

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

FINDINGS

in Complaint

by

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

against

**IAN SAMUEL GERARD
DONNELLY, residing at 158
Stonelaw Road, Rutherglen,
Glasgow**

1. A Complaint dated 8 November 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Ian Samuel Gerard Donnelly, residing at 158 Stonelaw Road, Rutherglen, Glasgow (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 20 February 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 20 February 2008. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent

was not present but was represented by Mr Macreath, Solicitor, Glasgow.

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

6. The Tribunal found the following facts established

6.1 The Respondent is a solicitor formerly enrolled in the Register of Solicitors in Scotland. He was born on 21st August 1962. He was admitted as a solicitor on 19th July 1996 and enrolled on 24th July 1996. He was latterly employed by the firm of Lloyd Green & Co, Solicitors, Glasgow until that employment terminated on 16th August 2006. He name was removed from the Roll of Solicitors in Scotland on 1st September 2007 as a consequence of his failure to reply to a statutory notice sent to him by the Complainers on 1st March 2007.

6.2 Sometime in September 2006 the Complainers became aware that on 21st August 2006 the Respondent had been convicted of certain crimes in Glasgow Sheriff Court. After enquiry they established that on that date the Respondent pled guilty to the following charges on indictment viz that (1) “on 19 October 2005 at the premises occupied by Ms A at Property 1 you did conduct yourself in a disorderly manner and did by means of delivering a letter to Property 1, the contents of which were indecent, place said Ms A in a state of fear and alarm for her safety and did commit a breach of the peace; (2) on 1 November 2005 at the premises occupied by Ms B at Property 2, you did conduct yourself in a disorderly manner and did repeatedly request that said Ms B, then working in her capacity as a prostitute, procure for you a mother with a child under the age of 11 years to engage in sexual activity with you, request that said Ms B and her daughter, then aged 6 years, engage in

sexual activity with you and thereafter did masturbate whilst holding a photo frame containing a photograph of said Ms B's stepdaughter, then aged 10 years, thus placing said Ms B in a state of fear and alarm and did commit a breach of the peace; (3) on 3 November 2005 at 158 Stonelaw Road, Glasgow, you did have in your possession indecent photographs or pseudo-photographs of children; CONTRARY to the Civic Government (Scotland) Act 1982, Section 52A(1) and (4), between 27 February 2003 and 17 July 2003, both dates inclusive at 158 Stonelaw Road, Rutherglen and elsewhere in Glasgow, you did take or permit to be taken or make indecent photographs or pseudo-photographs of children; CONTRARY to the Civic Government (Scotland) Act 1982, Section 52(1)(a)". The Complainers subsequently established that sentence was deferred until 23rd January 2007 when the respondent was made the subject of a Probation Order for a period of 3 years conditional upon him completing 180 hours' community service and also upon him submitting to counselling. They also established that the Respondent was then also placed on the Sex Offender's Register. The Respondent did not appeal against either conviction or sentence. In light of all of the aforementioned information gained by the Complainers following enquiry they decided that it was appropriate to raise a complaint of professional misconduct against the Respondent on an ex proprio motu basis.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
 - 7.1 his committing serious criminal offences, all of which had a sexual context to them and some of which related to children of tender years.

8. Having heard the Solicitor for the Respondent in mitigation and having considered various reports lodged, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 20 February 2008. The Tribunal having considered the Complaint dated 8 November 2007 at the instance of the Council of the Law Society of Scotland against Ian Samuel Gerard Donnelly, residing at 158 Stonelaw Road, Rutherglen, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his committing serious criminal offences all of which had a sexual context to them and some of which related to children of tender years; Given that the Respondent had already had his name administratively removed from the Roll of Solicitors in Scotland; Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but will not include the names or identify in any way the victims of the Respondent's actions.

