

**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

**SIMON DAVID BROWN, Eglinton House, 22
Eglinton Street, Irvine**

Respondent

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 Simon David Brown, Eglinton House, 22 Eglinton Street, Irvine (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, the Grand Orange Lodge of Scotland, Olympia House, 13 Olympia Street, Glasgow.
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 fixed a hearing for 16 July 2019 and notice thereof was duly served upon the Respondent. On the Respondent's motion, the hearing on 16 July 2019 was discharged and the Tribunal fixed a hearing for 4 October 2019.
5. At the hearing on 4 October 2019, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented by John McElroy, Advocate. The Tribunal granted the Fiscal's motion to amend the Complaint. Two Joint Minutes of Admissions were lodged. No evidence was led.

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 1 October 1996 and his date of birth is 31 March 1970. He is the principal of Matthew Brown Solicitors, Eglinton House, 22 Eglinton Street, Irvine. He was appointed as a partner in the said firm on 1 September 1997. He is a Solicitor Advocate.
- 6.2 The Respondent operates an account on the social media platform Twitter bearing the username Simon Brown and containing the profile “@broon313”. Said account is believed to be a personal account of the Respondent and not operated in connection with his said firm.
- 6.3 The Respondent published posts on his said Twitter account during the period from 11 April 2015 to 17 February 2018, making reference to Orange Walks taking place near his home. Twelve posts were made by the Respondent and were inappropriate, discriminatory, sectarian, derogatory, and offensive in their nature. Said posts in the following terms:-

11 April 2015: “You know your from Ayrshire when you hear foundations being laid in a building site and you think “early for **Orange** walk this year...”

9 May 2015: “FFS, **Orange** Walk just went past my house. Thought that shit was by after Thursday! #itsdifferentinayrshire”

27 June 2015: “Watching the **Orange** Walk go by. Wank wank, good g..., nope another wank, wank wank, wank...”

7 May 2016: “Wee Molly barking her head off at the **Orange** Walk. I love that dog. #goodbarkyweebastard”

25 June 2016: “Fucking Great. After all yesterday’s shite, the **Orange** Wanks are out banging their pots again. #ARSEHOLES”

4 March 2017: “Ah, spring must be coming. Just had the unbridled joy of seeing my 1st **Orange** Walk of the year. #bunchofinbredmutants #stickyerfluteupyer...”

“My town is full of Flute bands. Idiots. Every single one of them a knuckle dragging disgrace to humanity. **Orange** wankers. Ban them now.”

28 June 2017: “Enjoying well deserved long lie when f**king **Orange** f**king walk go by house at 8.20. I hate Ayrshire. #inbredretards.

1 July 2017: “Fair enjoyed getting held up for 25 minute today while the bastarding **Orange** Walk went by. Good to know there’s a ready supply of arseholes”. Said post was accompanied by a video of dancing chimpanzees.

3 February 2018: In response to a post on Twitter by the Evening Times Newspaper entitled “Orange Order to launch charm offensive evening” the Respondent posted “Word association. Charm. Snake.”

17 February 2018: “FFS! It’s only February and the Orange Bastards are out again. Every time I see those knuckle dragging mutants a little bit of my humanity is chipped away. #orangeorderfucktardinbredwankhankies.

In response to a reply received to said tweet the Respondent then posted “There is that. The knowledge that just by their neanderthal existence, you are automatically a better person.”

6.4 In addition to being published on the said social networking site Twitter, the said posts attracted national media attention in Scotland. Newspaper articles were published in several national newspapers repeating the content of said posts.

7. Having considered the foregoing circumstances and having heard submissions from the parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect that:

7.1 The Respondent, in or around the period between 11 April 2015 and 17 February 2018 published posts on the social media platform Twitter referring to Orange Walks in terms which were apt to be categorised as, and likely to be considered, discriminatory, sectarian, derogatory, and offensive in their nature and which were capable of bringing the profession into disrepute.

- 7.2 The Respondent, in or around the period between 11 April 2015 and 17 February 2018 published posts on the social media platform Twitter referring to Orange Walks in terms which were apt to be categorised as, and likely to be considered discriminatory, sectarian, derogatory, and offensive in their nature, which drew the Respondent's integrity into question;
- 7.3 The Respondent, in or around the period between 11 April 2015 and 17 February 2018 published posts on the social media platform Twitter referring to Orange Walks in terms which were apt to be categorised as, and likely to be considered, discriminatory, sectarian, derogatory, and offensive in their nature, which drew the Respondent's integrity into question and thereby a breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011.
8. Having heard the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 4 October 2019. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Simon David Brown, Eglinton House, 22 Eglinton Street, Irvine; Find the Respondent guilty of professional misconduct in respect that he (a) in or around the period between 11 April 2015 and 17 February 2018 published posts on the social media platform Twitter referring to Orange Walks in terms which were apt to be categorised as, and likely to be considered, discriminatory, sectarian, derogatory, and offensive in their nature and which were capable of bringing the profession into disrepute, (b) in or around the period between 11 April 2015 and 17 February 2018 published posts on the social media platform Twitter referring to Orange Walks in terms which were apt to be categorised as, and likely to be considered, discriminatory, sectarian, derogatory, and offensive in their nature, which drew the Respondent's integrity into question, and (c) in or around the period between 11 April 2015 and 17 February 2018 published posts on the social media platform Twitter referring to Orange Walks in terms which were apt to be categorised as, and likely to be considered, discriminatory, sectarian, derogatory, and offensive in their nature, which drew the Respondent's integrity into question and thereby a breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Fine him in the sum of £6,000 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; 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)

Beverley Atkinson

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 *30 October 2019* .

