

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11282-2014

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

JOSEPH HENRY FYLES

Respondent

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Before:

Mr R. Hegarty (in the chair)

Mr. J. A. Astle

Mrs L. McMahon-Hathway

Date of Hearing: 4 December 2014

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**Appearances**

Alastair Willcox, Solicitor employed by the Solicitors Regulation Authority of the Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

The Respondent appeared in person

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**JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent Joseph Henry Fyles were that he had breached Principles 1, 2 and 6 of the SRA Principles 2011 in that he had been convicted of the following criminal offences:
  - 1.1 Five counts of causing or inciting a child to engage in sexual activity
  - 1.2 Five counts of making indecent images of child.

## **Documents**

2. The Tribunal reviewed all the documents including:

### Applicant

- Rule 5 Statement dated 18 September 2014 with exhibit AHJW1
- Applicant's schedule of costs as at 25 November 2014

### Respondent

- Respondent's response to the Applicant's Rule 5 Statement with exhibit JF1, dated 21 October 2014
- Respondent's mitigation statement dated 21 October 2014 with exhibits JF1 to JF12
- Respondent's submissions in relation to publication dated 21 October 2014 with exhibit JF1
- Respondent's submissions in relation to costs dated 21 October 2014 with exhibit JF1
- Exchanges of e-mails between the Respondent, Mr Willcox and the Tribunal from 22 to 23 October 2014
- Respondent statement of means with exhibit JF1 dated 4 November 2014
- Respondent's letter to Mr Willcox dated 1 December 2014
- Exchanges of e-mails between the Respondent, Mr Willcox and the Tribunal from 28 November 2014 to 3 December 2014

## **Preliminary Issues**

3. The Tribunal had been informed in advance of hearing, that the Respondent intended to make an application that the judgment in this matter should not be published. In that context the Tribunal asked the Respondent if he also wished to make an application under the Solicitors (Disciplinary Proceedings) Rules 2007 ("the SDPR") for a hearing in private. The Respondent indicated that he wished to do so. The SDPR provided that:

“12(4) Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of:

- (a) exceptional hardship; or
- (b) exceptional prejudice,

to a party, a witness or any person affected by the application.

12(5) If it is satisfied that those grounds are met, the Tribunal shall conduct the hearing or part of it in private and make such order as shall appear to it to be just and proper.”

The Respondent referred the Tribunal to his emails sent over previous days and to representations made in behalf of another party. He explained that his application was based on his desire to protect others from being damaged by being linked to him. He had a distinctive surname and was well known in certain legal circles. For the Applicant, Mr Willcox’s submissions included that anonymisation of others could adequately protect their interests; that the proceedings against the Respondent were a matter of legitimate public interest; that it was also in the public interest for the Tribunal’s findings to be published so that its processes were transparent thereby demonstrating what disciplinary proceedings had been taken and why, thus maintaining public confidence in the disciplinary process; and that the Respondent had already been the subject of a public hearing with limited local publicity.

4. The Tribunal considered the submissions for the Respondent and the Applicant. The Tribunal attached considerable importance to transparency in its decision-making processes and the need to maintain public confidence in the disciplinary system. The circumstances in which a hearing should take place in private should be truly exceptional in terms of hardship or prejudice. The Tribunal refused the application for a hearing in private. It considered that others who had had no involvement in the Respondent’s admitted conduct could be adequately protected by no reference being made to them in the judgment and even if that were not the case, the public interest in having open and transparent proceedings outweighed the risk of a link being made between the Respondent and others.

### **Factual Background**

5. At the times material to this application, the Respondent practised as a solicitor. The Respondent was born in 1982 and was admitted to the Roll in November 2008.
6. As set out in the Certificate of Conviction dated 15 April 2014, on 20 January 2014, in the Crown Court, the Respondent was convicted upon his own confession and on indictment of the offences referred to in the allegations. On 20 February 2014, in the Crown Court, in respect of Count 1, causing or inciting a child to engage in sexual activity the Respondent was sentenced to a community sentence for three years, to participate in a sex offenders’ treatment programme, to a sex offender’s prevention order for five years, became liable to be included in children’s and adults’ barring list, and was made subject to a registration requirement for five years under section 104 and section 106 Sexual Offences Act 2003. In respect of Counts 2 to 10, the

Respondent was sentenced to a community order for three years and to participate in a sex offenders' treatment programme as directed by National Probation.

