

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

INTERLOCUTOR

in Complaint

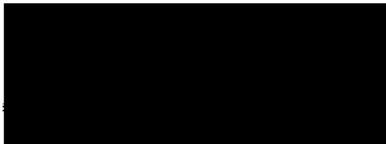
by

THE COUNCIL OF THE LAW SOCIETY OF
SCOTLAND, Atria One, 144 Morrison Street,
Edinburgh (hereinafter referred to as "the
Complainers")

against

KEVIN FREDERICK MacPHERSON,
Ravenswood House, PO Box 9945,
Stornoway, Isle of Lewis (hereinafter referred
to as "the Respondent")

Edinburgh 22 October 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Kevin Frederick MacPherson, Ravenswood House, PO Box 9945, Stornoway, Isle of Lewis; Find the Respondent guilty of professional misconduct in respect that between March 2011 and August 2013 he engaged in an improper course of conduct towards a trainee solicitor and on 22 June 2012 engaged in an improper course of conduct whereby he engaged in email correspondence with a female employee of another firm of solicitors in which he made reference to the statement of a child complainer in a case of alleged sexual abuse against a client of his firm in terms which demonstrated that he found the content of the said child statement to be titillating or sexually gratifying; Order that the name of the Respondent be Struck Off 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; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.


Colin Bell
Vice Chair

**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

**KEVIN FREDERICK MacPHERSON,
Ravenswood House, PO Box 9945, Stornoway,
Isle of Lewis**

Respondent

1. A Complaint 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 Kevin Frederick MacPherson, Ravenswood House, PO Box 9945, Stornoway, Isle of Lewis (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. Following sundry procedure, which is detailed in the findings following the preliminary hearing held on 19 June 2019, the Tribunal fixed a hearing to take place on 22 October 2019.
5. At the hearing on 22 October 2019, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented by David Burnside, Solicitor, Aberdeen. Parties lodged a signed Joint Minute of Admissions

and confirmed that it and the amended Record dated 22 October 2019 represented the agreed position of the parties. The Respondent's Answers were withdrawn. No evidence was led. Both parties made submissions.

6. The Tribunal found the following facts established:-

- 6.1 The Respondent is a Solicitor enrolled in the Registers of Scotland. He was enrolled as a Solicitor on 9th November 1998 and his date of birth is 25th December 1974. He is the principal of Kfm LAW, Ravenswood House, PO Box 9945, Stornoway, Isle of Lewis. He was previously a partner in the firm of Ken MacDonald and Co, 9 Kenneth Street, Stornoway, Isle of Lewis from 1st April 2009 until 30th November 2012, and thereafter a director of Ken MacDonald and Co Limited trading from the same address, from 1st December 2012 until 30th August 2013, (hereinafter referred to as "the firm").
- 6.2 On 14th March 2011 following upon an offer made by the Respondent, the said firm engaged a trainee solicitor (hereinafter referred to as "TS"). TS subsequently qualified as a Solicitor on 13th March 2013 and remained in the employ of the said firm until 30th August 2015.
- 6.3 On 28th May 2013 the office manager employed by the said firm (hereinafter referred to as "Mr B") accessed a computer operated by the Respondent within the said firm's offices. On that computer were found a number of emails covering a period from 8th April 2011 to 22nd June 2012, certain of which, made reference to the said TS. Said references were inappropriate, crude, pornographic and sexually explicit in their terms. Said emails were exhibited by the said office manager to TS who became distressed at their content. On 31st May 2013 the said emails were exhibited to the other Partner within the said firm (hereinafter referred to as "KMCD") and the fellow director of the Respondent within the said firm. Following upon a meeting between the said KMCD and the Respondent on 3rd June 2013, the Respondent agreed to leave the said firm with effect from 30th August 2013. Mr B was employed by the said firm on 11 June 2007 as Office Manager and Legal Assistant. His duties as Office Manager included dealing with staff issues, office equipment, the maintenance and administration of the firm's IT systems, and generally

