

**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, formerly at 26 Drumsheugh  
Gardens, Edinburgh and now at Atria One, 144  
Morrison Street, Edinburgh**

**Complainers**

**against**

**DAVID WILLIAM NIGHTINGALE, 65  
Springfield Road, The Village, Cumbernauld**

**Respondent**

1. A Complaint dated 16 January 2017 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 David William Nightingale, 65 Springfield Road, The Village, Cumbernauld (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Con McAfee, care of Atria One, 144 Morrison Street, Edinburgh.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 22 March 2017 and notice thereof was duly served upon the Respondent.
5. On 20 March 2017 of consent the Chairman exercising the functions of the Tribunal under Rule 56 granted the Respondent's motion to adjourn. The Tribunal appointed the

Complaint to be heard on 31 May 2017 and notice thereof was duly served upon the Respondent.

6. On 31 May 2017, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present or represented. However, he had lodged with the Tribunal a letter in mitigation.

7. Having heard evidence from the Clerk with regard to service of the Complaint and the Notice of Hearing, the Tribunal determined to proceed in the absence of the Respondent. The Tribunal heard submissions on behalf of the Complainers.

8. The Tribunal found the following facts proved:

8.1 The Respondent's date of birth is 17<sup>th</sup> July 1982. He was enrolled as a solicitor on 6<sup>th</sup> October 2009. Between 16<sup>th</sup> October 2009 and 10<sup>th</sup> February 2012 he was employed as a solicitor by Messrs Cartys, Larkhall and Hamilton. Between 13<sup>th</sup> February 2012 and 9<sup>th</sup> November 2012 he was employed by McAfee, Solicitors, 81 James Street, Airdrie. He is not currently in practice as a solicitor.

8.2 Mr McAfee was the Senior Partner of McAfee Solicitors, 81 Graham Street, Airdrie. The Respondent commenced employment as a Qualified Assistant with that firm on 13<sup>th</sup> February 2012. Shortly thereafter the Respondent approached Mr McAfee. He requested a loan of £4,000, stating that this was to assist his father to make payment of mortgage arrears. That was untrue. The Respondent told Mr McAfee that the loan would be repaid from the proceeds of his father's pension. Mr McAfee arranged for £4,000 to be paid to the Respondent on 30<sup>th</sup> April 2012. The payment was made from the firm account operated by McAfee's. Thereafter the Respondent appropriated the funds to his own use and in particular did not make any payment in relation to his father's mortgage. The loan has not been repaid.

8.3 In May 2012 the Respondent approached Mr A who is a Partner in the firm of McAfee. He requested a further loan of £4,000. The Respondent told Mr A that the funds were required to assist his father with financial difficulties. That statement was untrue. Mr A declined to provide a loan.

- 8.4 On 31<sup>st</sup> October 2012 Mr McAfee was contacted by a client of his firm Mr B. Mr B advised that he had loaned £3,500 to the Respondent. The advance by Mr B to the Respondent was paid on 26<sup>th</sup> September 2012. Mr B further stated that he had received a written undertaking from the Respondent acknowledging receipt of the sum of £3,500 and undertaking that it would be repaid in full on or before 18<sup>th</sup> October 2012. The Respondent told Mr B that his aunt had died and that the Respondent would receive money from her estate. That statement was untrue. The Respondent sent a text message to Mr B in September 2012 stating that the loan was to repay mortgage arrears on behalf of the Respondent's father and that the funds would be repaid through an inheritance. None of this was true. At no time did the Respondent advise Mr B to take independent legal advice. On the matter being brought to his attention Mr McAfee repaid the sum of £3,500 to Mr B by way of a firm's cheque.
- 8.5 On 8<sup>th</sup> November 2012 Mr C, a Qualified Assistant employed by McAfee's at their Airdrie office, was approached by a man who asked him whether he was the Respondent. On being told by Mr C that he was not, the man said that he wanted the £2,000 which his mother had paid to the Respondent to be refunded to her. When this was brought to the attention of Mr McAfee he made certain investigations which led him to have a meeting with Mrs D on 17<sup>th</sup> December 2012. Mrs D explained that the Respondent had represented her son Mr E in a criminal trial which took place during 2012. The Respondent told Mrs D that the funds were required to make payment of a compensation order and that if such funds were available, there was a better chance of her son avoiding a prison sentence than if no such funds were available. The Respondent had suggested a figure of £3,000 but Mrs D was able to come up with only £2,000. The Respondent sent Mr E a text message with bank account details and told Mrs D that the account in question (which was the Respondent's personal account) was a business account. Mrs D paid £2,000 into the account on 20<sup>th</sup> October 2012. The funds were appropriated by the Respondent to his own use. They were not used in connection with any compensation order. The funds have not been repaid.
- 8.6 In or about October 2012 a client of McAfee's Mr F handed in £140 to the office of McAfee's at Airdrie with the intention that it be applied towards an outstanding

fee. The Respondent took the cash and appropriated it to his own use. Shortly before the Respondent's employment with McAfee's was terminated on 9<sup>th</sup> November 2012 the Respondent repaid this sum in cash to Mr F.