7. The Applicant wrote to the Respondent on 20 March 2014 seeking an explanation of his conduct. The Respondent replied on 2 April 2014.

### **Witnesses**

8. There were no witnesses.

### **Findings of Fact and Law**

9. 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.

(The submissions recorded below include those made orally at the hearing and those in the documents.)

10. **Allegation 1 The allegations against the Respondent were that he had breached Principles 1, 2 and 6 of the SRA Principles 2011 in that he had been convicted of the following criminal offences:**

**1.1 Five counts of causing or inciting a child to engage in sexual activity**

**1.2 Five counts of making indecent images of child.**

- 10.1 For the Applicant, Mr Willcox referred the Tribunal to the Certificate of Conviction. He relied on Rule 15(2) of the SDPR which provided that:

“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.”

Mr Willcox submitted that the Respondent admitted the allegations in his response to the Rule 5 Statement where he said: “All allegations set out within paragraph 2 of the Applicant's Rule 5(2) statement are admitted. A statement setting out points in mitigation will be filed separately.” Moreover in his Mitigation Statement the Respondent said “The Respondent fully accepts and understands the very serious nature of his convictions and appreciates that such behaviour falls considerably below the standards expected of a solicitor.” In his sentencing remarks, the Crown Court Judge had described the offences in respect of which the Respondent sentenced as falling into two categories; “There are the internet offences of inciting this young girl to be very very stupid on her part for your sexual gratification and there are the indecent image offences.” The offences which fell into the first category were described by the Judge as being “despicable offences”. He told the Respondent that he

had “exploited her [the young girl’s] vulnerability,” and referred to the fact that the Respondent “did easily persuade her (the young girl)” and described that as “exploitation pure and simple”. In respect of the offences of the second category, the Judge then referred to that as “exploitation” and said “girls like that need to be protected from themselves as well as from exploiters.”

- 10.2 The Respondent confirmed that he fully accepted the allegations.
- 10.3 The Tribunal had regard to the submissions for the Applicant, Rule 15(2) of the SDPR in respect of the evidence and the admissions made by the Respondent. It found allegations 1.1, 1.2 and 1.3 proved to the required standard on the evidence.

### **Previous Disciplinary Matters**

11. None.

### **Mitigation**

12. The Respondent gave sworn mitigation. He stated that he was deeply sorry for what had happened and took full responsibility for his offences. He deeply regretted the harm to the profession and its reputation. He understood the need for his offences to be appropriately punished in order for public confidence in the profession to be maintained and he was realistic about the outcome of this hearing. The Respondent also relied on his Mitigation Statement and accompanying documents. The offences took place while he was in his twenties. He submitted he did not believe that at the material time he was in a fit state to appreciate fully the nature of what he was doing because of his diagnosed condition but he understood this did not excuse his behaviour. Following his arrest he had endeavoured (and was continuing) to take advantage of all available sources of professional help and he only wished that he could have done that before he committed the offences but had not done so because of his deep shame and fear of ridicule. A decision had been made that he should not be placed on the barred lists. He hoped that he could now say that he was a changed man and would never commit such offences again. He was deeply disgusted with what he had done and with the harm he had caused to the young girl in question and to her close friends and family. He had a supportive family who were aware of his conduct and had stood by him for which he was very grateful.

### **Sanction**

13. The Tribunal had regard to Guidance Note on Sanctions and to the mitigation which the Respondent had made. The Tribunal assessed the Respondent’s level of culpability taking into account the medical evidence which he had provided. It noted the sentencing remarks of the Judge in the Crown Court and his decision not to impose even a suspended custodial sentence. The offending took place entirely in the Respondent’s private life but that did not reduce the seriousness of what he had done. The Respondent’s conduct clearly had caused harm and damaged the reputation of the legal profession to a considerable extent. That harm would have been reasonably foreseeable to him if he had stopped to think about it. In terms of aggravating factors no dishonesty was alleged but the Respondent had been convicted of a criminal offence. His misconduct had been deliberate and repeated and he had taken advantage

of a vulnerable person. The Tribunal noted that he had not previously appeared before it and appeared to be making determined efforts to take up the help available to address his condition. His career was previously unblemished. On the face of it the Respondent showed genuine insight and had made open and frank admissions from the time of his arrest. His misconduct was at the most serious end of the spectrum and the Tribunal considered whether an indefinite suspension might be appropriate rather than the ultimate sanction of striking off. However even taking into account the medical evidence included among the exhibits to Respondent's mitigation statement, the Tribunal did not consider that the personal mitigation offered by the Respondent was so truly compelling and exceptional as to justify this lesser sanction. The protection of the public and the reputation of the profession demanded no less than that the Respondent be struck off the Roll.