administering the firm's offices. The IT system and network within the said firm was operated without the use of protective passwords. Any computer on the network could be accessed utilising a generic password. When opened using this generic password, the desktop on each computer would appear. Each computer was ordinarily used by the individual at whose desk it was situated. Each user had the facility to store data on their own computer. Each user had their own email icon on their desktop with their individual email address set up within that icon. The said firm used Microsoft Outlook. Each user's email account was not password protected. When solicitors or fee earners were absent from the office on business or on holiday, other members of staff had unrestricted access to their computer to check, monitor, and where appropriate respond to, emails. In addition, if documents were stored on a computer's individual hard drive, other members of staff could access that computer to open such a particular document without any requirement to enter a password. The Respondent's computer was operated on this basis. In or around December 2012, the Respondent was absent from the office and a deed was required which was stored on his computer in respect of a conveyancing transaction. Mr B accessed the Respondent's computer to locate that deed. In doing so he noted on the desktop a folder with a female's name. He opened said folder and found it to contain pornographic material. Said folder had no password protection. Mr B advised the Respondent on his return to the office that he should delete the said folder given that his computer was accessed by other employees and also the company who carried out the routine maintenance to the said firm's IT systems. Said folder was however still present on the Respondent's desktop on his computer on 28 May 2013. Further, in May 2013, two computers within the said firm had software installed on them in relation to the said firm's online banking facilities with the Bank of Scotland. Those computers were those of the Respondent and Mr C. The Respondent and Mr C were the individuals within the said firm who ordinarily processed the transactions using the online banking software. Others including Mr B and the said firm's Cashier also could, when required, process said transactions by utilising the two said computers.

On or about 28 May 2013, Mr C attempted to make an online banking payment which was unsuccessful. Mr B, knowing the Respondent undertook online banking transactions for the said firm on his computer, went to the Respondent's

room and opened his computer. Mr B was aware that the Respondent had previously been in email contact with the firm's Bank. He accordingly looked at the inbox of the Respondent's email. Said inbox was open and not locked nor protected by a password. Mr B was looking for a female name who might be the point of contact for the said firm's online banking. He scrolled down the inbox looking for any unfamiliar female name which might be the contact at the bank. One of the female names was that of Ms D. An email in said inbox from Ms D narrated "...if you come near me I'll scream...". Said email was dated 13 January 2012. Mr B continued to search the said inbox for the online banking information. He traced same, passed it to Mr C and the online banking issue was resolved. Mr B was concerned at the terms of the said email dated 13 January 2012 and therefore re-entered the name "Ms D" in the search engine for the inbox. In doing so he found several email trails, detailed below. He printed copies of the same. Said exercise took between fifteen and twenty minutes.

- 6.4 The Respondent engaged in a course of email correspondence with a female employee of another firm of Solicitors (hereinafter "Ms D") covering, and commencing on, a period from 8th April 2011. In particular said emails narrate *inter alia* the following:-

8 April 2011

09:18 email from Respondent to Ms D – "Hello"

09:22 email from Ms D to Respondent – "It was sent to everyone in my contacts."

09:24 email from Respondent to Ms D – "Ahh ok, i thought so. What is it? Is it work related? Is it your equivalent to connect2law? out of respect for you i didn't want to do anything with it until i understood."

09:27 email from Ms D to Respondent – "It's like facebook for professionals. It is not solely connected to law."

09:37 email from Respondent to Ms D - "Ahh ok. maybe safer for you then if i don't. How are you? I was at the Scottish Highland Renewable Energy Conference in Inverness yesterday and Lochmaddy on Tuesday. Was at a wedding on mainland last weekend (saw a girl from Glasgow the spitting image of you at it!) so its been a busy week! I have taken on a trainee last month. She has the scope of become a very good PA for me. I had thought of getting her to email you to introduce herself so that you had another point of contact up here if you needed and so that she had someone in your area of work to contact if she

ever needed. I recall when I started out here that it can be very isolating so the bigger her network the better and of course I trust you completely.”

18 May 2011

09:11 – email from Ms D to Respondent - “No they are having a civil ceremony in Florence so the marriage is there. I will see if I still have the details and let you know.

That’s good glad she is doing well. I wondered about that if you would take someone on with those “qualities”. Just be careful.”

09:19 – email from Respondent to Ms D – “Thanks it would be good if you could pass on the details re the wedding. Did you have a nice evening? Now that set of exams are over are you able to have some time to yourself at nights or are you back studying already? Where are you staying in Florence. There are a couple of not well known things you should do whilst you are there I can share with you. Thanks for the advice. All I can do is observe her. The main thing is to give her the best traineeship I am able to and look after her and out for her the best I can. Any thoughts for me? How are you feeling?”

09:22 – email from Ms D to Respondent – “Yes just at home with my bf and my sister visited for a while. No I have the summer free thank goodness. Haven't worked that out yet hoping to get it sorted soon. Fine thanks.”

09:24 – email from Respondent to Ms D - “Have you been thinking of my trainee?”

09:27 – email from Ms D to Respondent – “ A little, just thinking how exciting it will be for her if she is as you think and she has found you”

09:31 - email from Respondent to Ms D – “Thing is she doesn’t know what she is”

09:33 – email from Ms D to Respondent – “just be careful. Have you heard from Ellie recently? How's she doing?”

09:40 – email from Respondent to Ms D – “Yes i am and have to very careful. I am just being me and observing. No not heard from her at all, have you? she seem to have vanished completely. I suspect she has changed her name. She may have even left the scene completely but i doubt it, esp the escort scene. I miss her just as i have missed you”

09:43 – email from Ms D to Respondent – “No I haven’t heard anything.”

