

**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

**MATTHEW PHILIP BERLOW, 9 Lochbroom
Court, Newton Mearns, Glasgow**

Respondent

1. A Complaint dated 2 February 2022 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 Matthew Philip Berlow, 9 Lochbroom Court, Newton Mearns, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were five Secondary Complainers: Dorothy McPherson, 3 Netherton Road, Newton Mearns, Glasgow; Neil McPherson, Neil McPherson Solicitors, 87B John Finnie Street, Kilmarnock; David McPherson, Neil McPherson Solicitors, 87B John Finnie Street, Kilmarnock; Mick Napier, 23 Woolfords, West Calder; and Scott Reid, 13 Arrothill Drive, Kilmarnock.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. The matter called for procedural hearings on 25 February 2022, 31 January 2023 and 13 February 2023.
5. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 20-22 February 2023 and notice thereof was duly served on the Respondent.

6. At the hearing on 20-22 February 2023, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Thomas Ross K.C. The Respondent gave evidence and parties made submissions. Due to lack of Tribunal time, the hearing was continued to 27 April 2023, to take place online.
7. At the virtual hearing on 27 April 2023, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Thomas Ross K.C. The Tribunal delivered its decision orally. Parties made submissions in mitigation, and on publicity and expenses.
8. Having given careful consideration to the terms of the Complaint, the oral evidence and the documents lodged, the Tribunal found the following facts established:-

8.1 The Respondent is Matthew Phillip Berlow. He was born on the 13 February 1970. He was enrolled as a solicitor on the 27 October 1995. He was a sole practitioner in McIntyre Berlow between 1998 and 2000. He was a partner in Beltrami Berlow from 2000-2006 and 2007-2012. He was a partner in J R Rahman between May 2012 and October 2013. He was a consultant to Berlow Rahman Solicitors between November 2013 and 31 October 2015 when he became a partner of that firm. The partnership ended on 31 October 2018. The Respondent became an employee of Berlow Rahman until January 2020. He has been a consultant with Graham Walker Solicitors since 6 January 2020.

Dorothy McPherson, Neil McPherson and David McPherson

- 8.2 The first three Secondary Complainers are wife, husband and son. Neil McPherson is a solicitor in Kilmarnock. David McPherson was a solicitor in Kilmarnock. The Respondent referred to Dorothy McPherson in some of his social media posts.
- 8.3 Schedule A to the Complaint contained screenshots of an exchange between a social media account named "David McPherson" and the Respondent. This private exchange between David McPherson and the Respondent took place by way of Facebook Direct Messaging.
- 8.4 That private exchange contained the following comments which were made by the Respondent:
 - 8.4.1 And don't threaten me you weirdo son of a racist drunk
 - 8.4.2 What are you talking about you Complete weirdo XX

- 8.4.3 Are you stalking me like you do the birds?
- 8.4.4 ...you have problems. Proper psychological problems probably as a result of being brought up by a racist drunk ex cop dad and an equally abusive drunk Mother...
- 8.4.5 My dad was not a racist disgraced drunk...I am not considered a weirdo
- 8.4.6 ...nothing a Complete weirdo loser says or does...
- 8.4.7 Everyone thinks you are a weirdo...you are a product of your upbringing
- 8.4.8 ..you are a weirdo Stalker type freaks them out
- 8.4.9 Eddie says you are the weirdest guy he has ever had the misfortune to have spent time with and were a wee coward who cried like a baby
- 8.4.10 Like the weirdo son of a racist drunk...think you are a weird freak
- 8.4.11 I think you are a boozier like your dad. You are actually mad! Lol
- 8.4.12 You are the weirdo Stalker with no mates
- 8.4.13 I am a bit posher than the weirdo son of a drunk racist.
- 8.4.14 You are a failed son
- 8.4.15 Hugh said you were the worst trainee he ever had.
- 8.4.16 Your dad only took you on because you're his failure of a Stalker weirdo son
- 8.4.17 I only ever felt there was something seriously wrong with you like your dad
- 8.4.18 Oh you want me to arrange psychological counselling for you... for your stalkiness
- 8.5 Schedule B to the Complaint contained a separate set of Facebook posts published by the Respondent on a closed Facebook page for criminal lawyers in November 2017. The post was commented upon by others. The comments refer to Neil and David MacPherson. The posts contained the following comments which were made by the Respondent:
- 8.5.1 "...allegation by a deranged lunatic and his equally dangerous and lunatic son..."
- 8.5.2 "... I was warned not to stand up to this duo...I will fight against anti-Semitism, disability discrimination and threats of violence and I will not be intimidated..."
- 8.5.3 "The messages are his own messages and many of them are about me and in the most crude anti-Semitic terms"
- 8.5.4 "The individual clearly has psych issues."
- 8.5.5 "... this has given the lunatic the opportunity to make a report to the police that he has received abusive messages from me..."
- 8.6 Neil McPherson made a complaint to the SLCC about these comments. In reply to the SLCC the Respondent, referring to Neil McPherson, wrote:

“a respected solicitor...has been assaulted by him and another was targeted by him for years...a court journalist is terrified of him... I view his complaint as evidence of his recriminatory attitude.”

8.7 In an email to the Law Society of Scotland dated 6 December 2017 the Respondent wrote

“For years I have been aware that NM [Neil McPherson] is an anti-Semite and I am in no doubt that his son is also anti-Semitic. I say this with certainty as his father has made an anti-Semitic comment directly to me and continually whistled the German national anthem while passing me in the corridor... The hater has clearly been learned by the next generation not to mention the sectarianism and threats of violence.

He [Neil McPherson] is an extremely threatening dangerous and unpredictable individual ...I felt intimidated and afraid...he is crazy and prone to recriminatory actions ... he had a relationship with certain clients which entailed instructing them to firebomb rivals offices and homes....lawyers have told me that he can be violent and unpredictable ... two specific lawyers have told me that he has assaulted them.”

8.8 In the same email the Respondent characterised comments made by Neil McPherson as “LIES”.

8.9 In an email of the 17 July 2017 at 1333 hours, the Respondent sent an email to Neil MacPherson. He attached 28 screenshots of a social media exchange. That private social media exchange was between Mr A and “Mr B”. Mr A was a former client of David McPherson. The Respondent inferred that the “Mr B” account was operated by David McPherson. The exchange contained grossly offensive language. The Respondent published this offensive exchange on a closed Facebook page for criminal lawyers (Schedule C to the Complaint). The Respondent implied that the comments were made by David McPherson.

Mick Napier/SPSC

8.10 Mr Napier was in 2019 the Chair of the Glasgow Branch of the Scottish Palestine Solidarity Campaign, known as the SPSC. He observed comments by the Respondent on Facebook. The Respondent’s comments were posted on a Facebook page operated by “Mr C”. The Respondent knew “Mr C” was a pseudonym. The page was operated by Mr

D. The Respondent knew Mr D was a religious education teacher who supported Israel and who sought to identify and report anti-Semitism.

8.11 The Facebook exchange was as follows:

POST [by "Mr C"]: A certain Jewish lawyer woke up this morning to find "Free Palestine" spray painted rather prominently No idea who was responsible	
Respondent	Idiocy. Typical spsc behaviour. Criminal
Mr C	Wait till you find out who my lawyer is! You don't know how much bother your in.
Respondent	You're
Mr C	No idea what paint you're talking about
Mr C	You can't prove anything
Respondent	Hee hee I'm light years ahead of you. I actually feel pity for you. You should take advantage of that and perhaps walk away now. You have absolutely no idea what you are involved in It's way above your station.

8.12 At the time of making these posts, the Respondent was aware that Mr C/Mr D posted fictitious stories/comments to incite anti-Semites to comment. Mr C/Mr D had discussed a plan to paint graffiti on the Respondent's home. The Respondent was aware of that plan.

8.13 No graffiti was painted as suggested in the post by Mr C/Mr D. The Respondent knew no such graffiti was on his property. The Respondent attributed the action to the Scottish Palestine Solidarity Campaign and implied that their actions were criminal. The Respondent knowingly posted a false accusation of criminality against the SPSC on the Facebook page of Mr C/Mr D.

Scott Reid

- 8.14 Mr Reid provided instructions to the Respondent while the Respondent was at Berlow Rahman in June 2018. The Respondent accepted those instructions. Mr Reid faced a Summary Criminal Complaint at Kilmarnock Sheriff Court. The Respondent sent a letter submitting a plea of not guilty to the Court dated 26 June 2018. Intermediate and trial diets were fixed.
- 8.15 The Respondent sent terms of engagement letters dated 22 & 23 August 2018 to Mr Reid. The letter of 23 August 2018 intimated a fixed fee of £1500 + VAT. The Respondent wrote on 11 September 2018 withdrawing from acting as a colleague had accepted instructions to act against Mr Reid in a family matter.
- 8.16 Mr Reid instructed Neil F MacPherson Solicitors. The Respondent actioned a mandate received from Neil F MacPherson Solicitors & Notaries by sending electronic papers by way of email on the 21 September 2018.
- 8.17 The Respondent contacted Mr Reid on 14 September 2018 by text. He sent five messages. Part of that text message communication was as follows:
- 8.18 The Respondent contacted Mr Reid on the 22 September 2018. He sent 3 text messages. In one he wrote:

"I have reported Neil's son David to the police and law society for sending me racist and threatening messages. Other people have to. Basically I would like to know if he maligned me in any way or made reference to this in any way shape or form. I have at times felt threatened by Neil himself so please keep this between us."

"Hi Scott,

I think you should know a couple of things.

I think you are an ok guy and I am sorry about the conflict of interest that arose but these things happen.

I am of the opinion that you are being somewhat manipulated by Neil McPherson to say and do certain things and you may not fully appreciate the full situation you are becoming

embroiled in. Because of this I think it is only fair to warn you that certain matters are being investigated into Neil and David's behaviour and they include intimidation and harassment of people and a part of that consists of whistling certain songs at them (among them "there may be trouble ahead").

You may be being used as a vehicle for that without realising that and there is a good chance that such behaviour is treated as criminality.

It actually is much more serious than that and there are major things going on that you do not know.

You can post anything you want on social media, (within reason) it's a free world!

You should be aware however that whilst my assistant has been disqualified for drink driving and certain unsympathetic people may take glee from that fact, your new solicitor has been jailed for doing the same thing on 4 occasions and is currently under investigations for other matters whilst his son is being investigated by CID for death threats.

