

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11979-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

DAVID MARRIOTT

Respondent

Before:

Mr P. Jones (in the chair)
Ms A. E. Banks
Mrs L. McMahon-Hathway

Date of Hearing: 15 August 2019

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations faced by the Respondent were that:
 - 1.1. On 31 October 2018 at Leeds Crown Court he was convicted of two counts of sexual assault on a female, no penetration, and thereby breached Principles 2 and 6 of the SRA Principles 2011 (“the Principles”);
 - 1.2. He failed to notify the SRA promptly after 25 June 2018 that he had sexually assaulted Paramedic A and Paramedic B and/or after 31 October 2018 that he had been convicted as set out at allegation 1 and/or after 11 December 2018 that he had been sentenced as a result of that conviction and thereby breached Principle 7 of the Principles and Outcome 10.3 of the SRA Code of Conduct 2011 (“the 2011 Code”).

Documents

2. The Tribunal had before it the following documents:-
 - Rule 5 Statement dated 28 June 2018.
 - Joint application for an Agreed Outcome received by the Tribunal on 14 August 2019.

Factual Background

3. The Respondent was a solicitor having been admitted to the Roll in November 1991. The Respondent last held a practising certificate for the year 2014/2015 and was not practising as a solicitor but remained on the Roll at the relevant times as a non-practising solicitor.
4. On 31 October 2018 the Respondent was convicted (following an early guilty plea) at Leeds Crown Court of two counts of sexual assault contrary to section 3 of the Sexual Offences Act 2003. The conduct which gave rise to the conviction occurred on 25 June 2018. The Respondent was sentenced on 11 December 2018 by HHJ Mairs as follows:
 - four month custodial sentence, suspended for 12 months (for each count, to run consecutively);
 - Rehabilitation Activity Requirement for a maximum of 30 days;
 - placed on the Barring List for 10 years; and
 - victim surcharge of £140.

Application for the matter to be resolved by way of an Agreed Outcome

5. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Proposed Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal’s Guidance Note on Sanctions.

Findings of Fact and Law

6. 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.
7. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made. The Tribunal therefore found the allegations proved beyond reasonable doubt.
8. The Tribunal considered its Guidance Note on Sanction (December 2018). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
9. With regards culpability the Tribunal found that the Respondent's misconduct was sexually motivated and whilst it may well have been initially spontaneous, it was repeated in respect of a second victim. Both victims in this matter were paramedics who were carrying out a public function and doing their best to assist the Respondent. The Tribunal accepted that at the material time the Respondent was under the influence of alcohol but found that this did not vitiate his culpability. The Respondent had misled his regulator by failing to report his misconduct at any stage during the criminal proceedings.
10. The Tribunal found that there was considerable harm caused to both victims and paid due regard to the sentencing remarks of HHJ Mairs. The Tribunal was in no doubt that the Respondent's misconduct had an extremely detrimental effect on both victims. The Tribunal further concluded that the Respondent's misconduct had caused significant harm to the legal profession and undermined public trust in the same.
11. The Tribunal found a number of aggravating features in this case namely; (a) the misconduct resulted in two serious criminal convictions, (b) the offences were deliberate despite the intoxicated state of the Respondent at the material time, (c) the offences were repeated, (d) the victims were vulnerable in that they were providing a public service, (e) the Respondent sought to conceal his misconduct by virtue of his failure to self-report and (f) the Respondent knew, or ought to have known, better.
12. The Tribunal found a number of mitigating features in this case namely; (a) the misconduct was an isolated, albeit serious, event and (b) the admission made by the Respondent demonstrated some insight into the seriousness of his departure from the standards expected of him by the public and the profession.
13. The Tribunal concluded that the misconduct was so serious that the protection of the public and the reputation of the legal profession required the Respondent to be struck off the Roll of solicitors.
14. Having determined that the proposed sanction was appropriate and proportionate, the Tribunal granted the application for matters to be resolved by way of the Agreed Outcome.

