

**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, Atria One, 144 Morrison Street,  
Edinburgh**

**Complainers**

**against**

**BENJAMIN NEPHI HANN, Hann & Co.  
Solicitors, 83 Princes Street, Edinburgh**

**Respondent**

1. A Complaint dated 23 October 2020 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Benjamin Nephi Hann, Hann & Co. Solicitors, 83 Princes Street, Edinburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent. The Complainers lodged a Minute of Amendment containing a preliminary plea regarding the relevancy and specification of the Answers.
4. In terms of its Rules, the Tribunal appointed the Complaint to be set down for a virtual procedural hearing on 14 January 2021. Notice thereof was duly served on the Respondent.
5. At the virtual procedural hearing on 14 January 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. The Tribunal allowed the Complaint to be amended in

terms of the Complainers' Minute of Amendment and fixed a virtual procedural hearing for 23 March 2021. Notice thereof was duly served on the Respondent.

6. At the virtual procedural hearing on 23 March 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. On the Fiscal's motion, the Tribunal fixed a virtual preliminary hearing to deal with the Complainers' preliminary plea. The virtual preliminary hearing was set for 25 May 2021. Notice thereof was duly served on the Respondent.
7. At the virtual preliminary hearing on 25 May 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. Parties made submissions. The Tribunal repelled the Complainers' preliminary plea. A virtual procedural hearing was fixed for 29 June 2021. Notice thereof was duly served on the Respondent. An Interlocutor and Note containing the Tribunal's reasons for its decision on 25 May 2021 was issued to parties.
8. At the virtual procedural hearing on 29 June 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. The Tribunal fixed a virtual procedural hearing for 23 July 2021. Notice thereof was duly served on the Respondent.
9. At the virtual procedural hearing on 23 July 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. A Joint Minute had been lodged prior to the virtual procedural hearing. With parties' agreement, the Tribunal made two amendments to the Production numbers in the Joint Minute. The Tribunal fixed a virtual procedural hearing for 1 November 2021 and a hearing in-person for 1 and 2 December 2021. Notice thereof was duly served on the Respondent.
10. At the virtual procedural hearing on 1 November 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. The Respondent moved the Tribunal to adjourn the hearing so that he could obtain a medical report. The Respondent also made an application to recover a report produced during the Complainers' investigation and previously disclosed to him. The Fiscal indicated he was in the Tribunal's hands regarding the motion to adjourn. He opposed the motion to recover the report. The Tribunal refused the motion

to adjourn. It granted the Respondent's motion for recovery of a document. The case was continued to the hearing in-person already fixed for 1 and 2 December 2021. An Interlocutor and Note containing the Tribunal's reasons for its decisions on 1 November 2021 was issued to parties.

11. On 29 November 2021, due to concerns related to the Coronavirus pandemic, the Tribunal converted the hearing in-person to a virtual hearing.
12. At the virtual hearing on 1 and 2 December 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. The Fiscal indicated that the Complainers did not intend to lead any witnesses and would rely on the terms of the Joint Minute and the Productions agreed therein. The Respondent gave evidence. Parties made submissions.
13. The Tribunal found the following facts established:-
  - 13.1 The Respondent is Benjamin Hann who was born on 5 March 1976. He was enrolled as a solicitor on 16 August 2011. The Respondent was an employee with the firm Hann & Co, Edinburgh from August 2011 until September 2014. Thereafter he became a Director of said firm and remains so. He holds a current practising certificate.
  - 13.2 Summary proceedings were raised against the Respondent at Edinburgh Sheriff Court on 28 March 2018 under Crown Office and Procurator Fiscal Service (COPFS) reference ED18001380. The Respondent was charged with a contravention of section 39(1) of the Criminal Justice and Licensing (Scotland) Act 2010. The Respondent's wife was the alleged victim. The case was continued until 13 April 2018 when the Respondent appeared personally at Edinburgh Sheriff Court and tendered a plea of not guilty to the charge. He was released on bail subject to special conditions not to enter or seek to enter a particular address and not to approach or contact nor attempt to approach or contact his wife.
  - 13.3 The Respondent instructed Counsel to represent him. The Respondent appeared at Edinburgh Sheriff Court on 18 September 2018 at a notional trial diet and pled guilty to an amended charge under section 38(1) of the Criminal Justice and

Licensing (Scotland) Act 2010. He was represented on that date by Counsel and the Respondent confirmed to the Court his plea of guilty to that charge.

