

**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**

on behalf of

**IRIS McNAB on behalf of The
Friends of Victoria, Forth Park
and Whytemans Brae Hospital, 241
Overton Mains, Kirkcaldy**

against

**GEORGE ANTHONY
MACPHERSON SANDILANDS,
Andrew K Price Limited, 18
Whytecauseway, Kirkcaldy**

1. A Complaint dated 7 October 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") on behalf of Iris McNab, on behalf of The Friends of Victoria, Forth Park and Whytemans Brae Hospital, 241 Overton Mains Kirkcaldy (hereinafter referred to as "the Secondary Complainer") requesting that, George Anthony Macpherson Sandilands, Andrew K Price Limited, 18 Whytecauseway, Kirkcaldy (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent. The

Respondent sent in a letter indicating that he would not be challenging the Complaint.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 10 January 2014 and notice thereof was duly served on the Respondent.
4. The hearing took place on 10 January 2014. The Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was not present or represented. Iris McNab was present on behalf of the Secondary Complainer.
5. The Respondent sent in a letter dated 7 January 2014 confirming that he accepted the facts, averments of duty and averments of professional misconduct in the Complaint but did not accept that compensation was due to the Secondary Complainer.
6. The Tribunal found the following facts established
 - 6.1 The Respondent was enrolled as a solicitor on 2 October 1975. During the period 4 June 1976 to 27 April 2012 he was a partner in the firm of Beveridge, Herd and Sandilands. From 27 April 2012 until April 2013 he was a consultant with the firm of Andrew K Price Limited. The Respondent has now retired from practice.
 - 6.2 The Secondary Complainer made a complaint alleging inadequate professional service on the part of the Respondent's firm on 13 January 2010. That complaint concerned his firm's management and administration of the executry of the late Ms A who died in October 2007. The Secondary Complainer was a beneficiary under the late Ms A's will. That complaint was initially considered by the Client Relations Committee of the Complainers on 19 October 2010. Thereafter the Secondary Complainer raised a handling complaint with the Scottish Legal

Complaints Commission (“the SLCC”). The SLCC produced an Opinion dated 4 May 2011 recommending that the complaint be considered by a differently constituted Client Relations Sub Committee.

- 6.3 The complaint was considered by a differently constituted Client Relations Sub Committee on 6 October 2011. Following that hearing a Schedule containing inter alia the Sub Committee’s deliberations and decision was prepared. The Sub Committee Schedule provided that:

“The Sub Committee determined that in order to be able to assess whether the length of time which the administration had taken was appropriate, the Sub Committee would require a Report from the solicitors detailing the status of the administration....The Sub Committee ordered that the solicitors provide it with a detailed Report explaining precisely what steps the firm had taken since the previous Committee decided the complaint in October 2010 to date; what matters remain outstanding; and the solicitors’ estimation of a timescale for completion of these matters, within the next 21 days. The Sub Committee noted that should the solicitor dealing with the administration of the Estate fail to respond to the Sub Committee’s enquiry it would consider whether or not to refer such a failure to the Client Care Sub Committee, for consideration in the context of a complaint relating to the solicitor’s potential unsatisfactory professional conduct or professional misconduct.”

- 6.4 On 26 October 2011 the Complaints Investigator wrote to the Respondent to advise that the service complaint had been considered by the Client Relations Sub Committee on 6 October 2011 and had been continued at that time to allow further information to be obtained from the Respondent’s firm. The Complaints Investigator attached the Sub Committee’s Schedule dated 6 October to that letter. The letter advised the Respondent

that the complaint would be heard by the Sub Committee on 1 December 2011 and required a response within 21 days of the date of the 26 October letter.

- 6.5 The Respondent did not respond within 21 days. The Respondent did not respond in advance of the Sub Committee hearing scheduled to take place on 1 December 2011. As a result the matter was withdrawn from the Sub Committee and the complaint continued to a further hearing of the Sub Committee scheduled for 2 February 2012.
- 6.6 On 5 December 2011, the Complaints Investigator wrote to the Respondent to advise that the Sub Committee “have expressed their extreme disappointment in that you have failed to provide further information as requested by them and as intimated to you in my earlier letter dated 26 October (enclosed). A further letter intimating a section 15 Notice will now be intimated and failure to respond to that within 14 days will result in a forthcoming conduct complaint against you if such failure to respond continues”.
- 6.7 On 13 December 2011 the Complaints Investigator issued a Notice under Section 15(2)(i)(i) to the Respondent in connection with the inadequate professional service complaint (“The First Part of the Section 15 Notice”). The First Part of the Section 15 Notice stated that the Complainers considered that the Respondent had failed to reply in such a way which would enable the Complainers to complete their investigation of the matter. It required the Respondent to send to the Complaints Investigator the response previously requested in the letter of 26 October 2011. It stated “You should also be aware that if you fail to respond to this Notice within the specified timescale, the Society will intimate to you a conduct complaint in relation to your failure to respond to the Law Society”. The Respondent was required to reply within 14 days of 13 December 2011.

