

**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**

Complainers

against

**MURRAY ALEXANDER
THOMAS McAULEY, Solicitor,
formerly of 96 Woodside Street,
Coatbridge and presently of Flat
2/1, 92 Calder 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, Murray Alexander Thomas McAuley, Solicitor, 96 Woodside Street, Coatbridge (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 23 April 2015 and notice thereof was duly served on the Respondent.

5. At the hearing on 23 April 2015, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself.
6. A Joint Minute between the parties agreeing the averments of fact and duties was lodged with the Tribunal. The Respondent was allowed to lodge Answers late. Productions were lodged on behalf of both parties. The Tribunal heard submissions from both parties.
7. The Tribunal found the following facts established:-
 - 7.1 The Respondent's date of birth is 12th January 1982. He was enrolled as a solicitor on 31st August 2006. He formerly carried on business and resided at 96 Woodside Street, Coatbridge ML5 5JR. He is not currently in practice as a solicitor and now resides at Flat 2/1, 92 Calder Street, Glasgow. G42 7RB.
 - 7.2(a) In 2013 the Complainers received a complaint from DK in respect of the actings of the Respondent during the currency of his representation of MS in sequestration proceedings at the sheriff court in Lanark. After investigation the Complainers concluded that there was no basis upon which a finding of professional misconduct or unsatisfactory conduct could be made against the Respondent.
 - (b) During their investigation of DK's complaint the Complainers wrote to the Respondent on 27th August 2013 with intimation of the complaint and requiring the Respondent to provide his response. The Respondent telephoned the Complainers on 17th September 2013. At that time he requested additional time to respond to the complaint and undertook that his response would be with the Complainers within 7 days. No response was received from the Respondent. Accordingly the Complainers proceeded to attempt service of statutory notices upon the

Respondent on 23rd October 2013 but the postal service of these notices failed. The notices were sent by recorded delivery post but the Respondent, having been notified by the postal authorities that no one had been in when they attempted delivery of them, failed to uplift them from the Post Office. Further statutory notices sent by the Complainers to the Respondent on 28th November 2013 were also returned unserved by the postal authorities in the same circumstances as above condended upon.

- (c) On 13th January 2014 the Complainers served on the Respondent notices under Section 15 of the Solicitors (Scotland) Act 1980. They did so under cover of a letter sent to the Respondent by ordinary post which has not been returned to the Complainers and must therefore have been delivered to the Respondent. The notices were identical other than in relation to their date to those in respect of which service on the Respondent was attempted in October and November 2013. The first notice was served in terms of section 15 (2) (i)(i) of the Solicitors (Scotland) Act 1980. It required the Respondent to send to the Complainers a response to the original complaint, along with an explanation for his failure to have done so timeously in response to the letter of 27 August 2013 condended upon, within fourteen days of 13 January 2014. The second notice was served in terms of section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007. It required the Respondent to deliver to the Complainers, within twenty one days of 13 January 2014, all books, accounts, deeds, securities, papers and other documents in the Respondent's possession or control relating to the representation of the respondent's client MS in defence of sequestration proceedings at Lanark sheriff court. The Respondent failed to respond to these notices at all. Accordingly the Complainers were hampered in their investigation of the complaint by the lack of

cooperation of the Respondent and his failure to respond to statutory notices.

- (d) The Respondent issued instructions on 3 October 2012 and again on 21 October 2012 to Doctor S C to prepare medical reports in relation to clients whom he represented. Doctor S C prepared the reports and forwarded them to the Respondent. Doctor S C issued fee notes, each in the sum of £150 on 9 October 2012 and 29 October 2012 in respect of the reports provided. Having received no payment, Doctor S C sent reminders to the Respondent on 7 May 2013 and 27 September 2013. The Respondent failed to reply.
- (e) Doctor SC invoked the assistance of The Scottish Legal Complaints Commission who in turned passed the matter to the present Complainers. They wrote to the Respondent intimating the complaint on 5 February 2014. The Respondent did not reply. A notice in terms of Section 15 (2) (i) of The Solicitors (Scotland) Act 1980 was sent by the Complainers by Recorded Delivery post to the Respondent on 13 March 2014 along with a notice in terms of Section 48 (1) (a) of the Legal Profession and Legal Aid (Scotland) Act 2007. The Respondent did not reply. A further notice in terms of Section 15 (2) (i) of The Solicitor Scotland Act 1980 was sent by the Complainers to the Respondent on 14 April 2014. Again the Respondent did not reply. The fee notes remained unpaid until April 2015, at which point the Respondent telephoned the Doctor, apologised to him for his conduct and then forwarded a cheque in full settlement. The Respondent has not responded to the letter of complaint or statutory notices served upon him.

