

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

**GERARD NOBLE NESBITT c/o
HM Prison Castle Huntly,
Longforan, Near Dundee**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Gerard Noble Nesbitt, c/o HM Prison Barlinnie, 81 Lee Avenue, Glasgow (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent. However, a letter dated 27 March 2014 was submitted by the Respondent to the Tribunal confirming that the Respondent did not intend to defend this Complaint.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 8 May 2014 and notice thereof was duly served on the Respondent.

4. At the hearing on 8 May 2014, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was neither present nor represented.
5. The Fiscal moved the Tribunal in terms of Rule 14(4) of the 2008 Rules to deal with the hearing in the absence of the Respondent. The Tribunal, having heard evidence from the Depute Clerk to the Tribunal, being satisfied that Notice of the Hearing had been duly posted by recorded delivery post to the Respondent in accordance with Rule 11(2), granted the motion to hear and determine the Complaint in the absence of the Respondent. The Fiscal having lodged an extract conviction and the Respondent having submitted a letter admitting the conviction, no evidence was led.
6. The Tribunal, having heard submissions for the Complainers and considered the aforementioned letter from the Respondent found the following facts established:-
 - 6.1 On 3rd May 2013, at the High Court of Justiciary sitting at Glasgow, the respondent was convicted of a charge in the following terms:-

On 24th and 25th May 2012 at Flat 2/2, 78 Grange Road, Glasgow you, Mr A and Gerard Noble Nesbitt were concerned in the supply of a controlled drug, namely cannabis resin, a class B drug specified in part II of Schedule 2 of the Misuse of Drugs Act 1971 to another or others in contravention of section 4(1) of the aforementioned Act: contrary to the Misuse of Drugs Act 1971 section 4(3)(b).
 - 6.2 On 29th May 2013 the respondent was sentenced to imprisonment for a period of three years and six months, backdated to 3rd May 2013.

6.3 The Solicitors (Scotland) Act 1980 section 53(1)(b), as amended, provides as follows:-

53.-(1) Subject to the other provisions of this Part, the powers exercisable by the tribunal under subsection (2) shall be exercisable if –

(a)...

(b) a solicitor has (whether before or after enrolment as a solicitor), been convicted by any court of an act involving dishonesty or has been sentenced to a term of imprisonment of not less than 12 months.

6.4 The Scottish Solicitors' Discipline Tribunal Rules 2008, by Rule 3(2)(b) provide that the complaints which may be made by the present complainers include that a practitioner may have been convicted by any court of an act involving dishonesty or may have been sentenced to a term of imprisonment of not less than two years.

7. Having considered the foregoing circumstances, the Tribunal found that Section 53(1)(b) of the Solicitors (Scotland) Act 1980 applied to the circumstances of this case in respect of the Respondent's conviction.

8. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 8 May 2014. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Gerard Noble Nesbitt, c/o HM Prison Castle Huntly, Longforgan, Near Dundee; Find the Respondent has been convicted of an offence and sentenced to a period of imprisonment of three years, six months and that accordingly Section 53(1)(b) of the Solicitors (Scotland) Act 1980 applies to the circumstances of the case; Strike the

name of the Respondent, Gerard Noble Nesbitt, from 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)

Douglas McKinnon
Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

The Complaint in this case was made solely in terms of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 which provides for the Tribunal exercising its powers in terms of Section 53(2) of the said Act, *inter alia*, where solicitors have been sentenced to imprisonment for a term of 12 months or more. The Respondent had submitted a letter to the Tribunal dated 27 March 2014 indicating that he did not intend to defend the Complaint. The Fiscal lodged an extract conviction. Accordingly, evidence did not require to be led. The Tribunal heard submissions from the Fiscal and had regard to the aforesaid letter from the Respondent, together with another letter referred to therein dated 19 November 2013 addressed to the Law Society.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch referred the Tribunal to the terms of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 and Rule 3(2)(b) of the Tribunal's 2008 Rules. The Fiscal tendered an extract of the conviction referred to in the averments of fact and this confirmed that the Respondent was sentenced to a period of imprisonment of three years, six months backdated to the 29 May 2013.

