

**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, 26
Drumsheugh Gardens, Edinburgh
Complainers**

against

**JOHN FRASER TAIT, Tait
Macleod Solicitors, Eilean
Chambers, 6 Park Street, Falkirk
Respondent**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, John Fraser Tait, Tait Macleod Solicitors, Eilean Chambers, 6 Park Street, Falkirk (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Complaint was made on behalf of Brian Hodge, Achralaig, 1 Glen Shiel Grove, Dunfermline and Anne Hodge, 2 Maryfield Park, Mid Calder (hereinafter referred to as "the Secondary Complainers".)
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed that a procedural hearing on the Complaint be heard on 23 July 2015. Notice of said hearing was duly served upon the Respondent.

5. At the procedural hearing on 23 July 2015, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was not present but was represented by William Macreath, Solicitor, Glasgow. Mr Macreath confirmed that this case would be proceeding by way of a Joint Minute and a plea but that he required further time to prepare. Accordingly, the Tribunal continued the case to a full hearing on 2 October 2015.

6. At the hearing on 2 October 2015, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and was represented by William Macreath, Solicitor, Glasgow. A Joint Minute between the parties agreeing the averments of fact, duty and professional misconduct was lodged with the Tribunal. The Fiscal for the Complainers lodged written submissions, together with extracts from Smith & Barton: Procedures and Decisions of the Scottish Solicitors Discipline Tribunal. The Solicitor for the Respondent lodged four references for the Respondent. On the basis of the Joint Minute, no evidence required to be led.

7. The Tribunal found the following facts established:-
 - 7.1 The Respondent's date of birth is 5 April 1969. He was enrolled as a solicitor on 7 October 1993. Since 12 February 2009 he has been a partner in the firm of Tait Macleod Solicitors, Eilean Chambers, 6 Park Street, Falkirk.

 - 7.2 The late Mr A died on 22 June 2012. His children, the Secondary Complainers, instructed the Respondent in connection with the administration of the late Mr A's estate in July 2012. On 28 July 2012 the Respondent met with the Secondary Complainers at Ms Anne Hodge's home. During that meeting the Respondent noted the extent of the late Mr A's estate and

explained to the Secondary Complainers the various steps which would be required to ingather the assets of the estate. During that meeting the Respondent provided advice to the Secondary Complainers on the steps required to reclaim Council Tax from the local authority for the period during which the late Mr A was in hospital prior to his death. The Respondent prepared a file note of that meeting.

7.3 On 31 July 2012 the Respondent issued the firm's terms of business to the Secondary Complainers. On the same date the Respondent contacted the various financial institutions holding funds on behalf of the late Mr A. On the same date the Respondent wrote to the Revenue and Benefits Division of the City of Edinburgh Council to ask whether a rebate of Council Tax was due to the estate as a result of the late Mr A's hospital stay immediately prior to his death for the period 15 March 2012 to 22 June 2012.

7.4 On 10 August 2012 Ms B, Revenue and Benefits Officer employed by the City of Edinburgh Council's Revenue and Benefits Division, wrote to the Respondent. In her letter she advised that an exemption had been applied to the property from the date of the late Mr A's death, 22 June 2012. The letter also enclosed a "Patients in Hospital/Residential Homes" form which required to be completed and returned in respect of the Council Tax rebate relating to the late Mr A's hospital stay. On 16 August 2012 the Respondent sent the form to Ms Hodge and requested that she arrange for it to be completed by the Hospital where her late father had been resident before his death. In said letter the Respondent requested that the completed form be

returned to him for forwarding to the Revenue and Benefits Division of the City of Edinburgh Council.

- 7.5 On 22 August 2012 the Respondent spoke with Ms Hodge by telephone. During that conversation Ms Hodge instructed the Respondent to contact direct the hospitals where her father had been staying prior to his death, and confirmed to the Respondent that her late father had been an in-patient at the Western General Hospital in Edinburgh from 15 March to 8 May 2012 and an in-patient at St Michael's Hospital in Linlithgow from 8 May to 22 June 2012. During this conversation the Respondent informed Ms Hodge that there had been an overpayment of Council Tax of £109 to date. The Respondent prepared a file note of that meeting.
- 7.6 On 22 August 2012 Ms Hodge wrote to the Respondent following their conversation that same day. She stated 'I look forward to hearing from you about the claims for arrears of state pension (DWP) and overpayment of Council Tax.'
- 7.7 On 22 August 2012 the Respondent received a letter from the Department of Work and Pensions confirming that a cheque in the sum of £330 in respect of the State Pension due to the late Mr A would follow under separate cover. On 23 August 2012 the Respondent received a cheque in respect of this sum. On 24 August 2012 said cheque was encashed by the firm and credited to the estate's ledger.

