

**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

**COLIN NEIL MACLEOD, 65
Torbrex Road, Cumbernauld**

1. A Complaint dated 16 October 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Colin Neil Macleod, 65 Torbrex Road, Cumbernauld (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard at a procedural hearing on 20 January 2014 and notice thereof was duly served on the Respondent.
4. A procedural hearing took place on 20 January 2014. The Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented himself. The Respondent

indicated that he intended to seek legal representation and a substantive hearing was fixed for 28 March 2014.

5. The hearing took place on 28 March 2014, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented by Ian Ferguson, Solicitor, Glasgow.
6. A Joint Minute was lodged admitting the averments of facts, duty and misconduct in the Complaint. No evidence was led.
7. The Tribunal found the following facts established

7.1 The Respondent is Colin Neil Macleod. He was enrolled as a solicitor on 3 April 1984. He is currently unemployed. During the period 1 January 1996 to 8 February 2008, the Respondent was a partner with the firm of Dallas McMillan

7.2 On 27 October 2009 the Respondent appeared at Kilmarnock Sheriff Court to answer complaint number KM09006225. He was convicted of the following charges:-

“(1) on 6 June 2009 at CalMac Ferry Terminal, Harbour Road, Ardrossan you Colin Neil Macleod did conduct yourself in a disorderly manner, have a knife in your possession and commit a breach of the peace; and

(2) on 6 June 2009 at CalMac Ferry Terminal, Harbour Road, Ardrossan you Colin Neil Macleod did culpably and recklessly fail to disclose to Police officers [that] you had a knife in your possession when asked rendering them liable to injury.”

On 27 October 2009 sentence was deferred for the Respondent to continue attending alcohol counselling and for the accused to be of good behaviour until 2 February 2010. On 2 February

2010 the Respondent failed to appear at Kilmarnock Sheriff Court and a warrant was granted for his arrest. On 15 February 2010 the Respondent appeared at Kilmarnock Sheriff Court and sentence was deferred until 24 February 2010 to allow the trial sheriff, Sheriff McFarlane to preside. On 24 February 2010 sentence was further deferred to await the outcome of other matters until 22 June 2010. On 22 June 2010 the Respondent was admonished and dismissed in respect of both charges.

7.3 On 24 October 2011 the Respondent appeared at Glasgow Sheriff Court to answer complaint number GA10019907. He was convicted of the following charge:-

“On 10 December 2010 at Sauchiehall Street, Glasgow, you Colin Macleod, did assault, obstruct or hinder Mr A and Ms B, both Paramedics, Scottish Ambulance Service, and did fail to co-operate with their instructions, swear and utter threats CONTRARY to the Emergency Workers (Scotland) Act 2005, section 1(1).”

Sentence was deferred to 21 November 2011 and on that date the Respondent was sentenced to a Probation Order for one year.

7.4 On 14 November 2011 the Respondent appeared at Glasgow Sheriff Court to answer complaint number GA11013310. He was convicted of the following charges:-

“(1) on 26 August 2011 at West Regent Street, Glasgow you Colin McLeod [sic] did assault Mr C, care of Dallas McMillan, 70 West Regent Street, Glasgow and did punch him on the head [and] you Colin McLeod [sic] did commit this offence while on bail, having been granted bail on 17 June 2011 at Glasgow Sheriff Court;

(2) on 26 August 2011 at West Regent Street, Glasgow you Colin McLeod [sic] did assault Mr D, care of Dallas McMillan, 70 West Regent Street, Glasgow and did punch him on the head [and] you Colin McLeod [sic] did commit this offence while on bail, having been granted bail on 17 June 2011 at Glasgow Sheriff Court; and

(3) on 26 August 2011 at West Regent Street, Glasgow you Colin McLeod [sic] 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 shout and swear and threaten those present CONTRARY to section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010 [and] you Colin McLeod [sic] did commit this offence while on bail, having been granted bail on 17 June 2011 at Glasgow Sheriff Court.”

