

**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

**OLIVER KABEYA, The Hedges,
Camelon, Falkirk (Secondary
Complainer)**

against

**RAYMOND GEORGE MALLON,
RMS Law LLP, Legal Chambers,
8 Lint Riggs, Falkirk**

1. A Complaint dated 26 July 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 Oliver Kabeya, The Hedges, Camelon, Falkirk (Secondary Complainer) requesting that, Raymond George Mallon, RMS Law LLP, Legal Chambers, 8 Lint Riggs, Falkirk (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.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 5 November 2013 and notice thereof was duly served on the Respondent.
4. The hearing took place on 5 November 2013. The Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented himself. The Secondary Complainer was not present or represented.
5. The Respondent pled guilty to the averments of fact, averments of duty and averments of professional misconduct. Mr Marshall indicated that neither the Secondary Complainer nor the Secondary Complainer's agents were present and did not intend to appear. Mr Marshall asked the Tribunal to allow Affidavit evidence of Fiona Muirs to be accepted and referred the Tribunal to paragraphs 13 and 14 of the Affidavit in connection with compensation. Mr Marshall however advised that the Secondary Complainer had not provided any vouching in respect of a claim for compensation.
6. The Tribunal found the following facts established
 - 6.1 The Respondent was enrolled as a solicitor on 30 March 2004. Since 9 November 2009 he has been a partner with RMS Law LLP.
 - 6.2 The Secondary Complainer was formerly employed by Company 1, of Property 1. He was dismissed from his employment with Company 1 by letter dated 10 February 2011. On 16 February 2011 the Secondary Complainer wrote to Company 1 appealing against the decision to dismiss him. On 15 March 2011 and 18 March 2011 the Secondary Complainer met with the Respondent and provided instructions in connection with a claim for unfair dismissal. On 18 March 2011 the Respondent wrote to Company 1 confirming that RMS Law was instructed following the Secondary Complainer's

dismissal on 10 February 2011. In said letter the Respondent noted that an appeal hearing had taken place on 2 March 2011, and advised that in the event that the Secondary Complainer's appeal was not upheld a claim for unfair dismissal would be made to the employment tribunal. On 18 March 2011 the Respondent wrote to the Secondary Complainer enclosing a copy of his firm's terms of engagement and confirming that he had written to Company 1.

6.3 On 15 April 2011 the Secondary Complainer confirmed his instructions to the Respondent to apply to the employment tribunal for unfair dismissal. At that time the Respondent prepared an attendance note and statement from the Secondary Complainer confirming his instructions.

6.4 On 29 April 2011 the Respondent wrote to the Secondary Complainer to confirm that his application for unfair dismissal had been submitted to the employment tribunal.

6.5 The case was listed for a hearing on 29, 30 and 31 August 2011. Submissions on the merits of the case were made by parties on 29 and 30 August 2011. On 30 August 2011 the employment tribunal's Oral Judgment and Reasons was given to the parties. The Secondary Complainer's complaint of unfair dismissal was struck out on the grounds of no reasonable prospect for success. The employment tribunal's written reasons were provided to parties on 23 November 2011.

6.6 On 30 August Company 1 made an application for expenses against the Secondary Complainer. The employment tribunal's written judgment on this matter was issued to parties on 30 November 2011. The judgment provided inter alia:-

"The unanimous judgment of the Tribunal is that the claimant [the Secondary Complainer] shall pay the respondent [Company 1] expenses in the sum of £8,000 (Eight Thousand

Pounds], the claimant, or his representative, having, in conducting these proceedings, acted unreasonably, and the bringing or conducting of the proceedings by the claimant being misconceived.”

- 6.7 On 12 December 2011 the Respondent wrote to the Secondary Complainer with advice on an appeal against the two decisions of the employment tribunal dated 23 and 30 November 2011 respectively and referred to at paragraphs 6.5 and 6.6 above. The Respondent advised that the Secondary Complainer should restrict his appeal to the finding of expenses against him.
- 6.8 The Secondary Complainer instructed the Respondent to lodge an appeal against the finding of expenses with the Employment Appeal Tribunal. On 9 January 2012 the Respondent submitted a Notice of Appeal to the Employment Appeal Tribunal on behalf of the Secondary Complainer. On 25 January 2012 that appeal was dismissed for the reasons stated by Lady Smith. Lady Smith considered that the Notice of Appeal disclosed no reasonable grounds for bringing the appeal, and that as a result the appeal had no reasonable prospect for success
- 6.9 The Respondent met with the Secondary Complainer on 17 February 2012. Counsel instructed by the Respondent was also present at that meeting. At that meeting the solicitor client relationship broke down.
- 6.10 On 1 March 2012 the Secondary Complainer contacted Balfour and Manson Solicitors (“Balfour and Manson”) in connection with a potential professional negligence claim against the Respondent’s firm in connection with their management of his employment tribunal claim. On 15 March 2012 the Secondary Complainer met with Fiona Muirs, a partner with Balfour and Manson Solicitors, and provided instructions to take forward a professional negligence claim against the Respondent’s firm.

