

**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

**ROSS JAMES PORTER, Basement Flat, 8
Stormont Street, Perth**

Respondent

1. A Complaint dated 28 March 2019 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Ross James Porter, Basement Flat, 8 Stormont Street, Perth (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Mr A.
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 a procedural hearing of the Complaint to be heard on 16 September 2019 and notice thereof was duly served upon the Respondent.
5. On 24 July 2019, the Chair exercised the functions of the Tribunal under Rule 56 and 44 of its Rules. On the Respondent's motion, the Complainers having no objection, the Chair adjourned the procedural hearing set down for 16 September 2019 and fixed a procedural hearing on 6 November 2019. Notice thereof was duly served upon the Respondent.

6. At the procedural hearing on 6 November 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was present and represented himself. The parties lodged a Joint Minute of Admissions and invited the Tribunal to deal with the matter notwithstanding that the case had been set down for a procedural hearing on this date. In accordance with Rules 40 and 47, the Tribunal directed that the case should proceed as a hearing. The Fiscal noted that the Secondary Complainer had asked for certain information to be placed before the Tribunal. She had taken account of this material under Rule 5(iii) but did not wish to place it before the Tribunal. The Tribunal determined that it was not appropriate at this stage in proceedings to receive material direct from the Secondary Complainer. On the Fiscal's motion, the Respondent having no objection, the Tribunal amended the Complaint to delete the word "derogatory" where it appeared in paragraphs 6.1(c) and (d) and to delete "4000" where it appeared in paragraph 4.6(xvi) and substitute "400". Parties made submissions.
7. Having given careful consideration to the terms of the Complaint, Joint Minute of Admissions, and the parties submissions, the Tribunal found the following facts established:-

7.1 The Respondent is Ross James Porter. He was born on 11 September 1963. He was enrolled and admitted as a solicitor on 12 November 2007. He was employed by Michael S. Allan Solicitors, Aberdeen, from April 2007 to March 2008, then by Elliot & Co WS, Perth, from March 2008 to September 2008. From February to April 2010 the Respondent was employed by McDougall & Co, Aberdeen, and from April 2010 until March 2012 he was employed by Lynn Herbert & Co, Leven. The Respondent was the principal in the firm Ross Porter, Perth, from April 2012 to October 2014. The Respondent was then employed by Alex Mitchell & Sons, Musselburgh, from October 2014 to June 2016. He was then employed by Charles Wood & Son Limited, Kirkcaldy, as an Associate from June 2016 to October 2016.

The Respondent does not currently hold a practising certificate but remains on the Roll of Solicitors.

7.2 In December 2013, the Secondary Complainer instructed the Respondent to act on his behalf in relation to a dispute with his letting agent.

- 7.3 On 14 January 2014 the Secondary Complainer sent an email to the Respondent with details of a case in which the Secondary Complainer's mother, wished to instruct the Respondent. The Secondary Complainer advised that his mother wished to apply for civil legal aid to pursue an action against a builder for the cost of remedial work, distress and inconvenience.
- 7.4 The Respondent submitted applications for civil advice and assistance in relation to both matters and these were granted in February 2014.
- 7.5 The Respondent issued terms of business letters to the Secondary Complainer and his mother on 2 March 2014.
- 7.6 Various emails were exchanged between the Secondary Complainer and the Respondent in relation to the dispute with the letting agent and, in particular, the following:
- i. On 25 March 2014 at 12.51 hours the Respondent acknowledged recent correspondence and documents from the Secondary Complainer and advised that he believed the sum sought by the Secondary Complainer from the letting agent to be completely unrealistic. He addressed the various aspects of the Secondary Complainer's claim and explained why he thought that the Secondary Complainer had only suffered minimal loss or had failed to provide evidence of loss in respect of the various parts of the claim. The Respondent suggested that if the Secondary Complainer was "*hell bent on it*" then he could raise a small claims action although the Respondent advised against this. The Respondent stated that after research and careful thought he would not be able to assist the Secondary Complainer and that he found the issues relating to the letting agent to be vexatious.
 - ii. On 27 March 2014 at 10.50 hours the Respondent replied to an email which the Secondary Complainer had sent the previous day. The Respondent stated that he was the one who made the decisions about what cases he was prepared to take on, not the Secondary Complainer. He further stated that he did not believe that the matter was worth taking forward and commented that the

Secondary Complainer had never asked for his advice but had told him what the law was and what amount of damages he was claiming. He stated that, in his opinion, the issues were small claims matters but warned the Secondary Complainer regarding the difficulties in pursuing this course of action.