(signed)

Gordon Cunningham

Chairman

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

IN THE NAME OF THE TRIBUNAL

Gordon Cunningham

Chairman

NOTE

The Respondent was not present at the hearing but was represented by his solicitor, William Macreath. A Joint Minute was lodged on behalf of the Respondent admitting the facts, averments of duty and averments of professional misconduct. No evidence was accordingly led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir expressed his appreciation to the Respondent and his agent for cooperating with the Law Society and entering into a Joint Minute. Mr Muir stated that the facts in the Complaint spoke for themselves and that the Respondent had been involved in a deplorable course of conduct. Mr Muir explained that the Respondent's name had been administratively removed from the Roll of Solicitors and accordingly the Tribunal's powers were limited to those of Censure and Fine.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath advised that the Legal Defence Union had been involved in this matter since October 2006. Mr Macreath stated that at the very outset he gave his client advice, which was accepted by his client, to the effect that the allegations contained in the criminal indictment were so serious in connection with his personal life that they impacted on his professional life and were sufficient to amount to professional misconduct. Mr Macreath stated that there had been a lot of national and local publicity throughout the various stages of the criminal proceedings. Mr Macreath submitted that there was no doubt that the Respondent's convictions brought the profession into disrepute but this had been conceded from the outset. Mr Macreath explained that as the Respondent's name had been removed from the Roll, it meant that if he wished to be readmitted, he would have to satisfy the Law Society's Admittance Committee that he was fit to practise and this involved a formal procedure. Mr Macreath referred the Tribunal to the psychological risk assessment reports and social enquiry report which had been prepared for the Court in connection with the criminal proceedings. Mr Macreath advised the Tribunal of the Respondent's current work and family situation and of his financial position. Mr Macreath

explained that the Respondent and his family had already been adversely affected by the substantial amount of publicity which the case had generated. Mr Macreath asked that publicity not include the identity of the victims.

DECISION

The Tribunal considered that the Respondent's conduct was disgraceful and dishonourable. A solicitor has a duty to maintain the same standard of propriety in his private life as would be expected of him in his professional life. The Respondent's conduct in this case was extremely damaging to the reputation of the legal profession. Had the Respondent's name still been on the Roll of Solicitors in Scotland, the Tribunal would have had no hesitation in ordering his name to be struck from the Roll. However, since in this case as the Respondent's name had been removed administratively in September 2007, this was not an option, available to the Tribunal. It was unclear to the Tribunal exactly why the Respondent's name had been administratively removed but the Tribunal had to proceed on the basis that the Respondent was no longer on the Roll of Solicitors. The Tribunal accordingly did not have the power to order that his name be struck off the Roll. The Tribunal considered whether a fine should be imposed in addition to a Censure. Had the Tribunal been in a position to order the Respondent's name to be struck from the Roll of Solicitors, no fine could have been imposed. The Tribunal however considered that if a fine were to be appropriate, the fine imposed would have to be the maximum fine to signal how seriously the Tribunal regarded this particular case. The Tribunal also noted that the Respondent had not asked to have his name removed from the Roll, this had been done administratively by the Law Society. The Tribunal further noted that in terms of Section 53(1)(b) if a solicitor is found guilty of dishonesty or sentenced to a term of imprisonment of more than two years a sanction of fine is not available to the Tribunal on the basis that this would be double jeopardy. The Tribunal considered that in this case, although the Complaint did not fall within the terms of Section 53(1)(b), there were similarities as the Respondent had already been dealt with by the criminal courts. Having carefully considered all the circumstances in this particular case as stated to the Tribunal, and taking into account the Reports lodged, the Tribunal considered that imposing a fine on the Respondent could be construed as oppressive. On balance, the Tribunal determined to impose a Censure on the Respondent. The

Tribunal was concerned that it should be noted that, as in previous recent cases where the name of the Respondent appearing before the Tribunal was no longer on the Roll of Solicitors, the limitation on the sanction imposed in this case should not be taken as an indication that the Tribunal did not consider to be extremely grave, the offences of which the Respondent had been found guilty. The Tribunal made the usual order with regard to expenses. In connection with publicity, the Tribunal ordered that publicity should be given to include the name of the Respondent but that this publicity should not in any way identify the victims of the Respondent's actions as this, in the Tribunal's view, would be likely to damage the interests of these victims.

Gordon Cunningham
Chairman