

**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**

**against**

**AIDAN VINCENT GALLAGHER, Aidan  
Gallagher & Company, Solicitors, 4 Argyle  
Street, Greenock**

1. A Complaint dated 23 January 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Aidan Vincent Gallagher, Aidan Gallagher & Company, Solicitors, 4 Argyle Street, Greenock (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. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 14 June 2018 and notice thereof was duly served on the Respondent.
5. At the hearing on 14 June 2018, the Complainers were represented by their Fiscal, Paul Reid, Solicitor-Advocate, Glasgow. The Respondent was present and represented by Jonathan Brown, Advocate.
6. Of consent, and on the Complainers' motion, the Complaint was amended to delete the words "honest and" where they appeared in the thirteenth line of paragraph 3.4. A Joint

Minute of Admissions was lodged. Said Joint Minute agreed that the Respondent admitted the averments of fact, duty and misconduct contained within the Complaint as amended. The Tribunal heard submissions from both parties.

7. Having given careful consideration to the terms of the Complaint as amended, the Joint Minute of Admissions, the Productions for the Complainers and the parties' submissions, the Tribunal found the following facts established:-

7.1 The Respondent is Aidan Vincent Gallagher. The Respondent was born 23 June 1969. The Respondent was admitted and enrolled as a Solicitor practising in Scotland on 1 October 1993. From on or about 6 October 1993 through to 31 July 1998 the Respondent was employed with the firm Kennedy & Company, Solicitors, Port Glasgow. From 1 August 1998 through to 31 October 2009 the Respondent was employed initially and latterly a partner in the firm of Gordon Ritchie & Company, Solicitors, Paisley. From 1 November 2011 through to date the Respondent has practised and traded as Aidan Gallagher & Company, Solicitors, 4 Argyle Street, Greenock.

7.2 The Respondent formerly acted on behalf of Mr A. The practice of the Respondent is predominantly, if not exclusively, in criminal law. Mr A was a recidivist. Mr A instructed the Respondent on or about 24 December 2014 to act on his behalf in connection with a charge of assault. Mr A, as a result of his criminal record, was remanded in custody in respect of an Indictment containing charges of assault. The Indictment identified a first diet to call at Greenock Sheriff Court on 31 March 2015 with a trial diet due to commence on 13 April 2015. In respect of this Indictment the Respondent was instructed by the said Mr A as defence agent. On or about 13 April 2015 the Respondent attended at the cell area of Greenock Sheriff Court. The Respondent requested that he be provided with the opportunity to meet with his client. Mr A had been brought to Greenock Sheriff Court to appear at the diet. It is normal practice for a remand prisoner to be searched prior to departure from the prison when being taken to Court. Thereafter it is normal practice for a prisoner when arriving at Court to be searched once again prior to being deposited in the cell area. Mr A was brought to the agents' visit room to meet with the Respondent. The agents' visit room at Greenock Sheriff Court comprises two small rooms which are separated by a glass partition. At the bottom of the glass partition there is a space

which facilitates the piece of paper to be passed between the two areas. Communication is conveyed through a microphone set up in the glass partition. The agents visit room is exclusive to visits by solicitors acting on behalf of clients. Members of the general public are not allowed access to this area. Members of the general public are not allowed access to prisoners at all when they are brought to Court. The Respondent, in being in this position was afforded a privilege based on his status as a member of the profession. Mr A initially met the Respondent and discussed matters. Mr A then left and was returned to his cell. He obtained from a member of the security a pen and a piece of paper. He prepared a note. The Respondent met with another client. When the Respondent was finished with that client he asked that Mr A be brought against to the visit room. On his way to the visit room the security guard removed the pen from Mr A to prevent acts for vandalism being effected. At the second meeting Mr A passed the note to the Respondent. Mr A passed the sheet of paper to the Respondent and requested that the Respondent deliver the sheet of paper to a relative of Mr A. The Respondent took the sheet of paper and thereafter delivered the sheet of paper to the said relative. The sheet of paper included the following contents "Phone Ms B (my sister) and get her to come down to court with photographs of my injuries and Facebook messages. Also I said: tell Ms C to say she can't remember talking to the Police and Ms D to say she saw nothing in the house."

