

**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**

**STEPHEN ANDREW HARPER, c/o 37 Seaforth  
Avenue, Wick, Caithness**

**Respondent**

1. A Complaint 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 Stephen Andrew Harper, c/o 37 Seaforth Avenue, Wick, Caithness (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer on behalf of the A J Stuart Trust, Gavin Mason, Cobbarn Farm House, Groombridge Lane, Eridge Green, Tunbridge Wells.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent. Parties entered into a Joint Minute agreeing the averments of fact and duty contained in the Complaint.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 22 June 2023 and notice thereof was duly served on the Respondent.
5. At the virtual hearing on 22 June 2023, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was neither present nor represented.

6. Having given careful consideration to the terms of the Complaint and Joint Minute, the Tribunal found the following facts established:-

6.1 The Respondent is Stephen Andrew Harper. He was born on 10<sup>th</sup> January 1967. He is designed as c/o 37 Seaforth Avenue, Wick. He was enrolled as a solicitor on 8 November 1991. Thereafter he was employed successively by Peterkins, Solicitors, Cockburns, Solicitors, Walter Gerrard & Co., Solicitors, Stewart & McIsaac, Solicitors and Stewart & Watson, Solicitors, until 19 June 2009. Between 22 June 2009 and 7 June 2010 he was employed by Antons, Solicitors, 14 East Church Street, Buckie. From 8 June 2010 until 11 March 2019 the Respondent was the sole principal of Antons, Solicitors. The Respondent is not presently employed by any legal firm.

The A J Stuart Trust

6.2 On 15 December 2014, the Respondent wrote by letter to the Secondary Complainer Gavin Mason to say that his firm had acted for several years for the late Mr X as a trustee in relation to the A J Stuart Trust but that Mr X had died in March 2014. He advised that both the Secondary Complainer and another trustee, Mr RE, were the remaining trustees of the Trust. He said that he had prepared and enclosed a tax return for the Trust for the tax year ended 5 April 2014 and that in the past he had arranged for the late Mr X to sign the returns before their submission to HMRC. He asked the Secondary Complainer to sign and return to him the latest returns in his capacity as a trustee. He added that he would try to make an online return to HMRC before the deadline of 31 January 2015 to avoid a penalty charge but if this could not be arranged then he would need to submit the written return which would incur a penalty charge of £100 which his firm would pay. He asked whether in the long term the remaining trustees wished his firm to continue dealing with the administration of the Trust and, if so, suggested that HMRC be asked to forward the Trust's tax return form directly to his firm in future and that he would ask the representatives of the late Mr X to forward the documents relating to the Trust to his firm for safekeeping. In that event he also asked the Secondary Complainer to sign and return an enclosed letter confirming his instructions.

6.3 On 5 January 2015, the Respondent wrote again to the Secondary Complainer chasing him for a response to his letter of 15 December 2014 and pointing out that if the tax return was not made online before 31 January 2015 then financial penalties would apply.

- 6.4 On 14 January 2015, the Secondary Complainer e-mailed a letter to the Respondent in which he asked him to proceed with the tax return on behalf of the Trust. He further advised the Respondent that the life tenant of the Trust Mrs BH (his mother-in-law) was approaching the end of her life and so he anticipated contacting him again shortly thereafter about winding up the Trust.
- 6.5 On 16 January 2015, the Respondent e-mailed the Secondary Complainer in reply to say that the process of making an online return on behalf of the Trust required formal written authority to be obtained from the trustees and submitted to HMRC before a return could be made. The Respondent did not think there would be enough time to set that up before the end of the month and therefore asked the Secondary Complainer to sign and return as soon as possible the written tax return form previously sent to him so that the Respondent could submit it to HMRC before 31 January 2015. The Respondent added that he would pay the tax he calculated was due together with the penalty for late submission of the return.
- 6.6 On 22 January 2015, the Respondent wrote by letter to the Secondary Complainer referring to their telephone conversation that day and noting that the Secondary Complainer had been unable to locate the tax return sent to him on 15 December 2014. He enclosed a further copy for signature and return for submission before 31 January 2015. The Respondent noted that Mrs BH had now died and that the solicitor dealing with her estate in England would contact the Respondent about the winding up of the Trust.
- 6.7 On 27 January 2015, the Respondent wrote a detailed letter to HMRC and enclosed the Tax Return for the year ended 5 April 2014. He explained that although HMRC had sent the form to Mr X he had since died and that it was now signed by another trustee, the Secondary Complainer, and he also enclosed copies of the deeds under which the Secondary Complainer and RE had been appointed trustees and copies of letters from them confirming their instructions along with a cheque for the tax due and the penalty charge. The Respondent asked HMRC to confirm when any other sums were due and asked them to forward to his firm direct the Tax Return for 2014/15 as well as any further correspondence as agents for the trustees. Later the same day the Respondent wrote to the Secondary Complainer to confirm all of the above.