IN THE NAME OF THE TRIBUNAL



Beverley Atkinson
Vice Chair

NOTE

At the hearing on 4 October 2019, the Tribunal had before it the Complaint as amended, two Joint Minutes of Admissions admitting the averments of fact, duty and misconduct in the Complaint as amended, an Inventory of Productions for the Complainers, a bundle of authorities from each party, and two references lodged on behalf of the Respondent. The Respondent's Answers were withdrawn.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that by way of the Joint Minutes, the Respondent admitted that his actions amounted to professional misconduct, subject to the usual caveat that misconduct is for the Tribunal to determine. The Complaint related to the posting of tweets on the Respondent's personal Twitter account. The twelve tweets were narrated in the Complaint and copies were available at productions 2-8 of the Complainer's First Inventory of Productions. The tweet of 17 February 2018 was brought to the attention of the Secondary Complainer. It discovered the earlier tweets and made a formal complaint to the Respondent's firm in February 2018. The matter received media attention on 22 and 23 February 2018. Articles from the Daily Record, the Sun and the Times were produced at productions 9-12 of the Complainer's First Inventory of Productions. The Secondary Complainer submitted a complaint to the Scottish Legal Complaints Commission on 26 February 2018. The Respondent admitted that the tweets were inappropriate, discriminatory, sectarian, derogatory and offensive. The Fiscal submitted that by his conduct, the Respondent had allowed his integrity to be called into question and had breached Rule B1.2 of the Practice Rules 2011. The Fiscal confirmed that the Secondary Complainer did not wish to claim compensation in relation to this matter.

The Fiscal submitted that the Tribunal had to determine whether on these admitted facts, the behaviour constituted professional misconduct. He reminded the Tribunal of the definitions of misconduct contained in the case law (Sharp v Law Society of Scotland 1984 SC 129 and Sandeman v Law Society of Scotland 2011 CSIH 24). He referred to the Wikipedia definition of sectarianism. However, he submitted that since the Respondent admitted that the conduct was sectarian, the Tribunal did not have to consider this aspect of the Complaint. He said that Love v PF Stirling 2014 SLT 857 showed that posting sectarian material on social media can lead to fear and alarm. He also referred to four regulatory cases. Law Society v Cushnie involved a solicitor who used intemperate language in correspondence which lacked dignity. The solicitor in Law Society v Docherty sent threatening text messages. In Craven v Bar Standards Bar, a barrister sent offensive emails to a colleague. Solicitors Regulation Authority v Mahmood involved a solicitor who created anti-Semitic posts on Facebook.

SUBMISSIONS FOR THE RESPONDENT

Mr McElroy said that the Respondent accepted at an early stage that his behaviour constituted unsatisfactory professional conduct. The Respondent's intention was to express certain views which a person might be entitled to hold. He did not expect the tweets to be so broadly disseminated. Only 19 people had interacted with the tweet when it was made. The Orange Order became aware of it when a journalist put it in the public domain.

The Tribunal noted that the Respondent's bundle of authorities included the Section 42ZA Appeal case involving Matthew Berlow. The Chair asked whether, despite the admissions, it was open to the Tribunal to find unsatisfactory professional conduct in the circumstances. Mr McElroy submitted that the Tribunal had to make the decision on professional misconduct and it was not a "rubber stamp" for the parties' agreement. He referred to the tweets contained at paragraph 2.3 of the Complaint and noted that some of these tweets individually did not "cross the line". The tweet of 11 April 2015 referred to noise. The tweet of 9 May 2015 was posted after there had been something in the press about whether there was room in modern Scotland for Orange marches. The tweet of 17 June 2015 is expressed in a very immature way but is a quote from a television programme, "Chewin' the Fat". It gives a flavour of the Respondent's thinking. The Fiscal submitted that the Tribunal did not have to be satisfied that the material in question was offensive or sectarian as that was a matter of admission. Reliance on Berlow by the Respondent would be contradictory to the Joint Minute.

DECISION

The Tribunal proceeded on the basis of the facts agreed in the Joint Minute and was therefore satisfied beyond reasonable doubt that the Respondent had published the tweets set out in the Complaint. The parties agreed that the Respondent's conduct was inappropriate, discriminatory, sectarian, derogatory and offensive. However, it was the Tribunal's role to determine whether the behaviour constituted professional misconduct, even if the parties agree that it was so.

