

**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

**CAROLINE ROSE GOODENOUGH, Keenan
Solicitors, 2 Argyle Street, Greenock**

Respondent

1. A Complaint dated 9 October 2019 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Caroline Rose Goodenough, Keenan Solicitors, 2 Argyle Street, Greenock (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer,
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 26 February 2020 and notice thereof was duly served on the Respondent. Parties lodged a Joint Minute of Agreement
5. At the hearing on 26 February 2020, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented herself.

6. Having given careful consideration to the terms of the Complaint, the Joint Minute of agreement and the productions referred to therein, and the parties' submissions, the Tribunal found the following facts established:-

- 6.1 The Respondent is Caroline Rose Goodenough. She has a place of business at Keenan Solicitors, 2 Argyle Street Greenock. She was admitted to the roll of solicitors on the 4 January 1991. She has over time been employed by Moore & Partners, Cumbernauld; Stirling & Mair, Johnstone; McAuley, McCarthy & Co, Glasgow; WW J McClure, Glasgow and; TF Reid & Donaldson Paisley from where she left or on around the 9 June 2017 to join Keenan Solicitors where she remains employed.
- 6.2 The Secondary Complainer contacted TF Reid & Donaldson Solicitors (the firm) in the connection with the sale of her mother's house following upon her mother's admission to a care home. A report from the GP who treated the Secondary Complainer's mother indicated she did not have capacity to instruct a solicitor in connection the sale. The Respondent was tasked to contact the Secondary Complainer with a view to her appointment as a Guardian to protect her mother's welfare interests and finances. The Respondent received instructions to do so from a colleague within the firm in early May 2016.
- 6.3 The Respondent wrote to Secondary Complainer for the first time on the 17 May 2016. In that letter she explained the difference between welfare and financial powers; discussed her understanding of her mother's position and which powers may be needed; who should be the guardian(s); availability of Legal Aid and; provided a leaflet from the Office of the Public Guardian setting out the requirements of a financial guardian.
- 6.4 The Secondary Complainer provided instructions to the Respondent on the 18 May 2016 over the telephone. The instructions were to appoint the Secondary Complainer and her sister as financial and welfare guardians.
- 6.5 The Respondent prepared and sent Legal Aid application forms to the Secondary Complainer and her sister, and completed supporting statements in respect of the application. The signed forms were returned to the Respondent in May 2016. The

Respondent at no time made an application for Legal Aid on behalf of the Secondary Complainer and her sister.

- 6.6 The Secondary Complainer did not hear from the Respondent during the summer of 2016. The Secondary Complainer wrote on the 12 September 2016 *"I have been trying to contact you for the past 3 weeks both by phone and email...I have not received any updates at all"*.
- 6.7 The Respondent did not carry out any work in the furtherance of the instructions she received from the Secondary Complainer in the months of June, July, August, September, October and November 2016.
- 6.8 The Secondary Complainer spoke with Respondent on the 8 December 2016, the Respondent advised that Legal Aid had been approved – it had not – and that two medical practitioners were being appointed. The medical practitioners were not instructed. She advised letters would be sent to instruct the medical reports required for the Guardianship application. No letters were sent at this time.
- 6.9 The Secondary Complainer next chased the Respondent on the 7 February 2017, at this time she highlighted another period of no contact and little movement. She expressed frustration that she had not been kept up to date with progress and had expected the application to have been completed before the end of 2016. The Respondent replied to the Secondary Complainer by email on the 8 February advising she would make calls that afternoon to progress the instructions. The Respondent advised she would contact the Secondary Complainer the next day. The Respondent did not contact the Secondary Complainer on the 9 February 2017.
- 6.10 The Respondent wrote to the Secondary Complainer on the 16 February 2017 advising *"we have instructed medical reports...as soon as the Reports are available, we will ensure the application for guardianship is lodged without further delay"*. The medical reports had not been instructed. Two reports are required to accompany the application for the appointment of a guardian. The Glasgow City Health and Social Care Partnership (GCHSCP) wrote to the Respondent by letter dated 17 February 2017 acknowledging the Respondent's

request for a Mental Health Officer (MHO) and advising an officer would be appointed in 6 weeks. The MHO must also submit a report to support the guardianship application.

