

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

F I N D I N G S

in Complaint

by

**THE COUNCIL OF THE LAW SOCIETY of
SCOTLAND, formerly at 26 Drumsheugh
Gardens, Edinburgh and now at Atria One, 144
Morrison Street, Edinburgh**

against

**STEPHEN MICHAEL SKIMMING, residing at
care of 5 Old Dullatur Road, Cumbernauld**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Stephen Michael Skimming, residing at care of 5 Dullatur Road, Cumbernauld (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Secondary Complainer is James Kerr, residing at 1 Waverly Crescent, Kirkintilloch.
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 set down for a procedural hearing on 21 April 2016 and a substantive hearing on 11 May 2016 and notice thereof was duly served on the Respondent.
5. The procedural hearing took place on 21 April 2016. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present or represented. Mr Lynch asked that in the absence of any Answers being lodged for the Respondent and in the absence of any appearance by the Respondent at the Tribunal, he be allowed to proceed by way of Affidavit evidence in terms of rule 14 of the Tribunal

Rules. The Tribunal agreed that the Fiscal could proceed by way of Affidavit evidence but asked the Fiscal to have his witnesses on standby in case the Respondent appeared at the hearing that had already been set for 11 May 2016. Mr Lynch indicated that he had advised the Secondary Complainer that if he intended to lodge a compensation claim he should lodge the form which had been sent to him. Mr Lynch confirmed that he would contact the Secondary Complainer and advise him that if he wished to proceed with his compensation claim he should lodge his claim together with any evidence that he had and attend on 11 May 2016.

6. The hearing took place on 11 May 2016. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present or represented. After having heard evidence from the Clerk with regard to service of the Complaint and the Notice of Hearing, the Tribunal proceeded to deal with the Complaint in the Respondent's absence.

7. The Tribunal noted Affidavit evidence from three witnesses and heard evidence from one witness on behalf of the Law Society.

8. The Tribunal found the following facts established:-

8.1 The Respondent's date of birth is 10th February 1959. He was enrolled as a solicitor in Scotland on 20th December 2001. Between 12th February 2002 and 17th September 2002 he was employed by the firm of Moore & Partners, LP 7 Cumbernauld. Between 1st November 2002 and 14th April 2006 he was employed by Thompsons, Solicitors, 16-20 Castle Street, Edinburgh. Between 20th June 2006 and 6th March 2013 the Respondent was a director in the firm of Stephen Skimming & Co Ltd, 59 Main Street, The Village, Cumbernauld. The Respondent resides at care of 5 Old Dullatur Road, Cumbernauld. The Respondent is not currently employed by any Scottish legal firm.

8.2 The Respondent was instructed by Mr K in respect of the purchase of property one. By Missives dated 17th March and 5th August both months of 2011 Mr K agreed to purchase property one at a price of £275,000. Property one was a rural property.

- 8.3 The title to property one was not straightforward. At settlement of the transaction the Respondent obtained a disposition of part, but not all, of the subjects of purchase.
- 8.4 After settlement of the transaction Mr K became aware that he had not been given a title to part of the property. There had been two neighbouring fields which formed part of the property the dispositions for which had previously been recorded on the same day in 1989. One extended to 0.242 hectares and the other extended to 0.037 hectares. The area of ground which extended to 0.037 hectares, referred to as “the top field”, had not been transferred to the sellers of the property and was still held under a Sasine title resulting in corrective conveyancing being required. It later became apparent that the applications for registration of this area of ground forwarded to Registers of Scotland had been rejected by the Registers as the corrective disposition in favour of the sellers and prepared by the sellers’ agents and thereafter the disposition in favour of Mr K and prepared by the Respondent had incorrectly referred to the ground extending to 0.242 hectares rather than 0.037 hectares..
- 8.5 Following the cessation of the Respondent’s firm Mr K’s interests were represented by Ian Smart & Co.