Costs

15. The parties agreed that the Respondent should make a contribution to costs in the sum of £1,000.00. The Tribunal considered the costs application to be appropriate and proportionate, and ordered that the Respondent pay a contribution to the costs in the agreed amount.

Statement of Full Order

16. The Tribunal Ordered that the Respondent, DAVID MARRIOTT, 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 £1,000.00.

Dated this 23rd day of August 2019

On behalf of the Tribunal



P. Jones
Chairman

JUDGMENT FILED WITH THE LAW SOCIETY
23 AUGUST 2019

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MR DAVID MARRIOTT

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

1. By a Statement made by Nimi Bruce on behalf of the Solicitors Regulation Authority (SRA) pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007 dated 28 June 2019 the Solicitors Regulation Authority brought proceedings before the Tribunal making allegations of misconduct against the Respondent. The Tribunal gave directions on 3 July 2019 and 9 August 2019. The substantive hearing is listed for 3 September 2019.
2. The Respondent is prepared to make admissions to the allegations in the Rule 5 Statement as set out in this document.
3. The allegations arise out of the Respondent's conviction for sexual assault. It is alleged against, and admitted by, the Respondent that:
 - 3.1. On 31 October 2018 at Leeds Crown Court he was convicted of two counts of sexual assault on a female – no penetration and thereby breached Principles 2 and 6 of the SRA Principles 2011 ("the Principles");
 - 3.2. He failed to notify the SRA promptly after 25 June 2018 that he had sexually assaulted Paramedic A and Paramedic B and/or after 31 October 2018 that he had been convicted as set out at allegation 1 and/or after 11 December 2018 that he had been sentenced as a result of that conviction and thereby breached Principle 7 of the Principles and Outcome 10.3 of the SRA Code of Conduct 2011 ("the 2011 Code").

4. The SRA is satisfied that the admissions and outcome satisfy the public interest having regard to the gravity of the matters alleged.

Admissions

5. The Respondent will make the following admissions:
 - 5.1. On 31 October 2018 at Leeds Crown Court he was convicted of two counts of sexual assault on a female – no penetration and thereby breached Principles 2 and 6 of the SRA Principles 2011 (“the Principles”);
 - 5.2. He failed to notify the SRA promptly after 25 June 2018 that he had sexually assaulted Paramedic A and Paramedic B and after 31 October 2018 that he had been convicted as set out at allegation 1 and after 11 December 2018 that he had been sentenced as a result of that conviction and thereby breached Principle 7 of the Principles and Outcome 10.3 of the SRA Code of Conduct 2011 (“the 2011 Code”).

Agreed Facts

Background

6. The Respondent is a solicitor having been admitted to the Roll in November 1991. The Respondent last held a practising certificate for the year 2014/2015 and was not practising as a solicitor but remained on the Roll at the relevant times as a non-practising solicitor.
7. On 31 October 2018 the Respondent was convicted (following an early guilty plea) at Leeds Crown Court of two counts of sexual assault contrary to section 3 of the Sexual Offences Act 2003.
8. The conduct which gave rise to the conviction occurred on 25 June 2018.
9. The Respondent was sentenced on 11 December 2018 by HHJ Mairs as follows:
 - 9.1. four month custodial sentence, suspended for 12 months (for each count, to run consecutively);
 - 9.2. Rehabilitation Activity Requirement for a maximum of 30 days;
 - 9.3. placed on the Barring List for 10 years; and
 - 9.4. victim surcharge of £140.

Conviction for Sexual Assaults

10. On the morning of 25 June 2018 the Respondent had been reported as drunk in the middle of the road and was attended to by two female paramedics (“Paramedic A” and

“Paramedic B”, collectively “the Paramedics”). The Respondent did not require hospital treatment and the Paramedics drove him home in act described by HHJ Mairs “as an act of kindness”.

