

**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

**LAURA WINTON, 87 Clydesdale Avenue,
Paisley**

Respondent

1. A Complaint dated 13 December 2017 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Laura Winton, 87 Clydesdale Avenue, Paisley (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer.
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 the Complaint to be heard on 29 January 2018 and notice thereof was duly served on the Respondent.
5. At the hearing on 29 January 2018, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was neither present nor represented.
6. The Fiscal made a Motion to the Tribunal in terms of Rule 14(4) of the 2008 Rules for the Tribunal to hear and determine the Complaint in the absence of the Respondent. The Tribunal having heard evidence from the Clerk and carefully considered the circumstances

of the case, granted that Motion. The Complainers led evidence from two witnesses, following which the Tribunal heard submissions from the Complainers.

7. The Tribunal found the following facts established:-

- 7.1 The Respondent's date of birth is 13 June 1981. She was enrolled as a solicitor on 19 September 2006. Between 27 September 2006 and 23 May 2008 the Respondent was an employee of Cartys, 3 Cadzow Street, Hamilton. Between 2 June 2008 and 30 November 2009 the Respondent was an employee of Bonar Mackenzie WS, 9 Hill Street, Edinburgh. Between 2 December 2009 and 8 December 2011 the Respondent was an employee of Stewarts & Murdochs, Tontine House, 8 Gordon Street, Glasgow. Between 12 March 2012 and 31 October 2014 the Respondent was principal in the firm of Winton Law, PO Box 11351, Paisley. Between 1 May 2014 and 5 September 2014 the Respondent was an employee of Archibald Sharp & Sons Limited, 270 Dumbarton Road, Partick, Glasgow. The Respondent is not currently employed by any legal firm.
- 7.2 On 15 November 2012, Mr A died intestate. The Secondary Complainer wanted to make a claim on his estate in terms of the Family Law (Scotland) Act 2006, Section 29. She was aware that the son of Mr A was contesting her claim. On 3 December 2012, the Secondary Complainer instructed Ms B of firm C in Glasgow. On 6 December 2012, the Secondary Complainer attended at the offices of Ms B to sign terms of engagement and provide identification documents. At that meeting Ms B advised the Secondary Complainer that she was "not a litigator" and that the Secondary Complainer's case would be handled by the Respondent. At the end of February, or beginning of March 2013 the Respondent telephoned the Secondary Complainer and arranged for a meeting. That meeting took place between the Secondary Complainer and the Respondent in the Regis Building, Glasgow. The only contact information the Secondary Complainer had for the Respondent was her mobile telephone number. Only the Respondent and the Secondary Complainer were present at that meeting at which the Respondent noted the background circumstances of the Secondary Complainer with a view to raising court proceedings. The Respondent arranged for the preparation of an initial writ which was warranted on 14 May 2013. The writ was served on the deceased's executor

by post at 1:04pm on 16 May 2013. In terms of the statute the action was, accordingly, time barred. In terms of sub-sections (5) and (6) of Section 29 of the 2006 Act, the claim is made by an “application” which “may be made to... a sheriff in the Sheriffdom in which the deceased was habitually resident...” and “any application... shall be made before the expiry of the period of six months beginning with the day on which the deceased died.” The application is not made, in the sense that the action is commenced, until the date of service of the proceedings rather than the date of warranting.

- 7.3 Solicitors were instructed to defend the action. They adopted the position that the action was time barred. On 10 June 2013, the Respondent met with the Secondary Complainer, again in the Regis Building, Glasgow. Ms B was not present. At that meeting the Respondent made brief reference to the issue of time bar. She did not explain the issues to the Secondary Complainer and in particular, made no reference to any potential consequences in expenses. Defences containing a plea-in-law directed towards time bar were intimated to the Respondent by letter dated 14 June 2013. An options hearing took place in September 2013. The Respondent intimated this to the Secondary Complainer in a telephone call. The Respondent met with the Secondary Complainer in the offices of Firm C on 5 February 2014.
- 7.4 After sundry procedure, a sheriff heard a debate and issued a decision on 14 May 2014 which was to the effect that the action was time barred. Accordingly the sheriff dismissed the action.
- 7.5 On 4 June 2014 Ms B advised the Secondary Complainer that the action had been dismissed. That was the first communication to the Secondary Complainer of the position. Ms B also on that date advised the Secondary Complainer that there was to be a hearing on expenses on 24 June 2014 and that she would ask the Respondent to attend. The Respondent was duly instructed by them in connection with the hearing of 24 June 2014.
- 7.6 On 23 June 2014 the Respondent wrote to the sheriff court intimating that she was withdrawing from acting on behalf of the Secondary Complainer. As a result the Secondary Complainer was unrepresented when the case called on 24th June 2014