Sentence was initially deferred to 21 November 2011 and on that date was deferred for a year to 21 November 2012 when the Respondent was admonished and dismissed in respect of each charge.

7.5 On 3 January 2012 the Respondent appeared at Airdrie Sheriff Court to answer complaint number AI12000006. He was convicted of the following charge:-

“On 2 January 2012 on a road or other public place, namely Forrest Road, Cumbernauld you Colin McLeod [sic] did drive a motor vehicle, namely motor car registered number NA03XHK after consuming so much alcohol that the proportion of it in your breath was 88 microgrammes of alcohol in 100 millilitres of breath which exceeded the prescribed limit, namely 35 microgrammes of alcohol in 100 millilitres of breath CONTRARY to the Road Traffic Act 1988, section 5(1)(a).”

Sentence was deferred until 25 January 2012. On that date the Respondent was fined £300 and disqualified from holding or

obtaining a driving licence for 3 years and his licence was endorsed.

7.6 On 3 September 2012 the Respondent appeared at Airdrie Sheriff Court to answer complaint number AI11001041. He was convicted of the following charges:-

“(1) on 29 January 2011 at Cumbernauld Police Office, South Muirhead Road, Cumbernauld, you Colin Neil MacLeod, did behave in a threatening and abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did repeatedly shout, swear, issue insults and issue threats to Mr E and Mr F, Police Officers then in the execution of their duty; contrary to section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010; and

(3) on 29 January 2011 at Cumbernauld Police Office, South Muirhead Road, Cumbernauld, you Colin Neil MacLeod, did pretend to Mr F and Mr E, Police Officers then in the execution of their duties, that you were John MacLeod well knowing this to be false when the truth was as you well knew...that you are Colin Neil MacLeod born 10 July 1959 residing at 57 Kelvin Drive, Moodiesburn and this you did in an endeavour to avoid detection and prosecution in respect of charges one and two hereof and this you did with intent to pervert the course of justice and did attempt to pervert the course of justice.”

Sentence was deferred to 11 October 2012. On that date the Respondent was sentenced to a Probation Order for one year in respect of both charges.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in cumulo respect of:

8.1 his convictions for nine offences committed between June 2009 and January 2012;

- 8.2 the commission of three of the said offences whilst on bail; and
- 8.3 his failure to attend a deferred sentence hearing in respect of two of the said offences as a result of which a warrant was granted for his arrest.

9. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 28 March 2014. The Tribunal having considered the Complaint dated 16 October 2013 at the instance of the Council of the Law Society of Scotland against Colin Neil Macleod, 65 Torbrex Road, Cumbernauld; Find the Respondent guilty of Professional Misconduct in cumulo in respect of his convictions for nine offences committed between June 2009 and January 2012, the commission of three of the said offences whilst on bail and his failure to attend a deferred sentence hearing in respect of two of the said offences as a result of which a warrant was granted for his arrest; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to (and to being supervised by) such employer or successive employers as maybe approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least five years and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full practising certificate; 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 and may but has no need to include the names of anyone other than the Respondent.

(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

A procedural hearing took place on 20 January 2014. The Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented himself. The Respondent indicated that he wished to seek legal representation and a substantive hearing was fixed for 28 March 2014.

On 28 March 2014, a Joint Minute was lodged accepting the averments of fact, duty and misconduct. No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Marshall advised that although a Joint Minute had been lodged in which the Respondent admits the averments of fact, duty and misconduct contained in the Law Society's Complaint the parties recognise that the question of professional misconduct is a decision for the Tribunal.

Mr Marshall referred the Tribunal to the test for professional misconduct as set out in the case of Sharp v The Council of the Law Society of Scotland 1984 SC 129 at page 134:-

'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 made.'

Mr Marshall asked the Tribunal to find the Sharp test satisfied and to find the Respondent guilty of professional misconduct.

