

**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**

**MARTHA ANNE RAFFERTY, Berlow  
Rahman Solicitors, First Floor, 40 Carlton  
Place, Glasgow**

**Respondent**

1. A Complaint dated 22 August 2019 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 Martha Anne Rafferty, Berlow Rahman Solicitors, First Floor, 40 Carlton Place, Glasgow (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. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 29 October 2019 and notice thereof was duly served on the Respondent.
5. At the hearing on 29 October 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was present and represented John Scullion, Q.C. A Joint Minute of Admissions admitting the averments of fact, duty and misconduct in the Complaint was lodged with the Tribunal. Mr Scullion moved the

Tribunal to receive late two Inventories of Productions for the Respondent. The Fiscal having no objection, the Tribunal granted the motion. Parties made submissions.

6. Having given careful consideration to the Complaint, Joint Minute of Admissions, and the submissions made by parties, the Tribunal found the following facts established:-

- 6.1 The Respondent is Martha Anne Rafferty who was born on 9 April 1960. She was enrolled as a solicitor on 20 October 1983. The Respondent is currently a Consultant with two firms Philip Rooney & Co, 28 Moss Street, Paisley and Berlow Rahman Solicitors, First Floor, 40 Carlton Place, Glasgow. She holds a current practising certificate.
- 6.2 On 6 January 2012 at Glasgow Sheriff Court the Respondent was convicted under section 5(1)(a) of the Road Traffic Act 1988 of driving a motor vehicle on a road or other public place after consuming so much alcohol that the proportion of it in her breath exceeded the prescribed limit. The Respondent was disqualified from driving for a period of 18 months as from 6 January 2012 and fined £500.
- 6.3 On 4 August 2014 at Glasgow Sheriff Court the Respondent was convicted under section 7(6) of the Road Traffic Act 1988 of failing to provide the police with two specimens of breath for analysis which were required to ascertain her ability to drive or the proportion of alcohol in her breath at the time she was driving. The Respondent was disqualified from driving for a period of 3 years and fined £530.
- 6.4 On 24 August 2018 at Hamilton Sheriff Court the Respondent was convicted under section 7(6) of the Road Traffic Act 1988 of failing to provide two specimens of breath for analysis which were required to ascertain her ability to drive or the proportion of alcohol in her breath at the time she was driving. Sentence was deferred until 8 October 2018 and on that date the Respondent was disqualified from driving for a period of 10 years and sentenced to a 15 month community payback order.
- 6.5 The Council's Complaints Sub Committee considered the matter on 13 November 2018 and decided that, against the background of the Respondent's previous analogous convictions, it would be appropriate for a complaint to be made to the



SLCC. On 6 December 2018 the Council submitted a Complaint Form to the SLCC. The SLCC considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 section 6, remitted the Complaint to the Council to investigate.

6.6 The Council instructed a Reporter whose report was provided to the Respondent on 8 May 2019 together with intimation that the Complaint would be considered by a Professional Conduct Sub Committee. The Reporter also completed a supplementary report which was provided to the Respondent on 28 May 2019.

6.7 The Council's Professional Conduct Sub Committee considered the matter on 11 July 2019 and determined that the Respondent's conduct in respect of her conviction on 24 August 2018 for failing to provide two specimens of breath for analysis in contravention of section 7(6) of the Road Traffic Act 1988 appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable solicitor.

The Sub Committee accordingly determined that a Fiscal should be appointed, in terms of section 51 of the Solicitors (Scotland) Act 1980, to investigate and present a complaint in respect of the Respondent to the Scottish Solicitors' Discipline Tribunal.

6.8 The Council sent a copy of the Professional Conduct Sub Committee's Determination to the Respondent on 29 July 2019.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of her conviction of a charge under Section 7(6) of the Road Traffic Act 1988 together with two previous convictions under Section 5(1)(a) and Section 7(6) of said Act, said convictions demonstrating a lack of integrity, which was likely to bring the legal profession into disrepute, and in breach of Rule B1.2 of the Law Society Practice Rules 2011.

