

**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

**LEON KONDOL, McBride Kondol & Co., 35
Glenmore Avenue, Glasgow**

Respondent

1. A Complaint dated 15 October 2020 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 Leon Kondol, McBride Kondol & Co., 35 Glenmore Avenue, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Mr A.
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 in private for 5 May 2021 and notice thereof was duly served upon the Respondent.
5. At the hearing in private on 5 May 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Gerard Brown, Solicitor Advocate, Glasgow. The Tribunal received an amended Complaint dated 4 May 2021, amended Answers, and a signed Joint Minute. Parties made submissions.

6. The Tribunal found the following facts established:-

- 6.1 The Respondent is Mr Leon Kondol who was born on 14 January 1981. He was enrolled as a solicitor on 13 July 2004. The Respondent was employed by the firm McLennan Adam Davis in Ayr from 2004 to 2006, Quinn, Martin & Langan in Glasgow from 2006 to 2007 and then by McBride & Co in Glasgow from 2007 to 2013. In 2013 he became a sole practitioner at McBride Kondol & Co until present. He holds a current practising certificate.
- 6.2 The Respondent was instructed by the Secondary Complainer in 2014 when he appeared from custody at Glasgow Sheriff Court charged with serious offences of a sexual nature against minors. The Secondary Complainer's application for bail was refused and he was remanded in custody pending further procedure.
- 6.3 The Respondent sent an email to the Crown Office and Procurator Fiscal Service (COPFS) on 29 December 2014 seeking disclosure of the evidence including copies of the witness statements. In his email the Respondent undertook, among other things, that:
- “(a) Such material, or any information contained in it, will not be used or disclosed other than for the purpose of the preparation and conduct of any trial or any appeal in the case referred to above.*
- (b) Such material will not be made available to the accused or to any other party without the express agreement in writing of the Procurator Fiscal”.*
- 6.4 The Secondary Complainer's application for solemn criminal legal aid was granted with the Respondent as the nominated solicitor.
- 6.5 The Secondary Complainer's application for bail at full committal was refused as was his appeal against that decision and accordingly he was remanded in custody for trial.
- 6.6 On 9 January 2015 the Respondent sent a faxed letter to the Procurator Fiscal's Office again requesting disclosure of the witness statements and again

undertaking not to make them available to the Secondary Complainer or any other party without the express agreement of the Procurator Fiscal.

- 6.7 On 17 February 2015 the COPFS sent a letter to the Respondent enclosing a witness statement in the case against the Secondary Complainer. The letter from the COPFS stated that the material attached to the letter was provided on the basis of the Respondent's obligations under Articles 11 and 12 of the Code of Conduct for Criminal Work.
- 6.8 The COPFS sent a further 23 witness statements and 9 productions to the Respondent under cover of letters dated 18 and 19 February 2015. Said letters were in exactly the same terms as the letter of 17 February 2015 confirming that the material provided was on the basis of the Respondents obligations under Articles 11 and 12 of the Code of Conduct for Criminal Work.
- 6.9 Each statement provided by the COPFS was in a pro forma. Section 1 detailed the witness's name, age, occupation and disclosable address (usually care of Police Scotland). Section 2 detailed who took the statement from the witness, the date, time and place it was taken, any other persons present and how the content of the statement was authenticated. Section 3 contained the witness's detailed recollection of the events which formed the subject of the charges.
- 6.10 The witness statements included statements from the Secondary Complainer's three grandchildren who were alleged victims. The productions included handwritten statements which Police Officers had taken from said witnesses. These statements contained details of incidents of sexual and violent behaviour.
- 6.11 The Respondent attended at HMP Barlinnie on 23 February 2015 with the Secondary Complainer to discuss the witness statements and productions. He noted in particular the three handwritten statements from the Secondary Complainer's grandchildren and proposed that they should discuss each statement at separate meetings to ensure that the Secondary Complainer could fully consider matters. The Respondent, in his file note of even date, noted that he discussed one of the statements in detail with the Secondary Complainer.

