

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

FINDINGS

in Complaint

by

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

against

**MARK VICTOR MICHIE, 25
Rosebery Street, Aberdeen**

1. A Complaint dated 25 November 2010 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Mark Victor Michie, 25 Rosebery Street, Aberdeen (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 9 March 2011 and notice thereof was duly served on the Respondent.
4. The hearing took place on 9 March 2011. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was not present but was represented by Bill Macreath, Solicitor, Glasgow.

5. Mr Macreath tendered a plea of guilty on the Respondent's behalf to the averments of professional misconduct in the Complaint. No evidence required to be led.

6. The Tribunal found the following facts established
 - 6.1 The Respondent was born on 5 April 1968. He was admitted as a Solicitor on 15 September 1998. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 17 September 1998. From 30 November 1998 to 8 December 2000 he was employed by Murray Beith Murray, WS, from 3 January 2001 to 31 July 2005 he was an Associate with Henderson Boyd Jackson, WS then Bell and Scott and thereafter Murray Beith Murray, WS. From 1 August 2005 to 20 January 2009 he was a Partner with MBM Commercial. The Respondent does not currently have a practising certificate and is not working in the legal profession.

 - 6.2 As a result of information which came to light in the course of a Prosecution before the Tribunal of Paul Saunders Jardine and Gordon Alexander Phillips (Case Number DC/08/27), the Complainers ex proprio motu, submitted a complaint to the Scottish Legal Complaints Commission on 28 August 2009. As the matter complained of referred to conduct, the Commission referred it back to the Complainers.

 - 6.3 Paul Jardine, Gordon Phillips and Mrs Elizabeth Watt were partners in Guild and Guild WS, Solicitors, Edinburgh. Messrs Jardine and Phillips were negotiating with Mrs Watt with a view to their becoming equity partners and Mrs Watt retiring.

 - 6.4 Messrs Jardine and Phillips instructed the Respondent and sought advice from him in respect of the options open to them, including both the effective purchase of the business from Mrs

Watt on the one hand and dissolution of the existing partnership and the creation of a new partnership on the other. In the event a Notice of Dissolution was intimated on 31 July 2006 and was effective on the same date.

6.5 In the course of ongoing discussions with Messrs Jardine and Phillips, the Respondent sent them an email on 5 January 2006. The email inter alia referred to “Strategy 2” and set out what was described as a basic “TO DO LIST”. The list included:-

“Collect all clients lists/marketing databases and preferably destroy or remove that information from Liz getting it, both hard copies and electronic”

Identify the Will box and take it off the premises immediately prior to dissolution of the partnership”

“Walk with as much as we can – strictly we should not take the client files without a client mandate, however I would and would immediately contact the clients and request that they give a mandate to the new firm”

7. Having considered the foregoing circumstances and submissions on behalf of both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of the provision of advice to clients which (1) did not accord with the ethical standards of the profession and (2) amounted to a clear breach of the Law Society of Society guidance on mandates. In particular the Respondent advised his clients;

a) to collect all client less/marketing databases and preferably destroy or remove that information..., both hard copies and electronic.

- b) identify the will box and take it off the premises immediately prior to the dissolution of the partnership.
- c) to remove client files without mandates and advising “strictly we should not take the client files without a client mandate, however, I would.”

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

Edinburgh 9 March 2011. The Tribunal having considered the Complaint dated 25 November 2010 at the instance of the Council of the Law Society of Scotland against Mark Victor Michie, 25 Rosebery Street, Aberdeen; Find the Respondent guilty of Professional Misconduct in respect of his providing advice to clients which (1) does not accord with the ethical standards of the profession and (2) amounted to a clear breach of the Law Society of Scotland guidance on mandates; Order that the name of the Respondent be Struck Off 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 will be given to this decision and that this publicity should include the name of the Respondent but that such publicity be deferred until related proceedings have been completed.

(signed)

Malcolm McPherson

Vice Chairman

9. 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 Macreath advised that the Respondent did not feel up to appearing before the Tribunal. Mr Macreath confirmed that he had formal instructions from the Respondent to plead guilty to professional misconduct as outlined in the Complaint. Mr Macreath advised that the Respondent's failure to attend was not due to arrogance or the fact that he was lacking contrition. Mr Macreath advised that the Respondent has been greatly affected by these proceedings and other legal proceedings which he has recently been involved in in connection with his divorce and that to attend the Tribunal today would cause him more anxiety and distress.

The Tribunal confirmed that they were prepared to proceed in the absence of the Respondent.

