

**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

**GILBERT JOHN SIRUS ANDERSON, 9 South
Hamilton Place, Kilmarnock**

Respondent

1. A Complaint dated 6 November 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Gilbert John Sirus Anderson, 9 South Hamilton Place, Kilmarnock (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. Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal fixed a hearing for 11 March 2019 and notice thereof was duly served upon the Respondent.
5. At the hearing on 11 March 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was present and represented himself. The Fiscal having no objection, the Tribunal granted the Respondent's motion for the matter to be continued to another hearing for him to take legal advice and obtain a psychiatric report. A hearing was set for 18 June 2019.

6. At the hearing on 18 June 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was present and represented himself. A Joint Minute of Agreement agreeing the facts of the Complainers' case was lodged. The Respondent led witness Abigail Anderson.
7. The Tribunal found the following facts established:-
- 7.1 The Respondent is Gilbert John Sirius Anderson. The Respondent's date of birth is 15 November 1958. He was enrolled as a solicitor on 9 February 2010. The Respondent was an employee at Weber Wolf Limited from 1 November 2014 to 4 July 2017 and also a business administrator there from 28 April 2015 to 4 July 2017. He is currently unemployed but remains on the Roll of Solicitors.
- 7.2 On 22 May 2017 the Respondent appeared at Kilmarnock Sheriff Court to answer a complaint with procurator fiscal reference KM17003678. On that date the Respondent pled guilty to the following charge:-
- “on 21st May 2017 at the Fenwick Hotel, Kilmarnock you Gilbert Anderson did assault your wife, Abigail Anderson, care of the Police Service of Scotland, Kilmarnock and did seize her by the hair, pull her across the car park there and push her into your motor vehicle; and it will be proved in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 that the aforesaid offence was aggravated by involving abuse of your partner or ex-partner.”*
- On 22 May 2017 sentence was deferred until 5 September 2017 and the Respondent was ordered to be of good behaviour in the meantime. He was granted bail on the standard conditions.
- 7.3 On 5 September 2017 the Respondent was sentenced to a community pay back order with 50 hours of unpaid work to be completed within a period of three months from the date of sentencing. The Sheriff imposed the level 1 community payback order as an alternative to a fine.
8. Having considered the foregoing circumstances and having heard submissions from the parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his being convicted on 22 May 2017 of an assault aggravated by abuse of his partner.

9. Having heard the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 18 June 2019. The Tribunal having considered the Complaint dated 6 November 2018 at the instance of the Council of the Law Society of Scotland against Gilbert John Sirius Anderson, 9 South Hamilton Place, Kilmarnock; Find the Respondent guilty of professional misconduct in respect of his being convicted on 22 May 2017 of an assault aggravated by abuse of his partner; 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.

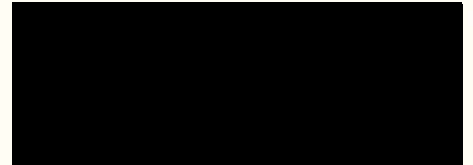
(signed)

Colin Bell

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 19 July 2019.

IN THE NAME OF THE TRIBUNAL



Colin Bell
Vice Chair

NOTE

At the hearing on 18 June 2019, the Tribunal had before it the Complaint, amended Answers dated 14 May 2019, a List of Witnesses for the Respondent, a List of Productions for the Respondent and a signed Joint Minute of Agreement. Said Joint Minute agreed that the factual averments at 3.1, 3.2 and 3.3 in the Complaint were admitted. It also indicated that the Respondent had been provided with the opportunity of obtaining independent legal advice prior to signature. Before proceeding, the Chair confirmed that the Respondent was content to proceed without representation and that he had been given the opportunity to seek legal advice. The Chair asked whether the Respondent intended to proceed without a medical report. The Respondent informed the Tribunal that this had proved to be outwith his means. He was content to proceed on the basis that he could provide information about his own medical history.

EVIDENCE FOR THE RESPONDENT**WITNESS: ABIGAIL ANDERSON**

The witness gave evidence on oath. She confirmed her name, address and date of birth. She is the Respondent's wife. They have been married for nearly 40 years. Prior to the incident in May 2017 she had not experienced any abuse or control issues in their marriage. Similarly, she had not experienced any such issues after the date of the assault. She said that the Respondent had acted "totally out of character". He had not been himself for quite some time before the incident. He had been very withdrawn. He had high blood pressure. He was suffering from stress at work.

Turning to the incident on 21 May 2017, the witness confirmed she had received no injuries. She made no complaint to the police. By the time she and the Respondent had arrived home after the incident, they had resolved their issues.

The witness confirmed that the Respondent had received nine weeks' residential mental health treatment through Combat Stress. The Respondent had also had six weeks' outpatient treatment with 12 weeks remaining.

During cross-examination, the witness was asked about the complaint to the police. She indicated that the police had informed her that a bystander had called them. She said perhaps a receptionist at the hotel "thought I was being kidnapped".

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal drew the Tribunal's attention to the agreed facts in the Complaint. On 22 May 2017, the Respondent appeared from custody at Kilmarnock Sheriff Court. Sentence was deferred to 5 September 2017 and the Respondent was ordered to be of good behaviour and was allowed to return home. On 5 September 2017 he received a community payback order as an alternative to a fine.