- 6.12 The Respondent's file recorded his attendances with the Secondary Complainer on 4, 6, 13 and 17 March 2015 discussing the statements of the main Crown witnesses.
- 6.13 The COPFS sent a further letter to the Respondent on 17 March 2015 enclosing the statements of two further witnesses one of whom was a Dr W. The letter again stated that the material was provided on the basis of the Respondent's obligations under the aforementioned Articles 11 and 12 of the Code of Conduct for Criminal Work.
- 6.14 The COPFS sent a copy of the Indictment to the Respondent. The Indictment contained 10 charges. Witnesses 1 to 4 on the list of witnesses were the alleged victims in the charges.
- 6.15 The Respondent attended a meeting with the Secondary Complainer and his file note recorded that he discussed the statement of Dr. W with the Secondary Complainer. This witness was the GP of one of the Secondary Complainer's grandchildren who was witness 1 on the Indictment.
- 6.16 On 27 March 2015 the Scottish Legal Aid Board granted the Respondent's application to remove the application of block fees from prison visits to enable the Respondent to charge them on a time and line basis due to the time which would be required with the Secondary Complainer to prepare his case.
- 6.17 On 31 March 2015 the Respondent attended a meeting with the Secondary Complainer and his file note records that he discussed the statements of Witness 3 and another witness in detail with the Secondary Complainer.
- 6.18 On 1 April 2015 the COPFS intimated three Vulnerable Witness Applications on the Respondent in respect of witnesses 1, 2 and 3 on the Indictment.
- 6.19 The Respondent instructed both Senior and Junior Counsel to represent the Secondary Complainer. A preliminary hearing took place at the High Court in Glasgow. A diet of trial was set.

- 6.20 The Respondent sent a letter to the Secondary Complainer on 11 May 2015 stating that he was enclosing a copy of “*the Summary of Evidence*” as requested by the Secondary Complainer. A summary of the evidence had been prepared by the COPFS and served on the Secondary Complainer together with the petition detailing the charges when he first appeared from custody.
- 6.21 On 15 May 2015 the Respondent sent a letter to the Secondary Complainer referring to his recent discussions with him and confirming that he would visit him on 19 May 2015. He stated that at that time he would provide the Secondary Complainer with a copy of the redacted statements of the civilian witnesses as discussed.
- 6.22 On 19, 20 and 22 May 2015 the Secondary Complainer sent letters to the Respondent regarding the evidence contained in the summary of evidence. He attached parts of the summary of evidence and wrote notes thereon in relation to each witness’s evidence.
- 6.23 On 27 May 2015 the Secondary Complainer sent a five page letter to the Respondent entitled “*In rely to [Witness 1’s] statement*”. The letter raised 25 points which were the Secondary Complainer’s comments on the statement of Crown Witness 1. Attached to the letter was a copy of the statement which had been provided by the COPFS to the Respondent in relation to Crown Witness 1. The Secondary Complainer had handwritten notes on the statement and had numbered 1 to 25 which correlated with the points 1 to 25 in his letter.

The witness statement had been redacted to remove the witness’s age, occupation, care of address and the details of when the statement was taken, in sections 1 and 2 but the name of the witness remained as did section 3 which provided the full detail of the witness’s narration of the alleged offences. The statement contained names, location and details of incidents of a sexual and violent nature and also referred to the age of the witness at the time of the alleged offences.

- 6.24 The Secondary Complainer sent a further 6 page letter to the Respondent dated 28 and 29 May 2015 in reply to the statement of Crown Witness 2. This letter raised 28 points of comment by the Secondary Complainer in relation to the statement of

said witness. Attached to the letter was a copy of the statement of Crown Witness 2 which had been provided to the Respondent by the COPFS. The Secondary Complainer had handwritten comments and numbers 1 to 28 on said statement and these entries correlated with the Secondary Complainer's handwritten letter.

Again this witness statement had been redacted but only to remove the age, occupation, care of address of the witness and details of the taking of the statement. The witness's name remained as did section 3 which contained the witness's full narration of the alleged offences. This included names, an address and details of incidents of a sexual and violent nature and also referred to the age of the witness at the time of the alleged offences.

- 6.25 The Secondary Complainer sent four further letters to the Respondent dated 5/6, 7, 9 and 10 June 2015 enclosing copies of the COPFS statements of four further Crown witnesses in relation to which he noted detailed comments which correlated to his numbering on the copy statements. Also enclosed was an additional COPFS statement of Crown witness 2 on which the Secondary Complainer had handwritten comments.

Said statements had been redacted in the same way as those of Witnesses 1 and 2.

- 6.26 The Secondary Complainer sent a letter to the Respondent on 8 June 2015 referring to a visit with the Respondent and junior counsel. However no such visit is recorded on the Respondent's file. The Secondary Complainer stated that: *"[junior counsel] also said that he would get the statements copied out, I can't remember the technical terms he used. I hope I recieve (sic) them soon, and get to work on them"*.

