

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A N Spooner (in the chair)

Mrs K Todner

Mr J Jackson

Date of Hearing: 24th March 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Sarah Jane Lakeman, solicitor, employed by The Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire on 10th November 2004 that His Honour Judge David Henry Deering Selwood, a solicitor, of Magdalen House, 5-9 Magdalen Hill, Winchester, Hampshire, might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made the Tribunal should think right.

The allegation was that the Respondent had been guilty of conduct unbecoming a solicitor in that after a guilty plea he had been convicted of:-

- a) 12 offences contrary to Section 1(1)a and Section 6 of the Protection of Children Act 1978 of making indecent photographs of children;
- b) one offence contrary to Section 160(1) of the Criminal Justice Act 1988 of possessing indecent photographs of children.

The application was heard at the Court Room, Gate House, 1 Farringdon Street, London, EC4M 7NS when Ms Lakeman appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admission of the allegation by the Respondent.

The Tribunal made the following Order:-

The Tribunal orders that the Respondent, His Honour Judge David Henry Deering Selwood of Magdalen House, 5-9 Magdalen Hill, Winchester, Hampshire, SO23 0HJ, solicitor, be Struck Off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

The facts are set out in paragraphs 1 and 2 hereunder:-

1. The Respondent, born in 1934, had been admitted as a solicitor in 1957. His name remained on the Roll of Solicitors.
2. The Respondent was convicted at Bow Street Magistrates Court on 13th July 2004 of the offences set out in the allegation and had been made subject to a 12 month community rehabilitation order.

The Submissions of the Applicant

3. The Tribunal had before it the Certificate of Conviction and the Respondent admitted his conviction.
4. It was understood that the Respondent would say in mitigation that he was a man of integrity and probity. The offences were at the lowest level, but his conduct and the nature of the offences had fallen below the level that would bring the solicitors' profession into disrepute.
5. In the submission of the Applicant the Respondent had been convicted of criminal offences which would damage the confidence of the public in the solicitors' profession. It was important that the public retained confidence in members of the profession. The Tribunal was invited to consider the ruling in the Bolton -v- The Law Society and, in particular, that the good reputation of the solicitors' profession was its most valuable asset and that the reputation of the profession was more important than the fortunes of an individual member.
6. The Tribunal was invited to take into account the sentencing remarks of the Senior District Judge at Bow Street Magistrates Court and, in particular, when he said that the courts look gravely upon this type of offence because it involves the exploitation and abuse of children and the court's first concern must be to them.
7. Although the Probation Service had reservations about the making of a community rehabilitation order, the senior District Judge expressed himself satisfied that such an order met the justice of the case, fell within the Court of Appeal guidance, and was in the public interest by providing protection to children by decreasing any risk of further offences. He did not add a condition that the Respondent attend the sex offender programme as he believed that such advice and guidance as was necessary could best be provided through regular contact with the Probation Officer.

The Submissions of the Respondent

The Respondent's arrest led to immediate and extensive press coverage of a sensational and grossly speculative kind which had very little to do with the actual facts of the case. The press and media continued to report matters in a similar way with little regard for accuracy. The nature of the media reporting brought great pressure to bear on the police, the CPS and the court, and the Respondent.

Press and other media reports suggested that the Respondent was a paedophile i.e. "a person who displays sexual desire directed towards children". That was not so. At his police station interview, and in open court, the Respondent made it plain that he had never had and did not have any conscious sexual desire directed towards children. The Respondent's wife of 31 years, his children, and two stepsons, who have very young children of their own, confirmed that they had never detected the slightest sign of anything of the sort.

The media incorrectly reported that the Respondent was a pervert and had made or produced pornographic images. The police, the CPS, and the District Judge at Bow Street acknowledged that the material was at the lowest level of the Copine Scale, which had been adopted for the purpose of sentencing guidelines by the Court of Appeal. It was submitted to the Court that the material was at the lowest possible end of the lowest level. None of the images depicted sexual activity of any kind; none depicted sexual arousal or erotic posing; none suggested any form of sexual abuse. They depicted boys of varying ages, some wearing swimming costumes, some not, playing, apparently happily, on beach or river bank, or swimming, including some underwater shots. They were high quality shots, probably taken by a professional, and depicting nudity and nothing more. They were described in court as "relatively innocuous". The word "pornography" was not used in evidence.

The Respondent did not think of these images as indecent. They had no sexual significance for him. At the material time he was dealing frequently as a matter of routine with cases involving the downloading of abusive images of children from the Net. These were said to be "readily available". He had been curious to know how readily available they were. The images he found were not "saved" in a recoverable computer file for future viewing, but remained in his temporary internet cache. They seemed to have no relevance. There were relatively few of them. There had been no repeat viewings and no distribution of the images.

The Respondent agreed with the advice he was given by his legal advisers that a jury could well find these images indecent and that to run the defence that these images were not indecent would be dangerous: to be convicted in front of a jury would have given rise to even worse adverse publicity and would have put the Respondent in a far worse position with regard to sentencing than that which would follow a plea of guilty.

The Respondent was shocked at being arrested. It transpired that the information which provided grounds for the arrest resulted in charges. The charges the Respondent eventually faced arose from the relatively few and, by Copine standards, relatively innocuous images found on his computer after his arrest.

The Respondent had come to realize that his actions were foolish. At the time, he had not really thought through all the aspects of what he was doing. The whole exercise was without great significance for him. He viewed the images he found briefly, in the same objective and dispassionate way as those many far worse images he had been obliged to view in court. He accepted that his amateurish efforts could not be categorised as genuine research and could not provide a defence to the charges. He had heard it said in defence of others that material had been accessed on the internet by accident. He wished to explore that assertion.