09:45 – email from Respondent to Ms D – “You are probably pleased about that?”

10:10 – email from Ms D to Respondent – “no it would be nice to know how she was.”

10:23 – email from Respondent to Ms D – “Yes if for that alone it would be nice to hear from her. If things have worked out for her then it would be nice to know as i would be really chuffed. It would have been a massive step for her leaving her husband and the boys and i know her mother was seriously ill. Likewise if things did not work out for her i hate to think of her suffering alone when i could perhaps help in some way even if all it is only to let her know she has a friend out there rooting for her! But it was her decision to vanish and she knows where i am and how to contact me if she wanted to, it would be nice to have a way of contacting her but i am not one to chase after or hassle anyone. We all have our past and secrets and i protect and respect that in anyone who has confided in me. She fell deeply in love with us both once.”

10:33 – email from Ms D to Respondent – “Can you watch what you say in any email you send to my work please”

10:33 – email from Respondent to Ms D – “Will I write from here? Sorry about that!”

10:37 – email from Ms D to Respondent – “No it’s ok I’m just saying to watch. Yes probably best you do”

10:37 – email from Respondent to Ms D – “Ok reply here to what I said x and thank you x”

10:43 – email from Ms D to Respondent – “I don’t think she will have left I think if it came to a choice she would choose her family. She was a very loving person.”

10:44 – email from Respondent to Ms D – “Yes that has occurred to me. Would she have given up her bf? She seemed very taken by him. I hope he was worthy of her x”

10:48 – email from Ms D to Respondent – “He was very nice. I had a 3some with them remember x”

10:48 – email from Respondent to Ms D – “Oh right I had forgotten that! Had you also a 3sum with hubby?”

10:59 – email from Ms D to Respondent – “No I didn’t meet him x”

11:01 – email from respondent to Ms D – “Do you recall ellies real name?”

11:10 – email from Ms D to Respondent – “That’s terrible I can’t remember it was an old fashioned name x”

11:12 – email from Respondent to Ms D – “I am the same! She was always ellie to me. Began with an A i recall x”

11:19 – email from Ms D to Respondent – “Can’t remember. So has anything interesting been happening with you? x”

11:22 – email from Respondent to Ms D – “No not really, the trainee is the only stimulation i have these days. I wouldn’t say i am active in the scene these days as i have no contacts. How about you?”

11:33- email from Ms D to Respondent - “Is she pretty? Nothing really as you know its something I don’t particularly like about myself so I won’t seek it again.”

11:34 – email from Respondent to Ms D “ Yes she is in an elegant way. It is a shame you have always thought that way about yourself. I am sorry you have hurt yourself so much over it and I do honestly regret and harm I caused you x”

11:42 – email from Ms D to Respondent - “I hope she is what you think she is. You deserve someone who can give you what you need x”

11:45 – email from Respondent to Ms D – “Even if I am right i can not really do anything about it which is a shame. What i am able to do is give her her break by giving her a traineeship – she had been looking for two years, try and give her the best traineeship and start I can and look after her as best I can.”

13:15 – email from Ms D to Respondent – “I’m sure you will and who knows what else you might teach her c”

13:16 – email from Respondent to Ms D “On a work related matter would you be interested in helping me?”

13:22 – email from Ms D to Respondent – “If I can yes”

13:27 – email from Respondent to Ms D “It relates to my trainee. We are a bit isolated here. I am therefore trying to build up her contacts so that she has people I trust to come to if she ever needs something or even to chat etc. Although we are friends I will not be seen as her boss so there will be times I send her off to go do or find out something and she feels lost. I have built up relations with our local Citizens Advice Bureau and Mediation Centres, I know someone in Harper Macleod who I am introducing her to, she knows someone in Sheppard & Wedderburn, I know a solicitor advocate and also a junior advocate but I also regard myself as having professional ties with Brodies and regard you as my contact there. Would you be interested in helping? Its ok if you prefer not to as I appreciate it may feel a liberty or cheek asking you x”

13:34 – email from Ms D to Respondent – “I just feel it might open too many questions about how we know each other and I’d rather not go down that line. It sounds like she has plenty of support x”

13:36 – email from Respondent to Ms D – “Fair enough but i already had the cover for that one x”

19 May 2011

16:18 – email from Ms D to Respondent - “I loved that. I enjoyed doing what you asked even though I really didn’t need to. Feeling I was pleasing you was

always something that gave me pleasure. I'm wearing a skirt and blouse. Pants stockings bra and heels x"

16:19 – email from Respondent to Ms D – “Did u dress for me today?”

