THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)

F I N D I N G S

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY of SCOTLAND, Atria One, 144 Morrison Street, Edinburgh

Complainers

against

MATTHEW PHILIP BERLOW, care of Graham Walker, 1584 Maryhill Road, Maryhill, Glasgow

Respondent

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Matthew Philip Berlow, care of Graham Walker, 1584 Maryhill Road, Maryhill, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There was a Secondary Complainer, Jane Elliott.

3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.

4. Following sundry procedure, the Tribunal set down a two-day, in-person substantive Hearing for 27 and 28 May 2025.

5. At the Hearing on 27 and 28 May 2025, the Complainers were represented by their Fiscal, Jamie Foulis, Solicitor, Edinburgh. The Respondent was present and represented by Roddy Dunlop K.C and Joe Bryce, Advocate. Following various procedural matters, set out in more detail later in the findings, both parties proceeded to lead parole evidence. Evidence was concluded on 27 May 2025 and the Hearing was adjourned to the following day for submissions to be made by both parties.

6. Having heard the submissions from both parties and having given careful consideration to all of the evidence before it, the Tribunal found the following facts established:-

6.1 The Respondent was enrolled as a solicitor on 27 October 1995. The respondent was employed as a solicitor by Steven Paterson & Co from 07 November 1995 to 04 July 1996. He was a partner in the firm of Briar Investigations and Agency Services from 06 August 1996 to 09 February 1998 and then a partner and at times cashroom partner (from 01 June 2000 to 30 September 2005 and 22 June 2007 to 04 May 2012), risk management partner (from 28 October 2003 to 30 September 2005) and client relations partner (from 26 July 2006 to 04 May 2012) in the firms of Beltrami Anwar and then Beltrami Berlow & Co from 10 February 1998 to 04 May 2012. The Respondent was a partner in the firm of JR Rahman from 04 May 2012 to 31 October 2013. The Respondent was a consultant, then a partner and latterly an employee in the firm of Berlow Rahman Solicitors from 01 November 2013 until 05 January 2020. He has been a consultant in the firm of Graham Walker from 06 January 2020 to date.

6.2 On 15 November 2021, the Respondent posted on a public online social media platform, namely Facebook the following:

"You need to be scientific to get the mix of nail varnish, hydrogen peroxide, and acetic acid correct and stable. Not a sweaty nervous paedophilic stoner in the back of a taxi who thinks there are 72 virgins waiting." ;

This comment was a post made in a chain of posts relating to an incident where an attempted suicide bomber was killed when his device exploded prematurely, before reaching his target, which was a hospital.

6.3 On 29 December 2021 the Respondent posted a comment on a publicly accessible social media platform, namely Facebook, with reference to Archbishop Desmond Tutu, who died on 26 December 2021, the following:

"But white leftist love an underdog and will forgive his racism (especially since he is a smiley dancing black one)"

6.4 On 29 December 2021, the Respondent posted a comment on a social media platform, namely Facebook about an incident in which people had been killed which read as follows:

"Did their cocks go black?"

This post was part of a discussion regarding two suicide bombers whose bombs exploded prematurely due to the clock timers not being set correctly.

6.5 On 16 January 2022, the Respondent posted on an online social media platform, namely Facebook, that *"Marie Thompson usually threatening a sinister bluster from the anti-israel (anti-semitic) brigade"* . "Marie Thompson" is one of several aliases used by the Secondary Complainer on Facebook. The comment was posted on the Facebook page of Glasgow Friends of Israel. Members of the public are required to request to join this Facebook page before being able to post comments there.

The Secondary Complainer has previously made remarks on Facebook which are capable of being construed as "antisemitic" in terms of the IHRA definition which is accepted and adopted by the UK and Scottish Governments.

6.6 At the time the posts referred at paragraph 6.2 to 6.5 above, the Respondent's Facebook profile made reference to him being a practising lawyer. His Facebook page contained posts regarding his work as a solicitor.

6.7 The Complainers have issued guidance to the profession which is available on their website entitled, "social media-advice and information for the legal profession". The guidance states:-

"1.

Legal professionals should consider the general risks associated with all forms of engagement and communication, and how these can be minimised or avoided...

[...]

2.

You might not be the most experienced social media user, but as a legal professional, you exercise good judgement on behalf of your firm and clients on a daily basis. Use that same decision-making ability in your approach to social media. Use your common sense. Social media offers brilliant opportunities to promote your business and services, establish a corporate personality and engage with your clients but you also need to consider the risks and potential consequences of your posts before going live. You can afford to be more conversational in tone on social media but avoid causing offence or alienating your audience.

[...]

4.

Participating in social media can present significant personal and business benefits, and members of the legal profession should seek to engage with social media in a positive way. Above all, remember that all professional responsibilities apply regardless of the medium of communication.

[...]

6.

... the use of social media is subject to the same ethical and professional standards as all other conduct of a member of the legal profession. Individual solicitors must ensure they abide by the professional practice rules and maintain professional relationships with clients and other members of the profession...

... Tone can be much harder to convey through text-based communications, and what was meant as a joke may be treated more seriously. Anonymity cannot be guaranteed, even when posting under a username. Members of the profession should always assume that comments may be traced back to them, and exercise appropriate discretion...

... Other areas where members of the legal profession have specific duties include the duty to maintain respectful and courteous relationships with the courts and with other members of the profession..."

In addition, the Complainers have published "golden rules of thumb" to avoid potentially serious issues to accompany their social media guidance. This states that solicitors should:-

"Avoid

- *posting remarks which might reasonably be construed as unprofessional, unwise, offensive, abusive, defamatory, or undermine trust and personal integrity (including posting them (or anything else) anonymously)*
- *engaging in unprofessional arguments with others in the online arena (including engaging with or encouraging online trolls), and shut them down quickly where they arise."*

6.8 That both the Council in the exercise of its regulatory function and this Tribunal are a public authority for the purposes of the Human Rights Act 1998.

7. Having given the foregoing circumstances careful consideration, the Tribunal found the Respondent not guilty of professional misconduct and declined to remit the matter to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980.

8. The Tribunal heard submissions from both parties with regard to expenses and publicity.

9. The Tribunal pronounced an Interlocutor in the following terms:-

> Edinburgh, 28 May 2025. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Matthew Philip Berlow, care of Graham Walker, 1584 Maryhill Road, Maryhill, Glasgow; Find the Respondent not guilty of professional misconduct; Find the Complainers liable in the expenses of the Respondent chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £18.00; Grants sanction for the instruction of Senior Counsel only; and Direct that publicity will be given to this decision.
>
> **(signed)**
> **Mark Hastings**
> **Acting Vice Chair**

10. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

[redacted]

Mark Hastings

Acting Vice Chair

NOTE

At the Hearing on 27 and 28 May 2025, the Complainers were represented by their Fiscal, Jamie Foulis, Solicitor, Edinburgh. The Respondent was present and represented by Roddy Dunlop, KC, and Joe Bryce, Advocate.

Prior to the Hearing commencing on 27 May 2025, each party had timeously lodged a Bundle of Productions. The Complainers had lodged Affidavits for two witnesses, not included in the Bundle and without a List of Witnesses. A Record had also been lodged with the Tribunal.

At the commencement of the Hearing, the Fiscal invited the Tribunal to allow a Joint Minute of Admissions to be received. There being no objection by the Respondent, this was allowed.

