

**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

**SVERRE NILS AAEN, formerly having a place of
business at LSO Ltd, 81 St. Vincent Street, Glasgow,
G2 5TF**

Respondent

1. A Complaint dated 14 March 2024 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Sverre Nils Aaen, formerly having a place of business at LTO Ltd, 81 St. Vincent Street, Glasgow hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of Professional Misconduct.
2. There were no Secondary Complainers.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent.
4. The Respondent engaged in email correspondence with the Tribunal office following service of the Complaint. During the course of this, Answers and Productions were lodged by the Respondent. He objected to the use of the address in the Complaint which was a business address in Andorra. The Complainers explained that the Respondent had not engaged with them in relation to matters detailed in the Complaint. In these circumstances, the Complainers had instructed UK tracing agents and identified a business address in Andorra which was linked to the Respondent. This was the only address available for the Respondent. The Respondent thereafter provided an email address for correspondence with the Tribunal Office. On 15 April 2024 the Tribunal Office contacted the Respondent by email to ask if he wished to receive all

correspondence by email or, if not, asking him to provide an updated postal address. The Respondent replied on the same date to say that he would use email and would thereafter provide a postal address to the Tribunal. He stated that he did not want that address passed to the Complainers. The Respondent did not provide an alternative postal address. He also indicated by email that he would rely upon the Answers and Productions already lodged and would not communicate further using the email address he had provided.

5. In terms of its Rules, the Tribunal appointed the Complaint to be heard at a virtual Procedural Hearing on 16 May 2024. The Tribunal Office attempted to send the Notice of Hearing to the Respondent by email on 22 April 2024 followed by the Joining Instructions for the Zoom hearing on 9 May 2024, but both were returned with a note indicating that the Respondent's address could not be found by the email service provider.
6. At the virtual Procedural Hearing on 16 May 2024, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. The Clerk of the Tribunal gave evidence in relation to intimation of the Notice of Hearing to the Respondent as detailed in paragraph 5 above. Having considered all the information presented, the Tribunal decided that service of the notice of the Hearing had not been effected in terms of Rule 11(2) of the Scottish Solicitors' Discipline Tribunal Rules 2008 ("the 2008 Rules") and section 64 of the Solicitors (Scotland) Act 1980 ("the 1980 Act"), and that issues of fairness arose in relation to proceeding with the case on this date in the absence of the Respondent in terms of Rule 14(4) of the 2008 Rules. The Tribunal invited the Fiscal to instruct an international tracing agent to locate the Respondent with a view to thereafter amending the address in the Complaint if appropriate. The Tribunal continued the virtual Procedural Hearing to a date to be afterwards fixed.
7. The date of 23 September 2024 was identified as suitable for the virtual Procedural Hearing and notice thereof was duly intimated to the Respondent.
8. At the virtual Procedural Hearing on 23 September 2024, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. The Depute Clerk of the Tribunal gave evidence in relation to intimation of the Notice of the hearing to the Respondent which was sent to the Respondent via First Class Recorded Delivery Post. The Royal Mail Track and Trace system disclosed that the item was handed over to Royal Mail's counterpart in Andorra. Their Track and Trace system suggested

that the item was collected on 27 August 2024. The Fiscal made a motion to proceed in the absence of the Respondent. He confirmed that he had instructed international tracing agents who were unable to identify a home address for the Respondent. He explained that in January 2024 he had traced, online, the address on the Complaint. The website for the business noted there listed the Respondent and included a photograph of him. Tracing agents confirmed that the Respondent had removed any online presence. They confirmed the Respondent was married to an Andorran resident who continued to operate the business. The Fiscal emphasised that the Respondent had received the Complaint served at the address on the Complaint. He invited the Tribunal to hold that the Respondent had taken deliberate action to step away from the Tribunal. The Tribunal was satisfied that intimation of this Hearing had been effected as required in Rule 11(2) of the 2008 Rules and decided that it was fair and appropriate to proceed in the absence of the Respondent in terms of Rule 14(4) of the 2008 Rules. The Fiscal made a motion for the Tribunal to direct the Respondent to lodge the documents listed in his written motion in terms of Rule 13 of the 2008 Rules. Having regard to the Fiscal's submissions and all of the information before it, the Tribunal granted the motion and directed that the Respondent should lodge any such documents within six weeks of the date of the notice sent to him advising of this order. The Tribunal fixed a further virtual Procedural Hearing for 4 December 2024.