Mr Reid indicated that he wished to make a minor amendment to paragraph 2.1 of the Complaint to amend the case number quoted in that paragraph from "DC10/17" to "DC08/27". Mr Macreath did not object to this minor change being made and the Tribunal agreed that the Complaint be amended accordingly.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid advised that this matter arose out of Paul Jardine and Gordon Phillips formerly partners in the firm of Guild & Guild consulting the Respondent regarding a possible buy out of their other partner, Mrs Watt, from the firm. The actions of Mr Jardine and Mr Phillips in relation to the manner of the dissolution of the partnership led to them appearing before the Tribunal in 2009.

Mr Reid advised that as a result of advice provided to Mr Jardine and Mr Phillips, an e mail dated 5 January 2006 came to light. That e mail is referred to at Article 2.4 of the Complaint. Mr Reid stated that the e mail sent by the Respondent to his clients was referred to as "strategy 2" and set out what was described as a basic "to do list". The list included (2) "identify the Will box and take it off the premises immediately prior to dissolution of the partnership." Mr Reid submitted that this advice was clearly inappropriate. (3) "walk with as much as we can – strictly we should not take the

client files without a client mandate, however I would and would immediately contact the clients and request that they give a mandate to the new firm”. Mr Reid submitted that despite the fact that the Respondent is aware that mandates should be obtained, he gives advice to Mr Jardine and Mr Phillips to proceed in the absence of such mandates. (1) “Collect all clients lists/marketing databases and preferably destroy or remove that information from Liz getting it, both hard copies and electronic”. Mr Reid submitted that this advice was of particular concern to the Complainers. Mr Reid stated that clearly if this had happened not only would it have been totally inappropriate action to take, but it could have caused serious harm to the firm of Guild & Guild and Mrs Watt.

Mr Reid stated that he had nothing additional to add to the facts, averments of duty and averments of professional misconduct which were clearly set out in the Complaint.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath stated that the Respondent is aware that the e mail should never have been written and that he is apologetic and contrite. In January 2009 the Respondent resigned from the commercial firm where he had been a partner. Mr Macreath advised that he had been asked by the Respondent’s partners to assist the Respondent in this matter. Mr Macreath stated that the Respondent recognises how silly and unprofessional the e mail was and that strategy 2 was wrong.

Mr Macreath advised that when he initially spoke to the Respondent he established that the Respondent’s knowledge of partnership law was wanting. Mr Macreath advised the Tribunal that he wrote at length to the Respondent setting out the advice which should have been given. Mr Macreath advised that the advice in the e mail of 5 January 2006 led ultimately to a notice of dissolution in relation to the partnership being served at the end of July 2006 which took effect immediately. This meant that the firm as a legal entity ceased to exist which involved the loss of the firm name and this impacted hugely on Mrs Watt. Mr Macreath advised that the Respondent is gravely embarrassed and can only explain that he was wrong to send the e mail. Mr Macreath stated that it is accepted that the e mail went to a client as well as a friend

and was written in colloquial terms. Mr Macreath accepted that this e mail gave wholly inappropriate advice.

Mr Macreath advised that the Respondent's career has been shattered as a result of this matter. He is now divorced and is residing in Aberdeen. He was educated at Glenalmond College, Perthshire and then attended Robert Gordon's University graduating with Honours in Bachelor of Arts (Business Studies). Between 1993 and 1995 he graduated in Law at Aberdeen University in the accelerated course and obtained his Diploma in Legal Practice at Aberdeen in 1996.

His employment history was 1996 – 1998 within Paull & Williamsons, Aberdeen as a Trainee. Between 1998 – 2000 within Murray Beith Murray, WS, Solicitors as an Assistant in the Corporate Department. In 2001 – 2002 within Henderson Boyd Jackson as an Assistant in the Corporate Department. He then joined Bell & Scott as an Associate in the Corporate Department between 2002 and 2004. He then joined MBM Commercial LLP and was a Corporate Partner between 2005 and 2009. Mr Macreath advised that since the events which lead to this case before the Tribunal he resigned from the firm of MBM Commercial in January 2009 and joined his family business, Charles W Michie Ltd in Aberdeen.

Mr Macreath stated that Mr Michie has not worked as a solicitor since 16th January 2009 knowing that this matter was outstanding and not wanting the outcome of this case to affect any other firm. He was divorced in January 2011 and the attendant costs of a Court of Session Action had an impact upon his financial status as he suffered substantial legal fees and division of capital assets. He had to apply for contact to his children over a five month period at great expense before contact was ultimately granted. He does not currently have a practising certificate but his name is still on the Roll of Solicitors and he would like to return to practice in future but without the pressure of partnership in a commercial firm. Following the acrimonious Court of Session action the Respondent felt that to appear before the Tribunal would have been too much for him but he wishes the Tribunal to know that his non attendance is not a sign of disrespect. Mr Macreath confirmed on speaking to the Respondent yesterday he was very distressed when discussing matters.

