

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

FINDINGS

in Complaint

by

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

against

**GRANT O'CONNOR, Solicitor,
Abbey Grange, Solicitors, 21-23
Hill Street, Edinburgh**

1. A Complaint dated 8 February 2011 under the Scottish Solicitors' Discipline Tribunal Procedure Rules 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Grant O'Connor, Solicitor, Abbey Grange Solicitors, 21-23 Hill Street, Edinburgh (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.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 11 April 2011 and notice thereof was duly served on the Respondent.
4. The hearing took place on 11 April 2011. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The

Respondent was present and represented by William Macreath, Solicitor, Glasgow.

5. Mr Reid made a motion to amend Article 4.5 of the Complaint to delete the final paragraph thereof and insert in its place “As the deceased had consumed a quantity of his own cocaine, along with alcohol and GHB that evening, the Crown accepted that the cocaine supplied by the Respondent did not cause the death of Mr A.” There was no objection to that motion and the Tribunal allowed the amendment to be made.
6. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint as amended. No evidence was led.
7. There is no secondary complainer in this case.
8. The Tribunal found the following facts established
 - 8.1 The Respondent is a solicitor enrolled in Scotland. The Respondent was born on 9 June 1972. From 1 April 2001 to 19 January 2009 he was a partner with Allan McDougall Solicitors. He is currently in practice as a sole practitioner operating under the name of Abbey Grange Solicitors.
 - 8.2 The Respondent was convicted and sentenced in respect of a contravention of the Misuse of Drugs Act 1971 Section 4(3)(a). The Complainers submitted a Complaint Form to the Scottish Legal Complaints Commission (SLCC). The SLCC considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Complainers to investigate.
 - 8.3 By letter dated 21 January 2010 the Complainers wrote to the Respondent intimating their obligation under the 2007 Act

Section 47(1) to investigate complaints relating to the conduct of enrolled Solicitors. The letter advised that the complaint was based on consideration of a contravention by the Respondent of the Misuse of Drugs Act 1971 Section 4(3)(a).

- 8.4 The Respondent pled guilty at Edinburgh Sheriff Court on 13 August 2009 to a contravention of the Misuse of Drugs Act 1971 Section 4(3)(a). Subsequently he was sentenced to a Community Service Order of 150 hours.
- 8.5 Under the Misuse of Drugs Act 1971 Section 4(1), it is not lawful for a person inter alia “to supply or offer to supply a controlled drug to another.”

In terms of Section 4(3)(a), it is an offence for a person “to supply or offer to supply a controlled drug to another in contravention of Sub Section (1)”.

- 8.6 On the evening of 16 January 2009 the Respondent had been out for a drink in a public house. During the evening he was joined by Mr A. Mr A was not previously known to the Respondent. At some point during the evening, the Respondent purchased a small quantity of cocaine, a controlled Class A drug, from Mr A, intending that it would be for his own personal use. Thereafter he invited several people, including Mr A, to join him in the premises in Dalkeith of the legal firm in which he was a partner at that time.

Those present continued to drink and some members of the group consumed a quantity of cocaine, some of which was supplied by the Respondent from the small quantity he had acquired earlier that evening from Mr A.

The said Mr A lost consciousness and later died. A Post Mortem disclosed that his body contained high levels of alcohol, cocaine and GHB (Gamma-Hydroxybutric Acid). Cocaine and GHB are controlled drugs in terms of the 1971 Act as amended.

As the deceased had consumed a quantity of his own cocaine, in addition to that supplied by the Respondent, along with alcohol and GHB that evening, the Crown accepted that the cocaine supplied by the Respondent did not cause the death of Mr A.

9. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

9.1 His conviction in relation to a charge under the Misuse of Drugs Act 1971 Section 4(3)(a).

10. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 11 April 2011. The Tribunal having considered the Complaint dated 8 February 2011 at the instance of the Council of the Law Society of Scotland against Grant O'Connor, Solicitor, Abbey Grange Solicitors, 21-23 Hill Street, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his conviction in relation to a charge under the Misuse of Drugs Act 1971 Section 4(3)(a); Censure the Respondent; Fine the Respondent in the sum of £10,000 to be forfeit to Her Majesty; 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.

(signed)

Kirsteen Keyden

Vice Chairman

11. 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

Mr Reid indicated that he wished to make an amendment to Article 4.5 of the Complaint to delete the last paragraph of that Article and to insert in its place the following -

“As the deceased had consumed a quantity of his own cocaine, along with alcohol and GHB that evening, the Crown accepted that the cocaine supplied by the Respondent did not cause the death of Mr A.”