6.8 The Respondent sent a response to the Complainers on 23 December 2011.

6.9 On 2 February 2012 the Sub Committee considered the Secondary Complainer's complaint of inadequate professional service, and considered the content of the Respondent's response dated 23 December 2011. A Schedule of the Sub Committee's deliberations and decision was prepared. The Sub Committee Schedule provided that:-

“The Sub Committee referred to the letter dated 23 December 2011 received from the solicitors. It noted that the letter was in response to a Statutory Notice served on 13 December 2011. The Sub Committee expressed their disappointment with the solicitors' Report and unanimously agreed that further information was required before they could make a final determination. The Sub Committee agreed that the Complaints Investigator was to request a further detailed Report from the solicitor specifically outlining information in relation to the following matters...”

6.10 The Sub Committee proceeded to specify seven matters on which a response was sought from the Respondent.

6.11 The Sub Committee's Decision as narrated in the Schedule provided:-

“The Sub Committee decided to continue consideration of the complaint for one further month. The Sub Committee expressed its disappointment with the solicitors' lack of information provided and decided that if the solicitors' unwillingness to assist with the investigation continued that the individual solicitor's conduct would be referred to the Client Care Committee to consider whether a further complaint might be intimated. The Sub Committee expressed the view that it wished its strength of feeling to be formally minuted so that the solicitor was left in no

doubt as to what he was being asked to provide. The Sub Committee also agreed that it would consider automatically referring the individual solicitor's potential conduct to the Client Care Committee if such information was not provided in the detailed Report as requested within the aforementioned time period."

- 6.12 On 23 February 2012 the Complaints Investigator wrote to the Respondent. She enclosed a copy of the Sub Committee's Schedule dated 2 February which set out the further information required from the Respondent. She advised the Respondent that the complaint would be considered again on 5 April 2012 and requested a report from him within the next 14 days. The Complaints Investigator did not receive a response to that letter.
- 6.13 On 22 March 2012 the Complaints Investigator wrote to the Respondent to advise that she required to withdraw the complaint from the hearing scheduled for 5 April 2012 due to the failure of the Respondent to respond to the letter of 23 February 2012. In that letter she advised that she "had been left with no alternative but to serve the second part of the Section 15 Notice in these circumstances." She advised that the Complainers would also raise with the Secondary Complainer the possibility of raising a conduct complaint against the Respondent due to his failure to respond to correspondence.
- 6.14 Attached to the 22 March letter was a Section 15(2)(i)(ii) Notice addressed to the Respondent and also dated 22 March ("The Second Part of the Section 15 Notice"). The Second Part of the Section 15 Notice narrated that the Respondent had "failed to sufficiently respond by the date specified in the Notice served on you on 13 December 2011 and to report as required to the Society". The Second Part of the Section 15 Notice also provided that "You should be aware that in view of your failure to respond to the Notice specified above within the specified

timescale, the Society may, without further warning or notice, invite any Reporter to prepare a Report in respect of this complaint to consider whether your failure to respond to the Law Society including this Notice may amount to professional misconduct”.

- 6.15 On 27 March 2012 the Secondary Complainer made a complaint alleging professional misconduct against the Respondent to the SLCC due to his failure to respond to Law Society correspondence.
- 6.16 On 4 July 2012 the Complaints Investigator wrote to the Respondent to intimate notice of the complaint. The Complaints Investigator required the Respondent to respond within 21 days:- setting out his position in respect of the complaint; providing his business files in relation to the matter from which the complaint arose (or confirm their current location); and providing any additional relevant information. The Respondent did not reply to that letter.
- 6.17 As a result on 31 July 2012 the Complaints Investigator served a further Notice on the Respondent in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 that the Complainers considered the Respondent had “failed to reply in such a way that would enable the Complainers to complete its investigation of the matter”. The Notice required the Respondent to send to the Complaints Investigator a response and explanation for the delay within 14 days. The letter advised the Respondent that “You should also be aware that if you fail to respond to this Notice within the specified timescale, the Society will intimate to you a conduct complaint in relation to your failure to respond to the Law Society. The Scottish Solicitors Discipline Tribunal has previously upheld such complaints as professional misconduct.”

