

**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**

**against**

**ALAN MAITLAND DEWAR  
MCWILLIAM, Solicitor, 3  
Hartington Place, Edinburgh**

1. A Complaint dated 22 December 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alan Maitland Dewar McWilliam, Solicitor, 3 Hartington Place, Edinburgh (hereinafter referred to as "the Respondent") is a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 27 February 2015 and notice thereof was duly served on the Respondent.
5. The hearing took place on 27 February 2015. The Complainers were represented by their Fiscal Paul Reid, Solicitor Advocate, Glasgow. The Respondent was not present or represented.

6. The Tribunal heard evidence from the Clerk with regard to service of the Complaint and the Notice of Hearing on the Respondent. The Tribunal then determined to proceed in the Respondent's absence.
7. The Law Society led evidence from one witness.
8. The Tribunal found the following facts established
  - 8.1 The Respondent was born 22<sup>nd</sup> April 1953. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 8<sup>th</sup> January 1980. Since 1<sup>st</sup> July 1994 he has traded as McWilliam WS of 3 Hartington Place, Edinburgh.

#### The Trust of Mrs A

- 8.2 Mrs B and Mrs C are Trustees in relation to the Trust in the name of Mrs A. The Respondent was responsible for the administration of the said Trust and, in particular, the handling of an insurance mis-selling claim against a commercial enterprise from 8<sup>th</sup> December 2011. The said Trustees were dissatisfied with the manner in which the Respondent dealt with the administration of the Trust, as a consequence of which they intimated a complaint in early 2013 to the Scottish Legal Complaints Commission ('SLCC').
- 8.3 On 25<sup>th</sup> March 2013 the SLCC wrote to the Respondent advising that a complaint had been received from the Trustees and requested that he deliver his firm's Terms of Business and the dates the firm commenced and, if applicable, ceased acting in connection with the Trust. The Respondent replied by letter dated 2<sup>nd</sup> April 2013 acknowledging the correspondence and confirming the date he commenced acting. Said correspondence also provided the position of the Respondent in relation to the

background of the complaint. This communication was acknowledged by the SLCC by letter dated 8<sup>th</sup> April. In terms of said letter they requested once again a copy of the Terms of Business employed by the Respondent.

- 8.4 By letter of 9<sup>th</sup> April 2013, the SLCC copied the summary of complaint to the Respondent and advised that eight issues had been identified. These issues had been accepted as service complaints. They advised the Respondent that the next stage of the complaints process was to consider whether these issues could be resolved through mediation. A further letter regarding the mediation process was sent to the Respondent on 11<sup>th</sup> April 2013. By letter dated 26<sup>th</sup> April 2013 the SLCC wrote to the Respondent advising that given he had not responded regarding the mediation process, the next stage in the process to occur would be investigation of the complaint. The Respondent was advised that given the levels of work required to be dealt with by the SLCC, it was estimated that a period of eight months would elapse before a Case Investigator was assigned to the complaint.
- 8.5 The SLCC wrote to the Respondent on 13<sup>th</sup> November 2013 advising that a Case Investigator had been assigned to the complaint.
- 8.6 A further reminder letter from the SLCC dated 12<sup>th</sup> December 2013 made reference to the letter of 13<sup>th</sup> November 2013. It also made reference to a number of voicemail messages which had been left for the Respondent. It noted that no reply had been received. Once again, the Respondent was asked if he had any paperwork relating to the case and, if not, to advise who now had the paperwork. A request was made for a reply within seven days, failing which a Notice in terms of Section 17 of the said 2007 Act would be issued.