- 7.8 Ms Hodge contacted the Respondent's office by telephone on 14, 15, 17 and 24 January 2013. On each occasion Ms Hodge was unable to speak with the Respondent and left messages requesting that he return her calls. The Respondent failed to return these calls.
- 7.9 On 20 January 2013 Mr Brian Hodge sent an e-mail to the Respondent. In that e-mail Mr Hodge referred to the Respondent's meeting with the Secondary Complainers of 28 July 2012. Mr Hodge noted that the Respondent had advised at said meeting that the administration of the estate would be complete within 6 months. He continued 'As we are not far from that point in time, it would be reassuring to know that everything is on track. I am aware that Anne has tried phoning you on several occasions recently and is concerned at your failure to return her calls. I look forward to your response.' The Respondent failed to respond to this e-mail.
- 7.10 On 28 January 2013 Ms Hodge sent a letter to the Respondent referring to his instruction in connection with the administration of her late father's estate. The letter referred to the Secondary Complainers' meeting with the Respondent of 28 July 2012 and noted that the Respondent 'expected settlement to be obtained by the end of January 2013, since there were no obvious complications'. The letter referred to Ms Hodge's instructions to the Respondent to complete the "Patients in Hospital/Residential Homes" form on behalf of the Secondary Complainers and his agreement to do so in order that council tax paid during the period of her late father's stay in hospital could be reclaimed. The letter stated:-

‘Since we are now approaching the end of January 2013 having had no further communication from you, we are seeking reassurance that all matters are in hand, that the deeds were in fact obtained, that the various sums of money owed have been paid to the estate and that settlement is imminent as you forecast.’

The letter proceeded to refer to the Secondary Complainers’ attempts to contact the Respondent as noted above and continued:-

‘As we have had no response from you whatsoever, not even an acknowledgement of our attempts to contact you, therefore I am now sending this formal letter of complaint regarding your handling of our late father’s affairs. In our opinion it is not only discourteous but also unprofessional to ignore completely a reasonable request for information after five months of silence and to fail to communicate with us either by phone or e-mail. As a result, we are understandably very concerned that matters may not be proceeding as we expected. I hope that the situation can be resolved to our satisfaction in the very near future. I look forward to your response.’

The Respondent failed to respond to this letter.

- 7.11 On 19 April 2013 the Respondent spoke with Mr C of the Scottish Legal Complaints Commission in connection with a service complaint made by the Secondary Complainers. The Respondent advised ‘that this would appear to be a reasonably good claim but will hopefully try and resolve matters with them [the Secondary Complainers] direct’.

7.12 On 22 April 2013 the Respondent wrote to the Halifax seeking information in connection with the late Mr A's bank accounts with the Halifax at the date of death, 22 June 2012 and at 22 April 2013. On same date the Respondent wrote to the Patient Records Department of the Western General Hospital, Edinburgh and St John's Hospital, Livingston seeking confirmation of the dates during which the late Mr A was an in-patient.

7.13 On 22 April 2013 the Respondent wrote to the Scottish Legal Complaints Commission's Mr C. In that letter he referred to Mr C's letter of 21 March 2013 and to their telephone conversation of 19 April 2013. The Respondent confirmed that he intended to contact the Secondary Complainers by telephone and letter during the course of that week. On same date the Respondent wrote separately to the Secondary Complainers. In his letters the Respondent stated:-

'Firstly, please accept my unqualified apologies for the delay in progressing matters. It is with some embarrassment that I review the file and note that nothing substantial has been done since August last year, some eight months ago. I can offer no good explanation for the delay in progressing matters.'

The Respondent noted that he would be happy to meet with either or both of the Secondary Complainers at some stage in order to discuss matters further. He proceeded to detail the progress which had been made in the administration of the estate and the matters which remained outstanding before confirmation could be obtained.

7.14 On 23 April 2013 the Respondent received an email from the Western General Hospital requesting that Mr A's next of kin

complete a consent form for the release of information in order that the hospital might comply with its data protection requirements. On same date St John's Hospital wrote to the Respondent to confirm that Mr A was admitted to hospital on 8 May 2012 and died on 22 June 2012.