The libel of the amended charge was as follows:

*“On various occasions between 1 May 2017 and 18 January 2018, both dates inclusive, at 4 Orchard Crescent, 10/4 Pilrig Heights, Pure Gym, Ocean Terminal, Ocean Drive, all Edinburgh and elsewhere you BENJAMIN HANN did behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm, in that you did (a) repeatedly attend at the home address of [...], your wife, c/o the Police Service of Scotland, whilst uninvited; (b) repeatedly loiter at her home address; (c) leave flowers and other items for her at her home address; (d) repeatedly send text messages to her; (e) repeatedly send messages to her via social media; (f) repeatedly post messages on social media to her and (g) repeatedly attend at places where you knew or suspected she would be present; Contrary to section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010.”*

The Sheriff imposed a fine on the Respondent in the sum of £400 discounted from £500 in terms of section 196 of the Criminal Procedure (Scotland) Act 1995.

13.4 The Respondent’s conviction is recorded as one with a domestic aggravation.

14. Having regard to the foregoing facts and submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his conduct between 1 May 2017 and 18 January 2018, which led to his conviction on 18 September 2018 at Edinburgh Sheriff Court for a domestically aggravated contravention of Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010.

15. Having given the Respondent an opportunity to address it in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 2 December 2021. The Tribunal having considered the Complaint dated 23 October 2020 at the instance of the Council of the Law Society of Scotland against Benjamin Nephi Hann, Hann & Co. Solicitors, 83 Princes Street, Edinburgh: Find

the Respondent guilty of professional misconduct in respect of his conduct which led to conviction for a domestically aggravated contravention of Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010; Censure the Respondent; 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 and that this publicity should include the name of the Respondent but need not identify any other person.

**(signed)**

**Catherine Hart**

**Vice Chair**

16. 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 **7 FEBRUARY 2022**.

**IN THE NAME OF THE TRIBUNAL**

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**Catherine Hart**  
**Vice Chair**

**NOTE**

At the Hearing on 1 and 2 December 2021, the Tribunal had before it the Complaint; Answers; a Joint Minute; one Inventory of Productions for the Complainers; six Inventories of Productions for the Respondent; the Tribunal's Interlocutor & Note of 25 May 2021; the Tribunal's Interlocutor & Note of 1 November 2021; and a List of Authorities for the Complainers. On the morning of 2 December 2021, the Fiscal submitted additional authorities by email to the Tribunal Office, copied to the Respondent.

By way of the Joint Minute, parties agreed that the Respondent had been represented by a solicitor and Counsel in the criminal proceedings. It agreed that Production 1/4 for the Complainers was a true and accurate record of the narrative given in the criminal case. The agreed narrative was the basis upon which the Respondent pleaded guilty. It was first shown to the Respondent on 18 September 2018. The Respondent pleaded guilty to the charge with the benefit of legal advice. Production 1/22 for the Complainers contained the substance of the plea in mitigation presented in the criminal case. It was not shown to the Respondent in advance. Parties agreed that had the Respondent proceeded to trial, he would have faced significant expense and it is likely his mental health would have been detrimentally affected. The Joint Minute also agreed the contents of two letters as being the equivalent of and equal to the author's oral evidence (Productions 23 and 24 for the Respondent).

The Fiscal indicated that he did not intend to lead any evidence and that his case was based on the facts agreed in the Joint Minute. The Tribunal clarified with the Respondent that he was to be the only witness for the Respondent. He had lodged a medical report but he had not been able to cite the author of that report. He wished to conclude the case on 1 and 2 December 2021. He did not want it to be part-heard for him to cite the author of the medical report. He did not understand that the Complainers disputed his state of health at the relevant time.

**EVIDENCE FOR THE RESPONDENT****WITNESS: THE RESPONDENT**

The Respondent gave evidence on oath. Although repeatedly asked to focus on the events contained in the criminal libel, he gave wide-ranging evidence about many matters. Some of these did not relate to the allegation of misconduct. His evidence was not always given in chronological order but has been presented that way in the following paragraphs.