when expenses were awarded against her. Subsequently, the executor's solicitors were awarded a ten per cent uplift in fees.

7.7 The Respondent failed to advise the Secondary Complainer at any stage of the prospects of success given the stance adopted by the executors, nor did she give any advice to the Secondary Complainer with regard to the expenses of the action. The Secondary Complainer was thus deprived of the opportunity of compromising the litigation to protect her position. At no stage did the Respondent explain the potential conflict of interest to the Secondary Complainer.

7.8 The Secondary Complainer invoked the assistance of the Complainers. On 20th August 2015 the complainers intimated the complaint to the Respondent and required that she respond to the complaint.

7.9 The Respondent failed to do so. Accordingly on 30th September 2015 the complainers served notices in terms of Section 15(2)(i) of the Solicitors (Scotland) Act 1980 and the Legal Profession and Legal Aid (Scotland) Act 2007, Section 48. The Respondent failed to reply.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in the following terms:

8.1 individually, in that she failed to respond to correspondence and statutory notices from the Council; and

8.2 *in cumulo*, that:

(a) she failed to advise the Secondary Complainer of the potential conflict of interest between them and failed to advise her to obtain legal advice;

(b) she failed to advise the Secondary Complainer of her legal position, particularly in relation to time bar, what options were available to her and how to proceed;

- (c) she failed to advise the Secondary Complainer in relation to the expenses of the litigation and that expenses could be awarded against her;
- (d) she withdrew from acting in a manner which would prejudice the course of justice.

9. Having heard further submissions from the Complainers, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 29 January 2018. The Tribunal having considered the Complaint dated 13 December 2017 at the instance of the Council of the Law Society of Scotland against Laura Winton, 87 Clydesdale Avenue, Paisley; Find the Respondent guilty of professional misconduct (a) individually, in that she failed to respond to correspondence and statutory notices from the Council, and (b) *in cumulo*, that i) she failed to advise the Secondary Complainer of the potential conflict of interest between them and failed to advise her to obtain legal advice; ii) she failed to advise the Secondary Complainer of her legal position, particularly in relation to time bar, what options were available to her and how to proceed; iii) she failed to advise the Secondary Complainer in relation to the expenses of the litigation and that expenses could be awarded against her; iv) she withdrew from acting in a manner which would prejudice the course of justice; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit her to acting as a qualified assistant to such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least three years; 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 but shall not include the name of the Secondary Complainer or otherwise identify her; and Allow the

Secondary Complainer to lodge any claim for compensation within 28 days of the service of the Findings.

(signed)

Alan McDonald

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 *22 FEBRUARY 2018*.

IN THE NAME OF THE TRIBUNAL



Alan McDonald
Vice Chairman

NOTE

Prior to the Hearing the Complainers had lodged a List of Productions and a List of Witnesses. No Answers had been lodged for the Respondent and she was not present at the Hearing. The Fiscal made a motion in terms of Rule 14 of the 2008 Rules for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. The Tribunal heard evidence from the Depute Clerk confirming that a copy of the Complaint together with the appropriate Notice had been sent by recorded delivery post to the Respondent at the address on the Complaint on 15 December 2017. The Royal Mail's track and trace system disclosed that this item was signed for on 21 December 2017 by "L Winton". Thereafter a Notice of Hearing was sent to the Respondent at the same address on 5 January 2018, again by recorded delivery post. This item, according to the track and trace system for Royal Mail, was signed for by "L Winton" on 10 January 2018. The Tribunal thereafter adjourned to consider the position.

