

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

**FINDINGS**

**in Complaint**

**by**

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

**against**

**MS A, Solicitor**

1. A Complaint dated 17 May 2011 under the Scottish Solicitors' Discipline Tribunal Procedure Rules 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Ms A, Solicitor (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 23 August 2011 and notice thereof was duly served on the Respondent.
4. The hearing took place on 23 August 2011. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented by Mr B, her solicitor.

5. A Joint Minute was lodged admitting the averments of fact in the Complaint subject to some amendments.
6. The Tribunal found the following facts established
  - 6.1 A Complaint was made by the Council of the Law Society of Scotland. The Secondary Complainer is The Scottish Children's Reporter Administration. No compensation was sought.
  - 6.2 By letter dated 29 October 2009 The Scottish Children's Reporter Administration (SCRA) submitted a Complaint to the Scottish Legal Complaints Commission (SLCC). The SLCC considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Council to investigate.
  - 6.3 By letter dated 20 January 2010 the Council wrote to the Respondent intimating their obligation under the 2007 Act Section 47(1) to investigate complaints relating to the conduct of enrolled Solicitors. The letter advised that the complaint was based on consideration of her state of sobriety when she attended a Children's Hearing in September 2009 acting as a representative of a client.
  - 6.4 The Respondent replied in full by letter of 10 March 2010 indicating that she had consumed some wine at lunchtime on the day in question due to stresses in her life.
  - 6.5 The Council proceeded with an investigation of the facts. During the investigation information was received from the SCRA and it became clear that there had been an incident at a Sheriff Court in October 2009 when the Respondent was intoxicated.

6.6 In October 2009 the Respondent attended a Sheriff Court at 2pm. She was instructed to present an appeal against a decision of the Children's Hearing on behalf of her clients. She began to address the Sheriff in a confused and rambling manner. She was staggering and unsteady on her feet. The Sheriff advised her that he believed she was unfit. She stated that she was not but had swine flu'. He asked her again and indicated that he was of the view she was unfit. She indicated that if he thought she was under the influence of alcohol she would withdraw. He confirmed that was his view and she withdrew.

The Respondent was under the influence of alcohol and unfit to appear in court or to represent her clients. The appeal was conducted by one of the appellants.

6.7 An additional complaint was intimated to the Respondent in relation to that incident. By letter dated 26 August 2010 the Respondent confirmed that she had been receiving treatment for flu around the time of the appeal hearing and but accepted the comments of the SCRA and accepted that she was unfit to conduct the appeal hearing.

6.8 The Council compiled an Investigation Report, a copy of which was intimated to the Respondent in a letter dated 18 October 2010. The Council provided a Supplementary Report to the Respondent on 3 December 2010 and intimated that the complaint would be considered by the Professional Conduct Committee on 16 December 2010.

6.9 On 16 December 2010 the Council's Professional Conduct Committee considered the matter and determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be

expected of a competent and reputable Solicitor, that it appeared to be capable of being proved beyond reasonable doubt and could thus amount to professional misconduct. It further determined that the Respondent should be prosecuted before the Scottish Solicitors Discipline Tribunal.

7. After hearing submissions from the Respondent's solicitor and having considered the matter very carefully, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
  - 8.1 Her appearing before a Sheriff in an unfit state to conduct appeal proceedings on behalf of her clients.
  - 8.2 Her failing to act in the best interests of her clients and failing to accord the Court with due respect and courtesy.
8. Having heard the Solicitor for the Respondent in mitigation and having heard submissions on publicity and expenses, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 23 August 2011. The Tribunal having considered the Complaint dated 17 May 2011 at the instance of the Council of the Law Society of Scotland against Ms A, Solicitor; Find the Respondent guilty of Professional Misconduct in respect of her appearing before a Sheriff in an unfit state to conduct appeal proceedings on behalf of her clients, failing to act in the best interests of her clients and failing to accord the Court with due respect and courtesy; Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision but this publicity

shall not contain any information that would allow the identification of any of the parties involved.

**(signed)**

**Malcolm McPherson**

**Vice Chairman**

10. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

**IN THE NAME OF THE TRIBUNAL**

**Vice Chairman**

**NOTE**

Ms Johnston advised that there had been ongoing discussions and a Joint Minute had been adjusted agreeing the averments of fact in the Complaint. The Complaint was amended to delete the word “drunk” in line 6 and 8 of Article 4.5 of the Complaint and substitute therefore the word “unfit” and the deletion of the words “through alcohol consumption” in line 11 and 12 of Article 4.5 of the Complaint. The averments of professional misconduct were not admitted and the Tribunal heard submissions in respect of whether the admitted facts amounted to professional misconduct.