- iii. On 1 April 2014 at 17.35 hours the Secondary Complainer responded with a detailed email advising that he had not requested that the Respondent take his case further. He stated that the Respondent had failed to provide advice which contained an appropriate level of detail. The Secondary Complainer further stated that the Respondent had assessed his claim without sight of the statement of loss which the Respondent had asked the Secondary Complainer to prepare.

The Secondary Complainer then addressed each of the issues which he wished to raise in relation to Hadden Rankin with reference to previous correspondence between himself and the Respondent.

The Secondary Complainer reminded the Respondent of his duty to communicate effectively and to treat clients with respect. He stated:

“I suspect that you are unaware of how inappropriate some of your communication is however there is no doubt that many of your statements are openly indignant, provocative and rude.”

The Secondary Complainer further stated that the Respondent had frequently made disrespectful and rude statements and that his communication with the Secondary Complainer had been unpleasant, disrespectful and ungracious.

- iv. At 20.01 hours the Respondent sent an email response to the Secondary Complainer stating that he would keep his response short as he had already given his opinion and much of the Secondary Complainer’s previous email was “*facile*”. The Respondent stated that he had investigated matters and felt that it was inappropriate to spend further Legal Aid money on it and that he would not support an application for civil legal aid for those reasons.

The Respondent further stated:

“In my dealings with you you have struck me as the sort of person who doesn't like to be told he is wrong. I'm telling you you are wrong. You made a complaint to the police they took it no further, you made a complaint to the SLCC [about the letting agent] they found your claims to be vexatious and I agree with them. If you are so convinced you are right take it to another solicitor and see what he or she says, get a second opinion, by all means prove me wrong. That's all I have to say. I'll be writing to SLAB indicating that I am withdrawing and the reasons for that.”

- v. On 2 April 2014 at 11.02 hours the Secondary Complainer sent a response to the Respondent. He stated that he considered the Respondent to be “*grossly incompetent*” and that whilst the Secondary Complainer had provided evidence to support his statements the Respondent had not.

The Secondary Complainer concluded by stating that:

“I believe that you may have an opinion of yourself that isn't widely shared in your profession.”

- 7.7 Various emails were also exchanged between the Respondent, the Secondary Complainer and the Secondary Complainer's mother from January 2014 onwards regarding the Secondary Complainer's mother's builder dispute and in particular the following:

- i. Between 11 and 12 March 2014 emails were exchanged between the Secondary Complainer and the Respondent regarding the accuracy of advice which had been offered by the Respondent and misunderstandings which had arisen. On 12 March 2014 at 16.55 hours the Respondent sent an email to the Secondary Complainer stating that:

“I do feel the need to apologise as some of this is obviously my fault and I would like to do so at this stage. I made an error of judgement in assuming you had far more knowledge and a greater understanding of the legal issues

at hand / and the topic of civil legal aid that you actually have. Consequently I adopted a discursive style, as opposed to a rather pedantic, literal style. Had you a more in depth knowledge of the law then you may well have been able to fill in the blanks, however that incorrect assumption on my part is my error alone and I apologise. I will change my writing style from now on to compensate and I'm glad that we were able to clear that up at this stage."

- ii. The Secondary Complainer replied at 17.36 hours on the same date stating to the Respondent:

"If you want to engage in backhanded insults regarding my legal knowledge then it would be more honest of you to say so without preceding them with an apology. My legal knowledge is comprehensive and sound."

- iii. On 25 March 2014 the Respondent sent an email to the Secondary Complainer's mother providing an update on his progress in relation to the builder dispute and suggested that they might need to instruct an alternative surveyor.
- iv. On 28 March 2014 at 12.30 hours the Secondary Complainer replied to the above email using his own email address. He asked the Respondent to refrain from contacting other surveyors as he would do this himself if it became necessary.
- v. On the same date the Respondent sent a further email to the Secondary Complainer's mother's email address at 14.12 hours advising that he had received an email from the Secondary Complainer and that the Respondent was concerned about an instruction which he had received from him. He advised the Secondary Complainer's mother that he did not think that the instruction from her son was in her best interests and for that reason he would not comply with it. He explained his reasoning for wanting to instruct another firm of surveyors himself.

