

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

SOLICITOR B

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Solicitor B (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were two Secondary Complainers, Ms AA and Org 1.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 2 April 2015 and notice thereof was duly served on the Respondent.
5. The hearing took place on 2 April 2015. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow.

6. An amended Complaint was lodged with the Tribunal together with a Joint Minute admitting the averments of facts, averments of duty and averments of professional misconduct in the Complaint as amended. It was also agreed between the parties that the Productions lodged on behalf of the Respondent and the Complainers were complete and were what they claimed to be and were accepted in to evidence. The Complainers lodged a List of Authorities. The Tribunal agreed to allow these documents to be lodged late. The request for anonymity in connection with both the Secondary Complainers was agreed and in the circumstances the hearing was held in private.

7. The Tribunal found the following facts established:-

7.1 The Respondent is a solicitor enrolled in the Registers of Solicitors in Scotland. He has been a Principal in private practice since 1992 latterly as a Partner and then a Director of Firm B Limited.

MS AA

7.2 In or around July 2010 Ms AA sought advice from Org 1 regarding matrimonial difficulties and in particular her separation from her husband and allegations of assault by him against her, as a result of which he had been charged by the Police.

7.3 At that time Org 1 had a long standing arrangement for referral of clients such as Ms AA to the Respondent. In line with that in August 2010 Ms AA was referred by Org 1 to the Respondent to act on her behalf in relation to the matters outlined in the preceding paragraph. Org 1 had been referring clients to the Respondent for approximately 15 years.

- 7.4 At the initial meeting on or around 27 August 2010 the Respondent, Ms AA and a representative from Org 1 were present. Prior to 27 August 2010 Ms AA and the Respondent had not met. The solicitor/client relationship between the Respondent and Ms AA commenced on that date. At that meeting Ms AA was upset and tearful. On that date and until 4 November 2010 the Respondent was aware that Ms AA alleged that she had been physically abused by her husband; that her husband had been charged with assaulting her and was subject to bail conditions which required him to have no contact with her.
- 7.5 Between around 27 August 2010 and the beginning of November 2010 the Respondent and Ms AA had a number of solicitor/client meetings in the Respondent's office, including 7 September, 17 September, 23 September, 1 October and 12 October all 2010. In some of those a representative from Org 1 was present. In others it was just the Respondent and Ms AA. From the commencement of the solicitor /client relationship on 27 August 2010 Ms AA was in a vulnerable state and remained so whilst a client of the Respondent.
- 7.6 By letter of 3 September 2010 the Respondent referred back to the initial meeting of 27 August 2010 and confirmed a further meeting had been arranged for 7 September 2010. That letter enclosed terms of business.
- 7.7 By letter of 29 September 2010 the Respondent wrote to Ms AA enclosing a letter from her husband's solicitors of the same date to him and referred to the next meeting arranged for 1 October 2010. By letter of 29 September 2010 the Respondent received pension details from Ms AA's employer.
- 7.8 Between Saturday 25 September 2010 and 3 October 2010 the Respondent and Ms AA commenced a sexual relationship. Said

relationship commenced within the offices of the Respondent, Ms AA having attended his office for a client meeting. Ms AA attended the offices of the Respondent at the Respondent's request to discuss a letter to her MP. At said meeting she had and produced to the Respondent photographs of the alleged bruising inflicted by Ms AA's husband. Accordingly at the time of the commencement of the sexual relationship between the Respondent and Ms AA the Respondent was acting on her behalf on the basis set out above.