Mr Macreath did not object to this amendment and the Tribunal agreed that the Complaint be amended accordingly.

A Joint Minute was then lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint as amended.

An Inventory of Productions was lodged on behalf of the Respondent.

No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid advised that this was a Complaint under the 2008 Rules at the instance of the Law Society and that there was no secondary Complainer. Mr Reid advised that the factual position is set out clearly in the Complaint. The Respondent pled guilty to a breach of Section 4(3)(a) of the Misuse of Drugs Act 1971 and was sentenced to 150 hours of Community Service.

Mr Reid drew the Tribunal's attention to Article 4.4 of the Complaint which sets out the terms of Section 4(3)(a) and to Article 4.5 which narrates the circumstances of the offence as agreed, taking into account the amendment regarding Mr A.

Mr Reid submitted that the Respondent's conduct clearly amounted to professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath stated that when he was first instructed he wrote to the Law Society on the Respondent's behalf and immediately accepted that the Respondent's behaviour was disgraceful. He stated that the Respondent co-operated with the Law Society at all stages of the investigation and provided as much information as he could.

In relation to the incident, Mr Macreath advised that the evidence discloses that on the evening in question the Respondent had been drinking with a staff member in a pub near to his office. He then met up with a group of persons, one of whom was Mr A. Mr Macreath stated that Mr A had been drinking heavily that day and taking drugs. Mr Macreath advised that whilst in the pub the Respondent had purchased some cocaine from the group which included Mr A. Later when the group returned with the Respondent to his office the Respondent shared some of the cocaine he had purchased from Mr A for his personal use back with the group after their drugs ran out. Mr A later became unwell due to the combination of drink and drugs and died the next morning. The Respondent was arrested the next day and was interviewed and gave a full confession to the police. Following a post-mortem and toxicology reports it was determined that any cocaine supplied by the Respondent did not cause the death of Mr A. Accordingly the criminal proceedings against the Respondent were reduced from solemn proceedings to summary proceedings.

In August 2009 the Respondent tendered a plea to the reduced charge at the earliest opportunity and the Crown accepted that the cocaine supplied by the Respondent did not cause Mr A's death. The Sheriff ordered social enquiry and community service reports. At the time of sentence the Sheriff said that he took into account the catastrophic effect that the death of Mr A had on the Respondent's life and the fact that this would continue to have such an effect. Mr Macreath stated that the case was the subject of detailed coverage by the press. He stated that in the course of the Law Society investigation he submitted mitigation to the Complainers. He had advised that the Respondent had resigned from the firm of Allan McDougall on the day of his arrest and he provided the Society with testimonials from senior partners in Allan McDougall, a Westminster MP and several clients. Mr Macreath advised that he also exhibited to the Complainers a report from an eminent psychiatrist, Dr Rodger, which

concluded that at the time of the offence the Respondent was suffering from a chronic adjustment disorder with mixed anxiety and depressed mood which was precipitated by cumulative personal and social stresses and aggravated by his tendency to misuse alcohol. The psychiatrist stated that this adjustment order was a significant factor influencing his conduct leading up to the offence. Mr Macreath stated that this report was given on soul and conscience in January 2010 and he pointed out that the report stated that the Respondent has recovered from this condition and was sufficiently mentally well to return to work as a solicitor and confirms that the prognosis is good for his sustained recovery.

Mr Macreath advised that after that report was obtained the Respondent made a successful application to return to practice again. Mr Macreath stated that he is obliged to the Law Society for their attention to the papers sent to them. Mr Macreath advised that the Respondent's relationship which is referred to in the psychiatric report, has ended and his former partner is no longer living in Scotland.

Mr Macreath referred the Tribunal to the supplementary psychiatric report at Production 17 of the Inventory of Productions. Mr Macreath advised that he shared the whole background to the case with Dr Rodger. Production 17 is a letter dated 7 September 2010 from Dr Rodger to Mr Macreath, which confirms Dr Rodger's opinion that at the time of the offence the Respondent's conduct was significantly influenced by him suffering from a mental condition. Dr Rodger emphasised that he considered that the Respondent was suffering with a recognised mental condition which influences conduct and that if that condition had not developed, or he had benefited from more effective treatment, then it was likely that the Respondent would have conducted himself differently. Dr Rodger confirmed the improvement in the Respondent's mental condition and notes that he continues to abstain from alcohol and has the support of an extended social network. He considers that on the basis of all the information available to him the prognosis is good for the Respondent to remain mentally well into the future and he considers it unlikely that he will ever repeat this offence.