### **Costs**

14. For the Applicant Mr Wilcox applied for costs in the amount of £3,279.50. The Tribunal asked for clarification of the reference in the costs schedule to case working costs which amounted to more than £700. Mr Wilcox explained that this related to work done in the Applicant's Supervision Department in going through the documents and drafting and preparing correspondence with the Respondent but it did not relate to the preparation of the Rule 5 Statement which was undertaken by the Legal and Enforcement Directorate. He confirmed that in effect this was the investigation stage of the matter. No hotel expenses had been incurred and the level of train fares was standard class. The Respondent relied on his submission in response to the schedule of costs and the Statement of Means which he had submitted with supporting evidence. The Respondent considered that some of the correspondence which the Applicant had entered into with him had been unnecessary. He had received requests for clarification on matters when he had already sent in his submissions on costs and his means before being asked to do so. He was then asked again for clarification as he pointed out in his submissions in relation to costs. In respect of his ability to pay costs, the Respondent explained that he had to liaise with the police and probation to ensure that any employment that he proposed to undertake was considered by them to be appropriate. He had had no success in obtaining suitable work which he believed to be on account of his criminal conviction. His monthly budget operated in deficit even allowing for state welfare. The Respondent asked that either no order for costs be made against him or that the order be reduced to take into account his financial circumstances. The Tribunal summarily assessed costs taking into account the submissions which the Respondent had made about communications between himself and the Applicant. It felt that the case working costs were somewhat excessive as was the amount of time spent in legal correspondence. The Tribunal summarily assessed costs in the fixed amount of £2,400. The Tribunal considered the ability of the Respondent to pay the costs award in favour of the Applicant. By reason of striking him off the Roll, the Tribunal had removed his ability to practise and accepted he was presently unable to obtain employment. The Tribunal did not consider that it was appropriate for no costs order to be made but determined that an order should be made in favour of the Applicant in the amount assessed but that the order should not be enforced without leave of the Tribunal.

**Respondent's application that the judgment should not be published**

15. The Respondent relied on his submissions in relation to publication. He had taken on board that the Tribunal considered that the need for transparency outweighed the needs of others who might be adversely affected by publication but he submitted that while accepting that he should be punished, he did not think that others who were beyond reproach ought to suffer. The Respondent also made submissions regarding his Article 8 rights in respect of the evidence he had submitted by way of (personal) mitigation. Mr Willcox submitted that the Applicant would like to see the judgment published in the usual way. It could be drafted in such a way as to give adequate protection to others. The Respondent was only speculating about the risk of damage; he could not speak with any certainty. Mr Willcox repeated the submissions he had made against granting a hearing in private. As to the Respondent's Article 8 rights Mr Willcox submitted that it was possible to avoid referring in the judgment to his private information.
16. The Tribunal had regard to the submissions made for the Applicant, by the Respondent in support of his application and to its Judgment Publication Policy dated 3 September 2013. In developing its policy the Tribunal took account of the following principles: proportionality, accountability, consistency and transparency. Publishing judgments was important in ensuring that the Tribunal's processes were transparent. The contents of judgments assisted in informing and educating users of legal services and the profession. The Tribunal had received representations from another source that this judgment should not be published but as with the application that the hearing should be held in private, the Tribunal considered that the public interest and the need to protect the reputation of the profession outweighed the other considerations which had been put to it. The Tribunal also considered that it would be possible to protect the interests of others and the Respondent's Article 8 rights in the way in which the judgment was drafted. Accordingly the application that the judgment should not be published was refused.

**Statement of Full Order**

17. The Tribunal Ordered that the Respondent Joseph Henry Fyles, 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 £2,400 not to be enforced without leave of the Tribunal.

Dated this 16<sup>th</sup> day of January 2015  
On behalf of the Tribunal

R. Hegarty  
Chairman