

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

F I N D I N G S

in Complaint

by

**THE COUNCIL OF THE LAW SOCIETY of
SCOTLAND, formerly at 26 Drumsheugh
Gardens, Edinburgh and now at Atria One, 144
Morrison Street, Edinburgh**

Complainers

against

**JOHN URQUHART, Solicitor, residing at 35
Back Dykes, East Wemyss, Kirkcaldy**

Respondent

1. A Complaint dated 30 November 2015 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, John Urquhart, solicitor, residing at 35 Back Dykes, East Wemyss, Kirkcaldy (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. The Respondent intimated that no Answers would be lodged.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 16 February 2016 and notice thereof was duly served on the Respondent.
5. At the hearing on 16 February 2016, the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented himself.

6. A Joint Minute between the parties was lodged with the Tribunal agreeing all of the averments of fact and duties. The Complainers had lodged an Inventory of Productions and the Respondent had previously sent a letter setting out his position. No evidence was led. The Tribunal heard submissions from both parties.

7. The Tribunal found the following facts established:-
 - 7.1 The Respondent's date of birth is 10 January 1948. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 21 December 1970. He retired from practice and has not held a practising certificate since 2006. His name remains on the Roll of Solicitors in Scotland.

 - 7.2 The police attended at the home of the Respondent on 19 December 2013 in possession of a search warrant. The Respondent was detained and subsequently arrested. Computer equipment was removed from the premises. On analysis a total of 75 images on the Respondent's personal computer were found to contain indecent content involving children of which 59 were unique and of those 15 would be easily accessible to the user of the equipment. The Definitive Guidelines outline a scale by which child sex abuse images can be ranked on a sliding scale of severity from one to five, one being the lowest, 62 of the images were graded at level 1, 3 at level 2, 7 at level 3, 3 at level 4 and none at level 5. Of the images found six at level 1, one at level 3 and one at level 4 had been shared with other users of the Yahoo Messenger Network.

 - 7.3 On 16 September 2014 at Dunfermline Sheriff Court the Respondent plead guilty to two charges under Sections 52(1)(a) and (b) of the Civic Government (Scotland) Act 1982 on Indictment. A copy of the Indictment and the court records of procedure and sentence were produced. The Respondent tendered pleas of guilty to two charges. The offence in charge one involved the distribution or showing of indecent images of children on 23 September 2013. The offence in charge two involved the Respondent taking or permitting to be taken or making indecent photographs of children and covered a period between January 2011 and December 2013. The court certified in open court in terms of section 92(2) of the Sexual Offences Act 2003 that the offence was a sexual offence to which Part 2 of the Act applied.

7.4 The offences occurred at the Respondent's home at a time when he did not hold a Practising Certificate but remained on the Roll of Solicitors. By virtue of s46(1) of the Legal Profession and Legal Aid (Scotland) Act 2007 the Complainers have a duty to investigate conduct complaints against any person if their name appears on the Roll of Solicitors, whether or not they currently hold a Practising Certificate.

8. After giving careful consideration to the submissions from both parties, all documents before it and the established facts, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his conviction on indictment under the Civic Government (Scotland) Act 1982 for (a) between 8 January 2011 and 19 December 2013 taking or permitting to be taken or making indecent photographs or pseudo-photographs of children; and (b) on 23 September 2013 distributing or showing indecent photographs or pseudo-photographs of children, as a result of which he was made subject to a community payback order on 29 October 2014 at Dunfermline Sheriff Court and made subject to the notification requirements under Part 2 of the Sexual Offences Act 2003 for a period of three years.

9. After giving careful consideration to the submissions in mitigation and with regard to publicity and expenses, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 16 February 2016. The Tribunal having considered the Complaint dated 30 November 2015 at the instance of the Council of the Law Society of Scotland against John Urquhart, solicitor, residing at 35 Back Dykes, East Wemyss, Kirkcaldy; Find the Respondent guilty of professional misconduct in respect of his being convicted on 29 October 2014 of contraventions of Section 52(1)(a) and Section 52(1)(b) of the Civic Government (Scotland) Act 1982; 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 and may but has no need to include the names of anyone other than the Respondent.

(signed)

Colin Bell

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

IN THE NAME OF THE TRIBUNAL

Colin Bell
Vice Chairman

NOTE

At the hearing on 16 February 2016 the Tribunal had before it the Complaint, an Inventory of Productions for the Complainers, a letter from the Respondent dated 31 December 2015 and a Joint Minute between the parties agreeing all of the averments of fact and duty. Given the extensive nature of the Joint Minute, evidence did not require to be led and the Tribunal proceeded to hear submissions from both parties.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston confirmed that the Joint Minute showed an acceptance by the Respondent of the factual position and that the duties averred were correct. The Minute did not include an admission of the averments of misconduct. At the time of discussing the Joint Minute, the Respondent had indicated that he preferred the question of misconduct to be left to the Tribunal, as ultimately it was a question for the Tribunal to answer. She understood however that it was the Respondent's position that he was not disputing that his conduct had amounted to professional misconduct.