- 6.11 The Secondary Complainer emailed the Respondent's colleague Ann Doherty on the 3 March 2017 asking for progress. The Respondent replied indicating she would press the medical practitioners and, that as it was an application for welfare and financial guardianship there was a need to have an MHO report in addition to two medical reports. She advised that the GCHSCP had requested they hold off instructing the medical reports until the MHO was able to advise they were able to complete their report. This is the first time the Respondent mentioned to the Secondary Complainer the necessity of the MHO report.
- 6.12 The Secondary Complainer emailed the Respondent on 17 March 2017 in response to the solicitor's email of 6 March 2017 advising that it seemed to her that the MHO report ought to have been requested as soon as Legal Aid was granted which would have prevented the delay. She highlighted her Mother was still paying a mortgage, electricity and insurance over the property, the Respondent's delay had cost her months of, what appeared to her, to be unnecessary expense.
- 6.13 The Secondary Complainer sent an email chasing a response on the 10 April 2017, noting more than 6 weeks had passed since the letter from GCHSCP advising an officer would be appointed. The Respondent advised in a one sentence email she would press GCHSCP for an update. The Respondent did not update the Secondary Complainer.
- 6.14 The Secondary Complainer emailed the Respondent on 21 April 2017 requesting an update. She noted that the solicitor had advised her she was calling the local authority on 10 April 2017, and that it had been 9 weeks since the GCHSCP letter with no contact from the Respondent. She advised she was dissatisfied and had still not received a response to her email of 17 March 2017.
- 6.15 The Secondary Complainer wrote to the Client Relations Manager (CRM) of the firm on the 2 May 2017 advising him of the history as noted above and expressing

concern that the Respondent had not acted with care and professionalism, she sought details of the date of granting of Legal Aid and instruction of the medical reports.

- 6.16 The CRM sought answers from the Respondent. None were immediately forthcoming,
- 6.17 The Secondary Complainer emailed the CRM on 23 May 2017 to advise that she had not received confirmation of when Legal Aid was granted and that she knew it was prior to November 2016. She asked for confirmation as to when Legal Aid was granted and why the MHO was not requested at that time.
- 6.18 The Respondent emailed the Secondary Complainer on 7 June 2017 to advise that she had been asked by the CRM to confirm the information requested by the complainer. She advised she had been attempting to speak with the local authority office which dealt with the appointment of the MHO to ascertain the date they received the solicitor's request. She advised she would call again the following day to ascertain whether an MHO had now been allocated. The Respondent did not call the local authority. The Respondent did not respond to the Secondary Complainer. The Secondary Complainer sought this information herself and was told the first contact was in February 2017. She advised the CRM of this and sought his comment.
- 6.19 The CRM pressed the Respondent for answers the Respondent made excuses including that the SLAB website was down so she could not advise him of when Legal Aid was granted but did tell him that Legal Aid had been granted. This was not true. Legal Aid had not been granted.
- 6.20 The Respondent left the employ of TF Reid & Donaldson on the 9 June 2017.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect that she:

7.1 failed in her common law duty to act with integrity and not to mislead others including the Secondary Complainer and the Client Relations Manager of the firm;

7.2 failed to comply with her duty to act with trust and integrity as contained in Rule B1.2, in that she misled both the Secondary Complainer and the client relations manager as to the progress being made with Secondary Complainer's instructions;

7.3 failed to act with competence and diligence as contained in Rule B1.10, delayed acting upon the Secondary Complainer's instruction for months and when she did act, she failed to comply accurately with statutory procedure; and

7.4 failed in her duty to act with mutual trust with other regulated persons, as contained in Rule B1.14.1, in that she misled the client relations manager on several occasions when discussing with him the progress of the Secondary Complainer's instructions.

8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 26 February 2020. The Tribunal having considered the Complaint dated 9 October 2019 at the instance of the Council of the Law Society of Scotland against Caroline Rose Goodenough, Keenan Solicitors, 2 Argyle Street, Greenock; Find the Respondent guilty of professional misconduct in respect that she failed to act with integrity, misled others and breached Rules B1.2, Rule B1.10 and Rule B1.14 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Fine her in the sum of £3,000 to be forfeit to Her Majesty; 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 but need not identify any other person.

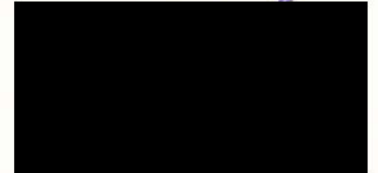
(signed)

Kenneth Paterson

Vice Chair

9. 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 1 JUNE 2000 .

