

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

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW SOCIETY of
SCOTLAND, Atria One, 144 Morrison Street,
Edinburgh**

Complainers

against

**JANE CAROLINE CHISHOLM c/o Patricia
Black, P Black Solicitors Limited, 2 Park Street,
Dingwall**

Respondent

1. A Complaint dated 9 July 2019 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Jane Caroline Chisholm, c/o Patricia Black Solicitors Limited, 2 Park Street, Dingwall (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were two Secondary Complainers, Ms A and Mr B.
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 29 October 2019 and notice thereof was duly served on the Respondent.
5. At the hearing on 29 October 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was neither present nor represented at the hearing. However, her agent entered into a Joint Minute of Admissions with the Fiscal and submitted a written plea in mitigation for the Tribunal's consideration.

The Tribunal received the signed Joint Minute of Admissions. It heard submissions from the Fiscal.

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

6.1 The Respondent is Jane Caroline Chisholm. She was born on 22 December 1961. She was enrolled and admitted as a solicitor on 21 December 1984. She was the Principal of the firm T.S.H. Burns & Son from 1 March 1986 to 31 August 2016. The Respondent does not hold a current practising certificate but remains on the Roll of Solicitors.

Executry of the late JW September 2011 to May 2013

6.2 The late JW died on 19 June 2011. In terms of his will dated 18 May 1966 his whole estate was left to his wife EW who was also his sole nominated executor.

6.3 EW sometime thereafter, and by 16 September 2011, instructed the Respondent to deal with the administration of her late husband's estate.

6.4 Initially progression in the administration of JW's executry was delayed by the fact that, in addition to JW's will, there were two informal writings in favour of his son, the Secondary Complainer Mr B. If the said codicils were given effect to they would have substantially altered the distribution of JW's estate. The Respondent had advised EW that it would be necessary to obtain some proof that the signature on the informal writings was that of the late JW. Sometime in late 2012 Mr B decided not to seek to prove said informal writings and to rely on his late father's will.

6.5 There was a further complication in that EW was sole executor in the estate of her late husband however in June/July 2012 the Respondent raised the question of EW's capacity and asked Mr B to arrange for a formal assessment of EW's capacity by an appropriately qualified medical professional.

- 6.6 On 9 October 2012 the Respondent sent a letter to the late JW's daughter, the Secondary Complainer Ms A, explaining the aforementioned difficulties which had caused delay in the progression of the executry and advising that EW no longer had sufficient capacity to act as executor. The Respondent sought confirmation as to whether or not Ms A wished to be appointed as an executor along with Mr B or whether she wished to leave Mr B as sole executor.
- 6.7 The Respondent wrote to Mr B on 2 May 2013 asking him to forward to her the Doctor's Certificate of Incapacity in relation to EW. The Certificate, dated 7 November 2012, was sent to the Respondent by Mr B on 13 May 2013.

Executry of the late EW

- 6.8 EW died on 16 May 2013. In terms of her will, executed in 1966, her whole estate was left to the late JW who was also her sole nominated executor. The Respondent had not obtained Confirmation in respect of JW's estate prior to the death of EW.
- 6.9 The Respondent was instructed to administer the estate of the late EW by both of the Secondary Complainers. On 3 June 2013 the Respondent wrote to both Secondary Complainers enclosing the firm's terms of business and a draft inventory of EW's estate. The Respondent noted that EW had been content to rely on the intestacy provisions and advised that an application had been lodged at Dornoch Sheriff Court to have both Secondary Complainers appointed as executors-dative. The Respondent also advised that she had written to fund holders seeking confirmation of balances in respect of EW's accounts as at the date of death and the usual letters to the Council and DWP regarding any outstanding debts.
- 6.10 The Respondent sent a letter to the Sheriff Clerk at Dornoch Sheriff Court on 3 June 2013 enclosing the initial writ for appointment of the Secondary Complainers as executors-dative. The petition appointing them was granted on 17 June 2013 and intimated to the Respondent by the Sheriff Clerk in a letter dated 24 June 2013.

