

**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**

**GERARD JOHN ROBERT MCMAHON,  
residing at 1 Silverwells Crescent, Bothwell**

**Respondent**

1. On 23 May 2022, a Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Gerard John Robert McMahon, residing at 1 Silverwells Crescent, Bothwell (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 period for lodging Answers was extended several times while the Respondent's agent sought further information about potential related proceedings. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal set a virtual procedural hearing on 22 June 2023 and notice thereof was duly served on the Respondent.
5. At the virtual procedural hearing on 22 June 2023, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present but was represented by Gerard Brown, Solicitor, Glasgow. The virtual procedural hearing was continued to 27

September 2023. In advance of the case calling on 27 September 2023, parties indicated that the continued virtual procedural hearing could be converted to a virtual hearing to dispose of the case.

6. At the virtual hearing on 27 September 2023, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present but was represented by Gerard Brown, Solicitor, Glasgow. The Fiscal indicated that parties had reached an agreed position whereby the Respondent would plead guilty to the Complaint with the exception of the last three sentences of paragraph 4(g) and under deletion of the averment of professional misconduct at paragraph 5. Mr Brown confirmed that he had instructions from the Respondent to plead guilty in those terms. Parties made submissions.
7. Having given careful consideration to the terms of the Complaint as amended, the Tribunal found the following facts established:-
  - 7.1 The Respondent was consulted by FF in connection with debt recovery. On 30 April 2020 the Respondent signed and purported to serve on Allbar Facility Management Solutions Limited (wherein the said company was incorrectly designed as Albarr Facility Management Solutions) a statutory demand demanding payment of the sum of £10,572.57. Within the signed Statutory Demand the Respondent designed himself as a solicitor.
  - 7.2 On 21 May 2020 and on subsequent dates the Respondent issued correspondence to Allbar Facility Management Solutions Limited and to the Sheriff Clerk at Glasgow in which he was designed as "Gerry McMahon LLB DIP LP NP". The last acronym is short for Notary Public. The Respondent was not and could not have been a Notary Public at the material dates, given that he was not a solicitor.
  - 7.3 On 8 June 2020 the Respondent signed and lodged electronically at Glasgow Sheriff Court a Petition craving a Winding Up Order in respect of Allbar Facility Management Solutions Limited. Within the Petition the respondent designed himself as a solicitor.
  - 7.4 On 9 June 2020 a warrant was granted appointing a copy of the Petition and Deliverance to be advertised on the Scottish Courts & Tribunals website in accordance with the Coronavirus (Scotland) Act 2020 and a like copy to be served on Allbar Facility

Management Solutions Limited along with the usual order for advertisement in the Edinburgh Gazette and Metro Newspaper, all of which was done.

- 7.5 On 26 June 2020 the Sheriff Clerk at Glasgow was contacted by the Respondent and asked to arrange an appointment of an interim Liquidator to Allbar Facility Management Solutions Limited. The Petition and Productions were forwarded to Sheriff McCormick.
- 7.6 The Productions included the foregoing Statutory Demand in which the company was incorrectly styled. Thus the terms of Section 123(1)(a) of the Insolvency Act 1986 had not been complied with. The Sheriff made enquiries and became aware that the Respondent's name was not on the published list of practising solicitors. The Sheriff Clerk was asked to enquire of the Respondent whether he was a solicitor or a commercial attorney and, if not, on what basis he had signed the Petition.
- 7.7 The Respondent replied that he had been a practising solicitor some 19 years previously but that his name remained on the roll of solicitors as a non-practising member. The Respondent confirmed that he did not have a practising certificate.
8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct individually and *in cumulo* in respect that:
- 8.1 On or around 30 April 2020 the Respondent, on behalf of the pursuer, signed and served a statutory demand for payment on Albarr Facility Management Solutions (sic) for £10,572.57, on which he designed himself as "solicitor" despite not having in force a practising certificate, thereby holding himself out to the recipient of the statutory demand to have a status as a practising solicitor which he did not at that time possess;
- 8.2 On 21 May 2020 and on subsequent dates, the Respondent purported to hold the qualifications or status "LLB. Dip LP, NP" as appended to a letter to the defender and e-mails to the court, despite not having in force at that time a practising certificate and consequently not holding the status of notary public per the operation of Section 58(5) of the Solicitors (Scotland) Act 1980;
- 8.3 On or around 8 June 2020, the Respondent prepared, signed and presented to the court electronically an initial writ within which he designed himself as a solicitor, craving the

liquidation of the defender company, despite not having in force at that time a practising certificate;

8.4 The Respondent having improperly obtained the court's authority by knowingly or recklessly presenting misleading documents to it seeking warrant, served and advertised notice of the pursuer's petition in the Edinburgh Gazette and Metro newspaper; and

8.5 On or around 16 June 2020, the Respondent requested that the Sheriff Clerk appoint an interim liquidator to the defender company in reliance knowingly or recklessly upon the defective and misleading documentation which had previously been submitted to the court, and on which the court had granted warrant to serve the petition on the defender company.