The Respondent further stated that:

“You are my client and I take instructions from you. But this is a question of my professional judgement and if this matter does proceed to Proof I am the one who has to conduct the Proof not your son, nor you. Therefore the question of appointing a suitable surveyor should be left to me. Allied to this the fact that I have received what I feel to be an instruction from your son which is not in your best interests I would rather he was not involved in giving me instructions in the future. I am happy to continue to represent you and to try and resolve this matter for you one way or another however I now wish to deal directly with you. Given that I am now the third firm of solicitors involved in this matter it would indeed be unfortunate if I was forced to withdraw especially as I am familiar with the case and given the amount of work I have done.”

- vi. The Respondent also sent an email to the Secondary Complainer at 14.23 hours in response to the Secondary Complainer’s email referred to at iv) above. The Respondent stated:

“Thank you for your last email. The ‘instruction’ contained within it is I believe not in your mother’s best interests and therefore I will not comply with it. I have written to your mother regarding this matter and indicated that I wish to deal with her directly in future. I will no longer take instructions from you in this matter.”

- vii. On 1 April 2014 at 16.46 hours the Secondary Complainer’s mother sent an email to the Respondent.

The email contained the following:

“My son and I discussed a course of action and my son issued you with an instruction. I note that in respect of that instruction you have advised me of your preferred course of action. I would have expected you to communicate that course of action directly to my son and to have moved forward however there is clearly an issue with you accepting instructions from my son.”

- viii. At 17.39 hours on the same date the Secondary Complainer sent an email to the Respondent stating that:

“My mother signed a mandate so that I could deal with her case, notwithstanding that I discuss all instructions with my mother before issuing them to you. If you do not agree with an instruction it is your duty to explain a preferred course of action. Thereafter, clients can arrive at an informed decision on what they want to do. Instead, you have used the opportunity to claim that I do not act in my mother’s best interests, undoubtedly so that you could avoid taking any further instructions from me.”

The Secondary Complainer further stated that he did not consider the Respondent to be communicating appropriately, that the Respondent had a duty to treat clients with respect and that:

“You should adhere to that duty from now on and communicate appropriately with my mother and without resorting to forceful and controlling statements.”

- ix. At 19.33 hours on the same date the Respondent sent an email to the Secondary Complainer’s mother stating that:

“Although I asked you to respond to me personally I can’t help sense your son’s hand in the writing of your email.”

The Respondent further stated that:

“I have formed an opinion of your son from dealings I have had with him in relation to this and other unrelated matters. I am entitled to take a professional view on this. I won’t take instructions from him, I wish to deal with you directly. If that is a problem then feel free to instruct another agent.”

The Respondent explained why he would not have used the firm of surveyors previously employed by the Secondary Complainer’s mother. He indicated

that he was happy to continue to act on her behalf, if she wished him to continue, but stated:

“Just keep your son out of my way.”

- x. At 20.26 hours that same day the Respondent sent an email to the Secondary Complainer in response to the email from him at 17.39 hours referred to at viii) above. The Respondent stated:

“Thanks for your email. I have indicated that I will no longer take instructions from you and made this clear to your mother and you have chosen to ignore this. I won’t reply to your email, you clearly have some issues. You are not my client so I’m not interested in your views. I was suspicious as to why I was the third firm of solicitors involved in this matter, when really it should have been sorted out a long time ago. Could your involvement have had anything to do with this? Unfortunately I won’t be corresponding with you again in relation to this matter but I’m happy to continue to try and help your mum. I am keen to help her so kindly let me do that and stay out of it.”`

- xi. On 2 April 2014 at 10.46 hours the Secondary Complainer’s mother sent an email to the Respondent in response to the Respondent’s email at 19.33 hours on 1 April 2014, referred to at ix) above. She stated:

“You sense my son’s writing because my son assists me when responding to solicitors’ emails. I have no doubt that you would have an issue with that however that is none of your business.”