- 6.8 On 3 June 2015, the Respondent spoke to the Secondary Complainer by telephone. The Secondary Complainer advised that probate had now been granted for the estate of the late Mrs BH. He explained that the English solicitor dealing with the estate required details of the holding in the Trust which the Secondary Complainer understood fell to be divided between the late Mrs BH's two daughters, one of whom was his wife. The Respondent pointed out that he had not seen the original Trust Deed setting out who was entitled to the assets of the Trust. The Respondent suggested that the solicitor in England write to him direct to advise him of the information he required, and the Secondary Complainer agreed.
- 6.9 On 3 June 2015, the Secondary Complainer e-mailed SG, partner at the English firm of solicitors, Thomson Snell & Passmore LLP (TSP) to say that he had just spoken to the Respondent and formed the impression that he didn't know what to do regarding the winding up of the Trust and distributing the assets. He said that the Respondent had claimed not to have the formation documents for the Trust and wanted TSP to contact him to sort the matter out. The Secondary Complainer asked TSP to contact the Respondent's firm and instruct them to liquidate the assets and close the Trust. He also suggested that it might be simpler for the firm if funds were transferred to TSP for distribution according to the Will.
- 6.10 On 5 June 2015, SG wrote to the Respondent by letter referring to the Respondent's recent conversation with the Secondary Complainer about the winding up of the Trust following the death of Mrs BH on 17 January 2015 and that he was assisting her two daughters as executors to obtain a grant of probate. SG noted that the Respondent had been unable to locate the originating document for the Trust and suggested that he obtain an official copy of the Will (under which the Trust had been established) from the relevant court office. SG confirmed that he understood that after the death of Mrs BH, the Trust funds fell equally among her two daughters as did her free estate. Finally, SG advised the Respondent that the Secondary Complainer wanted him to confirm specifically that the beneficiaries wished the Trust to be wound up by liquidating all remaining investments and paying them the cash proceeds net of expenses. SG invited the Respondent to call him or otherwise advise what steps he proposed to take to wind up and distribute the Trust fund.

6.11 On 8 October 2015, SG wrote again to the Respondent chasing a reply to his letter dated 5 June 2015 and noting that the Secondary Complainer had not heard from him and was concerned that nothing seemed to have happened since Mrs BH's death nine months before despite the winding up of her free estate nearing completion.

6.12 On 29 October 2015, the Secondary Complainer e-mailed a formal complaint to the Respondent as follows:

*"Since the death of the liferentrix in January this year and the email and phone communications with you, by both me as trustee and my wife FM as a beneficiary at that time, there has been a decided lack of communication from you with regard to winding up and distributing the trust.*

*"I telephoned you on 3<sup>rd</sup> June to move things along and you made it clear that you wanted to be contacted by the English solicitors who were dealing with the Will and the remainder of the estate, SG of (TSP).*

*"On 5 June (SG) wrote to you in this regard and having had no reply wrote again on 8 October with as yet no reply.*

*"During this period my wife has made a number of phone calls to your office, the most recent on Monday 26 October and you repeatedly fail to return any of the calls or communicate in any way with any of the parties above mentioned.*

*"I now require to know what, if anything, you have done since receiving instruction 9 months ago in this matter. I shall expect a satisfactory reply from you no later than noon tomorrow, the 30 October."*

6.13 Later the same day the Respondent sent a letter by fax and post to SG at TSP:

*"We refer to previous correspondence and apologise for the delay in response.*

*"Since last writing to you we have located a copy of the original Will of the late Alexander Stuart which appears to be the original Trust document. A copy of this is enclosed.*

*"With regards to the assets of the Trust these consist of holdings administered by Charles Stanley and what appears to be a holding of 1,850 shares in Aviva.*

*"We attach a copy of the last statement we received from Charles Stanley for the assets under their administration. This is dated April 2015.*

*"We have been looking for the shares certificates for the Aviva holding but have been unable to locate these in our office. However, we are able to identify the shareholding from the Aviva tax vouchers we have received with dividend payments.*

*"We attach a copy of the last tax voucher we have received from Aviva in April 2015.*

*We are willing to ask Charles Stanley to liquidate the holdings they are administering and to attend to the sale of the Aviva shares. Please however advise whether your client still wishes our firm to deal with this matter. If not please advise where the Trust documents should be sent.*

*"Given the delay in our responding we will not charge a further fee for liquidation of the assets if we are instructed to attend to this."*

