

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12190-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MARK REGINALD STUART HODGE

Respondent

Before:

Ms A E Banks (in the chair)

Mr R Nicholas

Mrs N Chavda

Date of Hearing: 16 July 2021

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, by virtue of his convictions for the offences set out below, he breached either or both of:

Principle 2 of the Solicitors Regulation Authority Principles 2011;

Principle 6 of the Solicitors Regulation Authority Principles 2011.

Documents

2. The Tribunal had before it the following documents:-
 - Rule 12 Statement dated 7 April 2021 and Exhibit SLS1.
 - Respondent's Answer to the Rule 12 Statement dated 24 May 2021.
 - Application for an Agreed Outcome dated 12 July 2021.
 - Statement of Agreed Facts and Proposed Outcome signed and dated 2 July 2021 (Respondent) and 8 July 2021 (Applicant).
 - Applicant's Schedule of Costs dated 7 April 2021.

Background

3. The Respondent was admitted to the Roll of Solicitors in February 1991 and remained so. He was last issued with a practising certificate, free from conditions, for the practising year 2014/2015.
4. At the material time the Respondent was a solicitor, owner and member of Continuum Corporate Lawyers. He was also a solicitor, beneficial shareholder, member and director at Continuum Nominees Limited. Both firms were based in Birmingham.
5. On 22 June 2015 in the Crown Court sitting at Birmingham, the Respondent was convicted, after trial, of:
 - Two counts of rape of a female aged 16 or over contrary to section 1 of the Sexual Offences Act 2003.
 - Two counts of sexual assault against a female contrary to section 3 of the Sexual Offences Act 2003.
 - One count of sexual assault on a female by penetration contrary to section 2 of the Sexual Offences Act 2003.
6. The Respondent was sentenced to a total of 11 years imprisonment in respect of which he served 5.5 years in custody then released on licence for the remainder of the term. He was also placed on the Sex Offenders Register indefinitely, the barring list (administered by the Disclosure and Barring Service) and issued with a Restraining Order.

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

7. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and 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

8. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
9. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
10. The Tribunal considered the Guidance Note on Sanction (Eight Edition). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

Culpability

11. The Tribunal found that the Respondent was solely culpable for his deplorable conduct which was sexually motivated and predicated on his own sexual gratification irrespective of the impact on the Person A and others. The fact that Person A was known to the Respondent demonstrates that his conduct was a flagrant breach of trust. The Respondent had direct control over Person A who was vulnerable and whom he sexually assaulted in her own home after having celebrated her 18th birthday with her and Person B with whom she lived.

Harm

12. The excerpt from the Person A's "Personal Impact Statement" deployed in the criminal proceedings made plain that the harm caused to her and her family was (and remains) severe. The harm caused by the Respondent permeated all aspects of her life physically, mentally and emotionally. That harm, in conjunction with the damage caused to the legal profession by a solicitor having been convicted of such heinous criminal offences, was at the highest level of seriousness.

Aggravating Features

13. The Tribunal found a substantial number of aggravating features to the Respondent's conduct namely (a) his conduct was sexually motivated by personal gratification, (b) Person A was known to him, (c) the assaults occurred after an evening spent socialising with the Person A and Person B, (d) Person A and Person B were intoxicated, (e) Person A was unable to defend herself and vulnerable, (f) Person B was unable to defend Person A, (g) the Respondent's conduct was deliberate, planned and repeated in that he sexually violated Person A five times throughout the evening in her own home and (h) the Respondent sought to cover his tracks with Person A after the event by sending her text messages directed at minimising his misconduct.

Mitigating Features

14. The Tribunal rejected all of the mitigating features advanced by the Respondent in that:
- The seriousness of the convictions vitiated any previous good character/unblemished regulatory record.
 - The fact that the Respondent maintained his innocence and intended to appeal against his conviction was not, in the Tribunal's mind, mitigation. The Tribunal assessed the misconduct on the evidence before it as opposed to an extant appeal process.
 - The personal and family tragedy upon which the Respondent relied was of his own doing and predicated on his conduct.
 - The assertion that he had "served his time" bore no relevance to the Tribunal's consideration as to the appropriate sanction to be imposed in order to protect the overarching public interest. The Respondent had no choice but to comply with the terms of the custodial sentence imposed upon him in the criminal proceedings.
 - Similarly, it was of no concern to the Tribunal whether the Trial Judge took into account the Respondent's position as a solicitor when imposing a criminal sentence for criminal offences. The purpose of sentence within the criminal jurisdiction (punishment and deterrence) differed from the purpose of sanction in regulatory proceedings (to preserve and protect the overarching public interest).
 - Further, the Tribunal did not consider the Respondent's contention that he had "served his time" to be relevant in terms of the appropriate regulatory sanction.
 - Personal mitigation advanced by the Respondent (having lost his livelihood, unemployment, impact on his immediate family who were supporting him, adverse publicity at the material time) did not, the Tribunal determined bear upon the seriousness of his misconduct and the appropriate sanction required to mark that.
 - The Tribunal rejected the assertion that "no clients were affected" by the Respondent's conduct or the closure of his firms. That assertion demonstrated, in fact, the complete lack of insight on the part of the Respondent.
15. Weighing all of the factors set out above in the balance, the Tribunal concurred with the proposed sanction submitted by the parties. There was no place on the Roll of Solicitors for those who had committed serious sexual offences. The protection of the public and maintenance of public confidence in the legal profession required the Respondent to be struck off the Roll of Solicitors.
16. The Tribunal therefore GRANTED the application for an Approved Outcome.

