

**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

**MICHAEL McKEOWN, of Callahan McKeown
& Co. Ltd., 54 Hairst Street, Renfrew**

Respondent

1. A Complaint dated 7 April 2022 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 Michael McKeown, of Callahan McKeown & Co. Ltd., 54 Hairst Street, Renfrew (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.
4. In terms of its Rules, the Tribunal fixed a virtual procedural hearing on 26 July 2022 and notice thereof was duly served on the Respondent.
5. At the virtual procedural hearing on 26 July 2022, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. The Fiscal invited the Tribunal to convert the procedural hearing to a full hearing and thereafter to allow an adjusted Complaint to be received. The Respondent confirmed he had no objection to these motions

and made a motion to withdraw the Answers previously lodged. The Tribunal granted all three motions. The Respondent intimated that he was admitting the averments of fact, duty and misconduct within the adjusted Complaint. The Tribunal proceeded to hear submissions from both parties.

6. The Tribunal found the following facts established:-

6.1 The Respondent was born on the 10 October 1968. He was enrolled as a solicitor on the 23 May 2005. He was employed by McCusker McElroy & Company between 24 May 2005 and 25 June 2010. He became partner on 28 June 2010 and, thereafter director in, Callahan McKeown & Co Ltd where he continues to practise.

6.2 In the early weeks of the 2020 pandemic the Respondent and his partner furloughed eight of their employees. Only the Respondent and his partner were available for court appearances. On the 6 April 2020 he was called at short notice to appear with a client at Glasgow Sheriff Court. Due to the nature of the hearing (via weblink) he chose to attend in casual rather than business attire. He drove to the Court.

6.3 While present in Glasgow Sheriff Court two Police officers approached the Respondent and subjected him to a search under 23(4) of the Misuse of Drugs Act 1971. The officers found herbal cannabis in the possession of the Respondent. Cannabis is a Class B controlled substance.

6.4 The Procurator Fiscal offered the Respondent the opportunity to accept a Fiscal fine for possession of Cannabis in contravention of Section 5(2) of the Misuse of Drugs Act 1971. The letter was issued on the 25 June 2020.

6.5 The Respondent accepted the opportunity to pay a fiscal fine for the possession of cannabis in contravention of section 5(2) of the Misuse of Drugs act 1971. He paid a fine of £325.

6.6 An article appeared in the Sunday Mail setting out the circumstances of the search and the finding of the controlled drug. The article narrated the Respondent's name and occupation.

7. Having given careful consideration to the facts held to be established and the submissions on behalf of both parties, the Tribunal found the Respondent guilty of Professional Misconduct in that, whilst within the confines of Glasgow Sheriff Court in a professional capacity, the Respondent was found in possession of a Class B controlled drug and he thereby contravened Rule B1.2 of the Law Society of Scotland Practice Rules 2011 and the common law duty to act with integrity and he brought the profession into disrepute.
8. The Tribunal heard further submissions from both parties with regard to disposal, expenses and publicity, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 26 July 2022. The Tribunal having considered the Complaint dated 7 April 2022 at the instance of the Council of the Law Society of Scotland against Michael McKeown, of Callahan McKeown & Co. Ltd., 54 Hairst Street, Renfrew; Find the Respondent guilty of professional misconduct in respect that he was, whilst within the confines of Glasgow Sheriff Court in a professional capacity, found in possession of a Class B controlled drug in contravention of Section 5(2) of the Misuse of Drugs Act 1971; 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)

Kenneth Paterson

Vice 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 **30 AUGUST 2022**.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chair

NOTE

The virtual procedural hearing set down for 26 July 2022 was, on the unopposed motion of the Fiscal, converted to a full hearing. The Fiscal had lodged an adjusted Complaint with the Tribunal Office and invited the Tribunal to allow this to be received. That motion, not being opposed, was granted. The Respondent made a motion to withdraw the Answers previously lodged and thereafter intimated his admission to all of the averments of fact, duty and misconduct within the adjusted Complaint. Both parties confirmed that no evidence required to be led. The Tribunal heard submissions from both parties.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal took the Tribunal through the averments of fact within the Complaint. He explained that the Respondent had attended at the Sheriff Court at very short notice in casual attire. This had occurred during the first lockdown of the pandemic and so the court building was quite empty. The police had cause to search him and found a quantity of herbal cannabis. Following this search, the Respondent was offered and paid a fiscal fine. An article appeared in the Sunday Mail bringing the Respondent's misdemeanour to the attention of the public. The article gave substantial detail and was a full-page article.