The Respondent gave evidence that his first wife died in July 2014. He met his second wife in August 2014. They got married in August 2015. He described their relationship as “toxic”. They argued, frequently broke up and got back together. They reconciled 18 times over the course of their relationship. The Respondent described various incidents prior to 1 May 2017 which he said showed that the relationship was “not normal” and provided background to what occurred during the period of the libel. He described his second wife as being very controlling, manipulative, and materialistic. She had a lot of power over him. He was terrified of being alone. There were also cultural differences between them. He pointed to occasions when after a breakup each party expected the other to “fight” for the relationship and maintain contact.

Following the final breakdown of his relationship, the Respondent explained he was charged with “stalking” his wife contrary to Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”). However, a plea to a contravention of Section 38 of the 2010 Act was accepted instead. He denied stalking his wife but felt he still had to defend himself against that charge before the Tribunal, due to things which had been included in the Law Society’s report and the Professional Conduct Sub Committee’s determination.

The Respondent invited the Tribunal to look at the conduct contained in the narrative. He said he had not behaved in a threatening or abusive way. The Sheriff had expressed some reservations about the nature of the conduct but was invited to sentence on the basis of the guilty plea.

The Fiscal objected to this line of evidence saying that the Respondent was moving away from the agreed position in the Joint Minute. According to the Fiscal, the Respondent should not be able to say he had pleaded guilty to a false narrative when he had agreed that the narrative was correct. He invited the Tribunal to give the Respondent a warning about self-incrimination. In the Fiscal’s view, if he continued in this way, the Respondent might open himself up to more serious allegations.

Following a break for discussion, the Chair indicated that the Tribunal’s view was that the words in the Joint Minute were clear. It was agreed that the narrative was a true and accurate account of what was read out in Court. The Respondent had not agreed by way of the Joint Minute that the narrative was a true and accurate of what had occurred.

The Fiscal submitted that the plea of guilty was a judicial admission. The basis of the admission was the narrative. If he departed from that, the Respondent admitted he presented a falsehood. This could have serious consequences. He referred to Wrav-v-The General Osteopathic Council [2020] EWHC 3409 and



Friel-v-Brown [2020] CSIH 7. He said it would be wrong to allow the Respondent to challenge the narrative. It was on his instruction that Counsel presented it to the Court. This was the equivalent of lying to the Court. If a position was put falsely to the Sheriff Court, the Complainers might need to consider further action.

The Respondent indicated he was in a "Catch-22" situation. He was under oath to tell the truth. The truth is he was offered a plea and took it. He wanted to highlight certain discrepancies to the Tribunal regarding the information presented to the Sheriff and the Complainers. He said he had never threatened anyone in his life. He wanted to take the Tribunal to his evidence so it could decide whether the evidence supported the narrative. The Respondent submitted that even the Procurator Fiscal said the evidence did not support the narrative. He said that Production 5 for the Complainers supported this view.

After another discussion, the Tribunal indicated that no warning against self-incrimination was required. It would hear the Respondent's evidence under reservation.

The Respondent spoke to his wife assaulting him on holiday in May 2017. A client witnessed it. The Respondent was embarrassed and split up with his wife. She contacted him later by text. He said this was an example of the situation where they would separate but neither expected to permanently cut contact. They knew they would get back together. He referred to call logs which he said showed his wife was still telephoning him on 28 May 2017. They continued to meet at dance classes. The Respondent felt that his wife was "fighting" for him. He referred the Tribunal to various texts and messages between them. They talked every day. The Respondent was very frustrated that his wife did not want to publicly acknowledge their relationship and marriage.

The Respondent referred to attending at his wife's home on 27 May 2017 even although she had told him not to visit. He said he did not see her messages until he arrived at her home. He fell asleep in his car. He did not go to her door. To him, this was "a romantic gesture". He admitted the incident did occur but said that there were minor factual inaccuracies in the narrative.

The Respondent referred to text messages he sent to his wife in August 2017. They had been on separate holidays that summer but had been in contact by telephone. They met up back in Edinburgh but argued again. He suggested that these messages were examples of him defending himself and telling his wife to leave him alone. He denied they were threatening or abusive. He admitted he swore during their discussions. He noted that his wife continued to call him constantly. He set up a custom message which was sent to his wife when she called which said, "You are not my friend."