8. Having considered the submissions in mitigation made on the Respondent's behalf and the submissions by both parties with regard to publicity and expenses, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 29 October 2019. The Tribunal having considered the Complaint dated 22 August 2019 at the instance of the Council of the Law Society of Scotland against Martha Anne Rafferty, Berlow Rahman Solicitors, First Floor, 40 Carlton Place, Glasgow; Find the Respondent guilty of professional misconduct in respect of her conviction of a charge under Section 7(6) of the Road Traffic Act 1988 together with two previous convictions under Section 5(1)(a) and Section 7(6) of said Act, said convictions demonstrating a lack of integrity, which was likely to bring the legal profession into disrepute, and in breach of Rule B1.2 of the Law Society Practice Rules 2011; Censure the Respondent; Fine her in the sum of £10,000 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 and that this publicity should include the name of the Respondent but need not identify any other person.

**(signed)**

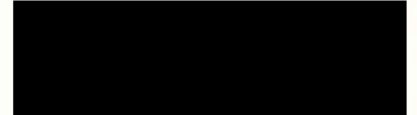
**Nicholas Whyte**

**Chair**



9. 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 JANUARY 2020.*

**IN THE NAME OF THE TRIBUNAL**



**Nicholas Whyte**  
**Chair**

## NOTE

At the hearing on 29 October 2019, the Tribunal had before it the Complaint, a Joint Minute of Admissions, a List of Authorities lodged by the Complainers and two Inventories of Productions for the Respondent which contained two medical reports and a number of references.

## SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that the Respondent admitted all averments of fact, duty and misconduct in the Complaint but that it was for the Tribunal to determine whether professional misconduct was established. She explained that the Respondent was convicted in 2012 of drink driving. She was disqualified for 18 months and fined £500. She was convicted in 2014 of failing to provide a specimen of breath. She was disqualified for three years and fined £530. Most recently she was convicted in 2018 of failing to provide a specimen of breath. She was disqualified for 10 years and sentenced to a 15 month community payback order.

The Fiscal noted that the Complainers did not aver any element of dishonesty. However, the conviction raised questions about the Respondent's integrity and was therefore in breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011 and brought the profession into disrepute. The Fiscal explained that the offence was detected when the Respondent collided with a wall when parking on her way to court. Police witnessed the incident and on speaking to her suspected that they could smell alcohol on her breath. She then failed without reasonable excuse to provide a sample at the police station. Her conviction was reported in the press. The media coverage identified her as a solicitor and referred to her previous convictions.

The Fiscal sought a finding of professional misconduct in respect of the Respondent's most recent conviction against the background of two analogous previous convictions. She said this was sufficient to meet the Sharp Test. She made reference to Paterson & Ritchie's "Law Practice and Conduct for Solicitors" at paragraph 1.23 which details the various criminal convictions which might amount to professional misconduct. She also referred to the Tribunal cases – Law Society of Scotland-v-Macpherson, Law Society of Scotland-v-McNiven, and Law Society of Scotland-v-Ali and the English disciplinary case of SRA-v-Sheldrick (case number 11964-2019).

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Scullion noted that the Respondent accepted the factual averments, the duties and the averments of professional misconduct contained in the Complaint. He indicated that he would address the Tribunal in mitigation later.

## **DECISION ON PROFESSIONAL MISCONDUCT**

Although the Respondent admitted professional misconduct, it remained for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. There are certain standards of conduct to be expected of competent and reputable solicitors and 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.

The Tribunal noted the Fiscal's invitation to find professional misconduct in relation to the conviction of 24 August 2018 only against the background of the Respondent having two other road traffic convictions. The offence followed a car park collision when the Respondent was parking before attending court. She failed to provide a breath test at the police station. The Respondent was disqualified from driving for 10 years and sentenced to a 15 month community payback order.

The Tribunal considered that failing to cooperate with the police in relation to providing a specimen of breath in these circumstances was a serious and reprehensible departure from the standards of competent and reputable solicitors. She was required by law to provide a sample and failed to do so. This conduct was likely to bring the profession into disrepute. It brought her integrity into question and was therefore in breach of Rule B1.2 which provides that a solicitor's personal integrity must be beyond question.