Mr Marshall referred the Tribunal to the Respondent's convictions. He stated that the Respondent had been convicted of a series of ten offences across five criminal cases as set out in the Complaint. He advised that copies of the criminal complaints and

extract convictions are lodged by the Law Society at 1-5 in the Complainer's List of Documents. He advised that each of the convictions is admitted.

Mr Marshall stated that the first two convictions arose from a complaint against the Respondent which he plead guilty to at Kilmarnock Sheriff Court on 27 October 2009 after the Procurator Fiscal amended the first charge to that contained in the extract conviction. He advised that the charges were breach of the peace and culpable and reckless conduct. Mr Marshall stated that sentence was deferred until 2 February 2010 for good behaviour and that when the Respondent failed to attend at that diet a warrant was issued for his arrest.

Mr Marshall stated that the next conviction arose from a complaint against Section 1(1) of the Emergency Workers (Scotland) Act 2005 which the Respondent plead guilty to and resulted in him being placed on probation for one year from 21 November 2011.

Mr Marshall advised that the next convictions arose from a complaint dealt with at Glasgow Sheriff Court on 21 November 2011 when the Respondent plead guilty to three charges - two of assault and one of breach of the peace. All three charges were committed whilst on bail.

Mr Marshall advised that the fourth complaint was dealt with at Airdrie Sheriff Court on 25 January 2012 and involved an offence of drink driving. The Respondent's alcohol level was 88 micrograms of alcohol in 10 millilitres of breath when the legal limit is 35. The Respondent was fined £300 and disqualified from driving for 3 years.

Mr Marshall advised that the final complaint was also dealt with at Airdrie Sheriff Court and involved three charges – breach of the peace, fraud involving the failure to pay a taxi fare and attempting to pervert the course of justice. The Respondent was not convicted of the second charge. He was sentenced on 11 October 2012 to one year's probation in relation to the other two offences.

Mr Marshall submitted that the convictions amount to a breach of duties owed by the Respondent as a solicitor. Mr Marshall referred the Tribunal to Article 4 of the Complaint where the averments of duty which are relevant to a finding of misconduct are contained. He advised that high standards of propriety are expected of members of the legal profession. He submitted that a solicitor has a duty to maintain the same

standards of propriety in his private life as would be expected of him in his professional practice. In addition, a solicitor has a duty to act with integrity and this duty extends to his personal and professional conduct. Thirdly he submitted that there is a close working relationship among solicitors, and between solicitors and the Courts, frequently involving an element of trust and respect. A solicitor has a duty not to act in a manner which has a negative impact on that working relationship and has a duty not to act in a manner which damages that mutual trust and respect. Finally a solicitor has a duty not to act in a way which brings the profession into disrepute. Mr Marshall submitted that these convictions amount to a breach of these duties by the Respondent.

Mr Marshall stated that he accepted that not all convictions will amount to misconduct. He referred the Tribunal to the case of Law Society v. Corrigan (DTD 636/84) where the Tribunal cited with approval the English case of *Re a Solicitor* stating:-

‘In the English case Re a Solicitor 1960 2 All ER 621 at 622, Lord Parker refuted the suggestion that the mere conviction of any criminal offence is evidence of conduct unbecoming a Solicitor.

The Tribunal stated that the nature of the offence and the frequency were matters to be taken into consideration.

Mr Marshall submitted that the fact that the Respondent has been convicted of ten separate offences over a three year period clearly points towards misconduct. He referred the Tribunal to the case of Law Society v McPherson from 29 July 2003.

In that case the Respondent was convicted of drink driving on four separate occasions. In finding the Respondent guilty of misconduct the Tribunal stated:-

‘One of the essential qualities of a solicitor is integrity which extends to the personal as well as the professional conduct of a solicitor. The Tribunal were particularly concerned that the Respondent had four convictions for drunk driving, conduct which is regrettably disgraceful and dishonourable and brings the profession into disrepute.’