In August 2017, the Respondent contacted his wife following a car crash. He went to her house. He said that he “wanted peace”. She asked him to leave. He did not refuse to leave. She called and paid for a taxi for him.

In September 2017, the Respondent said his wife contacted him to say she was pregnant. They got back together although she was not pregnant. His wife did not want people to know they were back in a relationship. They booked a “second honeymoon” for 14 to 19 October 2017. They were making efforts to get back together.

The Respondent described an incident in October 2017 when he said his wife locked him in her flat and attacked him. She threatened to stab him and herself. They broke up again on 11 October 2017 but went on holiday together on 14 October 2017. They talked about buying a home together, but the Respondent had second thoughts about them living together.

The Respondent referred the Tribunal to various photographs he had lodged. These included photographs of flowers he had sent to his wife which she had posted on social media. The only flowers she objected to receiving were those he left for her in November 2017. He referred to various other productions tending to show their mutual ongoing contact during the period of the libel, for example, when the Respondent helped his wife build some furniture.

The Respondent referred the Tribunal to various emails and text messages sent in November 2017, some amicable and some argumentative. He said on 7 November 2017, he tried to end things amicably. He started dating other people. The police visited him and said they did not want things to escalate. They told him not to contact her. The police told her to block him online but she did not do that. The police charged her but the Respondent wrote to the Procurator Fiscal requesting that the charges were dropped. He sent her flowers around 16 November 2017.

In December 2017 the Respondent felt his wife was defaming him and he sent her a “cease and desist” letter. He said he was very ill at that time. He was not sleeping well. He consulted his GP.

The Respondent referred the Tribunal to the Law Society Report (Production 26 in the Third Inventory of Productions for the Respondent) and the Professional Conduct Sub Committee determination (Production 25 in the Second Inventory of Productions for the Respondent) and his concerns about the

investigation and decision. He also referred the Tribunal to various messages which he said showed that his wife was a liar.

The Fiscal commenced cross-examination on the morning of 2 December 2021. The Respondent agreed that the relationship had been “traumatic” and “on and off”. It started shortly after the death of his wife in July 2014. He was married again within the year. The marriage was kept secret at his wife’s request. He did not want it to remain a private matter. They moved in together in October 2015 and she moved out in March 2016. Both made allegations to the police. Both were charged. He was prosecuted. He engaged a solicitor and Counsel to represent him. Although originally charged with a contravention of section 39 of the 2010 Act, he pleaded guilty to a contravention of section 38 of the 2010 Act.

The Respondent said that his solicitor and Counsel persuaded him to take the plea. His brother wanted him back at work. His Counsel met with the Procurator Fiscal. He said he did not want to plead but they “badgered him”. He agreed that he accepted Counsel’s advice. He was asked whether Counsel investigated his defence before negotiating a plea. He noted that her concern appeared to be his mental health. She was a professional and “put her best foot forward”. He accepted he was convicted of the section 38 offence but said he did not think those facts supported a crime. The plea was “a solution or a compromise”. He had had enough. He wanted it over. He lied to the judge. The Fiscal asked given that admission, why the Tribunal ought to believe him. The Respondent said, “I don’t care anymore”.

The Respondent said he had been on holiday when the negotiations between Counsel and the Procurator Fiscal took place. He was shown the narrative outside the courtroom. His solicitor and Counsel spent a couple of hours telling him why he should accept the plea. He did eventually accept it. He reluctantly pleaded guilty on the basis of the agreed narrative. He was not happy about it. The plea in mitigation was not discussed with him. The narrative was delivered in Court. He did not stop the Procurator Fiscal Depute from delivering it. If he did not plead guilty, Counsel would withdraw from acting.

With reference to the occasion where the Respondent slept in his car outside his wife’s home, he agreed she asked him five times to go home. He did not do so but it was because he fell asleep.

The Respondent agreed he attended at his wife’s home after a car crash. She asked him to leave. She ordered and paid for a taxi. He wanted to see and speak to her. He disagreed that he wanted to “confront” her. He said it was a conversation. His options were to “walk away or persuade”. He was very distressed that she had slept with him and then broken up with him. He felt she should be consistent.

The Fiscal asked the Respondent why he did not accept his wife's choice to split up with him. The Respondent said they had booked two holidays together. Their lives were entwined. He was frightened of her. He wanted to understand why they had broken up. He wanted to persuade her that her reasons for breaking up were not good reasons.