8. Having given careful consideration to the Joint Minute, Productions and detailed submissions from both parties, the Tribunal found the

Respondent guilty of Professional Misconduct *in cumulo* in relation to his failure to respond to correspondence from the Law Society of Scotland, his failure to obtemper statutory notices served upon him by the Law Society of Scotland and his failure to pay the professional fees of a Doctor instructed by him to provide reports.

9. Having heard the parties, in mitigation and on the matter of expenses and publicity, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 23 April 2015. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Murray Alexander Thomas McAuley, Solicitor, formerly of 96 Woodside Street, Coatbridge and presently of Flat 2/1, 92 Calder Street, Glasgow; Find the Respondent guilty of Professional Misconduct *in cumulo* in respect of his failure (a) to respond to correspondence from the Law Society of Scotland; (b) to obtemper statutory notices served upon him by the Law Society of Scotland; and (c) to pay the professional fees of a Doctor for reports instructed by him; Censure the Respondent; Direct that in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer or successive employers as maybe 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 and that for an aggregate period of one year; 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

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

Alan McDonald
Vice Chairman

NOTE

At the hearing on 23 April 2015 parties lodged with the Tribunal a signed Joint Minute agreeing the averments of fact and duties. The Fiscal asked the Tribunal to be allowed to amend Article 6(a) of the Complaint by adding at the end of it the words “and the other correspondence condescended upon.” This motion was not opposed by the Respondent and therefore was allowed by the Tribunal. The Fiscal had already lodged with the Tribunal a number of Productions. In the course of the Fiscal’s submissions to the Tribunal, it became apparent that the Respondent had intimated Answers to the Fiscal. At that point the Respondent asked the Tribunal if he be allowed to lodge his Answers late, together with a number of documentary Productions. That was consented to by the Fiscal and therefore allowed by the Tribunal.

Given the extent of agreement between the parties, no evidence required to be led and the hearing proceeded on the basis of submissions from both parties.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal indicated to the Tribunal that he would take the Tribunal through the terms of the Complaint, referring the Tribunal to the appropriate Production numbers, but without referring to the content of each Production.

Article 4(a) of the Complaint outlined that in 2013 the Complainers received a complaint from a member of the public who was unhappy with the actings of the Respondent in the course of sequestration proceedings at the Sheriff Court in Lanark. The Complainers concluded that there was no basis for a finding of any sort regarding this Complaint. However, the Respondent had professional duties regarding cooperation with the Law Society in its investigation of the Complaint. In paragraph (b) reference was made to a letter dated 27 August 2013 which required a response from the Respondent, and this letter was number 3 within the Fiscal’s bundle of Productions.

The Respondent had telephoned the Complainers asking for further time to respond but had in fact not provided any further information. A follow up letter was sent by the Society to the Respondent on the 8 October 2013, and this was Production number 4 for the Complainers.

Statutory notices proceeded to be served on 23 October 2013 and these were Productions 5 to 10 inclusive.

The notices were sent by recorded delivery post but were not collected by the Respondent. Further notices were sent by recorded delivery on 28 November 2013 – Productions 11 to 15 – and they too were not collected by the Respondent.

Notices were served on the Respondent in terms of Section 15 of the Solicitors (Scotland) Act 1980 on 13 January 2014 and these were Productions 17 and 18. These required a response from the Respondent together with production of documents. The Respondent failed to give any response at all. The Law Society were hampered in their investigation to some extent.

The second matter before the Tribunal was outlined in paragraph (d) of the Complaint. The Respondent had instructed a Doctor to prepare two reports for clients. The Doctor is a Consultant Psychiatrist. Subsequently the Doctor prepared two fee notes each for £150.00. These fee notes were both submitted to the Respondent in October 2012. The Doctor sent reminders to the Respondent in May and September 2013. No reply was given. The Doctor then proceeded to the Scottish Legal Complaints Commission (SLCC) and his Complaint was 24 to 36 on the Productions list.

The present Complainers wrote to the Respondent on 5 November 2013 and this was Productions 39 and 40 on the list. No reply was received and a Section 15 notice was served on 13 March 2014 and this was Productions 41 to 46. The second part of the Section 15 notice was served on 14 April 2014 and this was Productions 48 to 52.

As at the date of the submission of this Complaint to the Tribunal, the Respondent had not paid the outstanding fees or responded to any of the notices from the Law Society.

