

**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

**ALAN ROBERT KENNEDY WATT, Watt
Law, 3 Leven Way, Cumbernauld**

Respondent

1. A Complaint dated 5 April 2023 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 Alan Robert Kennedy Watt, Watt Law, 3 Leven Way, Cumbernauld (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Nahid Khan, 19 Old Tower Road, Cumbernauld.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal fixed a virtual procedural hearing for 6 June 2023.
5. At the virtual procedural hearing on 6 June 2023, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented himself. The Tribunal fixed a virtual hearing for 31 July 2023.
6. At the virtual hearing on 31 July 2023, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by John Brannigan, Advocate.

7. The Tribunal found the following facts established:-

- 7.1 The Respondent is Alan Watt. He was born on 24 March 1968. He was enrolled and admitted as a solicitor on 29 January 1998. The Respondent commenced employment with 'Watt Law' hereinafter known as 'the firm' as a partner on 30 May 2011. The Respondent currently possesses a full unrestricted practising certificate.
- 7.2 The Secondary Complainer instructed the Respondent on 24 January 2018 in relation to a debt recovery action which she required to be defended.
- 7.3 As per the Respondent's normal practice, a terms of business letter was issued to the Secondary Complainer on 25 February 2018 confirming her instructions to represent her in defending the action. The terms of business letter made clear that the Respondent may withdraw if monies were not forthcoming in relation to any work instructed.
- 7.4 Legal aid was applied for however this was refused on 9 April 2018. A subsequent request for review was refused on 28 May 2018.
- 7.5 The Respondent wrote to the Secondary Complainer by letter on 08 May 2018 to advise that as no financing was available, he had no alternative but to withdraw from acting.
- 7.6 The Respondent wrote to Airdrie Sheriff Court on 10 May 2018 to advise that he had withdrawn from acting for the Secondary Complainer on the basis that legal aid had not been granted. He advised the Court in his letter that he had also intimated his position to the Pursuer's agent.
- 7.7 The case called on 15 May 2018 and decree by default was sought by the Pursuer. The Respondent moved to re-enter proceedings, withdraw his withdrawal and discharge the diet of debate on the basis of legal aid not being granted. The Secondary Complainer was not present in Court.
- 7.8 The presiding Sheriff enquired as to why the Respondent had informed the client not to attend given that he had withdrawn from acting. The Pursuer objected to the Respondent

re-entering proceedings. The Sheriff directed that the case would call later that day as a debate.

- 7.9 At this point the Pursuer's agent spoke to the Respondent and stated that if it was agreed that the expenses of the action to date and the expenses of the discharge of the diet of debate were conceded then she would agree to a discharge of the diet and not oppose a fresh hearing being fixed.
- 7.10 The Respondent phoned the Secondary Complainer and advised that the choice she faced was to concede up to £7,000.00 of expenses to date or up to £50,000.00 if decree was granted. The Secondary Complainer agreed to the discharge of the debate. A fresh diet of debate was eventually fixed for 9 July 2018.
- 7.11 The Respondent continued to act for the Secondary Complainer until October 2018 when a new mandate from other solicitors was received.
- 7.12 A letter of complaint was sent to the Respondent by the Secondary Complainer on 15 October 2020 stating the following:

“You will recall that you withdrew from acting on my behalf following very peculiar circumstances, being that you phoned me during a court hearing I knew nothing about and advised me that I had to either consent to a full decree being taken against me or else consent to expenses being awarded against me, for reasons that I still do not fully understand. In general, you failed to advise me properly, follow my instructions, keep me abreast of developments in my case, or even follow the courts rules and procedures in the case,

The basis of my complaint against you is that your conduct in representing me fell far below the professional standard expected of a solicitor, to the point where I felt that you were actually deliberately acting against my best interests. All in all, not only did you effectively destroy my attempts to successfully defend the case, but you cost me a significant amount of money in legal fees and other expenses.”

- 7.13 The Respondent replied to the Secondary Complainer on 22 October 2020 via letter in the following terms:

“I refer to your letter of 15th October 2020. I refute the whole contents in its entirety. Quite frankly your case was a disaster from the outset. You had previously consulted 2 other firm of Solicitors. I attempted to progress your case and protect your interests. You will recall I had to withdraw from acting as you were not prepared to pay for legal representation. I did however step back into the action to protect your position. You then chose to go elsewhere. As such I have no proposals to compensate you and indeed, I must warn you that any time I spend dealing with this matter I will raise an action for recovery of any losses which I sustain in dealing with this. Indeed, given your conduct I am of the view that you blatantly misrepresented the facts of the case. I am also considering referring this matter to Police Scotland. I trust that this brings the matter to an end.”