The Statute under which the Respondent was charged was something of a “blunt instrument” incapable of taking into account degrees of guilt and did not enable the Court to recognize the very low level of the offence.

The Respondent did not believe that he should have been prosecuted. He had been informed by officers from West Midlands police at interview in Hampshire that if the decision were to be taken by West Midlands police there would be no prosecution if the Respondent accepted a caution. The decision would be one for the Hampshire police on whose behalf the West Midlands had conducted the investigation. The papers were sent to the CPS (Special Case Group) for a view as to whether a caution would be appropriate.

The Respondent’s arrest was leaked and public speculation followed. The Respondent believed he had been prosecuted in the light of political considerations.

The Respondent and his advisers considered that a conditional discharge would be the right sentence in accordance with the sentencing guidelines, with the outside possibility of a fine. The Probation Officer agreed. The Respondent still held his belief that the case did not cross the threshold to the next level of sanction, a community penalty. However, the District Judge came to the conclusion that there should be contact with a probation officer, “as someone outside the family to whom the Respondent could talk and to whom he could express a need for help if there was one”. The Respondent was clear that he needed no such help.

The Respondent served the communities in which he lived and his country throughout his working life. He was admitted to the Roll in 1957. National Service followed during which he was commissioned into the Royal Army Service Corps and he had an active time in support of the 3rd Commando Brigade during operations with the Amphibious Warfare Squadron in the Mediterranean and in Libya. He then spent two years in private practice in Plymouth during which time he was appointed to the Chief Constable’s Prosecution Panel and acted for the prosecution in the Magistrates’ Court and instructed Counsel at Quarter Sessions and Assizes. At the same time he served as a Territorial Army Officer with the 4th Battalion of the Devonshire Regiment.

In 1961 the Respondent left private practice and was commissioned into the Army Legal Services with whom he served in Germany, the Middle and Far East, Cyprus and in the UK in the MOD and HQ UK Land Forces. Duties were many and varied. In 1987 he became responsible for all military prosecutions in Germany and in 1990 he was promoted to the rank of Major General and appointed Director of Army Legal Services.

In 1981 the Respondent was appointed a Deputy Circuit Judge and a Recorder in 1985. On his retirement from the army in 1992 the Respondent was appointed to be a Circuit Judge on the South-Eastern Circuit and transferred to the Western Circuit in 1994, based on the Winchester Group of Courts. In 1994 he was appointed Resident Judge in Portsmouth where he remained until April 2004.

The Respondent had also been one of the co-authors of the annual "Crown Court Index" for nine years.

The Respondent was a good judge and a good resident judge.

In 1996 the Queen appointed the Respondent as one of the Deputy Colonels Commandant of the Adjutant General's Corps of which she was Colonel in Chief with special responsibility for the Army Legal Services which is a branch of that Corps. The Respondent held that honorary appointment, having been invited to extend, until January 2004.

The effects of the Respondent's prosecution had been severe in the extreme. The Respondent had retired earlier than he intended and had suffered significant financial loss as a result. His reputation had been seriously damaged and, in consequence, his valued relationships with the Judiciary, the Bar, solicitors and the army.

The Respondent had been greatly supported by those individuals that knew him who accepted that his integrity was intact and dismissed the idea that he had ever had any sexual inclination towards children of either sex. The Tribunal was invited to give due weight to the testimonials written in support of the Respondent all of which speak highly of his competence, integrity and probity.

It is the submission of the Respondent that he should not be struck off the Roll of Solicitors on the grounds that his behaviour tended to bring the profession into disrepute. The facts on which the allegations, to which he pleaded guilty at the earliest opportunity, were based were not such as to amount to behaviour deserving of so severe a sanction. Any sanction should be very greatly mitigated by the Respondent's good character and the history of his career in the law which reflected well on the solicitors' profession and the adverse publicity and its effect upon his personal and professional life.

The Respondent accepted that he had been responsible for a gross error of judgment which he deeply regretted.

The Tribunal's Findings

The Tribunal found the allegation to have been substantiated, indeed it was not contested.

The Decision of the Tribunal and its reasons

The Tribunal recognizes the great service that the Respondent has given to his country and to the community. He has enjoyed a long unblemished successful career to which

very few members of the solicitors' profession might hope to aspire. It is clear from the testimonials written in support of the Respondent that he was held in the highest regard by those who knew him. The Tribunal recognised that the Respondent had, in his own words, made a gross error of judgment in respect of the acquisition of photographs of children on the internet. The Tribunal has heard his explanations and his submissions. The Tribunal recognizes that the offences to which the Respondent pleaded guilty were at a very low level but it also recognizes that the Respondent has had considerable experience of persons who have been involved in procuring indecent and/or pornographic material from the internet and he was better placed than most to be fully aware of the nature, effect and impact of his activities.

31. Whilst recognizing that the offensiveness of the material downloaded by the Respondent was at the lowest level, the Tribunal would wish to associate itself with the sentencing remarks of Tim Workman, the Senior District Judge at Bow Street Magistrates Court when he pointed out that this type of offence involves the exploitation and abuse of children.
32. There can be no doubt that the events that have overtaken the Respondent represent a personal tragedy both for him and his family.
33. The Tribunal recognises that the preservation of the good reputation of the solicitors' profession and the perception that the public has of solicitors is of paramount importance. The Tribunal considers that members of the public, knowing that a solicitor who has enjoyed high judicial office has been convicted of this type of offence, should not be permitted to remain a solicitor.
34. The Tribunal Ordered that the Respondent be struck off the Roll of Solicitors and they also Ordered him to pay the costs of and incidental to the application and enquiry in the fixed sum agreed by the Respondent.