**SUBMISSIONS FOR THE RESPONDENT**

Mr B explained on behalf of the Respondent that on the day in question the case concerned family proceedings and dealing with the supervision of children and was a closed Court hearing. At the time the Respondent was suffering from swine flu and had self medicated with benylin. She had consumed a glass of wine at lunchtime and this combined with the effects of the flu and benylin led her to appear unsteady and incoherent when she appeared before the Sheriff. When the Sheriff enquired as to whether she was fit to continue, she immediately withdrew. No members of the public were present and the Respondent did not do anything inappropriate apart from being unsteady on her feet. Mr B pointed out that there had been no complaint from the client who is still in contact with the Respondent and was supportive of her. There was no suggestion that the Respondent had prejudiced her client’s case. Mr B stated that it was clear that at the time the Respondent was an alcoholic. This catalytic event made her hit rock bottom and resulted in her realisation of what she was doing to herself. Prior to this she had thought she was coping.

Mr B referred to a letter from the Sheriff who indicated that a few days later he spoke to the Respondent and she explained her alcohol problem and apologised. The Sheriff had known her for 11 years and stated in his letter that she had always impressed him as being a knowledgeable solicitor and that this was the only occasion when her high standards had been allowed to fall. Mr B indicated that there was awareness with regard to her problem at the local bar but nobody spoke to her about it or gave her

advice. Mr B advised the Tribunal that the Respondent had now been completely dry for a period of two years. He submitted that it had not been a wilful decision on the part of the Respondent to enter the Court intoxicated but she did have a drink problem and had been drinking. It was however a combination of the flu, the alcohol and the medication that caused her to be staggering in Court.

Mr B explained that prior to this the Respondent had run her own business for 11 years and had no outstanding complaints and there had been no suggestion by the Law Society that her business had been run inappropriately. There were no creditors or dissatisfied clients. Mr B explained that the Respondent now worked for a law firm as part of a family law team and accordingly no longer had the stresses of being a sole practitioner. She worked closely with a secretary who kept an eye on her to check that she had not reverted to drinking. The firm concerned does not allow any members of staff to have a drink during working hours. Mr B stated that there used to be much more of a drinking culture at Court bars and that the Respondent, when she had started working as a court solicitor, had got in with a group of solicitors who would regularly have a drink at lunchtime.

Mr B asked the Tribunal to accept that there was no need to take any action in this case as the profession had not been brought into disrepute and alcohol was an illness. The Respondent had already lost her business, almost lost her life and had lost her son. All these things have now been restored (with the exception of her business) by sobriety and hard work. The Respondent has taken up golf and has joint supervision of her son and her rehabilitation is ongoing, Mr B submitted that the Respondent should be proud of what she had achieved. Mr B asked the Tribunal not to pass a sanction and not to award expenses against the Respondent as she was still paying back trade creditors on a monthly basis in connection with debts from her former business.

Mr B submitted that the Respondent's conduct did not amount to professional misconduct because she did not have much alcohol that lunchtime, it was a combination of factors that rendered her unfit. Mr B referred the Tribunal to the letter from the Respondent's doctor.



## **SUBMISSIONS FOR THE COMPLAINERS**

Ms Johnston explained that the prosecution had been taken by the Law Society on the basis of the Respondent appearing in Court in an intoxicated state in a high profile case where confidentiality was important. All the parties who were present thought that she was intoxicated as she was seen to be staggering and incoherent and smelt of alcohol. The Bar Officer had expressed concerns prior to the Respondent addressing the Sheriff. Ms Johnston submitted that it was the Respondent's professional responsibility to ensure that she was fit to appear in Court. Ms Johnston stated that it was accepted that alcoholism was an illness but that the Respondent was clearly aware that she had a problem. Ms Johnston pointed out that there had been an issue in March 2010 where she had also had wine at lunchtime. Ms Johnston stated that it was accepted by the Law Society that she was prescribed tamiflu and that she was ill at the time. However the Respondent took wine in a situation where she was to conduct an appeal and failed to recognise the effect that this had on her and the potential implications of that for her clients. Ms Johnston submitted that appearing as a member of the profession, the Respondent had a professional responsibility and duty not to continue when she was unfit. Ms Johnston submitted that this was sufficient to amount to professional misconduct.