- 6.14 On 23 November 2015, the Secondary Complainer e-mailed the Respondent to say that he had not been surprised to receive no response to his letter of complaint other than to hasten the Respondent's reply to TSP on the matter. In the circumstances of the firm having administered the Trust for 15 years, the Secondary Complainer said that it made sense for the Respondent to liquidate the assets held in trust and provide a closing statement which he looked forward to receiving without undue delay.
- 6.15 On 14 January 2016, the Secondary Complainer chased up the Respondent by e-mail noting that it had been 7 weeks since his previous e-mail which was more than enough time to carry out his instructions and requested a response before close of business.
- 6.16 On 15 January 2016, the Respondent wrote to brokers Charles Stanley instructing them to liquidate the remaining investments currently managed by them and forward to him the funds together with any funds currently held at credit so that he could forward these to the beneficiaries.
- 6.17 On 18 January 2016, Charles Stanley wrote to the Respondent confirming they had sold the last remaining equity held in their nominee account and would remit proceeds separately. They confirmed that there was a holding of Aviva for which they did not hold the stock and if the Respondent wanted this sold, he should provide the share certificate and signed transfer form.
- 6.18 On 19 January 2016, the Respondent wrote to Computershare Investor Services regarding the Aviva holding and confirmed that he had been instructed by the trustees of the Trust

to sell the holding. He asked that they confirm the holding and advise whether the shares were held electronically because if not he would require an indemnity for completion as the Respondent did not hold any certificates.

- 6.19 On 24 January 2016, Computershare Investor Services replied by letter to advise that their policy of customer confidentiality was in accordance with the Data Protection Act 2009 meaning that they were unable to disclose any information or act upon an instruction relating to a holding without the written consent of the holder or their legally appointed representative. They asked for a signed letter of authority to allow them to correspond and provide the requested information. They also advised that they required the current shareholder(s) to re-register the shares by completing an enclosed transfer form.
- 6.20 On 28 January 2016, the Respondent's staff member SR spoke by telephone with Computershare who confirmed that the Aviva shares were held by the late Mr X as an individual and until the firm provided a letter of authority then they could not investigate further. A letter of authority signed by Mr X's executors was required as opposed to anything from the remaining trustees. It was also confirmed that this holding would have a share certificate which SR understood the Respondent did not have.
- 6.21 On 25 January 2016, the Respondent's cashier e-mailed Charles Stanley to acknowledge receipt of their letter with a contract note confirming the sale of an investment in a trust for £6,481.62 and receipt of £20,817.67 direct to the firm's client account of 22 January 2016. The e-mail added that unfortunately the firm had not received a contract note for the difference of £14,336.05 and asked that this be forwarded. Charles Stanley confirmed the same day that funds had been accumulated following redemptions.
- 6.22 On 10 February 2016 the complainer advised his wife that Charles Stanley had received a fax from the firm to sell Merchants Trust Shares and forward the redeemed treasury stock proceeds. Charles Stanley had sent a cheque to the Respondent on 20 January 2016 for £20,817.67 in respect of that and advised that the account should be closed. The complainer suggested to his wife that they needed SG to push the Respondent over the Aviva Shares, the devaluation of assets since the previous spring, and to be satisfied that all had been properly accounted for.
- 6.23 On 15 February 2016, SG at TSP wrote by letter and e-mail to the Respondent.

*“Following on from your letter of 29 August (sic) 2015, the trustee Gavin Mason informs me that he instructed you to liquidate all the shares. I am advised that Charles Stanley carried out sales of the holdings under their control and that the net proceeds of £20,817 were sent to you on 20 January. Please would you confirm receipt of these funds as soon as possible and remit them to my firm’s client account as follows: [XXX]*

*“Mr Mason tells me that you should already be aware of the trustees’ wish that the proceeds of sale be sent to my firm for distribution. I take it from your letter of 29 October that no fees are to be deducted by your firm.*

*“In addition, we see from your earlier letter that the trust also holds 1,850 shares in Aviva. This is a certificated holding, but the scrip cannot be located. Accordingly, please would you contact the share registrars, Computershare Investor Services plc at the Pavilions, Bridgwater Road, Bristol, BS99 6ZZ, asking them to confirm their requirements for issuing a replacement certificate. I suggest that the missing certificate indemnity form is sent to me so that I can arrange completion by the trustees. If the up-to-date shareholder reference number is not available from recent dividend counterfoils, I understand that it can be obtained from Computershare on 0371 495 0105, although Gavin Mason may have to be involved in this respect.*

*“I look forward to hearing from you very shortly, in view of the various delays the trustees have experienced, and I shall telephone you in a weeks’ time to check on progress if I have not had a reply from you in the meantime”.*

6.24 On 22 February 2016, the Respondent replied to SG at TSP:

*“We refer to your letter dated 15<sup>th</sup> February 2016. We confirm we have repeatedly attempted to e-mail [stuart.goodbody@ts-p.co.uk](mailto:stuart.goodbody@ts-p.co.uk) [solicitors@ts-p.co.uk](mailto:solicitors@ts-p.co.uk) and unfortunately our e-mails are being returned as “undeliverable”.*