She further stated that her son had no intention of attempting to instruct the Respondent again as he found the Respondent *“too distasteful an individual.”*

She further stated that:

“I think what is most surprising about your email is that you even consider that I would keep my son out of the way for you to represent me. I’m not sure

if you have any family of your own, I suspect not, however I can only imagine that your family of origin holds different values and loyalties to my own. Perhaps that explains your angry and resentful nature. Whatever the case, the language that you use is completely inappropriate.”

In conclusion she stated that:

“You do not communicate effectively, however it is your rude, petulant and obnoxious attitude that I will not countenance. You are dismissed with immediate effect. You should return my documents to me as soon as possible.”

- xii. At 10.53 hours on the same date the Secondary Complainer sent an email to the Respondent. With reference to the Respondent’s email on 1 April 2014 at 20.26 hours referred to at x) above the Secondary Complainer stated that he had no intention of instructing the Respondent further and continued as follows:

“If you want to talk about having issues let’s move over to my realm of expertise. I have a First Class Honours Degree in Psychology, a Masters Degree in Psychology with Distinction and extensive psychotherapy training, amongst other qualifications and experience. Your behaviour suggests that you are the one with issues., of that there is no doubt. I think you may have anger management issues with attendant cognitive functioning difficulties. If you want a bit of advice with it we can perhaps come to an arrangement.

The first solicitor retired. The second solicitor was slow with timescales. You were advised of that already. Again, it appears, unfortunately, that you have difficulties assimilating information.

You stated to my mother ‘...just keep your son out of my way...’. You are the one who is out of the way. You have been dismissed. My mother and I are relieved that we do not have to deal with your undignified, sarcastic and disturbing behaviour any further.”

- xiii. At 14.10 hours the Respondent replied to the Secondary Complainer stating:

"I know that you may struggle with this but you don't instruct me in relation to the 'builder dispute', therefore you cannot dismiss me. You may struggle with that concept but try and get your head round it. I would add that you are not my client now, in any way shape or form, therefore anything stated in this email is a personal response to your insults and in no way connected to any professional association I may have had with you. In all my previous communications I have never resorted to insults. You now have but I suspect you are just showing your true colours.

Quite frankly the insults or comments in your email mean nothing whatsoever to me coming from someone like you. You may be impressed by your degree, I'm not. Nor would anyone who has actually been to University. How many C's did you need to do psychology, it is not exactly hard to get into. And what have you done with your degree, you are in your forties, unemployed, living off the state and have been for some time. As a result of the various mental health issues which you clearly have, you are weighed down by the enormous chip on your shoulder. You are obviously unemployable, or lazy or stupid, probably all three. You are a sad and pathetic man. In order to bolster your flagging ego and sense of self worth you are argumentative, arrogant, pedantic and literal, the last vestiges of a fool. You seem to enjoy taking swipes at those of us that are at least trying to do something productive with our lives, however unsuccessful we may be in your eyes, at least we are trying, you are so pathetic you don't even try. If you wish me to take you or your comments seriously then get a job. Even if you swept the streets or cleaned toilets I would have some respect for you, but clearly you are not even up to that.

I'm glad I won't have to deal with you further and I pity anyone who does."

- xiv. At 14.40 hours on the same date the Respondent sent an email to the Secondary Complainer's mother stating that he did not believe that she had written the last email referred to at xi) above. He stated that:

“I have never resorted to insults but your son, who obviously wrote your last email, clearly feels the need to do so, including openly insulting my family. It is cowardly and unpleasant to do that, especially in an email and quite frankly that is a new low for me. I’m not sure your son would have dared do it to my face. I’m Irish and my family have farms in Ireland, my uncle who manages them is fond of saying ‘But sure what would you expect from a pig but a grunt.’

Our business looks like it is at an end.”

xv. At 14.49 hours the Secondary Complainer’s mother replied stating that she was not interested in what the Respondent believed and that her son would have advised the Respondent of his opinion in person . She further stated: *“In my opinion, your family background explains a lot.”*

xvi. The Respondent sent a reply to the Secondary Complainer’s mother at 15.04 hours addressing the email to the Secondary Complainer. He stated that:

“This charade of you pretending to be your mother is quite laughable Kenny. And yes all cowards say that they would insult people to their faces but they never ever do. How can my family background explain a lot, how can having 400 acres of farmland explain anything? Or are we going to have racial slurs now too? Is that the next thing Kenny, racial insults because I’m Irish?