- 6.11 On 3 June 2013 the Respondent also sent letters to National Savings and Investments in Blackpool regarding a Premium Bond held in the name of the late EW and the Bank of Scotland regarding a joint account held in the name of the late EW and Mr B. The Respondent sent a further letter to the Highland Council on 4 June 2013 regarding care home payments.
- 6.12 On 7 June 2013 Mr B sent a letter to the Respondent enclosing a cheque in the sum of £18,112.55 being half of the sum held in the aforementioned Bank of Scotland joint account. He advised the Respondent that he was unaware of any other estate debts aside from the funeral expenses.
- 6.13 On 10 June 2013 the Bank of Scotland sent a letter to the Respondent confirming a balance of £36,225.10 in the aforementioned joint account as at the date of death of EW.
- 6.14 The Respondent sent a letter to National Savings and Investments in Glasgow on 12 June 2013 seeking confirmation of any investments held by the late EW.
- 6.15 On 25 June 2013 NHS Highland sent a letter to the Respondent confirming that there were no sums due in respect of care fees.
- 6.16 On 18 July 2013 Mr B sent a letter to the Respondent enclosing the receipt for the funeral expenses which he had paid and advising the Respondent that he had received further correspondence from the Service Personnel and Veterans Agency in relation to arrears of War Widows Pension owing to the late EW.
- 6.17 On 22 July 2013 the Respondent sent the Confirmation Forms C1 and C5 and the application for Bond of Caution and inheritance tax account form to Mr B for review and signature. The Respondent sent a copy of this letter to Ms A for her information and asking her to sign the Bond of Caution.
- 6.18 On 24 July 2013 the Respondent sent a reply to Mr B's letter of 18 July 2013 advising that it would be worthwhile claiming any sums due in respect of the war widow's pension and seeking any paperwork held by him in relation to this.

- 6.19 On 25 July 2013 Ms A sent a letter to the Respondent noting an error in the inheritance tax form and seeking clarification regarding income bonds which her parents had held.
- 6.20 The Respondent replied on 30 July 2013 advising that she understood the income bonds to have been cashed to pay for care home fees.
- 6.21 The Respondent then sent a letter to Ms A on 2 August 2013 enclosing an amended inheritance tax account form and Bond of Caution application for signature. The Respondent also sent a letter to Mr B enclosing an application for arrears of pension for signature by him.
- 6.22 On 3 August 2013 Mr B wrote to the Respondent seeking re-imburement of funeral expenses. The Respondent reimbursed him on 19 August 2013 and on 21 August 2013 sent the amended inheritance tax account form to him for signature.
- 6.23 On 3 September 2013 the Respondent sent the inheritance tax account form and Form C1 to the Capital Taxes Office. The Respondent also sent letters to both Secondary Complainers confirming that this had been done. In the Form C1 EW's total estate for confirmation was stated to be £96,220.10. This comprised (i) Bank of Scotland Account £36,225.10 (ii) Premium Bonds £29,995.00 and (iii) EW's interest in the estate of the late JW £30,000.00.
- 6.24 On 10 October 2013 the Respondent sent a letter to Royal & Sun Alliance enclosing the application for Bond of Caution.
- 6.25 On the same date the Respondent sent letters to both Secondary Complainers stating that the Capital Taxes Office had confirmed that there was no tax payable. She enclosed a mandate for signature which was required by the insurance company in connection with the grant of the Bond of Caution.
- 6.26 The Respondent then sent the signed mandates to Royal & Sun Alliance on 17 October 2013.

- 6.27 On 28 October 2013 the Respondent sent a letter to the Sheriff Clerk of Dornoch Sheriff Court enclosing application form C1 stamped by the Capital & Taxes Office and Bond of Caution.
- 6.28 On 28 October 2013 the Respondent sent letters to both Secondary Complainers advising that the Bond of Caution had been issued and that papers had been submitted to Dornoch Sheriff Court for Confirmation.
- 6.29 Confirmation was granted on 30 October 2013.
- 6.30 On 9 November 2013 HMRC sent a letter to the Respondent confirming that there was no inheritance tax to pay in respect of the late EW's estate.
- 6.31 On 12 November 2013 the Respondent prepared an invoice detailing an interim fee note in respect of the work done in connection with the winding up of EW's estate. The invoice was in the sum of £900 plus VAT (total £1080.00). The firm's client ledger confirmed that payment for this invoice was taken on the same day.
- 6.32 There is no further correspondence on the Respondent's firm file until 21 January 2015 when Ms A sent a letter to the Respondent asking what progress was being made regarding the late EW's affairs. Ms A noted that the last time she had spoken to the Respondent was 7 May 2014 and the Respondent had advised that she expected things to be settled within 8 – 12 weeks. The Respondent did not reply to this letter.
- 6.33 On 13 May 2015 Mr B sent a letter to the Respondent noting that it had been two years since his mother had passed away and asked the Respondent to finalise his mother's affairs as soon as possible. He asked the Respondent to let him know how much he would be receiving. The Respondent did not reply to this letter.
- 6.34 On 8 August 2015 Ms A sent a letter to the Respondent stating that she was getting *“increasingly worried about the seeming lack of progress regarding my parents' wills”*. She continued *“The last written communication I had from you was in October 2013. Since then my letters have been ignored and phone calls not been returned or else I have been given wrong information.”* Ms A attached a list