Before granting such a motion, the Tribunal had to be satisfied, not just that the Notice of Hearing had been duly posted or intimated to the Respondent, but that it was also appropriate for the case to proceed in her absence. In this respect, the Tribunal had in mind the case of R-v-Jones [2003] AC 1 which, although a criminal case, has been referred to in relation to disciplinary proceedings. The Complaint before the Tribunal contained, amongst other allegations, an averment that the Respondent had failed to respond to Law Society correspondence. In addition to the two Notices sent by the Tribunal Office, the Respondent had also been sent intimation of the Fiscal's List of Productions and Witnesses. In these circumstances, it appeared that there would be little to be achieved by adjourning the case to a later date. The exercise of the Tribunal's discretion in this matter required consideration of fairness to both sides. The Notice of Hearing sent to the Respondent made plain that if she failed to appear the matter could be dealt with in her absence. The Complainers had two witnesses present, one of whom was the Secondary Complainer, to give evidence. In all of these circumstances, the Tribunal concluded that the appropriate and fair course of action was to proceed with the hearing in the absence of the Respondent.

The Complainers proceeded to lead evidence from the two witnesses.

WITNESS ONE – THE SECONDARY COMPLAINER

The witness confirmed that she had been in a relationship with Mr A and they had lived together at her address for a number of years. Mr A died on 15 November 2012 without a will. He had however left a document indicating that he wished her to have 50% of his estate. His son by a previous marriage had

made it plain that he would contest her claim. She therefore consulted with Ms B of Firm C in Glasgow. The Secondary Complainer was aware that there was a time limit of six months from the date of death to pursue this claim. The first meeting with Ms B was on 3 December 2012. Discussion with regard to litigation did not take place until the second meeting with Ms B at the offices of Firm C on 6 December 2012 when the Secondary Complainer attended to sign a letter of engagement and hand in identification documents. At that time Ms B said to the Secondary Complainer that she “was not a litigator” and that the Respondent would be handling her case. She did not meet the Respondent until some two months later. She had met with the Respondent on three separate occasions. The first occasion was at the end of February/March 2013 when the Respondent had asked her the details of her relationship with the deceased with a view to going to court. The second meeting took place on 10 June 2013. She had met with Ms Winton on her own for the first two occasions and Ms B was present on the third. At the second meeting the Secondary Complainer had made enquiry of the Respondent in relation to when she had lodged the writ. At that time the Respondent had made a throw away remark that the solicitors for the executor were thinking of complaining that the application was too late. She did not find out until September that the defender had protested that the action was late and that there was to be a hearing in the Sheriff Court. She had difficulty getting in touch with the Respondent. In total she had had three telephone conversations with the Respondent – two to arrange meetings and one where the Respondent had told her about this hearing. She felt she had been kept in the dark and was surprised to hear during this telephone conversation that there was to be a hearing to discuss whether or not her application was time barred. She had discovered the outcome of that hearing from Firm C who had advised her that the matter had been postponed until February 2014 as the Sheriff could not reach a decision and required further information. In the following February she had had a meeting with both the Respondent and Ms B at the offices of Firm C principally to speak about the other cases she intended to raise against Mr A’s son and estate but during which they had talked about what was happening with this case and she was told that the Sheriff required time to consider it as it was a complicated case. She knew from having contact with Ms B that the Sheriff had indicated he was going to make a decision by 15 May and that he had had to take expert advice because the matter was so complicated. She had repeatedly contacted Firm C to try and get in contact with the Respondent as the Respondent did not return her calls. On 3 June Ms B had contacted her and asked her to come into the office to see her as the Respondent had disappeared and was not returning even her calls. She was told that a box had been delivered to Firm C’s office with the Sheriff’s judgement in it and that he had decided that her case was time barred.

She was aware that there had been further hearings. She had received a letter from the Sheriff Court advising her that the Respondent was no longer acting on her behalf because of a conflict of interest.

