SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11682-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DAVID DANIEL JOSEPH REGAN Respondent

Before:

Mr R. Nicholas (in the chair)
Mr M. N. Millin
Mrs N. Chavda

Date of Hearing: 31 October 2017

Appearances

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

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, David Daniel Joseph Regan, made by the Applicant were that:

1.1 By virtue of his convictions on 3 March 2017 and 11 January 2017 in the Bristol Crown Court of making indecent photographs or pseudo-photographs of child, possession of extreme pornographic images – act of intercourse/oral sex with a dead/alive animal, distributing indecent photograph of child, 3 counts of possession of indecent photograph/pseudo-photograph for distribution, possession of class A and B drugs and supplying class A drugs he has breached all, or any, of the following:

1.1.1 Principle 1 of the SRA Principles 2011 ("Principles") by failing to uphold the law and the proper administration of justice;

1.1.2 Principle 2 of the Principles by failing to act with integrity;

1.1.3 Principle 6 of the Principles by failing to behave in a way that maintains the trust the public places in him and in the provision of legal services.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 11 July 2017 with attachments
- Amended Rule 5 Statement with attachments
- Applicant's statement of costs as at date of final hearing dated 12 October 2017

Respondent

- Correspondence from the Respondent and a close family member with enclosures where appropriate

Preliminary Issues

Amendment to the Rule 5 Statement

3. For the Applicant, Mr Gibson asked that the Tribunal admit an amended version of the Rule 5 Statement. The dates for the Respondent's criminal convictions given in the original Rule 5 Statement were 3 and 12 May 2017. These dates had been taken from Certificates of Conviction provided by the Bristol Crown Court which were also both incorrectly dated 17 May 2018. Replacement certificates dated 17 May 2017 received by Mr Gibson on 27 October 2017 showed that the drug-related convictions were dated 11 January 2017 and the remaining convictions were dated 3 March 2017. The replacement certificates were exactly the same as the earlier ones save for the corrections and the replacements included against the schedules of the convictions the term of the sentence for each one instead of setting the terms out below. The Tribunal

noted that there was also a typographical error in the replacement certificate for the non-drug related offences in that the words "deal/alive animal had been used instead of "dead/alive animal". The amended Rule 5 Statement also corrected a typographical error in paragraph 6 by substituting the word "indecent" for "decent" in line 5. The Tribunal enquired whether the amended Rule 5 Statement had been served on the Respondent. Mr Gibson stated that it had been posted to him first-class the previous day. The Tribunal could not be certain that the Respondent would have received the amended document but having regard to the factual nature of the amendments, it gave permission for the amended Rule 5 Statement to be admitted.

Respondent's Application for an adjournment of the Substantive Hearing

4. The Respondent had made two applications to adjourn the proceedings sine die (that is without a date for its resumption) until his release from prison which was due in November 2019. Both applications were opposed by the Applicant and refused by the Senior Deputy Clerk on 6 and 19 September 2017 respectively. The Respondent wrote to the Tribunal on 9 October 2017 enclosing a letter from a close family member dated 5 October 2017. He advised that he did not feel capable of entering into any further correspondence with the Applicant or Tribunal at this time due to concerns regarding his mental health. His family member invited the Tribunal to adjourn the proceedings due to concerns regarding the Respondent's mental health and physical condition. A letter was sent by the Tribunal to the family member asking him to provide a signed authority that he was instructed to act on the Respondent's behalf. The Applicant opposed the application for an adjournment. The Respondent provided a signed form of authority dated 13 October 2017 authorising the Tribunal to correspond with his family member but it expressly did not extend to the disclosure of the substantive papers filed and served by Mr Gibson on behalf of the Applicant. The Tribunal received further letters from the family member dated 23 and 29 October 2017.

