

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

FINDINGS

in Section 53(1)(b) 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

**DAVID WILLIAM NIGHTINGALE, 65
Springfield Road, The Village, Cumbernauld**

Respondent

1. A Complaint dated 16 January 2017 was lodged with the Scottish Solicitors' Discipline Tribunal in terms of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that David William Nightingale, 65 Springfield Road, The Village, Cumbernauld (hereinafter referred to as "the Respondent") was a practitioner who had been convicted of an act involving dishonesty.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 22 March 2017 and notice thereof was duly served upon the Respondent.
4. On 20 March 2017 of consent the Chairman exercising the functions of the Tribunal under Rule 56 granted the Respondent's motion to adjourn. The Tribunal appointed the Complaint to be heard on 31 May 2017 and notice thereof was duly served upon the Respondent.

5. On 31 May 2017, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present or represented. However, he had lodged with the Tribunal a letter in mitigation.
6. Having heard evidence from the Clerk with regard to service of the Complaint and the Notice of Hearing, the Tribunal determined to proceed in the absence of the Respondent. The Tribunal heard submissions on behalf of the Complainers.
7. The Tribunal found the following facts proved:
 - 7.1 The Respondent's date of birth is 17th July 1982. He was enrolled as a solicitor on 6th October 2009. He was formerly employed by McAfees, Solicitors, 81 Graham Street, Airdrie. He is not currently in practice as a solicitor.
 - 7.2 On 12th December 2014 the respondent pleaded guilty at Hamilton Sheriff Court to an indictment in the following terms:-
 - (01) On 1st May 2012 at the premises occupied by McAfees, Solicitors, 81 Graham Street, Airdrie and elsewhere you DAVID NIGHTINGALE whilst employed as a solicitor by said McAfees, Solicitors, did pretend to Con McAfee, c/o said McAfee Solicitors, that your father, David William Nightingale Senior, was in mortgage arrears and that his home may be repossessed, ask said Con McAfee to provide you with a loan to pay said arrears, the truth being that there were no such mortgage arrears and your father's home was not subject to repossession and you did not intend to use said loan to repay any mortgage arrears and instead intended to appropriate said loan for your own use, and you did thereby induce said Con McAfee to lend you £4000 or thereby of money and did all thereby obtain £4000 or thereby of money by fraud.
 - (03) Between 28th September 2012 and 3rd December 2012, both dates inclusive, at Property 1 and elsewhere you DAVID NIGHTINGALE did pretend to Mr I, that your father, David William Nightingale Senior, was in mortgage arrears and that his home may be repossessed, ask said Mr I to

provide you with a loan to pay said arrears, the truth being that there were no such arrears, that your father's home was not subject to repossession and that you intended to appropriate said loan for your own use you did thereby induce said Mr I to lend you £3500 or thereby of money and did all thereby obtain £3500 or thereby of money by fraud.

- (04) Between 1st September 2011 and 24th October 2012, both dates inclusive, at the premises occupied by McAfees Solicitors, 81 Graham Street, Airdrie, at Property 2 and elsewhere you DAVID WILLIAM NIGHTINGALE did, whilst employed as a Solicitor by said McAfees and whilst acting in that capacity, did pretend to Mr H, c/o Coatbridge Police Office you required payment of £3000 in money to assist in securing a reduced sentence on conviction in relation to the criminal proceedings in respect of said Mr H's father, Mr G, and that you would make payment of said £3000 to the Department of Work and Pensions in repayments of money owed to the Department of Work and Pensions by said Mr G, the truth being that you did not intend to pay said money to the Department of Work and Pensions and instead intended to appropriate said money for your own use, and did thereby induce said Mr H to pay £3000 or thereby of money to you in relation to said criminal prosecution and did all thereby obtain £3000 or thereby of money by fraud.
- (05) Between 12th October 2012 and 20th October 2012, both dates inclusive, at the premises occupied by Nationwide Bank, Graham Street, Airdrie, at Airdrie Sheriff Court, Airdrie and elsewhere you DAVID WILLIAM NIGHTINGALE did, whilst employed as a Solicitor by McAfees Solicitors and whilst acting in that capacity, pretend to Mrs D, c/o Coatbridge Police Office that you required a sum of money to assist in securing a reduced sentence on conviction in relation to the criminal proceedings in respect of said Mrs D's son, Mr E, further pretend that, if convicted, you would make payment of said sum of money in compensation on behalf of said Mr E or otherwise upon the acquittal of said Mr E, return said sum to said Mrs D, the truth being that you did not intend to make any payment in compensation or return said sum of money

and instead intended to appropriate said money for your own use, you did thereby induce said Mrs D to pay £2000 or thereby of money to you, fail to repay said money to said Mrs D on the acquittal of said Mr E, and did all thereby obtain £2000 or thereby of money by fraud.

Sentence was deferred. When the respondent appeared again at Hamilton Sheriff Court on 11th February 2015 he was ordered to perform 300 hours of unpaid community work and make repayment of £7,000 to his victims.

