

**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**

**THOMAS WILLIAMSON,  
Solicitor, Tom Williamson  
Limited, 14 St James Street,  
Paisley**

**Respondent**

1. A Complaint dated 1 July 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Thomas Williamson, Solicitor, Tom Williamson Limited, 14 St James Street, Paisley (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were three Secondary Complainers, two of whom sought compensation.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged on behalf of the Respondent.

4. In terms of its Rules the Tribunal determined that a full hearing take place on 14 November 2014 and notice thereof was duly served on the Respondent.
5. The hearing took place on 14 November 2014. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and was represented by George Moore, Solicitor Advocate, Glasgow.
6. A Joint Minute between the parties agreeing the averments of fact, duties and professional misconduct was lodged with the Tribunal. Given the terms of the agreement between the parties, no evidence required to be led. Submissions were made by both parties.
7. The Tribunal found the following facts established:-
  - 7.1 The Respondent's date of birth is 29 July 1959. From 17 April 1989 to 16 October 2005 he was a partner with Robertson & Ross, Solicitors, Paisley. From 17 October 2005 to 16 February 2011 he was a Director of Robertson & Ross Solicitors Limited, Paisley.

He was a Solicitor with McGeehan & Company Solicitors, Paisley from 27 January 2011 to 31 October 2011. He has been a Director of Tom Williamson Limited Solicitors, Paisley since 10 July 2012.
  - 7.2 In or about 2006 Ms A instructed Robertson & Ross Solicitors Limited and executed a Will. The principal was retained by Robertson & Ross.
  - 7.3 She received a letter from Robertson & Ross Solicitors Limited dated 23 January 2013 advising her that the Respondent,

previously a Director with Robertson & Ross, had removed her Will from the Robertson & Ross strong room without her authority. Inter alia the letter also advised “It was only when our Mr B did an audit that we discovered this as it had not been intimated to us by Mr Williamson.”

- 7.4 Ms A made a complaint to the Scottish Legal Complaints Commission (SLCC) on 25 February 2013 and the SLCC subsequently referred the matter to the Complainers.

The summary of the complaint was:

“Mr Williamson, who left the firm of Robertson & Ross Solicitors Limited in 2011, inappropriately removed my Will from the strong room at Robertson & Ross Solicitors Limited’s offices without my authority.”

- 7.5 The Respondent had been appointed sole Executor in the said Will. By letter dated 5 July 2013 to the Complainers, the Respondent advised inter alia that when he had left Robertson & Ross Solicitors Limited in February 2011, he had taken with him those Wills in which he had been appointed sole Executor.

- 7.6 The matter was investigated by the Complainers and thereafter considered by their Professional Conduct Sub Committee on 12 December 2013.

The Sub Committee decided that having carefully considered all the information before it “that the conduct of Mr Thomas Williamson in respect that he inappropriately removed the Will of Ms A from the strong room at Robertson & Ross Solicitors

Limited without her authority 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.”

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

7.7 Prior to February 2011, Mr and Mrs C instructed Robertson & Ross Solicitors Limited and executed Wills. The principals were retained by Robertson & Ross.

7.8 Mr and Mrs C received a letter from Robertson & Ross Solicitors Limited dated 22 January 2013 advising them that the Respondent, previously a Director with Robertson & Ross, had removed their Wills from the Robertson & Ross strong room without their authority. Inter alia the letter also advised “It was only when our Mr B did an audit that we discovered this as it had not been intimated to us by Mr Williamson.”

7.9 Mr and Mrs C made a complaint to the Scottish Legal Complaints Commission (SLCC) on 4 March 2013 and the SLCC subsequently referred the matter to the Complainers.

The summary of the complaint was:

“We, Mr C and Mrs C, wish to complain about the actions of Mr Thomas Williamson, formerly of Robertson & Ross Solicitors and now of Tom Williamson Limited in relation to his handling of our Wills in that, in or around February 2011,

Mr Williamson removed our Wills from Robertson & Ross' strong room storage facility without our knowledge or consent, and thereafter failed to advise us that he had done so."

7.10 The Respondent had been appointed sole Executor in both Wills. By letter dated 4 June 2013 to the Complainers, the Respondent advised inter alia that he had left Robertson & Ross in February 2011, he had taken with him those Wills in which he had been appointed sole Executor.

7.11 The matter was investigated by the Complainers and thereafter considered by their Professional Conduct Sub Committee on 12 December 2013.

The Sub Committee decided that having carefully considered all the information before it "that the conduct of Mr Thomas Williamson in respect that he removed the Wills of Mr and Mrs C from Robertson & Ross's strong room storage facility without their knowledge or consent and thereafter failed to advise them that he had done so appear 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."