- 8.7 In or about October 2012 the Respondent represented Mr G who was being prosecuted in connection with benefit fraud. The amount involved was approximately £23,000 which had been obtained over a period of ten years. The Respondent suggested to Mr G that the figure could be negotiated down with the Crown perhaps to around £10,000, but that if Mr G could come up with money to offset against the amount of the benefit fraud the figure could be brought below the £10,000 threshold which would reduce the risk of a custodial sentence. Thereafter Mr H, at the behest of his father, Mr G, contacted the Respondent, the Respondent repeated to Mr H what he had said to the father. Mr H attended at the offices of McAfee's and spoke to the Respondent. He indicated that he would make £3,000 available, and offered to make payment by way of a cheque or electronic transfer. The Respondent indicated that it would be preferable that the payment be made in cash because it could be deposited straight into the client account and would reduce the time taken for clearance. On 10<sup>th</sup> October 2012 Mr H paid the Respondent £3,000 in cash at the offices of McAfee, Solicitors. The Respondent gave to Mr H both a handwritten receipt and a typed receipt on McAfee's headed notepaper. No copy of the receipt was maintained in the client's file by the Respondent. Having obtained the sum of £3,000 by fraud the Respondent then appropriated this money to his own use.
- 8.8 In March 2012 the Respondent was instructed in relation to criminal matters at Airdrie Sheriff Court by Mr I. The Respondent secured an acquittal on the criminal charges for Mr I. Mr I then consulted the Respondent in relation to a separate matter. Mr I began to receive text messages from the Respondent enquiring whether Mr I would be in a position to help the Respondent's father by lending the Respondent a sum of money for a short period. Thereafter the Respondent borrowed £3,500 from Mr I which was paid over in cash on 29<sup>th</sup> September 2012. The money has never been repaid. The Respondent did not at any stage advise Mr I to obtain separate legal advice.

9. Having given consideration to the admitted facts and the parties' submissions in relation to the question of professional misconduct, the Tribunal found the Respondent guilty of Professional Misconduct in respect that he:-
- (a) Obtained a loan from Mr McAfee by fraud.
  - (b) Attempted to obtain a loan from Mr A by fraud.
  - (c) Obtained a loan from Mr B by fraud.
  - (d) Failed to advise Mr B to take independent legal advice.
  - (e) Obtained a sum of money from Mrs D by fraud.
  - (f) Misappropriated the sum paid to the firm to account of fees my Mr F.
  - (g) Obtained a sum of money from Mr H by fraud.
  - (h) Obtained a sum of money from Mr I by fraud.
  - (i) Failed to advise Mr I to obtain separate legal advice.

10. The Tribunal considered the Respondent's letter in mitigation. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 31 May 2017. The Tribunal having considered the Complaint dated 16 January 2017 at the instance of the Council of the Law Society of Scotland against David William Nightingale, 65 Springfield Road, The Village, Cumbernauld ; Find the Respondent guilty of professional misconduct in respect that he (a) Obtained a loan from Mr McAfee by fraud, (b) Attempted to obtain a loan from Mr A by fraud, (c) Obtained a loan from Mr B by fraud, (d) Failed to advise Mr A to take independent legal advice, (e) Obtained a sum of money from Mrs D by fraud, (f) Misappropriated the sum paid to the firm to account of fees my Mr F, (g) Obtained a sum of money from Mr H by fraud, (h) Obtained a sum of money from Mr I by fraud, (i) Failed to advise Mr I to obtain separate legal advice; The Respondent's name already having been removed from the Roll of Solicitors in Scotland at his request under section 9 of the Solicitors (Scotland) Act 1980, Prohibit the restoration of the Respondent's name

to the Roll of Solicitors in Scotland; 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; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent, his father and the Secondary Complainer but such publicity shall not include the names of other individuals as publication is likely to damage their interests; and Allow the Secondary Complainer 21 days from the date of the letter intimating these findings to lodge a written note of claim at the office for the Tribunal.