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

Edinburgh 31 May 2017. The Tribunal having considered the Complaint dated 16 January 2017 at the instance of the Council of the Law Society of Scotland against David William Nightingale, 65 Springfield Road, The Village, Cumbernauld; Find that the Respondent has been convicted by a court of an act involving dishonesty and that accordingly Section 53(1)(b) of the Solicitors (Scotland) Act 1980 applies to the circumstances of the case; The Respondent's name already having been removed from the Roll of Solicitors in Scotland at his request under section 9 of the Solicitors (Scotland) Act 1980, Prohibit the restoration of the Respondent's name to 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 shall be given to this decision and that this publicity should include the name of the Respondent, his father and Mr McAfee but such publicity shall not include the names of other individuals as the publication is likely to damage their interests.

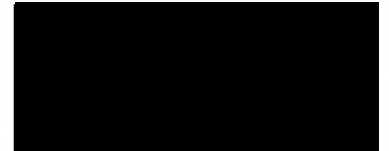
(signed)

Nicholas Whyte

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



Nicholas Whyte
Chairman

NOTE

This Complaint was made in terms of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 which allows the Tribunal to exercise its powers under Section 53(2) of the said Act where a solicitor has been convicted by any court of an act involving dishonesty. At the hearing on 31 May 2017 the Tribunal had before it the Complaint, Answers fully admitting the averments in the Complaint and a letter from the Respondent in mitigation.

The Respondent did not appear and was not represented at the Tribunal hearing. The Tribunal heard evidence from the Tribunal Clerk with regard to service of the Complaint and Notice of Hearing. The letter in mitigation from the Respondent indicated that he was unable to attend the Tribunal hearing and that he wished his mitigation to be received in writing. The Tribunal was satisfied that the Respondent had received service of the Complaint and Notice of Hearing, that the Respondent was content for the case to proceed in his absence, and that it was fair to do so.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that on 12 December 2014 the Respondent pleaded guilty at Hamilton Sheriff Court to a number of offences of dishonesty on indictment. He had obtained on 1 May 2012 a sum of £4,000 by fraud, between 28 September 2012 and 3 December 2012 a sum of £3,500 by fraud, between 1 September 2011 and 24 October 2012 a sum of £3,000 by fraud and between 12 October 2012 and 20 October 2012 the sum of £2,000 by fraud. The Fiscal indicated that sentence was deferred on 12 December 2014. On 11 February 2015 he was ordered to perform 300 hours of unpaid community work and to make repayment of £7,000 to his victims. Mr Lynch indicated that as far as he was aware the compensation order was being complied with and the Respondent was making regular payments. The Fiscal indicated that the Respondent had informed him that there was a criminal prosecution pending against him relating to similar matters. The Fiscal did not know whether this case would be governed by solemn or summary procedure.

The Fiscal informed the Tribunal that the Respondent's name had already been removed from the Roll of Solicitors under Section 9 of the Solicitors (Scotland) Act 1980 on the Respondent's application on 28 July 2014. The Fiscal therefore invited the Tribunal to prohibit restoration of the Respondent's name to the Roll under Section 52(2)(aa).

The Fiscal moved for the usual orders regarding expenses and publicity. The Chairman queried whether publicity ought to be delayed until conclusion of the pending criminal case. The Fiscal indicated that the criminal case giving rise to these proceedings had already attracted extensive publicity. As he understood it, the matters due to call were distinct from those contained within these proceedings and that there was no reason to defer publicity.

SUBMISSIONS FOR THE RESPONDENT

In his written submissions the Respondent indicated that his course of conduct during his time employed at McAfees Solicitors was “completely unacceptable” and that his letter was purely for the purposes of providing mitigation. He was not attempting to avoid responsibility for his actions. The Respondent narrated personal circumstances providing an explanation for his behaviour. He provided financial information with regard to his current employment and outgoings. He detailed the support he has received in order to address the issues in his personal life. He indicated his remorse towards those affected by his actions. He appreciated that he had let down his colleagues. The Respondent said that he had no wish to practise as a solicitor again. He had removed himself from the Roll of Solicitors following these incidents and he expected to be Struck Off as a result of his conduct.

DECISION

No extract conviction in respect of these offences was provided. Nevertheless, the Tribunal was satisfied beyond reasonable doubt on the basis of the Complaint and the complete admissions in the Answers that the Respondent had been convicted of offences of dishonesty. In these circumstances the Tribunal was satisfied that Section 53(1)(b) of the 1980 Act applied.

The Tribunal considered that convictions such as these which disclosed a course of dishonest conduct involving clients was incompatible with being a solicitor. Solicitors belong to a profession which requires high standards of ethical conduct. Members of the public must have confidence that solicitors are trustworthy and honest and that their integrity is beyond question.

The Tribunal considered the letter written by the Respondent and noted his remorse and insight into the seriousness of his conduct. However, the Tribunal considered that the convictions demonstrated that he was not a fit and proper person to be a solicitor. Given that the Respondent’s name had already

been removed from the Roll, the Tribunal prohibited restoration of his name to the Roll of Solicitors under Section 53(2)(aa) of the Solicitors (Scotland) Act 1980.

The Tribunal made the usual order with regard to expenses. The Tribunal ordered that its decision should be given publicity but that it was not necessary to name any parties other than the Respondent, his father, and Mr McAfee. Publication of information relating to other individuals may be detrimental to their interests.



Nicholas Whyte
Chairman