The Respondent explained that his wife would follow him and turn up at his home late at night. He thought she was fighting for him. She was contacting him. She did not block him. He accepted that he sent her many text messages and on one occasion, 32 messages in 10 minutes. However, he said these were part of a conversation. He did not swear at her. He did post things on Facebook when he was angry.

The Respondent confirmed that he and his wife went on holiday 14 to 19 October 2017. This was four days after the Respondent said his wife had held a knife to him. He reiterated that this was not a normal relationship. In his view, his wife was a "narcissist" and he was "trauma bonded" to her. She was the "source and cure of his anxiety". He felt as though his wife was still affecting his life through these proceedings. It was all "flying monkeys".

The Respondent confirmed he had other girlfriends while married to his wife. He never dated anyone while they were together but when they broke up, he would "jump into the arms of another woman". He dated six women between May 2017 and January 2018.

The Respondent said his relationship finally ended in November 2017 when he and his wife had an argument about Venice. Another woman moved into his home in January 2018. This was supposed to be a short-term arrangement, but she stayed longer because his health was so bad.

During re-examination, the Respondent noted themes in his text correspondence whereby his wife was scared the Respondent would leave her. He said he did not make her afraid. They had "reasonable and unreasonable" discussions. He directed the Tribunal to messages from his wife where she repeatedly asked him to come to her door. He said there was a "two-way intensity". She would complain either way. He directed the Tribunal to photographs of him and his wife together during the period of the criminal libel. They had been on holiday during this period.

## **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal made initial submissions on the admissibility of certain evidence before addressing the question of professional misconduct. With regard to admissibility, he said that the criminal conduct had

already been agreed in the Joint Minute. The law also prevents the challenge of some facts. The Fiscal said the Respondent had admitted in the Answers that he pleaded guilty to the Section 38 offence. The extract conviction was lodged and is self-proving. The Joint Minute agreed that the Respondent was represented by solicitor and Counsel during the criminal case. The Respondent gave Counsel instructions. Counsel had instructions throughout and acted in accordance with them. By submitting an agreed narrative, the Respondent admitted those were the agreed facts. The Respondent should not be permitted to move away from the Joint Minute and in any case, he cannot challenge the conviction or the matters that amounted to conviction. The Fiscal referred to Shepherd-v-The Law Society [1996] EWCA Civ 977; Shrimpton-v-The Bar Standards Board [2019] EWHC 677 (admin); and Wray-v-The General Osteopathic Council [2020] EWHC 3409. The Respondent could not claim his behaviour was reasonable as this would be going behind the conviction. The Fiscal noted the Tribunal does not have a rule regarding convictions. He suggested it should use Rule 40 and make its own ruling on this matter.

Turning to the question of misconduct, the Fiscal submitted that the averments in the Complaint had been proved beyond reasonable doubt. He said the narrative was a judicial admission. Crown Office did not provide full statements because these were based on a Section 39 offence. The agreed narrative reflected the offence to which the Respondent pleaded guilty. The Respondent had admitted that for a period of seven months he behaved in a threatening and abusive manner likely to cause a reasonable person fear and alarm. It was not necessary to prove the victim had been in fear and alarm but that the behaviour was likely to have that effect on a reasonable person. If the Respondent's behaviour had been reasonable, he could have led a defence. The Fiscal emphasised that the case was not about stalking. According to the Respondent's Counsel, a conviction for Section 38 was a good outcome in the circumstances. The Respondent's attentions had been unwanted. He had posted on social media contrary to his wife's wishes. He spent time twice in November 2017 knocking on her door. He went to her flat uninvited. He repeatedly swore at her. He observed her in secret and followed her. Following the breakdown of their marriage, he still imposed himself on his wife's life.

The Fiscal said the Complainers accepted the information contained in the plea in mitigation (Production 22 for the Respondent). This was a messy relationship which started in difficult circumstances. It was very turbulent. However, the Respondent tried to impose his will on his wife. He tried to tell her what to do. He was aggressive and made poor choices. His behaviour went too far. He chose to continue to engage with her. There is no question of coercion, diminished responsibility or insanity. The Respondent is personally responsible for his conduct. The Fiscal referred to the Respondent as a "Walter Mitty character". He blamed everyone else for his predicament. The Fiscal submitted the Respondent was zealous and impulsive.