- 6.27 The Respondent recorded on his file an attendance at HM Prison Barlinnie with the Secondary Complainer on 11 June 2015 and noted that the Respondent discussed with him the responses which the Secondary Complainer had given in his letter of 27 May 2015 to the statement of Crown Witness 1. The Respondent advised the Secondary Complainer that he had forwarded this correspondence to senior counsel to consider the content and relevance.

- 6.28 On 14 and 15 June 2015 the Secondary Complainer sent two further letters to the Respondent enclosing copies of the COPFS statements of Crown Witnesses 3 and 4 and again he had made handwritten notes on the statements and numbered points which correlated to the numbered points in his letters.

Both of these witness statements had also been redacted but only to remove the age, occupation, care of address of the witnesses and the details of the taking of the statements. The names of the witnesses remained and section 3 which in each case detailed incidents of a sexual nature and referred to the age of the witnesses at that time.

In the letters the Secondary Complainer noted that he had now responded to two statements for each of the 4 witnesses who had made allegations.

- 6.29 On 16 June 2015 the Respondent recorded a further meeting with the Secondary Complainer together with senior and junior counsel. The Respondent noted that the Secondary Complainer was advised that all of his written correspondence to the Respondent was being forwarded to senior and junior counsel.
- 6.30 The Respondent has a record on his file of a meeting with the Secondary Complainer on 25 June 2015 at which he discussed with the Secondary Complainer his letter of 28 May 2015 in relation to the statement of Crown Witness 2.
- 6.31 On 28 July 2015 the Respondent sent a letter to the Secondary Complainer enclosing a copy of the COPFS statement of another Crown witness for his consideration. Again the witness's name remained and all of section 3 of the statement. Reference was made in the statement to conversations about sexual allegations.
- 6.32 On 5 August 2015 the Respondent sent a letter to the Secondary Complainer providing details of the date and times when some of the Crown witnesses, including Crown Witnesses 2, 3 and 4, had given their statements to the police, thus providing some of the detail which had been redacted from the COPFS statements which were in the possession of the Secondary Complainer.

- 6.33 The Respondent's file note of a meeting with the Secondary Complainer on 10 August 2015 noted that the Respondent "*had taken the unusual step of providing client with redacted copy of the statements of the Crown Witness [4]*" and that the Secondary Complainer had provided a written response dated 15 June 2015.
- 6.34 The Respondent's file note of a meeting with the Secondary Complainer on 26 August 2015 confirms that the Respondent received the Secondary Complainer's letter of 5 June 2015 referred to above.
- 6.35 On 4 September 2015 the Respondent sent a letter to the Secondary Complainer enclosing a copy of a defence witness statement.
- 6.36 The Respondent instructed Dr O, an independent forensic physician, to prepare an expert report providing his opinion on what injuries the Crown witnesses 1, 2, 3 and 4 may have sustained as a result of the alleged offences.
- 6.37 Dr O provided the Respondent with a report on 14 September 2015. The report detailed the charges libelled in the Indictment and named the Crown witnesses who were the alleged victims. The report also provided specific detail as to the type of injury which might have been inflicted on the alleged victims should the behaviour narrated in the charges have occurred.
- 6.38 There is a letter on the Respondent's file dated 15 September 2015 sending a copy of Dr O's report to the Secondary Complainer at HMP Barlinnie.
- 6.39 A solicitor from the same firm as junior counsel instructed in the case attended at HM Prison Barlinnie on 15 September 2015 and discussed Dr O's report with the Secondary Complainer.
- 6.40 After trial the Secondary Complainer was convicted of a number of the charges on the Indictment. Sentence was deferred for the preparation of a Criminal Justice Social Work Report.

- 6.41 There is a letter dated 30 October 2015 on the Respondent's file to the Secondary Complainer at HMP Barlinnie sending him two copies of the statement of Crown witness Dr W.

This statement included the name and date of birth of Witness 1 and details of the witness's medical history.

On the Respondent's file is a copy of this statement with the Secondary Complainer's handwritten notes on the statement. The statement is not redacted in any way.

- 6.42 On 2 November 2015 the Respondent spoke to the Secondary Complainer on the telephone. The Respondent's file note of that conversation noted that the Secondary Complainer asked if the witness statements had been sent as requested and the Respondent confirmed that they had.

