`SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11511-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANTHONY ROBERT DART Respondent

Before:

Mr S. Tinkler (in the chair)
Mr G. Sydenham
Mr D. E. Marlow

Date of Hearing: 1 November 2016

Appearances

Mr Jonathan Goodwin, of Jonathan Goodwin, Solicitor Advocate, 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant

Mr Martin Meeke QC, of Colleton Chambers, Colleton Crescent, Exeter EX2 4DG instructed by direct access for the Respondent

---

JUDGMENT

Allegations

1. The allegations against the Respondent, Anthony Robert Dart as amended with the permission of the Tribunal were that:

1.1 he acted contrary to Principles 4 and/or 6 of the SRA Principles 2011 in that;

1.1.1 [Withdrawn];

1.1.2 on a date(s) between 12 July 2013 and 15 November 2013 he participated in discussions with a vulnerable female client in relation to an inappropriate and improper arrangement for the settlement of an outstanding bill of costs; and/or

1.1.3 on or around 19 October 2013 he watched pornography in his office with a vulnerable female client.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 10 May 2016 with exhibit JRG1
- Applicant's statement of costs dated 21 October 2016

Respondent

- Respondent's paginated bundle comprising:
  - Bundle submitted to the Applicant
  - Character references
  - Personal financial statement with attachments
- Respondent's Answer to the Rule 5 Statement dated 6 June 2016
- Letter from Mr Meeke QC to the Tribunal office dated 21 October 2016
- Record regarding an appeal to the Crown Court by Ms BC from the Magistrates' Court
- Excerpt from Sentencing Guidelines in respect of Threats to kill effective from 4 August 2008
- Cover page from The ICD 10 classification of Mental and Behavioural Disorders
- Cover page from Diagnostic and Statistical Manual of Mental Disorders Fourth Edition

Preliminary Issues

3. Mr Goodwin wished to make an application that the client referred to in the allegations would not be identified but referred to only as "Miss BC". He had advised the Tribunal in advance of the hearing that the Crown Court had made a "Press Restriction Order" in September 2014 in the context of a pending appeal as the Court recognised her vulnerability and accepted submissions made on her behalf that her identity and whereabouts remain confidential. The Tribunal also understood that she was not to be called as a witness in these proceedings. There was no objection from

the Respondent. The Tribunal determined that the client would be referred to throughout the hearing and in the judgment as Miss BC. Her identity and whereabouts would not be disclosed.

4. There had been discussions between the parties about the allegations, Mr Goodwin wished to apply not to proceed with or to withdraw allegation 1.1.1 which referred to proposing an inappropriate and improper arrangement. The Respondent admitted that he participated in, developed and encouraged it. To pursue allegation 1.1.1 would require evidence about who instigated the arrangement and the Applicant's view was that the mischief lay in what Mr Goodwin submitted was the Respondent's acceptance of the arrangement and his participation, encouragement and development of it. The Applicant considered it was therefore unnecessary to have a contest as to who proposed the arrangement and call Ms BC to give evidence in respect of such delicate matters. The Tribunal asked for clarification in respect of allegation 1.1.2 as to whether in consequence of his application regarding allegation 1.1.1, Mr Goodwin was seeking to amend it to include the words "developed and encouraged". Mr Meeke submitted that he had not taken instructions on such an amendment.

5. In respect of allegation 1.1.3, the Tribunal informed the parties that it was its settled procedure that if there were agreed facts the Tribunal would decide the matter on the basis of those facts. It noted that there was a factual dispute about who had instigated watching the pornography and what activity if any took place around it. Mr Goodwin submitted that allegation 1.1.3 had been carefully considered and drafted and related only to the Respondent watching pornography.

6. Mr Goodwin drew the attention of the Tribunal to the Rule 5 Statement where the substance of allegations 1.1.1 and 1.1.2 and 1.1.3 were alleged on an 'and/or' basis. He submitted that because of the way the Rule 5 Statement was pleaded the Respondent was not taken by surprise by the pleading in the alternative. The facts were agreed. The Respondent admitted breach of Principle 6 "You must behave in a way that maintains the trust the public places in you and in the provision of legal services". The only contentious point was whether Principle 4 of the SRA Principles 2011 "You must act in the best interests of each client." was engaged.

7. For the Respondent Mr Meeke submitted that it was not necessary to hold a "Newton" hearing to determine the facts which formed the basis of the Respondent's admissions. Mr Meeke referred the Tribunal to the Respondent's Answer where he stated:

> "I deny that I proposed the conduct in which I have admitted I participated.
> I admit the allegations at paragraphs 1.1.2 and 1.1.3 in Mr Goodwin's statement [the Rule 5 Statement]
>
> I admit that I acted contrary to Principle 6, but not 4, of the SRA Principles 2011.
>
> My admissions are on the basis of my letter and statement to the [Applicant] both of the 3 June 2015. These are to be found in Mr Goodwin's bundle ... The contents of that letter and statement are true."

8. The Tribunal gave permission for allegation 1.1.1 to be withdrawn and it was agreed with the parties that there was no need to amend allegation 1.1.2 as the extent to which if any the Respondent encouraged and developed the discussions alleged went to the seriousness of sanction and not to the content of the allegation. Mr Goodwin would rely on the level of discussions in respect of some of which there were recordings and on concessions made by the Respondent in interview.

9. Mr Meeke for the Respondent had written to the Tribunal office on 21 October 2016 inviting the Tribunal amongst other things to read the Respondent's bundle in its entirety. Mr Goodwin for the Applicant did not object. The Tribunal indicated that while it would not normally read character references until it had arrived at its findings on the allegations as some of character references in this case were relevant to propensity or absence of propensity to engage in the conduct complained of as well as to mitigation, the Tribunal had read them in their entirety.