*We confirm we have transferred by electronic transfer to your client account on Friday the sum of £24,622.82. This comprises of the funds of £20,817.67 received from Charles Stanley and additional funds received from trust investments which are being held in deposit of £3,802.88.*

*“With regard to the Aviva Shares we confirm that we have already been in contact with Computershare and were advised that the Aviva shares were apparently held by the late Mr [X] as an individual other than on behalf of the Trust. We have also been advised by Computershare that until we provide a letter of authority from the remaining trustees Computershare cannot investigate further. We had explained to Computershare that Mr [X] passed away last year and should have only been registered as Trustee along with the other Trustees.*



*“As the shares were purchased before Mr Harper took over Antons we cannot comment upon the reasons why the shares would have been taken in an individual’s name.*

*“We do not have the share certificates with the papers for the Trust.*

*“We therefore will be writing to the late Mr [X’s] Executors asking them to sign a letter of authority on the assumption that the shares are indeed held in the late Mr [X’s] individual name.*

*“We will advise when we have heard back from the Executors of the late Mr [X’s]. In the meantime, please acknowledge receipt of the funds we have sent you.*

*“We are preparing accounts for our dealings with the Trust. Please advise if this has to be forwarded to yourself or to the Trustees”.*

- 6.25 On 22 February 2016, the Respondent wrote to the late Mr X’s daughter explaining the position described immediately above and asking her to confirm the names of her late father’s executors or the solicitors who dealt with his estate.
- 6.26 On 24 February 2016, Mr X’s daughter e-mailed the Respondent to confirm that she and her two siblings were the executors. On 26 February 2016 the Respondent wrote to each of them enclosing for their signature and return a letter authorising the firm to correspond with Aviva in relation to the sale of the shares and confirming that the sale proceeds would be sent to the beneficiaries of the Trust. The executors cooperated with the Respondent’s request and on 29 February 2016 returned to him their signed letters of authorisation for the sale of the shares.
- 6.27 On 24 February 2016, SG wrote to the Respondent thanking him for his letter of 22 February 2016 and confirming receipt of £24,622.82 on 19 February. SG noted the Respondent’s comments regarding Aviva shares and looked forward to hearing from him further once he had heard back from the executors of the late Mr X. He asked the Respondent to send the trust accounts directly to the trustees.
- 6.28 On 10 March 2016, the Respondent received a letter from HMRC dated 17 February 2016 advising that the Trust’s Tax Return for year ended 5 April 2015 was late and had incurred a penalty charge of £100.
- 6.29 On 8 April 2016, the Secondary Complainer asked SG to chase up the Respondent as it had been 6 weeks without reply. He raised the matter of the late tax return due 31

January 2015 which the Respondent had accepted responsibility for as the lateness had been his. He anticipated the same thing had happened in the most recent year (he referred to the enclosed fine) so asked SG to clarify that with the Respondent too.

6.30 On 15 April 2016, SG wrote by letter and e-mail to the Respondent.

*“Further to the letter you sent me on 22 February, have you made contact with [Mr X’s] executors so that the sale of the Aviva shares can be progressed?”*

*“Gavin Mason has received a penalty notice from HM Revenue & Customs for the late submission of the trust tax return for the year ended 5 April 2015. Mr Mason informs me that a penalty was charged last year, presumably in connection with the 2014 trust tax return. Please confirm as a matter of urgency that the trust’s final tax return for the period up to the date of [BH’s] death on 17 January 2015 is being attended to, assuming that this is something the trustees have instructed you to undertake.*

*“I look forward to hearing from you at your earliest convenience”.*

6.31 On 4 May 2016 and again on 18 May 2016, SG chased the Respondent for a reply.

6.32 On 12 August 2016, the Respondent received a letter from HMRC advising that late filing penalties for year ended 5 April 2015 were now £1200.

6.33 On 31 August 2016, the Respondent wrote by letter to HMRC referring to their late penalty notices dated 17 February and 12 August 2016 and enclosed his firm’s cheque in the sum of £1,300 in payment.

6.34 On 31 August 2016, the Respondent wrote to Computershare explaining again the situation with Aviva holding and asking them what was required for the shareholding to be realized. He enclosed the letters of authority signed by the late Mr X’s three executors.

6.35 On 8 September 2016, Computershare wrote by letter to “The Representatives of Mr X c/o Antons Solicitors”. The letter stated that they had recently been notified that Mr X had died. They confirmed that following this notification they had updated their records accordingly and information on how to formally register the death would be sent under separate cover to the authorised representative.

