

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11640-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

EDWARD NICHOLAS PROFFITT

Respondent

Before:

Miss T. Cullen (in the chair)

Mr H. Sharkett

Mr M. Palayiwa

Date of Hearing: 26 September 2017

Appearances

Mark Gibson, solicitor of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent appeared in person.

JUDGMENT

Allegations

1. The Allegation against the Respondent was:
 - 1.1 By virtue of his conviction on 12 August 2016 for two counts of making an indecent photograph or pseudo-photograph of a child at Cambridge Crown Court the Respondent failed to:
 - 1.1.1 uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 ("Principles") and/or;
 - 1.1.2 act with integrity in breach of Principle 2 of the Principles and/or;
 - 1.1.3 behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.
 - 1.2 The Respondent failed to notify the SRA of his conviction within 7 days of being convicted and thereby failed to:
 - 1.2.1 comply with his regulatory obligations and deal with his regulator in an open, timely and co-operative manner in breach of Principle 7 of the Principles and/or;
 - 1.2.2 comply with Regulation 15.1(b) of the SRA Practising Regulations 2011 by failing to inform the SRA of his conviction.

The Respondent admitted the allegations.

Documents

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

Applicant:

- Application dated 12 April 2017 together with attached Rule 5 Statement and all exhibits
- Applicant's Statements of Costs dated 12 April 2017 and 5 September 2017

Respondent:

- Response to Rule 5 Statement
- Respondent's Statement of Means and attached documents

Factual Background

3. The Respondent, born in 1972, was admitted to the Roll of Solicitors on 15 September 1997. He did not hold a current practising certificate.

4. On 12 August 2016, in the Crown Court at Cambridge, the Respondent was, on his own confession, convicted on indictment of two counts of making an indecent photograph or pseudo-photograph of a child. On the same day, he was sentenced to a community order for three years, a sexual harm prevention order for five years and placed on the Sex Offenders Register for five years.
5. The Respondent's conviction attracted media attention as a press article about the Respondent's conviction appeared on 22 September 2016. The Solicitors Regulation Authority ("SRA") became aware of the Respondent's conviction as a result of the press article, as the Respondent did not report his conviction to the SRA within seven days.

Witnesses

6. No witnesses gave evidence.

Findings of Fact and Law

7. The Tribunal had carefully considered all the documents provided, and the submissions of both parties. The Tribunal confirmed the allegation had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering the allegation.
8. **Allegation 1.1 - By virtue of his conviction on 12 August 2016 for two counts of making an indecent photograph or pseudo-photograph of a child at Cambridge Crown Court the Respondent failed to:**
 - 1.1.1 **uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 ("Principles") and/or;**
 - 1.1.2 **act with integrity in breach of Principle 2 of the Principles and/or;**
 - 1.1.3 **behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.**

Allegation 1.2 - The Respondent failed to notify the SRA of his conviction within 7 days of being convicted and thereby failed to:

 - 1.2.1 **comply with his regulatory obligations and deal with his regulator in an open, timely and co-operative manner in breach of Principle 7 of the Principles and/or;**
 - 1.2.2 **comply with Regulation 15.1(b) of the SRA Practising Regulations 2011 by failing to inform the SRA of his conviction.**
- 8.1 The Respondent admitted the allegations.
- 8.2 The Tribunal had before it a Certificate of Conviction from the Crown Court at Cambridge dated 9 December 2016 which confirmed that on 12 August 2016, the Respondent had been convicted upon his own confession on indictment of "making

indecent photograph or pseudo-photograph of a child x 2". The Certificate also confirmed the Respondent had been sentenced to a community order for 3 years, a sexual harm prevention order for 5 years and his name was to be entered on the Sex Offenders Register for 5 years.

- 8.3 The Tribunal was satisfied that in light of the Respondent's conviction, he had failed to uphold the rule of law and the proper administration of justice. Engaging in criminal conduct indicated he lacked soundness, rectitude and a steady adherence to an ethical code. He had therefore failed to act with integrity. The Tribunal's attention had been drawn to a copy of an article in a local newspaper publicising the Respondent's conviction. The Tribunal was satisfied his conduct had not maintained the trust the public placed in him or in the provision of legal services. The Tribunal found the Allegation 1.1 proved.
- 8.4 The Respondent had not reported his conviction to the SRA within 7 days of that conviction. He had therefore breached Regulation 15.1(b) of the SRA Practising Regulations 2011 and Principle 7 of the SRA Principles 2011. The Tribunal also found Allegation 1.2 proved.