The Fiscal invited the Tribunal to consider the authorities he lodged. He quoted some sections from Paterson & Ritchie's *Law Practice & Conduct for Solicitors* and Ryder's *Professional Conduct for Solicitors*. He referred to the test for lack of integrity contained in SRA-v-Wingate and Another; Malins-v-SRA [2018] 1 WLR 3968. He confirmed that the Complainers did not aver dishonesty.

In the Fiscal's submission, the moral mores of the profession had been breached. The offence took place at several different places. All occurred when the Respondent's wife was alone and vulnerable. The Respondent had a privileged and trusted role in society and fell short of his obligations. His behaviour must be more scrupulous than an ordinary member of society including his wife. His behaviour met the Sharp test, namely that it was a serious and reprehensible departure from the standards of competent and reputable solicitors. The Fiscal referred to previous decisions of this Tribunal where professional misconduct was established on the basis of criminal convictions (Law Society-v-Gilbert Anderson [2019] and Law Society-v-Grant Doherty [2013]).

In conclusion, the Fiscal said the Respondent was guilty of professional misconduct by his course of conduct which involved going to his wife's home and repeatedly engaging with her on social media. These incidents occurred over a long period of time and took place at times when his wife was likely to be alone. The Respondent had ongoing relationships with other women. His behaviour was impulsive. He required the company of a companion. He wanted to persuade his wife to stay with him. His conduct met the test for a criminal offence. It was likely to cause a reasonable person fear and alarm. His behaviour was threatening and abusive. This was accepted on the Respondent's behalf by his solicitor and Counsel. The Respondent tried to excuse his behaviour but cannot lead a defence. The Tribunal should not find that his behaviour was reasonable. He pleaded guilty and admitted culpability in a criminal court. That admission should transfer to Tribunal proceedings. The Respondent showed a lack of control. He was impulsive. His conduct was dangerous. He blames everyone else for his situation. His conduct lacked integrity and fell below the standards of competent and reputable solicitors bringing the profession into disrepute. The Respondent had not put forward a defence of diminished responsibility or mental impairment. Mental illness could only be mitigatory. The medical reports did not identify the cause of his ill-health. The Respondent did not lead evidence from any medical practitioners. There was no evidence from ongoing health difficulties or evidence that mental health issues were contributory. It was not for the Tribunal to say a contravention of Section 38 is not professional misconduct.

## **SUBMISSIONS FOR THE RESPONDENT**

The Respondent said he was not trying to overturn or attack the conviction. He was not seeking to excuse his conduct, just explain it. To do that, he had to give evidence of his wife's conduct. The Tribunal's role was to decide if the Respondent's conduct was unprofessional. The Respondent submitted that it did not meet the test for professional misconduct and, challenged the suggestion that his actions lacked integrity. In his submission, a solicitor could plead guilty to a Section 38 charge and still be not guilty of misconduct.

The Respondent noted the Complainers' reliance on a course of conduct. He explained that although there were incidents, the couple were continually getting back together. He directed the Tribunal to messages where his wife said life was boring and she wanted him back. This was common. His wife would sometimes make threats of self-harm. He was concerned about her. There were layers of pressure upon him. He was not challenging the conviction but was defending himself against the allegation that he acted unprofessionally. He acknowledged that his ego was involved in his decision-making. He did not want his marriage to fail. The Tribunal required context. It needed to know why he made decisions so it could assess lack of integrity and whether the conduct was damaging to the profession. He had pleaded guilty to the offence. The Tribunal had to decide if that was enough, or if the surrounding facts would mitigate or justify a decision not to find misconduct.

The Respondent highlighted that although Counsel recommended acceptance of the plea, she was worried about the effect of a trial on his mental health. He had sought help for this. It continued to be a concern. The Complainers suggested he might be prosecuted for lying to a judge. The Law Society was supposed to protect him but instead was continuing to "torture" him. He said there was no evidence he was dangerous or lacked control.

## **DECISION**

The Tribunal first considered the admissibility issue raised by the Fiscal. He submitted that the Respondent should not be allowed to lead evidence contrary to the facts agreed in the Joint Minute or lead evidence which challenged his conviction. The Respondent submitted that he was not attempting to challenge the conviction but wanted to give an explanation of why he pleaded guilty to the offence. Despite this, on various occasions, the Respondent strayed into areas which appeared to challenge the conviction.