That’s enough of this.”

xvii. At 15.08 hours the Secondary Complainer sent a further email to the Respondent and referred to his mother’s email stating that he had not dismissed the solicitor, his mother had. He further stated that the Respondent had insulted him frequently in his communications but did not have the awareness to recognise it.

The Secondary Complainer advised that he would be sending the Respondent’s comments and other email communication to the Scottish Legal

Complaints Commission (SLCC) to enable them to consider the Respondent's conduct.

7.8 On or about 2 September 2014 the Secondary Complainer submitted a complaint form to the SLCC regarding the Respondent's conduct.

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

- (a) Sent emails to the Secondary Complainer on 1 April and 2 April 2014 in terms which were inappropriate, derogatory and offensive in their nature and which were capable of bringing the profession into disrepute;
- (b) Sent emails to the Secondary Complainer on 1 April and 2 April 2014 which were inappropriate, derogatory and offensive in their nature which drew the Respondent's integrity into question and thereby constituted a breach of Rule B1.2 of the Law Society of Scotland's Practice Rules 2011;
- (c) Sent emails to the Secondary Complainer's mother on 2 April 2014 which were inappropriate and offensive in their nature towards the Secondary Complainer and which were capable of bringing the profession into disrepute;
- (d) Sent emails to the Secondary Complainer's mother on 2 April 2014 which were inappropriate and offensive in their nature towards the Secondary Complainer, which drew the Respondent's integrity into question and thereby constituted a breach of Rule B1.2 of the Law Society of Scotland's Practice Rules 2011.

9. Having considered the Respondent's submissions in mitigation and the submissions of both parties with regard to expenses and publicity, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 6 November 2019. The Tribunal having considered the Complaint dated 28 March 2019 at the instance of the Council of the Law Society of Scotland against Ross James Porter, Basement Flat, 8 Stormont Street, Perth; Find the Respondent guilty of professional misconduct in respect of he (a) sent emails to the Secondary

Complainer on 1 April and 2 April 2014 in terms which were inappropriate, derogatory and offensive in their nature and which were capable of bringing the profession into disrepute, (b) sent emails to the Secondary Complainer on 1 April and 2 April 2014 which were inappropriate, derogatory and offensive in their nature which drew the Respondent's integrity into question and thereby constituted a breach of Rule B1.2 of the Law Society of Scotland's Practice Rules 2011, (c) sent emails to the Secondary Complainer's mother on 2 April 2014 which were inappropriate and offensive in their nature towards the Secondary Complainer and which were capable of bringing the profession into disrepute, (d) sent emails to the Secondary Complainer's mother on 2 April 2014 which were inappropriate and offensive in their nature towards the Secondary Complainer, which drew the Respondent's integrity into question and thereby constituted a breach of Rule B1.2 of the Law Society of Scotland's Practice Rules 2011; 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; 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; Allow the Secondary Complainer 28 days from the date of intimation of these findings to lodge a claim for compensation with the Tribunal Office.

(signed)

Kenneth Paterson

Vice Chair

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 18 DECEMBER 2019.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chair

NOTE

At the procedural hearing on 6 November 2019, the Tribunal had before it the Complaint, Answers, Joint Minute of Admissions, a List of Authorities for the Complainers and an Inventory of Productions for the Respondent. The Joint Minute admitted the averments of fact, duty and misconduct in the Complaint subject to the deletions and amendments moved by the Fiscal and recorded at paragraph 6 above. The Joint Minute also agreed that the Respondent's Productions 1-4, 7 and 8 were what they bore to be.

On 6 November 2019, both parties invited the Tribunal to deal with the Complaint notwithstanding that the case had been set down for a procedural hearing. The Fiscal suggested that one way of proceeding was to convert the procedural hearing to a full hearing. However, she noted that no formal notice had been served on the Secondary Complainer informing him that the matter was to call as a full hearing. She was obliged to do this in terms of Rule 5(b)(iv) to (vi). Alternatively, she submitted that the Tribunal could proceed on the basis that there was nothing in Rule 41 to preclude the Tribunal dealing with the Complaint at a procedural hearing. Indeed, in her view, Rule 41(5) allowed the Tribunal to dispose of cases at a procedural hearing.