- 7.9 On or about 6 October 2010 the Respondent and Ms AA stayed together in the same room at a Hotel in Aberdeen where they had sexual relations.
- 7.10 By letter of 6 October 2010 Ms AA's husband's solicitors wrote to the Respondent.
- 7.11 By letter of 11 October 2010 the Respondent wrote to Ms AA providing information in relation to her employer's pension and confirmed another meeting had been arranged for 12 October 2010 but this did not take place. A sale proceeds mandate dated 12 October 2010 with "Firm B" marked on it was held by the Respondent. Said mandate was returned by the Respondent. The Respondent replied to the letter of 6 October 2010 by a without prejudice letter of 13 October 2010. Said letter clearly disclosed that he had taken instructions from Ms AA in relation to the letter of 6 October 2010 and he offered proposals for resolution on behalf of his client. Said letter returned the mandate to the husband's solicitor duly revised.
- 7.12 On 21 October 2010 Ms AA e-mailed the Respondent indicating she had been advised by her bank that no direct debits had been paid from her joint account and that her husband had withdrawn funds from the account.

- 7.13 By e-mails dated 27 and 29 October 2010 Ms AA's husband's solicitor contacted the Respondent referring back to his letter of 13 October 2010 (see paragraph 7.11 above).
- 7.14 At no time prior to 4 November 2010 did the Respondent advise the solicitor acting for Ms AA's husband that he was no longer acting. Furthermore at no time did the Respondent write to Ms AA intimating to her that he had ceased to act.
- 7.15 Between around 27 August 2010 and the beginning of November 2010 the Respondent acted for Ms AA and during said period the Respondent and Ms AA had frequent sexual intercourse at his office, her home and other locations including the Hotel in Aberdeen detailed above.
- 7.16 At the beginning of November 2010 a decision was taken and Ms AA instructed another solicitor. By letter of 8 November 2010 to the Respondent a mandate dated 4 November was sent to him by another solicitor who took over acting for Ms AA. The consensual sexual relationship between Solicitor B and Ms AA continued until around February 2012.

ORG 1

- 7.17 The factual narrative is set out above.
- 7.18 Org 1 is a national charity working to end domestic violence against women and children. The Respondent was aware of this and had been accepting referrals from Org 1 for many years as detailed above.

7.19 Ms AA first approached Org 1 in about July 2010 and as detailed above was referred by them to the Respondent. At that time Ms AA was in a vulnerable state.

7.20 In referring clients, including Ms AA to the Respondent, Org 1 placed trust and confidence in the Respondent and expected him to act in compliance with the standards expected of a solicitor in private practice and in particular with professional and personal integrity.

8. Having heard submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

8.1 His entering into a sexual relationship with a vulnerable client referred to him by Org 1 and acting in a manner that raised issues as to his trustworthiness and placed into question his personal and /or professional integrity.

8.2 His entering into a sexual relationship with a client who was vulnerable thereby:-

- (a) allowing his independence to be impaired;
- (b) failing to act in the best interests of his client;
- (c) allowing his own personal interests to influence his actions on behalf of his client;
- (d) creating a potential conflict of interest between the interests of his client and his own and.
- (e) failing in his duty of utmost trust and confidence.

9. Having heard the Solicitor for the Respondent in mitigation and after having adjourned due to the lateness of the hour until 29 April 2015 to conclude its deliberations, the Tribunal pronounced Interlocutors in the following terms:-

Edinburgh 29 April 2015. The Tribunal having considered the amended Complaint at the instance of the Council of the Law Society of Scotland against Solicitor B; Find the Respondent guilty of Professional Misconduct in respect of his entering into a sexual relationship with a vulnerable client referred to him by Org 1 and his acting in a manner that raised issues as to his trustworthiness and placed into question his personal and/or professional integrity and his entering into a sexual relationship with a client who was vulnerable thereby allowing his independence to be impaired, failing to act in the best interests of his client, allowing his own personal interests to influence his actings on behalf of his client, creating a potential conflict of interest situation and failing in his duty of utmost trust and confidence; Censure the Respondent; Fine him in the sum of £5,000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, 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 £14.00; and Direct that publicity will be given to this decision but that the publicity will not contain the name of the Respondent or any of the parties to the said proceedings or otherwise identify them.

(signed)

Dorothy Boyd
Vice Chairman

Edinburgh 29 April 2015. The Tribunal having found the Respondent, Solicitor B, guilty of professional misconduct and having heard from the Secondary Complainer, Org 1, find that Org 1 were directly affected by the Respondent's professional misconduct and Direct that the Respondent provide a verbal apology to the manager and the Board of Org 1 to be followed up with a written apology.