The Fiscal made a motion to be allowed to lodge two additional Bundles of Productions late. The Tribunal clarified that it had not had sight of either of the Bundles. The first of these related to a tweet said to have been made by the Respondent outlining his position in relation to him being subject to disciplinary action. The second of these included a number of publicly available documents which had only come to the Fiscal's attention the day before when he was preparing for this Hearing. He stated that he intended to put these documents to the Respondent in cross-examination, in order to clarify the context in which one of his posts was made.

Mr Dunlop objected to both of the late Bundles. He submitted that the tweet the Complainers referred to was potentially a new allegation of misconduct which had not gone through the required complaints process. He submitted that the documents in the second late Bundle had only been intimated shortly before 9am that morning. They were not agreed by the Respondent. There were no witnesses to speak to them. The Respondent had had no realistic opportunity to address them. He questioned the relevance of them, particularly one said to have been produced by the police, as it was undated. He submitted that it was reasonable to assume that these documents did not exist at the time that the post was made.

Having carefully considered all of the submissions, the Tribunal refused to allow the late lodging of either Bundle. In regard to the alleged tweet, the Tribunal noted that there were no averments within the Record relating to this and the Tribunal was concerned that it raised the possibility of a further allegation of misconduct. The second late Bundle was very late and without any reasonable explanation to justify its lateness. There were no witnesses to speak to these documents and their relevance was questionable.

The Fiscal moved to amend averment 5.1(c) by deleting the reference to the post being racial in character. This was not opposed and, therefore, granted.

The Fiscal invited the Tribunal to allow the Record to be received. Both parties confirmed that it reflected their pleadings and the Tribunal granted that motion.

The Tribunal drew to the parties' attention that it had two Affidavits on behalf of the Complainers and no List of Witnesses. The Fiscal confirmed that it was his intention to lead only one witness. The Respondent indicated that he had no objection to there being no formal List of Witnesses and invited the Tribunal to put the Affidavit for the second witness out of its mind. The Tribunal was not satisfied by the explanation put forward by the Fiscal for there being no list of witnesses, but Given the Respondent's concession, the Tribunal was prepared to proceed without a formal List of Witnesses. The Tribunal emphasised its expectation that parties comply with the Rules.

The Tribunal drew the Fiscal's attention to the Affidavit for the witness Elliott; it included the name of another case in its heading, which was unacceptable. During an adjournment, a fresh Affidavit was sworn and the Tribunal allowed this to be received.

Both parties proceeded to lead evidence.

EVIDENCE FOR THE COMPLAINERS

Witness: Jane Elliott

The Secondary Complainer identified her Affidavit and confirmed that she was content to adopt it as her evidence. The Affidavit was in the following terms:-

"

1. My name is Jane Elliott. I am 58 years of age. I not working at present. I formerly worked as a dentist, but I am now retired.

2. On or around 5 February 2022, I submitted a complaint to the SLCC about a solicitor named Matthew Berlow. I understand that a copy of that complaint has been produced.

3. Mr Berlow is someone who I had been aware of for some time. He is a member of a Glasgow-based group called "Glasgow Friends of Israel". The group's site and Facebook page is one which I know of as making comments which I consider to be quite racist.

4. If an attempt is made to challenge the group, then you can find yourself personally insulted. You can be accused of things. I ended up in the Jewish Telegraph in an article that one of their members had written which named me personally. It is my position that what was written about me in that article was false and untrue and I considered it to be defamatory in nature. I have been accused of all sorts of things by members of this group.

5. What led to me making the present complaint was Mr Berlow calling me an "anti-semite" on social media. On 16 January 2022, he posted on Facebook that "Marie Thompson usually threatening a sinister bluster from the anti israel (anti-semitic) brigade". "Marie Thompson" was a Facebook profile which I had created. I have explained the reasons for this later in this statement. I felt that this post was publicly trying to smear me as being a racist. This was one of the posts which I mentioned in my complaint.

6. On Mr Berlow's Facebook page, I noticed what I considered to be racist comments. took screenshots of them and submitted them with my initial complaint. Those comments feature in the complaint. They are as follows:-

   a) On 15 November 2021:

   "You need to be scientific to get the mix of nail varnish, hydrogen peroxide, and acetic acid correct and stable. Not a sweaty nervous paedophilic stoner in the back of a taxi who thinks there are 72 virgins waiting." ;

   b) On 29 December 2021 with reference to Archbishop Desmond Tutu, who died on 26 December 2021:

   "But white leftist love an underdog and will forgive his racism (especially since he is a smiley dancing black one)"

   c) On 29 December 2021, in a comment about an incident in which people had been killed:

   "Did their cocks go black?"

7. My knowledge of the Glasgow Friends of Israel group came about because of my support for the Palestinian cause, which is something which I am quite passionate about. I have been to occupied Palestine myself - I went there to do charity work for Orthodox Jewish children from war torn countries such as Bosnia and Ethiopia when I was in my mid-20s and that was where my initial awareness of the situation came about. The charity work involved me providing free

dental treatment to these children for two weeks. That led to me becoming very passionate in support of this cause. There is a stall on Buchanan Street in Glasgow looking to discuss and support this cause, and a few years ago a stall countering was set up a few metres down the street.

8. In relation to the posts that I sent to the SLCC with my complaint, the post that included a comment about the suicide bomber mentioned at 6(a) was one which on my reading of it suggested that Muslims were paedophiles. There may have been a context to the comment being made - I do not know what going through Mr Berlow's head, but I thought that it was totally inappropriate when I read it.

9. When I saw the post with the comment saying "did there cocks go black" which is mentioned at 6 (c), again I do not know if the context was as Mr Berlow has said but I thought what I read was totally inappropriate.

10. I am aware that in response to my complaint, reference has been made to certain posts that I have reacted to on social media and also accounts that I have. I do have an alternative account under the name of "Rosy Marie Elliot". There was an account "Marie Thompson" which was me as well. The reason that I had these accounts was because those of us who support the Palestinian cause have found that Facebook can be quite biased and that you can find yourself getting trolled and banned. That is the only reason why I have used alternative accounts, and I haven't for around 2 years now. My main account is under my real name, and it has a real picture of me on it.

11. I understand that it had also been alleged that I had posted from a website named something like 'humansarefree.com'. This is not a site that I can recall ever having used or shared information from. I have done some research on this site and it appears to promote conspiracy theories which I do not believe in. I found no mention of it being a site which promotes anti-Semitic conspiracy theories, which are things that I neither believe in or promote either.

12. I am aware that some posts were also provided with the intention of suggesting that I was antisemitic. That is completely untrue. I run my own group on social media and if I see a hint of antisemitism on it then the person gets kicked out from it.

13. I have seen the post which reacted to with laughing emojis and calling someone a "dafty". I do not know the person who posted that, and my reaction was just laughing at his stupidity. I wasn't supporting the posts or the message in it.

14. The comment that I made in response to an article where I said "Zionist mother fucker" is one that I probably did make. I believe that there is a difference between antizionism and antisemitism. It is

Zionism that I take issue with. I make no apologies for using the term Zionist in a negative light. Zionism is nothing to do with Judaism. There is, in my opinion, an attempt to conflate antizionism with being antisemitic. That is not something which I agree with. It is my feeling that the conflation of the two is often used to weaponise against those of us who support the Palestinian cause. I have read a whole book on this subject by journalist and author Asa Winstanley titled The Weaponisation of Anti-Semitism'."