16:25 – email from Ms D to Respondent – “No but I must admit I did consider leaving my pants at home. Also I thought you would approve of my dress and how you'd observe me x”

16:25 – email from Respondent to Ms D – “I wish my trainee knew the code!”

16:32 – email from Ms D to Respondent – “Ha yes you never know one day she might sit in front of you open her legs and display her bare shaved cunt for your use x”

16:32 – email from Respondent to Ms D – “How do i make that happen!”

16:36 – email from Ms D to Respondent – “I think that would only happen if I was your trainee. It's too dangerous for you to involve her x”

16:49 – email from Respondent to Ms D – “Yep i know, good view of her chest today though! How wet are you?”

16:57 – email from Ms D to Respondent – “Is it better than mine? Ha I'm wet.”

17:03 – email from Respondent to Ms D – “U will just have to wait until u meet her one day! Doubt her nipples are as big as urs though! Doubt u will be able to wait until u get home tonight but good luck! Nite and thank u x”

17:13 – email from Ms D to Respondent – “Or can take pain like mine! X”

17:14 – email from Respondent to Ms D – “No that's true. U must really miss me x”

20 May 2011

08:14 – email from Ms D to Respondent – “Friday at last! Roll on 5pm. It's been a long hard week. It's been really nice chatting again. X”

08:40 – email from Respondent – “Morning are you at work already or on your way there? Yes glad its Friday. How has your first week back been? Yes it is lovely having you back in my life x”

09:14 – email from Ms D to Respondent – “Very very hectic! Yes at work now. Friday has come very quickly but I'm glad! How have you been this week? X”

09:14 – email from Respondent to Ms D – “You have been its highlight! The days go faster when we are chatting and i have a smile on my face and a bit of a buzz x”

09:21 – email from Ms D to Respondent – “Aw thank you. I have missed out chats and I can’t talk to anyone the way I do with you x”

09:27 – email from Respondent to Ms D – “I am now in the same boat as you now in that you are the only person I can talk to. I am not in a position to start looking and commit my time like I used to looking for someone new, nor do i feel at this moment i want to. I felt i had found what i wanted in both you and ellie. Just as for you you have a deep rooted desire to serve etc i need the mental stimulation that comes from our chatting etc, i find it helps keep me focussed, balanced and content which crosses over and makes me i feel a better and more content person in my work and vanilla life. Does that make any sense?”

09:39 – email from Ms D to Respondent – “Yes it does X”

09:40 – email from Respondent to Ms D – “I also suspect you also sense the same calm contentment and confidence as I do when we chat that must in some way cross over x”

09:57 – email from Ms D to Respondent – “Yes I feel better when we chat x”.

09:58 – email from Respondent to Ms D – “Just don’t let it take over and freak you again x”

10:02 – email from Ms D to Respondent - “I’ll try. Anyway is your trainee showing you anything today? X”

10:05 – email from Respondent to Ms D – “Not seen her yet but will report to you when I do x talk soon x”

- 6.5 The said email trails, dated 8th April, 18th, 19th May and 20th May all 2011, make specific and particular reference to the said TS in an inappropriate, disrespectful, and sexually explicit manner.
- 6.6 The said TS commenced a traineeship with the said firm on 14th March 2011. From that date until on or about 2nd May 2013, the Respondent repeatedly sent text messages to the said TS out of office hours and at weekends, and in relation to non-work related matters. In particular over the period from 13th May 2011 to 2nd May 2013, the Respondent sent the said TS 136 text messages outwith office hours.
- 6.7 The Respondent made repeated attempts and requests to have the said TS engage in social activities with him outwith working hours and outwith the scope of her employment with the said firm. He made repeated invitations to the said TS for her to accompany him for evening meals and to attend other social events along

with the Respondent, and on occasion, the Respondent's fiancée. Said requests and invitations were unwanted by the said TS.

- 6.8 Further, the Respondent was instructed to act on behalf of a minor who had been accused of sexually abusing another child. During the course of his representation of said minor, and in particular on or about 22nd June 2012, the Respondent exchanged emails with Ms D making specific reference to a statement from the child complainer in that matter. The three emails narrated *inter alia* the following:-

15:51 – email from Respondent to Ms D – “Almost an end of another week and all i can think of is the fact that your hard at work but your massive flaps are hanging out unbeknown to everyone but you and me x

You would have loved what I was reading this morning x”

16:25 – email from Ms D to Respondent – “How do you know my flaps arent tucked away on sensible panties. Care to elaborate on your reading material? X”

16:56 – email from Respondent to Ms D – “I know fine well they are out! If I am wrong prove it

A statement of a little girl talking about what she saw in a gym

Miss u x”

The content of said emails was improper, distasteful and inappropriate in that they made specific reference to the transcript of police interviews with a minor and child complainer.