11. Once at his home, Paramedic A went into the Respondent’s living room and Paramedic B into the Respondent’s kitchen. The Respondent insisted that Paramedic A sit down. The Respondent grabbed her, insisting she sit down. Paramedic A began to clean up the mess in the Respondent’s flat. The Respondent grabbed Paramedic A’s arm and deliberately grabbed her bottom in a grip over clothing.
12. The Respondent then went into his kitchen, made various remarks to Paramedic B, including that he was a dangerous man and didn’t care. The Respondent put his arm around Paramedic B who walked away. The Respondent then grabbed her breast and kissed her on the face; Paramedic B could feel the Respondent’s saliva in her hair. The Paramedics promptly left the Respondent’s home.
13. HHJ Mairs described the Respondent’s conduct in relation to both of the Paramedics as gratuitous, needless, offensive and disgusting, noting that their vulnerability was a “grossly aggravating feature”.
14. In sentencing HHJ Mairs considered that there was “strong personal mitigation” due to the considerable steps the Respondent had taken in relation to his alcoholism following these events, including attending rehabilitation and refraining from drinking alcohol from July 2018.

Failure to disclose

15. The Respondent was required to notify the SRA of his conduct, conviction and sentence by virtue of Outcome 10.3 of the 2011 Code which states: “you notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the Principles, rules, outcomes and other requirements of the Handbook”.
16. The Respondent’s conduct itself, in sexually assaulting two women, amounted to a serious failure to comply with the requirements of the SRA Handbook 2011 and he was therefore required to promptly notify the SRA of that failure.
17. By virtue of the Respondent’s conviction and also by virtue of his sentencing for that conviction there was a material change in the Respondent’s criminal history, which is relevant information for the SRA’s regulation of the Respondent’s practice as a solicitor.
18. Although the Respondent was not practising at that time, he remained on the Roll and was required to comply with the 2011 Code and notify the SRA of his conduct, conviction and sentencing.

19. The Respondent did not notify the SRA promptly of his conduct, conviction or sentence. In fact the Respondent's conviction came to the SRA's attention by virtue of a local newspaper article. The SRA first wrote to the Respondent on 16 January 2019, this was over one month after the Respondent had been sentenced, over two months after the Respondent had been convicted and nearly seven months after his conduct. The Respondent had the opportunity to notify the SRA promptly of his conduct, conviction and sentencing, but failed to do so.
20. The Respondent was asked to confirm receipt of the letter dated 16 January 2019, but did not do so. The SRA sent the Respondent a follow up email on 20 February 2019, to which the Respondent replied on 25 February 2019.
21. The Respondent was an experienced solicitor who had not removed himself from the Roll and therefore ought to have been aware of the requirement to notify the SRA. It is agreed that the Respondent had not considered the requirement to notify the SRA of his criminal conduct, conviction, or sentence.

Mitigation

22. The following points are advanced by way of mitigation on behalf of the Respondent, but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA.
23. The Respondent states that:
 - 23.1. the Respondent feels guilt, shame and remorse as a result of his actions and the impact they had on the Paramedics;
 - 23.2. the Respondent has been an alcoholic for many years, albeit one who was in denial;
 - 23.3. on the day that the assaults were committed, the Respondent had drunk two bottles of wine before 8am and was attempting to travel so that he could sign on for Jobseekers' Allowance;
 - 23.4. the Respondent accepts that his drunken state was no excuse for his actions;
 - 23.5. the Respondent has taken steps in relation to treatment for his alcoholism, continues to engage with support services and has been abstinent from alcohol since July 2018.

Agreed Outcome

24. The Respondent agrees:

- 24.1. To be struck off the Roll of Solicitors;
- 24.2. To pay costs to the SRA of £1,000.00

25. The Parties submit that in the light of the admissions set out above, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions 6th Edition. The Respondent's misconduct is at the highest level, involving the commission of criminal offences for sexual misconduct for which the Respondent has been placed on the Barring List. The misconduct is further aggravated by the Respondent's failure to promptly report these matters to the SRA. The protection of the public and the protection of the reputation of the legal profession require the Respondent to be struck off the Roll. The Respondent's personal mitigation does not warrant a departure from that sanction.

Signed:

NIMI BRUCE

On behalf of the Solicitors Regulation Authority

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DAVID MARRIOTT