

**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, 26
Drumsheugh Gardens, Edinburgh**

against

**MICHAEL SANDISON ALLAN,
25 Castle Street, Aberdeen**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Michael Sandison Allan, 25 Castle Street, Aberdeen (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 set down for a procedural hearing on 15 December 2014 and notice thereof was duly served on the Respondent. The Fiscal tended an amended Complaint dated 2 December 2014 to the Tribunal. Mr McCann for the Respondent objected to the admission of the new Complaint and indicated that both parties wished the matter to be continued to a further procedural hearing. Mr McCann indicated that the Respondent may wish to raise preliminary pleas of delay in relation to the amended Complaint

and further investigations were required into the factual background. The Tribunal accordingly fixed a preliminary hearing for 26 March 2015 at 10:30am and ordered that any Answers be lodged by 5 March 2015 and that these Answers should include any preliminary plea that was to be debated on 26 March 2015.

5. When the case called on 26 March 2015 Mr McCann lodged adjusted Answers on behalf of the Respondent. Mr McCann also advised that the preliminary plea was not to be insisted upon and he had now had no objection to the amended Complaint. The Tribunal was advised that parties were in the process of agreeing a plea to professional misconduct and parties asked that the matter be adjourned to a substantive hearing.
6. The Tribunal fixed a substantive hearing for 22 May 2015.
7. When the case called on 22 May 2015 the Respondent was present and represented by Mr McCann, Solicitor, Clydebank. The Law Society were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. A Joint Minute of Admissions was lodged admitting all the facts in the amended Complaint and two of the averments of professional misconduct. Mr Lynch confirmed that the Law Society accepted the plea as tendered and accepted the facts as set out in the Minute of Admissions.
8. Having heard submissions from both parties and having noted the terms of the amended Complaint and the Joint Minute of Admissions ,the Tribunal found the following facts established:-

8.1 The Respondent's date of birth is 10th December 1951. He was enrolled as a solicitor on 26th November 1979. He is the sole principal partner of Michael S Allan Solicitors, 25 Castle Street, Aberdeen.

- 8.2 In terms of the Goods Vehicles (Licensing of Operators) Act 1985 the Traffic Commissioner is the statutory licensing authority responsible for goods vehicle operators in Scotland.
- 8.3 On or about 14th May 2009 the Transport Commissioner revoked the goods vehicle operating licence of Company 1 and determined that Mr A and Mr B who were the directors of Company 1 should be disqualified from holding or applying for an operator's licence for a period of 7 years. Another director of the company Ms C was similarly disqualified for a period of 2 years. A driver employed by the company, Mr D, was similarly disqualified for a period of 12 months. The Respondent represented Company 1 at the Inquiry at which these orders were made. The Commissioner added a rider to her decision which was to the effect that should there be any TUPE transfers as a result of her decision any operator taking over the drivers or vehicles should undertake proactive risk assessments of the drivers and full inspections of any vehicles and plant, and that the competence and road worthiness of transferred persons and assets, and adherence to Health & Safety procedures, should not be assumed. She concluded by saying that disqualified operators often seek to reemerge in other corporate form.
- 8.4 An application for an operator's licence was made to the Traffic Commissioner by Mr E and Ms F as a result of which a Public Inquiry took place at Inverness on 8th July 2010. The application was for a standard national goods vehicle operator licence. The nominated operating centre was at Property 1. Given the family surname, the intended operating centre and the nature of the business it appeared to the Commissioner that there were connections between this application and the business previously carried on by Company 1. She therefore considered that she should hear the application at a Public

Inquiry. At the Inquiry the Commissioner heard evidence and concluded that the application was a front for Company 1. She refused the application. On 17th December 2010 the Upper Tribunal refused an appeal against the Traffic Commissioner's decision.

8.5 MSA Logistics Limited is a company of which the Respondent is director and shareholder. The Respondent is the controlling mind of the company. He is the sole director and owns eighty per cent of the issued share capital. MSA Logistics Limited was granted a standard national goods vehicle operator licence in January 2008 with authorisation for 10 vehicles and 7 trailers. Two operating centres were provided being at 14 Inchyra Road, Grangemouth and at Tillycairn Farm, Suachen, Inverurie. The sole director of MSA Logistics Limited was the Respondent.