7. Having considered the foregoing circumstances and the submissions of both parties, the Tribunal found the Respondent guilty of Professional Misconduct in that:-

- (a) in or around the period between March 2011 and August 2013, he engaged in an improper course of conduct towards a trainee solicitor, TS, and, without prejudice to that generality, in particular he:-

- i. Engaged in a course of email correspondence with a female employee of another firm of solicitors in which repeated reference was made to TS in sexually explicit terms;
- ii. Repeatedly sent text messages to TS in relation to matters which did not fall within the sphere of her professional duties;
- iii. Repeatedly attempted to persuade TS to socialise with him, to visit him at home, and to befriend his fiancée;

All of which amounted to the harassment of TS, an abuse of the Respondent's position of authority over her *qua* trainee and all of which was conduct which was apt to draw his integrity into question and the profession into disrepute; and

- (b) He engaged in an improper course of conduct whereby he engaged in email correspondence with a female employee of another firm of solicitors on or about 22 June 2012 in which he made reference to the statement of a child complainer in a case of alleged sexual abuse against a client of his firm in terms which demonstrated that he found the content of the said child statement to be titillating or sexual gratifying, which conduct is apt to draw the Respondent's integrity into question and the profession into disrepute.

8. Having heard submissions in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 22 October 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Kevin Frederick MacPherson, Ravenswood House, PO Box 9945, Stornoway, Isle of Lewis; Find the Respondent guilty of professional misconduct in respect that between March 2011 and August 2013 he engaged in an improper course of conduct towards a trainee solicitor and on 22 June 2012 engaged in an improper course of conduct whereby he engaged in email correspondence with a female employee of another firm of solicitors in which he made reference to the statement of a child complainer in a case of alleged sexual abuse against a client of his firm in terms which demonstrated that he found the content of the said child statement to be titillating or sexually gratifying; Order that the name of the

Respondent be Struck Off 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; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

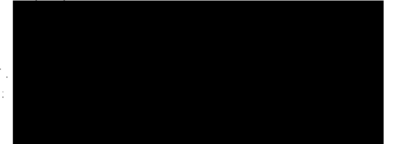
(signed)

Colin Bell

Vice Chair

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 29 NOVEMBER 2019.

IN THE NAME OF THE TRIBUNAL



**Colin Bell
Vice Chair**

NOTE

This case called on various occasions before the hearing on 22 October 2019 and these are detailed in the findings following the preliminary hearing dated 19 June 2019. At the hearing on 22 October 2019, the Tribunal had before it a Record as amended to 22 October 2019, a Joint Minute of Admissions, three Inventories of Productions for the Complainers, an Inventory of Productions for the Respondent, a List of Authorities for the Complainers, a List of Witnesses for the Complainers and the Tribunal's Interlocutor of 19 June 2019 (but not the findings or note which accompanied that Interlocutor).

SUBMISSIONS FOR THE COMPLAINERS

With reference to the Record and the Productions, the Fiscal explained the circumstances which led to the Complaint. In March 2011, TS commenced employment in the firm in which the Respondent was a partner. He said that the Respondent "took a shine" to TS and there were rumours in the office he was keen on her. A member of staff used the Respondent's computer on 28 May 2013. He discovered an email dated 13 January 2012. In this email, a person had written to the Respondent, "*I swear you better not be hanging around my work! If you come near me I'll scream.*" The member of staff thereafter looked through the Respondent's emails and found those that formed the basis of this Complaint. One set of emails referred to TS. These were sent between 8 April 2011 and 20 May 2011. The Fiscal quoted extensively from these emails. He noted that the level of innuendo increased over time. The emails contained salacious, crude and pornographic references to TS. The Respondent admitted that the emails were inappropriate, disrespectful and sexually explicit. TS reported to the Law Society Case Investigator that on reading these, she felt violated and used by the Respondent and his friend "as a sex toy".

The Fiscal noted that over the course of her traineeship, TS was also concerned about the number of texts sent to her by the Respondent. She kept 136 of these messages and these were produced. They contained no crude remarks or salacious content. Some were not related to work. In addition to these texts, the Respondent made a number of attempts to get TS to engage in social activities with him and his fiancée. TS did not attach any particular significance to this or the texts until the emails came to light. However, the Respondent admitted his conduct was harassment of TS and constituted an abuse of his position of authority over her. The Fiscal submitted that it brought the Respondent's integrity into question and the legal profession into disrepute.

The Fiscal indicated that the second set of emails was sent on 22 June 2012. The Respondent was acting for a client who was a child. The client was alleged to have committed a sexual offence against another child. The Respondent had access to the complainer's witness statement taken as part of a police interview. In that interview, the child complainer explained that the accused had taken her to a gym, exposed his penis and handled it in her presence. The Respondent told his friend, "*You would have loved what I was reading this morning.*" His friend asked him to elaborate and he noted that it was "*a statement of a little girl talking about what she saw in a gym.*" This comment was made in the context of a sexual conversation which referenced the Respondent's friend's genitalia. The Fiscal noted that the Respondent accepted that he found the statement titillating and sexually gratifying. He admitted these emails were improper, distasteful and inappropriate.

