

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

FINDINGS

in Section 53(1)(b) Complaint

by

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

Complainers

against

**PAUL KEVIN O'DONNELL, 16 Kirkhill
Avenue, Cambuslang, Glasgow**

Respondent

1. A Complaint dated 12 February 2018 was lodged with the Scottish Solicitors' Discipline Tribunal in terms of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Paul Kevin O'Donnell, 16 Kirkhill Avenue, Cambuslang, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who had been convicted of an act involving dishonesty.
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 31 May 2018 and notice thereof was duly sent for service upon the Respondent.
4. On 31 May 2018, the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was not present or represented. The Fiscal made a motion to proceed in the absence of the Respondent in accordance with Rule 14(4) of the Scottish Solicitors' Discipline Tribunal Rules 2008. However, following evidence on oath from the Clerk regarding service of the Notice of Hearing, the Fiscal instead moved the Tribunal to adjourn to a procedural hearing to allow him to instruct tracing agents. The Tribunal granted the Fiscal's motion and fixed 4 September 2018 as a procedural hearing. Notice thereof

was served upon the Respondent at the address in the Complaint which was the Respondent's last known place of residence.

5. On 4 September 2018, the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was not present or represented. The Tribunal Clerk gave evidence on oath regarding service of the Notice of Hearing. It was reported that the Notice of Hearing was served by Sheriff Officers depositing it at 16 Kirkhill Avenue, Cambuslang. The Respondent had previously indicated to Sheriff Officers that this was the most suitable address for correspondence. The Tribunal was content to proceed with the procedural hearing in the Respondent's absence. The Tribunal fixed a hearing for 7 November 2018. Notice thereof was served upon the Respondent at the address in the Complaint which was the Respondent's last known place of residence.
6. On 7 November 2018, the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was not present or represented. The Tribunal Clerk gave evidence on oath regarding service of the Notice of Hearing. The Tribunal was satisfied that the Respondent had been given notice of the hearing and that it was fair to proceed in his absence. Also calling on 7 November 2018 were two other Complaints against this Respondent (2018/1810 and DT/16/27 refer). Although the Complaints were not formally conjoined, the Tribunal indicated that it would hear evidence in relation to all three Complaints together since the witnesses were expected to speak to more than one Complaint. However, the Tribunal would consider the Complaints separately and produce separate decisions. The Fiscal led evidence from three witnesses. Only one witness spoke in connection with the present Complaint. The Tribunal heard submissions on behalf of the Complainers.
7. The Tribunal found the following facts proved:
 - 7.1 The Respondent's date of birth is 31 October 1981. He was enrolled as a Solicitor on 16 August 2007. He was employed by Thorley Stephenson, SSC, 51 South Bridge, Edinburgh, from 1 November 2012 to 1 September 2014.
 - 7.2 On 26 April 2016 at Edinburgh Sheriff Court the Respondent pleaded guilty to a charge on indictment of embezzling funds from clients in an amount of £21,485

between 1 November 2012 and 1 September 2014 while employed as a Solicitor at Thorley Stephenson SSC, 51 South Bridge, Edinburgh. Sentence was deferred to 31 October 2016.

- 7.3 At the deferred sentence on 31 October 2016 a Restriction of Liberty Order was imposed on the Respondent in terms:-

“That for a period of six months, the Offender must reside at the address of 16 Kirkhill Avenue, Cambuslang between the hours of 9pm and 6am the following morning to commence from this date and continue daily.”

- 7.4 The Complainers carried out the appropriate investigation.

- 7.5 The Professional Conduct Sub Committee considered the complaint at their meeting on 14 September 2017.

The Sub Committee determined that the Respondent’s conduct in respect of his:-

“Being convicted on 26 April 2016 of the Charge on the Indictment of embezzling funds from clients from the firm of Messrs Thorley Stephenson, his conduct in embezzling the said sums, and his subsequent conviction for doing so, serving to breach his duties of honesty and integrity, and to draw the profession into disrepute, appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor and appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.”

The Sub Committee further determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51.

The Professional Conduct Sub Committee Schedule was sent to the Respondent by letter dated 29 September 2017.