Obviously you are free to do as you choose or do others bidding as you choose but I am actually a decent hard working albeit imperfect bloke and as I have said above I think it is fair that I perhaps give you the heads up least you find yourself being used in this fashion and then abandoned when potential legal consequences arise.

Kind Regards,

Matthew Berlow

- 8.19 At this time Mr Reid indicated he did not wish the Respondent to contact him again.
- 8.20 The Respondent sent two further text messages on the 22 September 2018.
- 8.21 Mr Reid was released from a prison sentence in April 2019. He contacted the Respondent. Over a period of three or four months, mostly by text, the pair expressed their dissatisfaction with Neil McPherson. The Respondent reiterated allegations that Mr

McPherson was out to get him. Mr Reid maintained that Mr McPherson did not do a good job for him and “hung him out to dry”. Mr Reid explained that Mr McPherson had induced him to make a false complaint against the Respondent.

- 8.22 Mr Reid wished to make a complaint about Mr MacPherson. An employee of Berlow Rahman had a statement typed on behalf of Mr Reid. Mr Reid engaged with the Respondent and agreed to provide him with comments made by Mr McPherson to him.
- 8.23 When the communication re-commenced, the Respondent highlighted to Mr Reid that Mr Macpherson had disclosed personal information to another. Included was Mr Reid’s personal information - address, details of his children and family position. The Respondent indicated Mr Reid could claim “thousands” in compensation for this breach of personal data. Mr Reid declined to sue Mr McPherson.
- 8.24 During this communication about Mr McPherson’s behaviour, Mr Reid indicated several times he would record the meeting with Mr McPherson, his solicitor, on his mobile phone. The Respondent did not seek to dissuade Mr Reid from doing so.
- 8.25 At this time the Respondent was also making a complaint to the Police about Mr McPherson. He sought Mr Reid’s assistance and requested that Mr Reid give a supportive statement to the Police. Mr Reid refused several times. However, in due course he did give a statement to the Police.
- 8.26 The Respondent thanked Mr Reid for assisting him and enquired if there was anything he could do for Mr Reid.
- 8.27 During this exchange of communication Mr Reid indicated to the Respondent that he was in a desperate financial situation. He explained he had work lined up in Northern Ireland but he could not gather sufficient funds to travel there and live until his first pay was received. The Respondent undertook to provide Mr Reid with funds. The Respondent indicated he was to get a “wedge” and he would meet with Mr Reid to give this to him, which he did. The Respondent met Mr Reid a further twice and gave further cash to him. In all, the Respondent gave Mr Reid £800 between 1 and 8 August 2019. This payment was made at around the same time that the Respondent: assisted Mr Reid to make a complaint to the SLCC about Mr McPherson; sought to have Mr Reid withdraw his

complaint against the Respondent; and was encouraging Mr Reid to make a complaint to the police about Mr McPherson.

8.28 The Respondent did not formalise the basis of the payment to Mr Reid. He did not enter into a written agreement. There was no repayment arrangement. Mr Reid asked how he could pay the Respondent back without his wife knowing about it. The Respondent indicated Mr Reid could pay in cash in the future. The Respondent did not indicate repayment was a condition of his payment. A rate of interest was not mentioned. The payment/loan was on better than commercial terms.

9. Having considered the foregoing circumstances, and the parties' submissions, the Tribunal found the Respondent guilty of professional misconduct in respect that:

Mick Napier/SPSC

9.1 His actions lacked integrity, and to that extent breached Rule B1.2, when in a Facebook comment he deliberately associated members of the Scottish Palestine Solidarity Campaign with the criminal act of graffiti, knowing no crime had taken place and that the original post was false (averments of misconduct 5.1.1 and 5.2.1);

Scott Reid

9.2 His actions were likely to bring the profession into disrepute when he made a payment of £800 cash to Mr Reid in circumstances which appeared to be a *quid pro quo* for Mr Reid's assistance with the Respondent's ongoing complaints against Neil McPherson (averment of misconduct 5.1.2);

9.3 His actions were likely to bring the profession into disrepute and breached Rule 1.14.1 and Rule B1.14.2 (but did not lack integrity in terms of Rule B1.2), when he made disparaging remarks about Neil McPherson to Mr Reid, after the Respondent had withdrawn from acting for Mr Reid and Mr Reid had engaged Mr McPherson (averments of misconduct 5.1.3, 5.2.2, 5.3.1 and 5.4.1);

Facebook Group

9.4 His actions breached Rule B1.14.1, and Rule B1.2 in that they lacked integrity, and were likely to bring the profession into disrepute, when he published a grossly offensive

exchange between two other people on his closed Facebook group for criminal lawyers (averments of misconduct 5.1.9 and 5.2.4)

10. Having considered the foregoing circumstances, and the parties' submissions, the Tribunal found the Respondent not guilty of professional misconduct in respect of the allegations that he had:

Scott Reid

- 10.1 Implicitly encouraged or supported Mr Reid to record a meeting between Mr Reid and Mr McPherson, or had failed to dissuade him from so doing (averments of misconduct 5.1.4 and 5.2.3);

Dorothy, Neil and David McPherson

- 10.2 Lacked integrity, breached Rule B1.14.1, and engaged in conduct likely to bring the profession into disrepute in an exchange with David McPherson in 2015 by using intemperate, offensive, abusive and unpleasant language (averments of misconduct 5.1.5 and 5.3.2);
- 10.3 Lacked integrity, breached Rule B1.14.1, and engaged in conduct likely to bring the profession into disrepute in an exchange with David McPherson (averments of misconduct 5.1.6 and 5.3.2);
- 10.4 Lacked integrity, breached Rule B1.14.1, and engaged in conduct likely to bring the profession into disrepute in respect of his comments about Neil McPherson (averments of misconduct 5.1.7 and 5.3.2);
- 10.8 Lacked integrity in respect of his comment about Dorothy McPherson (averment of misconduct 5.1.8);
- 10.9 Breached Rule B1.14.1 and brought the profession into disrepute when he sent a grossly offensive exchange between two other people to Neil McPherson (averment of misconduct 5.1.9).

11. Having heard the Solicitor for the Respondent in mitigation on 27 April 2023, and both parties' submissions on publicity and expenses the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 27 April 2023. The Tribunal having considered the Complaint dated 2 February 2022 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Matthew Philip Berlow, 9 Lochbroom Court, Newton Mearns, Glasgow; Find the Respondent guilty of professional misconduct in respect that (1) his actions lacked integrity and to that extent breached Rule B1.2, when in a Facebook comment he deliberately associated members of the Scottish Palestine Solidarity Campaign with the criminal act of graffiti, knowing no crime had taken place and that the original post was false, (2) his actions were likely to bring the profession into disrepute when he made a payment of £800 cash to Mr Reid in circumstances which appeared to be a *quid pro quo* for Mr Reid's assistance with the Respondent's ongoing complaints against Neil McPherson, (3) his actions were likely to bring the profession into disrepute and breached Rule 1.14.1 and Rule B1.14.2, when he made disparaging remarks about Neil McPherson to Mr Reid, after the Respondent had withdrawn from acting for Mr Reid and Mr Reid had engaged Mr McPherson and (4) his actions breached Rule B1.14.1, and Rule B1.2 in that they lacked integrity, and were likely to bring the profession into disrepute, when he published a grossly offensive exchange between two other people on his closed Facebook group for criminal lawyers; Censure the Respondent; Fine the Respondent in the sum of £2,500 to be forfeit to His Majesty; Find the Respondent liable in respect of 80% of 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; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and the Secondary Complainers, but need not identify any other person, but that publicity should be deferred pending the conclusion of any associated criminal proceedings or confirmation that there are to be no such proceedings; and Allow the Secondary Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office.

(signed)

Catherine Hart

Vice Chair

12. 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 1 JUNE 2023.

IN THE NAME OF THE TRIBUNAL



Catherine Hart
Vice Chair

NOTE

At the Hearing on 20-22 February 2023, the Tribunal had before it a Record which was lodged in December 2022, a Joint Minute, one Inventory of Productions for the Complainers, one Inventory of Productions for the Respondent, a List of Witnesses for the Complainers, and a List of Witnesses for the Respondent.

At the start of the hearing, Mr Ross asked the Tribunal to receive an affidavit sworn by Jelina Rahman, and a statement by Mr D which had been notarised, but not sworn before a notary public. Mr Ross submitted that Mr D's statement was in a different style to an affidavit but was equivalent to one. It had been signed by him in the presence of a solicitor and notary public. The preamble was absent, but it could be inferred that Mr D was well aware of the serious nature of the evidence he was giving by way of the statement, even although he was not put on oath as part of that procedure. Mr Ross submitted that the statement was so close to an affidavit to be no different to one. Mr Ross noted that the Tribunal rules were more or less silent with regard to affidavits.

The Fiscal objected to the Tribunal receiving Mr D's statement. Mr D had not been put on oath. It was not a technical point. The oath was essential. He said that the statement should not be received as an affidavit and the Tribunal should place no reliance upon it. The Tribunal had made it clear at a procedural hearing that written statements should be submitted by way of affidavit.

Following a break for discussion, the Tribunal indicated that it was not prepared to regard Mr D's statement as an affidavit. It was not just a question of form. The oath was an essential element of an affidavit. However, the statement would be accepted into process and the Tribunal would determine its weight in due course. Other statements had been lodged with the Tribunal Office by the Respondent in the days prior to the hearing, but Mr Ross did not ask the Tribunal to receive these. The Tribunal therefore had no regard to them.

The Fiscal indicated that the Complainers relied on the admissions in the Record and Joint Minute. He did not intend to lead any evidence.

EVIDENCE FOR THE RESPONDENT**Witness 1: The Respondent****Evidence-in-chief**

The Respondent affirmed that he would tell the truth. He is 53 years old. He was enrolled as a solicitor in 1995. He has been a consultant with Graeme Walker Solicitors since 6 January 2020. He converted to Islam to marry his wife. He remains traditionally a Jew.

The Respondent said that in 2006 or 2007, he was discussing an Israeli Supreme Court decision in the agents' room at Airdrie Sheriff Court. Neil McPherson leaned over and said to him that the Jews were the source of all the problems in the world. The Respondent said that Neil McPherson harassed and abused him from that point on. Whenever he was at Kilmarnock Sheriff Court, Neil McPherson would whistle the German national anthem when he saw the Respondent. Neil McPherson did every time he saw the Respondent in court between 2007 and the present. The Respondent made no complaint about Neil McPherson's behaviour for many years.