9. Having heard the Solicitor for the Respondent in mitigation and heard submissions from both parties on expenses and publicity, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 27 September 2023. The Tribunal, having considered the Complaint at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Gerard John Robert McMahon, residing at 1 Silverwells Crescent, Bothwell; Find the Respondent guilty of professional misconduct individually and *in cumulo* in respect that (a) On or around 30 April 2020 the Respondent, on behalf of the pursuer, signed and served a statutory demand for payment on Albarr Facility Management Solutions (sic) for £10,572.57, on which he designed himself as "solicitor" despite not having in force a practising certificate, thereby holding himself out to the recipient of the statutory demand to have a status as a practising solicitor which he did not at that time possess; (b) On 21 May 2020 and on subsequent dates, the Respondent purported to hold the qualifications or status "LLB. Dip LP, NP" as appended to a letter to the defender and e-mails to the court, despite not having in force at that time a practising certificate and consequently not holding the status of notary public per the operation of Section 58(5) of the Solicitors (Scotland) Act 1980; (c) On or around 8 June 2020, the Respondent prepared, signed and presented to the court electronically an initial writ within which he designed himself as a solicitor, craving the liquidation of the defender company, despite not having in force at that time a practising certificate; (d) The Respondent having improperly obtained the court's authority by knowingly or recklessly presenting

misleading documents to it seeking warrant, served and advertised notice of the pursuer's petition in the Edinburgh Gazette and Metro newspaper; and (e) On or around 16 June 2020, the Respondent requested that the Sheriff Clerk appoint an interim liquidator to the defender company in reliance knowingly or recklessly upon the defective and misleading documentation which had previously been submitted to the court, and on which the court had granted warrant to serve the petition on the defender company; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written findings are intimated to the Respondent; 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)**

**Catherine Hart**

**Vice Chair**

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 **16 OCTOBER 2023**.

**IN THE NAME OF THE TRIBUNAL**



**Catherine Hart**  
**Vice Chair**

**NOTE**

At the Hearing on 27 September 2023, the Tribunal had before it the Complaint which was amended and the Judgment of Sheriff John N McCormick in the case FF-v-AFMS Ltd [2020] SC GLA 31.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal noted that where there was any divergence between the facts in Sheriff McCormick's note, and the Complaint, it was the agreed position of the parties which governed the decision of the Tribunal. The Fiscal referred the Tribunal to the Complaint as amended. He noted that the Respondent had not held a practising certificate since 1998. However, his name remains on the Roll of Solicitors and it is that which gives the Tribunal jurisdiction in this case. The Fiscal referred the Tribunal to paragraph 25 and 28-29 of Sheriff McCormick's note. He said that what the Respondent did constituted a statutory offence. On that basis, and following the Sheriff McCormick's comments, he invited the Tribunal to make a finding of professional misconduct.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Brown said his instructions were to inform the Tribunal that this was a one-off transaction which the Respondent became involved in. The Respondent accepted he behaved in the manner set out in the Complaint as amended. Ignorance of the law is no excuse, but the Respondent wished to emphasise that he had misunderstood the position. The Respondent has had a problem with alcohol and although he abstains for long periods of time, he was drinking at the time of this conduct and his thinking was muddled. He had thought that because he was on the Roll, he could present himself as a notary public. He had been in regular correspondence with executive members of the Law Society of Scotland and had designed himself therein as a notary public without challenge. Therefore, when this issue arose, it came as a surprise to him. Mr Brown suggested that against that background, while it is serious to misrepresent yourself as a solicitor, it was not professional misconduct in this context. Once the matter was raised with him, he apologised for his misunderstanding.

The Fiscal said that the Respondent's explanation begged a question about the circumstances in which the Respondent found himself acting on behalf of this client. Mr Brown said that the individual had been referred to him by an accountant who had previously done business with the Respondent over many years. The Respondent had not repeated such behaviour.