- 6.11 On 27 March 2012 Ms Muirs, sent a letter to the Respondent by fax and by post enclosing a mandate signed by the Secondary Complainer and dated 24 March 2012. Ms Muirs received no response to that letter.
- 6.12 On 11 April 2012 Ms Muirs sent a second letter to the Respondent by e-mail and by post. That second letter referred to the first letter dated 27 March enclosing mandate and requested implementation of the mandate. The e-mail sending that letter was marked as sent with high importance. Balfour and Manson's tracking of that e-mail confirmed that it had been successfully delivered to the e-mail address of the Respondent on 11 April 2012. Ms Muirs received no response to that second letter.
- 6.13 On 16 April 2012 Ms Muirs telephoned the Respondent's office. She was advised by a member of the office staff that the Respondent was out of the office at court, and that no other solicitors could deal with this matter. She left a message for the Respondent together with her direct dial telephone number. Ms Muirs prepared an attendance note following that call on 16 April 2012. Ms Muirs received no response from the Respondent to that telephone call.
- 6.14 On 17 April 2012 Ms Muirs telephoned the Respondent's office. She was advised by a member of the office staff that the Respondent was at court. She was advised that her message from 16 April 2012 had been passed to the Respondent and that he had the matter in hand. Ms Muirs advised that Balfour and Manson needed the file in early course. Ms Muirs advised that three weeks had passed since the mandate was sent. Ms Muirs prepared an attendance note following that call on 17 April 2012. Ms Muirs received no response from the Respondent to that telephone call.

- 6.15 On 18 April 2012 Ms Muirs telephoned the Respondent's office. She was advised by a member of the office staff that the Respondent was not in the office but that he was dealing with the matter. Ms Muirs advised that she would write a letter to the Respondent stating that unless the file was provided by the end of the week she would have no option but to make a complaint to the Scottish Legal Complaints Commission. Ms Muirs prepared a time entry note following that call on 18 April 2012. Ms Muirs received no response from the Respondent to that telephone call.
- 6.16 On 18 April 2012 Ms Muirs sent a letter marked for the attention of the Respondent by fax and by e-mail noting that more than three weeks had passed since the mandate had been sent to the Respondent. That letter advised that if the Secondary Complainer's file was not with Balfour and Manson by close of business on 20 April that they intended to report the failure to respond timeously to the Scottish Legal Complaints Commission. The fax copy of the letter was successfully delivered. The e-mail version of the letter was sent to the e-mail address of the Respondent. Balfour and Manson's tracking of that e-mail confirmed that it had been successfully delivered to the e-mail address of the Respondent on 18 April 2012.
- 6.17 On 20 April 2012 a female member of staff from the Respondent's office telephoned Ms Muirs and left a voicemail message for her. The voicemail message advised that the Secondary Complainer's file would be delivered to Balfour and Manson by Legal Post. Ms Muirs prepared a time entry note of this message on 23 April 2012. By 23 April 2012 the file had not been received. On that date Ms Muirs telephoned the Respondent's office. She was advised that the Respondent was at court and her message would be passed on to him. The person Ms Muirs spoke to was unable to confirm whether or not

the file had been sent to Balfour and Manson. Ms Muirs prepared an attendance note following that call on 23 April 2012. Ms Muirs received no response from the Respondent to that telephone call.

6.18 On 24 April 2012 Ms Muirs telephoned the Respondent's office. She was advised that the Respondent was in a meeting. Ms Muirs advised that the file had not arrived and that a complaint would be submitted to the Scottish Legal Complaints Commission. Ms Muirs prepared a time entry note of this message on 24 April 2012.

6.19 On 3 July 2012, Ms Muirs wrote to the Law Society's Complaints Investigator. She advised that the Secondary Complainer had been prejudiced by the Respondent's inaction. She stated that she was unable to proceed with the Secondary Complainer's instructions to investigate a professional negligence claim against the Respondent's firm arising out of their handling of his employment tribunal claim.

