

IN THE MATTER OF PAUL ANTHONY MASON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr I R Woolfe
Mr D Gilbertson

Date of Hearing: 10th September 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (“SRA”) by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts, SG14 1BY on 2nd October 2008 that Paul Anthony Mason of Iliffes Booth Bennett, Lovell House, 271 High Street, Uxbridge, Middlesex, UB8 1LQ might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were:-

1. That he had acted in a manner which was likely to lead to a breach of his duty to keep confidential the affairs of clients of his firm, contrary to Principle 16.01 of the Guide to the Professional Conduct of Solicitors 1999.
2. That he had acted in a manner whereby tapes and videos of children’s evidence were dealt with otherwise than in accordance with Principle 21.16 of The Guide to the Professional Conduct of Solicitors 1999 and the Council Statement giving guidance thereon.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 10th September 2009 when Stephen John Battersby appeared as the Applicant. Ian Ryan represented the Respondent, who was present.

The evidence before the Tribunal included the admissions of the Respondent.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Orders that the Respondent Paul Anthony Mason of Illifes Booth Bennett, Lovell House, 271 High Street, Uxbridge, Middlesex, UB8 1LQ solicitor, be Reprimanded and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,087.44.

The facts are set out in paragraphs 1 - 8 hereunder

1. The Respondent, born in 1956, was admitted as a solicitor in 1980. Until 2002 he was a partner at TVE & Co and since then has been a partner at Illifes Booth Bennett (IBB) of Lovell House, 271 High Street, Uxbridge, Middlesex, UB8 1LQ.
2. In April 2007 the Essex Police had been investigating suspected offences concerning indecent images of children. In pursuance of those enquiries, a search warrant had been executed at an address of a suspect, Mr X, and among other items found there were 130 audio tapes which had been used by the Essex Police, the Metropolitan Police and other Forces to record police interviews with suspects. They had also seized 30 video tapes, at least some of which had been used to record interviews with child witnesses in cases of a sensitive nature.
3. The suspect, Mr X, had been taken to Rayleigh Police Station where he had been interviewed about various matters, including an alleged theft of the tapes which the police had seized. At the police station, as was his right, he had been represented by a solicitor – the Respondent. Disclosure made to the Respondent and his client before the interview had included reference to the tapes and the Respondent had admitted that it had been he who had passed these tapes to this client, believing that they had first been wiped clean.
4. The police, being aware that not all of the tapes were in fact blank, had been concerned about the matter and had reported it to the SRA under cover of a letter dated 22nd October 2007. The police had conceded that the Respondent (or the firm to which he had belonged at the material time) might well have had legitimate possession of the tapes at some stage. Their concern had been that they had been passed on to Mr X who had no connection with the Respondent's firm or any other firm of solicitors.
5. On 19th December 2007, the SRA had written to the Respondent seeking his explanation for what had taken place. He had responded immediately by way of a phone call on 20th December and had taken the matter very seriously. He had explained that the recipient of the tapes, Mr X, suffered from severe visual impairment and educational problems and that he had provided him with the tapes some years earlier (2002 at the latest) when he had been with his previous firm. It had

been the Respondent who had devised the procedure at that firm for dealing with tapes after files had been closed.

6. The Respondent's written explanation had been provided in a letter of 2nd January 2008 in which he had made, among others, the following points:-
 - (i) He had breached the principle of confidentiality and the protocol relating to interviews with child witnesses, but this had been done inadvertently.
 - (ii) He had believed that all the tapes passed by him to Mr X were blank.
 - (iii) All tapes containing interviews with child witnesses had been kept in a locked secured container whilst the case was in progress and should have been returned to the police thereafter.
 - (iv) None of the tapes had related to his own cases.
 - (v) Mr X was a family friend with significant problems to whom he had provided the tapes out of kindness so that he could record music on to them.
 - (vi) He had taken video tapes home to record TV programs on to them. When he no longer required them, his wife had passed them on to Mr X believing them to be blank.
 - (vii) He had not passed the tapes to anyone other than Mr X.
7. An analysis of the tapes and their contents had been carried out by Ian Jackson, a trainee solicitor at Jameson and Hill. While the tapes listened to and viewed had represented the most serious breaches it had been accepted that what had been contained on many, or on most of the others, had not given rise to serious, if any, breaches of client confidentiality or the guidance on child witnesses.
8. On 7th March 2008, the conduct of the Respondent had been considered by an Adjudicator who had resolved to refer it to the Tribunal.

The Submissions of the Applicant

9. The Applicant explained that both allegations had been admitted. Both audio and video tapes had been involved. Misuse of the audio tapes could have involved the potential for a breach of client confidentiality. However, only four of the video tapes had contained sensitive information of a sexual nature. However, while the video tapes should have been returned to the prosecution, the Respondent had not signed undertakings in respect of the particular tapes involved. Indeed it was accepted that it had often been difficult in practice to return items to the prosecution.
10. The Applicant stressed that the Respondent had exhibited an exemplary attitude throughout the investigation and had cooperated fully with the SRA. Costs had been agreed at £5,087.44.

The Submissions on behalf of the Respondent

11. Mr Ryan explained the purpose of the relevant guidance and regulations to the Tribunal. He referred to the various references submitted on behalf of the Respondent and to their common themes as to both the probity and the competence of the Respondent. Mr Ryan stressed that very often members of the profession appearing before the Tribunal were dishonest individuals whereas the Respondent, who had been qualified for some 29 years, was a shining example of all that was good about solicitors. Mr Ryan referred to the witness statements of the Respondent and of his wife which clearly set out the inadvertent errors that had led to the appearance of the Respondent before the Tribunal.
12. Mr Ryan referred the Tribunal to the case of Iqbal Singh Chohan v the Law Society [2004] EWHC 1145 Admin in which a financial penalty was imposed on a solicitor who had, in addition, given an undertaking in respect of certain material. He submitted that the Respondent had a clean disciplinary history and that in all the particular circumstances a Reprimand would be an appropriate sanction.

The Decision of the Tribunal

13. Having considered all the evidence, including the witness statements and references and the helpful submissions of both the Applicant and on behalf of the Respondent, the Tribunal ordered that the Respondent be Reprimanded and pay costs in the sum of £5,087.44. While the particular circumstances had resulted in inadvertent disclosure that had caused no harm to any members of the public, the Tribunal was concerned that firm's should have effective systems in place to ensure that all regulations and guidance relating to sensitive information was complied with fully.

Dated this 13th day of May 2010
On behalf of the Tribunal

W. M. Hartley
Chairman