September 2013) when considering the proportionate and appropriate sanction. The Tribunal found the Respondent's submissions of assistance and had also taken all the documents into account when reaching its final decision.

20. The Respondent had admitted the one allegation with which he was charged, and which the Tribunal had also found proved.

21. The Tribunal had carefully considered the seriousness of the misconduct underlying the allegation, and paid due regard to the sentencing remarks of His Honour Judge Batty QC quoted at paragraph 9.1 above. The Tribunal was an independent, experienced body and must always bring its own judgement to bear when deciding on sanction. The Tribunal was also mindful of the need to have regard to the principle of proportionality, weighing the interests of the public with those of the Respondent. Interference with the Respondent's right to practise his profession must be no more than necessary to achieve the Tribunal's purpose in imposing sanctions.

22. The case of Bolton v The Law Society [1994] 1 WLR 512 was a useful starting point in identifying the purpose of sanctions. A penalty might be imposed on a solicitor in order to punish him for what he had done and to deter any other solicitors tempted to behave in the same way. A fundamental purpose of the imposition of sanctions was "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth". There was no suggestion in this case that the Respondent had behaved in a way which was dishonest. However, his behaviour, whilst unconnected with his professional practice, was dishonourable and incompatible with the high standards of conduct imposed on solicitors. The public and members of the profession were entitled to

expect that the Tribunal would deal appropriately and proportionately with solicitors whose conduct fell below those high standards and lead the way in demonstrating that behaviour such as the Respondent's was unacceptable regardless of the fact that it occurred outside his professional practice. The Tribunal must ask itself whether it was proud to have the Respondent as a member of the solicitors' profession and the answer was a resounding "no". Further, the Tribunal had some difficulty in satisfying itself that it could trust the Respondent "to the ends of the earth" and it certainly did not consider that it could trust the Respondent's moral compass and judgement in matters of a sexual nature involving women.

23. The Respondent demonstrated a worrying lack of any insight into the facts underlying the criminal offence for which he had been convicted. His responses to questions from the Tribunal suggested that he considered his downfall to have been failing to get away with his sexually-motivated physical advances towards an unknown woman on a bus at night during the first stage of a long journey. The Respondent demonstrated no genuine remorse for having committed an unacceptable act which had understandably caused significant distress and embarrassment to a vulnerable and relatively powerless woman. He seemed by his answers to be out of touch with the reality of his misconduct and its consequences. In consequence the Tribunal was unconvinced by the Respondent's assertion that he would not behave in the same way again if an opportunity arose.

24. The Respondent was solely culpable for his misconduct. He had no one to blame but himself and, for the avoidance of doubt, the Tribunal made it clear that the victim was not in any way responsible for the Respondent's actions. She was entitled to sit in her seat on a night bus without being pestered by the Respondent and having to worry about how to deal with his misbehaviour. The Tribunal rejected any attempt by the Respondent to pass some responsibility to the victim for not making clear her objection (either explicitly or otherwise) to his unwanted advances. In a civilised society it was essential to respect the personal space of others and to obtain explicit, unequivocal consent before invading that space with sexual advances. There was direct harm to the victim in the form of distress and inconvenience compounded by the fact that the Respondent denied the charge for which he was ultimately convicted, requiring the victim to give evidence at his trial. He was ordered by the Judge to pay the victim £1,000 in compensation as a result of his actions.

25. The Tribunal considered aggravating factors when assessing the seriousness of the misconduct. This case concerned misconduct involving the commission of a criminal offence. The misconduct was deliberate; there was no reason for the Respondent to assume that his attentions were welcome and he chose not to ask the question directly. It was clear from the transcript of the police interview that the woman was sitting on the inside seat and there was at least some luggage on the floor. The woman's movement, indeed escape, was therefore effectively restricted by the presence of the Respondent in the outside seat. In the Tribunal's view, the woman's predicament, being on the inside seat on a night bus flanked by the Respondent, placed her in the category of a vulnerable person of whom he was taking advantage. The Respondent said during the police interview that he chose to sit next to somebody as opposed to picking an empty seat because he thought that he would be comfortable, albeit that that was, he said, a split second decision. However, he had ample opportunity to move to a different seat in order to put space between himself and the woman. It was