Following the Respondent's departure from the firm in August 2013, TS contacted the Scottish Children's Reporters Administration because she was concerned about the content of the emails which referred to the child witness. The matter was referred to the Crown Office and Procurator Fiscal Service but ultimately no criminal proceedings were taken against the Respondent. The matter was referred to the Scottish Legal Complaints Commission in August 2015. The Respondent was removed from the Scottish Legal Aid Board's register in September 2015.

The Fiscal noted that the averments of duty in the Complaint were all admitted. Ultimately, the Tribunal had to determine whether the behaviour constituted professional misconduct. However, the Fiscal submitted that the gravity of the conduct and its "shear unpleasantness" brought this within the scope of professional misconduct. In support of his submission, the Fiscal referred the Tribunal to a number of authorities contained within the List of Authorities for the Complainers.

The Chair asked the Fiscal to address the application of Rules B1.3 and B1.4.2 to the circumstances of this case. The Fiscal indicated that the Respondent breached those Rules when he sent the emails about the child witness. Given the Respondent's admission that he found the statement titillating and sexually gratifying, he was not independent, and his personal interests may have allowed his advice to be impaired. In answer to questions posed by the Tribunal, the Fiscal explained that the Respondent's requests to TS to socialise with him were not contained within the text messages which were produced, but that this was a matter of admission.

SUBMISSIONS FOR THE RESPONDENT

Mr Burnside highlighted the Respondent's full and frank admissions. He noted that the Respondent admitted the terms of the duties narrated in the Complaint but said that it was for the Tribunal to determine which had been broken. He took exception to the Fiscal referring to the Respondent having "taken a shine" to TS and her remarks to the Law Society's Investigator. Mr Burnside noted that this was not part of the pleadings and no evidence had been led regarding these matters. Other than these comments, Mr Burnside proposed to hold over the rest of his remarks for the plea in mitigation.

DECISION ON PROFESSIONAL MISCONDUCT

The Tribunal disregarded the Fiscal's comments regarding the Respondent having "taken a shine" to TS and TS's comments to the Law Society's Investigator. These were not spoken to by any witness. They were not contained in the Joint Minute or admitted in the Record.

Although the Respondent admitted professional misconduct in terms of the amended Record, it remained for the Tribunal to consider whether the admitted conduct met the test set out in 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. If the public is to have trust in the profession, then the profession 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. Solicitors must give independent advice free from personal interests inconsistent with the standards of the profession. They must not allow their independence to be impaired. They must not allow their personal interests to influence their advice or actions on behalf of clients. Solicitors must maintain client confidentiality. They must not discriminate on grounds of sex in their professional dealings with employees. They must ensure there is no unlawful discrimination in employment. Solicitors must keep a professional distance from their trainees. They must not allow their personal interests to affect their decision-making. They must maintain their independence, particularly as they are asked to confirm that a trainee is a fit and proper person to be a solicitor.

The Respondent engaged in a course of email correspondence with a female employee of another firm of solicitors in which repeated reference was made to his trainee in sexually explicit terms. He repeatedly sent text messages to the trainee in relation to matters which did not fall within the sphere of her professional duties. He repeatedly attempted to persuade her to socialise with him, visit him at home and befriend his fiancée. There are occasions where it is appropriate for a supervisor to socialise with a trainee or communicate about issues other than work. It was accepted that TS did not attribute any significance to the text messages or the attempts to socialise until after the emails were discovered. The Tribunal noted that the terms of the text messages produced before it were entirely innocuous and on the face of it, only the frequency and timing of some of these messages was unusual. However, the behaviour was repeated, and the Respondent admitted that it amounted to harassment of the trainee and was an abuse of his position of authority over her. The Respondent's attitude to TS as displayed in the email correspondence gave this conduct context. By entering into email correspondence which made sexual and degrading reference to TS, a trainee over whom the Respondent had professional responsibility, the Respondent allowed his independence to be impaired and his conduct was discriminatory on the grounds of sex. He could not objectively carry out his duties of supervision and properly assess TS. The conduct drew the Respondent's integrity into question and the profession into disrepute.

In addition, when engaged in email correspondence with a female employee of another firm of solicitors, which contained other sexual comments, the Respondent made reference to the statement of a child complainant in a sexual abuse case. The Respondent had access to the statement in his capacity as the accused's solicitor. He breached client confidentiality. Although he did not share the child's interview, he made reference to the child, her gender, and the location of the alleged offence. The Respondent admitted that the terms of this correspondence demonstrated that he found the content of the child's statement to be titillating or sexually gratifying. His independence was therefore impaired due to his personal interests. This conduct drew the Respondent's integrity into question and the profession into disrepute.