The Doctor concerned had written to the Fiscal on the 9 April 2015 confirming that the Respondent had been in touch with him on the telephone and had subsequently paid the fees in full. The Fiscal submitted a letter from the Doctor dated 9 April 2015 confirming this.

The Fiscal confirmed that he had first been instructed by the Complainers in the early part of 2014. The second Complaint regarding the failure to pay the fees was only passed to the Fiscal in October 2014. He submitted that there had been no undue delay in bringing this matter before the Tribunal.

Obviously the question was whether or not this conduct amounted to professional misconduct. He invited the Tribunal to have before it the book Smith & Barton. He referred to paragraph 16.06 which he submitted showed that a failure to timeously settle a fee note to a witness/professional amounted to professional misconduct.

He referred to paragraph 16.08 as support for the submission that failing to respond to correspondence from the Law Society amounts to professional misconduct. The Fiscal submitted that the Tribunal has repeatedly said in the past that failure to correspond with the Law Society amounts to professional misconduct. A failure to obtemper a Section 39 notice is often held to be professional misconduct in itself. The Fiscal referred to paragraph 16.09 of Smith & Barton. He submitted that the individual elements of the Respondent's conduct were each capable of constituting professional misconduct in their own right but that here *in cumulo* the Tribunal should certainly be satisfied that the conduct complained of amounted to professional misconduct and was not merely a matter which could be referred back to the Law Society in relation to a question of unsatisfactory conduct. Although the conduct was professional misconduct he submitted that it might be considered towards the lower end of the scale.

The Fiscal thereafter asked the Tribunal to have in mind the explanation given by the Respondent in his Answers. At that point it was clarified that the Answers had not been lodged with the Tribunal but only intimated to the Fiscal. The Respondent asked

to be allowed to lodge his Answers, and supporting Productions, late. The Fiscal consented to that.

The Fiscal submitted that the explanations put forward by Mr McAuley were that he had health difficulties which impinged on his ability to carry out his professional duties. The Fiscal referred to paragraph 16.02 of Smith & Barton and submitted that this amounted to mitigation and did not prevent the conduct from amounting to professional misconduct. The case before the Tribunal included enquiries from unpaid witnesses, correspondence from the Law Society and notices from the Law Society. The Fiscal invited the Tribunal to hold that the admitted failings of the Respondent amounted to professional misconduct in three separate elements.

SUBMISSIONS FOR THE RESPONDENT

The Respondent indicated that his position was as described in his Answers. His problems had begun to arise in 2013 when he had been experiencing stress issues while working for his previous employers. He believed he left that employment probably as a result of these difficulties, although he had in mind that he wanted to set up on his own to expand from being a criminal defence lawyer. Before he had left his employment, in 2010 his mother had had difficulties with her own employment. In 2012 he had had no option but to raise employment tribunal proceedings as she had insisted that he do so. He accepted that this was inappropriate as he had no experience as an employment lawyer and he was so closely connected to his mother. He had had to ask himself whether he was a solicitor or a son and had taken on the case. He found these tensions to be irreconcilable. He started to ask if he was able to continue. He still had a case pending in Glasgow Sheriff Court regarding his mother's employment and there was still a question of what he should tell his mother. Was he to tell her that he could not do the case or step down from being a solicitor.

With regard to the original complaint referred to at paragraph 4(a) of the Complaint, the complaint was farcical. All he had done was go to Court to ask for a proof to be fixed. He had felt feelings of great resentment particularly as the Law Society had started to send him notices saying that they were going to restrict his practising certificate. He now realised that these feelings were irrational.

With regard to the outstanding fee notes, he explained that the case related to had been legally aided. His account to the Legal Aid Board had been abated. He had put the matter aside for the fees to be submitted to the Legal Aid Board again with the next set of fees. He had not got round to doing this.

He accepted that he had not been acting in a professional manner. He took issue with service of this Complaint upon him. He had been told by others that his practising certificate was most likely to be restricted.

As of 2013 he had not re-enrolled as a solicitor. He had taken a step back. He submitted that his conduct had raised questions of ignorance not a lack of integrity.

He had found himself in a difficult situation which he could not drag himself out of. After two years of not being a solicitor he felt that the whole proceedings were unnecessary and disproportionate. Throughout all of his difficulties he had made sure all of his clients of his were properly looked after. The contents of the Complaint all related to his own personal circumstances. He suggested that he would have no intention of getting a practising certificate until he felt fit enough to do so. He would not go back into his own practice if he was not able. He had suffered ill-health when his professional and personal circumstances had collided. If the Tribunal held that his conduct amounted to professional misconduct he would accept that. He had withdrawn from the Roll of Solicitors and had no intention of applying again until he had overcome these issues. He could not explain why he had not just phoned the Doctor at the beginning. He had assessed these issues as personal circumstances which he had not dealt with. He thought these issues were relating to his own personal finances and that his dealings with the Law Society were personal.