The Secondary Complainer was asked where she saw the posts which were the subject matter of her complaint and stated that they were on the Respondent's Facebook page.

The Secondary Complainer was asked if she was familiar with a Facebook page called "Glasgow Friends of Israel" and confirmed that this was a page she had visited herself. She was asked how many "followers" the page had and responded that she was now banned from that group. She believed she last visited the group three or years ago when it had about 500 followers.

The Secondary Complainer was referred to a Production for the Respondent showing a Facebook post relating to Lord Rothschild where the Secondary Complainer had commented "Zionist Motherfuckers". She was asked, if it was suggested to her that this disclosed antisemitic views, what her response would be. ~~and she~~ She responded that Zionism is a political ideology and Judaism is a religious faith. She said Lord Rothschild was a dedicated Zionist; dedicated to the Zionist movement. She did not accept that her remark was antisemitic and insisted Zionism is not Judaism. She stated that this comment was her opinion and, whilst the language used might be considered offensive to some, it was no more offensive than some of the language used by the Respondent and the Glasgow Friends of Israel.

She was asked to look at a further Facebook post and confirmed that the post in the background in red was hers. She said that the image of the rat was superimposed by someone else. She accepted that she referred to David Collier as a "disgusting ultra Zionist" and stood by it as a true statement. She stated that David Collier trolls through the internet looking for any "whiff" of what he interpreted as antisemitism. She explained that she did not post the image of the rat. She accepted that she had posted the comment on it that read "ya dafty" followed by three laughing emojis but she could not see how her comment could be construed in any way as antisemitic.

The Fiscal asked the Secondary Complainer to look at two further Facebook posts at page 23 and 24 of the Respondent's Bundle of Productions. She admitted making comments on Facebook but denied that they were antisemitic.

CROSS-EXAMINATION

The Secondary Complainer accepted that in the past she had operated a number of different Facebook accounts that were not in her name. She agreed that she did not like Glasgow Friends of Israel but would regularly go on their page until she was banned. She denied she deliberately sought conflict by going on a Facebook page that she did not like and stated that she only sought to challenge their anti-Palestine racist views. She denied that the reason behind her making the complaint against the Respondent was the conflict between her pro-Palestine views and the pro-Israel views held by Glasgow Friends of Israel.

She agreed that she took issue with the suggestion that her behaviour could be described as antisemitic.

She agreed that she did not accept the definition of antisemitism advanced by the International Holocaust Alliance. She conceded that the definition was widely adopted by governments and organisations across the world but stated that it was not legally binding.

Mr Dunlop directed her to page 12 of the Complainers' Bundle of Productions, a document entitled "A definition of antisemitism" which was produced by the government. Mr Dunlop took her through the definition of antisemitism in that article. The Secondary Complainer did not accept that her comment "Zionist Motherfucker" was antisemitic.

She stated that she was not aware the author of the book she referred to in paragraph 14 of her Affidavit had been suspended from the Labour Party for antisemitism.

The Secondary Complainer agreed that it was antisemitic to propagate the myth that Jews control the banks and economy across the globe.

She agreed that it was antisemitic to portray Jews as having big noses.

She agreed that it was antisemitic to compare Jews to rats.

She accepted that the use of the word Zionist could, depending on the context, be antisemitic.

She accepted that comparing Jews to nazis was antisemitic.

In response to a question from the Tribunal, she explained that she did not consider her use of the term "Zionist", described in her Affidavit at paragraph 14, to be antisemitic as she considered it to be a statement of fact.

A number of Facebook pages/posts were then put to the Secondary Complainer. She did not accept that any of her own activity in relation to these posts could be seen or construed as antisemitic. She denied making one of the posts that was suggested to have been posted by her and stated that the post she had made had been altered and then reposted with changes.

The Secondary Complainer denied that she disliked the Respondent and that she had a "deep animus" towards him. She was asked to estimate how many times she posted on the Respondent's Facebook timeline and responded that she had no idea. She was asked if it was approximately 2,500 times and she responded "I'm going to have to say yes" as she had not counted.

She did not accept that a person, looking at how she behaved on Facebook, could say she was antisemitic.

RE-EXAMINATION

The Secondary Complainer was referred to a number of Facebook posts produced in the Respondent's Bundle of Productions and stated that it was impossible to put dates on them from the copies produced.

She was asked if her behaviour online was that of an antisemite and responded that she insisted she was an anti-Zionist, not an anti-semite.

EVIDENCE FOR THE RESPONDENT

Witness: Matthew Philip Berlow

The Respondent identified his Affidavit and stated he was content to adopt it as his evidence.

"My name is Matthew Philip Berlow and I have been a lawyer for over 30 years.

In 2008 I converted to Islam in order to marry my wife. I am culturally Jewish and a Zionist (I support the right of Jews to have a state of their own in their indigenous homeland where there was formerly a Jewish state). I also support the notion of creating a Palestinian state when their leaders can reject terror and give up trying to destroy the Jewish state and murdering all Jews. I support a two state solution.

I am deeply involved in combatting anti-semitism online. I advocate for the continued existence of the State of Israel . I also have an interest in counter terrorism. [...]

Because of these beliefs I have, in recent years, been the victim of two stalkers. They have attempted to make my life a misery.

It's fortunate for stalkers of professional people that they have the added luxury of being able to attack and harm their victim by making spurious complaints to their respective professional bodies. In my case this is The Law Society of Scotland .

One of my stalkers is someone called Jane Elliott.

I have over time compiled a dossier of over 4000 social media posts showing this person to display overt anti-semitism. In addition she has threatened me and my family physically. She has openly indicated an intention to make my life a misery by making complaints to my professional regulator. She has shown something of an obsession with my wife and daughter, our movements and indeed our relationship .

The production lodged with the Scottish Solicitors Disciplinary Tribunal is only a small sample of the more than 4000 posts .

There are other UK Jews who are the victims of Jane Elliott online abuse but they are not lawyers.

I am aware of at least three others including an elderly couple in their 80s who have been bombarded with abuse .

Jane Elliott hates Israel and hates Israelis. As with many people like this her hatred of Israel often spills into antisemitism. Unlike me who desires peace with the Arabs, Jane Elliott comes primarily from a hateful position. Her goal is to see the end of the state of Israel.

As such Jane Elliott hates me and this is clear from her more than 4000 posts.

I am disappointed The Law Society of Scotland has entertained her complaints against me and effectively given her a platform from which she can perpetuate her ongoing abuse of me and my family.

Her complaints against me are borne of the fact that she has spent a great deal of time on her computer scrutinising in detail everything I have said online. This is particularly so when it comes to the Facebook Group called "Glasgow Friends of Israel "

The few things she has selected are taken out of context and readily explicable.

She has identified no profanity, no racism , no incitement to violence and no discrimination. The same cannot be said for her posts .

There are two posts about suicide bombers that Jane Elliott seems to have taken umbridge with .

I don't like suicide bombers and don't regard them as representative of Islam .

The first post relates to my knowledge about the mindset of suicide bombers and their misinterpretation of the Hadith which drives their motivation .

The second post is a spoonerism about a pair of suicide bombers whose bomb went off early because they had forgotten to put their clocks back . I quipped online
"Did their cocks go black?"

