

**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**

Complainers

against

**ROY WILLIAM ANDREW MILLER, formerly
of 6 St Ninian Terrace, Crown Street, Glasgow
and now residing at 3 Elm Street, Glasgow**

Respondent

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, Roy William Andrew Miller, formerly of 6 St Ninian Terrace, Crown Street, Glasgow and now residing at 3 Elm Street, Glasgow (hereinafter referred to as "the Respondent") was 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 16 February 2016 and notice thereof was duly served on the Respondent.
5. At the hearing on 16 February 2016, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was neither present nor represented.

6. The Fiscal asked the Tribunal in terms of Rule 14(4) of the Tribunal Rules 2008 to proceed to hear and determine the Complaint in the absence of the Respondent. The Tribunal heard evidence from the Depute Clerk regarding service of the Complaint and Notice of Hearing. The Tribunal, being satisfied that the Complaint and Notice of Hearing had been duly posted to the Respondent in accordance with Rule 11(2) of the 2008 Rules, granted the motion. The Fiscal proceeded to lead evidence from one witness, and lodged an affidavit for a second witness. The Fiscal made submissions to the Tribunal in relation to the evidence and the documentary Productions lodged.

7. The Tribunal found the following facts established:-

7.1 The Respondent is a solicitor enrolled in the Registers of Scotland. His date of birth is 22 September 1961 and he was enrolled as a solicitor on 11 December 1987. He formerly operated as a sole practitioner under the firm name of Miller & Company with a place of business at 6 St Ninian Terrace, Crown Street, Glasgow. The Respondent had traded as that firm name from February 1999. The Complainers believe that he ceased trading on 31 October 2014. He now resides at 3 Elm Street, Glasgow.

7.2 On 23 July 2013 the Scottish Legal Complaints Commission ("SLCC") wrote to the Respondent in respect of a service complaint which had been submitted to them by one of the Respondent's clients, a Mrs A. The SLCC issued a reminder letter to the Respondent on 14 August 2013. The Respondent failed to respond. On 27 August 2013 the SLCC sent a further letter by recorded delivery to the Respondent attaching a notice in terms of Section 17 (1) of the Legal Profession and Legal Aid (Scotland) Act 2007 requiring the Respondent to deliver his business file and an explanation in respect of the Complaint. The said file had been the subject of a previous investigation by the Complainers and had been returned to the Respondent by the Complainers on 17 July 2013. On 10 September 2013 the Respondent's firm issued a letter to the SLCC advising that the Respondent was absent from business due to ill health and was expected to return on 16 September 2013. The Respondent failed to issue a detailed response upon his return to business. Further attempts were made by the SLCC to contact the Respondent by telephone and letter. A recorded delivery letter was issued to the Respondent by the SLCC on 8 October 2013. A further reminder was issued to the Respondent by the SLCC on

29 November 2013. By letter dated 14 January 2014 the SLCC wrote to the Respondent advising that he had seven days to respond failing which the service Complaint would be dealt with on the basis of the information held. No response was received from the Respondent. The SLCC then formally intimated their Complaint in respect of the Respondent's alleged conduct on 24 February 2014. On 2 April 2014 the Complainers issued two notices to the Respondent in terms of Section 15 (2) (i) of the Solicitors (Scotland) Act 1980 and Section 48 (1) (a) of the Legal Professional and Legal Aid (Scotland) Act 2007. The Respondent failed to respond. On 28 April 2014 a further notice was issued by the Complainers to the Respondent in terms of Section 15 (2) (i) (i) of the Solicitors (Scotland) Act 1980. The Respondent failed to respond.