8. Having considered the foregoing circumstances, the Tribunal found that Section 53(1)(b) of the Solicitors (Scotland) Act 1980 applied to the circumstances of this case in respect of the Respondent's conviction.

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

Edinburgh 7 November 2018. The Tribunal having considered the Complaint dated 12 February 2018 at the instance of the Council of the Law Society of Scotland against Paul Kevin O'Donnell, 16 Kirkhill Avenue, Cambuslang, Glasgow; Find that the Respondent has been convicted by a court of an act involving dishonesty and that accordingly Section 53(1)(b) of the Solicitors (Scotland) Act 1980 applies to the circumstances of the case; Strike the name of the Respondent, Paul Kevin O'Donnell, from the Roll of Solicitors in 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; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and any individual referred to paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980 but need not identify any other person.

(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 30 NOVEMBER 2018

IN THE NAME OF THE TRIBUNAL



Colin Bell
Vice Chairman

NOTE

This Complaint was made in terms of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 which allows the Tribunal to exercise its powers under Section 53(2) of the said Act where a solicitor has been convicted by any court of an act involving dishonesty.

At the hearing on 7 November 2018, the Fiscal made a motion in terms of Rule 14(4) of the Tribunal Rules 2008 for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. The Tribunal heard evidence on oath from the Clerk regarding the service of the Notice of Hearing. Service of the Notice of Hearing had been effected on 18 September 2018 by Sheriff Officers depositing it in a sealed envelope in to the dwelling place at the address on the Complaint. That address was the Respondent's last known place of residence and the address where the Restriction of Liberty Order had required him to reside for the duration of that order. The Tribunal was satisfied both in terms of its Rules and section 64 of the Solicitors (Scotland) Act 1980 that the Respondent had been given proper notice of the hearing. The Fiscal advised that the List of Witnesses and List of Productions and the productions themselves had been served by Sheriff Officers and left in the hands of the Respondent's mother-in-law at that same address.

The Tribunal considered whether it was fair to proceed in the Respondent's absence. The Tribunal had regard to R-v-Jones [2002] UKHL 5 and the need to exercise its discretion in this matter "*with great caution and close regard to the overall fairness of the proceedings.*" The Tribunal noted that Sheriff Officers had indicated that the address where service had been effected was believed to be a relative's home. The Respondent had previously indicated to Sheriff Officers that it was the most suitable address for correspondence. The Tribunal was also aware that the Respondent had contacted the Tribunal Clerk on 2 September 2016 indicating that he did not intend to take part in Tribunal proceedings. It seemed likely therefore that he had chosen not to attend the hearing. The Tribunal considered that if it heard the case in the Respondent's absence there would be a disadvantage to him in being unable to give his account of events. However, he had been given notice of the date and there was no reason to be confident he would attend on another occasion if the hearing were adjourned. It is in the public interest that regulatory proceedings take place within a reasonable time. The fair, economical, expeditious and efficient disposal of allegations against solicitors was an important consideration. In these circumstances, the balance lay in favour of proceeding in the Respondent's absence. Therefore, the Tribunal granted the Fiscal's motion to proceed.

At the hearing on 7 November 2018, the Tribunal had before it the Complaint, an Inventory of Productions for the Complainers, a List of Witnesses for the Complainers, and an Affidavit by Mr Ian Ritchie. It was noted during the hearing that the second page of Mr Ritchie's Affidavit was not signed by the notary public. The Fiscal arranged for Mr Ritchie to be called to give evidence in person.

EVIDENCE FOR THE COMPLAINERS

Witness One: Ian Ritchie

The witness gave evidence on oath. He confirmed that his full name is Ian David Ritchie. He is 65. He is the Clerk to the Law Society of Scotland's Professional Conduct Sub Committee.

The Fiscal referred the witness to Production 2 in the Complainers' Inventory of Productions. The witness confirmed that this was a letter dated 5 September 2016 from a member of the Crown Office and Procurator Fiscal Service to a colleague in the Law Society of Scotland. The witness confirmed that he had seen this letter before. He noted that the letter advised that on 26 April 2016 at Edinburgh Sheriff Court, the Respondent pleaded guilty to a charge on indictment of embezzling funds from clients to the amount of £21,485 between 1 November 2012 and 1 September 2014 whilst employed as a solicitor at Thorley Stephenson.