Factual Background

10. The Respondent was born in 1952 and admitted to the Roll of Solicitors in 1984 and his name remained on the Roll.

11. At all relevant times the Respondent carried on practice as a Recognised Sole Practitioner "Tony Dart Solicitor & Advocate" from offices in Barnstaple, Devon.

12. On 29 May 2013, the Respondent was instructed by Miss BC in a criminal matter. Miss BC had been arrested and interviewed by the police in relation to an alleged threatening communication received at her GP surgery which she was suspected to have written and sent. The Respondent agreed to represent her.

13. The Respondent met Miss BC again on 6 June 2013 when the case was discussed in more detail. Miss BC indicated she did not think she would qualify for Legal Aid and instructed the Respondent on a private fee paying basis (aside from the costs of his attendance at the police station which were covered by legal aid). The Respondent's attendance note of that second meeting included:

> "She insisted on instructing me on a private retainer."

14. The Respondent sent Miss BC a client care letter setting out his terms of business and charging rates dated 7 June 2013.

15. On 10 July 2013, the Respondent attended the police station with Miss BC when she was interviewed with an Appropriate Adult present. Miss BC accepted a police caution on the Respondent's advice.

16. By letter dated 12 July 2013, the Respondent confirmed to Miss BC what had occurred following the conclusion of the case and enclosed his bill which was in the amount of £250 plus VAT.

17. There was then an exchange of e-mails between the Respondent and Miss BC during July 2013 regarding his costs. On 5 September 2013, the Respondent was informed by the police that Miss BC had made a number of complaints and expressed dissatisfaction as regards the advice he had provided.

18. The Respondent met Ms BC at his office on 14 October 2013 to discuss her concerns in relation to the caution. During the meeting there was a discussion in relation to the Respondent's overdue bill. The Respondent made an attendance note of the meeting. The Respondent referred to the meeting in his statement dated 3 June 2015:

> "I eventually persuaded Miss [BC] to call in to see me to discuss her concerns with the Caution she had accepted. She called in on 14th October... She actually denied complaining to Inspector [P] about my role and that of the Appropriate Adult and acknowledged that on reflection a Caution did seem to be the best outcome she could have hoped for. We also discussed my overdue account and I had to explain again why I was not in a position to submit a legal aid claim instead. It was a relatively short meeting but good-natured.
>
> Miss [BC] was quite chatty and said she was hoping to become a model or actress and made a few poses as if being photographed; I believe I did tell her that she seemed very photogenic and I did then take a few digital photographs of her which we looked at briefly before deleting them. She remained seated in her chair and fully clothed throughout and then she left promising to pay me something soon to reduce if not clear my account.
>
> I felt I had successfully resolved her complaint and half-hoped I might now actually get paid something but when she returned to see me the following Saturday 19th October she apologised that her family had declined to lend or give her the money to settle my account and she had no money to spare. She then suggested that perhaps I might care to do a photo-shoot with her modelling various outfits she had collected. I said I would prefer the cash but she could not pay me at present.
>
> She was quite animated and said she had been in contact with someone via the internet which could lead to her being paid lots of money for participating in a porn movie, and shooed me out of my chair in order to use my computer and went onto a website which contained adult porn. She showed me a couple of clips over a few minutes...
>
> ... Before leaving she did again suggest that I might care to take some photographs of her but she would not feel comfortable doing so at my offices. It never happened.
>
> I am not sure when she next made contact but she did send me a text asking me when we would be doing a topless photo-shoot, which came as a surprise as that had never been discussed. I was worried that she should send such an explicit text and rang her to ask her not to do so again not least in case my wife or someone else might read her message.

> In the light of that text I deleted subsequent texts from her and late one night after leaving the Custody Centre very tired and in the knowledge that I was never going to be paid and also worried about where this was going I threw my second phone into the River [T]. It was not done with any intention of concealing evidence but in the realisation that I had not been sensible and wanted to terminate all further contact with Miss [BC]."

19. Following the complaints by Miss BC to the police, both she and the Respondent were interviewed on 15 November and 2 December 2013 respectively. With the consent of Miss BC and the Respondent the police provided recordings of the interviews to the Applicant. Transcripts of the interviews were prepared and checked by the Applicant.

20. On or around 15 January 2014, the Applicant received recordings of two telephone conversations between the Respondent and a female client.

21. By letter dated 21 April 2015, the Applicant wrote to the Respondent seeking his explanation and providing him with the transcripts of the police interview of Miss BC, himself and a transcript of one of the telephone recordings provided by Miss BC and which was not played to him during the police interview. The Respondent was asked to read all the transcripts and identify any parts which he did not consider to be an accurate reflection of the discussion/interviews that took place.

22. On 3 June 2015, the Respondent wrote to the Applicant and provided a Statement, Chronology and copy of his file. He said of the transcript of his police interview:

> "As for the transcript of my police interview because I do not have the recording to cross-check I am unable to specifically confirm its accuracy but I imagine it is reasonably accurate."

23. The Respondent's reply was not considered to be a full and adequate response. On 7 July 2015, the Applicant wrote to the Respondent seeking explanation and clarification.

24. The Applicant e-mailed the Respondent on 9 July 2015 and suggested that it would be appropriate for an investigation officer to attend upon him, with a disc of the transcripts of the interview in order for him to listen to them. The Respondent confirmed this would be acceptable.

25. On 18 July 2015, the Respondent wrote to the Applicant including the following words:

> "Miss [BC] had an appropriate adult because the police decided she should. This was after the police had liaised with her GP's surgery where she was being treated for unspecified mental health issues. She had told me she had been diagnosed as suffering from bipolar and epilepsy, but the official diagnosis was never disclosed to me by the police or GP…

As made clear in my statement (para 20) there was discussion about me taking photographs of [Miss BC]. She raised the possibility that such photographs may be topless..."