(signed)

Dorothy Boyd
Vice Chairman

Edinburgh 29 April 2015. The Tribunal having found the Respondent, Solicitor B, guilty of professional misconduct find that Ms AA has been directly affected by the Respondent's misconduct and Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to Ms AA the sum of £250 by way of compensation and that within 28 days of the date on which this Interlocutor becomes final with interest at the rate of 8% per annum from the due date until paid.

(signed)

Dorothy Boyd
Vice Chairman

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

Dorothy Boyd
Vice Chairman

NOTE

Ms Motion, for the Law Society, lodged an amended Complaint with the Tribunal. A Joint Minute was also lodged which admitted the averments of fact, averments of duty and averments of professional misconduct in the amended Complaint. It was confirmed by Ms Motion and Mr Macreath that the Complainers Production 1 -14 and the Respondent's Productions were agreed between the parties. It was asked that the documents be allowed late and this was agreed.

Ms Motion asked the Tribunal to give anonymity to both Secondary Complainers. In connection with Org 1, there was a risk to their reputation as Town X was a small community and there was concern that people would lack confidence in their ability to recommend solicitors.

In connection with Ms AA, she had young children and was a vulnerable person and it would accordingly not be appropriate to identify her in any publicity of the findings.

Mr Macreath indicated that he agreed that there should be anonymity for the Secondary Complainers but also felt that in the circumstances of this particular case it might be necessary to avoid giving publicity to the Respondent's name due to the risk that this could lead to identification of the Secondary Complainers.

The Chairman enquired as to whether or not the parties were requesting that the hearing be held in private. Ms Motion indicated that hearings were usually held in public but she had a neutral stance with regard to the hearing being held in private. Mr Macreath indicated that the matters being discussed would be of a personal and sensitive nature and asked that the case be heard in private. It was suggested that the submissions be heard in private and thereafter, if necessary, the Secondary Complainers' claims for compensation could be heard in public.

DECISION ON WHETHER THE TRIBUNAL HEARING SHOULD BE HELD IN PRIVATE

The Tribunal considered it appropriate in this case that the whole of the hearing be heard in private. If there was to be anonymity for the Secondary Complainers it would not be appropriate to have the public admitted to any part of the hearing especially the part where the Secondary Complainers may be giving evidence in relation to compensation claims. The Tribunal then enquired as to whether or not either of the Secondary Complainers wished to be present during the private hearing. In the case of Ms AA, she was entitled to be present during the hearing because she was a Secondary Complainer who had requested compensation. However Org 1 were a Secondary Complainer who had not requested compensation and accordingly in terms of Rule 14 of the Tribunal Rules they would not necessarily be entitled to be present during a private hearing.

The Tribunal enquired of the representative for Org 1 as to whether or not she wished to make submissions as to why she should be entitled to remain during the private hearing. Mr Macreath on behalf of the Respondent indicated that there would be objection to this.

In the circumstances the representative from Org 1 indicated that she was quite happy to remain outwith the hearing during the submissions. Ms AA confirmed that she did not wish to be present during the submissions being made to the Tribunal.

The Tribunal accordingly proceeded to hear submissions from both parties in a private hearing.

SUBMISSIONS FOR THE COMPLAINERS

Ms Motion advised that there had been two independent complaints made, one from Org 1 and one from Ms AA. At the time the case was referred from Org 1 to the Respondent, Ms AA's husband had been charged with assault and she sought assistance from Org 1. The solicitor – client relationship between Ms AA and the Respondent started on 27 August 2010. The sexual relationship between them started

at some point between 25 September and 2 October 2010. Ms Motion indicated that she was not going to ask the Tribunal to determine which date was the start date as there was a dispute between the parties with regard to this matter. Ms Motion's position was that the relationship started when Ms AA perceived herself to be the victim of an abusive marriage and the relationship started within the Respondent's office.