- 8.7 No reply was received. A Statutory Notice dated 14<sup>th</sup> January 2014 was sent by First Class post and Recorded Delivery, and by facsimile transmission. This notice advised the Respondent in terms of Section 17 of the said 2007 Act, that the SLCC was entitled to examine documentation and to demand explanations where it was satisfied that it was necessary for the purpose of its investigation and determination. In this communication the Respondent was advised that he was required to produce or to deliver the business file of the firm and an explanation as to why this had not yet been produced by 3<sup>rd</sup> February 2014. The Respondent was advised that if it was not produced by that date, then it would result in a conduct complaint being intimated against him.
- 8.8 The SLCC wrote to the Respondent on 4<sup>th</sup> February 2014 noting that the Respondent had failed to produce or deliver the file, or to provide an explanation regarding matters which the complaint related to. The Respondent was advised that the Trustees would be asked if they wished to raise his failure to reply as a new complaint.
- 8.9 The SLCC wrote once again to the Respondent by letter dated 14<sup>th</sup> March 2014. This communication made reference to its earlier correspondence and advised the Respondent that in terms of Section 17 of the said 2007 Act, a new conduct issue had been instigated.
- 8.10 The matter was referred to the Complainers for their investigation. A formal intimation letter was intimated to the Respondent at his business address on 3<sup>rd</sup> April 2014. No reply was received. A Notice in terms of Section 15(1) of the Solicitors (Scotland) Act 1980 and Section 48 of the said 2007 Act was intimated to the Respondent by Recorded Delivery on

25<sup>th</sup> April 2014. A letter dated 28<sup>th</sup> April 2014 was received by the Complainers from the SLCC. This contained a letter from the Respondent to the SLCC dated 15<sup>th</sup> April 2014, which purported to address the original eight service issues.

- 8.11 The Complainers wrote to the Respondent on 22<sup>nd</sup> May 2014 acknowledging receipt of his communication and advising him that given he had written to the SLCC, the Complainers had extended the time limit for a response to the formal notices previously issued until 4 pm on 29<sup>th</sup> May 2014. He was invited to reply to the conduct issue of the complaint and to forward relevant client files to the Complainers within the time limit provided. It was clarified once more, as had been stated previously in the formal Notices, that if the Respondent failed to reply within the specified timescale the Complainers would intimate a conduct complaint. The Complainers reminded the Respondent that in previous matters calling before the Scottish Solicitors Discipline Tribunal, they had unanimously found a failure to reply in these circumstances to constitute professional misconduct.
- 8.12 No reply was received by the Complainers from the Respondent. Accordingly, formal Notice in terms of Section 15(2) of the said 1980 Act was intimated by Recorded Delivery to the Respondent on 2<sup>nd</sup> June 2014. This communication also included an additional issue of complaint, namely the failure to reply to the Complainers.
- 8.13 No reply was received from the Respondent. The Complainers wrote again to the Respondent on 10<sup>th</sup> July 2014. They provided the Respondent with a copy of earlier communication of 19<sup>th</sup> June 2014. This letter advised the Respondent that given no reply had been received, they required the Respondent to deliver to the Complainers all books, accounts, deeds,

Securities, papers and other document in his possession or control relating to the complaint by 5 pm on 18<sup>th</sup> July 2014. The Respondent was advised that if the papers were not delivered a Fiscal would be appointed to proceed with a complaint alleging professional misconduct. The Recorded Delivery letter of 19<sup>th</sup> June 2014 was returned to the Complainers on 22<sup>nd</sup> July 2014 marked “not called for”. The Complainers wrote to the Respondent on 23 July 2014 referring to the letter of 10<sup>th</sup> July 2014 and noting that no response had been received from him. It was confirmed that the Complainers would progress this conduct complaint.

9. Having heard submissions from the Fiscal the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

9.1 his failure to respond timeously, openly, honestly and accurately to the reasonable enquiries made of him by the Scottish Legal Complaints Commission and the Law Society in connection with a complaint raised in connection with the Mrs A Trust, despite repeated and numerous reminders made of him by both organisations, both by post, facsimile transmission and Recorded Delivery; and

9.2 his conduct being contrary to the terms of the Law Society of Scotland Practice Rules 2011, rules B1/9/1 and B1/14/1.