I know it's schoolyard humour but it is not racist. I was conjuring up an image of the charred bodies of the bombers who had blown themselves up and conflating this with the words "clocks" and "back".

In any event I am perplexed as to why such an obvious play on words has ended up as being considered capable of amounting to professional misconduct.

I refuse to accept that just because I am a lawyer I do not have the freedom of speech to make jokes about suicide bombers (not their victims) and express controversial opinions.

The Post regarding Desmond Tutu has also been taken out of context . The discussion online was about how he was perceived as anti-Semitic by many Jews including myself. My point about him was that many on the left would find it difficult to believe that a black South African could be racist. This is because of the phenomenon that people on the political left view racism as only white racism against black and oppressor against oppressed . They do not understand the nuance of all people being capable of racism.

My point about Tutu was that not only was he BLACK but also he became a popular figure in the public zeitgeist because of his personality and demeanour. The post was only part of a much longer conversation. As far as the complaint regarding Jane Elliott being part of the anti-Semitic brigade I firmly stand by this .

There are a number of anti-Israel personalities who post prolifically online and harass members of Glasgow Friends of Israel .

I have no qualms describing these people as members of the anti-Semitic brigade ."

CROSS-EXAMINATION

The Respondent agreed that his Facebook profile at the time of these posts described him as a lawyer and pianist. He agreed that his profile was public at that time. He identified posts made on his Facebook page referring to his work as a criminal practitioner and accepted that he had made these. He accepted that a member of the public would have been able to identify him as a solicitor from his Facebook page.

He agreed that he posted on the Facebook page of Glasgow Friends of Israel and stated that he was one of the founding members of the group. He was unable to say how many followers the group had at the time of the posts referred to in this Complaint but believed it was "quite a lot". He explained that users required to take steps to join the group before being able to see the page. He explained that it was a simple step and any application to join would be taken at face value. He stated that if a member turned out to be undesirable or misbehaved they could then be blocked.

The Respondent was referred to his post of November 2021. The Respondent explained that this was a comment posted as part of a discussion regarding an incident where a suicide bomber was attempting to attack a maternity hospital in Liverpool and the bomb exploded prematurely outside the hospital. The Fiscal asked the Respondent if he had produced to the Tribunal the earlier posts forming this discussion. The Respondent indicated that the post produced to the Tribunal was a snapshot of his particular interaction and he did not think he would be able now to go back far enough in time to obtain the earlier discussion.

He was asked if his reference to "72 virgins" could be seen by some as Islamophobic. He responded that this was in the Quran.

He was asked about the use of the word "paedophile" and conceded that he had not read that word in any of the reports of the incident. He stated that his basis for using that word was his knowledge of the mindset of suicide bombers who misinterpret the Hadith and believed that 72 virgins, who are young, with no pubic hair and available for sex with the martyr at any time, will be waiting for them in paradise.

He was asked about the basis for the using the word "stoner" and responded that it was well documented, in worldwide research that had taken place in relation to suicide bombings, that most bombers take drugs before their operations.

It was put to him that there was no evidence that this bomber acted under Islamic fundamentalist beliefs. The Respondent stated that an inquest was held which referred to the bomber as an ISIS fundamentalist sleeper

who had tried to claim asylum by pretending to be Christian. The Respondent stated that he had spoken to one of the solicitors present at the inquest and had read all of the articles about it. It was put to him that the Tribunal only had his word for that as he had not produced any evidence. The Respondent replied that there would be a huge amount of paperwork from the inquest. He stated that the words used were his opinion of suicide bombers, based on his knowledge of similar operations. He stated that the Hadith contains a reference to 72 virgins and it is well known that suicide bombers believe that they will go to paradise where 72 virgins will be waiting for them. He emphasised that he himself is a Muslim and he has family who are Muslims. He stated that suicide bombers are not regarded as Muslims. He did not accept that a member of the public would connect the reference to 72 virgins with the whole religion of Islam. He stated that that would be a mistake, as such conduct would be un-Islamic.

He asked if it was necessary for him to use the words "paedophile" and "stoner". He explained they were the words he chose in a discussion with like-minded friends in order to make his point that it was not safe for someone of this demeanour to carry the dangerous mixture around. He accepted he could have used different words but he did not accept that his words were crude or offensive, other than to suicide bombers.

The Respondent was referred to his post of 29 December 2021 and he agreed that he was making the point that Archbishop Tutu had conducted himself in a racist fashion towards Jews. The Fiscal put to him that he was saying that this comment was part of a discussion but he had not produced the rest of the chain. The Respondent replied that the Secondary Complainer had honed in on this comment and had only provided the Law Society with a copy of that. He said that the point he was making was that, when the Archbishop died, his racism was glossed over. The Fiscal asked if the Respondent could have made his point without referring to the Archbishop being black. The Respondent stated that the main point of his comment was that white people have a singular view of racism being white against black and would find it difficult to accept a black man could be racist. He took the view that the use of the word black was entirely relevant to the point he was making. It was put to him that he later amended the post to delete the word black. He said he did not believe that he had deleted the word from the post but believed that he had reposted his comment and missed out the word in the repost. He did not accept that his comment could be construed as racist. He explained that the Archbishop was a popular man, portrayed in the media as smiling and dancing. He stated that the whole point of his comment was that the Archbishop was black and white people could not contemplate him as a racist.

He was referred to his post of 29 December 2021 and explained that this was a spoonerism of "clocks go back" to "cocks go black". He did not consider the use of the word "cock" to be offensive or unprofessional. He was asked if he considered it to be "a poor taste joke" and was referred to the report to the Sub Committee where

it was stated by the Reporter that the Respondent had said that he accepted that it was a "poor taste joke". He responded that it was not to everybody's taste.

The Respondent was referred to his post of 16 January 2022 and was asked if he was aware that the Secondary Complainer holds anti-Zionist views. He said he was. He stated that he is aware that the Secondary Complainer finds it hard to accept that she holds antisemitic views and thought he would have been aware at the time he made this post that she possibly did not accept that she was antisemitic.

The Respondent was asked if he accepted that being anti-Zionist is not necessarily antisemitic. He responded that there are a large number of anti-Zionists who believe that Israel has no right to exist and should never have been allowed to have statehood. He believed that the Secondary Complainer is one of those who believe Israel has no right to exist and that Jews have no right to self-determination in their own indigenous homeland. He believed this to be antisemitic.

He stated that a cursory glance at the Secondary Complainer's social media history showed that she was antisemitic. In his opinion she is a "cast iron, dyed in the wool, antisemite".

In his opinion it is not possible to be anti-Zionist and not be antisemitic.

He was asked if he had seen the social media history he was referring to, of the Secondary Complainer, before he made this post. He replied that he has a dossier of 4,000 antisemitic posts made by the Secondary Complainer. He was aware at the time he made the post that she was antisemitic and that view would have been formed from her posts.

The Respondent was asked if he accepted that posting that someone was antisemitic on the Glasgow Friends of Israel page could lead to that person receiving hostility. He stated that the Glasgow Friends of Israel were mostly middle class and middle aged and that he had never seen actual hostility posted by them. He volunteered that "Marie Thompson" was a "moniker" used by the Secondary Complainer. He stated that the Secondary Complainer would from time to time be banned from the group and that she had used nine different false profiles to rejoin. He accepted that some other people in the group would know that Marie Thompson was in fact the Secondary Complainer. He emphasised that the Secondary Complainer had not received any harassment or profane remarks from him.