The Respondent said that in 2013, David McPherson started work with his father's firm. It was brought to his attention that David McPherson was posting comments on social media about the Respondent being corrupt and dishonest, as well as other derogatory things. The Respondent had not had any previous interaction with David McPherson. The Respondent knew that David McPherson had fallen out with another solicitor who had a similar name to "Mr B". The Respondent knew Mr B. They had worked together sometimes without any problems. The Respondent became aware of social media exchange between someone called "Mr B" and Mr A, a former client of his. Screenshots of the exchange were given to the Respondent by Mr A. The Respondent believed "Mr B" was David McPherson. The messages in that exchange were racist, homophobic, indecent, anti-Semitic, sectarian and very abusive. The Respondent said that the last straw for him was the reference to him as "Adolf Berlow". Those messages were contained at Schedule C of the Complaint.

Separate to this exchange, the Respondent became aware of other Facebook posts that David McPherson had made calling the Respondent corrupt and dishonest, and a rubbish lawyer. The Respondent asked David McPherson for an explanation and there followed a series of private messages between them between 2013 and 2016. The Respondent accepted that he had send the messages attributed to "MB" in Schedule A to the Complaint. He said these were his responses to David McPherson's abuse.

David McPherson's messages included threats of violence, anti-Semitic abuse, criticisms of the Respondent's court room performances, allegations that he was corrupt and dishonest. David McPherson, made fun of the Respondent's disability and his appearance and made racist remarks. David McPherson told him at one point to "expect tanks". The Respondent was aware that David McPherson lived close to him. He responded to these messages. He was at the end of his tether. He called David McPherson a

weirdo and referred to his father as a racist drunk. These were private messages. They had nothing to do with any case, client or the law. The Respondent said the comments were not nice, but he had lost his temper. However, he did not issue racist abuse or make any threats. He knew it was unsatisfactory to respond in the way that he had, but what he said was benign compared to the abuse he was receiving. He was asked whether he regretted his conduct. The Respondent said that everyone regrets losing their temper in the heat of the moment, but a lot of what he said had been vindicated. He felt there was something wrong with David McPherson. He did not report him for many years. The messages between the Respondent and David McPherson were private messages. They were never published.

The Respondent sent the exchange contained at Schedule C of the Complaint to Neil McPherson by email asking for an explanation. The Respondent believed "Mr B" to be David McPherson, who worked for his father's firm. He did not receive a response from Neil McPherson. Neil McPherson reported the Respondent to the police for sending abusive messages to him. However, that complaint was dropped.

The Respondent created a Facebook group for criminal lawyers in Scotland. The purpose of the group was to exchange cases and find local agents. It was a place to discuss the law and a bit of gossip. It was a closed, private group of, at that time, about 70-80 solicitors. No members of the public were members. The Respondent published the Schedule C exchange to this group. The Respondent's Facebook posts about the Schedule C exchange are set out at Schedule B. The Respondent did not identify the McPhersons by name. The post and the messages could be viewed by all of the group's members. The Respondent said several lawyers had experienced similar problems with Neil McPherson and David McPherson. The Respondent decided he would stand up to the McPhersons. Following his post, another solicitor explained that his client had also received abusive messages and death threats from "Mr B". He was able to tell his client that "Mr B" was David McPherson.

The Respondent decided to report Neil and David McPherson to the Police and the Law Society. He explained to the Law Society what anti-Semitism was and why he perceived the McPhersons' conduct to be anti-Semitic. The Respondent provided the private messages at Schedule A of the Complaint to the Law Society. He also provided the "Mr B" exchange at Schedule C of the Complaint to the Law Society.

Neil McPherson made a complaint about the Respondent to the SLCC. The Respondent replied to the SLCC explaining that Neil McPherson had assaulted another solicitor and targeted another for years and that a court journalist was terrified of him. He had also made certain remarks about Neil McPherson in an email to the Law Society on 6 December 2017. He called Neil McPherson's comments "lies".

The Respondent explained that he was a member of Glasgow “Friends of Israel”. Every Saturday that group has a stall in Buchanan Street in Glasgow. The group promotes Israel advocacy and a “two-state solution”. Threats have been made to the Glasgow “Friends of Israel” stall. There have been various incidents. One of the members of “Glasgow Friends of Israel”, Mr D, set up a false social media profile purporting to be an anti-Israel activist to gather information about threats to the stall and share this with the police. The name of the fake social media profile was “Mr C”. The fake Facebook profile was set up at the beginning of 2017. Mr D, under the guise of “Mr C”, gathered ‘friends’ on Facebook from pro-Palestine and anti-Israel groups. He purported to be a real person and to give credence to his profile, he pretended to have a grudge against the Respondent.

Neil McPherson made an approach to “Mr C” on Facebook. Neil McPherson thought that “Mr C” was a real person. They started a conversation about vandalising the Respondent’s house. Neil McPherson gave “Mr C” the Respondent’s address, a description of his house, and the registration numbers of his car and his wife’s car. They made a plan to vandalise the Respondent’s house. The Respondent referred the Tribunal to an email from Neil McPherson to “Mr C”. The Respondent emphasised that “Mr C” was not a real person and there was never any vandalism of the Respondent’s house. There was never going to be any vandalism. Neil McPherson had been trapped into discussing a criminal act against the Respondent and that had been the intention behind the “plan” to vandalise the Respondent’s house. The Respondent had been aware of the plan.

Mr D, posing as “Mr C”, posted on his fake Facebook page:

“A certain Jewish lawyer woke up this morning to find “Free Palestine” spray painted rather prominently No idea who was responsible.”

The Respondent commented;

“Idiocy. Typical spsc behaviour. Criminal”.

The Respondent said his comment was a “moment of madness” when he saw “Mr C’s” Facebook post and realised that “Mr C” was pretending that an act of vandalism had in fact occurred. That had not been part of the plan. The Respondent was trying to deflect attention by saying that someone else had done it. There was no vandalism. He knew the SPSC had nothing to do with it. The Respondent said he was scared that Neil McPherson would know he was being set up. It all happened within seconds. He panicked and tried to think of what he would say if the vandalism had actually occurred. Neil McPherson lives very close to the Respondent. It sounded “crazy”, but the Respondent acted in panic. He accepted it was unsatisfactory to have done this. He regrets it. However, he did not see how it tied into his

professional life. Any Facebook “friends” of “Mr C” would have been in a position to see the post and his comments.

The Respondent explained that he had accepted instructions from Scott Reid at the same time as his partner had accepted instructions to act for Scott Reid’s ex-partner in a family matter. Following advice from the Law Society, the Respondent told Scott Reid that he could not continue to act for him and that he would have to find another solicitor. The Respondent received a mandate from Neil McPherson Solicitors. Scott Reid began to post derogatory material about the Respondent on Facebook. The Respondent suspected Scott Reid was being manipulated by Neil McPherson due to the content of the posts. Scott Reid sent a friend request to the Respondent on Facebook. The Respondent could see material about himself and his firm.

The Respondent contacted Scott Reid by text. The Respondent had Scott Reid’s telephone number from when he had been his client. The Respondent said he was not sure if Scott Reid was aware of the extent of the problem and the criminal activity that the Respondent was experiencing. The Respondent said that he saw that Scott Reid was getting involved with Neil McPherson and he was in the process of complaining to the Law Society and Police Scotland. The Respondent had got on well with Scott Reid when he was a client and thought that perhaps Scott Reid was getting embroiled in something he did not know about. Scott Reid told him he did not want any more contact from the Respondent. The Respondent sent him a further two messages.

The Respondent said that Scott Reid contacted him again in 2019. He was not Neil McPherson’s client at that stage. He was not the Respondent’s client. The Respondent explained to Scott Reid that Neil McPherson had disclosed his personal data. That was a serious matter and Scott Reid might want to follow it up. The Respondent explained that Scott Reid could make a complaint to the Law Society and the Information Commissioner’s Office (ICO).

Scott Reid confided in the Respondent that Neil McPherson had offered to give him an alibi if he set fire to the Respondent’s car. The Respondent said if Scott Reid wanted to report that, he should contact a particular Detective Constable who was handling the Respondent’s complaints about Neil McPherson.

The Respondent said Scott Reid was not very literate. He therefore offered to draft his complaint against Neil McPherson to the SLCC for him.

With reference to the texts exchanged between himself and Scott Reid, the Respondent said that Neil McPherson had offered to pay Scott Reid to make a false complaint against him. That false complaint was that the Respondent visited Scott Reid at home and given him cash. Neil McPherson had referred to the Respondent's wife as a "useless Arab". Scott Reid authorised the Respondent to lodge a complaint on his behalf with the SLCC. The Respondent took the complaint to the office of the SLCC.

The Respondent said that Scott Reid wanted to meet Neil McPherson. The Respondent was not keen on this idea. He knew Neil McPherson could be very persuasive. The Respondent made no comment on Scott Reid's stated intention to record his conversation with Neil McPherson. He was not supportive of the idea.

The Respondent said that Scott Reid told him he wanted to take up a job offer in Belfast. However, Scott Reid had no money. His relationship with his former partner was difficult. He was worried about Neil McPherson. The Respondent loaned him £800 in cash. Scott Reid was supposed to repay the Respondent with his first wage. There was no written contract. The money was never repaid, and the Respondent did not seek repayment. The Respondent remained in contact with Scott Reid until Scott Reid submitted a complaint to the SLCC about the Respondent.

The Respondent agreed that he referred to Scott Reid as a "valuable asset". However, the complaint to the SLCC had already been made and lodged by that stage. The Respondent did not think that Scott Reid would withdraw the complaint if he did not lend him cash. Scott Reid was driving the complaint. The Respondent only offered to put it in the correct format. The money was not to make the complaint or to continue with it. It was not presented as a loyalty payment. It was money for the ferry and accommodation in Belfast. Scott Reid offered to pay it back.

The Respondent discussed Scott Reid making a complaint to the police about the "useless Arab" comment. Scott Reid did not follow this up. The Respondent could not make a complaint about this as he was not the recipient of the text.

The Respondent was asked about the timing of the complaint and the loan. The Respondent said the whole thing started in April. He gave Scott Reid money in the summer, possibly June. It was "weeks and weeks" after the complaint.