26. On 11 September 2015, the Applicant wrote to the Respondent enclosing a disc of his police interview, and the Respondent was asked to identify any amendments to the transcripts previously provided to him, having listened to the recordings.

27. On 7 October 2015, a representative from the Applicant attended the Respondent's office and played to him the recording of the telephone conversation(s).

28. By e-mail dated 21 October 2015, the Respondent wrote to the Applicant and said:

"I confirm there are no specific amendments I seek to the transcripts..."

Witnesses

29. There were no witnesses.

Findings of Fact and Law

30. 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.

(Submissions include both those made at the hearing and in the documents.)

31. **Allegation 1.1.2 - on a date(s) between 12 July 2013 and 15 November 2013 he [the Respondent] participated in discussions with a vulnerable female client in relation to an inappropriate and improper arrangement for the settlement of an outstanding bill of costs; and/or**

Allegation 1.1.3 - in or around 19 October 2013 he [the Respondent] watched pornography in his office with a vulnerable female client.

31.1 For the Applicant, Mr Goodwin summarised the facts as set out in the background to this judgment. He drew the attention of the Tribunal to the transcript of the Respondent's interview with the police on 2 December 2013 during the course of which he was played a recording of a telephone conversation between himself and Miss BC. The transcript included the Respondent confirming that the voice on the recorded telephone conversation was his. Mr Goodwin submitted that the date of the telephone conversation was not known but that it was reasonable to conclude that it occurred between the date the Respondent sent his bill to Miss BC and the date of the police interview. Mr Goodwin also referred to the transcript of the police interview with the Respondent after playing him the recording and to the transcript of a recorded telephone conversation between the Respondent and Miss BC prepared internally by the Applicant. The Respondent did not challenge the transcripts of the police interview or of the telephone conversations with Miss BC. Mr Goodwin read considerable extracts from the transcripts. Mr Goodwin submitted that the Applicant

put the allegations on the basis that the Respondent participated, developed and encouraged the improper arrangements. The Respondent was taking care to avoid a record of the discussions and improper arrangements being made. However, his intentions were clear from the recordings. He was discussing with a vulnerable female client the settling of his bill "rather than in cash but in kind" and these were his words. He submitted that the transcript of the telephone conversation played in the police interview showed a clearly planned and continuing intention on the part of the Respondent. The Respondent made several attempts to contact Miss BC to make arrangements including a telephone conversation made while he was out walking his dog a transcript of which the Applicant had prepared. From the recordings it was clearly intended that there would be explicit photographs and there were clear implications regarding sexual activity.

31.2 Mr Goodwin submitted that these were serious allegations of inappropriate and improper arrangements which were wholly contrary to public expectations of a solicitor. Mr Goodwin referred to the case of Bolton v Law Society [1994] 1 WLR 512 which made clear that the highest standards of integrity, probity and trustworthiness were what the public was entitled to expect of a solicitor. He submitted that the Respondent knew that Miss BC was vulnerable and that aggravated the position. Mr Goodwin submitted that the Respondent recognised this in his letter to the Applicant of 4 June 2015:

> "In summary I do sincerely regret and apologise to all concerned for my foolhardy behaviour which has been unbecoming, though I do insist not anywhere near as bad as alleged but certainly stupid."

Mr Goodwin submitted as he set out in the Rule 5 Statement that the Respondent's conduct went beyond being merely "foolhardy behaviour" or "stupid". It was evident that the Respondent's intentions were more nefarious. Mr Goodwin referred to evidence to support his submission that the Respondent knew that Miss BC was vulnerable. His first attendance note of 29 May 2013 included:

> "She was recently diagnosed with bi-polar and also suffers from epilepsy"

In the Respondent's client care letter to Miss BC of 7 June 2013, he included:

> "I was informed by you that you have been diagnosed with suffering from bi-polar disorder and previously you may have suffered from possible schizophrenia (which I understood led to the referral to the... Centre in the first place).
>
> It is important that you continue to take your medication, as prescribed..."

A handwritten note dated 10 June 2013 on a printout of an e-mail exchange of 9 July 2013 about Miss BC's attendance at the police station referred to the Respondent being aware that the police were arranging for an Appropriate Adult and explained that it was best to have one present. On a pro forma referring to his attendance at the police station with Miss BC, he referred under the heading of the Sufficient Benefit test for attending the police station one of the reasons being "M.H. issues" which Mr Goodwin suggested referred to mental health issues. There was

further reference in the handwriting on that form to the presence of the Appropriate Adult. There was also reference to the client being at risk as he had indicated 'Y' against that item in the typed checklist. He also recorded under his note of his client's instructions to "blackouts and seizures – a result of my epilepsy". The Respondent's attendance note dated 14 October 2013 referred to the officer in the case at the police station being disappointed that her seniors had suggested there should be a caution rather than charge. He had recorded "and no doubt the decision maker took into account her [BC's] recent history of mental health problems"

31.3 Mr Goodwin submitted that logically a breach of Principle 4 (acting in each client's best interests) followed on from the admitted breach of Principle 6. The public should be able to rely on an appropriate relationship between solicitor and client and on the solicitor recognising that there were appropriate boundaries and not crossing them. To view Principle 4 as relating only to conflict of interest and confidentiality missed the point. The SRA Handbook set out in the notes to the Principles by way of guidance in respect of Principle 4: "You should always act in good faith and do your best for each of your clients." The relationship between client and solicitor was a fiduciary one. The Handbook went on to refer to confidentiality and conflict of interest but it started from the fundamental basis of acting in good faith and doing your best for each client. A client was entitled to the single-minded loyalty of their solicitor. The Respondent had behaved with an element of disloyalty towards Miss BC. The Respondent's participating, encouraging and developing the improper discussions in respect of the bill of costs constituted a breach of his duty to act in her best interests. One could not argue that doing that was acting in her best interests. Mr Goodwin referred again to the case of Bolton which he submitted would also inform the Tribunal's decision in respect of sanction. It was necessary to maintain the reputation of the profession as a whole. It was a privilege to be a member of the profession but it also carried with it responsibilities. The Applicant advanced its case on the basis that the conduct in question was serious and that both Principles 4 and 6 had been engaged and breached.