She was aware that there was to be a costs hearing and she had gone to see Firm C and asked for someone to go to that for her. Subsequently expenses were awarded against her in the sum of £25,000. (which she later indicated was adjusted to £22,500.)

She had made a complaint to the SLCC. She confirmed that the document reproduced at pages 91 to 96 of the Complainers' Productions was her complaint to the SLCC. Production 121 she agreed was the document agreed between her and the SLCC. She was referred to page 123 of the Productions, a summary of her complaint. She explained that whilst she had given instructions for proceedings to be raised, she had not been consulted once the time bar issue had been raised by the solicitors for the executor. If she had known this would have happened she would not have proceeded. If she had found out that the action had been served two days late she would have negotiated a withdrawal of the action.

The witness confirmed that page 118 of the Productions was an email from her current solicitor to her. With reference item 7 on page 100 of the Productions she confirmed that her objection was that the Respondent had not taken her instructions to carry on with proceedings once the time bar matter had been raised. She confirmed that page 102 of the Productions was her handwriting. She was referred to paragraphs b and c at pages 110 and 111. She confirmed that page 113 of the Productions was a diary entry of hers.

At this juncture the witness became extremely distressed and broke down. Accordingly, the Tribunal considered it appropriate to adjourn for lunch to allow the witness to compose herself.

On reconvening after lunch, the Fiscal confirmed that he had no further questions.

In answer to a question from the Tribunal, the witness insisted that she was not privy to the relationship between Firm C and the Respondent. The Respondent had first been mentioned at the meeting on 6 December and she had assumed that the Respondent was a partner or an employee of Firm C. It was not explained to her until some time later that Firm C did not do any court work. The only contact details that the witness had for the Respondent was her mobile telephone number. Neither Ms B or the Respondent had explained anything other than that.

WITNESS TWO – IAN RITCHIE

The witness confirmed that he was one of the Clerks to the Professional Conduct Sub Committee of the Law Society of Scotland. He has been an employee of the Law Society for 15 years and is a solicitor by profession. In the course of his role as Clerk he had learned of a complaint against the Respondent referred to the Law Society by the SLCC. The witness was referred to the record card for the Respondent.

The Fiscal made a motion to the Tribunal to be allowed to lodge this item late. The motion was granted.

The witness was taken through the work record of the Respondent as noted on the record card.

Mr Ritchie confirmed that he was aware that the nature of the complaint raised involved instructions by the Secondary Complainer to raise proceedings to claim on the estate of her deceased partner. Although these proceedings had been raised, they had been dismissed by the court as time barred. The complaint was against both the Respondent and Ms B. The complaint was intimated to both.

Mr Ritchie confirmed that the Production at page 97 was a letter from Ms B to the SLCC where she indicated that the Respondent had never been an employee or agent of Firm C. He confirmed that the options record for the proceedings in the sheriff court was reproduced at page 29 to 34 of the Complainers' Productions and was signed by the Respondent. He confirmed that Production 15 was a letter from the defender's solicitor addressed to the Respondent and Production 16 was a letter from the same firm to Firm C. The defences were reproduced at page 17 to 19 and these included a plea in law founded on time bar. This correspondence demonstrated that the Respondent was aware from 14 June 2013 that the defender was arguing time bar. The witness confirmed that page 49 of the Productions was a letter from the sheriff court addressed to the Respondent's firm assigning a hearing in the case. He was aware that a debate had taken place and that the judgement for that debate was reproduced at page 62 and subsequent pages. Page 83 of the Productions was an interlocutor from the sheriff court which referred to a letter from the solicitor from the pursuer dated 23 June 2014 intimating that she had withdrawn from acting. Page 84 was a further interlocutor from the sheriff court dated 30 June 2014. The witness explained that the Respondent would have been aware between June 2013 and summer of 2014 that time bar was an issue and that she had done nothing to ensure separate representation.

He believed that the SLCC would have written direct to the Respondent in connection with this complaint. Page 119 of the Productions was a letter sent to the Respondent by a former colleague of his.