## DECISION

On the basis of the Respondent's plea of guilty to the Complaint as amended, the Tribunal was satisfied that the Respondent had held himself out to be a solicitor when he signed and served a statutory demand for payment on a company. He had purported to be a notary public on a letter and emails to the court, when he was not. He prepared, signed and presented to the court an initial writ within which he designed himself as a solicitor. He advertised notice of the petition having improperly obtained the court's authority. He requested that an interim liquidator be appointed based on defective and misleading documentation.

No person shall be qualified to practise as a solicitor unless he has a practising certificate in force (section 4 of the Solicitors (Scotland) Act 1980). It is an offence to practise without a certificate and may be treated as professional misconduct (section 23 of the Solicitors (Scotland) Act 1980). Persons without practising certificates cannot draw or prepare any writ in relation to any action or proceedings in any court, subject to certain exceptions (section 32 of the Solicitors (Scotland) Act 1980). Solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question, and they must not behave, whether in a professional capacity or otherwise, in a way which is fraudulent or deceitful (Rule B1.2 of the Law Society of Scotland Practice Rules 2011).

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."*

It is essential that solicitors act honestly and with integrity. The Respondent's conduct in holding himself out to be a solicitor to his client and the court, was dishonest. Seeking the interim appointment of a liquidator could have had serious consequences for the defender company. The court system can only work if the trust placed in representatives is well placed. As was noted by Sheriff McCormick, the court



and parties to a litigation are entitled to expect that a representative lodging a writ is qualified to do so. Solicitors with practising certificates are part of a regulated profession. They have to undertake continuing professional development. They pay professional dues and they must be insured. When things go wrong, the regulatory bodies and insurers provide a route for the aggrieved. Standards are maintained and the public is protected. The public interest and the reputation of the profession are harmed if unqualified persons carry out work reserved to solicitors with practising certificates. The Respondent's conduct has resulted in public criticism of him as a solicitor. The Respondent's actions were a serious and reprehensible departure from the standards of competent and reputable solicitors.

### **SUBMISSIONS IN MITIGATION AND ON PUBLICITY AND EXPENSES**

The Fiscal indicated that there was a finding of professional misconduct on the Respondent's record and provided a copy of McMahon & Ors. Re Petition of [2002] ScotCS 36. In that case, the Tribunal found the Respondent guilty of breaches of the Accounts Rules, failure to inform a client company of intrusions with funds and interest on those funds, and a failure to stamp and record a standard security and a disposition. The Tribunal's decision to suspend the Respondent for five years in 2000 was upheld on appeal, although the court directed that the period would run from the date of the Tribunal's decision rather than the Court's interlocutor. The Fiscal noted that the Respondent had not held a practising certificate since 1998.

Mr Brown said that the Respondent had advised that he would remove his name from the Roll. Mr Brown said he would ensure that was done. Mr Brown gave details of the Respondent's personal and family circumstances and information relating to his health. The Respondent is currently unemployed and has limited funds. He faced a criminal prosecution for a period but the Crown had decided not to proceed that further, although they reserve the right to raise proceedings in future.

With reference to publicity, Mr Brown noted that the criminal case has been discontinued but is not totally closed. He therefore suggested that the matter should not be given publicity. He asked the Tribunal to note the Respondent's financial circumstances when considering any award of expenses.

Mr Lynch said that there were no circumstances to justify a departure from the usual rule on publicity. There were no criminal proceedings currently in contemplation. The decision should therefore include the name of the Respondent. He moved for expenses on the usual basis.

**DECISION ON SANCTION, PUBLICITY AND EXPENSES**

The Tribunal noted the finding of dishonesty which it had made in this case. The Respondent's conduct could have been dangerous to the public. It was likely to damage the reputation of the profession. The Respondent had demonstrated no insight into his behaviour. The Tribunal had regard to the previous finding of misconduct following which the Respondent had been suspended for a period of five years. The Tribunal considered what Mr Brown said in mitigation. It noted that the Respondent had some health issues. He had cooperated with the Fiscal. He had pleaded guilty. However, the Tribunal was of the view that when considering protection of the public and upholding the reputation of the profession, no sanction other than strike off was appropriate in the circumstances of this case. The order for strike off should take effect on intimation of this written decision.

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. There was no Secondary Complainer in this case.



**Catherine Hart**  
**Vice Chair**