Mitigation and Submissions for the Respondent relating to Principle 4

32. For the Respondent, Mr Meeke submitted that the Respondent understood the peril in which he stood. Mr Meeke referred to a chronology in the Respondent's bundle. He submitted that the conduct fell into three periods: 29 May to 12 July 2013; 12 July to 14 October 2013; and 14 October to 15 November 2013. The key events in the first of those time periods were:

- On 25 May 2013 a police bail notice was given to Miss BC which showed a particular home address.

- On 29 May 2013, five days later the Respondent took the client's details which showed a different address.

- An attendance note dated 29 May 2013 recorded that Miss BC "called in on the off chance today to discuss her recent attendance at the Police station on 25th May…" During that attendance Miss BC told the Respondent that she had been in the area for about two years. Mr Meeke submitted that there was no diagnosis from a medical expert and therefore the Tribunal should consider Miss BC's claims with a little care. The attendance note referred to allegations which she had

made against a teacher at her school in another part of the country when she was aged 14 in respect of which the attendance note recorded "allegations that she made were not proved". The note recorded that during the attendance the Respondent explained the sentencing guidelines to the client.

- On 5 June 2013, the Respondent wrote to the police officer in the case (asking for details in advance of the attendance at the police station on 10 July 2013).

- An attendance note dated 6 June 2013 recorded that Miss BC visited the firm's office. It referred to a medical practice which she previously attended:

> "... but now discharged herself. They allege she sent them a threatening letter a few months ago...
>
> She said she did not go any further but is now worried that the Police may put two and two together and suggests she is responsible for both letters."

Mr Meeke submitted that the last sentence of the quotation evidenced that Miss BC showed clear thinking.

- The client care letter dated 7 June 2013 referred to the Respondent having been informed about mental health issues.

- There was an exchange of e-mails on 9 July 2013 between Miss BC and the Respondent making arrangements for the attendance at the police station the following day. It had a handwritten note dated 10 July 2013 recording that the Respondent had attended with Miss BC for the interview and Mr Meeke pointed out that it gave a third and new address for Miss BC. There was also reference to her receiving an allowance each month of £2,500.

- A pro forma dated 10 July 2013 referred to the attendance at the police station. It recorded that the police had disclosed at the interview that a card had been received at a particular GP practice address addressed to a doctor but intercepted by the practice manager:

> "The card contains death threats...."
> "[Miss BC's] fingerprints have been found within the card - hence her arrest in this investign (sic)".

The pro forma recorded under the heading "Client's instructions":

> "If the police have my f/prints from within the card then obviously I must have sent it but I do not remember doing so. I have previously been drinking ..."

Mr Meeke submitted that drinking would not be a defence.

33. Mr Meeke submitted one would expect the police to be assiduous in terms of protecting people providing medical services in the community. He referred to sentencing guidelines relating to Threats to kill. As an example of the "nature of

activity" it referred to: "Single calculated threat..." with a starting point for sentencing of "12 weeks custody" and range "6 to 26 weeks custody" subject, Mr Meeke indicated, to a discount for a plea. In those circumstances he submitted that the Respondent was entitled to say in his statement that the outcome he achieved for Miss BC was excellent:

> "Surprisingly the Police agreed to my suggestion that she receive a Caution and that is how the matter was concluded; an excellent outcome for her, avoiding what seemed to be an inevitable court appearance."

- Reverting to the chronology and attached documents, Mr Meeke referred to an e-mail on 11 July 2013 from Miss BC to the Respondent requesting that he send her an invoice.

- The bill was dated 12 July 2013 and included "My fee £365.40, but say: £250" plus VAT of £50

Mr Meeke submitted that during the first period of the chronology the Respondent had done all that was required of him. There was no question of a breach of Principle 4; there was no breach of confidentiality or the requirements covering conflict of interest.

34. In respect of the second period of time 12 July to 14 October 2013, Mr Meeke submitted that although in the bundle taken from the Respondent's file one saw an occasional e-mail, no meeting took place with the client. She made promises to pay the bill which were not fulfilled.

- In an e-mail to the Respondent on 30 July 2013 she stated "My mother has stopped my allowance..."

- Miss BC made comments in another e-mail dated 15 July 2013 about not being happy about accepting the caution. She had not mentioned this just to the Respondent.

- A photocopy of a returned letter stamped by Royal Mail on 24 June 2013 which the firm received back on 13 August 2013 indicated that Miss BC had moved from her address.

- On 5 September 2013, an e-mail from Inspector P indicated that Miss BC had made "a complaint regarding how she was dealt with and ultimately cautioned by the police". It indicated that she had complained about the legal advice given by the Respondent, the support provided by the Appropriate Adult and about police procedure. Mr Meeke submitted that the use of an Appropriate Adult indicated that the police were being cautious; it did not mean that Miss BC was not fit to be interviewed.