The letter was dated 20 August 2015 and set out what the Respondent was required to do. The Respondent did not respond. Procedure was escalated to serving the first part of a Section 15 Notice and a Section 48 Notice. These were reproduced at pages 125 and 129 of the Productions. Page 131 was a copy of a page from the posting receipt book relating to the letters of the 30 September. Although the letters were typed on 30 September, they were not posted until 1 October. He believed that it was the Law Society practice to send the two letters in one envelope but accepted that the receipt book contained two recorded delivery reference numbers. He could not explain what the ticks next to these reference numbers meant. He was aware that a couple of items had been returned by the Post Office as not called for but from his knowledge of the file could say that these letters were not returned.

The Respondent had taken no steps to comply at all and the Society had not heard anything from her at all.

The Tribunal referred the witness to a conflict between the record card and the Complaint at averment 3. The Fiscal indicated that this was a typographical error in the Complaint and moved to amend. This motion was granted.

The Tribunal referred the witness to the Law Society record card and Production 97. He believed that Firm C was the same firm as listed on the record card for the Respondent but under a different style. He described this as a revamping of the image of the firm but confirmed that at the time of the instruction given by the Secondary Complainer the Respondent was not part of either firm.

In response to questions from members of the Tribunal, the witness insisted that it was his distinct impression from the papers that the Law Society held that the Respondent was instructed directly by the Secondary Complainer. His understanding was that this was a new instruction to the Respondent at her own firm as Ms B's firm did not do any court work.

The Fiscal confirmed that he had no further questions for that witness and moved to re-call the Secondary Complainer. This motion was granted.

RECALL OF FIRST WITNESS – THE SECONDARY COMPLAINER

The witness confirmed that she had met with the Respondent on three occasions. The first meeting was with the Respondent in the Regis Building conference centre in Glasgow at which she and the

Respondent were present. The second meeting on 10 June, again was in the Regis Building and only involved the Respondent and the witness. The third meeting which she believed was on 5 February 2014 was in the offices of Firm C at which both the Respondent and Ms B were present. The witness had written to Ms B asking for an update in relation to this matter and also to discuss the two other cases she intended to raise. She signed terms of engagement with Firm C. She questioned why Ms B would take so long to pass papers to the Respondent and why she would field her telephone calls when she was complaining about not being able to contact the Respondent if she was no longer instructed. Throughout the witness had expected updates to come from Firm C. She confirmed that she had raised a professional indemnity claim against Ms B but not against the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal submitted that the Respondent had been instructed as principal and this was confirmed in the letter from Ms B at page 97 of the Productions. He conceded that Ms B may have had a conflict in writing that letter as she was also subject to a complaint. Consequently, the Tribunal would require to scrutinise the matter closely. He argued that the Tribunal should follow the practice of exercising a presumption in favour of a party leading evidence where that evidence is not challenged of drawing the most favourable inference from that evidence.

The Fiscal argued that this issue of whether the Respondent was acting as principal or as an agent for Firm C was not determinative of the complaint. He went on to argue that it was irrelevant to the duties owed by the Respondent what the client's understanding of the situation was. His starting point was the letter reproduced at page 97 indicating that the Respondent was the principal. He argued that this was not contradicted by any of the evidence. It was his submission that the Respondent should not benefit from her own failure to explain the circumstances to the Secondary Complainer.

Only the Respondent was present at the first two meetings. The Respondent made contact with the Secondary Complainer to arrange the first meeting. These meetings took place outwith the offices of Firm C. It was incumbent upon the Respondent not to act in a conflict of interest situation, to provide appropriate advice and she had duties of communication in general.

He referred the Tribunal to the email from the Secondary Complainer's current solicitor, reproduced at page 118 of the Productions and confirmed that the papers referred to therein were those reproduced at pages 1-89 of his Productions. Nowhere within these papers was any advice given regarding a conflict

of interest. There was no report to Firm C and it was significant that when the Secondary Complainer contacted Ms B she did not appear to be aware of the matters either.

He argued that a conflict arose as soon as defences were intimated to the Respondent and she became aware that there was a plea of time bar. There was potentially a claim against the Respondent herself and she gave no advice to the Secondary Complainer.