Cross-Examination

During cross-examination, the Respondent accepted that he made the posts attributed to him in Schedule A to the Complaint. He agreed that the messages set out in Schedule A were sent in 2013 and 2015. He agreed that when David McPherson sent him messages, he chose to reply. The Fiscal suggested there was a significant amount of name-calling and similar language used. The Respondent said his messages were not as offensive as those he had received. They were not meant to be nice. He disagreed that it was an “interaction”, rather he had “reacted” to the messages sent to him. He said he had to stand up for himself. The Fiscal asked why the Respondent had made a comment about David McPherson’s mother. The Respondent said that he has since reported this individual to the police for stalking. The Respondent agreed that to call someone a weirdo loser was offensive, but said it was benign in the scheme of things. The comments were offensive to the target and were unsatisfactory. However, the context was that he had received a lot of abuse over a long period of time.

With reference to Schedule B to the Complaint, the Respondent agreed that he was referring to Neil and David McPherson in his post. However, he did not name them. The people reading the post would not know the identities of those involved, although lawyers “in the know” would recognise them. They were people already affected by Neil McPherson’s behaviour. Publication led to a fruitful police investigation.

With reference to Schedule C to the Complaint, the Respondent agreed that 80-100 people could see the images of the messages he had posted. He had also sent them in an email to Neil McPherson. He did that because Neil McPherson was the principal of the firm and the Respondent believed “Mr B” to be his employee, David McPherson. Before the Respondent published the messages, no one else had seen them except for Mr A and David McPherson. The Respondent said he could tell “Mr B” was David McPherson because of the special knowledge contained in the messages. The Respondent agreed that the language in Schedule C was very offensive and derogatory.

The Respondent confirmed that “Mr C” is a fake person. His Facebook page is fake. The Respondent did not believe his Facebook page was open to the public, but thought he had 47 friends who could view it. The Fiscal suggested that the profile was a falsehood set up to allow offensive terms to be reported to the police. The Respondent disagreed, saying that the profile was set up to gather information on threats to the Glasgow “Friends of Israel” stall. The Respondent agreed that he engaged with the fake Facebook page knowing that it was fake. It was an entrapment for Neil McPherson. The Respondent said he was afraid of Neil McPherson. It had been a split-second decision to identify the SPSC in his comment about the post suggesting that his home had been vandalised. He did not have to post that comment. He

panicked under pressure. He knew that a fellow solicitor wanted to vandalise his house. The Respondent said that he and Mr D exposed criminal behaviour. The police entrap criminals in similar operations. The Respondent agreed that there had been no need to say the vandalism had happened or pretend that the SPSC were involved.

With regard to the Scott Reid issue, the Respondent agreed that after he received a mandate from another solicitor, he made contact with his former client. The Respondent warned Scott Reid that he could be getting involved in criminality and was being manipulated by Neil McPherson. The Respondent agreed that Scott Reid had asked him to stop sending messages to him. He admitted he sent another two messages after that.

The Respondent agreed that he had sent the information contained in the emails in the First Inventory of Productions for the Complainers. He said that he had provided the information that was now being used to prosecute him.

The Respondent agreed that he had Scott Reid's complaint to the SLCC typed up. It was Scott Reid's statement and he had approved it. The Respondent agreed that he had sent the messages to Scott Reid referred to in the Complaint. The Respondent was asked whether he had tried to dissuade Scott Reid from recording any meeting with Neil McPherson. The Respondent said he did not say anything. He asked Scott Reid not to go to the meeting.

Cross-examination resumed on 21 February 2023. The Fiscal indicated he was going to ask questions about money changing hands between the Respondent and Scott Reid. The Respondent was referred to Productions 1-6 for the Complainers. He agreed that he had provided these to the Law Society. They were not in chronological order. He indicated that the text from Scott Reid at Production 1/1 for the Complainers was received on 30 April 2019. They exchanged text messages. The Respondent met Scott Reid at a cinema in Kilmarnock. He was not sure when they met. It was maybe a couple of days after the first contact. He thought it was within a few days of 30 April 2019. The last text at Production C17 for the Respondents was sent after the meeting.

The Fiscal suggested that the Respondent was seeking assistance with his own complaint against Neil McPherson. The Respondent disagreed, saying that Scott Reid wanted to make a complaint on his own behalf. He offered to give Scott Reid the contact details of the police officer dealing with the Respondent's own complaint about Neil McPherson. The Fiscal referred the Respondent to Production 3/2 for the Complainers. The Respondent agreed that he was asking for assistance in this text message.

He said that things were escalating. They discussed the possibility of Scott Reid giving a statement to the Law Society. The Respondent drafted a statement. He did not know when he did that. They agreed to meet around 22 or 23 July 2019 for Scott Reid to sign the SLCC complaint. The Respondent agreed that he had sent a message to Scott Reid thanking him and indicating saying "I owe you for your moral stance here". He said this did not necessarily relate to money. He agreed that he indicated a willingness to help Scott Reid.

The Fiscal referred the Respondent to Production 4/4 for the Complainers. The Respondent agreed that Scott Reid indicated his intention to record a conversation between himself and Neil McPherson. He did not think that any cash had exchanged hands at this time. With reference to the texts at Production 4/6 for the Complainers, the Respondent explained that Scott Reid had a civil and a criminal case outstanding. He was aware that Scott Reid had been charged. However, the matter had not been to court yet. Scott Reid indicated he intended to go to Belfast. The Respondent agreed that he asked him to stay in touch in case he needed Mr Reid's assistance. He said that the SLCC might need some clarification. The Respondent said it did not enter his mind that Scott Reid was trying to evade criminal prosecution. He had told him that the police would eventually catch up with him and advised him to face the matter head on. However, Belfast is part of the UK. Scott Reid was not a fugitive from justice. The Respondent indicated that he paid Scott Reid £800 between 2 August 2019 and 8 August 2019.

The Respondent agreed that he asked Scott Reid to speak to the police about the "useless Arab" comment Neil McPherson was said to have made to Scott Reid. That issue had just arisen. Scott Reid was the recipient of the racist text. He was the complainer. He would have to make the complaint. The Fiscal suggested that the Respondent was asking for help. The Respondent said that Scott Reid was not capable of making the complaint himself. The Respondent was helping him, but it was Scott Reid's complaint.

The Fiscal noted that in a message at Production 5/12 for the Complainers, the Respondent was again asking for Scott Reid's support. The Respondent agreed, saying he was concerned that Neil McPherson would manipulate Scott Reid.

The Fiscal suggested that there were no loan terms. The Respondent said their agreement was that Scott Reid would pay him back after receiving his first wage. However, there was nothing in writing. He did not pursue Scott Reid for repayment. He was quite relaxed about it. He did not charge interest. He has loaned lots of people money over the years. He had no contact with Scott Reid after 25 September 2019. The Respondent emphasised that Scott Reid was not a client. The Fiscal noted that the Respondent had drafted a complaint for him. The Respondent said Scott Reid was a member of the public.

Questions by the Tribunal

In answer to a question from a Tribunal member, the Respondent noted that his first interaction with Neil McPherson related to Jews. The Respondent challenged him saying that his comment was racist. Neil McPherson got a bit flustered and angry.

The Tribunal asked some questions about the fake Facebook profile. The Respondent explained that the profile was created to gather information about threats to the Glasgow "Friends of Israel" stall. However, Neil McPherson contacted Mr D posing as "Mr C". It was the ideal opportunity to expose Neil McPherson's true intentions and criminality. The Respondent and Mr D decided to set him up with an entrapment plot. Neil McPherson provided "Mr C" with all the information he needed to arrange a graffiti attack on the Respondent's home. The Respondent and Mr D went immediately to the police. The matter was not progressed initially. The Respondent obtained an opinion from senior counsel that the circumstances could amount to a criminal conspiracy. Govan CID agreed.

The Tribunal noted that solicitors practising criminal law are bound by the code of conduct for criminal work. The code provides that solicitors should not give money to their clients. The Respondent noted that Scott Reid was not a client of his or of Neil McPherson's when the loan was made. The Respondent said this was the first time he had ever loaned money to a former client. The motivation was to help him start his job in Belfast by providing money to cover the cost of the ferry and accommodation. He knew that Scott Reid was probably going to be charged with an offence, but no prosecution had commenced.

The Tribunal asked about loans that the Respondent had made in the past and whether lending money to those in need was part of his faith. The Respondent said that when he lends money, he does not put pressure on the recipients to repay. He has lent money in the past to friends and family. These have been small amounts and large amounts. He never charges interest. Sometimes he is not repaid for years.

The Tribunal referred the Respondent to the messages exchanged with David McPherson at Schedule A of the Complaint and asked about the facility to block unwanted contact. The Respondent said he had considered using this. There were huge gaps of time between the messages. What he tends to do is enter into exchanges so that he can gather evidence and take screenshots. He is involved in exposing anti-Semitism online. He does that on a personal and group level for moral reasons. He is a member of the campaign against anti-Semitism. If he perceives someone to be anti-Semitic, within the profession, he feels duty-bound to expose it.

The Tribunal asked whether the Respondent had any insight into why Neil McPherson might have engaged with the fake Facebook profile of "Mr C". The Respondent said it was because the Facebook profile purported to have a grudge against him (the Respondent). Neil McPherson was furious that the Respondent had exposed him and his son. He saw Mr C as someone to hook up with. The Respondent is heavily involved with the Glasgow "Friends of Israel" stall. He gets constant abuse from anti-Semites and anti-Zionists. He is harassed and abused daily. To add realism to the fake profile, "Mr C" pretended to have a grudge against the Respondent.

The Tribunal noted the differences between the Respondent's Facebook posts in Schedule A and Schedule B. The Respondent said he did not know why there were differences, but it could be because the posts had been edited.

The Tribunal asked about the Facebook group for criminal lawyers. The Respondent said that the McPhersons were famous for harassing and abusing people. He saw the exchange between Mr B and Mr A as something of interest to share with other criminal lawyers and led to a positive result. The group shares lots of contentious content.

Re-examination

Mr Ross asked the Respondent about the closed Facebook group for lawyers. The Respondent said it was set up years ago for solicitors to find cover for their cases and also for them to chat about interesting cases. When the group was set up the Respondent was aware of the McPhersons' conduct. The Respondent warned other lawyers about the McPhersons.