- Mr Meeke referred to the Respondent's attendance note dated 14 October 2013 referring to the attendance by Miss BC at the Respondent's firm. The note included:

"I queried with her something that Inspector [P], the Custody Inspector, informed me…

I asked her to clarify that and to let me know if she had any complaint at all with regard to my role at the Police Station. She looked wide-eyed and said certainly not…"

35. Mr Meeke submitted that the Respondent was still Miss BC's solicitor; matters were not finalised as the bill had not been paid. Mr Meeke submitted that the telephone calls which were alleged to constitute misconduct could have taken place during the period alleged by Mr Goodwin 12 July to 12 November 2013 because Miss BC informed the police on 15 November 2013 during her interview that she had downloaded an app onto her telephone which gave her a recording facility "a couple of weeks ago" this meant around 1 November 2013.

36. Having regard to the third period in the chronology 14 October to 15 November 2013, Mr Meeke submitted that it was abundantly clear that the Respondent acted in breach of Principle 6 and that was never disputed but he challenged the assertion that the Respondent was in the sense envisaged by Principle 4 acting for Miss BC during the third period. Mr Goodwin put breach of the two Principles in the alternative in the Rule 5 Statement in order to allow the Tribunal to deal with the matter as appropriate and Mr Meeke submitted that Principle 4 was not engaged because it contemplated different circumstances from those in this case.

37. Mr Meeke also referred to the assertion of Ms BC's vulnerability. He submitted that vulnerability was a much used word. Epilepsy was not a mental health affliction. It did not feature in The ICD 10 classification of Mental and Behavioural Disorders and Diagnostic and the Statistical Manual of Mental Disorders Fourth Edition. Bipolar disorder could be debilitating but Mr Meeke knew of two legal professionals who were sufferers and practised successfully. It was also thought that Winston Churchill was a sufferer. Mr Meeke submitted that none of these three individuals were vulnerable. No medical evidence had been provided in support of reference in the client care letter to Miss BC having been diagnosed with suffering from bipolar disorder and previously that she might have suffered from possible schizophrenia. Vulnerability was not a "get out of jail free" card. Mr Meeke referred to an opinion which he had heard from a consultant forensic psychiatrist in a case he had prosecuted that it was likely that 80% of the population of prisons suffered from at least two mental conditions which were to be found in the mental health manuals. Mr Meeke submitted that therefore being vulnerable and being bad were not mutually exclusive. Miss BC's youth and her behaviour suggested that she was to an extent vulnerable but possibly she was not as vulnerable as might be suggested at first blush. She had been no more than 22 years old when the Respondent dealt with her. In his first attendance note he recorded that she had made reference to allegations she had made which had not been believed by the police. She stated that she had been in the area of the Respondent's practice for some two years and that she had felt she needed to move from elsewhere in the country because of the way she was treated in her former locality in respect of the allegations which she stated arose when she was aged 14. Her dates regarding that matter did not add up. The Respondent's attendance note of 6 June 2013 referred to an allegation that she had sent a threatening letter a few months ago to another medical practice. She complained to Inspector P about the

Respondent, the Appropriate Adult and two of the police officers who dealt with her. When the Respondent put the complaints to her in October 2013 she denied making them.

38. Mr Meeke submitted, having regard to the record sheet which he had provided that Miss BC was prosecuted before the Magistrates' Court and then appealed to the Crown Court against sentence for harassing police officers who had dealt with her in respect of the matter for which the Respondent represented her (the decision on appeal was to impose a conditional discharge for two years). The Respondent had asked the Applicant in a letter dated 3 June 2015:

> "I do respectfully ask that you contact the police to request a copy of the original threatening communication that Miss [BC] sent to her doctor, which sparked her arrest and subsequent investigation and also please request from the same source the details of her subsequent complaints about the police and her consequent prosecution for harassment.
>
> The police have declined to provide me with all this but have indicated they are more than happy to supply this information direct to you…"

Mr Meeke submitted that that information had not been obtained but the Press Restriction Order had been made for Miss BC's benefit, which he had never heard of happening before. This led to his enquiring of the relevant court if she had appeared there and he provided the Tribunal with a copy of her court record. It referred to six offences which were dealt with and appealed from the local Magistrates' Court in 2014. Mr Meeke had no information beyond the document; he did not know why the press restriction order had been sought and it led him to wonder what else was not known. By letter of 11 March 2014, the Police informed the Respondent that no further action would be taken against him.

39. The letter from the Applicant to the Respondent dated 21 April 2015 notifying him that a formal investigation was being started also advised him that the Applicant might send a copy of his reply to Miss BC. On 22 April 2015, a telephone message was taken from Ms BC by the Respondent's secretary as follows:

> "She said you will not get a penny from her and you have more chance of you killing her than getting paid. If you continue to harass her she will contact your wife"

40. Mr Meeke referred to the transcript of the telephone conversation between the Respondent and Miss BC particularly asking them to note that she said: "But what, okay, but what exactly did you want to do on Saturday?" Later she said: "No because erm I, I just got the impression that you wanted more than like just like the photo shoot" and "it's ok to be honest" and "like a hotel maybe?" Mr Meeke reminded the Tribunal that Miss BC knew that she was recording the telephone conversation and suggested that the Respondent was being persuaded to say certain things. The Tribunal would take a view about whether the Respondent had been concealing evidence when he discarded his mobile phone but based on his statement Mr Meeke suggested that he realised what a fool he had been and decided that the matter could not continue. Mr Meeke submitted that the Respondent's realisation did not excuse

his conduct and he never denied it and sought to apologise for it. Mr Meeke asked the Tribunal to note the concluding paragraph of his short Answer:

> "I offer my profession and the Tribunal my abject apologies for my failure to comply with the standards I know I should have observed."

Mr Meeke submitted that he was asked to repeat that apology.