5. On 24 October 2017, the Chairman of the division scheduled to hear the application, having considered letters from the family member dated 12 October 2017 and the Respondent dated 17 October 2017, requested that the Applicant clarify the following points; the policy of the prison in which the Respondent was detained in relation to releasing prisoners to attend non-criminal hearings; would that prison consider a production order for the Respondent to attend the Tribunal hearing on 31 October 2017; confirmation that no appeal against either conviction or sentence had been lodged by the Respondent following the Crown Court decision and sentence. The Chairman also referred to the family member having complained that the Applicant had rejected the medical opinion of a Dr Y. The Chairman enquired whether this medical report and the reasons for the Applicant's views would be provided. On 27 October 2017, Mr Gibson responded: the prison had a policy for releasing prisoners to attend non-criminal hearings – in his letter dated 12 October 2017 the Respondent had stated that he was unable to attend the hearing and that the prison did not facilitate attendance at anything other than hospital appointments, criminal proceedings and/or funerals. Mr Gibson understood that the prison would require a production order for the Respondent to attend the hearing at the Tribunal and that the order would have to be served at least 2 to 3 weeks before the hearing to give the prison time to comply. Mr Gibson also understood from the prison that the Respondent would need to be transferred to HMP Pentonville to attend

the hearing. He could give evidence by video link from the prison in which he was detained but that was not available on 31 October 2017. Mr Gibson pointed out in his response to the Chairman's enquiries that the Tribunal was aware that the Respondent had submitted that he was mentally and physically unfit to attend the Tribunal hearing. Mr Gibson further informed the Tribunal that Bristol Crown Court had advised that it had no record of receiving an appeal from the Respondent. Mr Gibson also attached a copy of the medical opinion of Dr Y. He advised that the Applicant had not rejected the opinion; rather Mr Gibson submitted that the letter was not a reasoned opinion of an appropriate medical adviser that the Respondent was not fit to participate in the Tribunal proceedings or attend a Tribunal hearing.

6. Mr Gibson submitted that in summary the Respondent's grounds for seeking an adjournment were that he had no legal representation; no access to a solicitor and that he could not in any event afford such representation. He also relied on medical evidence which was before the Tribunal. This consisted of a letter dated 8 August 2017 from the NHS healthcare facility at the prison where the Respondent was detained stating the medical conditions from which he suffered and the medication he was receiving. There was also the brief letter from Dr Y of the Royal Free Hospital dated 24 July 2017 which confirmed that the Respondent had been a patient since 1998. He referred to the two same health conditions as the prison healthcare facility and continued that the Respondent's "medical conditions can often lead to anxiety and depression resulting in behaviour not considered normal." Finally there was a letter from an NHS assistant psychologist at the prison dated 21 July 2017 addressed to the Respondent setting out that following assessment at the prison he had been referred to her and she set out what counselling the Respondent would/might receive. Mr Gibson reminded the Tribunal that in his e-mail to the Tribunal of 12 October 2017, he had commented:

> "The medical evidence that [the family member] has submitted does not state that he [the Respondent] is not medically fit to participate and/or attend the hearing of this matter."

It was said that the Respondent's mental and physical health would suffer if he had to attend the Tribunal but the medical evidence he had provided did not go so far as to say that an appearance would have a deleterious effect on him.

7. Mr Gibson submitted that an additional grounds for the Respondent's application to adjourn was that for the hearing to proceed would constitute a breach of his article 6 rights in that he would not receive a fair trial because the Respondent claimed that he was mentally and physically unfit to attend the hearing; that he was not practising as a solicitor and was therefore not a threat to the public and that furthermore he had no Internet access which was impeding him. Mr Gibson submitted that the Respondent had been served with the application and the Rule 5 Statement and exhibits and given an opportunity to file an Answer to the allegations but he had failed to do so. There was to be a public hearing of the allegations against him before an independent and impartial tribunal established by law and that the hearing would be conducted fairly. Also relevant was a letter dated 29 October 2017 from the family member to the Tribunal. In it the family member noted what Mr Gibson had said about production orders. He thanked Mr Gibson for reminding the Tribunal that the Respondent was "seemingly unfit both mentally and physically unfit to attend an SDT hearing…"