He referred to paragraph 8.02 of Paterson & Ritchie and asked the Tribunal to draw a distinction between the court action involved in this case and a personal injuries matter. The 2006 Act gave the court no discretion to allow an application late. During the whole period from June 2013 until the disposal of the action the Respondent had been aware of the conflict of interest and had failed to intimate that to the Secondary Complainer or give any advice.

The Fiscal invited the Tribunal to find the Respondent guilty of professional misconduct. He submitted that in relation to averment 9(1), 9(2) and 9(3) the Respondent was the person responsible to give advice. By accepting instructions, on whatever basis they were given, she had accepted obligations to give advice.

In answer to a question from the Tribunal regarding the rule preventing a solicitor contacting someone else's client, the Fiscal argued that it was implied that the court solicitor would be able to make direct contact with the client. Given the difficult time limits involved in litigation it would be implied that a litigator had the entitlement to contact the client directly.

In answer to a question from the Tribunal, the Fiscal submitted that there was a clear conflict here and that the issue of time bar was ultimately disposed of on the basis of fairly trite law. He submitted that even if the Tribunal could see some kind of comparison with the type of case referred to at paragraph 8.02 of Paterson & Ritchie, there would have needed to be full information given by the Respondent to the Secondary Complainer. The Respondent had not offered any advice in this case either to the Secondary Complainer or Firm C. As a result the Secondary Complainer had continued to be a party to litigation that was doomed to failure and the Respondent had continued to rack up expenses.

He referred the Tribunal to averments 9(4) and (5) of the Complaint and submitted that the Respondent's conduct here amounted to a peremptory withdrawal from acting on behalf of the Secondary Complainer.

Averment of misconduct 9(6) separately related to the Respondent's failure to respond to the correspondence and statutory notices from the Law Society.

He invited the Tribunal to find the Respondent guilty of all six heads of professional misconduct.

DECISION

The first matter for the Tribunal to consider was what facts had been established in the course of the hearing. The Tribunal had heard evidence from two witnesses and had before it the Productions for the Complainers.

The onus of proof lay on the Complainers to prove the facts beyond reasonable doubt.

The Tribunal was satisfied that both witnesses were credible and reliable. The Tribunal accepted the Secondary Complainer's evidence in relation to the history of contact between her and the Respondent.

However, the Tribunal had great difficulty in ascertaining the exact relationship between the Secondary Complainer and the Respondent. The Fiscal had invited the Tribunal to accept the letter from Ms B and thereafter draw inferences from the other Productions to support the proposition that the Respondent was the principal. The difficulty was that evidence led by the Complainers contradicted that proposition. The Secondary Complainer was under the impression that the Respondent worked for Firm C. She signed terms of engagement for Firm C. No terms of engagement were signed for the Respondent. The Secondary Complainer had only ever had a mobile telephone number for a point of contact for the Respondent and had often attempted to gain contact with her through Firm C. Whether the Respondent was acting as agent for Firm C or as principal solicitor in relation to these court proceedings, the writ would have been signed by her. Likewise, correspondence from the court and the solicitors for the defenders would be addressed to her. The Tribunal required to take care when assessing the letter from Ms B; she was the subject of a Complaint and there was some confusion about the previous employment of the Respondent.

Having consideration to the conflicting evidence, the Tribunal was unable to reach a conclusion as to whether or not the Respondent was acting as principal or agent.

However, whether or not the Respondent was the principal, she had a duty to communicate effectively with the Secondary Complainer. Firm C had no court department. The Respondent had met the Secondary Complainer on three separate occasions. On none of these occasions did she attempt to explain that expenses could be awarded against the Secondary Complainer if the court action failed. By the time of the second and third meetings, and at least one of the telephone conversations referred to by the Secondary Complainer, the Respondent was aware that the defender was raising an issue of time bar. In none of the meetings or conversations with the Secondary Complainer did the Respondent attempt to explain the significance of the argument taken by the defender or the possible consequences for the Secondary Complainer, including potential liability on the part of the Respondent.