7.14 The Secondary Complainer submitted a complaint to the SLCC on 12 November 2020.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent not guilty of professional misconduct but considered he may be guilty of unsatisfactory professional conduct. Therefore, the Tribunal remitted the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980.
9. The Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 31 July 2023. The Tribunal having considered the Complaint dated 5 April 2023 as amended at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Alan Robert Kennedy Watt, Watt Law, 3 Leven Way, Cumbernauld; Finds the Respondent not guilty of professional misconduct; Remits the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Finds no expenses due to or by any party; and Directs that publicity will be given to this decision and that this publicity should include the name of the Respondent and the Secondary Complainer but need not identify any other person.

(signed)

Kenneth Paterson

Vice Chair

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

Kenneth Paterson
Vice Chair

NOTE

At the Hearing on 31 July 2023, the Tribunal had before it the Complaint, Answers, Authorities for the Complainers, an Inventory of Productions for the Respondent and written submissions for the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

According to the Fiscal, the case against the Respondent was narrowly focussed. It related to a breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011 and was based solely on the correspondence issued by the Respondent to the Secondary Complainer on 22 October 2020. He noted that the facts were not disputed although the Respondent denied professional misconduct.

With reference to the letter of complaint sent on 15 October 2020, the Fiscal noted that it contained a number of allegations about the Respondent's conduct which were largely irrelevant to the Tribunal's consideration today. However, it was important to note that there was no request for compensation contained in the Secondary Complainer's letter of complaint. The Respondent warned the Secondary Complainer that he would raise an action for recovery of any losses which he sustained dealing with the complaint. There was no other way to interpret this sentence. The Respondent also said that he was considering referring the matter to Police Scotland. He did not explain the basis for any complaint to the police. The threat was designed to discourage the Secondary Complainer from taking the complaint any further. In the Fiscal's submission, this demonstrated a lack of integrity and was likely to bring the profession into disrepute.

The Fiscal drew the Tribunal's attention to Law Society-v-Graeme Miller (2023) and Law Society-v-Mark Thorley (2020). He referred to the Tribunal's criticisms of solicitors who sought to restrict or impede a client's statutory rights and the public interest in the complaints system running effectively.

The Fiscal noted the reference to Law Society-v-Sarah Stuart (2023) in the submissions for the Respondent. He said there were several important distinctions between that case and the present case. Ms Stuart had accepted her email contained a threat. Her position, which was accepted, was that the threat had been included due to an oversight when drafting. This was therefore a "sin of omission not commission". The Fiscal submitted that Law Society-v-David Wilkie-Thorburn (2022) was not directly relevant to the circumstances of this case. He submitted that if the Respondent's letter of 22 October 2020 was a threat and an attempt to dissuade the Secondary Complainer from pursuing a complaint, Law

Society-v-Mark Thorley (2020) was relevant as in both cases the Respondent had subordinated the client's interests to his own. The Fiscal denied that the Secondary Complainer's letter was a claim for compensation. He referred the Tribunal to Wingate-v-SRA and SRA-v-Malins [2018] EWCA 366. Solicitors are not expected to be paragons of virtue but they do have to adhere to higher ethical standards. It was a matter for the Tribunal whether the Respondent's conduct constituted professional misconduct in the terms of the conjunctive test in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313.

SUBMISSIONS FOR THE RESPONDENT

Mr Brannigan adopted his written submissions. He agreed with the Fiscal that the issue was a narrow one. He disagreed that the content of the Secondary Complainer's letter was irrelevant. He said it was necessary for the Tribunal to consider the context of the alleged wrongdoing (Sharp-v-Council of the Law Society of Scotland 1984 SLT 313). In his submission, the Respondent's behaviour was not both serious and reprehensible.

Mr Brannigan said the Respondent was cognisant of the language he used and accepted with hindsight that it was ill-judged. He has shown insight into his conduct and is regretful. He was dealing with the issues he thought were being raised in the Secondary Complainer's letter. The Respondent's position was that the letter contained an implied claim for compensation. She referred to the Respondent costing her significant amount of money in legal fees and other expenses. The tenet of the Respondent's response was that he did not have a proposal to compensate her. He was attempting to clarify the inaccuracies in the Secondary Complainer's letter. It could have been worded better. The reference to Police Scotland was a knee-jerk reaction. However, there were no aggressive adjectives used in the letter. It simply sets out the factual position. There is no rant. There are no threats. There is no dishonesty. The Respondent responded in the way he thought best at the time. This therefore was not a serious and reprehensible departure from the standards of competent and reputable solicitors.