of the dates when she had contacted the Respondent. She also advised the Respondent that she had contacted the Scottish Legal Complaints Commission (SLCC) and was giving the Respondent 28 days to respond.

6.35 Ms A attached to her letter a list of the dates when she said she had contacted the Respondent. The list detailed the following:

- 28 October 2013 – Ms A stated that she received a letter from the Respondent advising that her mother's papers had been submitted to Dornoch Sheriff Court for Confirmation and that she would let her know when they were returned.
- 7 May 2014 – Having heard no more Ms A called the Sheriff Court and was advised that Confirmation had been granted on 30 October 2013 and that the papers had been returned to the Respondent.
- 7 May 2014 – Ms A then called the Respondent who advised her that some of the money had been ingathered but that she was still waiting for the rest. The Respondent advised that she anticipated that it would take 8-12 weeks but said that she would write to Ms A and let her know if not.
- 22 January 2015 – Having heard nothing for 8 months Ms A wrote to the Respondent asking what progress was being made. Ms A received no reply.
- 2 March 2015 – Ms A's daughter sent an email to the Respondent on her behalf asking if the Respondent had received Ms A's letter or had it been lost in the post. Neither Ms A nor her daughter received a reply.
- 10 March 2015 – Ms A called the Respondent but was advised by the secretary that the Respondent was busy but assured Ms A that someone would call her back.
- 13 March 2015 – Having heard nothing Ms A called the Respondent again. The secretary in the firm assured Ms A that the Respondent would call her back later that afternoon which she did. The Respondent stated that Ms A's mother's estate was not quite finished but that the money from her father's estate could probably be released. The Respondent stated that she would look at the file on the Monday.
- 13 April 2015 - The phone message which Ms A left for the Respondent was not returned so she called again the following day.

- 14 April 2015 – Ms A called and spoke to the Respondent who told her that papers regarding Confirmation for her father’s estate had been sent to her brother, Mr B, for signature. The Respondent advised that Mr B had had the papers for some time and had not yet returned them. Ms A asked the Respondent if her brother was trying any “*funny business*” as four years previously her brother had tried to obtain all of their father’s money. The Respondent had assured Ms A that there was no problem and said that she would make Ms A first executor. The Respondent stated that she was going to send duplicate papers to Ms A to sign. As Ms A would be staying with her son she provided the Respondent with her son’s address and the Respondent advised that she would send the papers there by recorded delivery. Ms A stated that she waited in every day until 10.30am when the post usually arrived but nothing came.
- 28 July 2015 – As she had heard no more Ms A called the Respondent’s office and spoke to a member of staff who advised that the Respondent would return her call. The Respondent did not do so.

6.36 The Respondent did not reply to Ms A’s letter of 8 August 2015.

6.37 On 9 September 2015 Ms A submitted a complaint form to the SLCC regarding the Respondent.

6.38 On 28 September 2015 the Respondent sent a letter to Mr B referring to their telephone conversation and enclosing a form for signature and return in respect of his late father’s National Savings Investments.

6.39 On 8 October 2015 the Respondent sent an email to Mr B enclosing a mandate for him to sign and return in respect of his late father’s Premium Bonds.

6.40 On 17 November 2015 Mr B sent a letter to the Respondent on Citizen Advice Bureau (CAB) headed notepaper. Mr B stated that it had been two and a half years since the death of his mother and more than two years since the Respondent wrote on 28 October 2013 advising that papers had been submitted to Dornoch Sheriff Court for Confirmation. He stated that although they had had numerous

conversations since then Confirmation had not been granted and acted upon to his knowledge.