Costs

17. Costs were agreed between the parties in the sum of £2,000.00 which the Tribunal endorsed.

Statement of Full Order

18. The Tribunal Ordered that the Respondent, Mark Hodge, 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 £2,000.00.

Dated this 26th day of July 2021
On behalf of the Tribunal



A E Banks
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
26 JUL 2021

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

MARK REGINALD STUART HODGE

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 7 April 2021 and the statement made pursuant to Rule 12 (2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority (“the SRA”) brought proceedings before the Solicitors Disciplinary Tribunal making one allegation of misconduct against Mark Reginald Stuart Hodge (“the Respondent”).

The allegations

2. The allegation against the Respondent made by the SRA in the proceedings is that, by virtue of his conviction for the offences described in paragraph 7 below of this statement, he breached either or both of:
 - 2.1 Principle 2 of the SRA Principles 2011; and
 - 2.2 Principle 6 of the SRA Principles 2011.

Admissions

3. The Respondent admits the allegation in paragraph 2, above.

Agreed Facts

4. The following facts and matters, which are relied upon by the SRA in support of the allegation set out within paragraph 2 of this statement, are agreed between the SRA and the Respondent.

Professional Details

5. The Respondent was born on 1964 and is a solicitor having been admitted to the Roll of Solicitors on 15 February 1991. The Respondent remains upon the Roll of Solicitors, with his most recent practising certificate being for the practising year 2014- 2015, which was free from conditions.

6. At the material time he was a solicitor, owner and member at Continuum Corporate Lawyers, and a solicitor, beneficial shareholder, member, and director at Continuum Nominees Limited. The firms were based at 3 Temple Row West, Birmingham, B2 5NY.

Criminal Proceedings

7. On 22 June 2015, in Birmingham Crown Court, the Respondent was convicted of:
 - 7.1 two counts of rape of a female aged 16 or over contrary to Section 1 of the Sexual Offences Act 2003;
 - 7.2 two counts of sexual assault against a female contrary to Section 3 of the Sexual Offences Act 200; and
 - 7.3 one count of sexual assault on a female by penetration contrary to Section 2 of the Sexual Offences Act 2003.

8. On 30 June 2015 he was sentenced to a total of 11 years imprisonment for all of the offences. The individual sentence for each offence was as follows:
 - 11 years imprisonment for the first rape and 11 years imprisonment for the second rape to run concurrently;

- 6 months for the first sexual assault and 6 months for the second sexual assault, both to run concurrently; and;
 - 18 months for the sexual assault by penetration to run concurrently.
9. He was placed on the sex offenders register indefinitely, placed on a barring list by the Disclosure and Barring Service (“DBS”) and was issued with a restraining order until further notice.

Facts of the Offence

10. The offences occurred between 14 October 2013 and 15 October 2013. On 14 October 2013 the Respondent, Person A and Person B had returned from an evening out to celebrate Person A’s 18th birthday. It was prearranged that he would stay at their house and make his way to work the following day. All parties were intoxicated and Person B went to bed. He proceeded to sexually assault Person A in the kitchen and then raped her twice and continued to sexually assault her in the living room.
11. In his sentencing remarks on 30 June 2015 His Honour Judge Bond stated: *“What you did next was a gross breach of trust, in my judgement...”*
12. His Honour Judge Bond further stated: *“Your breach of trust is compounded by the fact you attacked A in her own home where, once again she was entitled to feel safe. You knew how drunken A was and realised she would be unable to fight back. You also knew that A’s mother was incapable of intervening. All of those factors taken together lead me to the conclusion that your victim was particularly vulnerable due to her personal circumstance”.*
13. He further stated: *“It is a real pity that with your intelligence and background you felt it necessary to conduct your case in a way where you deliberately attempted to portray A as a drunk, who was, to use your expression, “at war with her parents” and who was “flirting” with you in the restaurant. I reject all of these assertions. Of course, the biggest lie you told during the course of this trial was to portray A as a sexual predator herself. I do not need to say it because the jury rejected your version of versions”.*