Ms Motion referred the Tribunal to the Productions lodged being letters which showed that the Respondent, was at this time, continuing to act for Ms AA. There was not a mandate to another firm of solicitors until 4 November 2010. The relationship continued until February 2012. Ms Motion stated that there was nothing in the standards of conduct that specifically prohibited sexual relationships between solicitor and client. She however indicated that such a relationship led to the potential for a breach of the standards and the practice rules. She submitted that the generalised code was sufficient for the purposes and a breach of these could result in a finding of professional misconduct.

Ms Motion submitted that as soon as the relationship began the Respondent placed his personal and professional integrity into question and compromised his independence and the best interests of his client. Ms Motion submitted that the Respondent's personal interests should be subservient to his client's. She referred to Paterson & Ritchie, Law, Practice and Conduct for Solicitors which indicated that it would depend on the circumstances but if it was a divorce client in a distressed state who was looking for legal and pastoral support it was likely to be of more serious concern. Ms Motion submitted that a solicitor should not cross the line especially with a vulnerable client. She indicated that competent and reputable solicitors would consider that his conduct amounted to professional misconduct and emphasised that it was important to maintain public confidence in the profession. She asked the Tribunal to make a finding of professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath advised that the sexual relationship between the Respondent and Ms AA was not covered by any specific rule however there was a fiduciary duty owed to a

client by a solicitor to avoid any potential for a conflict or interference with independence. That was the reason that a plea to professional misconduct had been tendered in this case. Mr Macreath submitted that there was a good reason why there was no specific rule in the UK. It was recognised in Scotland that a solicitor must recognise his objectivity could be compromised and that to remain fully independent a solicitor must have no ties which would interfere with this. Mr Macreath submitted that the fiduciary duty was paramount.

The facts in this case were that the client was referred to the Respondent at the end of August and there were meetings. There was a very short professional relationship but the unequal balance between a solicitor and client meant that independence was vital. Mr Macreath stated that his client's position was that the intimacy commenced on 2 October and that the Respondent referred Ms AA on to an accredited solicitor in the area on 4 November. This was five weeks later. The Respondent however should have stopped the professional relationship as soon as he started having an intimate relationship with Ms AA. The appointment with the accredited solicitor however was arranged for an earlier date but due to her commitments it was not possible for this to take place. Mr Macreath stated that it was not accepted that the Respondent took any unfair advantage and this was borne out by the fact that the relationship endured until February 2012. The complaint did not arise until after the relationship ended.

Mr Macreath stated that sexual relationships between clients and solicitors did occur. They may be wrong but they did in reality happen. It was however the responsibility of the lawyer not to cross the boundary. Mr Macreath referred to the Healthcare Profession where there was a strict prohibition due to the nature of the doctor – patient relationship.

Mr Macreath also pointed out that in America there was now a strict prohibition but this was due to a number of high profile extreme end cases. Mr Macreath emphasised that in this case it was a consensual relationship. Mr Macreath submitted that a total ban on these types of relationships was overkill. However if a solicitor placed his or her interests in conflict with those of a client this may be an abuse of the fiduciary relationship. A solicitor's advice must be objective and emotions should not affect it. Once sexual feelings come into it there should be no further professional relationship.

Becoming involved can lead to poorer or wrong advice. In this case Mr Macreath however submitted that the client did not suffer any damage and there was no actual conflict, only the potential for it. There had been no evidence of any disadvantage to Ms AA.

At the time the Respondent saw his client her husband had been charged with assault. However her husband was found not guilty after trial. At this time she had the support of Org 1 and also the Respondent. The Respondent sought pension information and corresponded with her husband's solicitor with regard to maintenance issues and the sale of the home. There was however no active litigation. Mr Macreath submitted that the Respondent had recognised on 2 October that Ms AA would have to seek independent advice. This was however not part of the dialogue between the Respondent and Ms C, whom he passed the work to. The Respondent was keen that Ms AA obtain a very good alternative solicitor and referred her to an accredited specialist. The Respondent's firm was a small firm and his partners had no experience in these matters. Mr Macreath pointed out that the Respondent did not act in litigation for Ms AA nor did he leave her in the lurch. He did not subjugate his client's interests. At the time that the relationship ended there was no solicitor – client relationship.