Mr Marshall submitted that this judgement can equally be applied to the current matter where the Respondent has been convicted of ten offences in the period between October 2009 and September 2012. He stated that regrettably that these convictions can only properly be described as a course of criminal conduct. Mr Marshall submitted that this is conduct which is disgraceful and dishonourable and brings the profession into disrepute. He stated that in his submission there could be no doubt that the Respondent's conduct falls foul of the test for frequency set out in the Corrigan case.

Mr Marshall stated that the nature of the offending also supports a finding of misconduct. He submitted that of the particular concern are the convictions for public order offences and in addition other offences which demonstrate a lack of integrity.

Mr Marshall advised that the public order offences include breach of the peace while in possession of a knife; interfering with paramedics carrying out their duties; two assaults and a breach of the peace at the offices of Dallas Macmillan and behaving in a threatening or abusive manner towards police officers.

Mr Marshall stated that these were offences which took place in public and therefore by definition damage the profession in the eyes of the public. He submitted that it is conduct which brings the profession into disrepute.

Mr Marshall advised that the offences which demonstrate a lack of integrity included failing to disclose possession of a knife to police officers; drink driving and providing false information to police officers in an attempt to pervert the course of justice.

Mr Marshall submitted that these are offences which demonstrate a lack of integrity and involve conduct which calls into question the fitness of the Respondent to practice.

Mr Marshall stated that the fact that the offences committed at Dallas McMillan's offices were committed while the Respondent was on bail is significant. When an accused person is granted bail this is granted subject to conditions. One condition is that he undertakes to the Court not to commit further offences while on bail. The Respondent was granted bail and then proceeded to commit further offences in breach of that undertaking. Mr Marshall submitted that this damages the relationship of trust and respect between solicitors and the courts.

Mr Marshall stated that in the same way the Respondent's failure to appear at a deferred sentence hearing having undertaken to do so, which led to a warrant being granted for his arrest, damages the relationship of trust and respect between solicitors and the courts.

Mr Marshall stated that in considering this element of the Respondent's conduct it is of assistance to consider the position with contempt of court. The authors in Paterson and Ritchie of the text book entitled "Law, Practice and Conduct for Solicitors" at page 298 state:-

'it is clear that nowadays merely disrupting the business of the courtroom by lateness or failing to appear or by one's general behaviour in court will not of itself constitute contempt "unless there is wilful defiance of or disrespect to the court, or behaviour which challenges or affronts its authority" '.

Mr Marshall submitted that the Respondent's conduct in committing offences while on bail, and in failing to appear at a deferred sentence hearing, demonstrates the same disrespect or challenge to the Court's authority, and damages the relationship of trust and respect.

Mr Marshall advised that in previous decisions the Tribunal has made clear that it is not necessary for the offences to relate to the solicitor acting in the course of his profession. He referred the Tribunal to the case of Law Society v Maguire (DTD 1069/01) where the Tribunal said:-

'The Tribunal has considered carefully the question of whether or not the Respondent's actings amounted to professional misconduct....In the present case, none of the circumstances giving rise to the Respondent's conviction involved even remotely his practice or a legal process...[However] the public have the right to expect a high standard of conduct and responsibility from a member of an honourable profession. It is important for this Tribunal to demonstrate to the public that the profession of solicitors seeks to maintain the highest standards of conduct and that a solicitor cannot separate out his personal conduct from his membership of the profession. One of the essential qualities of a solicitor is integrity which extends to the personal as well as professional conduct of a solicitor.'

Mr Marshall submitted that arguably the offences committed at the offices of Dallas Macmillan where the Respondent was previously a partner do relate to the Respondent's practice but acknowledged that the other offences do not. However Mr Marshall stated the case of Maguire makes clear that a solicitor will be expected to maintain the highest standards of conduct and integrity in his personal as well as professional conduct. Mr Marshall submitted that the decision in Maguire will assist the Tribunal to be clear that the conduct in the present matter is misconduct. He stated that in the present matter the offences described demonstrate a clear and obvious failure by the Respondent to maintain the necessary standards of personal conduct.