- 6.43 In a second telephone call on the same date the Secondary Complainer advised the Respondent that he had taken a copy of everything which he had sent to the Respondent.

- 6.44 After a number of deferrals the Secondary Complainer was sentenced.

- 6.45 On 29 January 2016 the Respondent received a mandate dated 25 January 2016 from another firm and accordingly he ceased to act on behalf of the Secondary Complainer at that time.

- 6.46 On 18 November 2016 the Secondary Complainer submitted a complaint form to the Scottish Legal Complaints Commission (SLCC) regarding the Respondent's representation of him. The Secondary Complainer enclosed with his complaint form some documents which included copies of the COPFS statements of Crown witness 1 and Crown witness Dr W which had been retained by him. A further issue of complaint by the Secondary Complainer was made on 18 May 2018 in relation to his possession of these statements.

- 6.47 The Reporter wrote to the Secondary Complainer's partner requesting that she forward the documents to the Law Society and on 26 September 2019 the Reporter received a number of COPFS witness statements, a defence witness statement, the COPFS summary of evidence and the report by Dr O.
- 6.48 The witness statements were in the standard COPFS format as detailed at averment 3.9. The statements had been redacted at sections 1 and 2 to leave only the witnesses' names but section 3 of each statement contained no redactions. This section recorded the witnesses' recollections of the events surrounding the alleged offences and several of the statements narrated explicit sexual details and also referred to the age of the witness when the alleged offences took place.
- 6.49 All of the witness statements which were in the possession of the Secondary Complainer and then subsequently his partner had been provided by the COPFS to the Respondent on the basis of the Respondent's obligations under Articles 11 and 12 of the Code of Conduct for Criminal Work and on the basis of the undertaking given by the Respondent in his email to the COPFS dated 29 December 2014.

The COPFS did not provide any written authority for the Respondent to provide the Secondary Complainer with the Crown witness statements.

- 6.50 The medical report of Dr O had not been redacted at all and contained details of the charges on the Indictment which were of a sexual and violent nature, and provided an opinion as to the physical and psychological injuries which each person may have suffered as a result of the alleged behaviour.

7. Having given careful consideration to the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in that:-

- a) Between February 2015 and January 2016, he provided the Secondary Complainer, who was remanded in custody, with the Crown witness statements of some of the witnesses in the criminal proceedings against the Secondary Complainer. Said witness statements contained highly sensitive information.

- b) Between February 2015 and January 2016, knowing that the Secondary Complainer was in possession of the Crown witness statements of some of the witnesses in the criminal proceedings against the Secondary Complainer, he allowed the Secondary Complainer to retain said statements. Said witness statements contained highly sensitive information.
- c) Between 15 September 2015 and 29 January 2016 he knew, or ought to have known, that the Secondary Complainer had been provided with a copy of a report by an independent forensic physician, instructed by the Respondent, which contained highly sensitive information and he allowed the Secondary Complainer to retain said report.
- d) He failed to act with integrity in providing the Secondary Complainer with, and allowing the Secondary Complainer to retain, material which was of a highly sensitive nature.
- e) He failed to act with integrity by failing to adhere to the undertaking which he gave to the COPFS and his obligations in terms of the Code of Conduct for Criminal Work in respect of his receipt of disclosure of evidence.

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

By Video Conference, 5 May 2021. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Leon Kondol, McBride Kondol & Co., 35 Glenmore Avenue, Glasgow; Find the Respondent guilty of professional misconduct in respect that he provided to his client, and allowed him to retain, Crown witness statements and an independent forensic physician's report, all containing highly sensitive information, contrary to Rules B1.2 and B1.14.1 of the Law Society of Scotland's Practice Rules 2011 and Articles 11 and 12 of the Code of Conduct for Criminal Work; Censure the Respondent; Fine him in the sum of £2,000 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; 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: and Allow the Secondary Complainer, Mr A, 28 days from the date of intimation of these Findings to lodge a written claim for compensation.

(signed)

Nicholas Whyte

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 10 JUNE 2021.

IN THE NAME OF THE TRIBUNAL



Nicholas Whyte

Chair

NOTE

On 18 February 2021, the Chair exercising the functions of the Tribunal under Rule 56, granted the parties' joint motion under Rule 43 for any hearing set in this case to be held in private. The Secondary Complainer, who was named in the Complaint, was convicted of a number of sexual offences committed against members of his family. Reference was likely to be made to their police witness statements during the hearing. Their identities could be deduced if the Secondary Complainer's identity was disclosed during the hearing. The matter was therefore held in private to protect their interests.

