

**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

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

Respondent

1. A Complaint dated 12 February 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Paul Kevin O'Donnell, Solicitor, 16 Kirkhill Avenue, Cambuslang, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Mark Thorley of Thorley Stephenson SSC, 51 South Bridge, Edinburgh. The Secondary Complainer did not seek compensation from the Tribunal.
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 31 May 2018 and notice thereof was duly sent for service upon the Respondent.
5. 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.

6. 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.
7. 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 (2018/1809 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. Two spoke in connection with the present Complaint. The Tribunal heard submissions on behalf of the Complainers.
8. Having given careful consideration to the terms of the Complaint, The Tribunal found the following facts established:-
 - 8.1 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.

- 8.2 The Secondary Complainer made a complaint to the Scottish Legal Complaints Commission (the SLCC) which was referred by the SLCC to the Complainers.
- 8.3 The complaint referred to the Complainers was:-
- “I, Mr Mark Thorley of Thorley Stephenson, wish to complain about the actions of Mr Paul O’Donnell, former employee of Thorley Stephenson, who was employed by the firm from October 2012 until 31 August 2014 in that:-
- Mr O’Donnell inappropriately took the following payments from clients in cash in advance of fees and outlays and having done so failed to disclose the sums and failed to place these funds on the client ledger.”
- 8.4 During the course of his employment with Thorley Stephenson the Respondent obtained payments in cash from clients, these payments being advances of fees and outlays to be met in the respective client cases.
- 8.5 The cash payments obtained by the Defender were not disclosed to his employers, were not paid over to his employers and were removed by him. His actions were only discovered after he left the employment of Thorley Stephenson.
- 8.6 The cash payments taken by the Respondent totalled £27,955.
- 8.7 Thorley Stephenson raised Court Actions against the Respondent seeking recovery of inter alia the cash payments removed by him. They obtained Decrees against the Respondent for inter alia the said cash payments of £27,955. The Respondent was subsequently sequestered.
- 8.8 By letter dated 10 November 2015 the Complainers intimated to the Respondent a complaint received from the SLCC. The letter set out the relevant issues, referred him to his professional obligation to respond within a set timescale but advised that a failure to respond would result in the service of statutory Notices and possibly further conduct complaint in respect of failure or delay in responding.

- 8.9 The Respondent replied by email on 15 January 2016 accepting responsibility for his actions and saying “*I hold my hands up and I take full responsibility and the consequences.*”
- 8.10 On 26 April 2016 the Respondent appeared at Edinburgh Sheriff Court. He pleaded guilty to a charge on Indictment of embezzling £21,485 from Thorley Stephenson between 1 November 2012 and 1 September 2014.
- 8.11 Sentence was deferred and on 31 October 2016 he received a sentence of a Restriction of Liberty Order for a period of six months.
- 8.12 The Complainers prepared a Report which was provided to the Respondent by the Complainers with a letter dated 2 June 2017 together with intimation that the complaint would be considered by a Professional Conduct Sub Committee.
- 8.13 The complaint was considered by the Complainers’ Professional Conduct Sub Committee on 13 July 2017 and it decided;

That the conduct of the Respondent in respect that he inappropriately took payments from clients and cash in advance of fees and outlays and having done so failed to disclose the sums and failed to place those sums on the clients ledger in respect of a number of clients, all as listed in more detail in the issue appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further, the Sub Committee determined that a Fiscal should be appointed in terms of Section 51 of the Solicitors (Scotland) Act 1980 to prosecute the Respondent before the Scottish Solicitors Discipline Tribunal.

- 8.14 By letter dated 3 August 2017 the Complainers sent the Respondent a copy of the Professional Conduct Sub Committee’s Determination.

9. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect that he retained payments from clients and cash in advance of fees and outlays, failed to disclose said sums and failed to place those sums on the client ledgers in breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011.
10. 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, Solicitor, 16 Kirkhill Avenue, Cambuslang, Glasgow; Find the Respondent guilty of professional misconduct in respect that he retained payments from clients and cash in advance of fees and outlays, failed to disclose said sums and failed to place those sums on the client ledgers in breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; 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.

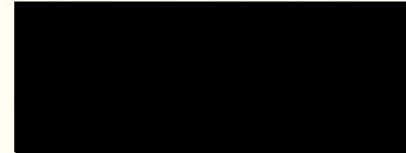
(signed)

Colin Bell

Vice Chairman

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 30 NOVEMBER 2018 .