- 7.3 The SLCC investigated the Service Complaint submitted to them as referred to in the previous Statement of Fact. Having done so, their determination was issued on 12 June 2014 to the Respondent directing the Respondent to pay a complaint levy of £800 by 2 July 2014 and to refund fees of £200 to the original Complainer and pay compensation of £1500 to the said Complainer by 10 July 2014. The Respondent failed to respond. The SLCC issued a reminder by way of recorded delivery letter on 18 July 2014. The Respondent failed to respond. On 23 September 2014, the Complainers issued a letter to the Respondent requesting a response to the matters raised by the SLCC following the issue of their determination on 12 June 2014. The Respondent failed to respond. A reminder letter was forwarded by the Complainers to the Respondent on 23 December 2014. The Respondent failed to respond. On 21 January 2015 the Complainers issued notices to the Respondent in terms of Section 15 (2) (i) of the Solicitors (Scotland) Act 1980 and Section 48 (1) (a) of the Legal Professional and Legal Aid (Scotland) Act 2007. The Respondent failed to respond. On 11 February 2015 a further notice was issued by the Complainers to the Respondent in terms of Section 15 (2) (i) (i) of the said 1980 Act. The Respondent failed to respond. A further and final letter was issued to the Respondent on 16 March 2015. The Respondent failed to respond.
- 7.4 In 2011 and 2012 the Respondent instructed Company 1 to provide reports in relation to clients of the Respondent. The Respondent's clients were in receipt of legal aid and sanction had been obtained from the Scottish Legal Aid Board to commission said expert reports. A total of five expert reports were instructed by

the Respondent totalling £4,342.08. Company 1 provided said reports and subsequently issued invoices dated 27 January, 16 April, and 19 and 29 June all 2012, and 11 January 2013. The Respondent failed to settle said invoices timeously. Company 1 issued reminder letters to the Respondent dated 28 August, 12 September, 7 November, and 11 December all 2012, and 22 February and 16 April both 2013. The Respondent failed to respond to said correspondence. Company 1 then instructed agents on their behalf to commence proceedings for payment against the Respondent. The Respondent defended said proceedings. On 12 December 2013, the Respondent settled the principal sum of £4,342.08. The Respondent had previously submitted applications for reimbursement of these outlays to the Scottish Legal Aid Board and had received payment from the said Board of four of the five invoices in June 2012, December 2012 and March 2013 but had then failed to remit those sums to Company 1 in settlement.

- 7.5 The Complainers intimated a Complaint to the Respondent in connection with the matters referred to in the foregoing finding in fact 7.4 and that on 22 May 2014. No response was received. On 18 June 2014 the Complainers issued notices to the Respondent in terms of Section 15 (2) (i) of the Solicitors (Scotland) Act 1980 and Section 48 (1) (a) of the Legal Profession and Legal Aid (Scotland) Act 2007. The Respondent failed to respond. On 16 July 2014, a further notice was issued by the Complainers to the Respondent in terms of Section 15 (2) (i) (i) of the said 1980 Act. The Respondent failed to respond. As a result of the Respondent's failure to respond to the Complaint as intimated on behalf of Company 1, the Complainers intimated a fresh and additional Complaint to the Respondent on 20 October 2014. The Respondent failed to respond. On 24 November 2014 the Complainers issued notices to the Respondent in terms of Section 15 (2) (i) (i) of the Solicitors (Scotland) Act 1980 and Section 48 (1) (a) of the Legal Profession and Legal Aid (Scotland) Act 2007. The Respondent failed to respond and the notices were returned by Royal Mail marked "not called for". The Respondent failed to respond to said notices but contacted the Complainers on 12 November 2014 to advise that his practice had ceased on 31 October 2014.
- 7.6 In April 2007 the Respondent had acted for a client AM in respect of a reparation matter. In May 2012 the Respondent advised the said AM that he could no longer act on her behalf as he had allowed her claim to become time-barred, and she would