- 6.36 On 8 September 2016, Aviva/Computershare wrote under separate cover to the Respondent with detailed instructions on how to register Mr X's death with them; calculating the date of death value of the holding; and setting out the options including transferring the shares and subsequent share dealing.
- 6.37 On 3 October 2016, the Respondent received a letter dated 28 September 2016 from HMRC thanking him for sending them the 2014-2015 Trust tax return but advising that they could not accept it and were returning it because it had to be signed by an acting trustee rather than by the Respondent as their agent. They asked him to ensure the return was signed by his client and resubmitted.
- 6.38 On 23 November 2016, SG wrote to the Secondary Complainer to ask if he had heard anything further from the Respondent regarding the remaining (Aviva) shares and final trust returns as he had had no meaningful communication from him or the firm since February 2016. SG wanted to close his file on the matter.
- 6.39 On 23 November 2016, the Secondary Complainer wrote to SG as follows:
- "I have heard nothing from Harper or Antons and it also appears he is either late again, or not doing at all, the Trust Tax Returns. I have had to pay a late filing penalty as a Trustee.*
- "I had previously made a formal complaint to his firm, and copied you in at the time, but had no reply other than that he wrote to you with what you had been chasing him for at that time.*
- "As Harper offered to conclude these matters free of charge (including paying a late filing penalty) it seemed reasonable to me, as a Trustee, to accept his offer rather than engage another firm to wind down the Trust. At no point have we been told that he no longer wishes to continue and do this.*
- "Can you please advise what our options are now?"*
- 6.40 On 23 November 2016, SG suggested that the Secondary Complainer lodge a complaint with the SLCC.
- 6.41 On 15 February 2017, HMRC wrote to the Respondent to advise that the Trust's tax return for year ended 5 April 2016 had not been submitted in time and a penalty of £100 was payable.

- 6.42 On 21 February 2017, HMRC wrote to the firm to advise that the late filing penalties for the year ended 5 April 2015 totalled £300.
- 6.43 On 11 August 2017, HMRC wrote to the Respondent to advise that late filing penalties for the year ended 5 April 2016 totalled £1200.
- 6.44 On 13 August 2017, the Secondary Complainer wrote a second formal letter of complaint which he faxed to the Respondent:

*“Following my first formal complaint, on the 29<sup>th</sup> October 2015, you communicated briefly with TSP Solicitors and it was understood that you would:*

- 1. Retrieve the Aviva shares which appeared to have been misappropriated by your firm.*
- 2. Bring up to date the Trust’s Tax returns including paying the HMRC late penalties from your own funds.*
- 3. Wind up the Trust and forward all proceeds to TSP Solicitors.*

*“You appear to have done nothing with these matters for more than a year and you fail to return my phone calls. Meanwhile further HMRC penalties accrue.*

*“I consider this to be unsatisfactory professional conduct within the meaning ascribed to this term by the Law Society of Scotland. It also appears to constitute Asset Misappropriation within the meaning ascribed by the National Fraud & Cyber Crime Reporting Centre.*

*“As a last attempt, before making a complaint to the above bodies, I am prepared to allow 7 days for you to confirm your precise proposals and, if satisfactory, a further 21 days in which conclude the Trust’s affairs as you undertook to do in October 2015.*

*“I enclose a 6 page Cut & Paste timeline of the relevant emails since Mrs [BH’s] death in January 15 along with copy of 2 letters from TSP Solicitors to Antons and copy of the HMRC Penalty Notice”.*

- 6.45 On 18 August 2017, the Respondent replied by letter to the complainer:

*“We refer to your faxed letter of 13<sup>th</sup> August 2017.*

*“We confirm that we contacted Aviva last year in connection with the shareholding registered in the name of the late Mr X. We enclose a copy of the letter received from Aviva in response.*

*"We acknowledge that we have not actioned this letter.*

*"Since we notified Aviva of the late Mr X's death we have received no further dividend payments for the shareholding. We assume that these are being held pending registration of the death of the late Mr X with Aviva.*

*"We have also enclosed a copy of our up-to-date client account for the AJ Stuart Trust which you will see is currently at a zero balance. The last entry dated 16<sup>th</sup> May 2016 for £259.93 has been invested in an interest-bearing account. For the avoidance of doubt, we have not appropriated the shares or used the last dividend received to pay any outlays. If you wish this sum to be forwarded to yourself, we will do so.*

*"We will write to the Executor of the late Mr X to request details of the late Mr X's estate and whether or not Confirmation has been granted. If Confirmation has been granted it would not presumably include the Aviva shares.*

*"It appears from the enclosed papers that it may be necessary for an additional application to be made to include the shares as an addition to the late Mr X's estate in order for the Executors to his estate to apply for a new share certificate for the transfer of the shares to the Trust beneficiary.*

*"Given the delay in progressing matters which we acknowledge please advise whether you wish Antons to continue dealing with this matter or whether you wish to pass the papers to another firm of Solicitors.*