7.15 On 29 April 2013 the Respondent forwarded the consent form received from the Western General Hospital to Ms Hodge to enable him to obtain details of her late father's stay at the Western General Hospital. The form which Ms Hodge was asked to sign noted, incorrectly, that the late Mr A had been resident at St John's Hospital, Livingston rather than St Michael's Hospital, Linlithgow and Ms Hodge's own address was stated incorrectly on the form. On 30 April Ms Hodge contacted the Respondent's firm to advise of the incorrect information on the consent form and declined to sign the form in its current state. Ms Hodge requested that the form be emailed to her for completion. On same date Ms D of the Respondent's firm e-mailed the amended form to Ms Hodge.

7.16 On or around May 2013 the Secondary Complainers instructed the firm of Anderson Strathern in connection with the administration of their late father's estate. On 7 May 2013 the Respondent was instructed by mandate to deliver his file of papers to Anderson Strathern.

7.17 The Respondent wrote to the Law Society on 10 June 2014 following intimation of a conduct complaint on him. In that letter the Respondent noted that he had not had sight of the file

since it was forwarded to Anderson Strathern and stated among other things:-

‘1. It has already been conceded that there was undue delay in obtaining Confirmation of the Estate of the late Mr A;

2. Once again, it has already been admitted there was a failure to communicate effectively. Unfortunately, there was not progress on the file between August 2012 and April 2013’

In that letter the Respondent also conceded the failures to return telephone calls and reply to e-mails as noted above. However he stated that no clear instructions had been received from Ms Hodge to reclaim Council Tax.

8. The Tribunal heard submissions from both parties in connection with whether or not the Respondent’s conduct amounted to professional misconduct. After full consideration of the submissions and the documents lodged, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect of the Respondent’s:

8.1 undue delay in obtaining confirmation in the late Mr A’s estate during the period from July 2012 to April 2013;

8.2 failure to follow the Secondary Complainers’ instructions, provided in August 2012, to reclaim council tax paid during the late Mr A’s three month hospital stay; and

8.3 failure to communicate effectively with the Secondary Complainers, and failure to keep the Secondary Complainers regularly informed about progress of the estate during the period from July 2012 to April 2013.

9. Having thereafter given careful consideration to the submissions made by the Respondent's Solicitor in mitigation, together with the references lodged, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 2 October 2015. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against John Fraser Tait, Tait Macleod Solicitors, Eilean Chambers, 6 Park Street, Falkirk; Find the Respondent guilty of professional misconduct *in cumulo* in respect of the Respondent's (a) undue delay in obtaining confirmation in the late Mr A's estate during the period from July 2012 to April 2013; (b) failure to follow the Secondary Complainers' instructions, provided in August 2012, to reclaim council tax paid during the late Mr A's three month hospital stay; and (c) failure to communicate effectively with the Secondary Complainers, and failure to keep the Secondary Complainers regularly informed about progress of the estate during the period from July 2012 to April 2013; 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 and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(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

Malcolm McPherson
Vice Chairman

NOTE

At the hearing on 2 October 2015 a Joint Minute was lodged for the parties which agreed all of the averments of fact, duty and professional misconduct. Although, the Respondent had admitted in the Joint Minute that his conduct amounted to professional misconduct, both parties clarified that they understood that the question of misconduct fell to be determined by the Tribunal. As the averments of fact were agreed in full in the Joint Minute, no evidence required to be led. The Tribunal heard submissions from both parties.

SUBMISSIONS FOR THE COMPLAINERS

Mr Marshall lodged with the Tribunal written submissions which he then went through orally with the Tribunal. These submissions were as follows:-

1 “IntroductionRespondent admits professional misconduct and Minute of Agreement agreed

The complaint alleging professional misconduct against the Respondent was originally lodged with the Tribunal in April 2015. A Minute of Agreement has been entered into by the parties by which the Respondent admits the facts, duties and averments of misconduct contained in the Complaint. The Respondent admits that he is guilty of professional misconduct. That said, parties recognise that the question of professional misconduct is a decision for the Tribunal.

The test for professional misconduct is as set out in the decision of *Sharp v The Council of the Law Society of Scotland* 1984 SC 129 at 134:-

“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 made.”

I am asking the Tribunal to find the Sharp test satisfied and find the Respondent guilty of professional misconduct.