IN THE NAME OF THE TRIBUNAL



Colin Bell
Vice Chairman

NOTE

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 the 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, List of Productions and the productions 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: Mark Thorley

The witness gave evidence on oath. He confirmed that his name was Mark Thorley and that he was a partner in Thorley Stephenson Limited a company which had started out as a partnership. He has been a solicitor for thirty years. His firm employed the Respondent as a solicitor. He became aware that the Respondent had obtained monies from clients and had not put them in the client account. He investigated and the firm raised proceedings against the Respondent. The firm obtained Decree against the Respondent and eventually had him sequestered.

The Fiscal referred the witness to Production C2/12 of the Complainers' List of Productions. The witness confirmed that this was the letter he wrote to the Scottish Legal Complaints Commission (SLCC). Production C2/5 was the SLCC complaints form. Production C2/3 was the summary of complaint in respect of this matter. It represented the cash known to have been taken by the Respondent at that time. Later, it was discovered that the Respondent had taken other money. The firm raised another action against the Respondent.

Production C2/15 and C/21 were the initial writs raised against the Respondent. The actions were undefended. The witness indicated that the firm obtained decree twice against the Respondent. The first writ was raised on the figures known at that time and the second writ once more wrongdoing came to light. The company recovered some money following the Respondent's sequestration. The Trustee accepted that money was due to the company.

Witness Two: 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 1 in the Complainers' Inventory of Productions. The witness confirmed that this was the Respondent's Law Society of Scotland Record Card. Production 2 was a letter from the Law Society to the Respondent dated 10 November 2015 referring to Mr Thorley's complaint. The witness indicated that this was the first letter the Society would send to a solicitor after receiving a complaint from the SLCC. Production 7 was the schedule of the Professional Conduct Sub Committee's decision of 13 July 2017 dealing with Mr Thorley's complaint. Production 3 was an email from the Respondent to the Society. In that email the Respondent noted that "*I hold my hands up and I take full responsibility and the consequences.*" Productions 4, 5 and 6 were letters to the Society from

Crown Office and Procurator Fiscal Service confirming that the Respondent had been pleaded guilty on indictment to a charge of embezzling funds from clients while employed as a solicitor at Thorley Stephenson SSC between 1 November 2012 and 1 September 2014.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that the present Complaint was in “not dissimilar terms” to Complaint 2018/1809 which was heard on the same day. The present complaint represented the conduct which was the subject of Mr Thorley’s complaint to the Society. Mr Thorley described the circumstances and the efforts his firm took to recover the money taken by the Respondent. Mr Ritchie spoke to the background of the Law Society’s involvement in the case. The Fiscal noted that dishonesty arose in this case. Rule B1.2 of the Law Society of Scotland Practice Rules 2011 provides that a solicitor must be trustworthy and act honestly at all times so that his/her personal integrity is beyond question. In particular, a solicitor must not behave, whether in a professional capacity or otherwise, in a way which is fraudulent or deceitful. The Fiscal submitted that by embezzling clients’ funds, the Respondent was clearly guilty of professional misconduct.

DECISION

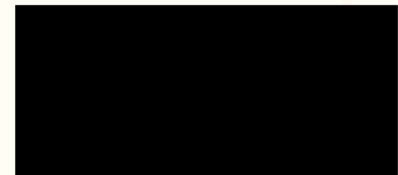
The Tribunal accepted the witnesses’ evidence as credible and reliable. According to the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313, there are certain standards of conduct to be expected of competent and reputable solicitors and a departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct.

The Tribunal considered that dishonesty with clients’ money is one of the most serious matters it deals with. 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. By taking cash payments from clients in advance of fees and outlays and keeping these, failing to disclose them to his employer or recording them on the clients’

ledgers, the Respondent's conduct fell far short of the accepted ethical standards of the profession and he was therefore guilty of professional misconduct.

The Tribunal noted that there was an overlap in terms of the conduct which was the subject of this Complaint and the conduct which led to the conviction which was the subject of Complaint 2018/1809. Having made the order for strike off in relation to Complaint 2018/1809, the Tribunal considered that its powers were limited in the present case by Section 53(3A)(a) of the Solicitors (Scotland) Act 1980. In relation to a former solicitor who has been struck off the roll, the disposals which the Tribunal can impose are those laid out in Section 53(2)(bb) to (e). The Tribunal noted that the public was already protected by the order for strike off. There was significant overlap in terms of the conduct which was the subject of this Complaint and the conduct which led to the conviction which was the subject of Complaint 2018/1809 which was heard by the Tribunal on the same day. Therefore, in these circumstances, the Tribunal considered that the appropriate sanction was Censure.

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