**(signed)**

**Nicholas Whyte**

**Chairman**

11. 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**



**Nicholas Whyte**  
**Chairman**

**NOTE**

At the hearing on 31 May 2017 the Tribunal had before it the Complaint, Answers fully admitting the averments in the Complaint and a letter from the Respondent in mitigation. The Respondent did not appear and was not represented at the Tribunal hearing. The Tribunal heard evidence from the Tribunal Clerk with regard to service of the Complaint and Notice of Hearing. The letter in mitigation from the Respondent indicated that he was unable to attend the Tribunal hearing and that he wished his mitigation to be received in writing. The Tribunal was satisfied that the Respondent had received service of the Complaint and Notice of Hearing, that the Respondent was content for the case to proceed in his absence, and that it was fair to do so.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal gave a narrative of the circumstances with reference to the averments of fact, duty and misconduct contained within the Complaint. The Respondent had admitted a serious course of dishonest conduct involving several instances of fraud and attempted fraud. He had misappropriated clients' money and when taking loans from clients, had failed to advise them to take separate legal advice. The Fiscal noted that on 12 December 2014 the Respondent pleaded guilty at Hamilton Sheriff Court to a number of offences of dishonesty on indictment. The circumstances of those offences were included within the averments of fact in this complaint and were also the subject of a separate Complaint to the Tribunal under section 53(1)(b) of the Solicitors (Scotland) Act 1980. The Fiscal indicated that on the indictment matter, sentence was deferred and on 11 February 2015 the Respondent was ordered to perform 300 hours of unpaid community work. He was also ordered to make repayment of £7,000 to his victims. The Fiscal indicated that as far as he was aware the compensation order was being complied with and the Respondent was making regular payments. The Fiscal indicated that the Respondent had informed him that there was a criminal prosecution pending against him relating to similar matters. The Fiscal did not know whether this case was to be governed by summary or solemn procedure.

The Fiscal informed the Tribunal that the Respondent's name had already been removed from the Roll of Solicitors under Section 9 of the Solicitors (Scotland) Act 1980 on the Respondent's application on 28 July 2014. The Fiscal therefore invited the Tribunal to prohibit restoration of the Respondent's name to the Roll under Section 52(2)(aa).



The Fiscal moved for the usual orders regarding expenses and publicity. The Chairman queried whether publicity ought to be delayed until conclusion of the pending criminal case. The Fiscal indicated that the criminal case giving rise to these proceedings had already attracted extensive publicity. As he understood it, the matters due to call were distinct from those contained within these proceedings and that there was no reason to defer publicity.

## **SUBMISSIONS FOR THE RESPONDENT**

In his written submissions the Respondent indicated that his course of conduct during his time employed at McAfees Solicitors was “completely unacceptable” and that his letter was purely for the purposes of providing mitigation and he was not attempting to avoid responsibility for his actions. The Respondent narrated personal circumstances providing an explanation for his behaviour. He provided financial information with regard to his current employment and outgoings. He detailed the support he has received in order to address the issues in his personal life. He indicated his remorse towards those affected by his actions. He appreciated that he had let down his colleagues. The Respondent said that he had no wish to practise as a solicitor again. He had removed himself from the Roll of Solicitors following these incidents and he expected to be Struck Off as a result of his conduct.

## **DECISION**

The Tribunal was satisfied that the conduct averred was proved beyond reasonable doubt on the basis of the averments of fact in the Complaint which were admitted in the Answers. The Tribunal had regard to the test for professional misconduct contained within Sharp v Council of the Law Society of Scotland 1984 SLT 313, namely that:

*“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.”*

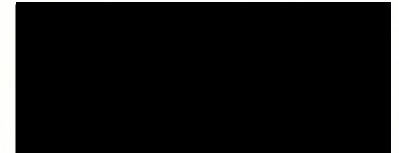
The Tribunal was satisfied that the Respondent’s behaviour was serious and reprehensible and met the test for professional misconduct. Solicitors belong to a profession which requires high standards of

ethical conduct. Members of the public must have confidence that solicitors are trustworthy and honest and that their integrity is beyond question.

The Tribunal considered the letter written by the Respondent and noted his remorse and insight into the seriousness of his conduct. However, the Tribunal considered that the course of dishonest conduct demonstrated that he was not a fit and proper person to be a solicitor. Given that the Respondent's name had already been removed from the Roll, the Tribunal prohibited restoration of his name to the Roll of Solicitors under Section 53(2)(aa) of the Solicitors (Scotland) Act 1980.

The Tribunal made the usual order with regard to expenses. The Tribunal ordered that its decision should be given publicity but that it was not necessary to name any parties other than the Respondent, his father, and the Secondary Complainer. Publication of information relating to other individuals may be detrimental to their interests.

The Secondary Complainer should be allowed 21 days from the date of the letter intimating these findings to lodge a written note of claim at the Tribunal Office.



**Nicholas Whyte**  
**Chairman**