The Fiscal advised the Tribunal that the Secondary Complainer had made representations asking to place information before the Tribunal. The Fiscal said that in terms of her duties under Rule 5(b)(iii), she had to take account of any comments made by the Secondary Complainer, where relevant. She had considered the documents and did not wish to place them before the Tribunal. She knew that the Secondary Complainer had also provided these documents to the Clerk to the Tribunal. The Chair informed parties that the Clerk had not made these papers available to the Tribunal. The Fiscal noted that the Rules did not enable the Secondary Complainer to lodge documents or lead evidence. Evidence is led by the Fiscal on behalf of the Society. The Fiscal had an agreed position with the Respondent. The Secondary Complainer's comment might be relevant at a compensation hearing but the Secondary Complainer had asked for them to be admitted for consideration at the professional misconduct hearing. Although under Rule 14, a Secondary Complainer was entitled to be present at a hearing, that had to be read in the context of Rule 5(b)(i) which referred to a Secondary Complainer leading evidence in support of a claim for compensation. Although the wording of the Rules could be clearer, it was for the Society to lead evidence in respect of misconduct.

The Fiscal noted the Tribunal's powers to waive or vary certain Rules where it was just to do so. She indicated that she had informed the Secondary Complainer by email on 2 September 2019 that it was

likely that the matter would be dealt with on 6 November 2019. She spoke to the Secondary Complainer the week before the hearing and it was at that stage he raised the issue of presenting material before the Tribunal.

The Respondent indicated that he took no issue with anything the Fiscal said. He was anxious to have the matter dealt with as soon as possible. The matter had been hanging over him for five and a half years and the situation was not good for his health.

Following a short adjournment for it to consider the parties' submissions, the Tribunal indicated that it would deal with the matter on that day. Rule 47 allowed the Tribunal to dispense with any requirements respecting notices, documents or time where it appeared to the Tribunal to be just to do so. Under Rule 40, the procedure for dealing with a case, including the procedure at any hearing shall be such as the Tribunal may determine (subject to the relevant statutes and rules). Therefore, it directed that the procedural hearing would be converted to a full hearing and it would dispense with any requirements regarding notices, documents or time.

The Secondary Complainer was not entitled at the stage of considering professional misconduct or sanction to lead evidence or make representations. He was not prejudiced by failing to receive the Rule 5(b)(iv) notice. The Secondary Complainer was also aware from his contact with the Fiscal that it was the parties' intention to invite the Tribunal to deal with the case on this day. In accordance with its usual practice, if it were to make a finding of professional misconduct against the Respondent, the Tribunal would invite the Secondary Complainer to make a claim and he could attend and lead evidence in support of his claim at any compensation hearing fixed. Refusing to deal with the matter on 6 November 2019 when there was Tribunal time available and parties consented, could be injurious to the Respondent's health. It was in the public interest that this case be dealt with expeditiously. It was also in the Secondary Complainer's interest that the matter moved forward and was not delayed when there was no benefit to any party in doing so.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that the Respondent admitted the averments of fact, duty and misconduct in the Complaint. She indicated that the Respondent had cooperated with the Complainers and entered into a Joint Minute early in proceedings.

The Respondent was a sole practitioner for two years when he was introduced to the Secondary Complainer in December 2013. The Respondent started some work for the Secondary Complainer and his mother. He corresponded with them by email. Paragraph 4.5 of the Complaint contained the emails which the Complainers say constituted professional misconduct. The tone of both parties deteriorated. The relationship broke down and the Respondent sent emails of an unpleasant nature to the Secondary Complainer and his mother. The Fiscal quoted extensively from these emails which are reproduced in the findings in fact above. She referred to various cases in support of her assertion that the Respondent's conduct constituted professional misconduct.

The Fiscal submitted that a solicitor has a duty to act with integrity. If the public is to have trust in the profession, solicitors must observe high standards of conduct. The Respondent had a duty to act with propriety and dignity. The Fiscal noted that the Respondent was aware that the Secondary Complainer had mental health problems. He ought to have behaved more professionally. The Fiscal indicated that although the Complainers alleged a breach of Rule B1.2, they did not suggest that the Respondent had been dishonest.