The Fiscal referred the witness to Production 3 of the same Inventory. The witness confirmed this was a letter of 1 November 2016. He was familiar with this letter. The letter was from Crown Office and Procurator Fiscal Service to the Law Society of Scotland. Said letter advised that the Respondent had been sentenced to a restriction of liberty order for a period of six months starting from 31 October 2016.

The Fiscal referred the witness to Production 4 of the same Inventory. This was a letter of 7 November 2016 from Crown Office and Procurator Fiscal Service to the Law Society of Scotland. The witness confirmed that he was familiar with this letter which noted that for a period of six months as part of a Restriction of Liberty Order, the Respondent was to reside at the address of 16 Kirkhill Avenue, Cambuslang between the hours of 9pm and 6am the following morning.

The Fiscal asked the witness whether, apart from these three letters, he was aware of the Respondent's conviction. The witness advised that he was aware that a separate Complaint was made by the Respondent's former employers on the basis of the same conduct which gave rise to the criminal conviction. The conviction also appeared in the media at the time of sentencing. The witness recalled

that it appeared in the Scotsman, the Herald and the BBC news site. In addition, the witness had seen a letter from the Sheriff Clerk's Office confirming the Respondent's conviction.

The witness gave evidence that this matter came before the Professional Conduct Sub Committee of the Law Society of Scotland. He confirmed that Production 5 of the Complainer's Inventory of Productions was the minute relating to the Sub Committee's meeting. He did not draft this minute but had read it. He noted that Production 6 was a letter from a colleague to the Respondent enclosing an extract from the minute of the Sub Committee intimating that prosecution before the Tribunal might follow.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal submitted that the documents spoken to by Mr Ritchie provided ample evidence of the Respondent's conviction of an offence of dishonesty. Section 53(1)(b) of the Solicitors (Scotland) Act 1980 therefore applied. He therefore invited the Tribunal to make a finding that the Respondent had been convicted by a court of an act involving dishonesty.

DECISION


No extract conviction in respect of the offence was provided. Nevertheless, the Tribunal was satisfied beyond reasonable doubt based on Mr Ritchie's evidence that the Respondent had been convicted of an offence of dishonesty. The Tribunal found Mr Ritchie to be a credible and reliable witness. In these circumstances the Tribunal was satisfied that Section 53(1)(b) of the 1980 Act applied.

The Tribunal considered that a conviction such as this which disclosed a course of dishonest conduct involving clients was incompatible with being a solicitor. Solicitors belong to a profession which requires high standards of ethical conduct. Members of the public must have confidence that solicitors are trustworthy and honest and that their integrity is beyond question. As was noted in McMahon v Council of the Law Society of Scotland 2002 SC 475, a solicitor who has been guilty of dishonesty with clients' money forfeits the respect and trust of the public and his colleagues and disgraces his profession. Membership of the profession is a privilege. Solicitors undertake a duty throughout their professional lives to conduct their client's affairs to their utmost ability and with complete honesty and integrity. Clients and colleagues should be able to expect these qualities of every solicitor as a matter of course. In that case the court noted that if the public is to give the profession its respect and trust, it must be assured that when solicitors fail in these duties, they will be suitably dealt with by the profession's

disciplinary system. The Tribunal's decision should be one that both vindicates the reputation of the profession and protects the public against the risk of repetition. In Bolton v The Law Society [1993] EWCA Civ 32 it was noted that proven dishonesty by solicitors will "almost invariably" lead to strike off.

In addition to the finding of dishonesty, the Respondent failed to show any remorse. He failed to engage with the Tribunal proceedings. The conduct leading to his conviction was a danger to the public and was likely to seriously damage the reputation of the legal profession. The Respondent did not show any insight into his conduct. The conviction demonstrated that the Respondent was not a fit and proper person to be a solicitor. Therefore, the only appropriate sanction was to strike the Respondent's name from the Roll of Solicitors.

Following submissions from the Fiscal on expenses, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Fiscal made a motion that publicity be given to the decision but that only the Respondent need be named. The Tribunal therefore ordered that publicity should be given to the decision and that publicity should include the name of the Respondent and any individual referred to paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests.



Colin Bell
Vice Chairman