Mr Macreath stated that on 5 February 2010 Abbey Grange Solicitors commenced in practice with the consent of the Law Society.

Mr Macreath emphasised that the Respondent is aware that he is guilty of a serious breach of the criminal law which generated adverse publicity for the profession given the circumstances of the offence. Mr Macreath stated that lawyers are bound to be trustworthy and honest and that integrity for a solicitor is vital. He stated that his client is aware that no solicitor should offend contrary to the law as he has done. Mr Macreath urged the Tribunal to take into account that the Respondent's breach of the law happened at the end of a chain of events. Mr Macreath referred the Tribunal to the testimonials contained in the Inventory of Productions from his former partners, other solicitors, politicians and clients.

Mr Macreath submitted that the view taken following the Law Society's investigation was sympathetic but the Complainers made it clear that only the Tribunal could take into account the mitigating factors. Mr Macreath stated that David Nicol, senior partner of Allan McDougall, who provided a letter in 2009 on the Respondent's behalf, was sympathetic to the position the Respondent found himself in and provided support together with other professional colleagues when the Respondent wanted to return to the profession.

Mr Macreath submitted that the Respondent was ill at the time of committing the offence and had no insight into his conduct because of his illness. Mr Macreath stated that the Respondent is contrite and bitterly remorseful and has always found the loss of Mr A's life very hard to cope with. Mr Macreath submitted that the Respondent knows that he is responsible but argues that now he has recovered from his illness he is a fit and proper person to remain on the Roll of Solicitors. Mr Macreath asked the Tribunal to take into account the psychiatrist's report which is to the effect that if this recognised medical condition had not been present or he had received effective treatment, the Respondent would not have committed the offence.

Mr Macreath referred the Tribunal to their Decisions in the cases of Angela Bailey and Neil McPherson. In the latter case the Tribunal considered all factors and the Respondent's efforts to contain his illness and the fact that his alcohol problem had not adversely affected his business life. Mr Macreath also referred the Tribunal to the Master of the Roll's comments in the case of Bolton-v-The Law Society [1994] 1

WLR 52, where it was stated that it is a privilege to be a member of the legal profession.

Mr Macreath asked the Tribunal to take account of a number of factors. Although the offence was the supply of a class A drug, the amount of the drug was very small indeed. Mr Norris and his group had been drinking during the day and consuming drugs. The group involving Mr A joined the Respondent and his secretary in the pub after work. The Respondent noted that Mr A and his friends were taking cocaine and GHB and obtained from them a small amount of cocaine, intending that it would be for his own personal use. The Respondent accepts that money changed hands in relation to this. The whole group then came back to the office. They continued to drink and use their own supply of drugs. When that supply ran out the Respondent offered to them some of the small quantity of cocaine which he had purchased from the group earlier that evening. Mr Macreath stressed that the drugs offered by the Respondent were not a supply that the Respondent previously had. In the criminal prosecution, the Crown accepted that this was a small amount. Mr Macreath stated that the Respondent had had a fair amount to drink that evening and referred the Tribunal to the terms of the psychiatric report which stated that he was not coping with alcohol at that time. Mr Macreath submitted that despite that, there is nothing adverse on the Respondent's professional record.

Following the Respondent's arrest he immediately resigned from Allan MacDougall and only in January 2010 did he seek consent from the Law Society to allow the firm of Abbey Grange to commence on 5 February 2010. Mr Macreath stated that the firm has already been inspected by the Law Society and only one issue, that of risk assessment for the purposes of Rule 24 was raised, and that matter is being addressed.

Mr Macreath explained that the Respondent has three employees, a paralegal, a property manager and a secretary. Mr Macreath submitted that both the property manager and the paralegal have accompanied the Respondent to the hearing to offer him their support.

Mr Macreath submitted that the Respondent behaved very responsibly after the event by immediately taking himself outside the profession and only applying to return at an appropriate stage in his rehabilitation.

Mr Macreath stated that since these events the Respondent has had to deal with his mother's death but despite that he has retained control of his life and started up a new business which now has 250 clients and 300 open files. Two senior members of the profession have written letters of support for him and letters have also been lodged from two important clients who speak to their own personal knowledge of the Respondent. The banks have permitted him to be on their panels. The Respondent's community work continues and he is undertaking pro bono work.