Mr Macreath stated that it was accepted that Ms AA was vulnerable on the basis that if a client is stressed and wound up, they could be said to be vulnerable but in the widest sense of the word.

Mr Macreath pointed out that the Respondent did write to Org 1 by email in May 2012 offering contrition and an apology but there was no response. Mr Macreath submitted that during the relationship with the Respondent there was no sign of Ms AA being particularly vulnerable. Mr Macreath pointed out that lawyers had to be people of note and of good standing. He referred the Tribunal to the reference lodged by a Sheriff. The Respondent had no previous findings of misconduct and had not had any complaints that had come to anything in the past. He and Ms AA had met weekly and she had given him a mobile phone. It was not a relationship which the Respondent took lightly. He separated from his wife in June 2011 for a few weeks and then was reconciled but the relationship continued.

After the relationship finished, the Secondary Complainer spoke to the Respondent's wife which led to devastation and distress for a number of people. The Respondent has now reconciled with his wife. He and his wife have two children. Mr Macreath stated that the Respondent was highly thought of by the faculty in Town X. The Respondent undertook not to deal with any future referrals from Org 1. Mr Macreath questioned whether or not if the relationship had continued there would have been any complaint made to the Law Society. He submitted that his client was bitterly regretful and submitted that there would be no risk of repetition.

FURTHER SUBMISSIONS FROM THE COMPLAINERS

Ms Motion stated that she had no information with regard to any prior meeting arranged with Ms C which then had to be cancelled. She pointed out that in connection with Org 1, that organisation referred clients and had had their trust breached. Ms Motion stated that although the Secondary Complainer's husband had been acquitted after trial, at the time the relationship started she was complaining of an abusive relationship and her husband was on bail for an assault charge. Ms Motion submitted that the Respondent crossed the line. Her position was that it was not accepted that the Secondary Complainer was told that separate advice was going to be necessary.

Mr Macreath stated that within a week of 2 October the Respondent had tried to get an appointment with Ms C but the 4 November was the earliest she could see Ms AA.

Ms Motion pointed out that the apology made to Org 1 was conditional upon them withdrawing the complaint. In connection with the reference from a Sheriff she indicated that she was not aware whether or not he knew of these proceedings. Ms Motion pointed out that between 25 September and 10 October, the Respondent still held himself out as Ms AA's solicitor. Ms Motion submitted that this was a very serious allegation and that it was important to the profession that it was dealt with severely to show that you could not cross the line. She submitted that such conduct brought the profession into disrepute.

In response a question from the Chairman as to whether Ms Motion was submitting that it was a strict liability offence, she indicated that in terms of Paterson & Ritchie she was not submitting this but in this case there should have been major warning bells particularly as Ms AA was a vulnerable client. The Respondent was in a position of trust and authority and undermined his duties and broke the trust of Org 1.

Ms Motion stated that she was not sure if a doctor – patient relationship was significantly different from this one. She referred the Tribunal to the case of AJ Bolton-v-The Law Society [1993] EWCA Civ 32 at paragraphs 14, 15 and 16 and submitted that the conduct raised issues as to the Respondent's fitness to practise. Ms Motion stated that no evidence had been provided to show that this would not happen again. She referred to some of the emails sent by the Respondent and suggested that they showed a lack of insight and did not suggest that the Respondent was remorseful. She submitted that it was possible that in future the Respondent may get similar types of clients.

FURTHER SUBMISSIONS FOR THE RESPONDENT

Mr Macreath stated that Ms Motion was trying to impose a moral standard on the profession that if a lawyer entered into a relationship they must stop acting immediately. However Paterson & Ritchie indicated that entering into such a relationship was not automatically professional misconduct. Mr Macreath pointed out that the Respondent phoned Org 1 on 29 February 2012 as soon as the Secondary Complainer voiced concerns as he realised immediately that he should contact Org 1.