Mr Marshall submitted that the decision in Maguire is consistent with Practice Rule B1, 1.2 which provides:-

'Trust and personal integrity

1.2 You must be trustworthy and act honestly at all times so that your personal integrity is beyond question. In particular, you must not behave, whether in a professional capacity or otherwise, in a way which is fraudulent or deceitful.'

Mr Marshall submitted that in the light of this rule the Tribunal should find the Respondent guilty of misconduct as a result of the offences he has committed.

In conclusion Mr Marshall advised that the parties are agreed that the Respondent is guilty of professional conduct as a result of his failure to comply with the each of duties set out in paragraph 4 of the Complaint as summarised above. He submitted that the Respondent's conduct both brings the profession into disrepute and calls into question the Respondent's fitness to practice given that the lack of integrity which it demonstrates.

Mr Marshall stated that for these reasons he was asking the Tribunal to find the Respondent guilty of professional misconduct in accordance with paragraph 5.1 of the Complaint which states that the Respondent is guilty of misconduct as a consequence of :-

1. Committing the offences referred to in the Complaint;

2. Failing to appear at a deferred sentence at Kilmarnock Sheriff Court as a result of which a warrant was granted for his arrest; and
3. Committing the offences at Dallas Macmillan's office while on bail.

Mr Marshall asked the Tribunal to make an award of expenses against the Respondent.

SUBMISSIONS FOR THE RESPONDENT

Mr Ferguson indicated that in the light of the Joint Minute he did not wish to make submission regard misconduct.

DECISION

The Tribunal considers that one of the essential qualities of a solicitor is integrity which extends to his personal as well as his professional conduct. The Tribunal had regard to the definition of professional misconduct as outlined in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC 129. The Tribunal noted that the Respondent had been convicted of nine offences over a three year period, three of which were committed whilst on bail and in addition he had failed to attend at a deferred sentence hearing in relation to two of the said offences as a result of which a warrant was granted for his arrest. The Tribunal considered that high standards of propriety are expected of members of the legal profession and that solicitors have a duty to act with integrity and this duty extends to both personal and professional conduct. There is a close working relationship among solicitors and between solicitors and the courts frequently involving an element of trust and respect. The Tribunal considered that a solicitor has a duty not to act in a manner which has a negative impact on that working relationship and has a duty not to act in a manner which damages that mutual trust and respect. In addition, a solicitor has a duty not to act in a way which brings the profession into disrepute.

The Tribunal considered that the nature and number of the Respondent's convictions demonstrate that he has failed in these duties and the Tribunal was of the view that these specific failures would be viewed by competent and reputable solicitors as

serious and reprehensible and therefore are sufficient to meet the Sharp Test. Accordingly the Tribunal considered that the Respondent was guilty of professional misconduct.

FURTHER SUBMISSIONS FOR THE COMPLAINERS

Mr Marshall indicated that he had no further submissions to make.

SUBMISSIONS FOR THE RESPONDENT IN MITIGATION

Mr Ferguson stated that his client is an alcoholic and bitterly regrets and apologises for his conduct. Mr Ferguson referred the Tribunal to the definition of alcoholism stated on the Wikipedia website:

“Alcoholism is a broad term for problems with alcohol, and is generally used to mean compulsive and uncontrolled consumption of alcoholic beverages, usually to the detriment of the drinker’s health, personal relationships and social standing. It is medically considered as a disease, specifically an addictive illness.”

Mr Ferguson submitted that as stated alcoholism is now accepted as a disease and that significant alcohol intake produces changes in the brain’s structure and chemistry. These changes maintain the person with alcoholism’s compulsive inability to stop drinking and result in alcohol withdrawal syndrome if the person stops. Alcohol misuse has the potential to damage almost every organ in the body including the brain and can cause both medical and psychiatric problems.