6.18 Accompanying the Section 15(2)(i)(i) notice was a Notice also dated 31 July 2012 requiring the Respondent to produce specified documents in accordance with section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007. The Notice required the Respondent to deliver the specified documents to the Complaints Investigator at the Council's offices within 21 days of the date of the Notice. The Notice advised the Respondent that "If you fail to respond to this Notice within the specified timescale, the Society:- 1. Will intimate a conduct complaint to you in relation to your failure to provide the relevant documentation and/or your failure to respond to the Law Society and, 2. May apply to the court for an order requiring you to deliver the documents." The specified documents were "All business files, book, reports, deeds, securities, and other documents in your possession or control relating to the Executry from which the complaint as intimated arises together with your written response setting out your position in respect of the complaint." The Respondent did not reply to either of the Notices served on 31 July.

6.19 In connection with the service complaint, the Complaints Investigator served a further Notice in terms of Section 42C of the Solicitors (Scotland) Act 1980, dated 21 August 2012, under cover of a letter of 20 August 2012. The letter dated 20 August stated:-

"I have today issued a Section 42C Notice. I refer you to part II of Schedule 3 of the Act. I have called upon you to produce the file relating to the administration of the Estate of the late Ms A who died on 10 October 2007. You have 21 days to comply with the Notice failing which I shall instruct a fiscal to apply to the Court of Session for an order requiring you to produce or deliver the documents within such time as the court may order."

- 6.20 The attached Notice dated 21 August called upon the Respondent to produce “All business files, books, accounts, deeds, securities, papers, court orders and other documents in your possession or control relating to the administration of the Executry relevant to the Estate of the late Ms A who died on 10 October 2007” within 21 days of the date of the Notice.
- 6.21 On 11 September 2012, the Respondent delivered a letter by hand to the Complainer. The letter of same date referred to the Notice dated 21 August and enclosed files in respect of Ms A’s executry. The letter also contained a report written in response to the Complainer’s letter of 23 February 2012. In that report the Respondent accepted that he had delayed unnecessarily in responding to the Society’s correspondence, under explanation that the delay was due to an amalgamation with another firm of solicitors.
7. Having considered the foregoing circumstances and having noted the terms of the letters from the Respondent dated 8 November 2013 and 7 January 2014, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
- 7.1 his failure to respond timeously, accurately or fully to correspondence or statutory notices sent by the Complainers to him on 26 October 2011, 13 December 2011, 23 February 2012 and 22 March 2012;
- 7.2 his failure to communicate effectively by providing clear and comprehensive information in response to correspondence or statutory notices sent to him by the Complainers on 26 October 2011, 13 December 2011, 23 February 2012, 22 March 2012, 4 July 2012 and 31 July 2012; and

7.3 his failure to respond promptly and efficiently to correspondence or statutory notices received from the Complainers in respect of their regulatory function.

8. Having heard from the Secondary Complainer in respect of compensation, the Tribunal pronounced Interlocutors in the following terms:-

Edinburgh 10 January 2014. The Tribunal having considered the Complaint dated 7 October 2013 at the instance of the Council of the Law Society of Scotland on behalf of Iris McNab, on behalf of The Friends of Victoria, Forth Park and Whytemans Brae Hospital, 241 Overton Mains Kirkcaldy against George Anthony Macpherson Sandilands, Andrew K Price Limited, 18 Whytecauseway, Kirkcaldy; Find the Respondent guilty of professional misconduct in respect of his failure to respond timeously, accurately or fully to correspondence and statutory notices sent by the Law Society and his failure to communicate effectively by providing clear and comprehensive information in response to correspondence and statutory notices sent to him by the Law Society; Censure the Respondent; Fine him in the sum of £1,500 to be forfeit to Her Majesty; 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)

Kenneth Paterson
Vice Chairman

Edinburgh 10 January 2014. The Tribunal having considered the Complaint dated 7 October 2013 at the instance of the Council of the Law Society of Scotland on behalf of Iris McNab, on behalf of The Friends of Victoria, Forth Park and Whytemans Brae Hospital, 241 Overton Mains Kirkcaldy against George Anthony Macpherson Sandilands, Andrew K Price Limited, 18 Whytecauseway, Kirkcaldy; and having considered the Secondary Complainer's claim for Compensation; Make No Award of Compensation.

