

**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**

against

**KEVIN WALLACE ALEXANDER
DAVIDSON, Solicitor, 23 Burnland Crescent,
Elrick, Aberdeenshire**

1. A Complaint dated 9 February 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Kevin Wallace Alexander Davidson, Solicitor, 23 Burnland Crescent, Elrick, Aberdeenshire (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 appointed the Complaint to be heard on 9 May 2018 and notice thereof was duly served on the Respondent.
5. The hearing took place on 9 May 2018. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented himself.
6. A signed Joint Minute was lodged admitting the averments of fact and duty in the Complaint.

7. The Tribunal found the following facts established:-

- 7.1 The Respondent's date of birth is 27 December 1968. He was admitted as a Solicitor and enrolled on the Register of Solicitors in October 1991.

From 1 December 2001 to 31 May 2012 he practised as KWAD Solicitors in Aberdeen.

From 1 June 2012 to 28 February 2014 he was an employee with James & George Collie, Solicitors, Aberdeen.

He does not currently hold a Practising Certificate but remains on the Roll of solicitors.

- 7.2 On 18 January 2017 the Respondent was convicted of a charge of Assault to Injury. On 6 April 2017 the Complainers' Complaints Sub Committee considered the conviction and decided that it was appropriate in the interests of the public and for maintaining standards within the profession that a complaint should be referred to the Scottish Legal Complaints Commission (the SLCC). On 4 May 2017 the Complainers' Complaints Sub Committee submitted a complaint form to the SLCC and the SLCC in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 accepted the complaint for investigation and remitted it to the Complainers to deal with as a conduct complaint under Section 6 of the 2007 Act.

- 7.3 The Complaint referred to the Complainers for investigation was:-

"On 18 January 2017 at Aberdeen Sheriff Court Mr Davidson was convicted of a Charge of Assault to Injury in respect of an incident which occurred on 18 October 2015 at Alford Place, Aberdeen in which he struck one complainer on the head, his actions in committing an assault and thereafter being convicted of same representing conduct which is apt to draw the profession into disrepute."

- 7.4 The Complainers commenced their complaints investigation procedure intimating a complaint to the Respondent by letter dated 20 June 2017.

The Complainers prepared a Report, a copy of which was sent to the Respondent by letter dated 6 November 2017. The letter advised that the complaint would go forward to the Professional Conduct Sub Committee for consideration.

- 7.5 The complaint was considered by the Complainers' Professional Conduct Sub Committee on 14 December 2017 and it decided;

"The conduct of Kevin Davidson in respect of him: being convicted on 18 January 2017 at Aberdeen Sheriff Court of a Charge of Assault to Injury in respect of an incident which occurred on 18 October 2015 at Alford Place, Aberdeen in which he struck one complainer on the head, his actions in committing an assault and thereafter being convicted of same appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor and appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct."

The Sub Committee further determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51 to prosecute the Respondent before the Scottish Solicitors Discipline Tribunal.

- 7.6 On a letter dated 20 December 2017 the Complainers sent the Respondent a copy of the Professional Conduct Sub Committee's Determination.

8. After considering the Complaint, the Joint Minute, the parole evidence of the Respondent and the submissions made by both parties, the Tribunal did not consider that the Respondent's conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors. The test for professional misconduct was not met. However, the Tribunal considered that the Respondent's actions may amount to unsatisfactory professional conduct and accordingly remitted the matter under Section 53ZA of the Solicitors (Scotland) Act 1980 to the Council of the Law Society of Scotland.

9. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 9 May 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Kevin Wallace Alexander

Davidson, Solicitor, 23 Burnland Crescent, Elrick, Aberdeenshire; Find the Respondent not guilty of professional misconduct; Remit the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Make no finding of expenses due to or by either party; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Alan McDonald

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 *25 MAY 2018.*

IN THE NAME OF THE TRIBUNAL



Alan McDonald
Vice Chairman

NOTE

The Respondent lodged Answers to the Complaint. The parties lodged a Joint Minute which agreed all the averments of fact and duty contained within the Complaint. Both parties lodged inventories of productions and lists of authorities. The Fiscal indicated that the whole Complaint was agreed except for the averments of professional misconduct. Therefore, he did not intend to lead any evidence. The Respondent gave evidence on oath. Both parties made submissions.

EVIDENCE FOR THE RESPONDENT

The Respondent gave evidence on his own behalf. He told the Tribunal that he was found guilty of assault to injury on 18 January 2017 and fined £750. He accepted that he had committed an assault. He recognised that the jury did not accept his defence of self-defence. It was his belief that some of the elements of the defence had been made out but accepted that he had not taken the opportunity to retreat.