Mr Macreath stated that the e mail does meet the Sharp test and accepted that no practitioner exercising reasonable care would have issued such advice which was contrary to clear Law Society guidance available on the Complainer's website. Mr Macreath stated that whilst the advice given re the will box is hard to understand, the advice regarding the client list is simply absurd. However, Mr Macreath asked the Tribunal to take into account that Mr Phillips and Mr Jardine were not inexperienced solicitors and should have taken further advice to clarify matters.

The Respondent now earns only a very modest income from his family business and has had to bear the costs of an expensive divorce action without being able to sell the former family home due to the downturn in the property market.

Mr Macreath asked the Tribunal to consider the penalties imposed on Mr Jardine and Mr Phillips and in all the circumstances to consider dealing with the Respondent in a similar manner. Mr Macreath advised that the court action between Mrs Watt and her former partners has been resolved.

In relation to publicity Mr Macreath asked that this be deferred pending the outcome of other related matters.

In response to a question from the Tribunal as to whether the Respondent knew that the advice was incorrect, Mr Macreath advised that the impression he got was that the Respondent was gung ho and unsure of the situation. His skill was in corporate rather than partnership law. The Respondent accepts he did not check the guidance on mandates but it was not a deliberate intentional instruction as at that stage strategy 1 was still being employed and continued to be until May.

DECISION

The Tribunal noted that the advice given by the Respondent ultimately led to a series of events taking place which gave rise to a huge potential for clients to be put at risk. There was a risk that large numbers of clients in the firm of Guild & Guild could have found themselves caught up in a protracted legal dispute between the former partners through no fault of their own and that their transactions might not have been able to

be progressed because of this. However, the Tribunal noted that due to the actions of Mr Jardine and Mr Phillips in acting quickly and returning all documentation the inconvenience to clients was in fact minimal.

The Tribunal noted that the e mail sent by the Respondent in January 2006 was written in the most unprofessional terms and considered that the content of the e mail amounted to advice to act in a way which did not accord with the ethical standards of his profession and amounted to a very serious breach of the well established Law Society guidance on mandates.

The Tribunal considered the test in the case of Sharp v The Council of The Law Society 1984 SC 129. The Tribunal considered that no practitioner exercising reasonable care would have issued such advice contrary to that clearly set out in the Law Society guidance and contrary to the accepted ethical standards of the profession. Regardless of what was said in mitigation regarding the Respondent's lack of knowledge and experience of partnership law, the position regarding mandates is clear and the Tribunal was of the view that the words used by the Respondent in the e mail demonstrated his awareness of the correct position. The Tribunal agreed with the Respondent's representative that it is hard to understand how the advice regarding the will box could have been given and that the advice regarding the client list was absurd. The Tribunal considered that the Respondent's actions amounted to a serious and reprehensible departure from the standards expected of competent and reputable solicitors. 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 therefore constituted professional misconduct.

In considering sanction the Tribunal did not consider a fine sufficient to protect the public and uphold confidence in the profession. It then considered a restriction of the Respondent's practising certificate but came to the conclusion that any restriction which could be imposed could not realistically prevent a repetition of flawed advice being issued by the Respondent. The Tribunal then considered suspension but was of the view that such a sanction would not address the Respondent's failures.

The Tribunal noted that the Respondent had not demonstrated any real insight into the seriousness of the failures demonstrated and the resultant effect on his clients and Mrs Watt. The Tribunal also noted that no real explanation had been given for the provision of wrong advice other than a lack of knowledge of partnership law.

The Tribunal took into account that this was not a simple error of omission. In the opinion of the Tribunal this was such seriously flawed advice from an experienced solicitor that it demonstrated a willingness to encourage other professionals to ignore the law and the rules of their professional body for their own commercial gain. This advice was given in January 2006 but not acted upon by his clients until months later. The Respondent continued to advise his clients during that period. The Respondent therefore had plenty of time to reflect on the advice given and the appropriateness or otherwise of strategy 2 before it was employed. The advice was never changed and strategy 2 was embarked upon by his clients with his continued assistance. The Tribunal concluded that the provision of such advice to clients to carry out acts which were tantamount to theft is behaviour which demonstrates a clear lack of comprehension on the Respondent's behalf of his professional responsibilities and is therefore inconsistent with being a solicitor.

For these reasons the Tribunal concluded that the Respondent is not a fit and proper person to remain as a solicitor and therefore that the appropriate sanction is to order that the name of the Respondent be struck off the Roll of Solicitors in Scotland. The Tribunal ordered that the Respondent be held liable for the expenses of this case and made the usual order in relation to publicity but ordered that such publicity be deferred until after the conclusion of any other proceedings connected with this matter.

Vice Chairman