With reference to the need for the Respondent to be transferred to HMP Pentonville if a production order was issued, the family member continued:

> "this alarms me greatly because I am sure it would be catastrophic for [the Respondent's] mental and physical well-being, but add nothing to the written statements of Mr Gibson and me which are to be presented at the hearing.... A transfer to another prison would disrupt the progress [the Respondent] appears to be making towards once more becoming a good and useful member of society... Overall and I know I speak for [the Respondent], it is better that the Tribunal comes to a decision on the day whatever that may be, but preferably leaving the matter to be finally decided upon [the Respondent's] release. This would leave [the Respondent] at HMP... Rather than proceed with the production order that would necessitate another hearing in about a month and [the Respondent's] transfer to HMP Pentonville. Another hearing in approximately a month would be time-consuming for the Tribunal and undo the good work that is being done at HMP..., to no benefit to the profession or to the public...
>
> In the circumstances, if the Tribunal decides its eligibility to sit in the light of the cases I have quoted previously, I earnestly request that the tribunal deals with this matter in [the Respondent's] absence and I can see no advantage to the profession or the public in requiring [the Respondent's] presence."

Mr Gibson submitted it would be surprising if one could not obtain a production order to attend the Tribunal if one wished as the Respondent had originally asserted and similarly that one would not be in allowed to consult a solicitor if the matter in question was not a criminal one. These were factually incorrect assertions. One simple telephone call to the prison in question had established that. The family member said that Mr Gibson must have spoken to someone more senior in obtaining differing information from the Respondent but Mr Gibson submitted that he had just spoken to someone who dealt with such matters. It would be possible to obtain a production order for the Respondent to attend the Tribunal but according to the family member's latest letter he did not wish to do so and therefore his medical evidence fell away in any event. Not being able to afford legal representation was not a ground for an adjournment (as set out in the Tribunal's Policy/Practice Note on Adjournments at paragraph 4d) and nor was absence of access to the Internet. Mr Gibson submitted that the Crown Court had also prohibited the Respondent from using any device capable of accessing the Internet subject to various conditions and that the Respondent had brought that problem on himself. Mr Gibson also pointed out that while the Respondent stated that he was not on the Roll of Solicitors, had no Practising Certificate and was no danger to the public, it was not entirely correct, he remained on the Roll. Furthermore Mr Gibson understood that the Respondent had not appealed against his criminal conviction – Mr Gibson had received confirmation of that from Bristol Crown Court.

8. The Tribunal enquired as to whether Mr Gibson was satisfied that there was adequate authority to rely on the family member's representations. Mr Gibson submitted the family member had repeatedly made the point that Mr Gibson had not communicated with him but this was because Mr Gibson had no authority to do so. The Respondent had now said that there could be communication with the family member but not to

the extent of providing him with the substantive papers in the proceedings. In the correspondence between the parties the Respondent had often said that the family member would be writing to the Applicant (and he had done so).

9. The Tribunal had also noted that in a letter of 10 June 2017, the Respondent stated that he never wished to practise as a solicitor again. (He continued that he had not renewed his practising certificate and he said he had "Paid no dues to remain on the solicitor's Roll"). Mr Gibson confirmed that at the date of drafting of the Rule 5 Statement, the Respondent had not applied to renew his practising certificate and did not hold one and therefore could not practise as a solicitor. He also confirmed that the Crown Court Judge indicated that the Respondent would serve half of the sentence passed on 12 May 2017 and that his expected release date was therefore around November 2019.

10. Mr Gibson asked the Tribunal to refuse the adjournment application and if it did so he would make an application under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 that the Tribunal proceed in the absence of the Respondent and without his being represented. Mr Gibson submitted that it was obvious the Respondent was well aware of the hearing date and the family member's letter received the previous day asked that if the hearing was not adjourned, the Tribunal proceed in the absence of the Respondent.