A proof had been assigned for August in connection with his mother's case and he was appearing in that case as a lay representative. This was a decision that he had had to make and the only decision he could take.

He submitted that he had always acted with integrity and had tried to be a credit to the profession. The prosecution itself and the allegation that he had acted without

integrity was too much. He accepted that the case law suggested that his conduct amounted to professional misconduct. He wanted to apologise to the Doctor and to the members of the Law Society affected by his conduct.

The Chairman asked the Fiscal if anyone from the SLCC had tried to speak to the Respondent. The Fiscal clarified that the first case to come to him related to the complaint arising from the Lanark sequestration proceedings. The complaint to the SLCC arising from the unpaid fees was passed to him in October 2014. He was unable to say if anyone from the Commission had tried to speak to the Respondent. Once the case came to the Law Society then it had a statutory obligation to investigate it.

In response to a question from the Chairman, the Fiscal clarified that the last practising certificate held by the Respondent had expired on 31 October 2013. The Respondent's name remains on the Roll of Solicitors.

DECISION

There appeared to be no dispute with regard to the facts of this case.

The Respondent clearly admitted failing to respond to correspondence from the Law Society, failing to obtemper notices served upon him by the Law Society, and failing to pay outstanding fees for a period in excess of two years.

The question before the Tribunal was whether this conduct amounted to professional misconduct.

The Tribunal has emphasised on a number of previous occasions the importance of solicitors dealing promptly and efficiently with correspondence from the Law Society to enable it to perform its statutory duties. Solicitors who fail to engage in the process bring the system into disrepute. It is impossible to see how the public can have any faith in the profession unless the profession upholds its duty to cooperate with its regulatory body.

The public is also entitled to expect that solicitors be fair in their dealings with witnesses/professional parties on behalf of their clients. A solicitor is expected to accept personal responsibility for the expenses incurred by professional witnesses and the Respondent in failing to make payment over an extended period, and in failing to give any response to the Doctor, has brought the profession into disrepute.

A solicitor's duties to respond timeously to correspondence from individuals or the Law Society, to obtemper statutory notices served upon them by the Law Society, and to accept personal responsibility for the expenses incurred by professional witnesses have been well stated and emphasised over many years. The Respondent's conduct clearly represented a departure from the standards of conduct to be expected of a competent and reputable solicitor. The conduct of the Respondent was clearly serious and reprehensible. The explanations given by him in his written Answers and his submissions before the Tribunal amounted to mitigation but not a defence to the conduct itself.

The Tribunal concluded that the Respondent was guilty of professional misconduct. On being advised of this decision, the Respondent had nothing further to add in mitigation. The Fiscal confirmed that the Respondent had not had any previous case before the Tribunal and moved for expenses and publicity in the usual way.

The Tribunal gave very careful consideration to the Respondent's submissions and Productions in considering the appropriate disposal. The Respondent had clearly described suffering significant personal difficulties that had affected his professional judgment. The Tribunal had great sympathy with the situation the Respondent had faced. Nonetheless, it appeared that the Respondent had taken a deliberate decision not to answer the Law Society's correspondence. In error, he had assessed the outstanding fees and correspondence/notices from the Law Society as being matters personal in nature that carried no weight or import. Even in his appearance before the Tribunal at the hearing, the Respondent failed to demonstrate any insight into the fundamental importance of a solicitor's duty to cooperate with his regulatory body. The Tribunal however accepted that the Respondent had recognised his difficulties with regard to his duties to his clients and had ceased to practise. The Respondent described ongoing difficulties. The conduct admitted by the Respondent disclosed

grave errors of judgment on his part. The Tribunal were anxious that should the Respondent seek to return to practise then the public should be protected. The Tribunal required to balance the consideration that the Respondent's conduct was at the lower end of the scale, with the ongoing possibility of risk to the public. In these circumstances the Tribunal felt it appropriate to restrict the Respondent's practising certificate to acting as an employee for an aggregate period of one year thus allowing the Respondent to return to practice but ensuring that he would be supervised and the interests of the public be protected.

The usual orders were made in relation to expenses and publicity.

Alan McDonald
Vice Chairman