Mr Ferguson submitted that it is really difficult to break the cycle of addictive behaviour and that his client is aware that if he does not stop drinking it will kill him. Mr Ferguson stated that his client has tried to stop drinking in the past but has been unsuccessful.

Mr Ferguson advised that his client had a very successful career undertaking commercial and corporate legal work and was a specialist within the field of intellectual property and IT law. He had significant experience of civil court matters

and at one time also found time to be a member of the Insurance Committee of the Law Society of Scotland. He qualified as a solicitor in 1984 having trained with McGrigor Donald; between 1984 and 1986 he was a corporate assistant with Dorman Jeffrey which later merged with Dundas & Wilson. The Respondent established his own firm, Macleods, in 1986 which after a merger became Harper Macleod. Between 1990 and 1993 he practised on his own account and undertook consultancy work for Harper Macleod. Between 1999 and 2008 he was the joint managing partner at Dallas McMillan solicitors in Glasgow undertaking commercial work. Also during that time he had hands on experience in the licensed trade running a hotel and two pubs. He was a director of Picsel Technologies Limited. In 2008 he left Dallas McMillan to form his own practice however it folded shortly after and he has done little work since 2008.

Mr Ferguson stated that the Respondent's work was exemplary and there was no question of his failing to comply with any of the normal rules of practice.

Mr Ferguson advised that the Respondent left practise five years ago although he kept up his practising certificate until last year. Mr Ferguson submitted that the Respondent's behaviour has not had an effect on clients at all.

Mr Ferguson stated that in relation to the terms of the Complaint the Respondent pled guilty to professional misconduct and very much regrets his alcoholism and the resultant effect on his family and career. Mr Ferguson stated that the Respondent suffers from ill-health in relation to his alcoholism and his financial position is desperate.

Mr Ferguson stated that in relation to the convictions these related to five separate incidents. Firstly in relation to the incident which occurred at the CalMac ferry terminal on 6 June 2009 Mr Ferguson stated that the Respondent knew the owner of the café who asked him to help himself. The Respondent had taken a Mars bar and a cutlery knife to cut it up. Mr Ferguson submitted that the staff in the café misunderstood the situation and reported the matter to the police. Mr Ferguson suggested that once the full facts were made clear to the Sheriff Court that a very

lenient view was taken and the Respondent was admonished in relation to these charges.

The second incident occurred in December 2010 when the Respondent had called for an ambulance for his friend. However once the ambulance had arrived his friend had recovered and the Respondent was not believed that there had been an emergency and was taken to task by the ambulance staff regarding wasting their time. It was perceived that the Respondent was behaving in a threatening manner, however again a very lenient view was taken by the court and he was admonished.

In relation to the third incident which took place outside the offices of Dallas McMillan Solicitors, again the Respondent was admonished by the court. This incident involved a request by the Respondent to his former partners for the money which he is owed by them.

In relation to the fourth incident which was a drink driving offence on 2 January 2012, this occurred very shortly after the death of his father. He was fined £300 and disqualified from driving for three years. Mr Ferguson advised that the Respondent no longer has a car and has not applied for his licence to be reinstated even though the disqualification period has ended.

Mr Ferguson stated that the fifth offence took place on 29 January 2011 at Cumbernauld Police Office and resulted in the Respondent being placed on probation for one year.

Mr Ferguson referred the Tribunal to the psychiatric report from August 2012 which was lodged. Mr Ferguson stated that it would have been helpful to have had an updated report but that the Respondent had not been able to afford to have an updated report prepared.

In relation to the Respondent's personal circumstances, Mr Ferguson stated that the Respondent's life was greatly affected seven years ago when his second wife left him. Prior to that he had been a partner with Dallas McMillan for 14 years but resigned shortly after the marriage breakup. Mr Ferguson indicated that the Respondent had

four children but had not seen any of his children for several years. Mr Ferguson stated that his client had been a workaholic.