2 Key facts admitted

The facts averred in the Complaint are admitted by the Respondent. For our purposes, I would draw the Tribunal’s attention to the following facts:-

- The Respondent was instructed by the Secondary Complainers Brian Hodge and Anne Hodge. They were the children of the late Mr A (“the deceased”). They instructed the Respondent in connection with the administration of his estate in July 2012.
- The Respondent stated to the Secondary Complainers that this was a straightforward executry and that he expected the estate to be wound up within 6 months.
- He made some initial progress.
- During the period 22 August 2012- April 2013 the Respondent made no progress with the executry.
- During the period 22 August 2012 – April 2013 the Secondary Complainers received no contact from the Respondent.
- They attempted contact with the Respondent by telephone and in writing on various occasions in the course of January 2013 as follows:-
 - 14 January – telephone
 - 15 January – telephone
 - 17 January – telephone

- 20 January – e-mail
 - 24 January – telephone
 - 28 January – letter
- In an e-mail of 20 January Brian Hodge noted that the Respondent had advised at the outset that the administration of the estate would be complete within 6 months. He continued:-

'As we are not far from that point in time, it would be reassuring to know that everything is on track. I am aware that Anne has tried phoning you on several occasions recently and is concerned at your failure to return her calls. I look forward to your response.'

- In a letter of 28 January Anne Hodge noted that the Respondent 'expected settlement to be obtained by the end of January 2013, since there were no obvious complications'. The letter stated:-

'Since we are now approaching the end of January 2013 having had no further communication from you, we are seeking reassurance that all matters are in hand, that the deeds were in fact obtained, that the various sums of money owed have been paid to the estate and that settlement is imminent as you forecast.'

- The letter referred to the Secondary Complainers' attempts to contact the Respondent and continued:-

'As we have had no response from you whatsoever, not even an acknowledgement of our attempts to contact you, therefore I am now sending this formal letter of complaint regarding your handling of our late father's affairs. In our opinion it is not only discourteous but also unprofessional to ignore completely a reasonable request for information after five months of silence and to fail to communicate with us either by phone or e-mail. As a result, we are understandably very concerned that

matters may not be proceeding as we expected. I hope that the situation can be resolved to our satisfaction in the very near future. I look forward to your response.'

- There was still no contact from the Respondent after these attempts by the Secondary Complainers to contact him in January.
- There was no further contact from the Respondent until April 2013. He contacted the Secondary Complainers on 22 April. However that followed the Scottish Legal Complaints Commission getting in touch with the Respondent to advise that a complaint had been made to them.
- On 22 April the Respondent wrote to the Secondary Complainers to apologise for the delay stating:-

'Firstly, please accept my unqualified apologies for the delay in progressing matters. It is with some embarrassment that I review the file and note that nothing substantial has been done since August last year, some eight months ago. I can offer no good explanation for the delay in progressing matters.'

- He then proceeded to take steps to contact the hospitals where the deceased had been receiving care before his death. However in May 2013 the Secondary Complainers instructed another firm to complete the executry.

3 Duties breached by the Respondent

In my submission there were two duties owed by the Respondent to the Secondary Complainers which have been breached:-

1. Duty to act in the best interests of your clients.
2. Duty to communicate effectively with your clients.

In my submission these two related duties were breached because there was a failure to progress instructions in the period from August 2012 to April 2013 **and**

there was a failure to communicate with the Secondary Complainers in the period from August 2012 to April 2013.

The failure to communicate was exacerbated by the fact that numerous efforts were made by the Secondary Complainers to obtain an update from the Respondent in the course of January 2013 when they contacted him on various occasions. Both Secondary Complainers wrote to him explaining they were concerned with the lack of any news from the Respondent and asked him to get in touch.

The correspondence sent by the Secondary Complainers to the Respondent in January 2013 demonstrates the significant inconvenience caused as a result of the inactivity of the Respondent and his failure to respond.

The failure to communicate was also exacerbated by the fact that the Respondent only finally responded to the Secondary Complainers after the Scottish Legal Complaints Commission had advised him that a complaint had been made to them.

4 Breach of duties amounted to professional misconduct

The Tribunal must be satisfied that the breach of the duties identified amounts to professional misconduct.

I start by recognising that each matter will turn on its own facts and circumstances and that a delay of eight months in the winding up of an executry may not alone amount to professional misconduct. In this case in relation to the issue of delay I rely on the fact that there is no dispute that this was a straightforward executry. The Respondent advised that he would wind up the estate within six months. He failed to progress the executry. He acknowledged there was no good reason for the delay in making progress.

However in my submission the delay is only one element of the conduct which is relevant and that the second key element is the failure to communicate with his clients. Smith & Barton identify the duties expected of a solicitor in the winding up of an estate in Chapter 14.