Mr B stated that he considered the delay to be unacceptable and, having taken advice from the Civil Legal Assistance Office in Inverness and the SLCC, he asked the Respondent to exhibit Confirmation and detail the arrangements for distributing the estate within 14 days. The Respondent did not reply to this letter.

- 6.41 On 29 December 2015 an advisor from CAB in Golspie sent a letter to the firm on behalf of Mr B making a formal complaint against the Respondent. The advisor stated that Mr B complained that the Respondent had demonstrated unacceptable delays in dealing with the estates of both of his parents. Since June 2013 Mr B had made repeated contact with the Respondent to finalise matters without success. Mr B had not received a response to his letter dated 17 November 2015 and on 8 December 2015 said advisor from CAB had spoken to the Respondent who advised that a letter had been prepared for Mr B but not yet sent. The Respondent promised to send this letter but Mr B had not yet received it. The advisor had called the Respondent that day (29 December) but no-one had answered the telephone.

The advisor stated that the situation had caused Mr B considerable worry and anxiety because of the long delay and he was starting to worry that the monies may have been misappropriated. The advisor asked that the Respondent immediately finalise the estates and suggested that the Respondent should consider paying Mr B compensation for his financial loss due to the delays and for the emotional and psychological stress.

- 6.42 The Respondent did not reply and Mr B submitted a complaint form to the SLCC regarding the Respondent on 26 January 2016.
- 6.43 The firm's client ledger in respect of the late EW's estate confirms that no payments were received or made in the period from 12 November 2013 to 1 April 2016 other than the accumulation of bank interest.

6.44 On 6 May 2016 the assistant in the firm Mrs Black sent a letter to Ms A and copied said letter to Mr B apologising for the delay and advising that, in the absence of the Respondent, she had reviewed the files and enclosed forms for signature to enable Mrs Black to uplift funds in respect of the late Mr B's premium bonds and the late EW's war pension and premium bonds.

6.45 Mrs Black thereafter dealt with the administration of the estates of the late JW and EW and matters were finalised and payments made to the beneficiaries, the Secondary Complainers, in June 2016.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of her:-

- (a) Undue delay in winding up the estate of the late JW in the period from 28 October 2013 to 6 May 2016;
- (b) Undue delay in winding up the estate of the late EW in the period from 28 October 2013 to 6 May 2016;
- (c) Failure to communicate effectively with the Secondary Complainer Ms A and failure to keep said Secondary Complainer informed about the progress of the estates of the late JW and EW during the period from 28 October 2013 to 6 May 2016; and
- (d) Failure to communicate effectively with the Secondary Complainer Mr B and failure to keep said Secondary Complainer informed about the progress of the estate of the late EW.

8. Having considered the Respondent's written plea in mitigation and submissions with regard to publicity and expenses, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 29 October 2019. The Tribunal having considered the Complaint dated 9 July 2019 at the instance of the Council of the Law Society of Scotland against Jane Caroline Chisholm, c/o Patricia Black Solicitors Limited, 2 Park Street, Dingwall;

Find the Respondent guilty of professional misconduct in respect of her (a) Undue delay in winding up the estate of the late JW in the period from 28 October 2013 to 6 May 2016; (b) Undue delay in winding up the estate of the late EW in the period from 28 October 2013 to 6 May 2016; (c) Failure to communicate effectively with the Secondary Complainer Ms A and failure to keep said Secondary Complainer informed about the progress of the estates of the late JW and EW during the period from 28 October 2013 to 6 May 2016; and (d) Failure to communicate effectively with the Secondary Complainer Mr B and failure to keep said Secondary Complainer informed about the progress of the estate of the late EW; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of two years any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit her to acting as a qualified assistant to and to being supervised by such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify the Secondary Complainers; and Allow the Secondary Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation.

(signed)

Nicholas Whyte

Chair

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 21 NOVEMBER 2019.