Mr Ferguson referred the Tribunal to the terms of the psychiatric report and asked the Tribunal to note that the Respondent suffers from depression and takes medication for that.

Mr Ferguson advised that following an arbitration, the Respondent was awarded a large capital sum from his former firm, Dallas McMillan. However following the arbitrator's decision a judicial review was taken against decision which the Respondent is now in the process of appealing. He hopes this dispute will be resolved later this year. The Respondent maintained his practising certificate until October 2013 and hopes to be able to return to legal work as a consultant at some time in the near future. Mr Ferguson stated that the Respondent believes that if he was able to get back to work there would be less chance of him reverting to his previous behaviour.

Mr Ferguson advised that the Respondent has had difficulties with his former tenancy which had previously been occupied by a drug addict and resulted in him being assaulted and disturbed by persons looking for the former tenant. The Respondent sought protection through social work and was moved six weeks ago to another tenancy and is now enjoying the peace and quiet in his new home and attempting to achieve a balance in his life. He is aware that his previous behaviour may be seen as challenging the authority of the court but wishes the Tribunal to understand that he was not in a fit state to have that intention.

Mr Ferguson asked the Tribunal to take a fair, reasonable and proportionate view of his client's failures.

In response to a question from the Chairman as to what the current position was regarding his alcohol consumption, the Respondent advised that up until he received help through social work to move to another property he had found it difficult to control his consumption although he was drinking considerably less than when the offences were committed. He advised that he had not consumed any alcohol in the last two months since he has moved into the new accommodation.

In response to a question regarding his intention to return to legal work, the Respondent advised that he had had the offer of office space from former clients and wished to be able to set up his own firm again. However, he advised he would need professional indemnity insurance and stated that until he receives the money due to him he would not be in a position to take up the offer of office space at the moment.

Mr Ferguson referred the Tribunal to the three references which had been lodged on behalf of the Respondent.

DECISION ON SANCTION

In considering sanction, the Tribunal noted that the Respondent had accepted that he was guilty of professional misconduct and had a previously unblemished record. The Tribunal had regard to the references lodged on behalf of the Respondent.

However, the Tribunal was extremely concerned about the Respondent's physical and mental health as outlined in the psychiatric report. The Tribunal considered that without an up to date medical report that it was unable to assess the Respondent's fitness to return to practice.

In all these circumstances of this case including the Respondent's medical history and the fact that he has not practised since 2008 the Tribunal was of the view that it was important that the Respondent be supervised for a significant period of time if he is to return to practice. The Tribunal considered that supervision would be in the Respondent's best interests as well as being necessary for the protection of the public. The Tribunal noted that there is no provision for the Law Society to monitor the sobriety of practising solicitors who admit to having alcohol problems and noted that such a monitoring mechanism is something which could be useful in cases such as this. The Tribunal considered that in order to protect both the public and the Respondent, there should be a restriction on his practising certificate for an aggregate period of five years. This restriction will limit him to acting as a qualified assistant to such employer as may be approved by the Council of the Law Society for an aggregate period of five years and thereafter until he satisfies the Tribunal that he is

fit to hold a full practising certificate. The Tribunal considers it appropriate that if an application for a practising certificate is made to the Law Society that the Society should take into account the Respondent's mental and physical health at that time prior to granting him a practising certificate and approving a prospective employer.

The Tribunal require the Respondent to come back to the Tribunal after he has worked for an aggregate period of five years and satisfy the Tribunal that he has completed the five years to his employers' satisfaction, that there has been a significant and sustained improvement in his medical condition, that he has shown insight into his failures, undertaken retraining to update his knowledge of the all the professional rules and requirements which must be complied with by solicitors involved the role of running a practice and that he can be trusted to hold a full practicing certificate again.

The Tribunal made the usual orders with regard to publicity and expenses.

Dorothy Boyd
Vice Chairman