6.20 On 19 July 2012 the Respondent wrote to the Law Society's Complaints Investigator. He confirmed that the solicitor/client relationship with the Secondary Complainer had ended on 17 February 2012. He confirmed that he had received Balfour and Manson's letter of 27 March 2012. He advised that he had intended writing to Balfour and Manson, but no letter was sent due to an administrative error. The mandated file was enclosed with the letter of 19 July.

7. Having considered the foregoing circumstances and having heard submissions from the Fiscal for the Law Society and from the Respondent, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- 7.1 his failure or undue delay in delivering to the Secondary Complainer's new agents, Balfour & Manson, the papers held by him in respect of the Secondary Complainer's Employment Tribunal claim in accordance with a mandate to do so sent on 27 March 2012 and subsequent reminder letters.
- 7.2 his failure or undue delay in responding to Balfour & Manson's letter of 27 March 2012, his failure or undue delay in responding to subsequent reminder letters and his failure or undue delay in responding to telephone messages from Balfour & Manson.
8. Having heard the Respondent in mitigation and having considered submissions from both parties in respect of compensation, the Tribunal pronounced Interlocutors in the following terms:-

Edinburgh 5 November 2013. The Tribunal having considered the Complaint dated 26 July 2013 at the instance of the Council of the Law Society of Scotland, 26 Drumsheugh Gardens, Edinburgh on behalf of Oliver Kaybeya, The Hedges, Camelon, Falkirk against Raymond George Mallon, RMS Law LLP, Legal Chambers, 8 Lint Riggs, Falkirk; Find the Respondent guilty of Professional Misconduct in respect of his failure or undue delay in responding to a mandate sent to him by the Secondary Complainer's new agents, Balfour & Manson, on 27 March 2012 and subsequent reminder letters and his failure or undue delay in responding to Balfour & Manson's letter of 27 March 2012 and subsequent reminder letters and his failure or undue delay in responding to telephone messages; Censure the Respondent; Fine him in the sum of £1,000 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.

(signed)

Dorothy Boyd
Vice Chairman

Edinburgh 5 November 2013. The Tribunal having considered the Complaint dated 26 July 2013 at the instance of the Council of the Law Society of Scotland, 26 Drumsheugh Gardens, Edinburgh on behalf of Oliver Kaybeya, The Hedges, Camelon, Falkirk against Raymond George Mallon, RMS Law LLP, Legal Chambers, 8 Lint Riggs, Falkirk and having considered the Secondary Complainer's claim for compensation; Make No Award of Compensation.

(Signed)

Dorothy Boyd
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

Dorothy Boyd
Vice Chairman

NOTE

The Respondent did not lodge Answers to the Complaint and made no contact with the Fiscal or the Tribunal until the morning of the Tribunal. The Respondent on the day of the Tribunal however tendered a plea of guilty to the averments of fact, averments of duty and averments of professional misconduct in the Complaint. It was accordingly not necessary for any evidence to be led.

Mr Marshall however indicated that the Tribunal may require to hear evidence on whether or not there was any loss, distress or inconvenience to the Secondary Complainer. Mr Marshall indicated that the Secondary Complainer was not present nor were his agents. Their position was that they wished to rely on the Law Society's Productions and they had no additional evidence to lodge. The Respondent stated that he pled guilty and was not opposed to the idea of the Secondary Complainer being due some compensation but he indicated that this would be notional as there had been no real prejudice. Mr Marshall referred to the Affidavit of Fiona Muirs, paragraphs 13 and 14 which makes mention of prejudice to the Secondary Complainer. Mr Marshall however indicated that he had not been provided with any vouching from the Secondary Complainer. The Respondent indicated that any inconvenience to the Secondary Complainer was a matter of weeks and there had been no prejudice as no professional negligence claim had ever been intimated.

Mr Marshall stated that the Affidavit of Fiona Muirs and the letter at Production 25 mentioned a delay in progressing the professional negligence claim. The Respondent accepted that Fiona Muirs had written to the Law Society in terms of the letter at Production 25 and Mr Marshall accordingly indicated that it would not be necessary for him to lead any evidence from Ms A from the Law Society.

Mr Marshall asked the Tribunal to accept the Affidavit evidence of Fiona Muirs. The Respondent indicated that he had no objection to this. Mr Marshall clarified that it was only paragraphs 13 and 14 that were now relevant as the Respondent had admitted all the facts and averments of duty in the Complaint.