41. The Tribunal considered the evidence and the submissions for the Applicant and for the Respondent. The facts were not in dispute. The Respondent admitted that on a date(s) between 12 July 2013 and 15 November 2013 he had participated in discussions with a vulnerable female client in relation to an inappropriate and improper arrangement for the settlement of an outstanding bill of costs and that in or around 19 October 2013 he watched pornography in his office with a vulnerable female client. The Respondent faced an allegation that by the conduct which he had admitted he had acted contrary to Principles 4 and/or Principle 6. The Tribunal noted the transcripts of the police interview and the two telephone conversations. In the conversation played to him by the police the Respondent asked Miss BC not to send explicit texts because they might be checked on by the authorities. He said what she suggested "would be wonderful and would be nice". He said "I mean I don't expect that a session is going to clear the bill..." He discussed her coming to the office on a Saturday when "there shouldn't be anybody around". He said "let's just go with the photos shall we... and see how it goes... then we can take it from there...and if we just end up talking about it and then planning some sort of session, we've got to find a ... more suitable venue....well it's an additional bill isn't it [for a hotel]...don't tell anyone what you're doing...I'll see you on Saturday...it could be fun and er it could lead onto you know, bigger and better things as well...." . In the conversation transcribed by the Applicant he thanked Miss BC for texting him back. The recording included that he did not want to text back because "I don't want to leave a written record of what we were discussing for obvious reasons." and "I'm sure we could think of some bright ideas where I might end up owing you some money, but at least that would clear the debt as far as I'm concerned. But if you can come in and have a chat with me about it, then we can talk about, you know, the mechanics, the logistics". The Tribunal found proved to the required standard on the evidence that the admitted conduct had taken place and that the Respondent had been in breach of Principle 6 relating to maintaining the trust of the public in the profession. The transcripts were damning in that regard; the public trust could not be maintained if solicitors participated in inappropriate and improper arrangements.

42. The Respondent denied that he had been in breach of Principle 4 his obligation to act in the best interests of each client. It was the Applicant's case that Principle 4 encompassed within the word "act" anything which the solicitor did which related to the client. It was the Respondent's case that matters relating to his bill of costs did not come within that definition because at that point he was no longer "acting" in the sense envisaged by Principle 4. The Tribunal considered that it was clear that the Respondent had achieved a good result for the client Miss BC in the criminal matter. He had advised her to accept a caution and as a result she had avoided going to court and gaining the conviction which it appeared from the evidence would have been the outcome of a prosecution. The legal services he had provided were provided

appropriately and to a high standard. The SRA Handbook stated in the notes on the Principles at paragraph 2.1:

> "The Principles embody the key ethical requirements on firms and individuals who are involved in the provision of legal services..."

The Tribunal considered that Principle 4 related only to the solicitor providing legal services to the client and that the incidents which gave rise to the allegations did not relate to the Respondent providing legal services to Miss BC. The criminal matter had been dealt with and concluded before that conduct began. Principle 4 referred to the requirement to act in the client's best interests in the provision of legal services which the Respondent clearly had done. At no point in the provision of legal services by the Respondent had he failed to act in Miss BC's interests. The Tribunal therefore found allegations 1.2 and 1.3 proved on the evidence to the required standard in respect of breach of Principle 6 but not in respect of Principle 4.

Previous Disciplinary Matters

43. None.

Mitigation

44. In addition to the points which he had already made during the course of his submissions disputing the allegation of breach of Principle 4, Mr Meeke submitted in mitigation, that it was difficult to see the harm which had resulted to Miss BC from the Respondent's action but one could see the harm to the reputation of the profession. Mr Meeke asked that the Tribunal take into account the consequences which the Respondent had suffered as a result of his crass stupidity. Before the Tribunal was a copy of the search warrant which the police had executed at his offices following Miss BC's complaint about him. The Judge who had issued it sat at the local Crown Court which dealt with all the cases in that particular area which was a small one and he would know the firm. The firm's staff witnessed the execution of the warrant and the seizure of the Respondent's computer. The police involved in dealing with Miss BC's complaint would know the Respondent. The criminal investigation had hung over his head from November 2013 to 11 March 2014. The investigation by the Applicant took then two years until 9 February 2016 when the Respondent was informed that a decision had been made to refer him to the Tribunal. Until November 2016, three years from the time when the matter first came to light, the Respondent had continued to practise without any complaint. Mr Meeke was not familiar with how quickly the Applicant generally moved but noted that it had not found it necessary to move very quickly in this particular case. The Respondent had been obliged to tell the people from whom he needed testimonials what had happened. The local newspaper had been in touch about the hearing and would carry the story. The Respondent's humiliation would then be complete. Mr Meeke asked how much more could the Respondent take.

45. Mr Meeke referred the Tribunal to the quality of the testimonials which had been submitted for the Respondent one of which was from a member of his own chambers. It referred to the Respondent as:

> "conscientious and hard-working and is well thought of and respected by his colleagues and clients alike. I have never had cause to doubt his honesty and integrity and have always found him helpful and charming."

A testimonial from a criminal practitioner stated that she had never had any reason to question the integrity or professionalism of the Respondent. A solicitor who rented office space from the Respondent for his firm referred to his "reputation for working extremely hard" and "is clearly committed to criminal defence work and I believe is driven by a desire to represent some of the most vulnerable and disenfranchised 2people..." Another solicitor wrote having known the Respondent since the writer moved to the area in 1987 and said he had recommended family friends to the Respondent and referred to his shock at learning of the allegations. Another wrote that he had known the Respondent in a professional capacity in excess of 25 years and commended him. Another came from a firm which undertook two thirds of the criminal legal aid work in the area. Mr Meeke submitted that there was only one other firm in the area which undertook some criminal defence work, showing how small the pool providing that service was. The writer had known the Respondent for well over 30 years as they had careers in the same geographical area and lived near each other. He said amongst other things:

> "Day after day and year upon year I have watched [the Respondent] give of his best in the arena of the local Magistrates Court...[The Respondent] has spent countless hours in the dismal environment of the local Police Station cells throughout evenings and into the night or for large portions of the weekend.... Nonetheless I believe we both hold a genuine aspiration to help people in the face of often overwhelming or life changing dilemmas...