In general, the Tribunal is not concerned with emails of a private nature between consenting adults. However, the Respondent used his work computer which was not protected, and a firm email address, to send the emails in question. These emails concerned the Respondent's trainee and a confidential child witness case where the Respondent represented the Accused. The Respondent said he intended the emails to be private, but they took place on the firm's email system and were capable of being accessed by others. They were sent to another solicitor, for the purposes of their sexual gratification. It was these circumstances which brought the case within the scope of misconduct as it brought the

Respondent's integrity into question. In particular, the Respondent used the circumstances of an alleged sexual crime against a child to further a sexual conversation. He admitted that he found the child's statement titillating and sexually gratifying. This was a serious and reprehensible departure from the standards of competent and reputable solicitors.

SUBMISSIONS IN MITIGATION

In mitigation, Mr Burnside explained that the Respondent met TS when she was working for another organisation. He was aware that she had not been able to secure a traineeship. She was efficient and pleasant in her dealings with others. She was hard-working and diligent. He thought she would be an asset to the firm. He spoke to his partner about taking her on as a trainee.

At that time, the Respondent was friends with Ms D. Mr Burnside submitted that the terms of their emails were "unfortunate". However, this was private correspondence between two close friends. It was not intended to be seen by anyone else. The comments were made in 2011 and should be seen in that context. They were perhaps more socially acceptable then than they are now. Different standards apply in 2019.

Mr Burnside noted that this was not a case of "sexual" harassment. There was no suggestion that the Respondent had threatened TS or that anything of a physical nature had taken place. There was no intention to make her aware of the correspondence. The emails came to light when an employee accessed the Respondent's computer. He found an email which was nothing to do with the firm. He then went through the mailbox and found others. He took them to TS. If he had not done so, the correspondence would have remained private. He urged the Tribunal to look at the context of the emails. With reference to particular emails, he explained that many of them were innocent and contained positive indications that he intended to treat TS well. He remarked on her appearance but in a complimentary way. His comments suggest a caring, not a predatory attitude. He noted the "particularly unfortunate exchange" on 19 May 2011. However, he noted it was Ms D who used crude and offensive terminology. It was his understanding that no action has been taken against her. She made comments which provoked a response from the Respondent. He was foolish to do so but did not think that anyone else would ever see that correspondence. He said it was a "quantum leap" to infer that the email at 1002 hours on 20 May 2011 referred to body parts. In his submission, the emails were unfortunate but the conduct was not as serious as that in Law Society of Scotland v Docherty which contained threats made directly to a third party. There was no threat to the well-being or

employment of TS. At one point there had been a suggestion that the Respondent had marked TS down but this is not the case. She was a satisfactory trainee and received top marks in all categories.

Mr Burnside referred to the texts which the Respondent sent to TS. He submitted that many of these were harmless and banal, if a waste of time. Many related to work. No unwanted invitations are contained within. Some compliment her on her work. The text correspondence might be unusual in other contexts, but the Respondent often worked long hours. He frequently sent text messages from the ferry on his way back home. He was regularly in the office until 10pm. There is nothing sinister in these messages. They were sent between colleagues in a small firm on the island. It was not uncommon for staff to socialise. With the benefit of hindsight, perhaps the Respondent had pushed things too far when he invited TS to socialise at his home with her boyfriend. However, the Respondent had wanted to be friendly.

Mr Burnside accepted that the email correspondence about the child witness case was distasteful. However, the three emails contained in the Record are the only references to this case. The client and the complainer were not identified. Although the transcript of the child's interview was provided to the Tribunal, the Respondent did not provide it to Ms D, nor was it shown to anyone else. As a consequence of these emails, the Scottish Legal Aid Board no longer uses the Respondent's services. He has been deprived of £40,000-£60,000 fee income per annum as a result.

Mr Burnside noted that the averments of duty were admitted but that did not mean that the Respondent admitted that he had broken any of these rules. He wished to address the Tribunal regarding the rules. However, the Chair indicated that the Tribunal had already considered the rules when making its decision on misconduct. Therefore, it was only prepared to hear mitigation at this stage in proceedings.

Mr Burnside said this had been a difficult situation for the Respondent. The emails were sent eight and a half years ago. Proceedings have been hanging over him for four years. Once the emails came to the attention of TS and his partner he felt obliged to resign. His partner did not want that to happen, but the Respondent felt his position was untenable. He did not seek the removal of TS and they could not work together after she had read the emails. At his partner's request he stayed away from TS while he worked his notice period. However, the Respondent wanted to take the opportunity to express his regret and apology for any distress caused.