IN THE NAME OF THE TRIBUNAL



Nicholas Whyte

Chair

NOTE

At the hearing on 29 October 2019, the Tribunal had before it the Complaint, a Joint Minute of Admissions, a List of Authorities lodged by the Complainers and a written plea in mitigation provided by the Respondent's agent.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that the Respondent had admitted all the averments of fact, duty and misconduct in the Complaint but that it was for the Tribunal to determine whether professional misconduct was established. She explained that JW died in June 2011. His wife died in May 2013. Initially work on the executries progressed satisfactorily but from 28 October 2013, the Respondent stopped communicating with the Secondary Complainers who were the son and daughter of JW and EW. No further work was undertaken after the interim fee note of 12 November 2013. The Secondary Complainers attempted to contact the Respondent many times by telephone, email and letter. However, the Respondent frequently failed to respond to them and did not wind up the estates. Eventually, the Respondent's colleague took over the executries in May 2016 and payments were made to the Secondary Complainers in June 2016.

The Fiscal submitted that the Respondent's failure to act in the Secondary Complainers' best interests and the failures in communication were in breach of Rules B1.4.1 and B1.9.1 of the Law Society of Scotland Practice Rules 2011. The Fiscal made reference to the case law in the List of Authorities (Law Society of Scotland-v-Smith and Law Society of Scotland-v-Murray) and reminded the Tribunal that in these analogous cases, professional misconduct had been established. The Fiscal submitted that the Respondent's conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors and sought a finding of professional misconduct. In answer to a question from the Tribunal, the Fiscal confirmed that the Complainers made no averments of deception or misleading behaviour by the Respondent.

DECISION ON PROFESSIONAL MISCONDUCT

Although the Respondent admitted professional misconduct, it remained for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. There are certain standards of conduct to be expected of competent and reputable solicitors

and 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.

Solicitors have a duty to act in the best interests of clients and must communicate effectively with them and others. The Respondent unduly delayed in winding up the estates of JW and EW for a period of two and a half years. This was not in the Secondary Complainers' best interests. She also failed to communicate effectively with the Secondary Complainers. This behaviour was a serious and reprehensible departure from the standards of competent and reputable solicitors and therefore constituted professional misconduct.

The Fiscal confirmed that the Respondent had a clean record card which she lodged. The Respondent does not have a practising certificate and was retained on the Roll for the purposes of these proceedings.

SUBMISSIONS IN MITIGATION


The Tribunal had regard to the written plea in mitigation provided on the Respondent's behalf. It noted that the Respondent accepted misconduct at an early stage. The Respondent was a respected and committed solicitor for many years. In 2013, she was running two offices in Dingwall. Her secretary retired in 2013. There were issues with the Respondent's staff. The new secretary and the property manager resigned in 2015. The Respondent found it increasingly difficult to deal with her business. In 2016, she suffered a period of ill-health. She has not practised since April 2016. She has no desire to do so. Her business closed in August 2016. Her financial position is "precarious". She expressed regret for the inconvenience and distress suffered by the Secondary Complainers. However, the background to the Complaint was a respected member of the profession who had become unwell rather than a solicitor who had deliberately flouted the Rules of the Society.

DECISION ON SANCTION, EXPENSES AND PUBLICITY

The Tribunal had regard to its indicative outcomes guidance. It noted that dishonesty or lack of integrity were not features of this case. There appeared to be a medical background to the Complaint which led to the misconduct. However, it was difficult to understand the extent of this or the prognosis in the absence of any medical evidence. The Respondent's agent did not attend the hearing and therefore the Tribunal was unable to question him about this.

The Tribunal Censured the Respondent. It did not consider that a fine would serve any purpose in the circumstances. Although the Respondent indicated she did not intend to return to the profession, the Tribunal considered that it was appropriate to impose a restriction on any practising certificate issued to her in future should she decide to practise again. Supervision of the Respondent by a solicitor approved by the Law Society will provide protection to the public should the Respondent's health suffer again following any return to the profession.

The Fiscal moved for expenses. The Tribunal awarded expenses to the Complainers. The Fiscal made no motion regarding publicity. The Tribunal ordered that publicity should be given to the decision and that the Respondent ought to be named in the decision. However, there was no requirement to name any other person as publication of their personal data was likely to be detrimental to their interests. The Fiscal noted that Ms A did not wish to make a claim for compensation. However, the Tribunal allowed the Secondary Complainers 28 days from the date of intimation of these findings to lodge a claim for compensation if so advised.



~~Nicholas Whyte~~
Chair