not suggested that the bus was full, and changing seats would have been more comfortable for both the Respondent and the victim on a long overnight journey from Edinburgh to London. One such opportunity to do so arose when the woman brushed the Respondent's hand away from her leg. The Respondent ought reasonably to have known that, whether or not his conduct resulted in criminal proceedings and a conviction, his behaviour was in material breach of his obligation to protect the reputation of the providers of legal services from disrepute. The Tribunal inferred from some of the Respondent's answers that he was not unduly concerned about actual or potential damage to the reputation of the profession. He was rightly concerned about the damage inflicted on his family, but placed undue emphasis on his own ultimately self-inflicted suffering. He apparently still failed to recognise the more general widespread damage to the reputation of the profession arising from the publicity which his behaviour attracted. The Tribunal gave the Respondent no credit as a mitigating factor for any genuine insight into his misconduct because none had been demonstrated. The Tribunal took into account the possibility that the Respondent's sense of humour caused him to answer questions in a way that could be perceived by an observer to be flippant. However these proceedings were a serious matter; and if the Respondent was attempting to be humorous on occasion, that was a further indication of his lack of genuine insight into the seriousness of his misconduct. Further, he had denied the charge on the indictment, resulting in a jury trial at which the victim had had to give evidence, and had not admitted the allegation in these proceedings until the morning of the hearing.

26. In the view of the Tribunal the impact of the Respondent's misconduct upon the public and the reputation of the profession was high. The criminal proceedings attracted considerable publicity both in the hard copy press and online, as demonstrated by the press articles exhibited to the Rule 5 Statement. The articles, which tended towards being lurid in nature, included specific reference to the fact that the Respondent was a solicitor. As soon as those articles were published, damage to public confidence in the reputation of the profession was inevitable. The Respondent complained of inaccuracy in the articles, but he had only himself to blame for behaving in a way that would inevitably attract colourful and intrusive press coverage. No doubt the victim also suffered embarrassment.

27. There were, however, a number of mitigating factors to be taken into account. The Respondent had paid the compensation ordered by the Crown Court. In his letter to the SRA dated 1 April 2013 he expressed some remorse for the consequences suffered by the victim and his own family. For the avoidance of doubt, the Tribunal discounted entirely the circumstances in which the Respondent met his wife when considering the facts in this case. The allegation concerned a single episode of misconduct in a previously unblemished career. There were a number of positive references put before the Tribunal, obtained during the course of the Crown Court proceedings (including from former employers) which the Tribunal had read. The Respondent cooperated and engaged with both the Applicant and the Tribunal during the investigatory and disciplinary process respectively.

28. Taking all of these matters into account and noting that the mitigating factors were relatively few when set against the aggravating factors, the Tribunal had concluded that the Respondent's misconduct was at the upper end of the scale of seriousness.

29. Having reached this conclusion, the Tribunal had no difficulty in deciding that a reprimand was an inappropriate sanction. Consideration was given as to whether a financial penalty would meet the purpose of sanction and the Tribunal concluded that it would not. Imposition of a fine would fall far short of the Tribunal's obligation to protect the public's confidence in the providers of legal services that they would behave in a way that could be trusted to the "ends of the earth" and would not adequately reflect the Tribunal's conclusion as to the seriousness of the misconduct. The Respondent's lack of insight was a key factor in this decision; he appeared to have no concept of the consequences of his actions, save that his behaviour had been misunderstood by all concerned.

30. The Tribunal noted that the Respondent was considering the possibility of resuming practice at some time in the future, although by his own admission he had not been a success as a solicitor, in spite of the perception of the press as expressed in the reports of the offence. He had no clear plans, but a vague idea that he might wish to practise again at some point. He had not practised as a solicitor (rather than patent attorney) since 1989 and his experience was specialised. He was not sure whether he would want to return to work as a patent attorney. He expressed interest in financial services, but there was again no formulated plan. The Tribunal considered and rejected a fixed term of suspension. As the Respondent was not currently practising, a fixed term would be no hardship to him. It was clear from his submissions and general attitude that he would merely sit the suspension out without further thought. The term would have to be sufficiently lengthy to reflect the seriousness of the offence. The Tribunal had significant concerns about the fact that the Respondent would be able to practise as soon as the suspension was at an end (subject to obtaining a practising certificate from the SRA).