The Fiscal referred to the test for misconduct set out within Sharp-v-The Council of the Law Society of Scotland 1984 SLT 313. He submitted that attending a court building whilst in possession of a controlled drug whilst there to perform a professional duty amounted to serious and reprehensible conduct. The Fiscal also referred to the case of The SRA-v-Wingate at paragraphs 97 and 102 to 103. He submitted that the conduct here demonstrated a lack of integrity. Additionally, the newspaper article made this conduct known to the public and the Respondent thereby brought the profession into disrepute. The Fiscal invited the Tribunal to find the Respondent guilty of professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath invited the Tribunal to consider this an exceptional case of unique circumstances. The date of the incident he submitted was important. This incident occurred within two weeks of the start of the pandemic. Courts were closed. The Registers of Sasines was closed. Many people were furloughed. The profession was attempting to ensure staff safety by allowing them to work from home where possible.

The Courts were closed other than for emergencies. Only two people within the Respondent's firm were not on furlough. The Respondent was one of these people. On 6 April, the Respondent was on leave and in civilian clothing. He had been visiting his widowed mother, delivering her some food, and carrying out some gardening. He communicated with his mother through a window. While there, he received a call from his colleague that a client was in custody. This was an extremely vulnerable individual who was in custody at London Road police station. The Respondent travelled to Glasgow Sheriff Court in order to use a computer link that had been set up within a room in the basement of the Sheriff Court which enabled agents to connect with the police station. The accused was not being brought to the Sheriff Court and was always going to remain within the police station. It was not the Respondent's intention to formally appear for the accused but only to speak to him over this computer link in order to try and calm him down. The accused's conduct whilst in police custody had been causing concern and he had been charged, amongst other things, with spitting at police officers. The Respondent did not attempt to drive home before attending at the Sheriff Court because he was only going to speak to the accused and was not formally appearing for him. The Respondent took the view that the added journey would not fall within the rules that allowed travel during the pandemic restrictions. On his way to access the computer link, the police stopped and searched the Respondent.

Mr Macreath submitted that the test set out in *Sharp* was a conjunctive test. The Respondent accepted that his conduct on this occasion met the test set out in *Sharp*. He accepted that solicitors must behave to a higher standard in order to maintain the trust of the public and the reputation of the profession. The case of *Wingate* explained the duty of integrity and described the expectation that solicitors maintain high standards in personal and private life.

The Respondent was not a user of cannabis. This period of time was stressful for many including the Respondent. A third party had given him this small quantity of herbal cannabis thinking that it would help. The Respondent had it in his possession and had forgotten about it. The whole situation was exacerbated by the report in the newspaper. Only security staff and police officers had been present within the building at the time of the search and he could not explain how the information came to be known by the newspaper. The reporter had contacted the Respondent and the Respondent's wife asking for comment. The article had caused great distress to the Respondent, his wife and family. Whilst a fiscal fine does not amount to a criminal conviction as such, this article described a solicitor within a court building being searched by police officers and being found to be in possession of drugs.

Mr Macreath submitted that it was a matter for the Tribunal to determine, in light of the whole circumstances, whether the conduct crossed over into the level of gravely serious behaviour and

culpability required to meet the test for professional misconduct. He invited the Tribunal to consider the date of the offence, the motivation of the Respondent in attempting to help in a difficult situation involving a vulnerable individual where it was never intended that he would formally appear in court.

DECISION

Whilst the Respondent had admitted that this conduct amounted to professional misconduct. It remained a matter for the Tribunal to be satisfied that the conduct met the test set out within the case of 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.”