At the date of these matters arising the Respondent had already retired and he has not held a practising certificate since 2006. His name remained on the Roll of Solicitors in Scotland and therefore his convictions were brought to the attention of his professional body.

She had little to add to the averments of fact. She referred the Tribunal to her Productions which included a copy of the indictment and court records showing sentence.

The Respondent had raised a question with her previously about how his plea had been arranged in this case. It had been his position that he had signed a Section 76 letter allowing an early plea. The Tribunal will see that the indictment served was not a Section 76 indictment. Ms Johnston had made enquiries with the Respondent's previous agent and had confirmed that the Respondent had indeed signed a Section 76 letter and therefore she was happy to accept that submission.

The conviction on charge 1 related to the distribution of images on one occasion.

With regard to charge 2, the timescale for the behaviour was between January 2011 and December 2013. It was not suggested that the Respondent had taken the photographs himself. For the purposes

this offence the definition includes putting an image on to one's hard drive and once the image is within the computer system that is the making of the image.

Ms Johnston referred the Tribunal to a case which had proceeded in England – The Solicitors Regulation Authority-v-James-Guy Jacobs, 10 February 2014. She indicated that that case demonstrated that it is the general position that these offences are considered to be serious offences, harmful to society, and contributing to the worldwide demand for child abuse. This case was support for the contention that the behaviour had a real risk of being damaging to the reputation of the profession and damaging to public confidence. In the Jacobs case the conduct had occurred entirely in his private life and this was not considered relevant to reducing the seriousness of the conduct. The Jacobs case too had involved downloading images from the internet. The majority of the images in that case were on level 1 of the scale. It was noted that there had been a gradual increase in the seriousness of his conduct, leading to a realisation by him that his conduct was unlawful and causing him to delete the images. The conduct in the Jacobs case was considered sufficient to hold that the Respondent was lacking in the required standard of integrity.

The Fiscal confirmed to the Tribunal that the sentence imposed in the Jacobs case was one of a suspended term of imprisonment. The Jacobs case had also made reference to a failure by the Respondent in that case to notify his regulatory body of the conviction, which appeared to be an English requirement.

SUBMISSIONS FOR THE RESPONDENT

The Respondent referred the Tribunal to his letter and indicated that he had no intention of going through it in detail.

There were certain matters that he wanted to highlight. Firstly he admitted the convictions and admitted that they brought the profession into disrepute. He had great remorse and regret. In particular, he regretted the impact that these images must have had on the subjects within them, the impact of his conviction on his profession, family and friends. At the time of the offences he had not believed that he was committing any offence.

This behaviour had occurred during his personal and private life and in no way was conduct connected to his actings as a solicitor.

He sincerely regretted the impact this would have on his profession, a profession he held in high regard. This was a matter of shame and regret for him.

With regard to the disposal of the matter, the Respondent was content to leave this within the hands of the Tribunal.

In answer to a question from one of the members of the Tribunal, the Fiscal confirmed that a Section 76 letter was something that allowed people who had appeared on petition to offer a plea at an early stage.

DECISION

Whilst the Respondent was admitting that his conduct amounted to professional misconduct, both parties accepted that the question of misconduct was one to be answered by the Tribunal.

The Respondent admitted having been convicted on indictment of two serious charges. This had resulted in him being made the subject of a community payback order and being made subject to the additional restrictions and supervision in relation to the Sex Offenders Act 2003.

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. It has been said often in the past that this requirement of integrity applies equally to a solicitor's private life as it does to his professional conduct.

The type of offending behaviour involved in these charges is considered by society to be serious and abhorrent. The Tribunal had no hesitation in unanimously finding the Respondent guilty of professional misconduct.

With regard to the appropriate penalty to be imposed, the Tribunal accepted that there were many mitigatory factors. In particular, the Respondent's remorse and regret were clearly demonstrated before the Tribunal. The Respondent had cooperated, entering into a Joint Minute at a very early stage. The Respondent had been in practice for some 36 years and there was no suggestion of any other disciplinary matter.

The Tribunal were faced with very serious convictions.

The English case of Jacobs was not necessarily on all fours with the current case. The English case had involved many more images than the Respondent's case. The English case had referred to a progression in the seriousness of the Respondent's conduct.

The Tribunal accepted that in the Respondent's case the number and nature of images involved was at the lower end of the scale of this type of offence. Nonetheless, these were serious enough offences to be prosecuted on indictment and resulting in a significant community based disposal and a restriction under the Sex Offenders Act 2003. The Tribunal concluded that ultimately the question that required to be answered was whether or not a conviction of this nature was compatible with an individual being on the Roll of Solicitors in Scotland. This was very serious conduct, extremely damaging to the reputation of and public confidence in the profession.

The Tribunal concluded unanimously that the only possible sanction was to Strike the name of the Respondent from the Roll of Solicitors in Scotland.

The Fiscal moved for an award of expenses and submitted that publicity in the usual course was appropriate. The Respondent confirmed that he had no comment to make in respect to either of these matters. Accordingly, the Tribunal made an award of expenses in favour of the Complainers and made the usual order in relation to publicity.

Colin Bell
Vice Chairman