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chair

NOTE

At the hearing on 26 February 2020, the Tribunal had before it the Complaint, Answers, Joint Minute of Agreement, two Inventories of Productions for the Complainers and a List of Authorities for the Complainers. During the hearing, the Respondent produced three references. The Respondent gave evidence and parties made submissions.

EVIDENCE OF THE RESPONDENT

The Respondent gave evidence on oath. She noted that she had admitted the facts contained in the Joint Minute. However, she wished to give evidence of the circumstances surrounding her conduct.

The Respondent explained that she joined TF Reid & Donaldson Solicitors as an assistant. All four partners undertook conveyancing and private client work. The Respondent was employed to deal with court work. She explained that she had a very heavy workload. The partners did not have much experience of court work and offered little in the way of support.

Following a break for her to compose herself, the Respondent told the Tribunal that looking at the admitted facts and the file, it was “almost incomprehensible” she could have mistakenly acted in this way. She accepted that she told the Secondary Complainer that Legal Aid had been granted. The Respondent said that she thought that it had been granted but it was difficult to explain why. She was struggling with her workload. She must have mistaken this for another file. It was within her ability to check and she should have done so before reassuring the client. She said it seemed incomprehensible, but it was the only answer she could give. She said that certain steps had not been recorded on the file (telephone calls by the Respondent or her secretary) but she accepted that where these were not on file, she could not prove they had taken place. The complaint was intimated to her by the SLCC seven months after she left the firm. She did not have access to her emails or her secretary’s emails. During the course of the investigation, the Secondary Complainer provided an email to the Law Society which was not contained on the file. However, the Respondent was not in a position to offer any other evidence.

Addressing the question of dishonesty, the Respondent said she could only say that she had no intention to mislead the Secondary Complainer. It seemed “inexplicable” but the information was given in the belief it was true.

During cross examination, the Respondent described how the case was passed to her. She explained that she was responsible for her own work diary and “to do” list. She accepted that nothing was done on the file between May and December. She said the usual process would be to set aside time for a file review once a month. However, this was not strictly adhered to as court commitments and other things took precedence. The Respondent was not able to explain why she had not responded to the Secondary Complainer’s emails.

The Respondent explained how she would apply for civil legal aid online. This was her own personal responsibility. She accepted it was not done in this case. She would write on the front cover of the file the date when the legal aid application was made. She confirmed that the Secondary Complainer’s file was not marked. If she had it in front of her, even a perfunctory check of the front of the file would have revealed there was no legal aid. She agreed that a reasonably competent solicitor would have checked the file before speaking to the client. She agreed that with hindsight this was reckless. She said it was genuinely unlike her to have had a conversation and not followed it up but there is nothing on the file or in her memory to contradict that.

The Respondent accepted that for long periods of time, nothing happened on the file even though she told the Secondary Complainer she would do certain things. She accepted that she told the Secondary Complainer she had instructed medical reports when she had not. Only one letter of instruction went out. She knew that she needed two medical reports and a report from a mental health officer. She knew in May this was required but had not arranged it by the following February.

The Fiscal noted that the Respondent had undertaken to speak to HSPC but no conversation is recorded on the file. The Respondent said it was incomprehensible that she would not have done it but there is no note on the file to evidence that. There is no note of her chasing up medical report. However, the Secondary Complainer was aware that she could not instruct reports until the Mental Health Officer’s report was available.

The Respondent said she had a conversation with the client relations partner at some stage. She accepted she told him that legal aid had been granted but could not give any details of that conversation. She was sure that legal aid had been granted. She said it would have been obvious once the application was lodged with the court but should also have been obvious from the file or Legal Aid Online. She agreed a prudent lawyer would have picked up the file before speaking to the partner. Had she picked up the file and seen that there was nothing on the front of it, she could have checked the legal aid position. She agreed that she told the client relations partner that she was sure legal aid

had been granted and she undertook to check that along with a lot of other things. The day before she left her employment (8 June) she tried to check online but could not gain access to the website.

During re-examination, the Respondent produced an email from a former partner which she said contained mitigatory material but also information regarding her workload which was useful at the stage of considering professional misconduct. The Fiscal having no objection, the Tribunal agreed to receive the production which was an email from a former partner at TF Reid & Donaldson Solicitors.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that the Tribunal heard evidence from the Respondent regarding the timeline of events. The facts in the Complaint were admitted and covered by the Joint Minute. The Fiscal referred to the Sharp test. He described the duties of a solicitor set out in paragraph 4 of the Complaint and the averments of misconduct contained in paragraph 5.