At the hearing on 5 May 2021, the Tribunal had before it an amended Complaint, amended Answers, a Joint Minute, an Inventory of Productions for the Complainers, and a List of Authorities for the Complainers. The Joint Minute agreed that the Complainers' Productions were true and accurate copy documents.

Parties indicated that no evidence was to be led and the case would proceed by way of submissions. Professional misconduct was admitted, although it was recognised this was a matter for the Tribunal. The only point of contention was the applicability of Article 11 of the Code of Conduct for Criminal Work to the disclosure of a defence expert report and a defence witness precognition to the client. Nevertheless, the Respondent admitted that the whole circumstances amounted to professional misconduct whether or not these items were included.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal thanked Mr Brown for his assistance with this case. He summarised the facts for the Tribunal and made reference to the pertinent paragraphs of the Complaint. The Fiscal said that the Respondent had breached Practice Rules B1.2, B1.4 and B1.14. He made reference also to Articles 11 and 12 of the Code of Conduct for Criminal Work and the Respondent's undertaking to COPFS regarding the police witness statements. The Complainers' position was that the Respondent should not have provided police witness statements, the defence medical report and a defence precognition to his client who was then in prison and ought not to have allowed the client to retain these items which contained highly sensitive material. With reference to the test in Sharp-v-The Law Society of Scotland 1984 SLT 313, the Fiscal submitted the Respondent's failings were a serious and reprehensible departure from the standards of competent and reputable solicitors. The Fiscal invited the Tribunal to consider the case of The Law Society-v-Hamish Melrose which was on his List of Authorities. In this

case, the solicitor gave his client a mobile telephone to use while in police custody at court. The Tribunal found professional misconduct to be established in this case. The Fiscal submitted present circumstances were more serious than those in that case.

SUBMISSIONS FOR THE RESPONDENT

Mr Brown provided the Respondent's personal and career details. He noted that following his instruction, early intimation was given to the Complainers that the Respondent intended to plead guilty to the Complaint. The Respondent deeply regrets his lack of judgment regarding his conduct in this case. He cooperated with the investigation by providing the complete file to the Complainers. There was no attempt to conceal what had occurred.

Mr Brown noted that the criminal case involved a lengthy trial with Senior and Junior Counsel. Although not an excuse, the Secondary Complainer was a difficult client. He was demanding and applied a lot of pressure to the Respondent. He complained about the Respondent to the SLCC regarding the handling of the criminal case and as a result, this matter came to light. The Respondent's actions did not impact on the trial. They did not affect the Crown witnesses.

Mr Brown noted that much of the information contained within the statements was already known to the Secondary Complainer. He was related to all but one of the complainers in the criminal case. Much of the information in the statements was also found in the summary of evidence and the indictment, both of which the client legitimately possessed. However, the Respondent accepted that the danger lay in use of the statements as a commodity within prison. In this case, there is no evidence they were used in this way, as they were recovered by the Complainers from the Secondary Complainer's wife.

Mr Brown noted that the Complainers sought to include within the materials wrongly provided to the client, an expert medical report instructed by the defence. In Mr Brown's submission, this report should not be included. He confirmed that the report contained sensitive information. However, he said Article 11 of the Code of Conduct for Criminal Work applied solely to Crown materials. The Code of Conduct was drafted following the decisions in Holland-v-Her Majesty's Advocate 2005 SLT 563 and Sinclair-v-Her Majesty's Advocate 2005 SLT 513. The context relates to Crown disclosure documents.

Mr Brown further noted that although reference is made in the averments of fact to the defence precognition provided to the Secondary Complainer, there is no corresponding averment of

misconduct. In any case, he said the precognition did not contain sensitive material. In the course of questions from the Tribunal members, the Fiscal indicated that he did not seek to include the defence precognition in the averments of misconduct.

DECISION

The Tribunal accepted as proved beyond reasonable doubt the admitted facts in the Complaint. In summary, the Respondent was instructed by the Secondary Complainer in a solemn criminal matter. The Secondary Complainer was charged with, and eventually convicted of, various sexual offences committed against members of his family and one other individual. During the period of instruction, the Respondent provided to the Secondary Complainer a number of police witness statements, a defence expert report and a defence witness precognition. The police statements contained highly sensitive material which included personal information relating to the witnesses and details of the alleged criminal conduct. The expert medical report contained highly sensitive details relating to the case. The defence precognition did not contain sensitive material.