require to consult another firm of solicitors. On 19 June 2012 the said AM executed a mandate in favour of her new solicitors, Patrick Campbell & Company and said mandate was forwarded to the Respondent with a request to delivery the file and all relevant papers. The Respondent failed to respond to the said mandate and a reminder letter was issued to the Respondent on 11 August 2012. The Respondent failed to respond. Further reminder letters were issued to the Respondent by the said solicitors on 12 September, 9 October and 31 December all 2012. The Respondent failed to respond. A formal Complaint was thereafter intimated to the Respondent by the SLCC on 23 October 2013. The Respondent failed to respond. The Complainers issued a letter to the Respondent on 2 December 2013 following the referral of the Complaint. The Respondent failed to respond. On 6 January 2014 the Complainers issued Notices to the Respondent in terms of Section 15 (2) (i) of the Solicitors (Scotland) Act 1980 and Section 48 (1) (a) of the Legal Profession and Legal Aid (Scotland) Act 2007. The Respondent failed to respond. On 27 January 2014 a further notice was issued by the Complainers to the Respondent in terms of Section 15 (20) (i) of the said 1980 Act. The Respondent failed to respond.

8. Having given careful consideration to the established facts, and the submissions of the Complainers, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect that:

- 8.1 he failed or delayed to respond to correspondence and statutory notices issued by both the Scottish Legal Complaints Commission and the Complainers;
- 8.2 he failed or delayed to respond to a formal determination of the Scottish Legal Complaints Commission and failed to implement the terms of said determination;
- 8.3 he delayed in settling five invoices issued by expert witnesses instructed by him in relation to legally aided cases despite having received reimbursement of at least four of these invoices from the Scottish Legal Aid Board; and

8.4 he failed or delayed to implement the terms of a mandate received from another firm of solicitors and failed or delayed to respond to their correspondence in that respect.

9. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 16 February 2016. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Roy William Andrew Miller, formerly of 6 St Ninian Terrace, Crown Street, Glasgow and now residing at 3 Elm Street, Glasgow; Find the Respondent guilty of professional misconduct *in cumulo* in respect that (1) he failed or delayed to respond to correspondence and statutory notices issued by both the Scottish Legal Complaints Commission and the Complainers; (2) he failed or delayed to respond to a formal determination of the Scottish Legal Complaints Commission and failed to implement the terms of said determination; (3) he delayed in settling five invoices issued by expert witnesses instructed by him in relation to legally aided cases despite having received reimbursement of at least four of these invoices from the Scottish Legal Aid Board; and (4) he failed or delayed to implement the terms of a mandate received from another firm of solicitors and failed or delayed to respond to their correspondence in that respect; Suspend the Respondent from practice for a period of three years; 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)

Colin Bell

Vice Chairman

10. 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

Colin Bell
Vice Chairman

NOTE

At the hearing on 16 February 2016 the Tribunal had before it the Complaint and a List of Productions lodged by the Complainers. No appearance was made on behalf of the Respondent and the Fiscal asked the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent in terms of Rule 14(4) of the Tribunal Rules 2008. The Tribunal heard evidence from the Depute Clerk regarding the service of the Complaint and Notice of Hearing. It was confirmed that both had been sent by recorded delivery post to the address given for the Respondent in the Complaint. The Royal Mail track and trace system disclosed that both items had been signed for by an individual giving the name "Miller". The Tribunal being satisfied that the Notice of Hearing had been duly posted to the Respondent in accordance with Rule 11(2), granted the Fiscal's motion.

The Fiscal made a motion to proceed by way of affidavit evidence and sought to lodge two affidavits. He confirmed to the Tribunal that one of the witnesses was present, and if preferred, he was in a position to lead evidence from that witness. After considering the Fiscal's motion, the Tribunal concluded that it was in the interests of justice to hear parole evidence from the witness who was present, and allow an affidavit for the second witness.

EVIDENCE FOR THE COMPLAINERS

Evidence was led from the witness, Ian David Ritchie. Mr Ritchie confirmed his date of birth and employment with the regulation department of the Law Society of Scotland. He confirmed that he was familiar with the terms of this Complaint. He indicated that the narrative of the Respondent's career was correctly outlined within the Complaint. The Fiscal had lodged as a Production a copy of the solicitor's record card. The witness then proceeded to go through the terms of the Complaint and referred the Tribunal to copies of all of the correspondence referred to within the averments of fact, which had been lodged by the Complainers with their Inventory of Productions. The witness confirmed that these Productions had been recovered from the Law Society's files in connection with this Complaint. The witness confirmed that the notices dated 24 November 2014 were returned to the Law Society by the Royal Mail marked "not called for". The Respondent had closed his business and had not given the Law Society any further address. The notices had been served at the last known place of business in terms of Section 64 of the Solicitors (Scotland) Act 1980. As far as the witness was aware, the only response to any of the correspondence from the Respondent was the letter which was the Fiscal's Production number 5 dated 10 September 2013 from the Respondent's office.