11. The Tribunal considered the representations made by and on behalf of the Respondent and the submissions for the Applicant. The Tribunal's Policy/Practice Note on Adjournments at paragraph 4c included among the reasons not generally regarded as providing justification for an adjournment:

> "The claimed medical condition of the Applicant or Respondent unless this is supported by a reasoned opinion of an appropriate medical advisor. A doctor's certificate issued for Social Security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient."

The report of Dr Y comprised a diagnosis and did not satisfy the Tribunal's requirements for an adjournment. The medical evidence simply confirmed that the Respondent suffered from serious medical conditions and referred to treatment. It did not constitute evidence that the Respondent was either physically or mentally unfit to attend a hearing. Inability to secure legal representation and lack of funds were also not generally grounds for an adjournment. In any event the Tribunal was not satisfied that the Respondent could not take legal advice upon Tribunal proceedings while in prison and make arrangements to attend the Tribunal hearing if he wished. Furthermore the Tribunal did not consider that it would be in the interests of justice for this matter to be adjourned for a period of two years awaiting the Respondent's release from prison. These were very serious allegations which needed to be determined in a timely fashion in the public interest and in order to maintain the reputation of the profession. The Tribunal also considered that it would be in the Respondent's best interests for this application to be determined rather than delaying the hearing. . The Tribunal had before it a considerable amount of correspondence from both the Respondent and his family member making representations on his behalf. In all the circumstances the Tribunal considered that there would be no breach

of the Respondent's article 6 rights by the refusal of an adjournment; there would be a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. In all the circumstances the Tribunal refused the application to adjourn the substantive hearing sine die. It then went on to consider whether it should proceed in the absence of Respondent. Under Rule 16(2) of the SDPR:

> "If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

The Tribunal was satisfied that it would have been possible for the Respondent to attend if he had made arrangements in time, although he now said that if the matter was to proceed he did not wish to do so; indeed the family member asked that if the adjournment was refused the hearing should go ahead in the absence of the Respondent. The Tribunal determined that it would proceed and hear the substantive application.

Factual Background

12. The Respondent was born in 1971 and admitted to the Roll of Solicitors in 1996. He did not hold a current practising certificate.

13. At the material time the Respondent was not practising as a solicitor.

14. In the Crown Court at Bristol on 3 March 2017, the Respondent was on his own confession convicted on indictment of making an indecent photograph or pseudo-photograph of child, distributing indecent photograph or pseudo-photograph of child, possession of extreme pornographic images – act of intercourse/oral sex with dead/alive animal, 3 counts of possessing indecent photographs/pseudo-photograph of child for distribution, possession of methylamphetamine a class A controlled drug, possession of a controlled drug of class A – MDMA, possession of a controlled drug class B – ketamine and supplying a controlled drug class A – methylamphetamine.

15. In the Crown Court at Bristol on 11 January 2017, the Respondent was on his own confession convicted on indictment of two counts of possession of a controlled drug of class A – Other, possession of extreme pornographic images – act of intercourse/oral sex with a dead/alive animal and possession of indecent photographs/pseudo-photograph of a child.

16. In the Crown Court at Bristol on 12 May 2017, the Respondent was sentenced to a total of 69 months imprisonment.

17. The Crown Court made an order under section 143 of the Powers of Criminal Courts (Sentencing) Act 2004 for forfeiture and destruction of various computers, (iPhones, USB sticks, Digital Memory Devices, USB drives and hard drives).

18. The Crown Court made an order under section 27 of the Misuse of Drugs Act 2001 for forfeiture/destruction/disposal of various class A, B, and C drugs which had been seized.

19. The Crown Court ordered that the Respondent might be placed on the Barring List by the Disclosure and Barring Service.