Mr Lynch explained that the evidence led at the trial in the High Court of Justiciary disclosed that the Respondent occupied a flat in Glasgow together with his domestic partner. A surveillance operation had taken place in the course of which the Scottish Drug Enforcement Agency had observed the co-accused of the Respondent entering the Respondent's flat carrying a bag. The police sought and were granted authority to search the premises. Cannabis resin was found concealed under a bunk bed, in a filing cabinet and in a kitchen cupboard. The police also searched the flat of the co-accused. In all, the total weight of drugs recovered was 31kg. Expert evidence was given at trial that the maximum street value for that weight of cannabis was £155,000.

The Respondent claimed in the course of his trial that he had allowed, as a favour to a friend, a homeless man to have access to his flat. The Respondent had indicated that it was he and not the Respondent who was responsible for the drugs being within his home. That explanation was clearly not accepted by the jury.

When the Complaint was intimated to the Respondent by the Law Society, the Respondent had sent the Law Society a letter dated 15 November 2013. In that letter the Respondent confirmed the defence that he had put forward in court, that nonetheless he had been convicted, and that he had not appealed that conviction. Additionally, the Respondent had expressed an apology for the adverse publicity his conviction had brought to the profession. Thereafter, following service of the current Complaint, the Respondent had written the letter of 27 March 2014 to the Tribunal. That letter confirmed that the Respondent intended not to defend the Complaint, indicated that he had no mitigating circumstances to put forward to the Tribunal beyond the content of the letter of 15 November 2013 and once again offered the Respondent's apologies for bringing the profession into disrepute.

Mr Lynch further explained that in the course of sentencing the Respondent, the trial judge had commented that the Respondent had brought shame upon himself and had brought the profession into disrepute.

Following upon the conviction in the High Court, the Advocate Depute prosecuting had produced to the court a previous conviction for the Respondent from 1984. This was a conviction for a contravention of Section 5(3) of the Misuse of Drugs Act 1971 on indictment at Glasgow Sheriff Court. This was a conviction for being in possession of drugs with intent to supply and had resulted in a fine of £1000. Clearly this is an analogous conviction to the conviction of 3 May 2013.

Mr Lynch submitted that with regard to the quantity and value of drugs in this case, this was at the upper end of this type of offending and the Respondent's conduct was at the upper end of misconduct. He referred to the case of Angela Baillie where the Tribunal had indicated that if they had been able to use the full extent of their powers, in a case where she had been convicted of a similar offence to the conviction here, then they would have done so.

The Chairman asked the Fiscal to clarify if the Law Society had taken any proceedings following on the conviction from 1984.

The Fiscal clarified that the Respondent was not a solicitor at the time of that conviction. He was granted his entrance certificate in 2006. The Law Society were aware of the conviction but had decided to give the Respondent a chance given the passage of time since the conviction and the steps he had taken to improve his position.

DECISION

Although the Fiscal for the Complainers had referred to misconduct within his submission, it was not necessary for the Tribunal to make any such finding in this case. The Complaint before them proceeded solely on the basis of Section 53(1)(b) of the Solicitors (Scotland) Act 1980. If the Tribunal was satisfied that the Respondent had been sentenced to a period of imprisonment of not less than 12 months then the Tribunal had the power to impose any of the sanctions (except a fine) described in Section 53(2) of that Act. The Fiscal had produced an extract conviction and the Respondent had admitted that conviction within his letter to the Tribunal dated 27 March 2014. In these circumstances, the Tribunal were satisfied that Section 53(1)(b) of the 1980 Act applied.

It was clear that this was a serious conviction. The matter had been prosecuted in the High Court and had resulted in a sentence of 3 years and 6 months imprisonment. The only mitigation put forward by the Respondent was his letter of 15 November, wherein he had set out his defence to the original charge. The Tribunal could not look behind the conviction. The Respondent had shown remorse in both of his letters and had cooperated fully with the Law Society. However, members of the public must have a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. As a solicitor, the Respondent was a member of a profession where a high standard of ethical conduct was required.

The Tribunal concluded that there was no measure, short of striking the Respondent's name from the Roll, which was compatible with the serious nature of this conviction, and the obvious damage caused to the reputation of the profession. The existence of a previous conviction for an analogous offence reinforced this conclusion.

Accordingly, the Tribunal struck the Respondent's name from the Roll of Solicitors in Scotland.

The Fiscal sought an award of expenses. There being no justification provided to depart from normal practice, the usual award of expenses was made.

The usual order for publicity was also made.

Douglas McKinnon
Vice Chairman