Mr Marshall lodged written submissions with the Tribunal in connection with allowing Affidavit evidence. Given that the Respondent had no objection to the Affidavit evidence being lodged and given that there is no specific provision in the Tribunal Rules, the Tribunal saw no difficulty in this particular case in allowing the Affidavit in relation to paragraphs 13 and 14.

SUBMISSIONS FOR THE COMPLAINERS

Mr Marshall submitted that the Respondent's conduct amounted to professional misconduct. It was a breach of three duties. Firstly, it was a breach of the Law Society of Scotland's Guidance on Mandates for Solicitors which provide that a delay in complying with a mandate would normally be misconduct.

The Respondent's conduct was also a breach of the duty to act in the best interests of clients in terms of the Law Society of Scotland Practice Rules 2011. The Respondent's conduct was also a breach of the duty to act with other regulated persons in a manner consistent with persons having mutual trust and confidence in each other. The Respondent in this case had failed to act with Ms Muirs in a manner consistent with mutual trust and confidence. Mr Marshall also referred to two previous Tribunal Decisions being the Law Society-v-Brian Travers [23 September 2010] where the Tribunal found a failure or delay in implementing a mandate to amount to professional misconduct and the case of Law Society-v-Alistair McDonald [18 May 2004] where a failure to respond to letters and telephone calls from a fellow solicitor in connection with implementing a mandate amounted to professional misconduct.

Mr Marshall submitted that both singularly and in cumulo the Respondent's conduct was sufficient to amount to professional misconduct. Mr Marshall further submitted that failure to deal with correspondence and phone calls could also amount to professional misconduct. He pointed out that the claim for professional negligence could not be advanced while the Respondent failed to respond to the mandate.

SUBMISSIONS FOR THE RESPONDENT

Mr Mallon stated that he accepted that he had failed in his duty to obtemper the mandate. He explained that there had been a lot going on at the time and that his business partner had left due to a health difficulties. Mr Mallon was not in the office a lot at that time and he let that get in the way of his duties. He however indicated that he accepted responsibility for what had happened and apologised. He pointed out that this was the first time anything like this had happened and nothing similar had happened since. He accepted that it was in the Secondary Complainer's best interests for the mandate to have been implemented more quickly. He also accepted that he did not act with the other solicitor in a manner consistent with mutual trust and confidence but pointed out that he did not knowingly mislead or go back on his word. He also pointed out that it was a situation that was remedied.

DECISION

The Tribunal considered it very unfortunate that the Respondent had failed to comply with the terms of the mandate for a period of almost four months despite numerous written and verbal reminders. The Tribunal has made it clear on a number of occasions that it is imperative that solicitors fulfil their professional obligations and respond properly to mandates. Failure to do so hampers the new solicitor in implementing a client's instructions which is prejudicial to the reputation of the legal profession. The Tribunal accordingly had no hesitation in finding that the Respondent's conduct amounted to professional misconduct.

The Tribunal however noted that the Respondent had appeared personally at the Tribunal and apologised, showed insight and accepted his culpabilities. The Tribunal also noted that in his letter of 19 July 2012 the Respondent indicated that he had no alternative but to accept responsibility for it and tender his apologies. It is however unfortunate that the Respondent waited until the day of the Tribunal to confirm that he was pleading guilty to the Complaint.

The Tribunal note that the Respondent has never previously been before the Tribunal and there have been no further problems since this. The Tribunal did not consider that there is any requirement for supervision in this case and there would be no risk to the public if the Respondent is allowed to continue with a full practising certificate. The Tribunal however imposed a Fine in addition to a Censure to show the seriousness with which the Tribunal view failure to respond to a mandate. Given that this related to one mandate in respect of one client, the Tribunal considered that a Fine of £1,000 would be sufficient penalty.

In connection with compensation, on the basis of the evidence provided to the Tribunal, the Tribunal cannot be satisfied that the Secondary Complainer incurred quantifiable expenses as a direct consequence of the professional misconduct. Given the lack of detail provided by the Secondary Complainer, it was not appropriate to award any compensation for loss, inconvenience or stress. It appears that there has as yet been no professional negligence claim raised. The Secondary Complainer has provided very little evidence to the Tribunal in respect of a claim for compensation. The Tribunal accordingly did not consider it appropriate to make any award of compensation.

The Tribunal made the usual order with regard to publicity and expenses.

Dorothy Boyd
Vice Chairman