The Tribunal was satisfied that the Complainers had established that the Respondent had failed to advise the Secondary Complainer of her legal position in relation to the issue of time bar, the options that were available to her, and the possible consequences in expenses.

The Tribunal was also satisfied that the Respondent withdrew from acting for the Secondary Complainer in a peremptory manner which would prejudice the course of justice. The Respondent was aware that the case had been dismissed and yet had delayed until the eve of the hearing on expenses to withdraw from acting by letter tendered to the sheriff court. As a result, the Secondary Complainer was unrepresented at that hearing.

The Tribunal was not satisfied that the Complainers had established that a conflict of interest arose in this case until the Sheriff had dismissed the action as a result of the plea of time bar. Until that stage, the Tribunal concluded that there was only a potential conflict of interest between the Respondent and the Secondary Complainer. The duty incumbent upon the Respondent was to communicate effectively with the Secondary Complainer and this included a duty to explain the potential conflict of interest which involved potential liability on the part of the Respondent.

With regard to the averment that the Respondent had failed to report to the Secondary Complainer in relation to the result of the hearing on 15 May 2014, the Tribunal was not satisfied that this had been established. If the Respondent was acting as an agent for Firm C then any duty to report the outcome of the hearing would have been to report it to Firm C and not the Secondary Complainer.

The Tribunal accepted the evidence of Mr Ritchie in relation to the Respondent's failure to respond to the Law Society. He gave evidence that three letters were sent to the Respondent, two of these by

recorded delivery, at the address in the Complaint. None of these letters had been returned by the Post Office. The Respondent had failed to give any response.

Having found the above conduct established, the Tribunal went on to consider the test set down in the case of Sharp, in order to assess whether the established conduct amounted to misconduct.

The Tribunal firstly considered the Respondent's failure to respond to the Law Society. On many occasions the Tribunal has made it plain that solicitors have a duty to cooperate with their regulatory body. If the public are to maintain confidence in the profession then they must have faith in the regulation of the profession. The Law Society is unable to investigate complaints made by the public without cooperation from solicitors. To fail to do so brings the profession into disrepute and damages public confidence.

Accordingly, the Tribunal concluded the Respondent's conduct in this regard alone was conduct that fell well below the standards to be expected of a competent and reputable solicitor, to a degree that was serious and reprehensible and amounted to professional misconduct.

Whilst the Tribunal had held that the Respondent had failed in her duty to communicate effectively with the Secondary Complainer and in her duty in relation to withdrawing from acting in the case, given the other background circumstances, it concluded that individually these matters did not meet the standard for professional misconduct. However, taken together with the failure to communicate with the Law Society, the Tribunal was satisfied that they were, *in cumulo*, professional misconduct.

SANCTION

The Tribunal considered the Respondent's misconduct in this case to be of a very serious level. This matter had begun with a complaint made by a member of the public. The Respondent had failed to cooperate with the complaints process. Her failure to engage in the Tribunal proceedings meant that the Tribunal was unable to ascertain if the Respondent had any insight into her misconduct, or any appreciation of its seriousness. The Tribunal had uppermost in its mind consideration of the protection of the public. This required to be balanced with regard to the Respondent's apparent previous good record, as disclosed on her record card.

In these circumstances, the Tribunal concluded that a strike off or suspension was not required and that the public interest could be best protected by the imposition of a restriction on the Respondent's practising certificate to acting as an assistant for a period of three years.

The Tribunal heard submissions from the Complainers with regard to expenses and publicity. In the circumstances, it concluded that it was appropriate to award expenses to the Complainers. With regard to publicity, the Complainers invited the Tribunal to make an order for publicity that did not identify the Secondary Complainer. Given the sensitive and personal nature of the background circumstances to the original complaint and on the basis that it did not prejudice the public interest in any way, the Tribunal so ordered.

The Tribunal invited the Secondary Complainer to make submissions with regard to her claim for compensation. Having regard to the late hour and the motion of the Secondary Complainer, the Tribunal continued the question of compensation and allowed the Secondary Complainer to lodge any claim for compensation within 28 days of the service of the Findings.



Alan McDonald
Vice Chairman