*"Antons will also remain responsible for payment of any fines imposed by HMRC".*

6.46 On 6 September 2017, the Secondary Complainer wrote to the Respondent as follows:-

*"In reply to your letter of the 18<sup>th</sup> August, the beneficiaries see no merit in engaging another firm at this late stage in the affairs of the AJ Stuart Trust.*

*1. The letter from Aviva, a copy of which you enclosed dated 8<sup>th</sup> Sept 2016, appears to assume that 1850 Aviva shares were wrongly registered in the name of Mr [X], the now late trustee of the AJ Stuart Trust, will be transferred to his executors following the formal registration of his death. "Confirmation" as you refer to it in Scottish Law. You refer 6 times in your letter to "Mr [X]" and it is not hard to see how this registration error occurred.*

*I was expecting you to contact his executors last year to inform them of the share registration error and as you say you will do this now, a year later, it seems likely that the shares, or their value if sold, will likely have been distributed in accordance with his will. I hope you will be able to unravel this and make a claim on his estate if necessary.*

*2. As you have agreed to be responsible for the HMRC late filing penalties, may I suggest you contact them to resolve the matter. Perhaps they would waive the penalties, and even reimburse the payment I made for the year to April 2015, if they knew the Trust was, or should have been, closed.*

*"I look forward to progress now being made and matters concluded".*

- 6.47 On 29 September 2017, the Respondent e-mailed again Mr X's daughter/executor referring to the letter she had provided the previous year to allow for the sale of the Aviva shares which had formed part of the Trust. He enclosed a copy of the letter dated 8 September 2016 which he had received from Aviva/Computershare in response to notifying them of her father's death. He accepted that he had failed to action the terms of the letter until now and had advised the Secondary Complainer of this too and who had instructed him to contact her and the other executors as it seemed now that for Aviva to transfer the shares Confirmation would be needed for the shareholding as part of her father's estate. In the event of Confirmation already having been granted then he said it might be necessary to apply for an amendment of Confirmation. A third option he suggested was if her father's estate was worth less than the IHT limit of £325,000 then he might be able to deal with the matter by way of a small estate declaration and indemnity form. In any event the Respondent offered to deal with any application and associated cost.
- 6.48 On 29 September 2017, the Respondent wrote to the Secondary Complainer to explain the terms of his further approach to Mr X's children/executors and said he would report back their response. Separately he enclosed a copy letter received the previous year from HMRC returning a copy of the tax return the firm had submitted for tax year ending April 2015. The Respondent pointed out that the letter stated that the return had to be signed by a trustee and therefore asked the Secondary Complainer to sign and return the copy so that the Respondent could submit it to HMRC.
- 6.49 On 29 September 2017 the Respondent had a telephone conversation with Mr X's daughter/executor who was responding to his e-mail. The Respondent confirmed that he had failed to progress the matter after their last communication beyond receiving the response from Aviva in September 2016. She confirmed that the shareholding had not been included in the Confirmation to her late father's estate. The Respondent opined that an eik might be needed. The executor wanted to know if the Respondent would meet the

cost to her in seeking her own legal advice and the Respondent agreed to this. The Respondent asked her to send him a copy of the Confirmation so he could consider preparation of an eik after she had sought her own legal advice.

- 6.50 On 29 September 2017, the Respondent wrote to the Secondary Complainer to inform him of the content of his discussion with Mr X's daughter/executor.
- 6.51 On 3 November 2017, the Respondent e-mailed the agents who were dealing with Mr X's executry attaching a letter from Aviva which they had previously discussed. He said that he thought that this had been sent to them the previous week and asked them to let him know how they wanted to proceed.
- 6.52 On 17 November 2017, the same agents e-mailed the Respondent attaching a further letter from Computershare dated 15 November 2017 with a form to be completed for a replacement Certificate to be issued for the Aviva holding. They asked the Respondent if he wanted them to have the form signed by the executors. They also asked him to let them know if the holding was to be transferred to the name of another or sold so they could arrange signature of the appropriate form.
- 6.53 On 20 November 2017, the agents e-mailed the Respondent again with further correspondence from Computershare and said that it looked as though they would be able to proceed without obtaining an eik to Confirmation. They asked for his instructions as to whether the shares were to be sold and, as per their e-mail on 17 November, said they would require a cheque in settlement of the indemnity due for the lost share certificate.
- 6.54 On 13 February 2018, HMRC wrote to the Respondent to advise that as the Trust's tax return for the year ended 5 April 2017 had not been sent in on time a late penalty of £100 was payable.
- 6.55 On 20 February 2018, HMRC wrote to the firm to advise that late filing penalties for the year ended 5 April 2016 totalled £300.
- 6.56 On 4 June 2018, Aviva issued a new share certificate for 1850 Ordinary Shares in the name of the Secondary Complainer with his registered address being that of his firm, where the certificate was then sent.