- 7.3 Later on that date it was ascertained that the sheet of paper contained a note from Mr A to his brother which sought to induce the brother to persuade and intimidate witnesses, who were to give evidence against Mr A in relation to the charges on the Indictment, to give false evidence. The communication was a device by Mr A in an effort to persuade witnesses to give false evidence and was an attempt to pervert the course of justice. As a result of the note being passed and the subsequent behaviour of the brother, who was the recipient of the note, police became involved and a subsequent Indictment was served, in terms of which the brother and the said Mr A faced an individual charge alleging an attempt on their part to pervert the course of justice. With the brother being detained the Respondent withdrew from acting on behalf of Mr A. Mr A subsequently appeared at the Sheriff Court in relation to the charge on the Indictment arising from the note. Mr A pled guilty to the charge and received a sentence of 34 months imprisonment. Mr A is currently in a custodial setting serving this sentence.

7.4 The Respondent failed to act in the best interests of his client Mr A. The Respondent abused the privileged position which he enjoyed as a member of the profession whereby he was allowed access to a client in a custodial setting. There are explicit rules forbidding a solicitor from passing any item to a client within a custodial setting. The Respondent should have declined to act as a conduit for passing a note between Mr A and his brother. The Respondent should have, at the very least, read the note and advised the client as to the implications of the note. In each and all of these duties the Respondent failed. In acting in this fashion, the Respondent acted contrary to the formal duties expected of a solicitor acting in this fashion. As a consequence of his behaviour the Respondent was identified as a Crown witness on the list of witnesses attached to the Indictment which the said Mr A faced as a consequence of the passing of the note. In acting in this fashion, the Respondent allowed his personal integrity to be questioned. He failed to act in the best interests of his client. He did not preserve his independence from his client. He did not provide independent advice to his client regarding the implications of the note. The client should not have prepared the note nor requested the Respondent to deliver the note to his brother. In so accepting the note the Respondent accepted improper instructions from his client. In acting in this fashion, the Respondent allowed the reputation and integrity of the profession to be demeaned in eyes of the general public and in particular in the eyes of those responsible for the running and administration of security within Greenock Sheriff Court.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his breaches of Rule B1.2, Rule B1.4 and Rule B1.5 of the Law Society of Scotland Practice Rules 2011 in respect that he had allowed his integrity to be called into question, he had not acted in the best interests of his client, and had accepted improper instructions.

9. Having heard further submissions from the parties, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 14 June 2018. The Tribunal having considered the amended Complaint dated 23 January 2018 at the instance of the Council of the Law Society of Scotland against Aidan Vincent Gallagher, Aidan Gallagher & Company, Solicitors, 4 Argyle Street,

Greenock; Find the Respondent guilty of professional misconduct in respect of his breaches of Rules B1.2, B1.4 and B1.5 of the Law Society of Scotland Practice Rules 2011; Censure 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)**

**Alan McDonald**

**Vice 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 5 July 2018.

**IN THE NAME OF THE TRIBUNAL**



**Alan McDonald**  
**Vice Chairman**

**NOTE**

At the hearing on 14 June 2018, the Tribunal had before it an amended Complaint, a Joint Minute, and an Inventory of Productions for the Complainers.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal noted that the Respondent was 49 years old and had been admitted as a solicitor in 1993. His employment history was detailed in the Complaint. There were no complaints outstanding or pending against him. The Fiscal noted that the Respondent exclusively carried out the practice of criminal law.

The Respondent acted for the Secondary Complainer who had been accused of assault. The Secondary Complainer had been remanded in custody. On 13 April 2015, he was brought to court for trial. He was searched before leaving prison and by G4S on arrival at the court. He was taken to a holding cell. The Respondent attended the cell area for a meeting. Defence agents are allowed in this area if they show their Law Society identification card. The Secondary Complainer was brought to the visit room which has a secure partition in the middle of it. The prisoner enters by a door on one side of that partition and the agent on a door on the other side. The prisoner and agent can discuss the case through the glass but are kept separate. There is a small opening under the glass partition which allow papers to be passed between the parties. Following their initial meeting on that day, the Secondary Complainer was returned to his cell and was given a piece of paper and a pen by a security guard. He prepared a note. The Respondent asked to see the Secondary Complainer again. The Secondary Complainer passed a note to the Respondent through the gap in the partition. The Secondary Complainer asked the Respondent to pass the note to the Secondary Complainer's brother. That note contained instructions to intimidate witnesses and persuade them to give false evidence in the trial against him. The Respondent delivered the note. The Fiscal conceded that there was no evidence that the Respondent was aware of the contents of the note before he delivered it. The Secondary Complainer and his brother were prosecuted on indictment. They pleaded guilty in August 2015 to attempting to pervert the course of justice. The Respondent had been due to appear as a Crown witness at their trial.