SUBMISSIONS FOR THE RESPONDENT

The Respondent indicated that he had nothing to say regarding professional misconduct which was admitted. He would make submissions in mitigation at the appropriate time.

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.

This Tribunal has repeatedly noted that it is a basic and fundamental principle that a solicitor requires to be a person of integrity. By sending inappropriate, derogatory and offensive emails to clients, the Respondent allowed his integrity to be called into question. The Tribunal noted particularly that the Respondent was aware of the Secondary Complainer's mental health background and this made his

comments particularly offensive. These comments were capable of bringing the profession into disrepute. The conduct was a serious and reprehensible departure from the standards of competent and reputable solicitors and therefore constituted professional misconduct.

The Fiscal produced the Respondent's record card which disclosed no conduct findings.

SUBMISSIONS IN MITIGATION

The Respondent noted that the emails in question were written over a period of less than 24 hours on 1 and 2 April 2014. He believed that he was corresponding at all times with the Secondary Complainer. He did not believe that the Secondary Complainer's mother knew of the emails. His correspondence with the Secondary Complainer became heated. He accepted full responsibility for the misconduct. He accepted that he was the professional in the situation and ought to have "risen above it". He apologised for any offensive caused.

The Respondent noted that when he said "you clearly have some issues", this had been badly worded. He meant that the Secondary Complainer disapproved of the Respondent. He was not at that time referring to the Secondary Complainer's mental health. He accepted that the expression regarding a pig was an ill-advised choice of words and was capable of giving offence but what he had meant was that you cannot expect people to act in a way which is not in their nature.

The Respondent explained that he was a sole practitioner with no support staff. He did everything himself because he could not afford to employ anyone. He worked long hours, at weekends and late nights doing primarily civil and criminal legal aid work. He experienced cash flow problems. He had to borrow money from family. He was exhausted and under stress. He was also dealing with a long-term illness which made him vulnerable in circumstances where he was under stress and not sleeping well.

Shortly after the emails, the Respondent said he wrote to the Secondary Complainer suggesting a meeting with the intention of offering an explanation and apology. However, this was refused. A mutual acquaintance also attempted to broker a meeting. The Secondary Complainer refused. The Secondary Complainer raised an action against the Respondent at Perth Sheriff Court. The Respondent said his insurers settled "primarily for commercial reasons". The self insured payment was £3,000. The

insurer paid the balance. The Respondent also attempted to apologise to the Secondary Complainer through his solicitor.

The Respondent is now 56 years old and has not worked since October 2016 as a solicitor. He experienced some health difficulties during that time. He has now recovered but has no interest in returning to the profession. He has a small income which is mostly used to pay a mortgage and loan. He submitted a balance sheet of his income and outgoings. He noted that he represented himself before the Tribunal because he had no funds to pay for a representative.

In summary, the Respondent asked the Tribunal to take into account that the emails were written after a tense and heated exchange; they were written over a relatively short period of time; this was an isolated incident; he tendered a plea of guilty at an early stage; he cooperated with the Fiscal and the Tribunal; there had been no repetition of the incident; he was a person of good character; there was no risk to the public; and his health was improved. He submitted that this was not a premeditated incident. Rather, he snapped when under professional and financial stress when exhausted and ill. He has already been penalised by having to pay £3,000 to the Secondary Complainer. The matter had taken along time to come before the Tribunal through no fault of the Respondent. His case had been caught up in the “hybrid complaint” legislation.

The Fiscal moved for expenses and made no motion regarding publicity.

DECISION ON SANCTION, EXPENSES AND PUBLICITY

The Tribunal noted that the professional misconduct took place during a 24 hour period in an otherwise unblemished career. The Respondent had cooperated with the Fiscal and the Tribunal. He had demonstrated remorse and insight. He had attempted to minimise the impact on the Secondary Complainer by offering to meet and apologise. On the scale of solicitor’s wrongdoing, the Tribunal considered the misconduct to be at the lower end. Accordingly, it censured the Respondent.

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. The Secondary

Complainer will have 28 days from the date of intimation of these findings to lodge a written claim for compensation.



Kenneth Paterson
Vice Chair