Mr Macreath submitted that the Respondent was too close to the situation and was in turmoil at the time. He further submitted that Bolton was not in point as this concerned a very serious case of misuse of clients' money. He referred to the importance of culpability and the Sharp Test. Mr Macreath submitted that if a solicitor had a relationship with a client and then withdrew from acting there could not be criticism. In this case it was a consensual relationship and there was no basis to say that there was a risk of repetition. Mr Macreath stated that if he thought there was a risk in this case he would say so.

Mr Macreath explained that the Respondent worked five days a week at court and saw clients at the office on a Saturday morning. This however would not happen in future. Mr Macreath submitted that the Respondent had enormous insight and had considered leaving the profession.

After a short adjournment, Ms Motion advised that she had checked with Ms AA as to when she was asked to take separate advice and she advised that it was about two weeks before 4 November when she was advised by phone to take legal advice and then the meeting was set up. She did not recall any meeting having been cancelled.

DECISION

The Tribunal did not consider this to be a strict liability offence. However the Respondent, by continuing to act for his client after he entered into a sexual relationship with her, breached the fiduciary duty owed by a solicitor to a client. The entering into an intimate relationship, meant that the Respondent was no longer able to give independent advice free from external influences or personal interests. A solicitor owes his client a duty of upmost trust and confidence. It is imperative in order to uphold the reputation of the profession that solicitors adhere to this duty.

In this case the Respondent was dealing with a vulnerable client who had been referred on to him from Org 1. He was also acting in a divorce matter which was very personal to his client and his judgment in relation to dealing with these matters may well have been affected by his intimate relationship with his client. The Tribunal noted that soon after the relationship started the Respondent referred his client on to another solicitor who was an expert. In the whole circumstances however the Tribunal find that the Respondent's conduct in continuing to act during this period is seriously sufficient and reprehensible so as to amount to professional misconduct.

SUBMISSIONS FROM THE SECONDARY COMPLAINERS

Ms B from Org 1 confirmed that Org 1 were not looking for any financial compensation but was very concerned about how the Respondent had let someone referred to him by them down and advised that Org 1 accordingly felt that they had let Ms AA down. Ms B stated that Org 1 was looking for an apology from the Respondent.

Mr Macreath indicated that the Respondent had no difficulty with this and it was agreed that the Respondent would meet with the manager and Board of Org 1 and provide a verbal apology which would be followed up with a written apology.

Ms AA indicated that she was looking for financial compensation and that she wanted recompense. She indicated that she did not have any documentary evidence with her and did not wish to give evidence. She however advised that she had been attending appointments with a psychotherapist. Some of the visits had been paid for by Org 1 but some had not. She indicated that she might be looking for a nominal sum and then indicated that she might perhaps wish £3,500.

The Chairman explained that for the Tribunal to be able to award a sum such as this, she would have to substantiate her claim. The Chairman further explained that if Ms AA was looking for anything other than a nominal sum by way of compensation she would require to provide some evidence of the link between the Respondent's professional misconduct and her psychotherapist's appointments. The Chairman advised that due to the lateness of the hour, the case was to be adjourned to another date in any event and this would give Ms AA the opportunity to obtain documentation and return on the future date. The Chairman however advised Ms AA that if the Tribunal was involved in extra time in respect of evidence regarding her compensation claim and this was not successful there was a potential for an award of expenses. Ms AA stated that she did not want to come back on another date or give evidence and wanted an end to the matter today. Ms AA indicated that in the circumstances she did not want the opportunity to lodge documentation and was happy with a nominal sum.

Mr Macreath on behalf of the Respondent indicated that the Respondent was prepared

to offer a sum of £250. Ms AA indicated that this was acceptable to her. The Tribunal accordingly agreed to award compensation in the sum of £250.

SUBMISSIONS ON PUBLICITY AND EXPENSES

Ms Motion asked the Tribunal to award expenses of the Law Society and the Tribunal in the usual manner.