8.6 MSA Logistics Limited made an application to add premises at Longman Drive, Inverness as an additional operating centre for the vehicle operations. The Traffic Commissioner noted that the finance condition imposed in relation to the grant in January 2008 had not been complied with. Having heard evidence at Oral Hearings on 26th January and 26th April 2010 and 11th May 2010 and having seen written representations from the Respondent the Commissioner decided that the Respondent was not, as she had thought, operating as a front for the family. The Respondent appeared at that inquiry and gave assurances to the Commissioner that he was operating independently and that he was not a front for the family.

8.7 As a result of having received adverse reports about MSA Logistics Limited the Commissioner directed that a Public Inquiry be held on 22nd and 23rd November 2012. She refused a motion by the Respondent that she should recuse herself. The Respondent did not appear at the hearing. The Commissioner

proceeded with the hearing. She found in fact, *inter alia*, that the licence issued to MSA Logistics Limited did not provide for any authorised operating centre at any locations other than those condescended upon at above and in particular that there was no authorisation for vehicles to be parked or normally kept at any address in Rossshire including any yard or premises belonging to the family Group of Companies; that at least three of the specified vehicles were being operated from the family's premises in property 1, and that this unauthorised operating centre had been in use for over one year; MSA Logistics Limited did not have a company digital card and so had no means whereby digital data could be downloaded by the company for analysis; MSA Logistics Limited took no steps to download the digital data for the vehicles being operated by it which had digital tachographs; the single vehicle seen by the examiners after inspection on 24th January 2012 had the family's digital card locked in it; the family were the registered keepers of the vehicles specified in MSA Logistic Limited's licence and that at least two of the vehicles specified in the licence were working under the direction of Company 2 which was part of the family group of companies; the instructions to drivers were given by the family who had day to day control of the drivers; that vehicle repairs were under the control of the family; and that MSA Logistics Limited through the Respondent's Aberdeen office and his accountants paid the drivers' wages according to time sheets provided by the family. The family provided the funds to MSA Logistics Limited's bank account to pay the drivers wages and to deal with national insurance and Pay as you Earn for the drivers. The Commissioner concluded that the Respondent and MSA Logistics Limited were "a puppet licence for the family". She remarked that both the company and the Respondent had lost their reput. The Commissioner determined that the operators licence held by MSA Logistics Limited should be revoked with

effect from 8th February 2013 for a period of seven years. She disqualified both the company and the Respondent from holding any operator's licence for the same seven year period. Neither of the disqualifications were appealed against.

- 8.8 The Respondent had operated since 2009 with an administrative structure that depended on himself being assisted by a Traffic Manager, Mr. G and he had also allocated a full time secretary from his legal office to look after the necessary administrative and compliance documentation for MSA Logistics Limited.
- 8.9 The main activity of MSA Logistics Ltd from its inception in 2009 up to about October 2011 was in the operation of four lorries designed to collect wheeled bins according to a rota set out by the local authorities who had contracted these operations originally to the Company 1. The Respondent through his company had agreed to sub-contract the completion of the relevant contracts which continued to run in the name of the local authority and the family Company. That arrangement would have been compliant with the regulations as long as the family Company and its disqualified directors took no part in the traffic operations or in their supervision.
- 8.10 In about October 2011 the Respondent's firm acquired the rights to operate two further lorries designed to collect skips. These would operate on individual contracts as the demand arose from time to time, rather than on a fixed rota like the bin lorries. The Respondent had made it clear that his drivers were only to operate on instructions from his firm.
- 8.11 The Respondent's Traffic manager resigned with effect from 11th November 2011 and that the various efforts which the Respondent made to replace him, and to improve the administration and compliance of his firm, were unsuccessful.