- 6.57 On 12 July 2018, the agent wrote to the Respondent to confirm that the shareholding had been transferred to the complainer as the surviving trustee with the registered address being that of the Respondent's firm and that they had asked that the fresh certificate be sent to the Respondent directly. They also asked him to settle the balance of their fees and outlays of £336.55. These totalled £1,274.50 made up as follows:
- Fee for transferring the holding per Auditor's Certificate - £930
  - VAT on their fee - £186
  - Auditors Fee - £48
  - Computershare fee to transfer Aviva holding - £110.50
- 6.58 The agents had already deducted £937.95 which was the sum they had received from Computershare re 4 outstanding dividend payments from Aviva of £137.27 (7/11/16); £293.78 (17/5/17); £155.40 (17/11/17) and £351.50 (17/5/18), leaving a net balance due to them of £336.55 which the Respondent paid on 27 August 2018.
- 6.59 On 31 July 2018, HMRC wrote to the Respondent to advise that late filing penalties for the year ended 5 April 2017 now totalled £900.
- 6.60 On 13 August 2018, HMRC wrote to the Respondent to advise that late filing penalties for the year ended 5 April 2017 now totalled £1200.
- 6.61 On 19 June 2019, SG asked the Secondary Complainer what was to be done with the outstanding sum on his client account from the monies received from the Respondent several years ago.
- 6.62 On 20 June 2019, the Secondary Complainer e-mailed SG to advise that he had had no luck with the Respondent doing what he had undertaken to do in winding up the Trust, either free of any further charge as he had offered or indeed at all. Neither did it appear to him that the Respondent had taken steps to recover the shares that were mistakenly included in the estate of the late trustee Mr X and distributed to his relatives in error. He also noted that HMRC penalties continued to accumulate.
- 6.63 The Secondary Complainer submitted a complaint to the SLCC in which he stated:



*"1850 Aviva shares held in the A J Stuart Trust and administered by Mr Harper of Antons, had been registered in error in the name of one of the trustees – Mr X – and upon his death had mistakenly formed part of his estate. This only became known by me on 22 Feb 2016. Mr Harper accepted the error and undertook, free of charge, to rectify matters. I chased him periodically on this and the winding up of the trust as can be seen in the timeline document previously enclosed..."*

6.64 On 17 June 2020, the Respondent e-mailed the SLCC following their intimation of the complaint upon him as follows:-

*"As I do not have access to the files for this case, I am not in a position to deal directly with this complaint. I believe the files were among those taken over by the LSS when Antons closed in February 2019.*

*"I suggest this matter be put through your eligibility procedure as suggested.*

*"I should add that I intend to apply for my own bankruptcy in the next few weeks and this may affect how this complaint can be dealt with on my part".*

6.65 On 11 December 2020, the Respondent e-mailed the Council in in response to their intimation of the complaint:

*"I refer to your email of 23 November 2020 regarding the above complaint.*

*"I have already advised in previous correspondence that I do not have any of the files relating to this matter in my possession. These files were among those taken into the possession of the Law Society after Antons ceased trading in February 2020.*

*"My following comments are based upon my recollection of this matter without having the benefit of the files to hand.*

*"I accept that the grounds of complaint numbered 1-5 set out in the papers which accompanied your said email are justified.*

*My recollection is that I arranged for the Aviva shares referred to in the papers to be transferred from the executor of the estate of the late Mr X to the name of Mr M but the new share certificate may not have been forwarded to him. If not, the certificate should be in the files. I am not sure why the shares were originally registered in the name of the late Mr X as this was done before I took over dealing with the trust in 2010.*

*"I should add that an award of sequestration was made against me on 20 November 2020. The agents dealing with the sequestration on behalf of the Accountant in Bankruptcy are Wylie & Bisset 168 Bath Street, Glasgow".*

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect that he:
  - 7.1 Failed to act diligently in that he failed to finalise the tax compliance work for the Trust following the death of the life tenant;
  - 7.2 Failed to act diligently or in the best interests of the Trustees in that he delayed unconscionably and failed to complete the winding up of the Trust;
  - 7.3 Failed to act diligently or communicate effectively with his client in that the Respondent did not inform the Secondary Complainer that he had ceased to practice despite having been engaged in an ongoing matter; and
  - 7.4 Accepted instructions to deal with matters which were beyond his professional competence.
  