Previous Disciplinary Matters

9. None.

Mitigation

10. The Respondent stated he did not offer any excuses for his behaviour which he accepted was wrong and totally unacceptable. He stated he felt deeply ashamed for his actions. He had let down his family, colleagues and his profession. In relation to Allegation 1.2, the Respondent confirmed he had filed a notification of non-renewal of his practising certificate in 2014 and, indeed, had not had a practising certificate since 31 October 2014 as he had gone into another business. As such, he had assumed that was the end of the matter and indeed, neither his solicitor nor his barrister, who were both aware of his position, advised him that he should contact the SRA even though he didn't have a practising certificate. The Respondent had held a personal alcohol licence and his barrister had informed him he should notify the Authorities about this which he had done almost immediately. The Respondent stated he did not routinely ignore taking action when he needed to do so and was very mindful of his duties to report.
11. The Respondent reminded the Tribunal that he had accepted all the allegations from the outset. He had co-operated fully with his regulator, complied with all directions and made frank early admissions. He had qualified as a solicitor in 1997 and had a previously unblemished record having had no problems with any regulatory body. The Respondent had found the proceedings highly stressful. They were constantly on his mind and had caused a great deal of personal difficulties for the Respondent, details of which he provided to the Tribunal.
12. The Respondent confirmed he had been attending for his community order for the last thirteen months and he hoped to obtain gainful alternative employment sometime in the future. The Respondent apologised unreservedly for his conduct and the effect of

this on the profession. He accepted it was his own fault and stupidity that had led to the loss of membership of his profession, which was one he was immensely proud of. The Respondent stated the proudest day of his life was when he became a solicitor and it meant a great deal to him to be losing his career.

Sanction

13. The Tribunal had considered carefully the Respondent's submissions. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.
14. The Respondent's level of culpability was high. He had direct control over his actions, he was an experienced solicitor and a great deal of harm had been caused to the reputation of the profession. The conviction involved children who were vulnerable and the Respondent's motivation was his own gratification. The extent of the harm caused by the conduct could reasonably have been foreseen.
15. In relation to the failure to report the conviction to the regulator within 7 days, the Tribunal accepted the Respondent's explanation that this had not been deliberate.
16. The Tribunal considered the aggravating and mitigating factors in this case. The Respondent's conduct involved an extremely serious criminal offence which exploited vulnerable children and it had been repeated. The Respondent ought reasonably to have known his conduct was in material breach of his obligations to protect the public and the reputation of the profession. These were all aggravating factors.
17. The Respondent did have a previously long unblemished record and he had co-operated with the regulator, making early admissions to his behaviour. He had shown genuine remorse and insight and had spoken candidly before the Tribunal. It was clear the conviction had had a profound effect on the Respondent. These were all mitigating factors.
18. The Tribunal took into account the case of Bolton v The Law Society [1994] 1 WLR 512 and the comments of Sir Thomas Bingham MR who had stated:

"It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... 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... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well."

19. The Tribunal considered each of the possible sanctions that could be imposed in turn. This was not a case where it was appropriate to order a Reprimand or a Fine in light of his serious conviction. A Restriction Order was not appropriate as the Tribunal could not formulate conditions to address this type of misconduct. The Tribunal decided that a Suspension Order would not be sufficient to mark the serious nature of the conviction in this case which involved acting with a lack of integrity by exploiting vulnerable children. The Tribunal concluded that the seriousness of the misconduct was such that nothing short of an Order striking the Respondent off the Roll would be sufficient to protect the public and the reputation of the legal profession. Accordingly, the Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

Costs

20. Mr Gibson, on behalf of the Applicant, requested an Order for his costs in the total sum of £1,849.06 and provided the Tribunal with a breakdown of those costs. He stated the Respondent did not take issue with these and he had been informed the Respondent that he could make arrangements with the costs recovery team to pay by instalments. Mr Gibson accepted the hearing time, which was claimed at 3 hours, needed to be reduced as the hearing had not taken as long as estimated on the schedule. He submitted a claim for 30 minutes for the hearing time would be more appropriate.
21. The Tribunal had considered carefully the matter of costs and noted the Respondent did not object to the amount claimed. However a reduction needed to be made to the time of 3 hours claimed for attending the hearing. The Tribunal reduced this to 30 minutes and assessed the total costs in the sum of £1,524.06. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £1,524.06.
22. In relation to enforcement of those costs, the Tribunal noted the Respondent had provided a Statement of Means. This indicated he had assets and some income. There was therefore no need to restrict enforcement of the costs order.

Statement of Full Order

23. The Tribunal Ordered that the Respondent, EDWARD NICHOLAS PROFFITT, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,524.06.

Dated this 27th day of October 2017
On behalf of the Tribunal


T. Cullen
Chair

Judgment filed
with the Law Society
on 31 OCT 2017