Mr K’s Correspondence with the Respondent

- 8.6 Having become aware of the difficulty with his title Mr K telephoned the Respondent during November 2012. He then sent emails to the Respondent on 25th November, 30th November and 6th December, all 2012. These emails were acknowledged by the Respondent by email on 7th December 2012. The gist of the emails was that the Respondent had not obtained the title which he was supposed to, and the client wished the Respondent to take steps to resolve matters.
- 8.7 In his email of 7th December 2012 the Respondent stated that he had written to his client (Mr K) on 26th November 2012 confirming that the file had been requested from storage. The Respondent stated that he assumed that the letter had not been received. On 13th December 2012 the Respondent emailed Mr K

advising that the file had still not arrived from storage and that the matter was being “chased up”. On 14th February 2013 Mr K emailed the Respondent pointing out that no substantive response had been received over a period of four months and requested an urgent reply.

- 8.8 The Respondent did not reply. Accordingly Mr K invoked the assistance of the Scottish Legal Complaints Commission and ultimately of the Complainers.

The Complainers Correspondence with the Respondent and Service of Statutory Notices

- 8.9 The Complainers wrote (by letter and email) to the Respondent on 20th January 2015 intimating the complaint of failure adequately to respond to the correspondence from Mr K condescended upon. The letter drew the attention of the Respondent to the Complainers’ obligation in terms of Section 47(1) of the Legal Profession and Legal Aid (Scotland) Act 2007 and required that the Respondent provide a response within twenty one days.
- 8.10 The Respondent did not reply.
- 8.11 On 11th February 2015 the Complainers served the first part of a notice under Section 15 of the Solicitors (Scotland) Act 1980 on the Respondent. The notice was also sent to the Respondent by email. The recorded delivery postal copy of the notice was signed for by the Respondent on 12th February 2015. The notice required the Respondent to provide (a) a response to the complaint as previously intimated to the Respondent on 20th January 2015, together with an explanation for the delay in replying, all within fourteen days of the date of the notice.
- 8.12 The Respondent did not reply to the notice.
- 8.13 On 5th March 2015 the Complainers served the second part of a notice under Section 15 above condescended upon on the Respondent. This was again served by recorded delivery post and email. The Respondent signed for the postal copy on 7th March 2015. The Respondent was thereby put on notice that he would require to give six weeks’ notice to the Complainers of his intention to make an

application to take out a Practising Certificate for the practice year commencing on 1st November 2015.

8.16 By letter dated 26th March 2015 the Complainers intimated a further complaint to the Respondent in respect of his failure to reply to or obtemper the statutory notice and correspondence.

8.17 The Respondent failed to reply.

9. Having considered the foregoing circumstances and having heard submissions from Mr Lynch on behalf of the Complainers, the Tribunal found the Respondent guilty of professional misconduct in respect of:

- a. His failure to adequately respond to his client's correspondence sent to him in November and December 2012.
- b. His failure to respond to correspondence from the Law Society.
- c. His failure to comply with a statutory notice issued by the Law Society.

10. The Tribunal went on to consider the Secondary Complainer's compensation claim. Mr Lynch gave evidence confirming that the compensation claim had been served on the Respondent.

11. The Tribunal found that the Secondary Complainer had been directly affected the Respondent's misconduct.

12. The Tribunal pronounced Interlocutors in the following terms:-

Edinburgh 11 May 2016. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Stephen Michael Skimming, residing care of 5 Old Dullatur Road, Cumbernauld; Find the Respondent guilty of professional misconduct in respect of his failure to respond to a client's correspondence sent to him in November and December 2012, his failure to respond to correspondence from the Law Society and his failure to comply with the statutory notice issued by the

Law Society; Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

Alistair Cockburn
Chairman

Edinburgh 11 May 2016. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Stephen Michael Skimming, residing care of 5 Old Dullatur Road, Cumbernauld and having determined that the Respondent was guilty of professional misconduct, considered that the Secondary Complainer, James Kerr, 1 Waverly Crescent, Kirkintilloch has been directly affected by the Respondent's misconduct; Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to Mr James Kerr, 1 Waverly Crescent, Kirkintilloch the sum of £250.00 by way of compensation in respect of loss, inconvenience and distress resulting from the misconduct together with the Secondary Complainer's expenses for attending the Tribunal hearing in the sum of £22.00 within 28 days of the date on which this Interlocutor becomes final with interest at the rate of 8% per annum from the date due until paid.