The Tribunal was not prepared in this case to look beyond the Respondent's plea to the criminal charge. He had repeatedly asserted that he did not wish to challenge the conviction. In addition, the Respondent is a solicitor who was represented by a solicitor and Counsel in a criminal case. He was given advice which he accepted and gave instructions to Counsel to proceed. He did not go to trial. He did not give evidence. The conviction was not appealed. The plea may well have been a compromise, as these things often are, but he cannot get around the conviction. The Respondent's reasons for pleading guilty were not relevant to the present case. The plea had consequences and the Respondent ought to have been aware of these. The Tribunal was prepared to look at the context of the offence if it assisted with the question of misconduct. To that extent it was content to hear about the background and circumstances of the offence. However, the starting point was that the Respondent was guilty of the offence.

The evidence produced in the present case was also consistent with this starting point. The Tribunal had regard to the documents lodged in this case as well as the Respondent's evidence. It considered the Respondent's credibility and reliability. His evidence was unfocussed, one-sided and self-indulgent. It lacked insight. However, in the course of giving evidence, he also admitted much of the criminal charge. Overall, his evidence did little to challenge the case presented by the Complainers.

The Respondent gave evidence about minor discrepancies in the narrative regarding some dates and times. The Tribunal was satisfied that even if he was correct about these, they were not material. The Respondent submitted that the Procurator Fiscal could not provide the statements in the case to the Complainers because they did not support a crime. This was not a correct interpretation of the email contained at Production 5 for the Complainers. In that email, it was noted that the summary of evidence and statements would not accurately reflect the amended charge to which he pleaded guilty. Therefore, the narrative was provided as this described the basis of the conviction and was agreed by the Respondent. This appeared to the Tribunal to be the correct approach. The Respondent claimed that the Sheriff was concerned about the plea but no other evidence was led regarding this. The Tribunal proceeded on the basis that the Court did not have any material concerns when it proceeded to sentence the Respondent.

It was apparent that during the period of the libel there were periods when the Respondent and his wife were back in a relationship. There was evidence that the couple were seeing each other consensually during this time. They went on holiday together and at various stages were attempting to make a success of their relationship. There were various episodes during the period of the libel which constituted a course of criminal conduct. These were interspersed with other periods when the Respondent and his



wife were back together. However, this does not mean that the Respondent cannot be guilty of the criminal offence which he pleaded guilty to, or that it cannot constitute professional misconduct.

The Tribunal accepted at face value the productions lodged by the Respondent. He referred to many different text exchanges with his wife as well as social media posts and photographs. The Tribunal took account of these.

The Tribunal considered the terms of Productions 23 and 24 for the Respondent which were the statements agreed in the joint minute. However, it did not consider that they were of much assistance as the information contained within was not first-hand evidence of the conduct in question.

Production 25 for the Respondent was the Professional Conduct Sub Committee's minute. It contained a view that the Respondent's behaviour was a "very clear case of stalking". This was unhelpful and led the Respondent to challenge this position at every opportunity. However, the Tribunal's remit was to consider the conduct leading to the conviction for a contravention of section 38 of the 2010 Act. It took no account of the fact that the Respondent was previously charged with a contravention of section 39 of that Act. It focussed on its role which was to make a determination regarding professional misconduct based on the facts before it.

The Tribunal had regard to the medical report contained at Production 30 for the Respondent. It was referred to by the Respondent but not spoken to by the author. It noted that although the Respondent had suffered some challenges regarding his mental health, the Respondent had full insight into his actions when he pleaded guilty to the criminal offence. The report was based mainly on information provided by the Respondent, although there was some independent vouching of the Respondent's mental state at the time of the offence. The Tribunal considered that the weight that could be attributed to the report was limited in these circumstances.

Having regard to all the evidence, the Tribunal was satisfied beyond reasonable doubt that the Respondent pleaded guilty to a contravention of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 with a domestic aggravation. He was fined £400. The basis of the plea was that the Respondent had repeatedly attended at his wife's home uninvited, repeatedly loitered outside her home, left flowers for her, repeatedly sent messages to her via text message and social media, repeatedly posted messages on social media to her and repeatedly attended at places where he knew or suspected she would be present.