The Complainers submitted that the Respondent had breached Practice Rules B1.2, B1.4 and B1.14 and had acted contrary to Articles 11 and 12 of the Code of Conduct for Criminal Work (“the Code”) and the Respondent’s undertakings to the Crown Office and Procurator Fiscal Service (“COPFS”). In so acting, they submitted that he was guilty of professional misconduct.

According to the definition of professional misconduct contained in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313:-

“There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made.”

The Tribunal examined the Respondent’s conduct against the standard of competent and reputable solicitors. It gave careful consideration to the degree of culpability involved. It scrutinised the

provision of each type of document separately, namely the police witness statements, the defence medical report and the defence precognition.

Police witness statements were provided by the Respondent to his client who was in prison. This was done in breach of the undertaking he had given to COPFS that statements would not be made available to the accused without the express agreement in writing of the Procurator Fiscal. It was also contrary to Article 11 of the Code. Article 11.1 notes that a solicitor will receive in the course of defence work, documents, including those disclosed by COPFS. It provides that:-

“A solicitor should not give a client, or any other third party, even on a temporary basis, copies of any documents, materials or recordings.”

Exceptional cases where disclosure to the client may be necessary must be referred to the Professional Practice Department of the Law Society for guidance. Article 11.2 provides that some documents may be of a sensitive nature and should never be given to the client. The statements in this case involved detailed description of assaults and sexual abuse. They clearly came within the “sensitive” category. Article 12 gives guidance regarding the retention and destruction of case papers. The Respondent was unable to comply with Article 12 because he allowed his client to retain witness statements.

The Tribunal noted that the Code is a statement of good practice and does not have the status of a Practice Rule. However, the risks of disclosure of sensitive material to an accused person are obvious. Circulation can lead to witness intimidation. They can also be used as a commodity within prison as a form of pornography. That the information was largely known already to the accused, did not prevent its use by him or others for nefarious purposes.

The Respondent’s conduct lacked integrity because of the sensitive nature of the statements and his express undertaking to COPFS. He ought to have been well aware of the risks of providing these statements to the Secondary Complainer. Despite this, he provided them on several different occasions. His conduct lacked integrity by breaching the ethical standards of the profession (Rule B1.2). His actions were not consistent with regulated persons having mutual trust and confidence. He gave his word to the Crown and he went back on it (Rule B1.14.1). The Tribunal did not consider that the Respondent’s actions were contrary to Rule B1.4, which refers to acting in the client’s best interests.

The Tribunal took account of what was said on the Respondent’s behalf regarding pressure from the client. However, competent and reputable solicitors must be able to withstand these kinds of demands

from clients. Failure to do so brings the profession into disrepute and has consequences for the criminal justice system. Witnesses may not be prepared to give statements to the police if solicitors provide them to accused persons. The Respondent's conduct in providing and allowing the Respondent to retain these sensitive statements was a serious and reprehensible departure from the standards of competent and reputable solicitors.

A medical report obtained by the Respondent was also disclosed to the Secondary Complainer. This contained sensitive material. Article 11.1 provides that:-

"A solicitor will receive in the course of defence work the documents, materials or recordings related to the cases in which he is instructed. These documents will include those disclosed to the Crown Office and Procurator Fiscal Service ("COPFS"). A solicitor should not give a client or any third-party, even on a temporary basis, copies of any documents, materials or recordings." (Emphasis added).

The guidance attached to Article 11 refers to solicitors receiving *"documentation, materials or recordings from the COPFS, or other third parties..."* (Emphasis added). The Tribunal noted that paragraph 14.09 of Paterson and Ritchie's "Law, Practice and Conduct for Solicitors" quotes part of Article 11.1 and goes on to say that *"this includes but is not limited to material received from the Crown."*

Article 11.1 of the Code therefore applies to documents obtained by the defence as well as disclosed by the Crown. The distinction between Article 11.1 and 11.2 was in the nature, not source, of the material. Material falling within Article 11.2 is so sensitive it cannot fall with the exceptions provided in article 11.1. Providing the defence medical report was therefore contrary to both Article 11.1 and 11.2 of the Code. The Respondent also breached Article 12 by allowing the Secondary Complainer to retain the report.