At paragraph 14.01 the authors consider what is expected of a solicitor when winding up an estate and consider when a solicitor will be found guilty of professional misconduct. It's important to note that while the authors identify delay as a basis for misconduct they **also** place significance on failure to communicate with clients.

At page 139 they highlight the Tribunal's view that:-

"It is an essential duty on the part of the solicitor to keep his clients informed; and in relation to an executry, this duty extends towards the beneficiaries of the estate" (Case 661/86).

They also note that:-

"In finding a solicitor guilty of professional misconduct on various charges relating to the winding up of an executory estate, the Tribunal stated:

'A solicitor acting in the winding up of an executory or a trust estate is under a duty to provide the beneficiary with an up to date report on progress when called upon to do so.' (Case 543/82).

In the circumstances of the current matter there was a period of delay which the solicitor accepts was without justification. However in my submission the significant point is that the solicitor failed to keep his clients informed in the period August 2012 to April 2013, and failed to provide an up to date report on progress even when asked to do so in January 2013.

Smith & Barton at paragraph 7.03 consider the duty of keeping the client informed. In a case where a solicitor was found guilty of professional misconduct the Tribunal stated:-

"...it is of cardinal importance that a solicitor should at all times keep his client fully informed regarding his progress in dealing with his client's business and to respond to any enquiries which are received by him from his client." (case 751/89)

Therefore it is relevant that it is acknowledged by the Respondent that there was no good reason for the eight month delay in the winding up of a straightforward estate. However in my submission it is the failure to communicate with clients which, together with the unjustified delay, establishes this conduct as professional misconduct.

That conduct caused concern and inconvenience to the Secondary Complainers. They had been given an expectation that the executry would be complete within 6 months. They were then left in the dark with no contact from the Respondent, despite repeated requests, for some 8 months. They only received contact after they had made a complaint to the SLCC.

Conclusion: finding

Parties are agreed that the Respondent is guilty of professional conduct as a result of his failure to comply with the each of duties set out in paragraph 4 of the Complaint and summarised in this submission.

For the reasons that I have given, I would ask you to find that the Respondent is guilty of professional misconduct in accordance with paragraph 5.1 of the Complaint which states:-

“The Council avers that the Respondent has been guilty of acts or omissions which, singularly or in cumulo, constitute professional misconduct on his part within the meaning of the Solicitors (Scotland) Act 1980 as amended, Section 53:-

The Council avers that as a consequence of the Respondent’s:-

- a) Undue delay in obtaining confirmation in the late Mr A’s estate during the period from July 2012 to April 2013;
- b) Failure to follow the Secondary Complainers’ instructions, provided in August 2012, to reclaim Council Tax paid during the late Mr A’s three month hospital stay; and

- c) Failure to communicate effectively with the Secondary Complainers, and failure to keep the Secondary Complainers regularly informed about the progress of the estate during the period from July 2012 to April 2013;

that the Respondent is guilty of professional misconduct.”

If you make that decision I would also ask that you make an award of expenses against the Respondent.”

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath indicated to the Tribunal that the Respondent is 46 years of age. He is married. His wife is a primary school teacher. The couple have two teenage children. Mr Tait began his career in Stornoway where he was trained in executry work, amongst other matters.

The Respondent accepted that his conduct amounted to professional misconduct for three reasons: (a) the undue delay in progressing the executry; (b) the failure to follow instructions to reclaim council tax; and (c) the failure to communicate.

Mr Tait’s father and the deceased had been friends. That is why Mr Tait was originally instructed. The Respondent had issued the normal letters in August. This was not a complicated executry; one only involving a house, bank account, a car and some other small matters. The main issue for the Respondent was that he had not responded to the Secondary Complainers until after the complaint was raised with the SLCC. His immediate response, however, to the complaint was to apologise to the Secondary Complainers. He conceded that the service provided was not what it should have been and had confirmed that he would abate any fees. Unfortunately by that time the relationship had broken down irretrievably. The Secondary Complainers sought advice elsewhere.

The Respondent accepted the recommendation made by the SLCC and agreed to restrict his fees to £200 and pay compensation to the Secondary Complainers of £1,000. Compensation was paid in early 2014. The Secondary Complainers had indicated that they had no intention in being further involved in this matter.

Mr Tait had been experiencing some difficulties in his professional life since leaving an earlier partnership in 2009. This partnership dispute continued even to this date. Mr Tait had raised litigation against his previous firm and the court had made an award in his favour. The firm have however indicated that they may appeal to the Inner House.