Accordingly, the level of compliance was seriously deficient during the last year of his operation. In particular, in the absence of proper tachograph checks, it was not possible for the representatives of the Vehicle and Services Operation Agency, who have a statutory duty to inspect vehicles, to ascertain that driver's hours regulations were being complied with and the drivers supervised so that the vehicles would only be kept in duly authorised locations in terms of the Regulations. The Respondent did not in actual fact act as a front for members of the family or the family company who were already disqualified. However, in the absence of his Traffic Manager his drivers may have started taking instructions for jobs direct from members of the family, including loads on the two skip lorries from Company 2, albeit that was in breach of their instructions. The Respondent's own management and supervision of his own company MSA Logistics Limited, were seriously deficient and certain justifiable concerns reported by VOSA to the Traffic Commissioner led to the calling of the public Inquiry on 22nd and 23rd November 2012 following which he was disqualified.

- 8.12 In regard to financial matters, the payments received by the Respondent's firm were in payment of invoices due by the family which had fallen into arrears. The Mr H's letter and schedule dated 12 May 2015, and show a total of £61,337.66 paid on 15th November 2012. These payments were properly made, but in the absence at the Public Inquiry of himself or of anyone to speak on his behalf, concerns may have remained in the mind of the Commissioner as to the operation of his company.

9. Having considered the foregoing facts and having heard submissions from both parties, the Tribunal found the Respondent guilty of professional misconduct in respect of:

9.1 His causing the company of which he was the controlling mind to be subject to a seven year period of disqualification, thereby bringing the legal profession into disrepute; and

9.2 His incurring himself a seven year period of disqualification, thereby bringing the legal profession into disrepute.

10. Having heard the submissions in mitigation from the Respondent's agent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 22 May 2015. The Tribunal having considered the amended Complaint dated 2 December 2014 at the instance of the Council of the Law Society of Scotland against Michael Sandison Allan, 25 Castle Street, Aberdeen; Find the Respondent guilty of professional misconduct in respect of his causing the company of which he was the controlling mind to be subject to a seven year period of disqualification and his incurring himself a seven year period of disqualification thereby bringing the legal profession into disrepute; Censure the Respondent; Fine him in the sum of £1,000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00 from the date of submission of the amended Complaint being 2 December 2014; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

Alan McDonald

Vice 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

Alan McDonald
Vice Chairman

NOTE

The case called for a number of procedural hearings prior to being dealt with by the Tribunal on 22 May 2015. When the case called on 22 May 2015 a Joint Minute of Admissions was lodged. Mr McCann advised the Tribunal that the background to the case was very complex.

The Chairman enquired as to whether or not the Joint Minute of Admissions admitted everything in the amended Complaint. Mr Lynch clarified that the Law Society accepted the plea as tendered in the Joint Minute of Admissions. He indicated that his understanding was that the Joint Minute of Admissions admitted all the averments of fact in the Complaint including what was averred at Article 4(06) on the basis that these were the Findings made by the Traffic Commissioner at the Public Inquiry. However the Respondent did not accept that all the Findings were correct. Mr Lynch stated that the Findings of the Traffic Commissioner were not res judicata in connection with the question between the Law Society and the Respondent.

Mr Lynch clarified that the Law Society were content that the Tribunal proceed on the basis of what was set out in the Minute of Admissions which was a plea of guilty to paragraph 6.1(3) and (4) but not guilty to 6.1(1) and (2). Mr Lynch confirmed that the Law Society accepted the Respondent's not guilty plea to paragraph 6.1(1) and (2). Mr Lynch also confirmed that the Law Society accepted all the facts as set out in the Minute of Admissions.

Mr McCann confirmed that this was correct and was also his understanding of the position.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch acknowledged that this was not an easy case and expressed his gratitude to Mr McCann for his assistance. He indicated that it was an unusual case but referred the Tribunal to Smith & Barton: Procedure and Decisions of the Discipline Tribunal – page 110 and quoted Lord Donaldson from the case of *United Bank of Kuwait Ltd-v-Hammond and Others*[1988]A11 ER 430. This showed that to conduct business

where you were the only director in such a way as to incur a seven year disqualification, which was the maximum that could be imposed, amounted to professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann stated that it was accepted that this amounted to professional misconduct. Mr McCann however submitted that solicitors often venture into matters outside the law. When solicitors did this and a solicitor's business collapsed, matters did not always end up before the Tribunal. However in this case the Respondent had fallen foul of a regulator in this other area of business. Mr McCann explained that the Respondent was a family man and also had a family farm. In 2010 the Traffic Commissioner had warned the Respondent that given how busy he was he might be overstretching himself. The Respondent however carried on and was unable to deal with all the day to day problems. The Respondent did intend to be fully compliant as sole owner of the company. When his traffic manager left, it was a very specialised job and he could not get anyone to replace him. He did train up two people but they dropped out. With hindsight it would have been better if the Respondent had attended the Public Inquiry.