The risks of providing the report to the Secondary Complainer were similar to those described above in relation to the witness statements. Similarly, the Tribunal found the conduct breached Rule B1.2 of the Practice Rules. Rules B1.4 and B1.14 did not apply. The Tribunal considered the Respondent's conduct in providing the defence medical report to the Secondary Complainer to be a serious and reprehensible departure from the standards of competent and reputable solicitors.

A defence precognition was also provided to the Secondary Complainer. It was not suggested that this contained any sensitive material. As above, in relation to the defence medical report, the Tribunal considered that a defence precognition is also subject to Articles 11.1, 11.2 and 12 of the Code. However, in this case, although averments of fact were made regarding this document at paragraph 3.37 of the Complaint, there was no corresponding averment of misconduct. During submissions, the Fiscal indicated that in the absence of an averment of misconduct he did not seek a conviction for misconduct based on the provision of the defence precognition. Accordingly, in the particular circumstances of this Complaint, the Tribunal made no finding of misconduct.

Therefore, in conclusion, the Tribunal found the guilty of professional misconduct by providing police witness statements and a defence medical report which all contained highly sensitive material to an accused person on remand awaiting trial in relation to charges of a serious sexual nature.

SUBMISSIONS IN MITIGATION

Mr Brown referred to the personal circumstances of the Respondent which he had addressed in his earlier submissions to the Tribunal. The Respondent is a sole practitioner. No previous conduct issues have arisen and none are outstanding against him. His firm has been regularly inspected by the Law Society and the Scottish Legal Aid Board with no adverse findings. The anticipation of this hearing has worried him and affected him deeply. The Respondent has shown remorse, cooperated, and entered into a Joint Minute.

Mr Brown said that without wishing to blame the Secondary Complainer in any way, the Respondent accepts he should have dealt with the demands of a demanding, complex and difficult client differently. He ought to have been more assertive and if concerned, sought independent advice or assistance from colleagues. The Respondent's actions were out of character. They demonstrated a lack of judgment in this particular case. It was an aberration. The Respondent has learned from this experience. Since January 2016, the Respondent has worked professionally and successfully. He has undertaken in-house training on the Code. He has instituted a system where he and his secretary double-check all documents and correspondence leaving the office. He has identified a number of colleagues to help him if such a situation arises again. He has recently sought guidance from colleagues about a current client who has behavioural difficulties and has been able to be assertive with him. He can routinely handle these situations now. The Respondent is well-regarded by colleagues and at court. He assures the Tribunal he will consult the Law Society's Professional Practice Department in relevant cases and comply with all Practice Rules and the Code. He has

contacted the Professional Practice Department twice in recent times for advice. The Respondent is a hardworking and diligent solicitor providing a much-needed service in Glasgow. He appreciated the finding will impact on him professionally, financially and in terms of his future career.

During the course of his submissions in mitigation, Mr Brown submitted two references, one from an advocate and a solicitor advocate. The report from the advocate supported what had been said about the difficult context in which the Respondent's conduct occurred. The solicitor advocate indicated his firm would provide assistance and mentoring to the Respondent.

The Tribunal invited parties to make submissions on publicity and expenses. The Fiscal moved for expenses. He asked that the decision be given publicity but asked for the Secondary Complainer to be anonymised so as to prevent identification of the Crown witnesses in the criminal case. Mr Brown made no submissions.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal considered the aggravating and mitigating factors relating to the misconduct. It noted the serious potential consequences for the Crown witnesses, and the potential damage to the criminal justice system and the reputation of the profession. It considered the repeated nature of the misconduct whereby the Respondent provided materials on more than one occasion. It considered that the conduct was more serious than that in Law Society-v-Melrose. It took into account the Respondent's remorse, cooperation and the steps he had taken to avoid a similar situation in future. It considered the context of the misconduct which involved only one case. It had regard to the positive references provided on behalf of the Respondent. In all these circumstances, the Tribunal considered that the appropriate sanction was censure and a fine of £2,000.

Expenses were awarded to the Complainers. Publicity will be given to the decision but the Secondary Complainer's name and some other details in the Complaint will be anonymised in the Tribunal's findings in fact so as to protect the identities of the Crown witnesses. Publication of their details is likely to damage their interests. The Secondary Complainer will have 28 days from intimation of these findings to lodge a claim for compensation or confirm his existing claim.



Nicholas Whyte
Chair