

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11843-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

RICHARD IAN OXER

Respondent

Before:

Mr D. Green (in the chair)
Mr P. Booth
Mr R. Slack

Date of Hearing: 4 October 2018

Appearances

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

The Respondent appeared by video link from HM Prison.

JUDGMENT

Allegations

1. The allegations against the Respondent, Richard Ian Oxer made by SRA were that:
 - 1.1 On 7 November 2017 he was convicted of three counts of making indecent photographs/pseudo photographs of a child. He thereby breached Principles 2 and 6 of the SRA Principles 2011.
 - 1.2 On 23 November 2017 he was, upon his own confession, convicted of:
 - 1.2.1 “Attempting to incite a girl aged 13 not reasonably believing she was 16 or over to engage in sexual activity of a non penetrative nature” and
 - 1.2.2 “Attempting to cause a child of 13 years to watch/look at an image of sexual activity”.

He thereby reached Principles 2 and 6 of the SRA Principles 2011.

Documents

2. The Tribunal reviewed all the documents including:
 - Rule 5 Statement dated 9 July 2018 with exhibit SG1
 - Civil Evidence Act notice dated 14 September 2018
 - Civil Evidence Act notice dated 20 September 2018
 - Documents disclosed by the Crown prosecution Service:
 - Witness statement of Law Enforcement Officer A dated 25 September 2017
 - Witness statement of Police Officer S dated 25 September 2017
 - Record of interview with the Respondent dated 30 September 2017
 - Witness statement of Detective Constable B dated 30 September 2017
 - Witness statement of Detective Constable G dated 8 October 2017
 - Witness statement of Detective Constable H dated 8 October 2017
 - Witness statement of Detective Constable G dated 16 October 2017
 - Witness statement of Detective Constable G dated 5 November 2017
 - Judgment in the case of Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366
 - Applicant’s Schedule of Costs as at 9 July 2018
 - Applicant’s Schedule of Costs as at 26 September 2018

Respondent

- Answer to the Applicant’s Rule 5 Statement dated 3 August 2018
- Personal Financial Statement dated 30 August 2018

Preliminary and Other issues

3. Mr Willcox informed the Tribunal that the application contained a typographical error in that it was incorrectly dated 9 June 2018 but the Rule 5 Statement was correctly dated 9 July 2018. Also in his Answer dated 3 August 2018, the Respondent had pointed out that the copy of the Rule 5 Statement provided by the Tribunal was incomplete. The

Applicant had confirmed to him that a complete copy would be provided within 14 days of receipt of the copy Statement. Mr Willcox confirmed to the Tribunal that a full copy had duly been provided to the Respondent.

4. The Tribunal informed the Respondent of its decision on sanction and costs at the appropriate point in the proceedings and that for logistical reasons its Order would be read out formally following disconnection of the video link.

Factual Background

5. The Respondent was born in 1986 and admitted to the Roll of Solicitors in 2015. He did not currently hold a practising certificate.
6. The Respondent was employed from 2 February 2015 to 30 September 2016 as an assistant solicitor at the firm at which he had been employed since 10 October 2011 and where he had undertaken his training contract and from 3 October 2016 to 2 December 2016 at another firm.
7. On 29 November 2016, the Respondent was arrested on suspicion of causing/ inciting a female child under 13 to engage in sexual activity contrary to the Criminal Attempts Act 1981. His telephone, personal computer and tablet computer were seized by the police. The Respondent was released on bail pending the forensic examination of his electronic equipment. The police sent the Respondent a disclosure letter dated 14 December 2016 advising him of their intention to advise the Applicant of his arrest and the reason for it.
8. The Respondent informed the Applicant of his arrest on 20 December 2016. He advised the Investigation Officer, in a telephone conversation on 17 January 2017 that it had taken him four weeks to do so as he had had to wait for his next payday to purchase a telephone to contact the Applicant.
9. From 3 December 2016 to 31 October 2017, the Respondent held a practising certificate but was not employed in legal practice.
10. On 17 February 2017, the Respondent gave an undertaking to the Applicant that he would "inform the SRA in writing prior to undertaking any employment in any capacity for any law firm". He further stated that he did "not intend to pursue any employment in a law firm until this situation has been resolved".
11. On 20 December 2017, the Respondent was sentenced in relation to both the conviction on 7 November 2017 and the conviction on 23 November 2017. He was:
 - sentenced to a total of 3 years imprisonment (being consecutive sentences for the above convictions);
 - ordered to forfeit images and computer equipment under a Section 143 Powers of Criminal Courts (Sentencing) Act 2000;
 - made subject to a Sexual Harm Prevention Order until further order under Section 103 of the Sexual Offences Act 2003

- ordered that he sign the Sex Offenders Register indefinitely
- ordered to pay a victim surcharge of £170.00.