DECISION

In response to a letter of complaint from a former client, the Respondent said,

"I must warn you that any time I spend dealing with this matter I will raise and action for recovery of any losses which I sustain in dealing with this. Indeed, given your conduct, I am of the view that you blatantly misrepresented the facts of the case. I am also considering referring this matter to Police Scotland. I trust that this brings the matter to an end."

Solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question. In particular, they must not behave, whether in a professional capacity or otherwise, in a way which is fraudulent or deceitful (Rule B1.2 Law Society of Scotland Practice Rules 2011).

The Tribunal considered whether the Respondent's conduct met the test set out in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313. According to that definition,

“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 considered that the Secondary Complainer's letter of 15 October 2023 could reasonably be interpreted as putting the Respondent on notice that she wished to claim compensation. However, even in those circumstances, the Respondent ought not to have written to the Secondary Complainer as he did on 22 October 2023. The language used was ill-judged and was designed to prevent the Secondary Complainer pursuing the matter. There is a public interest in clients and others being able to make complaints to their solicitors. The complaint could have been handled much better.

However, when considering the whole context in which the conduct occurred, the Tribunal did not consider that the Respondent's conduct constituted a serious and reprehensible departure from the standards of competent and reputable solicitors. The letter was a response to a complaint which suggested that the Secondary Complainer might be seeking compensation. It set out the Respondent's position. It was a response about a case which the Respondent believed he had done his best for the Secondary Complainer, the complaint coming two years after she had instructed a different solicitor. It was inappropriate but was not aggressive or rude. It could not be said to have been a serious and reprehensible departure from the standards of competent and reputable solicitors.

No case referred to the Tribunal was on all fours with the present case. The Tribunal carefully considered all the cases highlighted by parties which had resulted in a finding of misconduct. Law Society-v-Wilkie-Thorburn contained a menacing text by a prosecutor suggesting that the recipient's immigration status could be reviewed. Law Society-v-Miller contained a blatant restriction on a client's right to complaint

from the very outset. The Respondent in that case continued to refer to the client to it in the face of criticism of his actions. Law Society-v-Thorley related to the Respondent inserting into a separating couple's minute of agreement, a clause requiring a party to refrain from making a complaint about him or raising any proceedings against him. He also required a party to withdraw complaints which had already been made to the Scottish Legal Complaints Commission. He wrote a letter threatening to raise court proceedings in the event that the complaint to the SLCC was not withdrawn. The Respondent's conduct was not as grave as the behaviour described in those cases.

The Tribunal considered that the case was very similar to an unsatisfactory professional conduct case summary on the Law Society's website from 13 January 2022. In that case it is reported that a solicitor, having received intimation from the SLCC that the complainer had made a complaint against him, wrote to her representative stating that he considered her to have blatantly misrepresented the matter; that he was considering reporting the matter to the police in respect that it represented a fraudulent claim; that he would consider pursuing the complainer for any losses he sustained as a result of the complaint; and stating that he trusted that the complainer would consider her position very carefully going forward.

Having considered all the circumstances of this particular case in context, the Tribunal considered that the Respondent's conduct may represent a departure from the standards of conduct to be expected of competent and reputable solicitors, even if it was not a serious and reprehensible departure. The behaviour might therefore constitute unsatisfactory professional conduct which is professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor but which does not amount to professional misconduct and which does not comprise merely inadequate professional service. Accordingly, the Tribunal found the Respondent not guilty of professional misconduct in relation to the conflict issue and remitted the complaint to the Law Society under Section 53ZA of the Solicitors (Scotland) Act 1980.

SUBMISSIONS ON EXPENSES AND PUBLICITY

The Fiscal suggested that the Tribunal should make no award of expenses. He noted that the Secondary Complainer had not responded to him about publicity.

Mr Brannigan said the Fiscal's approach to expenses was sensible. The Respondent was not in favour of the matter being given publicity but he was in the Tribunal's hands with regard to that.

DECISION ON EXPENSES AND PUBLICITY

In accordance with parties' submissions, the Tribunal made no award of expenses due to or by either party. The Tribunal noted its obligations under Paragraphs 14 and 14A of Schedule 4 to the Solicitors (Scotland) Act 1980. It ordered that publicity should be given to its decision and that publicity should include the name of the Respondent and the Secondary Complainer. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests.

Kenneth Paterson
Vice Chair