(signed)

Kenneth Paterson

Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

The Respondent did not attend the Tribunal and was not represented. The Respondent however had sent in a letter dated 8 November 2013 confirming that he would not be challenging the Complaint and would not be lodging Answers and confirming that he had retired from practice at the end of April 2013 and had not renewed his practising certificate. The Respondent sent another letter dated 7 January 2014 setting out mitigation and confirming that he opposed a further award of compensation in favour of the Secondary Complainer. The Respondent confirmed that he accepted the facts, averments of duty and averments of professional misconduct as set out in the Complaint. It was accordingly not necessary for any evidence to be led.

Mr Marshall advised that the Respondent did not intend to appear but accepted professional misconduct. He advised that the Secondary Complainer, Mrs McNab was present but suggested that it may not be appropriate for her to be in the court while he was making his submissions. The Chairman however indicated that the Secondary Complainer should be present in court during the submissions made by Mr Marshall and there was no need to exclude her. The Tribunal would firstly decide whether or not the Respondent was guilty of professional misconduct and after that would go on to consider whether or not it was appropriate to award any compensation in favour of the Secondary Complainer. The Tribunal did not consider in the circumstances of this case that there would be any difficulty with the Secondary Complainer being present during the Fiscal's submissions.

SUBMISSIONS FOR THE COMPLAINERS

Mr Marshall referred to his written submissions:-

“Introduction

This complaint concerns a failure by the Respondent to respond to Law Society correspondence and statutory notices.

Following service of the complaint the Respondent wrote to the clerk to confirm that he did not intend to challenge the proceedings or attend. He has sent a letter plea in

mitigation to the clerk dated 7 January 2014. In separate e-mail correspondence he has also confirmed that he admits the facts as contained in the complaint - as a result I do not intend to lead evidence to prove those facts.

He has also accepted that his conduct amounts to misconduct, but of course that is a matter for the Tribunal to determine (See e-mails dated 6 and 8 January 2014).

In this submission I will:-

1. Provide a brief summary of the facts;
2. Summarise the relevant duties owed by the Respondent as set out in the complaint; and
3. Submit why a breach of these duties amounts to professional misconduct.

Before turning to my submission, I should note that Mrs McNab of the Secondary Complainer has attended to present the Secondary Complainer's claim for compensation. In his plea in mitigation the Respondent disputes the Secondary Complainer's claim for compensation.

I do not intend to make any submission in connection with compensation. However to assist the Tribunal I have provided copies of correspondence Mrs McNab has sent to me in connection with her claim, and I am content to ask Mrs McNab some questions to allow her to state the Secondary Complainer's claim, and perhaps Tribunal members may have questions for Mrs McNab after that.

1 Summary of facts

The background to this **misconduct complaint** is that a complaint of **inadequate professional service** was being investigated by the Law Society. The complaint of inadequate professional service related to the Respondent's firm's failures in connection with the management of the executry of the later Ms A.

In connection with the service complaint the Law Society contacted the Respondent with requests for information and documentation to establish the progress being made with the executry.

As noted in the averments in the complaint, and as can be seen from the correspondence produced, the Respondent failed to respond to a succession of

correspondence and statutory notices to provide information and documentation. He was sent correspondence or statutory notices by the Law Society on a series of dates:-

26 October 2011

13 December 2011

23 February 2012

22 March 2012

4 July 2012

31 July 2012

The Respondent did not finally respond to the Law Society's various requests in a satisfactory manner until 11 September 2012. That was in response to a further statutory notice sent by the Law Society on 21 August 2012.

2 Summary of duties owed by the Respondent

At paragraph 4 of the complaint I set out the three duties which I submit the Respondent has failed to comply with.

(a) Failure to act in the best interests of client

The Respondent had a duty to act in the best interests of his clients (paragraph 4.1 in the Complaint). His failure to respond to Law Society correspondence and notices delayed the investigation of a complaint of inadequate professional service in relation to the estate of the late Ms A (paragraph 4.2). As a result the Respondent failed to act in the best interests of his client, **the estate**.

(b) Failure to communicate effectively with clients and others

The Respondent had a duty to communicate effectively with clients and others (paragraph 4.3). The Respondent's failure to respond to the Law Society's various correspondence is a failure to communicate effectively with the Law Society (paragraph 4.4).