31. The Tribunal considered the seriousness of the misconduct on the facts to be on the cusp of justifying an order striking the Respondent off the Roll of Solicitors. The Tribunal was swayed in that direction primarily by the Respondent's lack of remorse and insight. He chose to excuse his actions in a way which was unattractive, effectively blaming the victim for not being more assertive in what must have been for her a very distressing and embarrassing situation. The Respondent did not even trouble to ask the victim's name, let alone strike up a conversation with her, but proceeded to make advances without ascertaining whether those advances were welcome. The Respondent assumed that silence and a brushing away of his hand equated to consent or perhaps a change of mind without any grounds for that belief. He knew nothing at all about the victim which would enable him to reach that conclusion. The Tribunal wished to send a clear message to the public and members of the profession that such behaviour was totally unacceptable and would result in serious consequences, as envisaged by the Judge in his sentencing remarks quoted at paragraph 9.1 above. The Respondent had resoundingly failed to provide any compelling and exceptional personal mitigation. However, and with some reluctance, the Tribunal had on balance concluded that its duty to the public and profession was met by imposing an indefinite period of suspension on the Respondent, rather than striking off the Roll, balancing the interests of the public and the profession against the interests of the Respondent in an appropriate and proportionate way. That decision had not been easy, but the Tribunal took account of the fact that the Respondent was subject to a supervision requirement for 3 years and was required to attend an accredited programme and sign the sex offenders' register for 5 years. The

Judge had not felt it appropriate to impose either a suspended or immediate custodial sentence. The Respondent said that he had no intention of repeating the offence and he would be well-advised not to do so. The Tribunal sincerely hoped that attendance on the programme would have a more significant impact now that these proceedings were at an end.

32. Whilst this division of the Tribunal could not bind any future division of the Tribunal tasked with determining any application by the Respondent to terminate the indefinite period of suspension, this division of the Tribunal wished to state in the clearest possible terms that it would not expect the suspension to be terminated without compelling evidence from suitably qualified and experienced professional experts that the Respondent had been completely rehabilitated so that there was no risk of re-offending. The sole responsibility for obtaining such evidence rested with the Respondent and the SRA would have an opportunity to carry out its own enquiries and to respond. It was up to him to change his ways with the help and support of his family and others. The Respondent was encouraged to take advantage of that assistance by readily accepting full responsibility for the distress and embarrassment his misconduct had caused to the victim and to his own family and friends, including his former employers who appeared to think highly of him. On an application for termination of the suspension, this Tribunal hoped that there would be no more excuses from the Respondent. The Tribunal also considered that the Respondent should provide the organisers of the accredited programme with a copy of this Judgment, which would in any event be available to all on the Tribunal's website in due course. It was important that those assisting the Respondent were aware of the way in which the Respondent had phrased his submissions so that appropriate advice could be given and further therapy/counselling arranged as deemed necessary. The suspension would also give the Respondent ample time in which to think seriously about his future plans and secure suitable rehabilitative employment, obtaining advice and guidance from the SRA whenever necessary (for example, if he wished to consider employment as a clerk). The Respondent had not practised as a solicitor for some time, and the way back was likely to be lengthy and to require hard work and sacrifice. This would assist the Respondent in his reflection on the consequences of his actions. The suspension should also act as a deterrent to the Respondent and to others tempted to take advantage of such a situation in the same way.

33. Some members of the public and the profession might consider that the Respondent should have been struck off the Roll and had been let off lightly. The Tribunal had had the benefit of reading all the evidence and hearing from Ms Dickerson and the Respondent. Its Members had reached the carefully considered view that the public and public confidence in the reputation of the profession would be sufficiently protected by an indefinite suspension because the Respondent would not be able to practise again until both the Applicant and the Tribunal had been able to explore his rehabilitation in detail. It was likely to be some time before any rehabilitation could be complete, bearing in mind that the Respondent was to remain on the sex offenders' register for 5 years. The Tribunal had concluded that, with considerable support and guidance, there might be a possibility of rehabilitation and had had due regard to the fact that the offence had not occurred in the course of the Respondent's practice as a solicitor. The Tribunal hoped, for the benefit of the Respondent, his family, the public including, in particular, women travelling alone on public transport, and the

profession, that the Respondent would, with humility and contrition, take every possible step to turn his life around.

Costs

34. Ms Dickerson applied on behalf of the Applicant for an order for costs totalling £1,841.80. The Respondent raised no objection to paying those costs in principle. He said that he had no money with which to do so, but did not provide any detailed evidence of means. The Tribunal noted that he and his family were in receipt of benefits and that he had dependent children in full-time education.

35. The Tribunal considered the claim for costs to be very reasonable in all the circumstances. The Respondent must pay the costs of these proceedings as claimed, and the Tribunal so ordered.

Statement of Full Order

36. The Tribunal Ordered that the Respondent, HUGH ROBERT WOTHERSPOON, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 10th day of December 2013 and it further Ordered that he do pay the costs of and incidental to this application and enquiry agreed and fixed in the sum of £1,841.80.

Dated this 17th day of January 2014
On behalf of the Tribunal

N. Lucking
Chairman