He confirmed that the words in all of the posts were his words. He accepted that as a solicitor he had to take care how he expressed his opinions. He emphasised that he had not said anything that incited violence, nothing

that was racist and had not used profanities. He confirmed that he was aware of the Law Society guidance at the time he made the post. He was not aware of the "golden rules of thumb". He did not accept that anything he said overstepped the mark in terms of the Law Society guidance. He stated that the Secondary Complainer had intentionally taken his posts out of context.

RE-EXAMINATION

The Respondent confirmed that the dossier of 4,000 posts referred to by him were posts by the Secondary Complainer about him, his wife, his daughter and dead mother.

He explained that he had gained knowledge of the mindset of a suicide bomber from previous experience. Additionally, he himself had narrowly missed two suicide bombings.

He explained that the Hadith is an interpretation of passages of the Quran and that there are different Hadiths and interpretations. Suicide bombers seize on a particular part of the Hadith, as described in his evidence. He stated that the security services investigating suicide bombers invariably find child pornography on their computers.

He believed that drawing an inference from his reference "72 virgins" that he was referring to the whole of Islam was in itself racist.

Evidence was concluded and the Hearing was continued to 28 May 2025 for submissions.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal invited the Tribunal to find that misconduct had been established.

He submitted that it was not his position that the Respondent was not permitted to make jokes or express opinions. This Complaint was about the manner in which they were expressed on a public social media platform. The Tribunal required to consider whether the communications made by the Respondent, on public social media, were appropriate for a solicitor and, if they were not, whether they met the standard for misconduct.

The Fiscal submitted that the burden of proof rested with him and that the standard of proof was beyond reasonable doubt. He referred the Tribunal to the standard direction for "beyond reasonable doubt" in the Jury

Manual used in criminal proceedings and the definition of professional misconduct in Sharp-v-Council of the Law Society 1984 SLT 313.

He accepted that the Tribunal required to comply with the European Convention on Human Rights, and in particular, for the purposes of this Complaint, Article 10.

He referred the Tribunal to the case of Khan-v-Bar Standards Board [2018] EWHC 2184 (Admin) for a statement of the general principles that freedom of expression can legitimately be restricted if that restriction is in pursuing a legitimate aim and is necessary and proportionate having regard to that aim. He submitted that the Complainers in this case have the objective of promoting the interests of the profession and the public.

The Fiscal submitted that the analysis in the case of Khan was approved in the case of Diggins-v-Bar Standards Board [2020] EWHC 467 (Admin).

He referred the Tribunal to the case of Holbrook-v-Bar Standards Board, The Bar Tribunal Adjudication Service, Case Number 2021/4441 in particular paragraph 42 and 44. He submitted that the analysis used in Holbrook was approved in the case of Husain-v-SRA [2025] EWHC 1170 (Admin).

He referred the Tribunal to SSDT-v-Simon Brown. 4 October 2019 as a case relevant to this Complaint. There a number of tweets were found to be offensive, sectarian and provocative.

The Fiscal summarised a set of propositions he submitted could be derived from the authorities:-

- Khan p25 and p26, maintaining public confidence in a profession is something which members of that profession and the public who use it have a legitimate interest in and both are entitled to expect high ethical standards. It is a legitimate aim and is proportionate having regard to a "pressing social need to uphold and maintain standards".
- The Test is essentially one of necessity and proportionality.
- Diggins page 49 and 50, a social media post is not a purely private matter. There is not in any event a bright line between public and private realm and ultimately the question is whether what is said is found to be likely to undermine trust and confidence in an individual member or the profession.
- Social media posts are protected by Article 10 and interference can only be justified if necessary and proportionate in pursuing a legitimate aim. "Necessary" doesn't mean indispensable but nor is it synonymous with useful, reasonable or desirable
- Essential issues are necessity and proportionality

- Holbrook page 103, the right to political speech is not unfettered and loses protection if it includes the use of gratuitous personal abuse, derogatory racist or sexist language.

- 103-104, Expression of political belief will require to be seriously offensive or discreditable, particularly if no derogatory or abusive language is used and objection is taken to the political message
- Brown page 122-123, use of social media in this manner can amount to a breach of rule 1.2 on the basis of lack of integrity.

The Fiscal stated the test for professional misconduct was a high bar, therefore, it would be rare for a situation to arise where conduct was found to be serious and reprehensible that would not merit interfering with Article 10 rights.

He submitted that there was helpful guidance on the approach to be taken by the Tribunal in the case Husain at page 66 where it is stated:-

"..consider each tweet individually and determine whether its meaning was inherently antisemitic, offensive or otherwise inappropriate, to stand back and look at the context of the twitter conversation to determine whether this would undermine the initial conclusion; to view all the tweet on a macro/cumulative level to determine reoccurring patterns of expression and/or coded language; to avoid any over analysis; and to resolve any doubt in favour of Mr Hussain".

The Fiscal referred the Tribunal to paragraph 60 and 61 of the case Diggins which states:-

"These require the Tribunal to assess how a hypothetical, ordinary, reasonable reader would be likely to respond to the social media statement under consideration. This is an objective process. It does not require evidence of the reactions of actual readers...the panel's task was to read the tweet, consider such evidence as there was of its context and, applying their common sense and knowledge of the world, to make an assessment of how the tweet would be likely to affect the attitudes of ordinary reasonable readers to the Bar or to the Appellant or both."

The Fiscal emphasised that it was no defence to an averment of misconduct that the post was made on a medium where people routinely use rude and offensive language.

The Tribunal asked the Fiscal if the position would be different, for instance, in the case of the Facebook page of Glasgow Friends of Israel where a person requires to join the group before being able to access its page.

The Fiscal responded that he did not accept that was the case, but in any case, the Tribunal should consider the ease by which someone could join the group.

He emphasised that the Respondent accepted all of the posts were made by him. They were made on the social media site of Facebook which was open to a member of the public, or if the Tribunal accepts the Respondent's evidence that it was not completely open, it was easily accessible and had a large number of followers.

With regard to the first post, the Fiscal submitted that the use of the reference to "72 virgins" would lead a reasonable person to conclude that this was a derogatory and offensive remark aimed towards the religion itself. He submitted that there is no evidence before the Tribunal that would amount to a basis for the description of the individual involved as "paedophilic" or a "stoner". He submitted there was no evidence that the individual was an Islamic fundamentalist. He stated that the Respondent's explanation for failing to produce any evidence of this was wholly lacking in credibility.

The Fiscal submitted that it was not clear what the point of this remark was. It was possible that it was intended as a joke. He submitted that even if this was the expression of a political view, the way the comment was expressed was derogatory, insulting, demeaning a person or group and was seriously offensive. He submitted that the ordinary reader would see it as insulting Islam.

The Tribunal asked the Fiscal what his position was in relation to the explanation given by the Respondent, that the reference to "72 virgins" was an interpretation used by suicide bombers of one part of the Hadith. The Fiscal responded that the Respondent had stated in evidence that this is in the Quran.