10. Having heard submissions from the Fiscal and having noted a previous Finding of professional misconduct against the Respondent the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 27 February 2015. The Tribunal having considered the Complaint dated 22 December 2014 at the instance of the Council of the Law Society of Scotland against Alan Maitland Dewar McWilliam, Solicitor, 3 Hartington Place, Edinburgh; Find the Respondent guilty

of Professional Misconduct in respect of his failure to respond timeously, openly, honestly and accurately to the reasonable enquiries made of him by the Scottish Legal Complaints Commission and the Law Society of Scotland in connection with a complaint raised in connection with a Trust, despite repeated and numerous reminders being made of him by both organisations and his conduct being contrary to Practice Rules B1/9/1 and B1/14/1; Censure the Respondent; Fine the Respondent in the sum of £2500, 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)**

**Alan McDonald**

**Vice Chairman**

11. 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**

**Alan McDonald**  
**Vice Chairman**

**NOTE**

The Respondent did not lodge Answers to the Complaint and was not present or represented at the hearing. Mr Reid advised that he had sent the Productions by first class recorded delivery post to the Respondent on 10 February 2015 and these have not been returned. He had similarly sent the Respondent a List of Witnesses by recorded delivery. Mr Reid confirmed that the Respondent had failed to engage with him at all throughout the process.

The Tribunal heard evidence from the Clerk to the Tribunal with regard to service of the Complaint and the Notice of Hearing. The Clerk confirmed that the Complaint had been served on the Respondent personally by Sheriff Officers on 16 January 2015. The Notice of Hearing had been served by recorded delivery at the Respondent's address, 3 Hartington Place, Edinburgh, and was signed for by O'Hara on 10 February 2015. The Notice of Hearing had also been sent to the Respondent by ordinary post. The Notice of Hearing had not been returned by the Post Office. The Clerk confirmed that the Tribunal office had heard nothing from the Respondent. In the circumstances the Tribunal determined to proceed in the Respondent's absence.

**EVIDENCE FOR THE COMPLAINERS**

Mr Reid led evidence from Caroline Catto, Clerk to the Professional Conduct Committee. Ms Catto confirmed that she had been dealing with the complaint that had come in with regard to the Respondent. She obtained the principal file from the Scottish Legal Complaints Commission (hereinafter referred to as "the SLCC"). Ms Catto advised that there was a complaint about the Respondent's handling of a Trust from the Trustees, Mrs B and Mrs C. This complaint was made to the SLCC in 2013. The complaint was intimated by the SLCC who wrote to the Respondent on 25 March 2013 advising him that the complaint had been received from the Trustees and asking that he deliver his firm's Terms of Business and advise of the dates that the firm commenced and if applicable ceased acting for the Trust. The Respondent sent a brief reply but did not send his Terms of Business despite a reminder by the SLCC.

On 9 April 2013 the SLCC sent details of the complaints in respect of the service issues to the Respondent. Mediation was suggested but there was no reply despite a reminder. The SLCC then wrote to advise the Respondent that the investigation process would take place and this was sent to him on 26 April 2013. This letter advised that there would be a delay due to the SLCC being very busy.

Ms Catto referred to Production 4 being the letter of 12 December 2013 which referred to a previous letter sent on 13 November 2013 and submitted that this showed that the Respondent was failing to engage with the SLCC despite their efforts. An investigator was appointed and a Section 17 Notice was served. Ms Catto explained that a Section 17 Notice was the statutory notice which required a response within a certain period failing which the complaint would be taken further. Ms Catto referred to Production 3 being the statutory notice sent on 13 January 2014. This required the Respondent to deliver his file by 3 February 2014. There was no response.

Production 5 was a letter dated 4 February 2014 sent by the SLCC which now referred to a new complaint in connection with the failure to respond and indicated that the Trustees, as complainers, would be asked if they wished to raise a failure to comply complaint. Production 1 was a letter sent on 14 March 2014 from the SLCC advising that as there had been no response from the Respondent there was a new complaint raised. This letter attached a summary of the Complaint which included the service complaints and also the failure to respond.

Production 2 was a letter of 3 April 2014 sent to the Respondent by the Law Society intimating the conduct complaint. Production 6 was the statutory notice served on the Respondent on 25 April 2014. Production 7 was another statutory notice sent on the same day asking the Respondent to deliver his files. Ms Catto referred to Production 8 being a response sent by the Respondent to the SLCC dated 15 April 2014. In this letter the Respondent indicated that the intervention of authorities in cases he was handling inspired an almost phobic reaction from him causing a more or less complete mental block. Ms Catto advised that the Law Society wrote to the Respondent on 22 May 2014 referring to his letter of 15 April 2014 and giving him further time to reply to the conduct issue pointing out that his letter only dealt with the service issues. This

letter warns that his failure to reply will result in the matter being taken to the Tribunal. The Respondent did not reply.