Mr Macreath stated that the Respondent has re-built his personal and professional life and has dealt with this Complaint in a professional manner. Mr Macreath submitted that the Tribunal should consider imposing a sanction which would allow the Respondent to continue as solicitor on the Roll. In relation to the Respondent's financial circumstances, Mr Macreath advised that the Respondent lives in Edinburgh and also owns two flats which he rents out. He has a limited free income once his outgoings, primarily his mortgages are set off against his drawings from the business.

The Tribunal then heard a submission from Mr Nicol, senior partner of Allan McDougall Solicitors. Mr Nicol stated that he did not depart from the terms of the letter sent to Mr Macreath eighteen months ago regarding the Respondent which now forms part of the Inventory of Productions. Mr Nicol said that letter was dated nine months after the event and at that stage there were already clear signs that the Respondent recognised and realised how unacceptable his actions would be viewed by members of the profession. Mr Nicol stated that in the last eighteen months the Respondent has undergone a period of rehabilitation, partly from his own self motivation and partly through medical assistance and with the great support of his family. Mr Nicol advised that the Respondent has given up drinking, changed his whole outlook on life and has addressed his previous life style and criminal behaviour. Mr Nicol advised that the Respondent worked hard to get himself back into a position where he was able to set up in practice some fourteen months ago. Mr Nicol stated that in the current financial climate some might say that starting a new

business was foolhardy. However, the Respondent is busy and is providing a service in the community and employing others. Mr Nicol stated that he and others in his firm are very regularly consulted by the Respondent.

Mr Nicol advised that the Respondent had indicated to him following the offence that his behaviour had been disgraceful. Mr Nicol commended the extent to which the Respondent has recognised and addressed his failures. Mr Nicol stated that he would be prepared to work with the Respondent again. In response to a question from the Tribunal, Mr Nicol indicated that there was still a possibility that the Respondent could return to work at Allan McDougall in the future.

The Respondent then addressed the Tribunal and stated that the night in question in January 2009 would haunt him for the rest of his life. He stated that this was a dark period of his life for a number of reasons which ultimately caused him to be quite ill. The Respondent stated that he was not aware how irrational he had become, and stated that his condition crept up on him but with help from friends and family he has fought tooth and nail to rebuild his life and has vowed never to let himself, his family and his profession down again. The Respondent stated that he is now well and that having been given a clear Law Society inspection report recently he hoped that the Tribunal would see fit to allow him and his two assistants to continue building Abbey Grange Solicitors.

DECISION

The Tribunal noted that the Respondent's conviction for the supply of a controlled drug at his former firm's premises had been widely reported and had had an adverse affect on the reputation of the profession. The Tribunal considered the test in the case of Sharp-v-The Council of the Law Society [1984] SC 129. The Tribunal considered that the Respondent's actions would be regarded by competent and reputable solicitors as a serious and reprehensible departure from the standards expected from those within the profession. Having considered all the circumstances, the Tribunal concluded that the Respondent's conduct was of a kind which could bring the profession into disrepute and constituted professional misconduct.

In considering sanction, the Tribunal noted that the Respondent was convicted of the supply of a class A drug following tendering a plea of guilty. As such he brought himself and, more importantly, the legal profession into serious disrepute. One of the essential qualities of a solicitor is integrity which extends not only to his professional life but also to his personal conduct.

The Tribunal noted the careful submissions made on behalf of the Respondent by Mr Macreath. The Tribunal took note of the evidence that this was a single offence and that although it was committed in the offices of the firm of which he was a partner, it did not directly pertain to his work as a solicitor.

The Tribunal considered the evidence of Dr Colin Rodger, a respected Consultant Psychiatrist, to be compelling and noted that he considered that at the time of the incident the Respondent was suffering from a chronic adjustment disorder which Dr Rodger considered was a significant factor in influencing the Respondent's conduct leading to the offence. The Tribunal also heard evidence that the offence involved the social supply of a very small quantity of drugs back to the person who had supplied the drugs to the Respondent in the first instance earlier the same evening.

The Tribunal was impressed by the references lodged in support of the Respondent, in particular those of his former partners in Allan McDougall, other members of the legal profession, current clients and employees. The Tribunal took account of the Respondent's level of co-operation with all the authorities including the police, the Crown and the Law Society and the Tribunal accept that the Respondent showed genuine remorse and regret for his actions.

In conclusion, the Tribunal does not consider the public to be at risk as the offence was in respect of the Respondent's private life and in the view of Dr Rodger there is little likelihood of the offence reoccurring. Accordingly the Tribunal concluded that the appropriate sanction is to Censure the Respondent and Fine him in the sum of £10,000. The Tribunal made the usual orders in relation to publicity and expenses.

Vice Chairman