With reference to the fake Facebook profile, the Respondent explained that he had previously started a crowd funding campaign. Anti-Semites and anti-Zionists posted on the noticeboard for the crowd funder page. The Respondent believed one of the people posting comments to be David McPherson or Neil McPherson. That person made "Fagin" references and referred to the Respondent being dishonest. "Mr C" became involved in the comments. He posted in negative terms to keep up the pretence of having a grudge against the Respondent. Neil McPherson the contacted "Mr C" saying that he had seen his post on the Respondent's "begging page". The Respondent understood this to be his crowd funding page. Neil McPherson sent an email to "Mr C" attaching copies of the complaints made against the Respondent to the SLCC. Mr D posing as "Mr C" asked Neil McPherson for details about the Respondent's house and car. Neil McPherson accurately described the Respondent's house and his cars, including registration numbers. At this point they had enough to expose his criminality and the Respondent reported this matter

to the police. The police have not progressed this issue and as of February 2023, Neil McPherson is still entitled to practise. The Respondent panicked when he saw the post about the graffiti. He agreed that he should not have involved the SPSC. There were ways of keeping the pretence going without involving the SPSC. However, he was putting himself in the shoes of someone whose home had been vandalised. He accepted he had made a mistake.

With reference to the loan, the Respondent said that Scott Reid had consulted a solicitor at the Public Defence Solicitors' Office (PDSO). Scott Reid had not been interviewed by police. No initiating warrant had been issued. Even if those steps were taken, the case would spend months at the Procurator Fiscal's Office. Scott Reid had indicated his intention to pay the Respondent with his first wage. That was due around 15 August 2019. The Respondent advised Scott Reid to face the criminal case head on. It would be best to be proactive and not wait for warrants to be issued. It was completely untrue to suggest he was helping Scott Reid to "do a runner". He was not Scott Reid's solicitor. He received no payment for representing him. The loan was not a *quid pro quo* for Scott Reid's complaints against Neil McPherson.

Mr Ross referred the Tribunal to the Schedule C exchange. The Respondent agreed that "Mr B" was referred to by Mr A as "David" in some of the messages without correction. The solicitor with a similar name to "Mr B" had fallen out with David McPherson. "Mr B" was involved in the Green Brigade. That person was involved in anti-Semitic abuse of the Respondent and general abuse referring to his wig or hairpiece. There was knowledge in the messages that Mr A had signed a mandate from David McPherson to another lawyer (identified as a Catholic and Celtic supporter). There was reference to the father and son having a practice in Kilmarnock and a secretary called Lorna. The individual knew that Mr A had received a sentence of community service. There was reference to the café at Kilmarnock Sheriff Court. There were anti-Semitic references in the messages. Based on all that information, the Respondent concluded that "Mr B" was in fact David McPherson. According to the Respondent, the police had also found a link between the URL or IP address of Mr B and the address of the McPhersons and had obtained a warrant to seize devices.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal invited the Tribunal to find the Respondent's practising history was as set out in his Answers rather than as expressed at paragraph 3.1 of the Complaint.

The Fiscal said the evidence showed that the ongoing interaction between the Respondent and David McPherson outlined in paragraph 3.2 of the Complaint was antagonistic. The Respondent admitted he

was the author of the comments marked “MB” in Schedule A. The Respondent published these comments by sending them to the Law Society in the context of the complaint against David McPherson. There is no prohibition on a regulator using these as part of a complaint against the person who supplied them. The Respondent had not objected at any earlier stage to the material being used against him. The Respondent admitted the comments he made in Schedule A were harmful to the recipient. It is not acceptable to abuse someone online by referring to their parents’ ill health or addiction. Although the Reporter had recommended a finding of UPC, the PCSC is the decision maker and they had referred the matter to a Fiscal for prosecution of professional misconduct (Paragraph 3.4 of the Complaint).

The Fiscal said that the Schedule B posts had been made by the Respondent and published in a criminal lawyers Facebook group. They contain derogatory language about mental health which was not appropriate in a public forum. The Respondent intended Neil McPherson and David McPherson to be identified (Paragraph 3.5 of the Complaint).

The Respondent made offensive and derogatory comments in his correspondence with regulators (Paragraphs 3.6-3.9 of the Complaint). This was unacceptable.

The Fiscal invited the Tribunal to find that the Respondent sent the Schedule C exchange to Neil McPherson and published it on his closed Facebook page for criminal lawyers. No one else would have known about the abusive hateful messages if he had not published them. The Respondent brought that abuse into the public domain (Paragraph 3.10 of the Complaint). The Facebook group is a closed community. He was responsible for sharing the content of the exchange as soon as he made the post.

The Fiscal invited the Tribunal to make no finding regarding paragraph 3.11 of the Complaint. The Fiscal invited the Tribunal to make a finding in fact in terms of paragraph 3.12-3.20 of the Complaint. He said it was wholly inappropriate for the Respondent to engage with Scott Reid after the Respondent had withdrawn from acting and a mandate had been received. His email sought to denigrate the McPhersons. It tries to dissuade Scott Reid from using the McPhersons as agents.

The Fiscal invited the Tribunal to make findings in fact in terms of paragraphs 3.21-3.23. He suggested deletions to paragraphs 3.24, 3.25 and 3.26. He invited the Tribunal to make findings in fact in terms of paragraphs 3.27 to 3.28. He invited the Tribunal to find in relation to paragraph 3.29 that the Respondent had made payment to Scott Reid between 1-7 August 2020. He invited the Tribunal to make findings in fact in terms of paragraph 3.30, but not 3.31 of the Complaint.

The Tribunal had received an affidavit from the Respondent's wife. The Fiscal noted that this evidence was untested. Much of it reflected what the Respondent had told her and paragraph 15 onwards relates to things which occurred after the matters set out in the Complaint. He suggested that the signed statement from Mr D should be given little or no weight. It had not been given on oath. It was not tested. The relevant parts at (i)-(iv) are simply commentary on facts which are before the Tribunal.

With regard to the Respondent's credibility and reliability, the Fiscal noted that he appeared to be open. He made some concessions. He answered some questions clearly. However, he also obfuscated. He did not always give direct answers. He sought to blame the Complainers for his problems. The Fiscal submitted that it was sometimes appropriate to put regulatory investigations on hold while criminal investigations were ongoing.

The Fiscal said that the Respondent's conduct crossed a professional line. He showed only a limited amount of personal responsibility. The greater good was more important to him than his individual conduct. The Tribunal had heard lots of evidence about what others had done, but this case was about the Respondent's conduct. Rumours and supposition made up significant parts of his evidence.

The Fiscal invited the Tribunal to make findings of misconduct against the Respondent. He acknowledged that the Complainers must establish professional misconduct beyond reasonable doubt. The test for professional misconduct is contained in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313. The Tribunal is entitled to take into account the whole circumstances of the case.

The Fiscal submitted that the Respondent's conduct displayed a lack of integrity. He referred the Tribunal to Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366. He noted that solicitors do not have to be paragons of virtue, but said that the Respondent's conduct was the equivalent of making false representations on behalf of a client.

The Fiscal said that provocation was a key question in the case. Undoubtedly, the Respondent experienced a significant amount of racial bigotry. However, this does not exculpate him from meeting his professional duties. Standards do not change depending on how pleasant the client is, for example. While the Tribunal can consider the whole circumstances, the background to this case was relevant to sanction only, not culpability.

The Fiscal referred to the cases contained in his list of authorities – SRA-v-Bennett 11828-208, Law Society of Scotland-v-Grant Docherty (2013) and Law Society of Scotland-v-Ross Porter (2019). In

Bennett, offensive language was used about a former client to that client, the regulator and others. In Docherty, the solicitor sent a series of offensive and threatening texts to a person who failed to complete the purchase of his father's house. Porter involved a long exchange of emails with a client in which offensive language was used. The Fiscal submitted that the language in this case was comparable to that in those cases.

The Fiscal submitted that the Respondent's comments on the fake Facebook post were dishonest or deceitful, or at least lacked integrity. He referred the Tribunal to Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. The Respondent knew there was no graffiti on his house. He knew the SPSC were not responsible for any vandalism to his home. Applying the test of the ordinary decent man, the Respondent's conduct was dishonest. The Respondent's evidence about his motivation for making the comment lacked credibility. The provocation did not justify the dishonesty.

Scott Reid signed a complaint drafted by the Respondent or his firm against Neil McPherson. The Respondent encouraged or facilitated that action. The Respondent relayed his thanks and gratitude to Scott Reid and asked him to stay in touch. The payment was made when the Respondent was encouraging Scott Reid to make a complaint against Neil McPherson and support the Respondent's complaint to the Law Society and the Police about Neil McPherson. There were no commercial terms for the loan. No interest was payable. The situation was more advantageous to Scott Reid than the Respondent. The Respondent has not sought repayment of the loan. There is very limited information to justify calling it a loan. It would be reasonable for the Tribunal to make a finding that the Respondent conspired with Scott Reid to make a Complaint against Neil McPherson. There was encouragement on both sides to make a complaint. The relationship between the Respondent and Scott Reid had gone beyond that of former solicitor and client. A loan is not prohibited between a solicitor and a former client, but this situation has a very uncomfortable air about it. It demonstrates a lack of integrity. Scott Reid was trying to evade justice when under investigation for a crime. The Respondent continued to ask for help after the payment had been made. He was offering help because he received help. No competent and reputable solicitor would make a loan to a former client in these circumstances. This is a serious and reprehensible departure from the standards of competent and reputable solicitors.

SUBMISSIONS FOR THE RESPONDENT

During submissions, Mr Ross provided a copy of Khan-v-Bar Standards Board [2018] EWHC 2184 and a document which contained quotations from Khan and other cases on the Complainers' List of Authorities.

Mr Ross noted that proceedings had been brought by the Law Society. It was easy to see why the Law Society had an interest in policing the behaviour of solicitors. Solicitors interact with the public, make submissions to court, and hold client money. They should be trusted by the public. Mr Ross asked whether David McPherson and Neil McPherson should hold the trust of the public given the nature of the material before the Tribunal. He asked whether their disgraceful, abusive, racist and criminal behaviour should be covered up or whether it was in the public interest for it to be disclosed to their regulatory body and the police.