12. The Applicant wrote to the Respondent on 26 March 2018 following his notifying the Applicant of his arrest on 20 December 2016. Amongst other things the Applicant's letter put the allegations to him. He replied by letter dated 29 March 2018 admitting the allegations. He also stated that he was unable to offer any defence or mitigating factors; that he was aware that he was likely to be struck off; and that regarding his undertaking of 17 February 2017 he had not undertaken any employment in any capacity for any law firm prior to his imprisonment. The Respondent also apologised "for my shameful actions and any disrepute this has brought against the profession I had dedicated so much of my life to being a part of."

Witnesses

13. None.

Findings of Fact and Law

14. The Applicant was required to prove its allegations beyond reasonable doubt. In arriving at its decision the Tribunal gave due weight to its statutory duty, under Section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for his private and family life under, respectively, Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

15. **The allegations against the Respondent, Richard Ian Oxeer made by SRA were that:**

Allegation 1.1 - On 7 November 2017 he was convicted of three counts of making indecent photographs/pseudo photographs of a child. He thereby breached Principles 2 and 6 of the SRA Principles 2011.

Allegation 1.2 - On 23 November 2017 he was, upon his own confession, convicted of:

1.2.1 "Attempting to incite a girl aged 13 not reasonably believing she was 16 or over to engage in sexual activity of a non penetrative nature" and

1.2.2 "Attempting to cause a child of 13 years to watch/look at an image of sexual activity".

He thereby reached Principles 2 and 6 of the SRA Principles 2011.

15.1 SRA Principles 2011 cited in the allegation:

"You must:
2. act with integrity;

6. behave in a way that maintains the trust the public places in you and in the provision of legal services;”

- 15.2 For the Applicant, Mr Willcox relied upon the certified copies of the two Certificates of Conviction dated 9 March 2018 in respect of the conviction on 7 November 2017 and on 23 November 2017 as proof of the convictions of the Respondent under Rule 15(2) of the Solicitors (Disciplinary Procedure) Rules 2007 (“SDPR”) which 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.”

- 15.3 Mr Willcox informed the Tribunal that the Respondent had pleaded guilty to the charges. He referred the Tribunal to the sentencing remarks of His Honour Judge Batty QC at York Crown Court on 20 December 2017 which included:

“Richard Oxer, you are 31 years of age. You are by occupation a solicitor of the Supreme Court. By your profession and by your calling you are expected to uphold the law. You did not, however, do that or anything like it for whilst during the day practising the law as a conveyancing solicitor, by night you had this dark side to you whereby not only were you in possession of indecent images of children upon your laptop, in total when the police seized your equipment and interrogated it they found deleted some 66 images of which the largest number, 27 images, were category A, the most serious type of image...the really aggravating feature of this first raft of offences is the fact that some of the victims, particularly in relation to the category A imagery, one child in particular was as young as 3. There were very young children involved in that gross abuse and it was not, of course, simply the viewing of the images, the criminality lies in the fact that those who view those images perpetuate this vile activity, the abuse and exploitation of young children.

That of course, of itself is serious enough but, whilst you were on bail awaiting proceedings in respect of those matters to which I have referred, between 7th and 11th September of this year, whilst being in the process of being summoned to court for the earlier matters, you were involved in more serious sexual activity, or so you believed it to be, with a young child...

...This was truly revolting behaviour and you were attempting to seduce and, more particularly, corrupt a minor. That was your intention from first to last and all whilst you were on bail.”

- 15.4 It was set out in the Rule 5 Statement that in respect of the first conviction the Judge took into account that the Respondent had not installed software for deleting the search name terms or for hiding what he had viewed; that the images viewed were still as opposed to moving and that the Respondent pleaded guilty. In respect of the second charge the Respondent was caught in a sting operation where an undercover police

officer posed as a 13 year old girl on an internet chat site. The Judge took into account that the communication did not go on for a very long time; that despite the Respondent's intent it was "never going to come to anything ... because he was dealing with a police officer" and that the Respondent pleaded guilty.

- 15.5 Mr Willcox submitted in respect of the allegations of breach of Principles 2 and 6 that it was set out in the SRA handbook 2011 Part 2 point 5.1:

"In relation to activities which fall outside practice, whether undertaken as a lawyer or in some other business or private capacity, Principles 1, 2 and 6 apply to you if you are a solicitor, REL or RFL."

Mr Willcox further submitted that regarding the definition of integrity it was said in the case of Wingate and Evans v SRA and Malins v SRA [2018] EWCA Civ 366 (following the numbering of the judgment):

"95. Let me now turn to integrity. As a matter of common parlance and as a matter of law integrity is a broader concept than honesty. In this regard, I agree with the observations of the Divisional Court in Williams and I disagree with the observations of Mostyn J in Malins.

96. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.

97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson PC in Williams at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

...

100. Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty...

101. The duty to act with integrity applies not only to what professional persons say, but also to what they do..."

Mr Willcox submitted that the Respondent had failed to act with integrity; he had failed to meet the higher standard that society expected in terms of displaying moral rectitude and adherence to a moral code and he had re-offended whilst on bail. He had had the opportunity to think about and reflect on what he had done and went on to commit a more serious offence. The Respondent admitted that he had breached Principle 2.