Mr McCann explained that although the Respondent leased the family's lorries, it was a legitimate exercise. When he obtained two extra skip lorries, ad hoc jobs were done and the drivers were going direct to the family which gave the appearance of them being back involved in the matter. Mr McCann however submitted that this was a problem of a lack of supervision rather than any collusion.

Mr McCann further explained that within the Respondent's legal office, two of his lawyers fell ill and he had additional obligations to deal with. This meant that he did not get around to sorting out the problems with his traffic operation. Mr McCann stated that it was a regrettable case and suggested that it should have no bearing on the Respondent's right to practise. The Respondent had been a solicitor throughout his career without fault. Mr McCann explained that the Respondent now only had his family farm and his legal practice and did not have any other businesses. Mr McCann

asked the Tribunal to deal with the matter in such a way so as it would not affect the Respondent's legal practice.

Mr McCann advised that an award of expenses was conceded from the time that the amended Complaint was submitted. In connection with the procedure prior to this, Mr McCann asked the Tribunal to make a finding of no expenses due to or by any party.

Mr Lynch asked the Tribunal to make an award of expenses in favour of the Law Society from the date of the amended Complaint but to make no award for anything prior to that date. It was clarified that the date of the amended Complaint was 2 December 2014.

In response to a question from a Tribunal member, Mr McCann explained that the family owned the quarries but were disqualified from undertaking traffic operations. The Respondent told his drivers that the jobs must be done through his MSA company. It was perfectly legitimate for the family to ask his company to transport items. However because the Respondent's transport manager had left, his drivers accepted instructions from the family. The Respondent only discovered this at a later stage.

The Traffic Commissioner had concerns with regard to the appearance of the family doing it. Mr McCann submitted that there was no intention to allow the family to control the traffic operations. The Respondent did not know at the time that this was happening. There was no boardroom level deal. The family were not funding the business, they were just paying invoices for the work done by the Respondent's company. It accordingly looked bad but actually was not.

DECISION

The Tribunal found this quite a difficult and unusual case. The Respondent got himself into difficulty in operations not connected with his legal practice. Solicitors however require to maintain the same standards of propriety in relation to any commercial ventures as are expected of them in professional practice.

In this case the Respondent was trying to do too much and should not have put himself in that position. His failure to supervise his staff and exercise control led to the company of which he was the sole director being subject to the maximum period of disqualification that the regulator could impose. This clearly brings the legal profession into disrepute. The Tribunal accordingly made a finding of professional misconduct.

A solicitor who allows a company solely controlled by him to incur a disqualification from the regulator in the business in which the company was operating is detrimental to the reputation of the legal profession. In this case the solicitor also personally incurred a seven year disqualification.

The Tribunal did not consider that there was any risk to the public by the Respondent continuing to work with an unrestricted practising certificate.

The Tribunal considered whether or not to impose a Fine in addition to a Censure. Although the Tribunal considered the Respondent's conduct to be at the lower end of the scale of professional misconduct, the Tribunal was concerned by the Respondent's lack of supervision and control of his business which although not directly related to his legal practice is cause for concern. In the circumstances the Tribunal imposed a fine of £1,000 in addition to the Censure. The Tribunal considered that solicitors need to be reminded of the importance of maintaining appropriate standards in other aspects of their life as well as in their professional lives.

The Tribunal made a finding of expenses from the date of the amended Complaint as this was requested by both parties. The Tribunal did not require to make any finding of no expenses due to or by in respect of the earlier proceedings as if no award is made then no expenses will be due.

The Tribunal made the usual order with regard to publicity.

Alan McDonald
Vice Chairman