Mr Meek referred to the problems besetting criminal legal aid work. The Respondent undertook a very significant proportion of all the criminal legal aid work in the area; he did nothing but crime and for 30 years and more had served the community. His rewards were meagre enough but his commitment was steady and continuous. He was aged 64 and wanted to continue working. Mr Meeke asked the Tribunal to remember that the worst of his behaviour constituted discussions on the telephone with Miss BC. Mr Meeke was not excusing the Respondent's conduct in taking photographs which were perfectly innocent or letting her put pornography on his computer. The case was taking a heavy toll on his personal and professional life and would take a heavy toll on him financially. He had to bear not just the costs of the Applicant. The Respondent had decided to resign from the Rotary of which he had been asked to be president. If the Tribunal prevented him from practising it would ruin him. There were also three members of staff and two consultants working under the firm's legal aid contract. Mr Meeke submitted that the case did not call for anything so drastic for a man without a blemish on his character. If this were a criminal matter he would ask for credit to be given for the admissions that Respondent had made from the outset. Mr Meeke asked that the penalty be a reprimand plus an order for costs. He referred to the words of Abraham Lincoln that mercy bore richer fruit than strict justice.

46. As to the Respondent's finances, Mr Meeke referred the Tribunal to his Personal Financial Statement; it detailed the value of his home (of which he was joint owner) It was subject to a mortgage of something over half the value. He had detailed his assets of around £24,500 but there was a business loan. The income disclosed was supported

by a letter from his accountant showing trading profit for the year ended 30 April 2015 in the amount of £63,014; this was the reality of criminal legal aid practice. His monthly expenditure he declared as £4,105.30 approximately. In his Answer to the Rule 5 Statement the Respondent stated that he accepted his liability to pay the Applicant's costs. At the stage he made his statement May 2016 they had been a little over £5,000 but we now in the region of £15,000 quite an increase over the original amount. The Respondent had agreed that he could pay £12,000. The Respondent did not contest any aspect of the costs and if he could continue to practise he would manage to pay them but it would take time.

Sanction

47. The Tribunal had regard to its Guidance Note on Sanctions and to the mitigation which had been offered for the Respondent including the testimonials. The Tribunal took account only of those facts which were not in dispute and which had been admitted. The fact that breach of Principle 4 was not found proved did not make the breach of Principle 6 any less serious and Mr Meeke did not seek to assert that it did. As to culpability, the Respondent's motivation was his personal benefit. The Tribunal considered the chronology of contact between the Respondent and Miss BC. She came to see him about the outstanding bill on a working day 14 October 2013. At this point the matter went seriously awry. As well as discussing the outstanding bill on that day, the Respondent said in his statement dated 3 June 2015 that he took photographs of Miss BC which he deleted. Five days later she came to the office by arrangement on a Saturday, the Respondent provided her with wine and she and the Respondent watched pornography together. On the Respondent's own account it was then suggested to him by text that there should be a topless photo shoot; he said this came as a surprise but the Tribunal noted that there were at least two subsequent telephone calls after that meeting in which the Respondent continued to make arrangements to meet Miss BC. The discussions in those conversations included specific contemplation of photographs of Miss BC, and also clear implications of possible sexual activity between the Respondent and Miss BC, which were described as "payments not in cash, but in kind". Whilst he asked her not to text him, presumably to avoid a record of the conversation, he clearly was continuing a discussion about an inappropriate arrangement. At no point did he try to stop it even after she expressly mentioned topless photo shoots. The Respondent was completely complicit in the suggestion that activity might escalate including that there might be inappropriate photographs taken at a venue other than the office and possible sexual activity beyond that. Throughout, the issue of the unpaid bill provided the context for the contact with Miss BC. Discussions included the subject of where and when the Respondent would meet Miss BC which showed an element of planning; indeed the Tribunal considered that there was a much greater degree of planning and foresight in the Respondent's conduct than he acknowledged in his first interaction with the Applicant. The Tribunal accepted that this misconduct occurred in a long unblemished career but it was not a one-off but a series of contacts. The Tribunal considered that the Respondent had acted to a considerable degree in breach of a position of trust. At the time the misconduct occurred he was aware that Miss BC was no more than 22 years old. While the exact nature of her problems might not have been known to him she had at least told him that she had mental health problems and indeed in one of his letters to her he advised her to continue taking her medication. The documentation which he had prepared in relation to the police interview identified that an

Appropriate Adult was appointed and while the Tribunal was aware that the police might err on the side of caution this was a significant fact which the Respondent with all his years of experience of criminal defence work would have understood. His documentation also referred to Miss BC's instructions which included references to blackouts and seizures as a result of epilepsy and a recent diagnosis of bipolar disorder. The Respondent had also marked 'Y' against a question 'Client at risk?' and made reference to her having been prescribed some medication. Miss BC was already in difficulties by virtue of having fallen foul of the criminal law when the Respondent encountered her. He was aware that she had moved to the locality because of earlier problems elsewhere. The Respondent had been told by Miss BC that she was geographically distant from her family and that she had financial issues because she informed him that her family had stopped her allowance. The Respondent was very aware that she owed money to the Respondent which she could not pay. As the misconduct related to discussions about how Respondent's bill might be paid his knowledge of her financial circumstances was relevant. The Tribunal determined that this was clearly a situation where a solicitor in a position of trust, very experienced in dealing with criminal defendants, was in a position of significant power over an individual who owed him money and whom he believed to have mental health and other issues. His level of experience exacerbated his culpability. The Tribunal found that the harm to the reputation of the profession was very serious. The Tribunal had not been presented with any evidence of harm to Miss BC but as had been said in the case of Bolton one should be able to trust one's solicitor to the ends of the earth.