- 15.6 With regard to Principle 6, members of the public and other members of the profession would not expect the Respondent to behave as he had and would be horrified to know of it. The Respondent admitted that he had breached Principle 6.

15.7 Mr Willcox referred to the Respondent's Answer which included:

"In accordance with Paragraph 3 of the Standard Directions, I hereby confirm that the allegations raised against me in Paragraphs 1.1 and 1.2 of the Applicant's Rule 5 Statement are admitted and the facts and matters therein agreed..."

The Respondent confirmed that he had received a full copy of the Rule 5 Statement and stated that he had no objection to any of its contents. He submitted that as he had said in correspondence he had no defence to his actions; they were reprehensible.

15.8 The Tribunal had regard to the evidence and the submissions for the Applicant and by the Respondent. It relied on Rule 15(2) of the SDPR in regard to the facts giving rise to the allegations and found that the Respondent's misconduct and resulting criminal convictions constituted breaches of Principles 2 and 6 as alleged and the Tribunal therefore found allegations 1.1 and 1.2 proved on the evidence to the required standard indeed they had been admitted.

Previous Disciplinary Matters

16. None.

Mitigation

17. The Respondent submitted that he had a great deal of time to consider what he had done and was thoroughly ashamed of himself. He had spent the last 6 months on a Kaizen rehabilitation programme in which he was trying to understand his state of mind and all the issues that he was going through at the material time. He was quite stressed and depressed which were contributory factors to his offending. The programme had helped him a great deal. He stated that he realised that it could not have much influence in these proceedings. Following questions from the Tribunal, the Respondent assured it that he was developing the skills, tactics and methods he had picked up from the programme so that there would be no further risk of offending. The Respondent explained that the programme involved a small group of other similar offenders; it helped them to look at past aspects of their lives, how to have more positive coping mechanisms and not fall back into self-destructive behaviour. If further work was required at the end of the programme it would be provided. He would complete the programme shortly and receive a certificate. On his release he would receive support from the probation service which could refer him to additional schemes and the police would provide public protection. There were several charities which could help. He confirmed that he felt he had acquired enough knowledge to access these programmes. He had been at quite a low point in his life at the material time but was now more attuned to his mental and emotional state which had previously been quite an issue. His only direct social contact was with one member of his immediate family but he felt there were others who were willing to provide support on his release.

Sanction

18. The Tribunal had regard to its Guidance Note on Sanctions and to the mitigation offered by the Respondent. It assessed the seriousness of his misconduct. His motivation was

not known but his level of culpability was very high. His actions were planned; he had to take positive steps to engage in the behaviour. He breached the trust of the most vulnerable by his actions; the youngest child pictured was only 3 years old. He was in direct control of and responsible for the circumstances giving rise to the misconduct. The level of harm caused was very grave both to the ultimate victims and to the reputation of the profession and was totally foreseeable. There were aggravating factors; criminal offences had been committed; his conduct was deliberate, calculated and repeated and the second more serious offence was committed while the Respondent was on bail. It potentially involved vulnerable people and its potential impact was appalling. In mitigation, the Respondent had not appeared at the Tribunal before and he had not had software on his electronic devices designed to conceal what he was doing. He notified the Applicant of his arrest and ceased to practise. It was difficult to assess the Respondent's level of insight at this early stage; he had given an explanation of sorts. He had pleaded guilty and made admissions in both his response to the Applicant's March 2018 letter and in his Answer. He had co-operated with the Applicant. He accepted the gravity of his actions. The Tribunal considered that the Respondent's misconduct was far too serious for no order, a reprimand or a fine. A restriction order was not appropriate because the misconduct was so grave; it had affected the vulnerable and the reputation of the profession in the worst possible way. The Tribunal considered and dismissed indefinite suspension; it determined that the seriousness of the misconduct was at the highest level, such that public confidence in the legal profession demanded no lesser sanction than strike off as did the protection of the public where the offences involved very young children. It was completely unacceptable and inappropriate for the Respondent to remain on the Roll of Solicitors.

Costs

19. For the Applicant, Mr Willcox applied for costs in the amount of £2,608.00 which included the costs at the date of issue of £1,587.00 and which sum he submitted was reasonable. The Applicant had taken note of the Respondent's limited means but he should be able to obtain employment on his release. The Applicant's costs recovery team usually tailored payment arrangements to the individual's position. The Respondent confirmed that he had seen the costs schedule and it seemed reasonable but he had no income, savings or assets. He was less confident than Mr Willcox that he would be able to obtain employment on his release. The terms of his licence and the other orders made against him would make that exceedingly difficult. There were significant restrictions on his employment options and income potential. The Tribunal considered the Applicant's costs to be very reasonable. It had looked at the Respondent's Personal Financial Statement. The Tribunal felt it appropriate to leave it to the Applicant to deal with payment arrangements with the Respondent and would award costs in the amount sought.

Statement of Full Order

20. The Tribunal Ordered that the Respondent, RICHARD IAN OXER, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,608.00.

Dated this 16th day of October 2018
On behalf of the Tribunal



D. Green
Chairman

Judgment filed
with the Law Society
on 16 OCT 2018