Ms Catto referred to Productions 10 and 11 being notices dated 2 June 2014 sent to the Respondent by recorded delivery. Production 13 is a letter of 19 June 2014 which was sent because there was some dubiety as to whether or not the Respondent received the notices of 2 June 2014. Production 15 was another letter from the Law Society dated 23 July 2014 referring to another letter of 10 July 2014. The Respondent was written to again on 15 August 2014 and this letter enclosed the report. The Respondent had not engaged at all with the Law Society.

Ms Catto confirmed that from March 2013 until July 2014 the Respondent did not respond at all apart from the letter of 15 April 2014 to the SLCC. 18 letters were sent and four statutory notices. Ms Catto confirmed that she understood that the SLCC was now investigating the service complaints but was still unable to contact the Respondent. Ms Catto confirmed that the Respondent had not renewed his practising certificate in October 2014 and indicated that she did not know what he was doing at present.

In response a question from one of the Tribunal members, Ms Catto indicated that she was not aware of him suffering from any illness. She confirmed that the Respondent's details on his record card were in accordance with the facts as set out in paragraph 1.1 of the Complaint.

In response to a question from the Chairman, she confirmed that she had seen all the original documents and original letters in respect of this matter.

## **SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid asked the Tribunal to find the facts proved and make a finding of professional misconduct. He referred to Paterson & Ritchie at page 400 and submitted that on many prior occasions the Tribunal had found that failure to respond promptly and effectively to the Law Society and the SLCC amounted to professional misconduct. Mr Reid also referred the Tribunal to Smith & Barton at pages 153 and

154. He submitted that a 16 month delay, 18 letters and 4 notices were sent and time and expense was involved in dealing with this matter. Mr Reid accepted that it was an isolated incident but submitted that in the circumstances it was sufficient to amount to professional misconduct.

## **DECISION**

The Tribunal had no hesitation in finding the Respondent guilty of professional misconduct. The Tribunal has emphasised on a number of occasions that it is very important for solicitors to deal promptly and efficiently with correspondence from the Law Society and the SLCC to enable these organisations to perform their statutory duties. Solicitors who fail to engage in the process bring the system into disrepute. In this case, although it only involved one incident, the failure to respond was over a protracted period and involved a failure to respond to two different organisations. The Respondent has not provided a response at all in connection with the conduct issue. The Tribunal accordingly made a finding of professional misconduct.

## **SUBMISSIONS FOR THE COMPLAINERS IN RESPECT OF PENALTY**

Mr Reid stated that he understood that the Respondent was no longer trading and that the Respondent seemed to be turning a blind eye to outstanding issues. Mr Reid lodged previous findings of professional misconduct against the Respondent made by the Tribunal in August 2013. Mr Reid pointed out that these findings related to analogous matters.

## **PENALTY**

The Tribunal was extremely concerned to note that the Respondent had been before the Tribunal and dealt with on 13 August 2013 for analogous matters and then immediately after this failed to respond to the SLCC and then shortly thereafter failed to respond to the Law Society. This shows a disregard for the previous decision of the Tribunal. The Tribunal consider it extremely unfortunate that the Respondent has failed to engage at all in the process. He did not cooperate with the Fiscal and did not lodge Answers to the Complaint. He also failed to attend the Tribunal. The

Respondent has not provided the Tribunal with any mitigation and has not shown evidence of any corrective steps taken to rectify the situation.

The Tribunal noted that the Respondent had had an unblemished career prior to appearing before the Tribunal on 13 August 2013. The Tribunal are unaware of the Respondent's current situation and financial position as he has failed to engage in the process. The Tribunal noted that this Complaint only related to one incident but given the previous analogous findings, the Tribunal considered that a Censure plus a Fine of £2,500 was required in order to show the seriousness with which the Tribunal views the Respondent's ongoing failure to respond. The Tribunal did not consider that the Respondent was a danger to the public and accordingly did not find it necessary to restrict his practising certificate.

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

**Alan McDonald**  
**Vice Chairman**