The Respondent went from being an equity partner in the firm earning £96,000 a year to working as a sole practitioner in his own home. He had to leave without any capital from the firm although he had taken a £100,000 business loan on becoming Partner. He left without any files or clients and very little money. He currently does his own typing and cash room administration. He has built up his business again. Last year's net profit was £44,336. The Respondent provides a useful service to the people of the islands and people speak highly of his work. He has been a sole trader for six years. He has opened 1,141 files in that time. 70% of his work is in conveyancing and crofting. The remaining work is in wills, executries and powers of attorney. He has lived on the island for twenty years and built up a good reputation. He believes he has a reputation for being an honest, upstanding member of the community. Mr Burnside referred to the testimonials produced by satisfied clients indicating that the Respondent provides good legal services.

Mr Burnside noted that a restriction would not be a workable for the Respondent as a sole practitioner. There are only five other firms locally. A strike off or suspension would be a significant blow to him in addition to what he has already lost. He would lose his firm and would have to relocate. Mr Burnside noted that the Tribunal would have concerns about the under-provision of legal services on the islands. The Respondent has to turn away work. There are only six firms locally and they all have the same problem. If his right to practise was lost, this would be a loss to the community. The Secondary Complainer did not claim to be directly affected by the Respondent's actions. She completed her traineeship and now works as a solicitor. Her career did not suffer. The Respondent, by his own foolishness, has suffered considerably and the publicity which this case will attract will cause him to suffer again regarding something which happened a long time ago.

The Fiscal sought the expenses of the entire process including those of the preliminary hearing. He had no motion to made regarding publicity and no representations to make regarding sanction. Mr Burnside did not oppose the motion regarding expenses as he was aware of the usual practice of the Tribunal. The Respondent preferred that publicity was not given to the decision as it would have a detrimental effect on him and would exacerbate the issues for Islanders regarding provision of legal services.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal had regard to the references provided by the Respondent which were in the form of email testimonials from clients regarding the Respondent's professional work, provided for the Respondent to use on his website. In general, testimonials have limited weight (Bolton v Law Society 1993

EWCA Civ 32) and these specific references did not assist the Tribunal. They referred to the standard of the Respondent's professional work which was not the subject of this Complaint. There was no indication that any of the referees knew the nature of the specific allegations of misconduct against the Respondent.

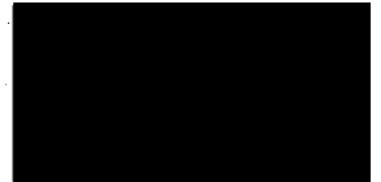
The Tribunal noted that the Respondent had attended the hearing in person. He cooperated by entering in a joint minute. He admitted misconduct. He expressed remorse. There was no physical element to the misconduct. There was no threat to the trainee or any evidence that there was a lasting effect on her as a result of the Respondent's misconduct. There were no previous conduct findings against the Respondent. The Respondent appeared to have practised satisfactorily for the last eight years without repetition of the misconduct. No criminal prosecution arose as a result of the misconduct.

However, the Tribunal did not accept that social mores were significantly different in 2011 as the Respondent claimed. The Respondent's emails about the trainee revealed that he assessed a junior employee in a predatory way. He betrayed her trust. His conduct was completely inappropriate. The emails displayed an escalating course of conduct. The text messages were sent over a two year period and there were a significant number of them.

The Respondent's admission that he found the sexual abuse of a child titillating and sexually gratifying revealed that he was a danger to the public. Employees, colleagues and clients were therefore at risk. The Respondent demonstrated no insight into his conduct or how he would deal with such a situation differently in future. Even in the context of this Complaint, having been warned about the discovery of pornographic material on his computer he did not remove it or the correspondence in question. Although he was no longer allowed to undertake work for the Scottish Legal Aid Board, this did not preclude him from family law work or working with vulnerable individuals.

The Tribunal considered that strike-off was the only appropriate sanction. The Respondent admitted that he found the sexual abuse of a child titillating and sexually gratifying and had used those circumstances to further a sexual conversation. This conduct in particular was a danger to the public and was likely to seriously damage the reputation of the legal profession. It showed that the Respondent was not a fit person to be a solicitor. The Tribunal considered lesser sanctions but was of the view that these would not satisfactorily address the risks it had identified. Suspension or restriction would not protect the public in the longer term. The Respondent's work appeared to be satisfactory and restriction could not in practical terms ensure that this kind of correspondence would not be repeated or that the Respondent would not harass another person during the period of restriction.

Following submissions on expenses and publicity, the Tribunal decided that following success, the appropriate award of expenses was one in favour of the Complainers. Publicity should be given to the decision and 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 Tribunal made no order in terms of section 53(6) of the Solicitors (Scotland) Act 1980.



Colin Bell
Vice Chair