20. The Crown Court ordered that the Respondent must be placed on the Sex Offenders Register indefinitely and a Sexual Harm Prevention Order was also made.

21. The Crown Court ordered that Respondent is prohibited from having any contact with any person under the age of 16 and is prohibited from residing in a dwelling where any person under the age of 16 resides. The Crown Court also ordered that the Respondent is prohibited from allowing any person under the age of 16 from entering and remaining in his dwelling house.

22. The Crown Court also prohibited the Respondent from using any device capable of accessing the Internet subject to various conditions. The Respondent is also prohibited from possessing any device capable of storing digital images subject to various conditions. The Respondent is also prohibited from using the Internet to access and participate in chat and videoconferencing for the purpose of discussing sexual abuse and is prohibited from using online forums, social media, messaging services or conferencing subject to the condition that he notifies the police.

23. On 5 April 2016, a letter was sent to the Respondent setting out the potential allegations against him. He was requested to provide a response.

24. As no response was received from the Respondent a further letter was sent him on 10 May 2016.

25. The Respondent provided a response dated 10 June 2017 which was summarised in the Rule 5 Statement. It included that he had no intention of practising as a solicitor in the foreseeable future; it referred to his mental and physical health problems, his drug addiction and unresolved issues from his childhood. He had pleaded guilty to all charges and expressed deep remorse for his actions. He was attempting to access every therapeutic service available and deeply regretted his behaviour.

26. On 31 May 2017, an authorised officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

27. There were no witnesses.

Findings of Fact and Law

28. 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.

29. **Allegation 1.1 - By virtue of his convictions on 3 March 2017 and 11 January 2017 in the Bristol Crown Court of making indecent photographs or pseudo-photographs of child, possession of extreme pornographic images – act of intercourse/oral sex with a dead/alive animal, distributing indecent photograph of child, 3 counts of possession of indecent photograph/pseudo-photograph for distribution, possession of class A and B drugs and supplying class A drugs he has breached all, or any of the following:**

1.1.1 Principle 1 of the SRA Principles 2011 ("Principles") by failing to uphold the law and the proper administration of justice;

1.1.2 Principle 2 of the Principles by failing to act with integrity;

1.1.3 Principle 6 of the Principles by failing to behave in a way that maintains the trust the public places in him and in the provision of legal services.

(The submissions below include both those made orally and in the papers.)

29.1 For the Applicant, Mr Gibson relied on the two certificates of conviction. The Tribunal did not have before it a full list from the Crown Court of the orders which had been made against the Respondent but Mr Gibson had had it confirmed to him that they had all been made. He referred the Tribunal to the Judge's sentencing remarks where the Judge had set out in great detail the depraved lifestyle pursued by the Respondent; this was not conduct befitting of a solicitor. Mr Gibson submitted that a solicitor was obliged to uphold the rule of law and the administration of justice and to abstain from criminal behaviour at all times (Principle 1). The Respondent had engaged in criminal behaviour including committing offences whilst on bail. Mr Gibson submitted that a solicitor who engaged in criminal behaviour such as the Respondent had been convicted of, might properly be said to lack moral soundness, rectitude and steady adherence to an ethical code so as to lack integrity (Principle 2) and by his convictions he had brought the profession into disrepute and undermined the profession's reputation and the reputation of legal services (Principle 6). The Applicant had written to him on 5 April 2016 but the Respondent had not responded. A further letter had been written on 10 May 2016 to which he had responded on 10 June 2017 including that he had no intention of practising as a solicitor again. In this letter the Respondent had detailed his health and other problems. He had pleaded guilty and expressed deep remorse but Mr Gibson submitted that his plea only came late in the day.