With regard to honesty, he submitted that the Respondent had been dishonest and had breached her duty not to mislead. The Respondent advised the Secondary Complainer that legal aid had been granted. She either knew or should have known that was incorrect. Failing to check the file was reckless and, in his submission, recklessness can support a finding of dishonesty. Funding is a fundamental part of the case.

The Fiscal quoted from paragraphs 1.11 of Paterson and Ritchie's "Law, Practice and Conduct for Solicitors" (2nd Edition) and paragraphs 2.42-2.46 of Treverton-Jones et al "Disciplinary and Regulatory Proceedings" (9th Edition).

Paterson and Ritchie note that,

"Although it has been little discussed in the context of professional discipline, at least in Scotland, misconduct would seem to require mens rea or substitutes such as recklessness or negligence. Thus a solicitor who claimed to clients that the writ in their action had been served timeously on the other side without checking the file to see if the statement was correct, might still be guilty of misconduct for acting recklessly or in wilful blindness, even if he or she had not consciously lied to the client."

The Fiscal noted that the law in relation to dishonesty in disciplinary proceedings has moved on since Paterson and Ritchie's book was published. He referred to the case law leading up to Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 referred to at paragraphs 2.42-2.46 of the

Treverton-Jones text. He submitted that the Tribunal should not consider subjectively what the Respondent claims but must consider the reasonableness of it objectively. In his submission, recklessness can amount to dishonesty. However, if it was not dishonest, it demonstrated a lack of integrity. He referred to paragraph 2.53 of the Treverton-Jones text and noted that dishonesty and lack of integrity are distinct. Lack of integrity does not require the subjective element of conscious wrongdoing.

The Fiscal submitted that the Respondent repeatedly and recklessly gave false information to the client and the client relations partner. She said two medical reports had been instructed. This had not happened, and only one letter of instruction went out that day. She deceived the Secondary Complainer and the client relations partner with regard to the grant of legal aid. Almost 12 months after instruction there was no legal aid on the file. It should have been obvious, and it was very simple to check. She also delayed acting on the Secondary Complainer's instruction in a time-critical matter, demonstrating a lack of competence and diligence.

SUBMISSIONS FOR THE RESPONDENT

The Respondent said she accepted what the Fiscal had said but took issue with one part of the Fiscal's submissions. She confirmed that in her view the test was that contained in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. She said that when dishonesty is in question, the fact-finding Tribunal must first ascertain subjectively the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of the belief is a matter of evidence (often determinative) going to whether the belief was held but it is not an additional requirement that the belief must be reasonable. The question is whether it is genuinely held. Once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people.

The Respondent said she could see that her conduct fell below the expected standards of her employer and the client. The information she gave was wrong. She failed to act with diligence. However, she said she was not dishonest and had not lacked integrity. She did not know that legal aid had not been granted but she should have known. She accepted she ought to have corrected the information. Her belief was genuinely held regarding the steps taken. She said the failure to obtain the second medical report was "indefensible". However, she was not intentionally seeking to mislead.

The Respondent gave details of the working situation when she left the firm. She tried to hand over a very large workload without knowing who was going to take over and without secretarial support. She could not clearly recall the conversations with the client relations partner but there were more than one. She did tell him falsely that legal aid had been granted but did not intend to mislead him. The file was dealt with “fairly badly from beginning to end”.

The Respondent referred to the Sharp test and urged the Tribunal to consider the gravity of the failure in the whole circumstances of the case. She noted that the Secondary Complainer’s complaint was settled by payment of compensation. The Respondent contributed to that compensation which was paid by the firm. The Respondent did not think it was appropriate to contact the Secondary Complainer directly to apologise as she was a client of a different firm. However, it was a matter of regret to her that she had not been able to offer an apology.

A panel member asked the Respondent to address the Tribunal on recklessness and dishonesty. She said that inadvertent mistakes or carelessness could not be dishonest but she accepted her conduct went beyond careless. The Tribunal has to assess dishonesty objectively. Her state of mind is part of the fact-finding mission. She can only give her own evidence. She said it was not reckless because of the context of the workload although hindsight has given her perspective.

A panel member asked if there was a reason why the Respondent had not checked the file. She said she had the file when she drafted the application and would not have done this if she did not think legal aid had been granted. She was always working on the basis that the client had legal aid.

The Chair noted that over a period of about a year, despite numerous opportunities, the Respondent did not get the case “back on the rails”. The Respondent said the file “fell into a black hole” between May and December. She did not know why matters were not brought to her attention and she could not defend this. She accepted that she did not call the client back when she said that she would and that this happened a number of times. However, in her submission, the case fell short of professional misconduct.