(c) Failure to respond to Law Society when carrying out its regulatory function

The Respondent had a duty to respond promptly and efficiently to correspondence received by the Law Society when carrying out its regulatory function (paragraph 4.5). He has failed to discharge that duty.

As a result of his failure to comply with these three duties it is submitted that the respondent is guilty of professional misconduct.

3 Submission as to why these failures amount to misconduct

I would submit that these failures satisfy the Sharp test:-

“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.”

and accordingly amount to misconduct.

Failure to communicate with the Law Society

Dealing with the second and third duties in the complaint being:-

- failure to communicate effectively with the Law Society and
- failure to respond to the Law Society when carrying out its regulatory role

I rely on *Paterson and Ritchie: Law, Practice & Conduct for Solicitors*, which provides at para 12.15:-

*“...it is clear from the decisions of the Discipline Tribunal down the years that one of the most common reasons for finding solicitors guilty of professional misconduct is their failure to respond to communications from the Society...**The Tribunal has continually stressed that failure to respond hampers the Society in the performance of its statutory duty and brings the profession into disrepute.** At a time when both the profession and the Society’s regulatory function are under scrutiny as never*

before, it is even more important to deal promptly and efficiently with correspondence from the Society in respect of its regulatory functions, and if solicitors find difficulty in doing that themselves they should consider making use of the facilities afforded by the Legal Defence Union who have considerable experience in dealing with such matters.”

I would submit that this guidance will assist the Tribunal to find professional misconduct.

And *Smith and Barton: Procedures and Decisions of the Scottish Solicitors Discipline Tribunal* at paragraph 16.08 provides:-

“INQUIRIES FROM THE LAW SOCIETY

*The Law Society has a statutory duty to inquire into allegations of Professional Misconduct and Inadequate Professional Service made to it concerning solicitors and in order that the Law Society can adequately deal with such allegations it is essential that solicitors respond promptly, accurately and fully to inquiries made of them by the Law Society. **In a case where the solicitor had repeatedly failed to respond to the letters from the Law Society inquiring into various allegations** by clients, the Tribunal said:-*

“The statutory objects of the Law Society of Scotland include the promotion of the interests of the solicitors’ profession in Scotland and the interests of the public in relation to that profession; and it is in pursuance of these objects that the Law Society makes enquiries of a solicitor in the event of any letter of complaint being received from a member of the public...

...The Respondent’s conduct not only inconvenienced the Law Society and caused them to write additional letters but put the Law Society in the position that they were unable to provide each of the complainers with an explanation. Such a situation is damaging to the reputation of the profession of solicitors in Scotland and it is therefore appropriate that the Respondent should bear a substantial fine.” (Case 776/89).

I would submit that this guidance will assist the Tribunal to find professional misconduct in the present matter, given that he repeatedly failed to respond to the Law Society's inquiries.

Two recent Tribunal decisions in which failing to respond to the Law Society was held to amount to misconduct are:-

Alasdair Oag 2013

The Respondent was found guilty of misconduct due to his failure to respond to the reasonable enquiries of the Law Society between September 2009 and July 2011 (para 7.2 and 7.3). The Tribunal said:-

“The Tribunal was concerned by the Respondent's failure to respond to his professional body. Failure to do this hampers the Law Society in the performance of their statutory duty.” (Note to judgment page 16)

Alistair Kay 2013

In this matter the Respondent failed to respond to correspondence and notices from the Law Society between April and December 2008. He was found guilty of professional misconduct (paras 8.1 and 9). The Tribunal said:-

“The Respondent's conduct was extremely likely to seriously damage the reputation of the legal profession. His complete failure to co-operate with his professional body could be seriously detrimental to the public trust in solicitors.” (Note to judgment page 20)

I would submit that the conduct of the Respondent in the current matter should also be viewed as professional misconduct for the same reasons – it hampers the Law Society in performance of its role, is likely to damage the reputation of the profession, and has a negative impact on public trust.

I would submit that on this basis the Tribunal should find misconduct arising out of the failure to communicate effectively with the Law Society and failure to respond to the Law Society when carrying out its regulatory role.

Failure to act in best interests of client

Separately, we have the first duty in the complaint which is the failure to act in the best interests of the client. Remembering in the current matter the client is the estate and not the Secondary Complainer.

In the case of *Kay* referred to above the Tribunal commented at page 21 that it considered the failure to respond to the Law Society demonstrated a lack of concern on the part of the Respondent for the estate.

In the current matter the reason why the Law Society was contacting the Respondent was to investigate concerns with the lack of progress with the winding up of the estate. The Respondent repeatedly failed to respond to the Law Society and provide the information requested.