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

8. Having giving careful consideration to the agreed facts and the submissions made by both parties, the Tribunal found the Respondent

not guilty of Professional Misconduct, but determined that in terms of Section 53ZA of the Solicitors (Scotland) Act 1980 the Respondent may be guilty of unsatisfactory professional conduct as a consequence of which the Tribunal required to remit the Complaint to the Council of the Law Society of Scotland.

9. Having heard further submissions from both parties in relation to expenses and publicity, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 14 November 2014. The Tribunal in respect of the Complaint dated 1 July 2014 at the instance of the Council of the Law Society of Scotland against Thomas Williamson, Solicitor, Tom Williamson Limited, 14 St James Street, Paisley; Find the Respondent not guilty of Professional Misconduct; Remit the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Find no expenses due to or by either party; 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)**

**Dorothy Boyd**  
**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**

**Dorothy Boyd**  
**Vice Chairman**

**NOTE**

At the hearing on 14 November 2014 a Joint Minute was lodged with the Tribunal which agreed all of the averments of fact, duties and professional misconduct contained within the Complaint before the Tribunal. No evidence required to be led. The matter proceeded on the basis of submissions.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal explained to the Tribunal that the Respondent left Messrs Robertson & Ross in February 2011. In January 2013 it became apparent that he had taken with him various wills. The Complaint before the Tribunal refers to three wills in particular. Two of the testators claim compensation.

He submitted to the Tribunal that before a solicitor leaving a firm takes any files he requires to consult his clients. He requires to ask the client whether he can take the files, or wills as the case may be. In this case there was no communication with the clients. Messrs Robertson & Ross did an audit in January 2013. The Fiscal was not aware what had instigated the audit. Messrs Robertson & Ross wrote to the three Secondary Complainers in this case explaining what had happened and matters flowed from there.

Mr Reid submitted that a solicitor cannot depart from the firm requirement of consulting with his client. The Respondent could not take the wills or files without the client's consent and without the firm knowing about it. He submitted that such conduct amounted to professional misconduct.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Moore indicated that parties had considered the position carefully. Originally the view was taken that this was unsatisfactory conduct but thereafter professional misconduct was accepted.

Mr Moore indicated that he had little to say in regard to the question of professional misconduct. The question had been considered carefully. Originally the view had been taken that the conduct was unsatisfactory conduct. After a review of the authorities he had been directed to by the Fiscal he had come to the conclusion that this was a question of professional misconduct.

In response to a question from the Tribunal, the Fiscal submitted that the case amounted to professional misconduct as it met the Sharp Test. He submitted that the conduct in this case amounted to inappropriate and reprehensible conduct. He indicated that it was his understanding that if there was a breakup of a firm the appropriate course was to write to a client to obtain a mandate.

The Tribunal invited Mr Reid to indicate which authorities the parties had been referring to. He clarified that he had in mind the case of Jardine & Phillips, although he accepted that that case had been far more extensive than this. He had not brought with him any copies of authorities. He conceded that he was not suggesting that this case was in the same category as Jardine & Phillips at all.

The Fiscal was asked whether he was aware of anything beyond the three wills mentioned within the Complaint. He confirmed that he had no information beyond the answers given by the Respondent which indicated that he had returned "all wills" when this matter had been drawn to his attention.

The Fiscal was asked by the Tribunal whether he considered it relevant whether the conduct was carried out in error or mischievously. The Fiscal submitted that intent was only relevant to mitigation. He submitted that every solicitor ought to know that they cannot take wills and files without the agreement of clients. Intent did not come into the question.

Mr Moore was asked by the Tribunal if there was any explanation for the lack of communication with the clients. Mr Moore indicated that the Respondent was the sole executor in each of the wills. He had mistakenly considered that as executor he was

the client and was entitled to take the wills. The Respondent now accepts that he should have made better enquiry.

The Tribunal invited the Respondent's agent to clarify the background to the Respondent's actions.

Mr Moore indicated to the Tribunal that Mr Williamson is 55 years old and was admitted as a solicitor in 1983. He became a partner in Robertson & Ross in 1989 and remained a partner there until the firm became a limited liability partnership when he became a director, in 2005. His role was mainly civil litigation with a little chamber practice. The remaining partners of the firm worked almost exclusively in criminal legal aid work. Mr Moore knew the Respondent only as someone acting on the other side of civil litigation. He had always appeared as straightforward in all of these litigations.

Messrs Robertson & Ross got into difficulties in 2008. Mr B was deregistered by the Legal Aid Board along with an employee so that neither of them could provide criminal legal assistance. At that point it was decided Mr Williamson and Mr B would swap roles. Mr Williamson would do legal aid work and Mr B would do civil work. Matters became even more difficult at that point. Another firm, Messrs McGeehan & Co, who were a husband and wife firm, joined the practice sharing premises. This was a business arrangement to allow Thomas Williamson to do criminal legal assistance work. Mr Williamson started to work for McGeehan & Co. Unfortunately that did not work out and this relationship was terminated. Matters reached a head when another director of Messrs Robertson & Ross was deregistered in 2011. This was followed immediately by the whole firm of Robertson & Ross being prohibited from providing criminal legal assistance. If Mr Williamson had remained within that firm he would not have been able to provide criminal legal assistance, even though he himself had done nothing wrong.