(signed)

Alistair Cockburn
Chairman

13. 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 and the Secondary Complainer by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Alistair Cockburn
Chairman

NOTE

The Respondent had not lodged Answers to the Complaint, did not attend the procedural hearing and did not attend the substantive hearing. The Tribunal had agreed at the procedural hearing to allow the Fiscal to proceed by way of Affidavit evidence in terms of rule 14 of the Tribunal Rules. Mr Lynch lodged Affidavit evidence from James Kerr, Wendy Henderson and Margot Walker. The Tribunal then heard evidence from the Clerk to the Tribunal to confirm that the Notice of Complaint had been served by recorded delivery on 9 February 2016 at the address in the Complaint and had been signed for on 10 February 2016. The Notice of Hearing for the substantive hearing had been served by recorded delivery on 14 March 2016 and was signed for on 15 March 2016.

The Tribunal then heard evidence from Caroline Catto, Clerk to the Law Society Professional Conduct Committee, to confirm the Respondent's employment history as per his record card. Ms Catto also confirmed that the Respondent's date of birth was 10 February 1959.

The Affidavit from Mr Kerr confirmed that the Respondent had failed to respond to telephone calls and then emails sent on 25 November, 30 November and 6 December 2012. These emails had been sent to the Respondent in respect of the title issue. The Respondent had sent an email on 7 December 2012 indicating that he had written to Mr Kerr on 26 November 2012 confirming that the file had been requested from storage. The Respondent stated that he assumed that the letter had not been received. On 13 December 2012 the Respondent emailed Mr Kerr advising that the file had still not arrived from storage and the matter was being chased up. On 14 February 2013, Mr Kerr emailed the Respondent pointing out that there had been no substantive response over a period of four months and requested an urgent reply but no reply was received.

The Affidavit from Wendy Henderson, Complaints Investigator with the Law Society of Scotland confirmed that she had written to the Respondent on 20 January 2015 in respect of Mr Kerr's complaint in connection with the failure to respond and required that the Respondent provide a response within 21 days. The Respondent did not reply. The Affidavit by Wendy Henderson confirmed that on 11 February 2015 she served the first part of Section 15 Notice under the Solicitors (Scotland) Act 1980 and the recorded delivery postal copy of the Notice was signed for by the Respondent on 12 February 2015. The Respondent did not reply to the Notice. By letter of 26 March 2016 Wendy Henderson intimated a further complaint to the Respondent in respect of his failure to reply or obtemper statutory notices and correspondence and the Respondent failed to reply.

The Affidavit of Margot Walker, Solicitor employed by the Law Society as Head of Investigations confirmed that on 5 March, 2015 she served the second part of the notice under section 15 on the Respondent which was sent by recorded delivery and signed for by the Respondent on 7 March, 2015. The Affidavits of the witnesses referred to the Productions contained in the Inventory of Productions for the Complainers being the emails, copy letters and track and trace receipts.

Mr. Lynch submitted that the Respondent's failure to reply was sufficient to amount to professional misconduct.

DECISION

The Tribunal was satisfied beyond reasonable doubt on the basis of the evidence led that the facts in the Complaint were proved. The Tribunal was also satisfied that the Respondent's conduct amounted to professional misconduct. The Respondent failed to reply not only to his client but also to the Law Society and had also failed to respond to a Statutory Notice sent by the Law Society. The Tribunal has held on many occasions that this is sufficient to amount to professional misconduct. It is a breach of Rule B 1.9 of the 2001 Practice Rules and failure to respond to the Law Society hampers the Law Society in the performance of their statutory duty and bring the profession into disrepute.

The Tribunal however considered the Respondent's misconduct to be at the very lowest end of the scale of professional misconduct. His failure to respond was in respect of one client and one matter. The Respondent's failure to respond however had caused inconvenience and distress to the Secondary Complainer and had hampered the Law Society in the performance of their statutory duties. The Tribunal noted that the Respondent had been sequestered on 15 October, 2015 with an effective date of 1 May, 2015. The Tribunal did not consider that the Respondent was a danger to the public and the Respondent would have no money to pay a fine. The Tribunal considered that in the whole circumstance a Censure would be a sufficient penalty.

Mr. Lynch asked the Tribunal to make the usual order with regard to expenses. Mr. Kerr indicated that he had no issue about his name being included in the Findings and the Tribunal made the usual Order with regard to publicity.