The Tribunal examined the established facts against the test for professional misconduct. According to the definition of professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313,

*“There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made.”*

A solicitor requires to be a person of integrity. If the public is to have trust in the profession, then solicitors must observe high standards of conduct. The need to have integrity applies equally to a solicitor’s private life as it does his professional conduct. Lack of integrity was defined in Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366 as being a broader concept than dishonesty. It was said that in professional codes of conduct, the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. Integrity connotes adherence to the ethical standards of one’s own profession and involves more than mere honesty. However, it was also noted in Wingate that although solicitors must act with integrity, they do not have to be “paragons of virtue”.

The Tribunal considered parties’ submissions. It was of the view that the Fiscal overstated some issues, particularly when referring to the Respondent as aggressive, lacking control and dangerous. Contrary to the Fiscal’s submission, the Tribunal also considered that it was its role to consider professional misconduct in the circumstances of each individual case. Not every criminal offence will also be professional misconduct. Conduct leading to a contravention of section 38 of the 2010 Act could vary widely. Not all these cases would necessarily constitute professional misconduct. In his submissions, the Respondent minimised his involvement to a degree which was not credible. He showed no insight into the conduct or his role in the whole situation.

Having considered all the circumstances, the Tribunal was satisfied that the Respondent’s conduct met the test for professional misconduct. It represented a serious and reprehensible departure from the standards of competent and reputable solicitors and called his integrity into question. The conduct occurred in the context of a complicated relationship which had started in difficult circumstances and ended in a very turbulent fashion. However, the Respondent had exercised very bad judgement in

continuing to contact his wife. She had made clear on various occasions that she did not want to engage with him. The police advised the Respondent not to contact her. Despite this, he continued to do so by communicating with her electronically and by attending at her home and places she was known to frequent. The Respondent has no insight into his conduct and blames everyone but himself for his predicament. It was concerning that in evidence the Respondent said he wanted his wife to be “consistent” and that he wanted to persuade her that her reasons for ending the relationship “were not good reasons”. The medical evidence was not exculpatory. The domestic nature of the conviction was a concern. Society today rightly views domestic incidents seriously and a failure to act with integrity in this context negatively affects the reputation of the profession.

### **SUBMISSIONS ON SANCTION, PUBLICITY AND EXPENSES**

The Fiscal indicated that there were no previous conduct findings against the Respondent. He noted that the Tribunal required to give publicity to its decision but asked that the name of the Respondent’s former wife was anonymised. He moved for expenses on the usual basis.

The Respondent said he had nothing more to say and that “it is what it is”. He said it didn’t matter what he did. The Chair explained that the Tribunal’s normal approach was that expenses would follow success and that it would publish its decision but would not identify third parties. The Respondent said the basis of the award of expenses did not matter and that he could not afford to pay them. However, he later acknowledged he would have to meet them if that was the Tribunal’s order.

### **DECISION ON SANCTION, PUBLICITY AND EXPENSES**

Aggravating factors the Tribunal took into account were the domestic nature of the conviction and the lack of remorse and insight shown by the Respondent. Mitigating factors were the fact that the conduct led to prosecution on summary complaint only; the relatively low level of the court’s disposal; the lack of previous conduct findings against the Respondent; the context of the conduct which occurred during a turbulent break-up; and the Respondent’s mental and physical health issues during the period. The Tribunal considered the conduct to be at the lower end of the scale of misconduct. There was no suggestion the conduct had been repeated after the conviction. In all these circumstances it considered that censure was the appropriate sanction.

The appropriate award of expenses was one in favour of the Complainers. This Tribunal generally awards expenses on the basis of success. No submission was made by the Respondent to make any

alternative award. It was appropriate that he bore the expenses of the Complainers and the Tribunal. He had entered into a joint minute with the Complainers which had been of some assistance. However, his Answers were lengthy and unfocussed. He lodged a very large number of productions, many of which were not referred to in the hearing. His evidence at the hearing was rambling and despite reminders, he repeatedly failed to keep to the point. Overall, the Respondent's conduct of this case meant that it took far longer to conclude than was necessary.

Publicity will be given to this decision and the interlocutors and notes of 25 May 2021 and 1 November 2021. Publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests.

  


**Catherine Hart**  
**Vice Chair**