The Law Society's research shows that in 2020/2021 less than 3 in every 1000 solicitors in Scotland was Jewish. That means there are less than 40 Jewish solicitors in Scotland. The conduct demonstrated by Neil McPherson was disgraceful towards any minority, but particularly so against such a very small minority. The proportion of Jews would be higher if not for Adolf Hitler in the 1930s and 1940s. One did not have to be Jewish to imagine the sensitivities involved. Mr Ross said he had been in the profession since 1984 and he was mildly astonished that in bringing information to the Law Society, the Respondent finds himself being prosecuted when, for all we know, Neil McPherson might be conducting a Sheriff and Jury trial in Kilmarnock Sheriff Court.

It was Neil McPherson who repeatedly whistled the German national anthem at the Respondent. He said that the Jews were at the root of all the world's problems. Negative images of Jews were employed in the harassment of the Respondent, such as Shylock, the money lender, and Fagin, the resetter. Mr Ross asked whether Neil McPherson and David McPherson should have their reputations protected. He asked whether the Respondent should have said nothing or whether he should have taken action to bring that behaviour to the attention of the Law Society and the Police.

Four and a half years after Neil McPherson conspired with Mr D posing as "Mr C" to vandalise the Respondent's house, he continues to practice on a daily basis in Kilmarnock Sheriff Court while the Respondent has been involved in these disciplinary proceedings for the past two days.

Mr Ross said that if the Tribunal agreed that the McPhersons' reputation was so scandalous it should not be protected, what should a concerned citizen do? The Respondent reported the conduct to the Law Society. Should the Respondent in the knowledge that David McPherson referred to his clients as "fenien bastards" and used stereotypical tropes about Jews, keep that to himself or tell his colleagues? The Respondent chose to bring that behaviour to the attention of colleagues in a closed Facebook group. Some of the McPhersons' conduct was criminal and that was reported to the police. Confronted with the

situation, he did what he should have done by making the conduct public. The police initially said that there was no crime. The Respondent is still waiting for the police or the Law Society to take action.

It is highly unsatisfactory that if a Respondent makes a criminal complaint to the police, then the natural consequence of that is he is prosecuted by the Complainers first, and four years after the event. Meanwhile the instigator is working and currently free from prosecution. Mr Ross asked whether it is in the public interest that a solicitor prepared to conspire regarding vandalism is allowed to continue to practise. Should the regulator take an interest in that matter? Instead of being grateful, it prosecutes the person who brought the matter to its attention.

It was no surprise that the Fiscal said the case was not about David McPherson and Neil McPherson. The Complainers do not want the case to be about them. However, the Tribunal might wonder why those individuals are not present. The case/hearing xxx is all about them. Everything that the Respondent did had a connection to the McPhersons.

The Respondent made mistakes. His online exchanges with David McPherson were intemperate. The reference to the SPSC was an error. However, in isolation or combination, these do not come anywhere near meeting the test for professional misconduct.

Mr Ross urged the Tribunal to consider the whole circumstances of the case. Very few facts are disputed. The case proceeds on the basis of the joint minute adding to the admissions already made.

Mr Ross noted that the communication with David McPherson was intemperate, but it occurred outside the workplace. While that does not absolve the Respondent, a higher standard must be reached before professional misconduct is engaged. This was a private communication on Facebook Messenger. It was not published on Facebook. The Tribunal can only have a snapshot, but comparing the Respondent's messages to the ones he received, one can get a flavour of the type of abuse the Respondent was getting from David McPherson. By 2015, David McPherson was referring to the Respondent and his parents as "rats" and there was reference to having to speak loudly enough for the Respondent to hear. The Tribunal can see the extent of the abuse that the Respondent was subjected to by David McPherson in 2016 in the Respondent's productions at Part A. There is no comparison in the gravity of the language employed between what David McPherson said and the Respondent's responses.

Mr Ross noted that the Fiscal said that provocation did not affect culpability. Mr Ross submitted that proposition could not possibly be correct. Provocation can reduce murder to culpable homicide. It does

not just have an impact on penalty. It changes the character of the crime. The Tribunal can take this into account. If the Respondent had never met David McPherson before, found his profile online and then engaged in the language used in Schedule A, that would be much worse than in the present circumstances where he was on the receiving end of racist abuse.

Although the messages did not put him in a good light, the Respondent still provided them to the Law Society. He was acting in good faith. He was seeking the assistance of the Law Society.

Neil McPherson assisted in a criminal conspiracy. He was prepared to conspire with a complete stranger in a plan to vandalise the Respondent's home. The Respondent's natural instinct was to cover his tracks. The way in which he went about that was regrettable. He could have just said there was no vandalism, or said other things which did not involve the SPSC. Although his conduct was erroneous, it falls short of professional misconduct.

Mr Ross noted that Scott Reid contacted the Respondent, not the other way around. The Respondent's first response was to warn him off. Thereafter a relationship began in which it became obvious that Scott Reid intended to make a complaint to the Law Society about Neil McPherson. The Respondent knew that Neil McPherson had disclosed information relevant to Scott Reid to Mr D as "Mr C". When Neil McPherson contacted "Mr C", he attempted to legitimise his involvement by providing information relevant to the complaint made against the Respondent which involved Scott Reid. Was Scott Reid not entitled to know that his former solicitor had breached data protection rules? There was a public interest in Scott Reid knowing that Neil McPherson had breached the Data Protection Act. Yet the Law Society hold it against the Respondent. The Respondent was not in a solicitor-client relationship with Scott Reid. Scott Reid was consulting the PDSO in Ayr. There was no attempt to dissuade him from seeing the PDSO lawyer. The Respondent was not independent. He had an interest in a complaint being made against Neil McPherson. He did not want his house vandalised. He did not want to experience the name-calling and anti-Semitic abuse. The more people who complained, the better.

There are no loan documents pertaining to the Respondent's payment of £800 to Scott Reid. However, the Tribunal has something better than documentation – context in the form of the messages between the Respondent and Scott Reid. There was no solicitor-client relationship. Scott Reid wanted to start a new life in Belfast (not that far from Ayrshire). He was not proposing a trip to the south of Spain or the Virgin Islands, where criminals sometimes flee. The behaviour was reasonable in the circumstances. It would have been different if the parties were in a solicitor-client relationship. However, Scott Reid was not a client, although the Respondent was assisting him.

If Scott Reid had no reason to complaint about Neil McPherson and the Respondent offered him cash to do that, the situation would be different. However, the Tribunal can see that Scott Reid had a legitimate complaint against Neil McPherson. It was in the public interest that he pursued this. The Respondent should be thanked, not prosecuted.

Mr Ross said that he had no quarrel with the test for misconduct set out in Sharp. However, the Bennett, Docherty and Porter cases were of no use at all to the Tribunal. All those cases proceeded on agreement. The Respondents in those cases admitted that they were guilty of professional misconduct. There was no decision for the Tribunal to make. This is a different situation. The language in Bennett was much worse than the Respondent's. Porter involved language directed towards a client. Docherty involved threats to the person purchasing the home of the solicitor's father. Their language was not aimed at an abuser.

Mr Ross highlighted that to find professional misconduct, the Tribunal would have to be satisfied that the conduct was both a serious and reprehensible departure from the standards of competent and reputable solicitors. He referred the Tribunal to Diggins-v-Bar Standards Board 2020 EWHC 467 and Khan-v-Bar Standards Board [2018] EWHC 2184. He also referred to Wingate noting that, in every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public. Mr Ross submitted that the Respondent's behaviour was not trivial or inconsequential or a trivial lapse. However, it was also not serious and reprehensible. Given the disgraceful racial abuse he was subjected to at the hands of Neil and David McPherson, it his conduct was excusable and forgivable.

DECISION

The Tribunal considered the Complaint, Answers, Joint Minute, Productions and the Respondent's evidence. The Tribunal noted the content of Jelina Rahman's affidavit, but did not consider that it added much to the evidence already available to the Tribunal. The Tribunal decided that very little weight, if any, could be given to the evidence contained within Mr D's statement. The statement was not sworn testimony and had not been tested by cross-examination. Most of the facts in the case were admitted. Taking the agreed facts, the productions and the witness evidence into account, the Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in the manner set out in its findings in fact.

The Complainers alleged that the conduct breached Practice Rules B1.2, B1.14.1 and B1.14.2. Rule B1.2 provides that solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question. They must not behave in a way that is fraudulent or deceitful. Rule B1.14.1 provides

that solicitors must act with other regulated persons in a manner consistent with persons having mutual trust and confidence in each other. Rule B1.14.2 prohibits communication with a person known or believed to be a client of another regulated person except in certain specified circumstances. The Complainers alleged that the Respondent's behaviour was likely to bring the profession into disrepute. It was noted that his conduct on social media had not been in accordance with the Complainers' social media guidance. The Tribunal noted that breach of a practice rule may constitute professional misconduct, but such a breach will not automatically lead to a finding of professional misconduct.

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.”

The Tribunal had to consider whether the conduct in this case represented a serious and reprehensible departure from the standards expected of competent and reputable members of the profession. It was necessary to consider all the circumstances and the degree of the Respondent's culpability. In all cases, the question is one of fact and degree.

Many of the allegations made against the Respondent concerned behaviour in his private life. Solicitors are bound to uphold the standards of the profession even when they are not directly engaged in their work. However, they are not expected to be “paragons of virtue” (Wingate & Evans v SRA: SRA v Malins [2018] EWCA Civ 366).

The Respondent suggested his behaviour did not meet the test for professional misconduct because of the significant provocation which was present. Parties made submissions regarding the applicability of the law of provocation to disciplinary proceedings. The Tribunal considered that provocation was best considered during its assessment of the whole circumstances of the case and the context in which the Respondent's conduct occurred. Based on the productions lodged in this case, and his own evidence, the Tribunal accepted that the context of the Respondent's conduct was that he had been the victim of entirely

unacceptable anti-Semitic and other abuse and harassment for many years at the hands of another solicitor and a former solicitor.

Mr Ross put particular emphasis on the fact that the Respondent was before the Tribunal but that Neil McPherson appeared not to have been called to account for his behaviour. The Tribunal considered Mr McPherson's conduct as part of the context of the alleged wrongdoing by the Respondent. However, the Tribunal's focus had to be on the Complaint which was before it. That Complaint was against the Respondent, not Neil McPherson or others, irrespective of how unsavoury the behaviour of other solicitors might have been.