Whilst it was accepted that a solicitor's personal life should not impinge upon his professional one, it was often difficult in reality to prevent that. The Respondent's wife in her employment often required to deal with difficult children and on occasion would return home from school injured. She suffered stress as a result.

The Respondent did have an assistant to help at one stage but that assistant had left. He accepts that is not an excuse however. At no stage in these proceedings has he offered any false explanation. Immediately the complaint was received, he apologised and attended to the work. Papers were passed immediately to the new firm. Everything has been settled and he has paid the compensation.

Mr Macreath submitted that the delay in progressing the executry may not meet the Sharp test in its own right but the other factors tilted the balance. The Respondent had been pressed for information by the Secondary Complainers and had given no response.

Sometimes being a sole practitioner is difficult but clients' interests must always be protected at all costs.

Whilst the Respondent conceded that this was professional misconduct, Mr Macreath asked the Tribunal to accept that it was not at the most serious end of the scale of misconduct. The Respondent had dealt with matters appropriately since the Complaint had been made. He was apologetic from the outset.

The Respondent is otherwise a well-respected member of the profession. Mr Macreath drew the Tribunal's attention to the references which he had lodged. The Respondent had been directly involved in helping to wind up the firm of a colleague. The colleague had been diagnosed with a brain tumour and prior to that he had not been coping and had lost control through his ill-health. The man's faculty got round him and in particular Mr Tait did a great deal of work in helping to resolve the firm's affairs.

The Society had been advised from the outset of Mr Tait's position and had been advised that this would be a plea.

In his current firm, the Respondent employs three SOLAS trained paralegals. He conducts civil court work and the office carries out residential conveyancing. He employs a cashier and secretaries.

The Respondent is a well regarded practitioner.

The Respondent will be affected by these proceedings as they will be published. The Respondent has conceded the expenses. Mr Macreath asked the Tribunal to accept that in these circumstances a Censure would be sufficient to mark the seriousness of the conduct.

The Secondary Complainers had behaved admirably and had themselves accepted the recommendations of the SLCC immediately. In turn, the Respondent had paid the compensation immediately. Mr Macreath submitted that the Respondent had rescued his professionalism in the way he had responded to the complaint. The Respondent was extremely apologetic, not least because of the familial connection with the Secondary Complainers.

The question remained as to why Mr Tait had left the executry in the corner and not dealt with it. It had not been a complex executry and had not even required a qualified solicitor to deal with it. Mr Macreath suggested that this executry had been the victim

of “the winking file syndrome”. Unlike court work, executry work does not have a particular deadline.

It was submitted to the Tribunal that it was unlikely to see Mr Tait before it again.

DECISION

The test for professional misconduct, as set out in the Sharp case, is a high standard to meet.

In this case, the Tribunal agreed with the parties that the delay in progressing the executry, and reclaiming the council tax benefit did not in themselves meet the standard necessary. However, the duties upon a solicitor to keep clients advised of progress and to respond to correspondence are, as referred to in Smith & Barton, “of cardinal importance”.

The Respondent had failed to contact the Secondary Complainers despite repeated attempts on their part to obtain information. Such failure to respond would inevitably cause anxiety on the part of the clients. The Respondent’s conduct in this case was not that to be expected of a competent and reputable solicitor. Taken together his failure to progress the executry, deal with the council tax claim and most importantly his failure to respond to the Secondary Complainers would be regarded by any competent and reputable solicitor as serious and reprehensible.

In these circumstances the Tribunal held that the conduct admitted amounted to professional misconduct.

The Tribunal accepted that the Respondent’s conduct however was at the lower end of the scale of professional misconduct. This appeared to be an isolated incident. The Respondent had tendered an early plea of guilty and was clearly remorseful and insightful. The Respondent had cooperated fully with the Fiscal and the Tribunal in these proceedings. There was no suggestion of any repetition of this kind of behaviour. As a result, there appeared to be no risk to the public or requirement for supervision. The Respondent had acted appropriately in response to the complaint to

the SLCC and had settled the claim for compensation immediately minimising the impact upon the victim. In all of these circumstances, the Tribunal considered that the appropriate disposal was one of Censure.

The Complainers moved for expenses and the Respondent conceded that such an award was appropriate. Accordingly the Tribunal made the usual orders with regard to expenses and publicity.

Malcolm McPherson
Vice Chairman