With regard to the second post, the Fiscal submitted that the use of the term "black" was unnecessary and was used as a term of insult. He stated that the inclusion of the adjective "black", where there was no need for it, was something that an ordinary reader would consider racial in its terms and offensive. He directed the Tribunal's attention to the difference in wording of the two posts made by the Respondent. The Fiscal conceded that, if the Tribunal considered it was necessary for the Respondent to use the word "black" to make his point, then he could not credibly submit that it was either racial or offensive. If the use of the word was not necessary and was used as an insult, then it was capable of being construed as racial and offensive.

With regard to the third post, he stated that his position was that the use of the word "cock" was offensive and unprofessional. He pointed to the Respondent's acceptance to the Reporter of the Sub Committee that the joke was in poor taste. In response to a question from the Tribunal, the Fiscal explained that the comment did not amount to professional misconduct in isolation but did so *in cumulo* with the other posts.

With regard to the final post, he stated that this was the criticism of an individual made on social media. He submitted that it was not correct to say that, because the Secondary Complainer expresses anti-Zionist views, that she is an antisemite. He emphasised that the agreement in the Joint Minute, that the Secondary Complainer had previously made remarks on Facebook which were capable of being construed as antisemitic, would not on its own lead to the conclusion that the Secondary Complainer is an antisemite. He emphasised that the Secondary Complainer gave her evidence explaining why she did not accept that she was an antisemite and invited the Tribunal to find that she was not an anti-semite.

The Fiscal accepted that, if the Tribunal reached the conclusion that the statement that the Secondary Complainer was not an antisemite was incorrect, the averment of misconduct must fail.

He stated that if the Tribunal considered whether this was a view that the Respondent could reasonably hold, this might affect the assessment of misconduct. However, the Fiscal stated that he had difficulty understanding the basis upon which the Respondent could have held this opinion, other than simply the anti-Zionist position of the Secondary Complainer. He stated that the dates of the posts produced by the Respondent were not clear and it was not clear whether the Respondent had seen these prior to making his own posts which were complained of.

The Fiscal submitted that the Respondent accepted that he was accusing the Secondary Complainer on a forum that was likely to have strong feelings about it and that he should have anticipated that would lead to a degree of hostility towards her. The Respondent did not know who the other users of the page were. The use of the terms by the Respondent was reckless, inappropriate and unprofessional.

The Fiscal argued that the conduct of the Respondent could be assessed as professional misconduct. The Respondent had acted wilfully contrary to the guidance issued by his regulator. This amounted to a breach of Rule B1.2, a lack of integrity. He referred the Tribunal to the case of Wingate and Evans-v-SRA [2018] EWCA Civ 366.

The Fiscal emphasised that these were statements made on a public forum which could be viewed by any user of Facebook or which could be easily accessed by a member of the public. Remarks were made from a Facebook profile which clearly identified the Respondent as a solicitor. They were written by the Respondent himself and he ought to have at least appreciated the risk of them causing significant offense. The Respondent had the opportunity of providing the context of these posts but did not do so. The fact that the posts were made on a page where strong views and language may have been used was not a defence.

He submitted that the conduct met the Sharp test and was serious and reprehensible. He summarised the Respondent's behaviour as :-

- Without any evidence, stating that a bomber was an Islamic fundamentalist, and was a paedophilic stoner. The terms used, the combination of those insults, and in particular the insinuation that the bomber acted from fundamental Islamic beliefs without any basis was derogatory, was offensive, and would be construed as racist by an ordinary, reasonable reader.
- Posting a comment which referred to the colour of a person's skin as part of a derogatory statement for the purposes of making a point that did not need or justify the respondent to do so.
- Using offensive language for the purposes of making a joke that the solicitor acknowledged was in "poor taste"
- Labelling a member of the public an anti-semite, without a basis for doing so, on a forum where he knew or ought to have known that such a provocative and charged term would lead to hostility being directed towards them.

He argued that if the Tribunal accepted his analysis of the posts, then the Tribunal was entitled to conclude that interference with the Respondent's Article 10 rights was justified in order to protect the reputation of the profession. He referred the Tribunal to the case of Bolton-v-The Law Society [1994] 1WLR 512 which emphasised the importance of solicitors upholding the standards and maintaining the reputation of the profession.

SUBMISSIONS FOR THE RESPONDENT

Mr Dunlop invited the Tribunal to dismiss the Complaint in its entirety he submitted that, even ignoring the issues of freedom of expression, the facts of this case come nowhere close to meeting the standard required for professional misconduct.

He reminded the Tribunal of the test set out in Sharp which he emphasised was a high bar which requires proof beyond reasonable doubt.

He emphasised that all of the cases regarding freedom of expression are fact sensitive. The cases of Khan, Diggins, and Brown were all decided on their own particular facts, which were strikingly different to this case.

Mr Dunlop directed the Tribunal to the postscript to the case of Campbell-v-Dugdale 2019 SLT (Sh Ct) 141, a recent defamation case, where the Sheriff stated "A mature legal system interferes as little as possible".

He referred the Tribunal to the case of Higgs-v-Farmer's School [2025] EWCA Civ 109 which recognises the strict qualifications for interfering with an individual's exercise of his freedom of expression. He emphasised that political speech does not mean a speech on politics but, as stated in Higgs, is an "expression of opinion on matters of public and political interest". He submitted that the introduction of the requirement that one can only use words that are "necessary" was an unnecessary fetter to the freedom of expression.

The Tribunal asked Mr Dunlop if an individual's right to shock and offend was restrained by being a member of a profession with rules and regulations within which the member had to act. He responded that a member of a profession requires to be more guarded. He explained that this was a factor that would "go into the mix" in determining what was proportionate. He submitted that the assessment was very fact sensitive and how what was said would be understood by a reasonably informed observer. He drew the Tribunal's attention to remarks in the case of Higgs in relation to the possible "chilling" effect on the freedom of expression by restrictions placed upon the freedom of expression of private citizens.

He submitted that the Fiscal had accepted that the burden of proof in this Complaint rested with him. Mr Dunlop explained that that meant the Fiscal required to demonstrate that what was being done here was proportionate. The Fiscal required to establish that the Sharp test was met and that this was consistent with Article 10. In Higgs at paragraph 77 it was clearly stated:-

"... as a matter of general principle a justification for interfering with a qualified Convention right must be proved by the party relying on it".

Mr Dunlop referred the Tribunal to the case of Rex (Watson)-v-The Chief Constable [2025] EWHC 954 (Admin) which he submitted contained a useful summary of recent authorities.

He questioned whether it was necessary for the Tribunal to make a finding of fact that the Secondary Complainer is an antisemite. He argued that the Respondent had expressed an opinion to which he had the defence of fair comment. He directed the Tribunal to the case of Joseph-v-Spiller [2011] 1 AC 852. There the difference between a statement and fact and a value judgment was emphasised. It states that paragraph 76 *"A value judgment is not susceptible of proof so that a requirement to prove the truth of a value judgment is impossible to fulfil"* and goes on to say *"...even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the*

impugned statement". He referred to paragraph 78 and 86 of Spiller and said this had two aspects: the enhanced protection for (1) making statements of opinion and (2) for making comment on matters of public interest.

Mr Dunlop highlighted the case of Brown-v-Public Prosecution Service for Northern Ireland [2022] NICA 5 which he emphasised set out: the requirement that the Law Society, in this case, convince the Tribunal of the need for interference; the importance of considering whether the remarks fall within the concept of "political speech"; "political speech" should be broadly interpreted and could cover matters of general concern and public interest.