During his evidence, the Respondent expressed clearly his view that he had a responsibility to seek out those with anti-Semitic or racist views and expose them. While this can sometimes be appropriate, the Tribunal also bore in mind that solicitors have certain professional duties which cannot be overlooked when pursuing such aims.

The Complainers alleged that the Respondent had been dishonest. The Tribunal had regard to the test for dishonesty described in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. According to that case, the Tribunal should first ascertain subjectively the actual state of the individual's knowledge or belief as to the facts. When that is established, the question of whether his conduct was honest or dishonest is determined by applying the objective standards of ordinary decent people.

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 to a solicitor's private life as well as his professional life. According to Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366, integrity is a broader concept than dishonesty. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. Integrity connotes adherence to the ethical standards of one's own profession and involves more than mere honesty.

Dorothy, Neil and David McPherson (Findings in fact 7.2-7.4)

The Respondent engaged in intemperate Facebook Messenger conversations with David McPherson between 2013 and 2015. In the course of those conversations, he sent insulting messages to another solicitor, which included comments about his parents ("the Schedule A exchange"). The messages at Part A of the Inventory of Productions for the Respondent demonstrated the continuing tenor of the

conversation between these individuals, but these messages occurred in 2016 and were not directly relevant to the complaint about the Respondent's conduct in 2013 and 2015.

Focussing on the content of the exchanges between 2013 and 2015, the Tribunal noted that both parties had used abusive and insulting language in a private conversation between two adults, which did not relate in any way to their professional work. Both parties were free to leave the conversation at any time. The Respondent's comments in Schedule A were not exemplary and it is regrettable that these comments were ever made. However, when considered in context, they did not lack integrity or constitute a serious and reprehensible departure from the standards of competent and reputable solicitors. The Tribunal therefore found the Respondent not guilty of the charges pertaining to Dorothy, Neil and David McPherson (averments of misconduct 5.1.5, 5.3.2, 5.1.6, 5.1.7 and 5.1.8).

Facebook Group (Findings in fact 7.5 and 7.10)

The Respondent received a series of screenshots of a text conversation. He believed the participants of that conversation to be David McPherson and his former client, Mr A ("the Schedule C exchange"). The content of those messages was extremely crude and offensive, containing racial, sectarian and anti-Semitic slurs, sexual insults and other derogatory language.

On 17 July 2017, the Respondent sent the Schedule C exchange to Neil McPherson, as the employer of David McPherson. In November 2017, the Respondent published the Schedule C exchange on a closed Facebook Group for criminal lawyers, which had approximately 80-100 members. When the Respondent published the Schedule C exchange to his closed Facebook Group, he made veiled references to two solicitors in terms which were insulting and were also likely to lead to identification of those solicitors ("the Schedule B comments").

The Tribunal considered that the Respondent's assessment that "Mr B" was in fact David McPherson, was reasonable. David McPherson was a solicitor, and it was not inappropriate to forward the messages to his employer in the circumstances. However, the publication of the messages to a Facebook Group of 80-100 other lawyers was highly inappropriate. The Schedule C exchange contained grossly offensive material and insults about named individuals. The appropriate course of action would have been to report these messages to the police and the SLCC. Publishing them to the group meant that the Respondent lost control of the messages and this grossly offensive material could potentially have had a much wider audience. The immediate audience were likely to know that the Respondent's description of a "*deranged lunatic and his equally dangerous and deranged lunatic son*" referred to Neil and David McPherson. The Respondent noted that publication had allowed another crime to be reported to police. However,

this end did not justify the means. The Tribunal considered that the Respondent's decision to publish the Schedule C exchange to the Facebook Group accompanied by the comments at Schedule B was a breach of Rule B1.14.1 and demonstrated a lack of integrity. The Respondent had explained that he wanted to spread the word and warn others in the profession about the behaviour of the McPhersons, but he could have done so without sharing the exchange in Schedule C and without using the language set out in Schedule B. When sharing the full exchange of messages, the Respondent had no control over what other members of the Group might choose to do with the exchange. It was a serious and reprehensible departure from the standards of competent and reputable solicitors and was therefore professional misconduct (averments of misconduct 5.1.9 and 5.2.4).

Respondent's correspondence with regulator (Findings in fact 7.6-7.8)

Neil McPherson made a complaint to the SLCC about the Respondent. In his response to that complaint, the Respondent said Neil McPherson had assaulted people, that he "targeted" individuals and that a court journalist was terrified of him. On 6 December 2017, the Respondent sent an email to the Law Society describing Neil and David McPherson as anti-Semites. He referred to being on the receiving end of sectarianism and threats of violence. He called Neil McPherson an extremely threatening, dangerous and unpredictable individual. He said that Neil McPherson was violent and had assaulted others. The Respondent called Neil McPherson "crazy". He also characterised the comments made by Neil McPherson as "lies".

While a solicitor does not have carte blanche to say absolutely anything to a regulator in response to a complaint, solicitors must also have freedom to respond to complaints made against them. They must be able to make points that may be unpalatable to the complainer and refute complaints made against them. That includes comment on the truthfulness of the allegations. The language employed by the Respondent in his correspondence with his regulator was not so intemperate or insulting that it would satisfy the test of being a serious and reprehensible departure from the standards of competent and reputable solicitors. The Tribunal therefore found the Respondent not guilty of the charges pertaining to the Respondent's correspondence with his regulators (averments of misconduct 5.1.7).

Mick Napier/SPSC (Findings in fact 7.10-7.13)

In 2019, the Respondent saw a post on Facebook by an individual called "Mr C". The Respondent knew that the person behind the Mr C profile was in fact a friend of his called Mr D. "Mr C" had written, *"A certain Jewish lawyer woke up this morning to find "Free Palestine" spray painted rather prominently No idea who was responsible"*.

The Respondent commented below that post,

“Idiocy. Typical spsc behaviour. Criminal”.

The SPSC is the Scottish Palestine Solidarity Campaign. The Respondent knew that there was no vandalism to his property. He knew that the SPSC was not involved in any vandalism to his property.

The Respondent explained to the Tribunal that the “Mr C” profile had been set up by Mr D to gather intelligence on potential threats to the Glasgow “Friends of Israel” stall. Mr D under the guise of “Mr C” had commented on the Respondent’s crowdfunding page. Neil McPherson made contact with “Mr C” after seeing this comment. Neil McPherson and “Mr C” entered into correspondence by Facebook messenger and email. On the face of the productions provided to the Tribunal, “Mr C” sent a message to Neil McPherson saying he had been up at the Respondent’s house *and “didn’t want to spray free Palestine on the wrong house!”*. He asked for information about the Respondent’s house and car (Production B13 for the Respondent). Neil McPherson apparently offered “Mr C” details about the Respondent’s, house and details of his cars, including their registration numbers (Production B14 for the Respondent).

The Respondent said that when he saw “Mr C’s” post about spray paint, he panicked and was concerned that Neil McPherson, who lived close to him, would know that there was no vandalism to the Respondent’s house and might suspect that he had been set up. The Respondent said that he tried to think of what a person would say if their house had been vandalised in the manner described and he decided to make a comment saying it was typical SPSC behaviour. Knowing that there was no vandalism, and that the SPSC was certainly not responsible for any graffiti at his property, the Respondent implied that this organisation had carried out a criminal act. This might have had very serious consequences for the SPSC and its members. It was a grave error of judgment in the circumstances.

The Tribunal took into account the context of the Respondent’s conduct which was that he believed a solicitor was plotting with another party to damage his property. This must have been of serious concern to him. The Respondent may have panicked on seeing the post about the spray paint. However, he failed to explain in what way identifying an innocent party as having committed a crime might prevent Neil McPherson finding out that the Respondent’s house had not been vandalised. There were many other comments that he could have made in response without referring to the SPSC if that had been his intention. His explanation lacked credibility. The Respondent’s action lacked integrity and constituted a serious and reprehensible departure from the standards of competent and reputable solicitors. He was therefore guilty of professional misconduct (averments of misconduct 5.1.1 and 5.2.1).

Scott Reid (Findings in Fact 7.14-7.28)

On 11 September 2018, the Respondent withdrew from acting for a client, Scott Reid. The client consulted Neil McPherson Solicitors. The Respondent sent five text messages to Scott Reid on 14 September 2018 indicating that he had reported Scott Reid's new solicitors to the police and the Law Society for sending him racist and threatening messages. He sent further messages on 22 September 2018 referring to the intimidation and harassment he had received from Neil McPherson. He reported that Neil McPherson had been to jail before and that he and his son were under investigation for other criminal matters. Scott Reid asked the Respondent not to contact him again. The Respondent sent another two text messages to Scott Reid on 22 September 2018. Taking all of the Respondent's contact with Mr Reid after 11 September 2018 into account, the Respondent's actions breached Rule B1.14.1 and B1.14.2 and were a serious and reprehensible departure from the standards of competent and reputable solicitors. He was therefore guilty of professional misconduct (averments of misconduct 5.1.3, 5.2.2, 5.3.1 and 5.4.1).

In April 2019, Scott Reid contacted the Respondent. The Respondent encouraged Scott Reid to make complaints about Neil McPherson. He told him that Mr McPherson had released his data unlawfully to another. He advised him of the appropriate bodies to contact if he wished to report this. The Respondent drafted and delivered the complaint to the SLCC. The Respondent encouraged Mr Reid to make complaints to the police.

Scott Reid repeatedly indicated his intention to record his conversation with Neil McPherson. The Respondent did not dissuade him from doing so but did try to discourage him from meeting Neil McPherson at all. The Tribunal was not satisfied that the Respondent implicitly encouraged or supported Scott Reid to record the meeting. He failed to dissuade him from doing so but there was no positive obligation upon the Respondent to do that. The Respondent was therefore found not guilty of this allegation of misconduct (averments of misconduct 5.1.4 and 5.2.3).

Following the complaint to the SLCC, the Respondent thanked Scott Reid for his assistance. He said that he "owed him". Shortly thereafter, Mr Reid indicated he was in a difficult financial situation. The Respondent gave him £800, which parties apparently considered to be a loan. The text messages show that there was at least at the beginning, a willingness by Scott Reid to repay the money. However, there were no written terms for a loan. No interest was charged. The Respondent has not sought repayment of the £800. The Respondent said he was very relaxed about repayment. He had loaned money in the past without expectation that it would be paid within months or years. In this case, he was content to loan £800 to a person knowing that he might never receive that money back again.