This incident occurred at the beginning of the pandemic, a difficult and stressful time for everyone. The Respondent had been on leave and not expecting to attend court. He was called at very short notice in relation to a vulnerable young client in custody at London Road police station. The client’s conduct whilst in custody was causing concern. The Respondent had attended at Glasgow Sheriff Court with the sole intention of gaining access to a computer system set up within the Sheriff Court premises enabling solicitors to communicate with their clients at the police station. His aim was to attempt to calm the accused and to hopefully prevent any further harm. It was on his way to access this computer link that he was stopped and searched by the police. The Respondent was not, in general, a user of cannabis and had forgotten that he had this quantity of herbal cannabis within his possession.

Whilst the Tribunal recognised that these were unusual and unfortunate circumstances, it considered the Respondent’s conduct such that would be regarded by a competent and reputable solicitor as serious and reprehensible. Solicitors are not expected to behave as “paragons of virtue” but they are expected to act with integrity both in their professional and private lives. Solicitors must hold themselves to a higher standard in order to maintain the trust of the public and the reputation of the profession. Even taking into account all of the background circumstances, it could not be ignored that the Respondent was acting in a professional capacity when he had entered a court building whilst in possession of an illegal substance.

This behaviour had been made public knowledge with consequent damage to the reputation of the profession.

In all of the circumstances, the Tribunal found the Respondent guilty of professional misconduct.

DISPOSAL

The Tribunal invited further submissions with regard to sanction, expenses and publicity.

The Fiscal confirmed that the Respondent had no previous findings of professional misconduct or unsatisfactory professional conduct. He moved for expenses and had no comment to make with regard to publicity.

Mr Macreath indicated that the question of expenses was conceded and had no comment to make with regard to publicity.

He explained that the Respondent had a long history of working with the vulnerable in society. He had worked for some years as a social worker before training to be a solicitor as a mature student. He had gone on to choose to practise in criminal defence, an area of law Mr Macreath described as difficult and less appealing than it once was. The Respondent in particular chose to represent vulnerable clients.

This particular period of time was one of great stress for the Respondent. As well as dealing with the consequences of the pandemic in his business life, his son had contracted covid whilst working in Egypt.

The newspaper article had caused great distress to the Respondent and his family.

When preparing for today, Mr Macreath had no difficulty in obtaining references for the Respondent. Many colleagues were prepared to provide commendations for the Respondent. Mr Macreath directed the Tribunal to the written references and invited it to have particular regard to that of Thomas Ross, QC, which he said spoke volumes for the character of the Respondent. He invited the Tribunal to accept that the Respondent had demonstrated contrition and that he would not repeat this conduct or appear before the Tribunal again.

The circumstances in which the Respondent had gone to the court indicated his qualities. His intention was to help. He did not intend to appear for the accused as such but hoped to be able to calm the accused

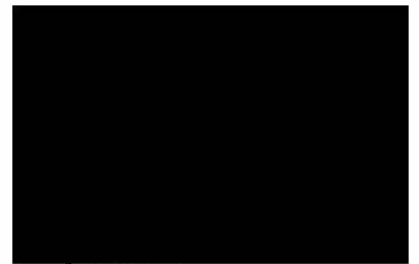
and encourage him to behave appropriately. It was unfortunate that the Respondent had forgotten that the drug was still in his pocket.

The finding of professional misconduct itself was a stain on the Respondent's character. Mr Macreath invited the Tribunal to hold that this was sufficient punishment for the Respondent and to consider dealing with the matter by way of a censure.

DECISION RE DISPOSAL

The Tribunal accepted that this incident had occurred in very unusual and compelling circumstances. The Respondent had no previous findings of misconduct or unsatisfactory professional conduct on his record. He had attended the Sheriff Court with good intentions. The newspaper publicity caused him and his family distress and embarrassment. The Respondent cooperated fully both with the criminal and misconduct proceedings. The Tribunal accepted that there was no likelihood of the Respondent repeating this conduct.

In all of the circumstances the Tribunal concluded that a Censure was appropriate. The Tribunal made an award of expenses against the Respondent and directed that publicity should be given to this decision which should include the name of the Respondent but need not name any other individual.



Kenneth Paterson

Vice Chair