The witness confirmed that each of the main Complaints had gone to the appropriate Sub Committee to consider whether they might amount to misconduct. Thereafter the Fiscal had been appointed to proceed with the matters.

The record card for the Respondent, which was Production number 1, suggested that the Respondent had not practised since October 2014. The record card notes that the Respondent would require to give six weeks' notice to the Law Society of his intention to apply for a practising certificate.

The witness confirmed that the record card showed two previous convictions for professional misconduct. The first of these dated 2012 had involved the failure to deliver a file. The second from 2014 involved the failure to pay witness fees.

The witness was aware that new matters had arisen. The Law Society had been attempting to obtain files from the Respondent. He had not responded and so a court action had been raised and an order for delivery granted. He believed that order was granted either at the end of December 2015 or in January 2016.

A member of the Tribunal asked if any information could be provided with regard to the exact nature of the defence lodged in the payment action raised by the expert witness. No further information could be given.

In response to a question from a member of the Tribunal, the Tribunal was referred to copy correspondence from the expert witnesses that confirmed that their payment terms required payment of the invoices within six months.

The witness was aware that a couple of the notices sent out by the Law Society had been returned by the post office. Given the Respondent's position the Complainers could only effect service at his last known address.

The Fiscal lodged an affidavit for the witness, Caroline Rose Catto. This witness confirmed that she too was employed in the regulation department of the Law Society of Scotland. The affidavit referred to the correspondence noted in the averments of fact and confirmed no response on the part of the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal invited the Tribunal to find the Respondent guilty of professional misconduct *in cumulo* in relation to the facts averred and the averments of professional misconduct as set out in Article 4 of the Complaint.

The Fiscal made a motion to amend the Complaint to correct what he described as typographical errors. In Articles 2.2, 2.3, 2.5 and 2.6 reference was made to Section 41(1) of the Legal Profession and Legal Aid (Scotland) Act 2007. The Section referred to should in fact be Section 48. In Article 2.3, the letter described as being dated 18 September 2014 should in fact be 23 September 2014. In Article 2.6, the letter said to be dated 27 November 2013 should in fact be described as dated 2 December 2013.

These amendments, appearing to be corrections of typographical errors and presenting no prejudice to the Respondent, were allowed by the Tribunal.

The Fiscal referred to the Respondent's two previous convictions indicating that they were analogous to the present matters. He submitted that both previous Findings showed a level of contempt towards the regulatory process and included a small degree of dishonesty in relation to not paying witness fees where sums had already been reimbursed by the Legal Aid Board. The Finding of 2014 had also included an averment of the Respondent lying to a colleague who had been instructed to provide a report to the court.

The Fiscal submitted that together with the current Complaint this presented a familiar and repetitive pattern involving a course of conduct over four years. The Respondent had already been dealt with by the Tribunal imposing a sanction of a restriction on his practising certificate. The matters before the Tribunal today crossed that line. This was a progression of behaviour.

It was put to the Fiscal by a member of the Tribunal that the description of a progression of behaviour might not accurately reflect the position and that the course of conduct was really the bringing by the Complainers of separate Complaints.

The Fiscal submitted that there had been a number of matters over a period of four years. The first finding of misconduct in 2012 had involved a failure to produce a file where the Respondent had narrowly avoided conviction for contempt. The second finding of misconduct in 2014 had involved not

paying fees even where the Respondent had already been reimbursed. The Fiscal moved for expenses to be awarded to the Complainers.