The Respondent said it was necessary for the Tribunal to consider the circumstances of the offence before making a judgment as to whether the conduct constituted professional misconduct. He had not had any involvement with the victim before the incident. The Respondent had been drinking but was not drunk. He had only entered the nightclub as he did not want to wait on the street for the night bus which was not due to leave for another half an hour. The offence had occurred in the early hours of the morning. Loud music was playing. Out of the corner of his eye, he noticed the victim raise his hand. He believed he was about to be assaulted and so struck the complainer on the head. The Respondent noted that he was facing a tall gentleman who was full of drink and acting in an aggressive manner. The Respondent gave evidence that he was in a state of fear and alarm. He felt that it was "*hit or be hit*". In hindsight he reflected he should have left immediately. He did not do so and this was a "*catastrophic error of judgment*".

The Respondent referred to Production R1 in the Respondent's Inventory of Productions. This was a "Return To Scene" forensic report which had been instructed by his agent but had not been lodged as a production at his trial. The author's conclusion was that the victim could be seen pointing in the direction of the Respondent twice. The second time he pointed, the Respondent took the victim's hand and there appeared to be a forward movement by the victim before the Respondent swung his right hand towards the victim's head.

The Respondent explained that he was not a violent person. He has no previous convictions for violence. This was not a premeditated or calculated attack. The assault comprised only of one punch. He was glad that the victim did not suffer serious injury and had not required any hospital treatment.

In cross-examination, the Fiscal suggested to the Respondent that he had hit a man because he had pointed at him. The Respondent said that he had been afraid. He thought the victim was going to punch him.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal made reference to the Sharp test for professional misconduct. The Fiscal explained that the Tribunal's task was to decide whether the Respondent's previous conviction for assault to injury constituted professional misconduct against the background of the Sharp test. The Fiscal said there was no dispute that a previous conviction can amount to professional misconduct. The question in this case was whether this particular conviction amounted to professional misconduct. The Fiscal said the authorities were clear that private conduct can be relevant to the question of professional misconduct.

The Fiscal suggested that the conviction affected the Respondent's fitness and his integrity. He said that a previous conviction for assault to injury was serious enough to justify a finding of professional misconduct. The Fiscal submitted that the profession had been brought into disrepute. He suggested that an ordinary member of the public would not look kindly upon a conviction of this nature.

The Fiscal highlighted that there were a number of Tribunal authorities on this matter. These involved a variety of criminal convictions. Some of these had involved the Respondent being struck off the roll of solicitors. He submitted that the Tribunal authorities were of limited help but that the most relevant case on the Respondent's list was the Law Society of Scotland-v-Jethwa which had involved a breach of the peace, assault and a charge of resisting arrest.

In response to a question from a member of the Tribunal, the Fiscal said that he was unable to refer to any previous authority whereby the Tribunal found professional misconduct based on one assault which was not of a repeated nature. However, the Fiscal noted that assault to injury is more serious than simple assault and was an aggravation. He referred the Tribunal to page 115 in Smith & Barton's "Procedures and Decisions of the Scottish Solicitors Discipline Tribunal". In that book the authors referred to a solicitor who had been found guilty and admonished in the Sheriff Court on a charge of assault and breach of the peace.

In response to a question from the Chair, the Fiscal said that he did not think that the fact that the Respondent had not disclosed that he was a solicitor to the police was relevant to the question of professional misconduct. The Fiscal clarified that his submissions were based on integrity and bringing the profession into disrepute, and not on dishonesty or deceit.

SUBMISSIONS FOR THE RESPONDENT

The Respondent referred to the Sharp test. He said it was essential for the Tribunal to consider the whole circumstances and the degree of culpability involved. He noted that there were certain standards of conduct to be expected of competent and reputable solicitors. It was a departure from those standards which could be categorised as serious and reprehensible which would constitute professional misconduct. He noted that in Sharp v Council of the Law Society of Scotland 1984 SLT 313, the Inner House decided that the culpability of the junior partners was not so serious and reprehensible that it could be stigmatised as professional misconduct "*which is a grave charge*". The Respondent invited the Tribunal to consider whether his behaviour was so serious and reprehensible that it constituted professional misconduct.