Mr Macreath stated that in the unusual circumstances of this case, he was making an application for the Respondent's name also to be anonymised in the Findings. Mr Macreath stated that Town X was a small area and that there had already been a court case and a lot of publicity about the matter. Mr Macreath stated that Ms AA had young children and if publicity was given to Findings with the Respondent's name in it it would raise the matter again in the community which may well cause a risk of harm to Ms AA's children. He asked the Tribunal to use the powers contained in Section 14A of Schedule 4 to the Solicitors (Scotland) Act 1980.

DECISION

The Tribunal found this to be a difficult case and considered its decision in connection with sanction very carefully. The Tribunal noted that in connection with the complaint from Ms AA, the complaint was not raised until the relationship had ended. However the Tribunal is considering the Respondent's conduct in continuing to act after he had entered into a sexual relationship with his client. The Respondent should have known better and committed a serious error of judgment by continuing to act. The Tribunal did not consider that the Respondent acted improperly from a legal point of view as he just kept matters ticking over. The Tribunal however considered that the most serious aspect of the Respondent's misconduct was his breach of Org 1's trust. The Respondent was considered to be a trusted advisor by Org 1 and he abused this position of trust. The Tribunal consider this to be very damaging to the reputation of the legal profession.

The Tribunal however noted that the Respondent did recognise that he should not continue to act and did take steps to sort matters out albeit that he did not do this quickly enough. An intimate personal relationship is different from a professional association or social friendship and Solicitors should exercise extreme caution when entering into an intimate relationship with a client particularly if the client is a vulnerable client.

In considering sentence, the Tribunal took account of the fact that the Respondent has been a solicitor for 25 years with no previous issues. The Tribunal considered that the Respondent had shown extreme remorse and insight into what had happened. The Tribunal also noted that the Respondent had changed his practices and will no longer meet clients at his office alone at the weekend. In the circumstances the Tribunal think it is extremely unlikely that the Respondent would re-offend. The Tribunal accordingly did not consider that the Respondent presents a risk to the public and did not consider it necessary to restrict his practising certificate. The whole episode has clearly had a huge impact on the Respondent and the Tribunal noted that he is willing to go to the Board of Org 1 and formally apologise. The Tribunal did not consider that the Fiscal's references to the case of Bolton were helpful as that case relates to misappropriation of clients' funds which is completely different territory. It is difficult to see how this case is in point.

The Tribunal noted a case dealt with by the Tribunal against a Ms A in 2001 where a solicitor was found guilty of professional misconduct in respect of forming an intimate personal relationship with a party to litigation (then represented by the firm of solicitors for which she was a partner) whilst continuing to act for a child who was also party to the proceedings and thereafter having been assumed as a partner in the firm of solicitors acting for the opponent in these proceedings she continued to act for the child notwithstanding the further conflict. In that case the Respondent was Censured and Fined in the sum of £1,000.

The Tribunal considered that an appropriate sanction in this case was a Censure plus a Fine of £5,000 to represent the seriousness with which the Tribunal views the Respondent's breach of the trust of Org 1.

The Secondary Complainers did not ask for expenses but the Law Society asked for expenses in the usual manner. The Tribunal saw no reason to depart from the usual practice of awarding expenses of the Tribunal and the Law Society against the Respondent.

In connection with publicity, Mr Macreath asked the Tribunal to also anonymise the Respondent's name in the findings as Town X is a small area and there was a risk that there would be harm to Ms AA's children if publicity was given to the whole matter in the community again.

The Tribunal considers that in this case there has been enough distress caused to all the parties involved and given that Town X is a small town and the matter has already had a high profile in the area, there is a real risk if publicity is given to the findings including the Respondent's name and location that there would be more publicity which could adversely affect Ms AA and her children and also Org 1. Therefore in these exceptional circumstances the Tribunal has ordered that publicity be given to this decision but will not include the name of the Respondent or any of the parties to the proceedings or otherwise identify them in terms of paragraph 14(A) of the Solicitors (Scotland) Act 1980.

Dorothy Boyd
Vice Chairman