DECISION

The Tribunal carefully considered the admitted facts in the Complaint, Answers and Joint Minute, and the productions referred to in the Joint Minute. It was satisfied beyond reasonable doubt that the Respondent had acted in the manner libelled. The Respondent misled the Secondary Complainer and

the client relations manager regarding progress on the case and whether legal aid had been granted. She failed to act with competence and diligence. She breached Rules B1.2, B1.10 and B1.14.1 of the Law Society of Scotland Practice Rules 2011.

The Tribunal considered the issue of professional misconduct. The test for misconduct is set out in 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 Respondent misled the Secondary Complainer and the client relations manager and failed to act on the client's instructions for many months. The Tribunal considered that this behaviour demonstrated a serious and reprehensible departure from the standards of competent and reputable solicitors and therefore constituted professional misconduct.

The Fiscal submitted that the Respondent's conduct had been dishonest or alternatively lacked integrity. The Respondent denied this. The Tribunal had regard to paragraph 1.24 of Paterson and Ritchie's "Law, Practice and Conduct for Solicitors" (2nd Edition). The authors refer to misleading statements coming in a variety of forms. Out and out lies which one knows to be a falsehood are clear examples of misconduct. A negligent statement which is innocent or inadvertent is not misconduct. The situation where a solicitor states an untruth without checking whether it is in fact truthful or not can amount to recklessness which will give rise to a misconduct finding even although there is no intentional dishonesty. The Tribunal considered that the Respondent's conduct fell within this last category.

One incident of misleading could have been a mistake or negligent. However, the Respondent was given many opportunities to check the file or Legal Aid Online, and did not do so, even although she was specifically asked about the grant of legal aid. Failure to do so was reckless. She repeatedly misled with regard to legal aid and the medical reports. The Respondent was dealing with a client in a sensitive situation. The Secondary Complainer's mother had dementia. The family had to cover her obligations. The Respondent should have known that she had not signed the declaration in the legal aid forms. The Tribunal gave the Respondent an opportunity to explain why she believed legal aid was granted and she was unable to provide any information. No explanation was given beyond the assertion that she believed legal aid was granted. No basis in the file or otherwise upon which she was misleading herself was advanced. The Tribunal accepted that the Respondent was experiencing problems with her workload at this time and was under stress, but this did not excuse her conduct. The

Tribunal considered that her conduct in these circumstances fell short of dishonesty but demonstrated a lack of integrity.

SUBMISSIONS IN MITIGATION AND ON PUBLICITY AND EXPENSES

The Respondent referred to the reference from her current employer and the reference from Cook, Stevenson and Co. She had been in private practice for 29 years and had an unblemished record. She recognised that she was in an untenable position at her former firm. It was impossible for her to provide clients with good service. Even if this incident had not occurred, she would have moved on. While she accepted her culpability, she submitted that the lack of systems, staff and support at her former firm contributed to the misconduct. She joined her current firm in June 2017 and carried out civil legal aid work. With hindsight she has learned through this process and was confident there would be no repetition of the behaviour. She had cooperated with the Fiscal and the Tribunal. She submitted Answers and signed a Joint Minute. She provided details of her personal circumstances to the Tribunal.

The Fiscal moved for expenses. He made no motion regarding publicity. The Respondent indicated that she could not oppose the motion regarding expenses.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal had regard to its indicative outcomes guidance and the references produced on the Respondent's behalf. Although there was no personal gain to the Respondent, she had acted in a way which called her integrity into question. This was a serious matter which meant that censure alone would be insufficient. The behaviour demonstrated an ongoing course of conduct. The conduct was likely to damage the reputation of the profession. The conduct could put the public in danger although the Tribunal was satisfied that the Respondent did not pose a risk in her current working environment. The Tribunal noted that there were no previous disciplinary findings against the Respondent. She had attended the hearing and shown remorse. She showed insight by seeking other employment when she was unable to manage her excessive workload. She was under stress at the time of the misconduct. She paid part of the compensation made by her former firm to the Secondary Complainer. In all these circumstances, the Tribunal was satisfied that a fine was appropriate in addition to censure and that the appropriate level of fine was £3,000.

The Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. 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. No order was made in relation to the Secondary Complainer. It was noted in the Complaint that she did not seek compensation through the Tribunal.



Kenneth Paterson

Vice Chair