The Fiscal produced the Respondent's record card which disclosed a previous finding of misconduct which referred to the two earlier convictions referred to in the Complaint.

## **SUBMISSIONS IN MITIGATION**

Mr Scullion informed the Tribunal that the Respondent was 59 and had been a solicitor since 1983. He described the circumstances of the offence. He noted that she accepted full responsibility for the offence and pleaded guilty at the earliest opportunity. She cooperated fully with her community based



sentence and her reports were positive. Mr Scullion referred to two medical reports which outlined the Respondent's medical history, the steps she had taken to overcome her alcohol addiction and her progress in this regard. Her doctor confirmed that she continued to remain abstinent from alcohol. The Respondent suffered a great deal of stress as a result of these proceedings which impact on her health.

Mr Scullion referred to various testimonials produced by experienced practitioners. These individuals have direct experience of the Respondent and her work. She is a hard working solicitor who is highly experienced in her field. She has a reputation for being diligent, well prepared and effective. She continues to receive instructions from colleagues even after the commission of this latest offence. There are no outstanding complaints from clients or the Law Society. The Respondent is involved in the training and continuous professional development of others. Her referees describe her as a person of good character.

Mr Scullion noted that the Tribunal had to punish the Respondent and deter behaviour which would bring the profession into disrepute. However, it also had to support professionals suffering illness and other problems. He noted that in Law Society of Scotland-v-Macpherson, the solicitor was allowed to continue in practice as a principal despite amassing four drink driving convictions. The solicitor in Law Society of Scotland-v-McNiven was censured and restricted but Mr Scullion submitted that the conduct in that case was more serious involving a flagrant breach of a court order. SRA-v-Sheldrick involved a criminal sentence which was commensurate with that imposed in the present case. The Solicitors Disciplinary Tribunal imposed a fine.

Mr Scullion explained that the Respondent suffered from alcohol dependency. She sought assistance and is aware of her problems. There is no cure but she seems to be experiencing a degree of success in dealing with this problem which has dogged her for many years.

The Respondent has cooperated with the criminal and disciplinary prosecutions. She pleaded guilty at the first opportunity. She faced up to her responsibilities from the outset. She has attempted to expedite matters. She felt ashamed. She expressed remorse and apologised profusely for her conduct. It was very important that she be allowed to retain her practising certificate and Mr Scullion invited the Tribunal to deal with the case in a way that allowed her to practise as a solicitor.

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

The Tribunal had regard to its indicative outcomes guidance. It noted that dishonesty was not a feature of this case, but that the Respondent had shown a lack of integrity. The Tribunal took account of the efforts made by the Respondent to limit the prosecution's preparation and expedite matters. The Respondent had expressed remorse and shame. However, an aggravating feature of the case was that the Respondent had broken the law in the course of her employment.

The Tribunal had regard to the fact that attitudes to compliance with road traffic legislation had changed over the years. The authorities were therefore of limited assistance.

The Tribunal was concerned that this was the Respondent's third conviction for road traffic matters. The criminal courts had dealt with her and had regard to her risk to the public. The Tribunal's concern was the risk to the reputation of the profession. It noted that the Respondent was censured for the professional misconduct arising out of the first two convictions. The Tribunal considered that it would not be appropriate simply to censure her again. The Tribunal considered whether a restriction on the Respondent's practising certificate was appropriate but decided that in these circumstances it was not suitable. The quality of the Respondent's work appeared to be satisfactory and supervision would not prevent her failing to give another breath test. Strike off was not proportionate in the circumstances. However, the Tribunal wished to mark the seriousness of the offence. It considered whether a short period of suspension would be appropriate to mark the seriousness of the offence but was ultimately persuaded that a censure with a substantial fine would suffice. The only information provided to the Tribunal in respect of the financial circumstances of the Respondent was that she was working as a consultant for two firms. The Tribunal imposed a fine of £10,000. This is the statutory maximum which the Tribunal can impose. The Tribunal considered it to be merited in this case. It marked the seriousness with which the Tribunal viewed the Respondent's conduct in the context of the previous finding of misconduct.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that 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.



**Nicholas Whyte**  
**Chair**