The Respondent noted that he had originally faced much more serious charges. However, the jury had only found him guilty of an assault involving one punch on one victim. The injury was not serious. The victim was not hospitalised and had not wished to press charges against the Respondent. He notified the Law Society of his conviction on the date of conviction. The Respondent said that the media reports following the criminal case referred to him as a "*local businessman*". He had not practised since 2014. When arrested and during the court case he did not give his occupation as a solicitor. He said this limited the potential for the profession to be brought into disrepute.

The Respondent referred to a number of previous decisions of the Tribunal where the Tribunal had had to consider the question of professional misconduct in the context of a criminal conviction. These involved a variety of types of offending and sanctions imposed by the Tribunal. He sought to distinguish these cases from the circumstances of his case. He noted that the cases which involved violence had all involved repeated or premeditated action. He submitted that his conduct fell short of professional misconduct.

DECISION

On 18 October 2015 while within a nightclub the Respondent struck a person on the head. On 18 January 2017 he was convicted of assault to injury. The Tribunal heard the Respondent's account of the circumstances of that offence. The Tribunal found the Respondent to be a credible and reliable witness. Reference was made by the Respondent to the issue of self-defence. The Tribunal noted that the jury had rejected that defence. While giving due respect to the jury's verdict, the Tribunal considered that the Respondent's account of the circumstances of the offence in general was relevant to its consideration of the issue of professional misconduct.

The Respondent referred to Production R1 for the Respondent which was a forensic report. The Fiscal submitted that the Tribunal should place no weight upon this document since the Respondent had not called a witness to speak to it. The Tribunal indicated that it would hear the evidence and then decide what weight to place upon the report. Having heard all the evidence, the Tribunal considered that the Respondent was entitled to speak to the report himself. However, very little weight could be attached to it. The CCTV was not produced, the expert did not give evidence before the Tribunal and the author concluded the report by saying that "*It must be noted that the descriptions are my analysis of what can be seen in the CCTV recording, and others may see it differently.*"

According to the definition of professional misconduct contained in 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."

The question therefore for the Tribunal was whether the Respondent's conduct represented a serious and reprehensible departure from the standards expected of the profession. It is necessary to consider all the circumstances and the degree of the Respondent's culpability. A solicitor requires to be a person of integrity. If the public is to have trust in the profession then solicitors must observe a high standard of conduct. This requirement of integrity applies equally to a solicitor's private life as it does his professional conduct.

Mere conviction of any criminal offence does not constitute professional misconduct. In all these cases the question is one of fact and degree. In the present case, the conviction was on indictment and involved an assault to injury. However, the conviction was only in respect of one strike, albeit to the head. The Respondent's evidence, which the Tribunal accepted, was that this offence took place in the heat of the moment. There was no course of conduct. Although there was injury, it appears to have been minor. Although the prosecution was on indictment, the jury made substantial deletions to the charges originally faced by the Respondent and the disposal was, relatively speaking, low. The criminal behaviour was not aggravated in any other way.

Of all the authorities referred to as examples of professional misconduct following criminal conviction, the Law Society of Scotland-v-Maguire and the Law Society of Scotland-v-Jethwa were the most relevant to the present case. Both these cases involved assaults. In Maguire, the Respondent assaulted his wife and his mother-in-law. Aggravating factors in this case were the domestic nature of the assault, the course of conduct and the fact that injury was involved. The Jethwa case involved a course of conduct whereby the solicitor repeatedly kicked the victim on the body and struggled and lashed out against police officers when being arrested. The Respondent in that case received a £900 fine and a compensation order in the criminal case which took place over 30 years ago. The Tribunal considered that the present Respondent's culpability was lower than the solicitors in those cases.

The Tribunal considered that the Respondent's conduct represented a departure from the standards of conduct to be expected of competent and reputable solicitors. However, it did not consider that the departure was serious and reprehensible. The Tribunal had regard to its functions of protecting the public and upholding the reputation of the profession. The Respondent was punished by the criminal courts. The Tribunal did not consider that the public required protection as a result of this case. The Tribunal considered how the public would view this conviction. The conduct, while falling short of the standards to be expected of a solicitor in Scotland, would not bring the profession into disrepute. However, it may constitute unsatisfactory professional conduct which is professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor but which does not amount to professional misconduct and which does not comprise merely inadequate professional service. Accordingly, the Tribunal found the Respondent not guilty of professional misconduct and remitted the case to the Law Society under Section 53ZA of the Solicitors (Scotland) Act 1980.

Following submissions, the Tribunal made no finding of expenses due to or by either party. It directed that publicity would be given to the decision and that publicity should include the name of the Respondent.



Alan McDonald
Vice Chairman