8. The Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 22 June 2023. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Stephen Andrew Harper, c/o 37 Seaforth Avenue, Wick, Caithness; Find the Respondent guilty of professional misconduct in respect that he failed to act diligently in that he failed to finalise the tax compliance work for the Trust following the death of the life tenant; failed to act diligently or in the best interests of the Trustees in that he delayed unconscionably and failed to complete the winding up of the Trust; failed to act diligently or communicate effectively with his client in that the Respondent did not inform the Secondary Complainer that he had ceased to practice despite having been engaged in an ongoing matter; and accepted instructions to deal with matters which were beyond his professional competence; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of three years, any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him 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; 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; Direct 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; and Allow the Secondary Complainers 28 days from the date of intimation of these findings to lodge a claim for compensation if so advised.

**(signed)**

**Kenneth Paterson**

**Vice Chair**

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 **6 JULY 2023**.

**IN THE NAME OF THE TRIBUNAL**



**Kenneth Paterson**

**Vice Chair**

## **NOTE**

At the Hearing on 22 June 2023, the Tribunal had before it the Complaint, a Joint Minute, and an email and supporting documents from the Respondent. The Tribunal Clerk gave evidence on oath confirming that the Complaint had been served on 15 April 2023 and the notice of hearing had been served on 12 May 2023. The Respondent had entered into a Joint Minute. He had indicated by email that he did not intend to attend the hearing but had provided written material for the Tribunal's consideration. The Tribunal was satisfied in the circumstances that the Respondent had been given proper notice of the hearing and that it was fair to proceed in his absence.

## **SUBMISSIONS FOR THE COMPLAINERS**

Referring to the Complaint and Joint Minute, the Fiscal invited the Tribunal to make findings in fact in the same terms as the averments of fact in the Complaint. He outlined the Respondent's course of alleged misconduct which he said started with his failure to respond to SG's letter of 5 June 2015 and went on into 2019. He noted that the Respondent was sequestered on 20 November 2020. He said it was not the worst example of professional misconduct but submitted that it did meet the "Sharp test". The Respondent's behaviour had been unconscionable and brought the profession into disrepute.

The Fiscal noted that he had spoken recently to the Secondary Complainer. He reported that he had recovered the share certificates required. His only outstanding matter was the dividends paid into the Trust's client account from 2015 onwards. The Secondary Complainer was at present undecided about whether to make a claim for compensation.

In answer to a question from the Tribunal, the Fiscal submitted that it could be inferred from the way that the Respondent had handled the case that he had acted in matters beyond his professional competence.

## **DECISION**

The Tribunal was satisfied beyond reasonable doubt based on the admissions in the Joint Minute that the Respondent had acted in the manner set out in its findings in fact. In dealing with a Trust matter, the Respondent had failed to diligently finalise the tax compliance work, failed to wind up the Trust, failed to inform the Secondary Complainer that he had ceased to practice, and accepted instructions to deal with matters which were beyond his professional competence.

Solicitors must act in the best interests of their clients (Rule B1.4). They must communicate effectively (Rule B1.9). They must only act in those matters where they are competent to do so (Rule B1.10). The Respondent breached these rules.

According to the definition of professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313,

*“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 Respondent repeatedly failed to do the work required to wind up the Trust in question. It was clear from his handling of the case that he did not have sufficient competence to carry out this work to the requisite standard. He acknowledged in his correspondence with the Secondary Complainer and SG that he had failed to take action, yet his course of inaction persisted for four years. Having regard to all the circumstances, the Tribunal was satisfied that the Respondent’s conduct *in cumulo* represented a serious and reprehensible departure from the standards of competent and reputable solicitors. Accordingly, he was guilty of professional misconduct.

The Fiscal confirmed that there were no findings on the Respondent’s record card. He moved for expenses.

The Tribunal had regard to the information the Respondent provided with regard to his current personal and financial circumstances. It noted that there were no previous conduct findings against the Respondent. The Respondent had cooperated with the Fiscal and had entered into a Joint Minute. The Respondent’s behaviour was not at the most serious end of the spectrum of misconduct. However, it persisted for many years, despite various opportunities to turn the situation around. The Respondent’s conduct was likely to damage the reputation of the profession. There was no information available to the Tribunal to judge the Respondent’s insight or remorse. The Tribunal considered that the conduct could be a danger to the public.

In all the circumstances, it was appropriate to censure the Respondent. It was also appropriate to provide a level of protection to the public by restricting his practising certificate so that he could only work under supervision. This gives the Respondent the opportunity of returning to work as a solicitor, while at the same time protecting his clients. The restriction will last for an aggregate period of three years. That means that the Respondent must complete three years of practice under supervision before he can apply for a full practising certificate. Any periods out of practice do not count towards the three-year total.

The Tribunal found the Respondent liable in the expenses of the Complainers and the Tribunal on the usual basis. The Tribunal's decision will be given publicity. The Respondent and the Secondary Complainer will be named in the decision. The Secondary Complainer will have 28 days from the date of intimation of these findings to lodge a claim for compensation with the Tribunal Office.



**Kenneth Paterson**  
**Vice Chair**