In 2019, Scott Reid was not a client of the Respondent. The provisions in the criminal code of conduct about lending to clients therefore do not apply. However, lending money to this individual in these circumstances was a serious error of judgment by the Respondent. Scott Reid had previously been a client of the Respondent. There was no other social or business aspect to their relationship. The Respondent drafted a complaint against Neil McPherson to the SLCC for Scott Reid and gave him advice about how to complain to various bodies about alleged breaches. These were therefore aspects of a professional connection between them. The Respondent ought to have been cautious about lending money in these circumstances. He confirmed that, although he had lent money to many people in the past, these had been friends and family members and he had never lent money to an ex-client previously. While the Respondent may not have intended the payment to Scott Reid as in any way connected to Scott Reid's complaint to the SLCC, the Tribunal was concerned about the perception that the Respondent's loan to Scott Reid would create in the circumstances. The Respondent had made it clear that he was replying on Scott Reid to support his attempts to have Neil McPherson's behaviour dealt with, and in the circumstances, making a payment to Scott Reid gave the impression of being a *quid pro quo*.

The Respondent encouraged Scott Reid to make complaints to the police, ICO and SLCC. He assisted him to draft the complaint to the SLCC and delivered it to the SLCC offices himself. He did this at a time when the Respondent had also complained to the police and the SLCC about Neil McPherson. The Respondent had an interest in Scott Reid's complaints. From his perspective, the more people who complained about Neil McPherson, the better. Once the complaint was submitted, the Respondent indicated that he "owed" Scott Reid. Shortly thereafter he made a payment of £800 to him. At the same time, he asked Scott Reid to keep in contact with him in case he needed any further assistance with regard to the complaints. He continued to encourage Scott Reid to contact the police. He referred to Scott Reid as a "valuable asset".

The Respondent said that the loan was entirely innocent and that he was just trying to help out a person in need. The Tribunal could understand why the Respondent was keen to bolster his own case with other complaints against Neil McPherson. He perceived himself to be the victim of a campaign of abuse and harassment. He considered that he was having little success in having this addressed by the police or the Law Society. However, he lost his professional independence and objectivity in this situation. The connection between these two parties and their shared purpose in pursuing complaints against Neil McPherson meant that any payment from the Respondent to Scott Reid ran the risk of being perceived on any objective assessment as suspicious and a *quid pro quo* for the complaints. The conduct was therefore likely to lower the profession in the estimation of the public. The Respondent's action lacked

integrity and constituted a serious and reprehensible departure from the standards of competent and reputable solicitors. He was therefore guilty of professional misconduct (averment of misconduct 5.1.2).

SUBMISSIONS IN MITIGATION

At the continued virtual hearing on 27 April 2023, the Tribunal delivered its decision orally. It invited parties to make submissions in mitigation, and on publicity and expenses.

The Fiscal referred the Tribunal to a previous finding of unsatisfactory professional conduct against the Respondent in which he had posted online comments calling people, among other things, “scummy racists” and “racist bullies”.

Mr Ross accepted that a finding of unsatisfactory professional conduct had been made against the Respondent. The case resulted in a fine of £1750. Mr Ross noted that the Respondent has practised as a solicitor since 1995. There is only one single incident of unsatisfactory professional conduct on his record in 27 or 28 years of practising and it resulted in a fairly modest penalty.

Mr Ross indicated that between 2018 and December 2021, the Respondent cared for his mother who had Alzheimer’s disease. This was an upsetting and stressful time. It affected the Respondent’s mental health. The Respondent suspects the pressure caused by his mother’s condition may have impaired his judgement in relation to the matters which were the subject of this Complaint.

Mr Ross said that the Respondent wanted the Tribunal to know that he feels completely let down by the Law Society of Scotland. It has failed to deal with this situation within the Scottish legal community. The Respondent was able to prove racist abuse in deeply offensive terms. He complained in 2016 but now, in 2023, the Law Society of Scotland has done nothing to protect him from the racial abuse he received and continues to receive. Mr Ross asked what a solicitor in the Respondent’s position should do. The Respondent drew the Law Society’s attention to the situation. Ironically, having brought the messages to the attention of the regulator, it did not prosecute the wrongdoers, but instead used the material the Respondent provided to prosecute him. Understandably, the Respondent feels completely let down by the Law Society’s treatment. The exchange between Mr A and David McPherson also contained deeply offensive abuse about the Respondent.

The Respondent ended up in a situation where the Respondent had material which supported the allegation that a practising solicitor had conspired with an individual to attack his home. He reported to

this to the Police, Crown Office and the Law Society of Scotland. As far as he knows, no prosecutions have been instigated.

Mr Ross referred to the provocation which the Respondent had experienced. He said that it could not be discounted and was mitigatory. It would be difficult to find something more provocative than calling the Respondent “Shylock” or “Adolf Berlow”. The whole circumstances were highly unsavoury.

With reference to the complaint by the SPSC, Mr Ross reminded the Tribunal that the Respondent had admitted in evidence that there had been an error on his part. Whatever provocation, it had been inappropriate to draw that organisation into the dispute. It was clear that the Respondent regretted doing this. It would have been possible to achieve the objective of exposing Neil McPherson in a different way. Mr Ross invited the Tribunal to take account of the Respondent’s acknowledgement of that.

With reference to the publication of information on the closed Facebook page, Mr Ross said he could see that the legal profession may be diminished in the eyes of the public by the publication of a private dispute. On the other hand, the Respondent set up the group so that sole practitioners could make contact with agency practitioners. He knew that those members might be minded to instruct Neil and David McPherson. He was motivated in part to make the group aware of the way these individuals communicated with their clients. The messages constituted a fairly shocking exchange. Having brought the matter to the attention of the Law Society, and that body having done nothing, the Respondent published the exchange. Publishing or not publishing did not assist the standing of the profession either way. Publication could diminish the reputation of the profession, but allowing Neil and David McPherson to continue practising would also do that. The Respondent’s motivations were good.

Mr Ross noted that Scott Reid contacted the Respondent. The parties were not in a solicitor-client relationship but the Respondent assisted Mr Reid with his complaint against Neil McPherson. It is clear that the Tribunal has understood the Respondent’s motivation. A loan was made and parties expected it would be repaid. The reason for making the loan was to allow Mr Reid to accept the offer a job in Belfast. It would be much more serious if this had been a gratuitous payment.

In summary, Mr Ross said that the Respondent had been a practising solicitor for many years with only one lapse, for which he received a fairly modest penalty. He did not do anything until he was attacked in a grotesque and racist fashion while the Respondent was caring for his dying mother. In these circumstances the Tribunal could deal leniently with the Respondent.

With regard to expenses, the Fiscal noted that the Law Society had been successful. The Tribunal had made a finding of professional misconduct. It would be artificial to split expenses. The Respondent had not communicated his acceptance of any aspect of professional misconduct prior to the hearing. A full unrestricted hearing was therefore required. The Fiscal moved for expenses on the usual scale. If the Tribunal was not with him on that, he suggested a 20% reduction only.

The Fiscal indicated that there was a risk to the police and professional conduct investigations if the matter was given publicity, even if this was an unconscious effect. He suggested that it was appropriate to fully anonymise the decision, including the names of David and Neil McPherson. However, as “jigsaw identification” would be possible, it would also be appropriate to defer publication of the decision until criminal and disciplinary proceedings are concluded. He referred the Tribunal to the case of Law Society-v-George Morton. The hearing took place in 2015 but the decision was not published until 2019. He noted that the McPhersons had indicated that they did not wish the matter to be given publicity, and he forwarded emails to the Tribunal Office in support of this. No views on publicity had been expressed by Mr Napier, or Mr Reid, who could not be contacted. The Fiscal submitted that there would be a risk to the interests of justice if David and Neil McPherson were named in the decision. He had no opposition to other individuals being named in the decision.

Mr Ross agreed that there should be no publicity of the decision. The allegations against Neil McPherson were serious but as yet unproved. There could still be a criminal prosecution by Crown Office or a private prosecution by the Respondent if authority is obtained for that. It is possible that any publicity of these proceedings could support a claim by Neil McPherson that he could not get a fair trial. The safest course would be to order no publicity or to restrict it in a way that removes the risk that he can be identified, although Mr Ross could not suggest a way to do that. Neil McPherson is still practising as a solicitor and has asked for that the matter is not given publicity. It would be appropriate to defer publicity until the position becomes absolutely clear.

Mr Ross said that he accepted that expenses follow success. However, it was appropriate to restrict the expenses the Respondent had to pay. He suggested that it would be appropriate to do that to the extent of 50%. It would have been possible to conclude the case in one day rather than two if the Complaint had been restricted to the matters in which the Tribunal made findings of professional misconduct. A lot of the Tribunal’s time had been taken up with the David McPherson complaint which had not been found to be established.

The Tribunal asked the Fiscal whether the Complainers had any information regarding potential criminal or regulatory proceedings which might assist the Tribunal when making a decision on publicity. The Fiscal said there are eight ongoing conduct investigations involving the names of either the Respondent, David McPherson or Neil McPherson. The police were investigating certain things which form part of those investigations. The Complainers' investigations are on hold until the police investigation is concluded. The Complainers have not had intimation that the police investigations have been completed.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal considered the aggravating and mitigating factors in the case. Aggravating factors included the previous finding of unsatisfactory professional conduct which involved similar behaviour, the lack of remorse and insight demonstrated by the Respondent during his evidence, the course of conduct, and the detrimental effect on the reputation of the legal profession. Mitigating factors included the substantial provocation involved in the case and the difficulties the Respondent was experiencing in his private life. In all the circumstances, the Tribunal considered that the appropriate sanction was a censure and a fine of £2,500. The misconduct in context was at the lower to middle end of the scale. There was no requirement for supervision of the Respondent's professional practice or for public protection.

The Tribunal ordered that publicity should be given to the decision and that publicity should include the names of the Respondent and the Secondary Complainers. There was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests. However, given the concerns raised by both parties, publicity will be deferred until the conclusion of any associated criminal proceedings or confirmation that there will be no such proceedings. There was no requirement to defer publicity pending the outcome of related disciplinary proceedings.

The appropriate award of expenses was one in favour of the Complainers. However, to reflect the Respondent's degree of success, the Tribunal decided that the Respondent's liability should be limited to 80% of both the expenses of the Complainers and the Tribunal.



Catherine Hart
Vice Chair