According to the test set out within Sharp v The Law Society of Scotland 1984 SLT 313, there are certain standards of conduct to be expected of competent and reputable solicitors and a departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. 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 high standards of conduct. The need

to have integrity applies equally to a solicitor's private life as it does his professional conduct. However, in all cases the question is one of fact and degree. Solicitors ought to be mindful about the material they publish. What a professional says on social media in his or her private life can constitute professional misconduct.

The Tribunal would have found it helpful to have been addressed at greater length on the authorities and what the Tribunal was being invited to glean from these. The cases which involved threats or correspondence sent in the course of a solicitor's employment were not particularly similar to the facts in the present case. The Section 42ZA Appeal involving Matthew Berlow was the closest in terms of the facts. However, the language used in the Berlow case was not so inflammatory as that employed by the Respondent and the conduct also took place over a shorter period of time.

In this case, the tweets were offensive, but it was their sectarian nature which brought them into the realm of professional misconduct. The tweets of 4 March 2017 and 17 February 2018 were particularly unbecoming of a solicitor and clearly crossed the line into professional misconduct. Sectarianism brings the profession into disrepute. The tweets were made over a three-year period. The Respondent was identifiable as a solicitor immediately from this twitter account. He described himself as a "Solicitor Advocate from darkest Ayrshire." The sectarian remarks would have a particular sensitivity in the West of Scotland where the Respondent lives and works. They were provocative and likely to cause offense. Twitter is a public forum. Once published the Respondent had no control over the material. There was widespread national media coverage of the tweets. They raised questions about the Respondent's integrity. The conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors.

The Fiscal confirmed that there were no previous findings against the Respondent.

SUBMISSIONS IN MITIGATION

Mr McElroy made submissions in mitigation based on a written statement which was provided to the Tribunal. He said that the Respondent bitterly regretted his actions. He should not have published these tweets. He accepted that his behaviour constituted misconduct and that certain consequences will flow from the Tribunal's decision.

The local Orange walk passes by the Respondent's house. From February to September they can occur four times a weekend. These walks are often accompanied by drunk "hangers-on" who litter and attract the attention of the police. On the occasion which preceded the first tweet, there were twenty or thirty

of these individuals, shouting and swearing and urinating in the street. The Respondent was angry and expressed that on Twitter. These marches have a detrimental effect on him and his family. When he became aware that his tweets were going to be reported in the paper, he deleted them, posted a public apology and spoke to officers at the Law Society. He never sought to deny that he was the author of the posts. He offered to resign from his roles within the Law Society although his resignation was not accepted at that stage.

The Respondent has worked in North Ayrshire for many years. This area is blighted by sectarianism. He has represented many clients across the sectarian spectrum. Mr McElroy explained that the Respondent was brought up in the Church of Scotland. He has no prejudice against Protestants. However, he has witnessed the divisive impact of Orange walks on his community. The cost of policing these events is considerable. There is a legitimate debate regarding these walks. He referred to two online petitions calling for them to be discontinued. Notable public figures such as the First Minister, Roman Catholic Bishops and the Moderator of the Church of Scotland have made public their views on the appropriateness of these marches in modern Scotland.

Mr McElroy accepted that the reputation of the profession would be uppermost in the Tribunal's mind. However, he asked the Tribunal to consider that the Respondent had among many appointments, sat on the Council of the Law Society of Scotland for six years, been a Board member of the Law Society of Scotland for two years, chaired the working party for solicitor advocates' training, and convened the education and training committee. He was an external examiner for the Diploma in Legal Practice at Glasgow University. He was a criminal peer reviewer and had trained peer reviewers for the Scottish Legal Aid Board. However, he has not worked in these posts pending resolution of this matter. Having to resign from these posts has affected the Respondent considerably. There has been a financial impact on the Respondent. He also had to fund his own defence. Mr McElroy urged the Tribunal to consider the references provided by a Sheriff and an advocate. The Respondent is held in very high regard by many persons in the legal profession. He urged the Tribunal to impose a censure.


DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal took into account the mitigatory factors advanced by the Respondent's representative. It noted that the Respondent made an immediate apology and had demonstrated insight into the offence. The conduct had not occurred during the course of the Respondent's work as a solicitor. He dealt appropriately with the Law Society. He pleaded guilty to the Complaint before the Tribunal. There has already been a financial and reputational impact. The Tribunal accepted that the tweets were published

out of frustration at the walks taking place the Respondent's home and the effect this had on his family. The Tribunal was confident that the Respondent would not repeat this conduct.

On the other hand, the conduct took place over a three-year period. The matter received considerable media attention. Sectarianism would negatively affect the reputation of the profession. The Tribunal was of the view that in these circumstances, the appropriate sanction was Censure and a Fine of £6,000. A restriction on the Respondent's practising certificate was not required as there was no risk to the public arising from his practice.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests. The Fiscal confirmed that the Secondary Complainer did not wish to claim compensation. Therefore, no directions were made regarding the submission of any written claim for compensation.



Beverley Atkinson
Vice Chair