The Fiscal reminded the Tribunal of the test for professional misconduct contained in Sharp v The Law Society of Scotland 1984 SLT 313. Not all convictions will amount to professional misconduct. The nature and frequency have to be taken into account. A solicitor's duty to have integrity extends to both public and private life. She referred the Tribunal to the Law Society of Scotland-v-Jethwa and the Law Society-v-Maguire referred to at pages 33 and 34 of Paterson and Ritchie's "Law Conduct and Practice for Solicitors" (2nd Edition). She also referred to a short section at page 30 of Ryders "Professional Conduct for Scottish Solicitors" and pages 114 and 115 of Smith and Barton's "Procedures and Decision of the Scottish Solicitors Discipline Tribunal".

The Fiscal submitted that the circumstances of this conviction were sufficient to constitute professional misconduct. The assault was committed in public. It was aggravated by the victim being the Respondent's wife. It called into question his integrity. She noted the "harder line" taken by society and the courts to domestic abuse. This conduct was sufficient to bring the profession into disrepute. She referred to parts of the medical records lodged by the Respondent and challenged his wife's assertion that the incident had been out of character. She noted that the Respondent had received treatment for anger management and attributed his behaviour to Post Traumatic Stress Disorder (PTSD). However, no medical reports were lodged which gave this opinion although there was reference to his symptoms being in keeping with the diagnosis of complex PTSD. The Fiscal submitted that the Respondent's health condition may go some way to explaining his behaviour but does not excuse it. In her submission, this should be treated as mitigation only. It did not provide a defence to the criminal charge and should not provide one to disciplinary proceedings. The Respondent had a duty to observe high standards of propriety. His conduct breached the standards of integrity and brought the profession into disrepute.

SUBMISSIONS FOR THE RESPONDENT

The Respondent's submission was that the domestic assault conviction did not amount to professional misconduct. The incident was "a one-off affair". No injury was caused to the victim. There had been no repetition of that or any other offence since conviction. No public protection was required. Throughout,

the Respondent had been honest and truthful. He suggested that there were differences between the present case and those referred to in Paterson and Ritchie.

The Respondent said that he had suffered from PTSD for about 10 years. His mental health deteriorated over the last two to three years and his wife persuaded him to get treatment. He wishes to return to the profession once he is well.

DECISION

The Tribunal proceeded on the basis with the facts agreed in the Joint Minute. The Tribunal was therefore satisfied beyond reasonable doubt that the Respondent had acted in the manner set out in the Complaint. According to the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313, 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 question therefore for the Tribunal was whether the Respondent's conduct represented a serious and reprehensible departure from the standards expected from the profession. It is necessary to consider all the circumstances and the degree of the Respondent's culpability. A solicitor requires to be a person of integrity. If the public is to have trust in the profession, then solicitors must observe high standards of conduct. The need to have integrity applies equally to a solicitor's private life as it does his professional conduct.

Mere conviction of any criminal offence does not constitute professional misconduct. In all cases the question is one of fact and degree. In the present case, the conviction was on summary complaint. It involved a domestic assault. There was no injury. The Tribunal had regard to the case of Law Society-v-Maguire. In Maguire, the Respondent assaulted his wife and his mother-in-law. Aggravating factors in that case were the domestic nature of the assault, the course of conduct and the fact that injury was involved. The Tribunal also had regard to the 1986 case of Law Society of Scotland-v-Hunter where the Respondent had been convicted of assaulting his mother in law, among other offences. The Tribunal noted that,

"Initially this was clearly a domestic matter but for a solicitor to appear on such charges undoubtedly tends to bring the profession into disrepute."

The Tribunal considered that the domestic nature of the conviction in the present case was apt to bring the profession into disrepute. The Respondent had not acted with integrity. His conduct was a serious

and reprehensible departure from the standards of competent and reputable solicitors and therefore he was guilty of professional misconduct.

The Tribunal had regard to the Respondent's mental health but considered that in general, ill-health only goes to mitigation and not culpability. On the evidence before it, the nature and degree of the mental illness was not sufficient to constitute a defence to the charge of professional misconduct. The Tribunal was satisfied that the Respondent was able to appreciate the nature and wrongfulness of his conduct and his actions therefore lacked integrity.

SUBMISSIONS IN MITIGATION

The Respondent said the incident occurred as a result of him suffering from PTSD. He said he was not in full control of what he was doing. He has taken positive corrective steps to rectify the situation and is receiving ongoing treatment and anger management training. He did not view he was a danger to the public. He had limited means.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal noted the difficulties faced by the Respondent with regard to his mental health. It was pleased to see the admirable efforts he had made both as an inpatient and an outpatient to improve his mental health. The matter appeared to be a one-off incident. The Respondent had not previously appeared before the Tribunal. He had engaged with the Law Society and the Tribunal. He had entered into a Joint Minute. He showed some remorse in relation to the effect the incident had on his relationship with his wife. In all the circumstances, a Censure was sufficient to protect the public and uphold the reputation of the profession.

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.



Colin Bell
Vice Chair