48. The Tribunal considered that this case displayed several aggravating factors in addition to the inequality of power between the people involved. The misconduct had continued over a period of time. There was an initial meeting, a further meeting arranged for a weekend at which the pornography was watched and then at least two phone calls in which further arrangements were discussed. He showed by expressions of concern to Miss BC about others, including the "authorities", seeing their messages and his references to how their actions might be interpreted as well as asking her not to tell others where she was going on the Saturday when she was to visit his office that he did not want anyone to know what was happening. He did not notify the Applicant of what had happened where that was clearly an option if he was getting out of his depth. He said in the police interview; "I should have coming running to you lot and just said oh I think I've got myself in er a bit of hot water here..." He knew that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the profession. He was, during the course of this conduct, attempting to cover his tracks. The Tribunal noted that the Respondent had deliberately discarded a mobile phone which he had used to communicate with Miss BC but it had not been proved that he did this out of any base motive and it was plausible that he might have panicked. The Tribunal did not attach any weight to this disposal.

49. As to mitigating factors, the Tribunal noted that Miss BC had made recordings of particular conversations and the fact that she was aware that they were being recorded might well have played into the way that the conversations developed. Having regard to the Respondent's long experience and the inequality of bargaining power between the two people, Miss BC's role was not a persuasive mitigating factor. The Tribunal noted the high quality and considerable number of the testimonials submitted for the Respondent and accepted that he had shown genuine insight into his misconduct. The

Tribunal noted however that the Respondent had not initially been totally open when the matter had emerged – he made no reference in his initial reaction for example to the two telephone conversations where the improper activity was mentioned. He had clearly suffered considerably on a personal level but this was not unusual when conduct led to an appearance before the Tribunal.

50. The Tribunal considered the appropriate sanction very carefully. The Tribunal did not consider that the Respondent presented a danger to the public as he showed genuine insight and remorse, and had a previously unblemished record. The Tribunal considered that the key factor in determining sanction in this case was the need to protect the reputation of the profession. This was a very serious matter and clearly well beyond no order or a reprimand. The Guidance Note set out that a fine would be imposed if the Tribunal determined that the seriousness of the misconduct was such that a Reprimand would not be sufficient sanction but neither the protection of the public nor the protection of the reputation of the legal profession justified a restriction order, suspension or strike off. The Tribunal considered that imposing a fine would not convey to the public the seriousness of the Respondent's misconduct. As protection of the public from the Respondent was not a key issue a restriction on practice combined with another sanction would not assist. The Tribunal considered in detail whether suspension or strike off would be the appropriate sanction. The Respondent was well aware of his duty as a solicitor at every stage of the matter as his concern to remove all trace of the personal contact outside the professional relationship evidenced. The consequences of failing in his duty were set out in the case of Bolton:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees."

The Respondent had engaged in a fundamental breach of trust of his position by having inappropriate discussions with Miss BC, a clearly vulnerable person, and he had compounded this by watching pornography with her. This was a solicitor dealing with the most vulnerable people in society. His behaviour had been so fundamentally outside the limits of what was acceptable for a solicitor in a position of trust that only a long suspension or strike off would be suitable in order to demonstrate to the public, and especially to all future clients of the profession however vulnerable, that solicitors must behave with utmost responsibility when in a position of trust. After careful reflection and particularly having regard to the fact that the Respondent was clearly aware throughout the misconduct that what he was doing with a vulnerable client was very wrong, the Tribunal considered that a strike off was the appropriate sanction to convey the importance to the public and the profession of the highest standards of behaviour. It was set out in Bolton:

> "It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. .... All these matters are relevant

and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness."

and

"The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

There was no suggestion that the Respondent had committed a criminal offence, but his conduct so greatly and clearly undermined the trust the public would place in solicitors that in the view of the Tribunal he could not continue as a member of the profession. This was a most disturbing case which constituted a personal tragedy for the Respondent, and quite possibly for the criminal legal aid work in the region in which he practised. However as set out in the Guidance Note where the Tribunal had determined that the seriousness of misconduct was at the highest level such that any lesser sanction was inappropriate and that the protection of the reputation of the legal profession was paramount it was required that the Respondent be struck off the Roll.

Costs

51. For the Respondent, Mr Goodwin had submitted a costs claim in the amount of £14,860.04. He asked the Tribunal to make an order in the amount of £12,000 as agreed between the parties. He asked that it be without any restriction upon enforceability on the basis that discussions could take place between the Respondent and the Applicant regarding instalment payment facilities. The Tribunal considered the amount agreed to be reasonable and made an award in that amount. Part of the allegation that in respect of breach of Principle 4 had not been found proved but the Tribunal did not consider that it had added much work to the application and it was not appropriate to make any reduction in the costs on that account. It had viewed the Respondent's Personal Financial Statement and attachments and considered that an immediately enforceable order would be appropriate, noting that the Applicant was open to negotiation about payment arrangements.

Statement of Full Order

52. The Tribunal Ordered that the Respondent, Anthony Robert Dart, 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 agreed sum of £12,000.00

Dated this 28th day of November 2016
On behalf of the Tribunal

S. Tinkler
Chairman