29.2 The Tribunal considered the evidence, the submissions for the Applicant and the representations received from the Respondent and on his behalf. The Respondent did not dispute the convictions. He maintained that his health and other issues had led to his behaviour and that certain issues were not known to the Respondent's legal team throughout the trial. He referred, in his letter of 10 June 2017, to pleading guilty to all charges. His family member referred to the Respondent being unable to understand yet why he pleaded guilty and that his defence team could not understand why he "suddenly changed his plea to guilty". However it appeared that he was legally represented at the criminal trial (and the transcript of the Judge's sentencing remarks referred to his being represented at sentencing). The Tribunal was informed that he

had not lodged any appeal against conviction or sentence. Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 stated:

> "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."

The Respondent's convictions stood. It was suggested that the Respondent's medication had caused him to act irrationally. If the Respondent appealed the convictions successfully it would be open to him to revert to the Tribunal (under Rule 21(5)) and apply for the Tribunal to revoke its finding. The Tribunal considered the evidence and the submissions for the Applicant and the representations by the Respondent and his family member. It found the allegations proved on the evidence to the required standard.

Previous Disciplinary Matters

30. None

Mitigation

31. The Respondent's correspondence and that submitted by his family member, set out that the Respondent deeply regretted his behaviour.

Sanction

32. The Tribunal had regard to its Guidance Note on Sanctions (December 2016). In considering the seriousness of the Respondent's misconduct, the Tribunal considered that his level of culpability was high. There was a statement in the Judge's sentencing remarks: "...depraved material of the very worst kind was watched ..." The Judge also referred to;

> "a very high level of culpability, spanning a significant period, whilst you committed offences while on bail, and taking considerable risk and effort to enable yourself to satisfy your depraved needs sexually."

The conduct was aggravated in that the harm caused by the Respondent's behaviour was incalculable including watching and joint-watching via the Internet of the appalling treatment of very young children. It involved the commission of criminal offences, was deliberate, calculated and repeated, continuing over a period of time and involved taking advantage of vulnerable children damaging their lives forever. Offences were committed while on bail:

> "Even after your arrest for the matters in September of 2014, even though you were on bail, even after you had pleaded guilty to the drugs charges and were awaiting trial for two counts of which you had absolutely no defence on the

facts at all, you continued with your lifestyle and continue[d] to commit even more serious offences."

The damage to the reputation of the profession was commensurate; it represented a major departure from the "complete integrity, probity and trustworthiness" expected of a solicitor. The Respondent had taken steps to conceal his wrongdoing; in the sentencing remarks the Judge stated:

> "You as a highly intelligent solicitor, used your knowledge and ability with computers, as is clear, to take on board encryption software, special deletion software and other software to disguise and hide material on your various storage devices and equipment…"

The Tribunal considered that the harm caused to the victims was entirely foreseeable and intended and the Respondent would have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession. His only mitigation was that he said he deeply regretted his actions. There was no evidence directly linking what the Respondent said was his irrational behaviour to the offences he committed. This was misconduct of the most serious kind and the only reasonable and proportionate sanction was strike off.

Costs

33. For the Applicant, Mr Gibson applied for costs fixed in the amount of £1,919.68. He informed the Tribunal that his hotel costs had been £145 rather than the estimate of £184.60 on the schedule. However his travel costs had been somewhat higher than expected £205.90 rather than £179 but he could not seek to increase the claim. Mr Gibson submitted that there had been a considerable amount of correspondence and that accounted for a large part of the Applicant's costs. He applied for an immediately enforceable order; the Respondent owned a flat in his sole name in central London subject to a mortgage of £55.000. The Applicant could not force a sale but would seek to obtain a charging order. The Respondent had no funds at present. The Tribunal assessed the costs as asked but subject to a reduction for the lower hotel costs. Costs were awarded to the Applicant fixed in the sum of £1,880.08. Based on the information Mr Gibson had provided about the Respondent's assets the Tribunal did not consider it appropriate to make any reduction.

Statement of Full Order

34. The Tribunal Ordered that the Respondent, David Daniel Joseph Regan, 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 £1,880.08.

Dated this 20th day of November 2017
On behalf of the Tribunal

R. Nicholas
Chairman