Therefore in my submission the Respondent in the current matter demonstrates a lack of concern for the estate similar to that which concerned the Tribunal in *Kay*. The Respondent's failure to respond to the Law Society over an extended period of time, when the Law Society was concerned with and investigating the lack of progress with the estate, demonstrates his lack of concern for the estate. In my submission this represents a clear failure to act in the best interests of his client.

Conclusion: finding

For the reasons that I have given in section 3 of this submission, 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....as a consequence of the Respondent's:-

1. failure to respond timeously, accurately or fully to correspondence or statutory notices sent by the Council to him on 26 October 2011, 13 December 2011, 23 February 2012 and 22 March 2012;

2. failure to communicate effectively by providing clear and comprehensive information in response to correspondence or statutory notices sent by the Council to him on 26 October 2011, 13 December 2011, 23 February 2012, 22 March 2012, 4 July 2012 and 31 July 2012; and
3. failure to respond promptly and efficiently to correspondence or statutory notices received from the Council in respect of its regulatory function

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.”

In oral submissions, Mr Marshall amplified that the Respondent had failed to reply to correspondence for a period of nearly a year. He clarified that the client was not the Secondary Complainer but was the estate.

DECISION

In this case the Respondent failed to reply to numerous letters and notices sent to him by the Law Society which clearly hampered the Law Society in the performance of their statutory duties and is prejudicial to the reputation of the legal profession. The Respondent’s failure to respond to the Law Society also delayed the Law Society’s investigation into the complaint of inadequate professional service in relation to the estate of the late Ms A. This has a negative impact on public trust in the profession. The Tribunal accordingly had no hesitation in making a finding of professional misconduct.

The Tribunal then heard from Iris McNab on behalf of the Secondary Complainer. Ms McNab explained that the Secondary Complainer had decided to claim compensation because there was a five year history of the Respondent not dealing with the executry. Ms McNab explained that due to the Respondent’s lack of attention, the value of the estate had been affected and there had been a loss in share values. Ms McNab also advised that the Tribunal that there had been time and effort involved in the charity

having to correspond with the Law Society and the Commission in respect of the matters of inadequate professional service and professional misconduct. Ms McNab however indicated, in response to questions from the Tribunal, that there were no quantifiable losses and that she could not give any figures re the value of shares etc. Ms McNab was also unable to differentiate between correspondence with the Law Society in connection with the bringing of the complaint of professional misconduct and the complaint in connection with inadequate professional services. Ms McNab advised that she did not keep timesheets because she worked on a voluntary basis but she had spent a significant number of hours dealing with these issues.

The Tribunal noted that the Client Relations Sub Committee of the Law Society had considered the inadequate professional service complaint on 10 January 2013 and made an award of £2,000 compensation in favour of the estate of the late Ms A in respect of the Respondent's delay in winding up the estate. The Tribunal also noted that the Law Society Sub Committee had previously determined that the Respondent's firm should restrict fees to 50% of those taxed for the executry. The Tribunal further noted that the Law Society Sub Committee had determined that the Respondent's firm would be required to bear the fees incurred by instructing another firm to complete the executry. Given this, the Tribunal considered that the estate had already received compensation in respect of the Respondent's delay in completing the executry.

What the Tribunal was considering was whether or not the Secondary Complainer had suffered any further losses as a result of the Respondent's misconduct in failing to respond to the Law Society. Ms McNab was unfortunately unable to differentiate between correspondence by the charity in connection with the inadequate professional service and the professional misconduct issue and was unable to provide the Tribunal with any kind of estimate in connection with quantifiable loss. The Tribunal noted that the compensation had already been awarded to the estate by the Law Society Sub Committee which had already taken into account the delay caused by the Respondent's failure to respond to the Law Society when it made its decision in January 2013. In the circumstances, although the Tribunal had sympathy for the Secondary Complainer, the Tribunal was unable to find that the Secondary Complainer had incurred any further losses, distress or inconvenience as a direct result of the Respondent's failure to respond to the Law Society.

PENALTY

The Tribunal accordingly did not make any award of compensation but considered that it was appropriate to impose a Fine of £1,500 in addition to a Censure given the Respondent's blatant disregard for correspondence received from the Law Society and his numerous failures to respond. The Tribunal noted that the Respondent had retired from practice and no longer intended to practice as a solicitor. The Tribunal made the usual order with regard to expenses and publicity.

Kenneth Paterson
Vice Chairman