14. He read extracts from Person A's impact statement, stating: *"I feel unhappy, sad and isolated". In relation to relationships, she says, "I have grown distant from all my friends". With regards to her health, she has panic attacks now and she has had to seek professional help to deal with the ordeal you put her through. Simply on the issue of trust, she says this "I can't get close to people and I bottle things up". With regard to sexual relationships, she said, "Being intimate with anyone would freak me out". Overall, she says: "It's changed the way I think, the way I feel and dress. My confidence is much less than before, my self-esteem is lower than before. I've changed the way I view people and I trust much less. My moods have changed, I now have mood swings".*

Mitigation

15. The following mitigation is put forward by the Respondent but is not endorsed by the SRA:

15.1 prior to his conviction he was of previous good character;

15.2 the Respondent continues to maintain his innocence of the offences for which he was convicted;

15.3 the events between 14 October 2013 and 15 October 2013 and the continuing aftermath are a tragedy for all concerned;

15.4 the Respondent has served a custodial sentence of 5 and a half years for the offences and will remain on licence until 2026;

15.5 the Respondent's position as a solicitor was fully taken into account at sentencing;

15.6 he has been adequately punished for the offences;

15.7 the Respondent has lost his livelihood and his law firm has closed. He used his capital account to fund the firm in the period 2015 to 2019 in order to keep his former employees in work. His losses are therefore greater than would be the case for other solicitors in similar circumstances coming before the Tribunal;

15.8 the Respondent made it clear to the SRA prior to the decision to refer the matter to the Tribunal that he had no intention of applying for a practising certificate

pending a successful further appeal against his conviction as he has no wish to bring any further embarrassment to the profession;

15.9 the Respondent is currently unemployed and is not in a position to discharge any penalty or costs award that the Tribunal may wish to impose.

15.10 notwithstanding the above the Respondent's wife and immediate family continue to be supportive of him, they are directly affected by these proceedings;

15.11 no clients have been affected by either the fact of conviction for the offences or as a result of the closure of the firm;

15.12 there was a considerable amount of publicity at the time that the Respondent was convicted, and the Respondent believes that any further publicity would serve no useful benefit to either the profession or the wider public; and

15.13 the Respondent remains optimistic that he will ultimately successfully challenge his conviction.

Sanction proposed

16. Taking account of the seriousness of the admitted misconduct, and having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions, the SRA contends, and the Respondent accepts, that the proper penalty in this case is for the Respondent to be struck off the Roll of Solicitors.

17. With respect to costs, it is further agreed by the Respondent that he should pay the SRA's costs of the enquiry and application fixed in the sum of £2000.

Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance

18. The offences were sexually motivated. Person A was abused in her own home following an evening out to celebrate her 18th birthday. The Respondent took advantage of the situation knowing Person A and Person B were intoxicated. He knew Person B was asleep upstairs so would be unable to hear her if she did raise the alarm. He knew Person A would be unable to defend herself. The Respondent's culpability for his actions was accordingly high.
19. The Respondent's actions have caused immeasurable psychological and emotional trauma to Person A. Extracts of her victim impact statement are at paragraph 14, above, which outline the effects it had.
20. The misconduct has also caused damage to the reputation of the profession. The case was widely reported in the press and the public would not expect a solicitor to commit serious sexual offences. The public would not expect a solicitor to be given an 11-year prison sentence, be on the sex offenders register, be on a DBS barring list and be subject to a restraining order. The Respondent's actions have called into question the trust that the public places in the profession.
21. The principal factors that aggravate the seriousness of the Respondent's misconduct are that he was convicted of five sexual offences, two of which are the most serious in nature. The Respondent tried to conceal what he had done by texting Person A afterwards and attempted to normalise the situation. The Respondent pleaded not guilty at Court, forcing her to go through the trauma of a Crown Court trial. He tried to put the blame on her accusing her of sexually assaulting him which would no doubt have added to her torment. He would have known his conduct was a material breach of the obligations to protect the public and the reputation of the legal profession.

22. In all the circumstances of the case, it is therefore proportionate and in the public interest that Mark Reginald Stuart Hodge should be struck off the Roll of Solicitors.

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Sarah Stockley, Legal Adviser upon behalf of the SRA

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Date

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Gabb and Co on behalf of Mark Reginald Stuart Hodge

Date: 16 July 2021