## **DECISION**

On the basis of the agreed facts it is clear that the Respondent was suffering from flu and had taken medication and that this together with the wine that she had consumed at lunchtime resulted in her being unfit to appear on behalf of her clients in Court. The Respondent was staggering, unsteady on her feet and addressed the Sheriff in a confused and rambling manner. It accordingly appeared to all those who were present in Court that she was drunk. She was representing clients in a case involving children and the Tribunal consider that the Respondent continuing to represent her clients when she was in this state is clearly conduct which is capable of bringing the profession into disrepute. The Tribunal consider that the Respondent must have realised on her way into Court that she was not fit to appear and yet she continued to represent her clients and addressed the Sheriff in an unfit state. The Tribunal cannot

accept that the Respondent did not realise until the minute that she stood up to address the Sheriff that she was not in a fit state to continue. The Tribunal accept on the basis of the letter from the doctor that the Respondent had taken benylin on the day in question which contains compounds that, can in some people, cause excessive sedation. However this drug also advises on the bottle that alcohol should not be taken. Despite this the Respondent took alcohol at lunchtime prior to then appearing in Court for her client. The Tribunal consider that it was reckless of the Respondent to take alcohol when she was unwell and on medication and then continue to represent her client at Court when she must have realised she was not in a fit state to continue. The Respondent had a professional responsibility and duty not to continue when she was unfit. The Respondent's conduct resulted in her clients having to represent themselves before the Sheriff.

It is essential that solicitors maintain certain standards of conduct. The public expect solicitors to act in the best interests of their clients and maintain due respect and courtesy towards the Court. The Respondent's conduct in this case fell short of these standards. The Tribunal considered the Respondent's conduct in terms of the Sharp Test (Sharp-v-The Council of the Law Society of Scotland [1984] SC129) and also in terms of the recent Sandeman Case (Richard Allan Sandeman-v-The Council of the Law Society of Scotland [2011] CSIH 24). The Tribunal consider that the Respondent's actings in this case have sufficient gravity and culpability so as to be capable of bringing the profession into disrepute and that her actions were such as would be regarded by competent and reputable solicitors as serious and reprehensible.

In the whole circumstances, the Tribunal consider that the Respondent is guilty of professional misconduct.

## **MITIGATION**

Mr B emphasised that alcoholism is an illness and that the Respondent had now been dry for the past two years and had worked really hard to restore her life. He emphasised that the Respondent did not need a reminder about her behaviour and had

achieved a remarkable amount over the last two years and required help rather than punishment.

### **SENTENCE**

The Tribunal took account of the comments made by Mr B in mitigation and also the letter from The Respondent's doctor. The Tribunal also took account of the Sheriff's comments on her ability to represent her clients and the fact that the senior partner in the firm where she is presently working is very happy with her work. The Tribunal had sympathy for the Respondent and was very impressed by the fact that she has sorted out her life during the last two years by sobriety and hard work. It is clear to the Tribunal that what happened had been a wake up call for the Respondent and the Tribunal saw no point in imposing a sentence other than a Censure on the Respondent. The Tribunal agreed with the doctor that the Respondent has demonstrated exceptional strength and character by being able to achieve long term sobriety and the Tribunal do not believe that the public will be at risk by the Respondent continuing in practice.

### **PUBLICITY AND EXPENSES**

The Tribunal then heard submissions from the Respondent's representative in connection with publicity and expenses. Mr B asked that the Tribunal not award expenses in this case due to the Respondent's financial position and the fact that she had already been punished for her illness. In connection with publicity, Mr B asked that the Tribunal not give publicity to the proceedings in the particular circumstances of this case due to the likelihood of embarrassment to other parties including children by the press reporting on the case.

Ms Johnston asked that expenses be awarded in the usual manner as the Respondent had been found guilty of professional misconduct and pointed out that expenses should not fall to be paid by members of the profession. Ms Johnston stated that there was nothing in the Complaint that would necessarily lead to adverse publicity for other parties.

**DECISION ON PUBLICITY AND EXPENSES**

The Tribunal took account of the Respondent's limited income but given that the Respondent has been found guilty of professional misconduct the Tribunal saw no reason in this case to depart from the usual practice of awarding expenses against a Respondent where a finding of professional misconduct has been made. In connection with publicity, the Tribunal consider that giving publicity to the Decision in this case would be likely to have a detrimental effect on third parties including minors and accordingly the Tribunal Ordered that publicity be given to the Decision but that the publicity would not contain any information that would allow the identity of any of the parties involved to become known.

**Vice Chairman**