SECONDARY COMPLAINER'S COMPENSATION CLAIM

Mr. Lynch advised that he had sent the Secondary Complainer's compensation form to the Respondent on Friday 6 May, 2016 by recorded delivery and it had been signed for on Saturday 7 May, 2016. Mr. Lynch gave evidence to the Tribunal confirming that the compensation form before the Tribunal was the compensation form that had been served on the Respondent. The letter sent by Mr. Lynch had advised the Respondent that the claim form would be placed before the Tribunal today. The Tribunal then heard evidence from Mr. Kerr in respect of his compensation claim.

EVIDENCE FROM THE SECONDARY COMPLAINER

Mr. Kerr confirmed that he was an Investigator and he had been a client of the Respondent. He had consulted with the Respondent in connection with a purchase of rural property in 2011. There had been difficulties with the title which had led to the Secondary Complainer trying to communicate with the Respondent. He had contacted the Respondent by telephone but he was not returning his calls so he sent a series of emails. Mr. Kerr confirmed that the emails sent were included at Production 1-4 of the Complainer's Inventory of Productions. Mr. Kerr indicated that he had sent other emails to the Respondent's assistant but she did not reply either. Mr. Kerr also indicated that the Law Society had made him aware of the statutory notice being prepared. He was in correspondence with the Law Society in respect of the failure to respond and the issues with the title. Mr. Kerr stated that the whole aspect had caused him a great deal of distress. He and his partner were in the middle of accepting an offer but because of the time taken to resolve matters, the party withdrew the offer. It was very unsettling for him and he and his partner had split up and there was a financial impact.

The Chairman enquired as to how the Tribunal could allocate stress between the failure to respond and the stress caused by the title difficulties. Mr. Kerr stated that if the Respondent had answered the correspondence, the matter could have been resolved quickly.

In response to a question from a member of the Tribunal, Mr. Kerr confirmed that the offer on the house had come in October/November, 2012 and the title issue was flagged up. The offer had been for £330,000. The other party was anxious with regard to lack of response. The house sale eventually went through on 5 February, 2016. It took a long time to rectify the problems. Mr. Kerr confirmed that he visited the Respondent in late 2012 and it was not long after that there was a closed sign on the door and he realised he was no longer trading so he consulted other Solicitors. In response to a

question from another Tribunal member, Mr. Kerr confirmed that he had visited the doctor in 2012/2013 with regard to anxiety and had been on medication for it but he did not have any letter from his doctor. He indicated that he could obtain one if the Tribunal wished this.

DECISION ON COMPENSATION

The Secondary Complainer had been given the claim form and guidance in connection with making his compensation claim in advance of the Tribunal hearing and the Tribunal did not consider it appropriate to adjourn to allow the Secondary Complainer to now bring medical evidence. The Tribunal was unable to accept that the Secondary Complainer's anxiety state was caused by the Respondent's failure to respond to correspondence as opposed to the problems with the title defect and the problems he was experiencing in respect of his personal relationship at the time. The Tribunal however was prepared to accept that the Respondent's failure to respond may have exacerbated the situation. The Secondary Complainer had lodged invoices in respect of fees in connection with rectification of the title deeds. The Tribunal was not able to award any compensation in respect of the defective conveyancing as the Tribunal was only dealing with a finding of professional misconduct in respect of the Respondent's failure to respond to the Secondary Complainer and the Law Society. In connection with non-quantifiable loss, the Secondary Complainer had not provided any medical evidence in respect of stress. The Tribunal accepted that the failure to respond would have caused the Secondary Complainer extra distress and noted that the Secondary Complainer had also had to deal with the Law Society and the Tribunal in connection with the proceedings in respect of the Respondent's failure to respond. The Tribunal accordingly was prepared to make an award of £250.00 in respect of inconvenience and distress resulting purely from the failure to respond by the Respondent. The Secondary Complainer may still have a live claim in connection with the service element of the matter which the Tribunal understands is still to be dealt with by the Scottish Legal Complaints Commission. The Secondary Complainer advised that he had had to buy a travel ticket at a cost of £22.00 to travel through to the Tribunal today. In the circumstances the Tribunal also awarded expenses of £22.00 in favour of the Secondary Complainer. The Respondent will pay the expenses of the whole proceedings including the time taken by the Tribunal to deal with the Secondary Complainer's claim for compensation.

Alistair Cockburn
Chairman