The Fiscal invited the Tribunal to make a finding of professional misconduct. He said that the Respondent had failed to act in the best interests of his client. He had abused the privilege awarded to him by being allowed to meet with his client at the court. There was no rule to prevent a prisoner passing a note to a solicitor. However, the Respondent should have secured the consent of the guards, read the note and advised the client fully of the consequences of his actions. Instead, the Respondent allowed his

integrity to be called into question. He failed to be independent and provide independent advice. The reputation of the profession was tarnished as a result.

### **SUBMISSIONS FOR THE RESPONDENT**

Mr Brown did not take issue with the Fiscal's narrative. He explained that the Secondary Complainer is a recidivist violent criminal well-known to the Respondent. However, he is not a "criminal mastermind" and there was nothing to suggest that he might attempt to intimidate the witnesses in his trial. The Respondent had tendered advice to his client regarding the chances of success which was positive regarding the charges of assault. It was not a case where unpalatable advice had been given to the client. This client had been in and out of jail for many years. He was not someone who would be unable to face up to the fact that he might go to jail. There was nothing to alert the Respondent that he should be on his guard.

On the day on which this incident occurred, the Respondent was dealing with many matters. There were new custodies to be seen and scheduled routine business. When the Respondent received the note he simply did not apply his mind to the appropriate course of action. He was asked to pass the note to the Secondary Complainer's brother and it did not occur to him that this might be a nefarious scheme. In general, everyone is concerned about things going into custody, not a piece of paper coming out. There was no lengthy discussion with the Secondary Complainer and the Respondent did not give it particular thought.

Mr Brown noted that the Respondent without hesitation agrees that the proper course of action when asked to pass a note is to scrutinise it, consider the ramifications and give advice to the client. The Respondent recognises that he is guilty of professional misconduct and tenders his apologies to the Tribunal. However, during the subsequent criminal investigation and prosecution, it should be noted that the Respondent was a witness. He was never thought to have been complicit in this scheme. His involvement had been unwitting but nevertheless allowed the reputation of the profession to be called into question. If the Respondent had read the note, he would have been able to save the Secondary Complainer from the consequences of his own folly. However, Mr Brown submitted that the misconduct arises as a result not of the impact on the client, but on the risk to others which arose as a result of the Respondent's actions. Mr Brown urged the Tribunal to consider refusing the Secondary Complainer's claim for compensation at this stage. In his submission, it would be wholly wrong for the Secondary Complainer to profit from the commission of serious criminal offence. This was not the intention of the legislation.



The Respondent has been in private practice for 23 years, 20 of these as a principal. He is an experienced competent criminal lawyer. He does not pose any risk which would concern the Tribunal. This was not a case where a solicitor was brow-beaten by a client. The Respondent was simply a man trying to keep all the plates spinning in his criminal practice. He promptly recognised his error and made it clear to the Law Society that he would plead guilty before the Tribunal. He has insight into the circumstances and has displayed contrition and understanding. He is now “once bitten, twice shy” and is therefore the last person likely to be used in this way again.

## **DECISION**

Although the Respondent admitted professional misconduct, it remained for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp-v-The Law Society of Scotland [1984] SLT 313. The Respondent had not applied his mind when asked to pass on a message to another person. He allowed himself to be used in a scheme which attempted to pervert the course of justice. The consequences for those mentioned in the note could have been extremely serious. 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. The Respondent’s conduct could have created a danger to members of the public and was likely to damage the reputation of the legal profession. The Respondent had allowed himself unwittingly to become involved in a criminal offence. It accordingly found the Respondent guilty of professional misconduct. The Tribunal considered that a solicitor’s duty in these circumstances is to act as a gatekeeper, consider the contents of the note, decide whether to act, and if necessary, give the client advice. The solicitor should apply his or her own judgement and does not necessarily have to seek consent of security officials.

Following submissions in mitigation, the Tribunal considered the appropriate sanction. The Respondent cooperated with the investigation and entered into a Joint Minute. He showed remorse and attended in person. This was the first time the Respondent had appeared before the Tribunal following a lengthy career in practice. There was no dishonest element to his conduct. The Tribunal was satisfied that a Censure was sufficient to mark the gravity of the offending in these circumstances where it was accepted that the Respondent did not have knowledge of the contents of the note.

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 Tribunal did not think it appropriate to dismiss the Secondary Complainer's claim for compensation on the day of the hearing without affording him an opportunity to make his claim. Therefore, the Secondary Complainer will have 28 days from the intimation of these Findings to lodge a written claim for compensation with the Tribunal Office.



**Alan McDonald**  
**Vice Chairman**