In February 2011, as a result of his concern, Mr Williamson left Messrs Robertson & Ross and joined Messrs McGeehan & Co as an employee. There were significant financial implications for him if Messrs Robertson & Ross failed. There were

substantial borrowings of the firm personally secured over Mr Williamson's own home. Although it is referred in the Complaint to him being the risk partner, that was not the case. Mr Williamson was the client relations partner.

Mr Williamson is aware of the rule that a solicitor requires the authority of his clients. He took a number of wills where he was the sole executor as he believed that as executor he was entitled to do so.

Matters developed after that. At least two testators died during the course of 2012 and Messrs Robertson & Ross contacted Mr Williamson to explain that the beneficiaries had asked them to wind up the estate. Mr Williamson returned the wills to Messrs Robertson & Ross immediately.

At that point Mr B had not appreciated that Mr Williamson had breached any rule by taking the wills. Clients then got in touch with Messrs Robertson & Ross to make changes to their wills. At that point Mr B contacted Mr Williamson and the Law Society. The Law Society advised Mr B that Mr Williamson should not have taken the wills in those circumstances and that he should return them immediately. Mr Williamson accepted this reported advice and immediately returned the wills to Messrs Robertson & Ross.

Mr Williamson has paid compensation to the two Secondary Complainers who were claiming compensation.

Mr Williamson has been in practice a long time with no adverse findings of any kind. In hindsight he accepts that perhaps he should have taken guidance before taking the steps that he did. There was no question of dishonesty or deception or any financial loss to the clients. There may have been some anxiety that wills were missing but in reality Messrs Robertson & Ross knew where the wills were all along. It was only once the firm took guidance from the Law Society that matters proceeded.

In answer to a question from the Tribunal, Mr Moore clarified that it was Robertson & Ross who took advice from the Law Society and had passed that information on to Thomas Williamson. Mr Williamson had accepted that and returned the wills.

## **DECISION**

There appeared to be no dispute amongst the parties at all as to what had taken place here. The Respondent had taken with him three wills where he was the sole executor. These wills had been returned immediately his actions were called into question.

There appeared to be absolutely no issue of dishonesty in connection with the conduct.

The Tribunal accepted that the Respondent had acted contrary to the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008. The question for the Tribunal was whether the breach of these rules amounted to professional misconduct. The test for professional misconduct is a high one. In the case of Sharp it was said “there are certain standards of conduct to be expected of competent and reputable solicitors. 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. Whether or not the conduct complained of is a breach of rules or some other actings or omissions the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought to be properly attached to the individual against whom the Complaint is to be made.”

Additionally in the case of Sandeman it was said that professional misconduct was “conduct which has sufficient gravity and culpability to be capable of bringing the profession into disrepute.”

Clearly the Respondent's conduct was not what would be expected of a competent and reputable solicitor. The Tribunal, however, had difficulty in describing the conduct as "serious and reprehensible". The Tribunal required to look at the whole circumstances. The Respondent was the sole executor in each of these wills. When the wills were noted not to be within the firm's will safe, Messrs Robertson & Ross appeared to be aware that they were likely to be with Mr Williamson. Mr B had discussed the conduct with the Law Society, which had not taken steps itself when matters were drawn to its attention. As soon as matters were drawn to Mr Williamson's attention he acknowledged that he had made a mistake and had returned the wills to Messrs Robertson & Ross. It did not appear to the Tribunal that the Respondent had deliberately disregarded his clients' interests, but that he had misdirected himself as to the appropriate steps to take.

Whilst the Tribunal hesitated to describe the conduct as "serious and reprehensible" the conduct was clearly not of the standard which could reasonably be expected of a competent and reputable solicitor and the conduct certainly comprised more than inadequate professional service. Accordingly, the Tribunal found the Respondent not guilty of professional misconduct but remitted the Complaint to the Council of the Law Society in terms of Section 53ZA of the Solicitors (Scotland) Act 1980.

Parties were asked for submissions with regard to expenses and publicity. The Fiscal for the Law Society moved for expenses submitting that the Complainers had been justified in bringing proceedings. Mr Moore submitted that the appropriate order was no expenses due to or by either party. Immediately the Complaint was raised Mr Williamson had accepted his conduct was unsatisfactory professional conduct.

After further consideration, the Tribunal directed that no expenses were due to or by either party. The usual order was made with regard to publicity.

**Dorothy Boyd**  
**Vice Chairman**