DECISION

The Tribunal gave careful consideration to the parole evidence of Mr Ritchie, the affidavit of Ms Catto and the extensive Productions lodged on behalf of the Complainers. The Tribunal found Mr Ritchie to be a credible and reliable witness. It was satisfied that the facts as noted above were proved beyond reasonable doubt.

The conduct described represented a course of conduct by the Respondent spanning a period of in excess of two years. This conduct represented a catalogue of a failure to respond by the Respondent to correspondence or notices. He had failed to respond to the SLCC. He had failed to implement their determination. He had delayed in settling witness invoices, even where in four out of five of these invoices he had already been reimbursed by the Scottish Legal Aid Board. He had failed to respond to the correspondence from these witnesses. He had failed to implement a mandate from another solicitor and failed to respond to correspondence from that solicitor. Finally, in respect to all of these aforementioned complaints he had continually failed to respond to correspondence and notices from his regulatory body which was investigating these complaints.

The Tribunal was not satisfied that sufficient evidence had been provided to it for it to hold as established that the Respondent had defended the court proceedings raised by the expert witness without a stateable defence. The Fiscal and his witness were unable to give any information as to what defence had been stated by the Respondent in the court proceedings.

In the course of his submissions the Fiscal had asked the Tribunal to find the Respondent guilty of professional misconduct *in cumulo*. The Tribunal had no hesitation in holding that the Respondent's conduct in failing to respond to his regulatory body, the Scottish Legal Complaints Commission, a colleague and an expert witness instructed by him clearly amounted to professional misconduct.

Solicitors have a clear duty to respond to their regulatory body. This Tribunal has on many occasions made it clear that the public trust in the profession depends on the regulatory body being in a position to appropriately investigate any complaint against the solicitor. A failure to cooperate with the regulatory body prevents it from doing so and is extremely damaging to the reputation of the profession.

Solicitors have a clear duty to communicate effectively with their clients and others. This Respondent has failed in that duty with regard to his dealings with the Scottish Legal Complaints Commission, a colleague and a witness previously instructed by him. This conduct represents a series of complaints arising from the Respondent's lack of response or cooperation which was then seriously aggravated by his lack of cooperation with his regulatory body in attempting to investigate these complaints.

The Respondent has two previous Findings of misconduct which could be considered analogous to the present matters. On the last occasion the Respondent had his practising certificate restricted for three years.

The Tribunal did not accept in its entirety the suggestion that the conduct in this Complaint represented a progression from the conduct that resulted in the finding of misconduct in 2014. The time frame for the current conduct does to some extent overlap with the conduct involved in the last Complaint. However, what did concern the Tribunal was that some of the misconduct outlined in the current Complaint occurred over a time period after the Complaint of 2014 had been served upon the Respondent.

There was no indication of any remorse on the part of the Respondent. He had failed to engage with the Tribunal proceedings.

The public require to have trust in the profession. That requires solicitors to cooperate with their regulatory body in their investigations when any Complaint arises. The Respondent here has refused to cooperate with the Law Society with respect to the investigation of a complaint by the SLCC, a complaint by a colleague and a complaint by a witness instructed by him. This lack of cooperation continued at a time when he had another matter live before the Tribunal. That latter case had resulted in a restriction on the Respondent's practising certificate, as a way of protecting the public interest. Given the scale of the conduct in this case and the fact that the behaviour had continued as described, the Tribunal concluded that the misconduct could not go unmarked. The Tribunal concluded that in the circumstances the appropriate disposal was to suspend the Respondent from practising as a solicitor and that the appropriate period for such a suspension would be three years. This is to mark the seriousness with which the Tribunal regards the Respondent's misconduct. Thereafter, the restriction already imposed upon his practising certificate should serve as a protection for the public interest in not allowing him to practise as a sole practitioner.

The Fiscal moved for expenses and an order for publicity in the usual way. The Tribunal made an award of expenses in favour of the Complainers and made the usual order with regard to publicity.

Colin Bell
Vice Chairman