The Tribunal asked Mr Dunlop what his position was in relation to the Fiscal's submissions that the Tribunal should make a finding that the Secondary Complainer was not an antisemite. He referred the Tribunal to the case of Greenstein-v-Campaign against anti-Semitism [2019] EWHC 281 (QB) where it was said that a statement that someone was a "notorious antisemite" would be seen as an author's opinion or a value judgment and not a statement of fact.

Mr Dunlop submitted that the most helpful case to the Tribunal was that of Holbrook, where the suggestion that criticism in the wake of an atrocity by the member of a particular religion results in offence to the whole religion, was held to be erroneous. He submitted that the framework followed by the Bar Standards Board is very similar to the Practice Rules and the guidance issued by the Law Society.

He submitted that, in considering how to square what is in the guidance from the Law Society with someone's freedom to shock and offend, the Tribunal requires to understand that the guidance is not "tram lines" and is only a part of the assessment of proportionality as a whole. He submitted that the remarks complained of require to fall into the category of "seriously offensive" or "seriously reprehensible" in order to justify interference with the right of freedom of expression. He emphasised that the reasonable reader is taken to espouse the values of a plural democracy, fundamental to which is the freedom of expression. The ordinary, reasonable reader does not take an unusually sensitive approach to what he reads on social media.

Mr Dunlop then addressed the first post complained of. He accepted that this post was derogatory and offensive of someone on his way to blow up pregnant women. He submitted that no one in a civilized society should have difficulty with being offensive to such an individual.

He reminded the Tribunal that the Fiscal brought out, in cross-examination of the Respondent, that the bomber pretended to convert to Christianity in order to help his asylum claim. He submitted that the context of this post was that the Respondent was commenting on a suicide bomber who accidentally detonated the device on

his way to the target, a maternity hospital. The tone of the post was mocking, which was in the Respondent's favour.

Mr Dunlop submitted that it was clear on the evidence that Islamic fundamentalists have tried to recruit bombers with a promise of "72 virgins" waiting for them in the afterlife.

He submitted that to hold that the use of the words "paedophilic" and "stoner" amounted to professional misconduct would be disproportionate.

He submitted that it would be wholly unfounded to suggest that this remark was derogatory to the whole religion of Islam. He argued that, if he criticised those responsible for 9/11, he was not being offensive to the whole religion of Islam. He reminded the Tribunal that the Respondent had converted to Islam himself and to suggest that, by commenting on one member of the religion, he was criticising the whole religion held no water at all.

He stated that the Tribunal could only find this conduct to be professional misconduct if it brought the profession into disrepute. He explained that no sensible person would consider this post an attack on anyone other than suicide bombers. To reach the conclusion that this comment was aimed at the whole of Islam he submitted was itself offensive to Islam and would require the reader to think that the whole of Islam covets suicide bombers.

With regards to the second post, he submitted that there was clear evidence that Archbishop Tutu had said many things which could be considered antisemitic during his life. Mr Dunlop explained that this exchange on Facebook was prompted by the lionising of Archbishop Tutu following his death. He submitted that this was a legitimate comment on a matter of public interest. In response to questions from the Tribunal, he submitted that the alleged editing of the post by the Respondent was irrelevant and should not be taken as an admission of guilt.

With regards to the third post, Mr Dunlop submitted that what was libelled about the post did not reflect well on the Complainers. When it was averred that this comment related to an "incident in which people had been killed", it was in fact an incident relating to an attempted suicide bombing where two bombers were killed when their devices exploded prematurely due to an issue with their timing devices. The comment by the Respondent was clearly a spoonerism of "did their clocks go back" to "did their cocks go black". The Complainers only belatedly recognised that this was not racist and amended the Complaint accordingly on the first day of the Hearing. Mr Dunlop emphasised that the only element of this post the Complainers now took

issue with was the use of the word "cock". He submitted that to suggest that a reputable member of the profession would find it serious and reprehensible to tell a joke that was "mildly blue" was untenable.

With regards to the fourth post, Mr Dunlop reminded the Tribunal that the remark made by the Respondent was directed to "Marie Thompson", a character that only existed in the Secondary Complainer's mind. The Secondary Complainer used a false profile to join a private group, a group that she disliked and deliberately inserted herself into. Mr Dunlop reminded the Tribunal of the nature of the Secondary Complainer's activity on Facebook. He submitted that expressing the opinion that she was a member of "the antisemitic brigade" was perfectly reasonable and the Respondent was entitled to express that opinion. He submitted that it was not necessary to make a finding in fact that the Secondary Complainer is an antisemite in order to reach this conclusion but, if the Tribunal considered that it was necessary, then he considered that there was ample evidence from her activity on Facebook to draw that conclusion.

Mr Dunlop submitted that none of the averments of professional misconduct held water. He invited the Tribunal to stand back and ask if a finding of professional misconduct would be a sensible result. He suggested that the Tribunal was the embodiment of the hypothetical, reasonable reader, who is not avid for scandal, who would understand the context of what he is reading and take into account the longstanding value placed on freedom of speech, would recognise that there was nothing racist in what was said and that any criticism being made was of people liable to criticism.

He submitted that any finding of professional misconduct would not be compatible with Article 10.

DECISION

The first step for the Tribunal was to determine which facts had been established. In order to do that, the Tribunal had before it the Joint Minute, documentary productions and parole evidence of two witnesses.

The Tribunal considered that the Secondary Complainer, in giving her evidence, was vague, evasive, contradicted herself and lacked credibility. It considered that the Respondent gave his evidence in a straightforward manner and made concessions, where it was appropriate. He volunteered in evidence that he knew that the profile "Marie Thompson" was the Secondary Complainer and that, although a Facebook user had to apply to join Glasgow Friends of Israel, it was easy to gain access to the group's page.

Having carefully considered all of the evidence before it, the Tribunal found the facts at paragraph 6.1 to 6.8 to be established. The Tribunal accepted the Respondent's evidence regarding the context of the various posts

complained of. The Fiscal had commented on the Respondent's failure to produce the chain of posts that his remarks were part of, however, there is no onus on the Respondent to produce that evidence. The screenshots of the comments posted by the Respondent clearly showed that these comments were part of a chain of comments on Facebook and the Tribunal accepted the Respondent's evidence providing the context for those chains of communication.

The Tribunal required to consider four averments of professional misconduct. The Tribunal considered that the correct approach was to look at the individual comments in turn, in an objective manner, as the ordinary, reasonable reader and then consider the comments in each of their contexts.

The first was that the Respondent :-

5.2 (a) failed to maintain the standards of behaviour expected of a solicitor by posting a racial comment publicly on an online social media platform on 15 November 2021 namely:

You need to be scientific to get the mix of nail varnish, hydrogen peroxide, and acetic acid correct and stable. Not a sweaty nervous paedophilic stoner in the back of a taxi who thinks there are 72 virgins waiting.

It was clearly established that the Respondent made the remark as set out above. He explained this was part of a discussion relating to a suicide bomber who attempted to blow up a maternity hospital, but whose explosive device exploded prematurely, outside the hospital. The Complainers did not appear to dispute that this was the context of the comment, but did dispute the basis for using the language that he did in making the comment. The Respondent accepted that he made the remark using a Facebook profile which publicly disclosed that he was a solicitor.

It should be noted that this averment alleges that the comment was racist. The Tribunal concluded that if it did not accept that the comment was racist, this averment could not be held as established.

The suggestion put forward by the Fiscal was that the reference to "72 virgins" had the effect of directing the remark to the whole of Islam and that is what made the remark racist. Putting aside the issue of whether Islam is an ethnicity, the Tribunal did not believe that the ordinary, objective reader would have reached such a conclusion, given the whole context of the remark. It considered that to criticise one member of a religion is not the same as criticising the whole religion.

Therefore, the Tribunal held that this averment of misconduct was not established.

The second averment of professional misconduct was that he:-

(b)) failed to maintain the standards of behaviour expected of a solicitor by posting a racial and/or and/or offensive and/or unprofessional comment, comment publicly on an online social media platform on 29 December 2021 namely: "But white leftist love an underdog and will forgive his racism (especially since he is a smiley dancing black one)"

In his submissions, the Fiscal indicated that if the Tribunal accepted the Respondent's explanation for using the word "black", then he had to concede that the comment did not meet the threshold for professional misconduct. The Tribunal concluded that the point the Respondent was making was that some white people might find it difficult to understand that a black person could be racist. The Tribunal took the view that the use of the word "black" was relevant and reasonable and in no way used in a derogatory manner. The Tribunal concluded that the objective reader would not construe the use of the word as racist in nature.

Accordingly, the Tribunal concluded that this averment was not established.

The third averment of misconduct in its amended terms was that he :-

(c) failed to maintain the standards of behaviour expected of a solicitor that he responded in an offensive and/or unprofessional manner to a post on a social media platform on 29 December 2021 by posting a public comment "did their cocks go black?"

The only matter the Complainers took issue with was the Respondent's use of the word "cocks". The Complainers referred to the case of Wingate as support for the proposition that a solicitor must act with integrity in his private life as well as in his professional role. This is a well accepted proposition. However, it should be noted that the case of Wingate states that solicitors are not expected to be "paragons of virtue". The Respondent made a remark online that was a joke, described by Mr Dunlop as "mildly blue". The Tribunal did not accept that the ordinary, objective reader, not residing in an Ivory Tower, would take offence to the language used in this context. The language used was not of the character that would call into question the integrity of the Respondent or put at risk the reputation of the profession.

The Tribunal concluded that this averment was not established, and would not have been even on an *in cumulo* basis.

The fourth averment of misconduct was that he:-

(d) failed to maintain the standards of behaviour expected of a solicitor when he made incorrect and/ or unprofessional posts publicly on an online social media platform by posting on 16 January 2022 that the secondary complainer was a member of "the anti-semitic brigade".

The remark made by the Respondent is said in the Joint Minute to have been :-

On 16 January 2022, the Respondent posted on an online social media platform, namely, Facebook, that: "Marie Thompson usually threatening a sinister bluster from the anti-Israel (antisemitic) brigade."

This was clearly the expression of his opinion. The Tribunal took the view that it did not require to consider whether the Secondary Complainer was in fact an antisemite. What it had to consider was whether or not the Respondent had a reasonable basis on which to make the remark. The Complainers had agreed in the Joint Minute that the Secondary Complainer had made remarks on Facebook that were capable of being construed as antisemitic. Given the concession made in the Joint Minute, the Tribunal did not consider it necessary, for the purposes of this judgement, to look at the detail of the posts put to the Secondary Complainer in evidence. Mr Foulis questioned whether the remarks of the Secondary Complainer produced by the Respondent to the Tribunal had been made prior to the comment being posted by the Respondent and whether or not the Respondent had seen them before posting his comment. The Respondent gave evidence that the Secondary Complainer had made a large number of such remarks, although he could not say whether the ones copied to the Tribunal were made before he made his comment. The copies provided to the Tribunal were only some of the remarks he said the Secondary Complainer had made. It was the Respondent's evidence that his comment was posted on the page of Glasgow Friends of Israel in response to a comment made by "Marie Thompson", the false profile he knew that the Secondary Complainer used in order to join the group.

The Tribunal concluded that the Respondent had a reasonable basis on which to make the remark he did and found this averment was not established.

Given the Tribunal's assessment of all four posts, the Tribunal did not consider that it was appropriate to remit any of the four averments to the Law Society in terms of Section 53ZA of the 1980 Act.

SUBMISSIONS ON EXPENSES AND PUBLICITY

Mr Dunlop invited the Tribunal to make an award of expenses in favour of the Respondent on the usual scale, on the basis that expenses normally follow success. He invited the Tribunal to sanction the instruction of Senior and Junior Counsel. He submitted that the justification for that was (1) the nature of the Complaint (2)

the seriousness of these matters for the Respondent (3) the distress occasioned by the Respondent (4) the complexity of the matter involved and (5) that it was appropriate for specialist Counsel to deal with the matter.

With regard to publicity, he invited the Tribunal to take the usual approach.

The Fiscal indicated that he had no issue with the Tribunal following the usual process for publicity.

In response to a question from the Tribunal, he confirmed that his position was a neutral one in relation to publicity naming the Secondary Complainer. He acknowledged that the Complaint was brought by the Secondary Complainer and that she had indicated an intention to claim compensation if the Complaint had been successful. He invited the Tribunal to only publish the personal details of the Secondary Complainer that were necessary for the Tribunal's reasoning.

In relation to the question of expenses, he submitted that he could not take issue with the usual rules and accepted the scale of expenses. He did not concede that the matter was appropriate for the instruction of both Senior and Junior Counsel. He submitted that it was a matter for the Tribunal to be satisfied that the complexities and importance of the Complaint justified granting sanction.

Mr Dunlop responded that it was appropriate to name the Secondary Complainer in these proceedings.

With regard to expenses, he confirmed that the preparation work was done by Junior Counsel and that he, as Senior Counsel, had consulted on 20 March 2025 and then represented the Respondent at the Hearing.

DECISION ON EXPENSES AND PUBLICITY

With regard to the issue of publicity, the Tribunal gave careful consideration to all of the information before it. It required to balance the issues of open justice with the interests of those to be identified. The Tribunal noted that the posts on Facebook referred to in the course of the Hearing were public and clearly identified the Secondary Complainer. She had given evidence in person at a Hearing held in public. In these circumstances, the Tribunal concluded that it was appropriate that publicity should include the name of the Secondary Complainer.

With regard to the question of expenses, the Tribunal noted that this was a Complaint under the 2008 Rules and that the usual scale for 2008 Rules cases should be applied. The Tribunal noted that the Respondent was entirely successful in the defence of the Complaint. The Tribunal considered that the prosecution had been

entirely lacking in context and evidence had been necessary to place the communications in context. The Tribunal noted that the Complainers only conceded the issue of the use of the word "black" in averment 5.2(c) on the first day of the Hearing. Having regard to all of the circumstances and information before it, the Tribunal considered that the fair and appropriate decision was to award expenses to the Respondent.

With regard to the issue of sanction, the Tribunal recognised that the allegations were of a serious nature and that the submissions on the applicable law were detailed. In these circumstances, the Tribunal considered it appropriate to grant sanction for the instruction of Senior Counsel but did not consider that it was appropriate to grant sanction for both.

Mark Hastings

Acting Vice Chair