9. At the virtual Procedural Hearing on 4 December 2024, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. The Clerk gave evidence in relation to intimation of the hearing. A notice dated 9 October 2024 was sent to the address on the Complaint by Royal Mail Track and Trace on the same date. The tracking history provided by Royal Mail stated that delivery was attempted on 17 October 2024 at 12:54 with 'no answer'. The system showed that the item was to be returned but it had not yet been received by the Tribunal Office. The Fiscal referred to Rules 11 and 14 of the 2008 Rules and paragraph 6.19 of *MacPhail's 'Sheriff Court Practice'* in support of a motion to proceed in absence of the Respondent. The Tribunal was satisfied in respect of intimation of the Notice of Hearing and decided that, in all the circumstances, it was fair and appropriate to proceed with the Hearing in the absence of the Respondent. The Fiscal lodged an amended Complaint and explained that its terms had been restricted on the basis of the Answers submitted by the Respondent and nothing had been added to the pleadings. On the Fiscal's motion, the Tribunal fixed a virtual full Hearing for 24th February 2025, with evidence to be given on behalf of the Complainers by Affidavit and a deadline of 14 days before the Hearing for any objections to be lodged. At the request of the Fiscal, the Tribunal agreed that only the List of Documents and not the documents themselves be intimated to the Respondent in terms of Rule 12 of the 2008 Rules.

10. At the virtual Hearing on 24 February 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. The Tribunal granted the motion of the Fiscal to proceed in the absence of the Respondent in terms of Rule 14(4) of the 2008 Rules. The Fiscal referred to Affidavits for four witnesses and made submissions.

11. Having given careful consideration to the terms of the Complaint and all the information before it, the Tribunal found the following facts to be established:-
 - 11.1 The Respondent is Mr Sverre Nils Aaen. He formerly had a place of business at LSO Ltd, 81 St. Vincent Street, Glasgow. The Respondent was formerly a director of LSO Ltd., an incorporated legal practice in Scotland. That business ceased in 2019. The Respondent did not provide the Council with a postal address when closing his business. He provided an email address and phone number. That email address and phone number are no longer active. The Society had information to suggest that the Respondent had moved to Andorra. The Respondent's former legal adviser was not instructed to provide contact details to the Council. The Council carried out investigations.

 - 11.2 The Respondent was born on 7 March 1975. He was admitted to the Roll of Solicitors on the 22 October 2004. He was an employee of (1) MSS Legal Limited Glasgow between 9 November 2003 until 2 September 2005, (2) Scullion Law Limited Hamilton between 27 September 2005 and 31 January 2007 (being an associate from 1 November 2006), (3) Your Conveyancer Limited Dunfermline as an associate between 8 February 2007 and 27 August 2008. He became partner, director and client relations manager of Aaen Peach Limited ("the company") on 1 July 2008. Aaen Peach Limited changed its name to LSO Ltd on 7 January 2019. The firm ceased practice on 16 October 2019. However, the company was not dissolved. The Respondent resigned as a director on 3 August 2020. The company was voluntarily dissolved on 13 July 2021. The Respondent remained a shareholder until dissolution. He has not held a practising certificate since 2019.

 - 11.3 A Cessation of Practice PU14 form for the company was submitted to the Society. The form was dated 13 September and received on 17 September 2019. The form narrated

the date of cessation as 16 October 2019. At the date of signature of the form and date of cessation, the Respondent was the sole director and Client Relations Manager of the company. Eric Miller, the company's second director, had resigned as director on 13 September 2019. Eric Miller remained as company secretary. Within the Cessation of Practice certificate, the Respondent is identified as the "*Manager who will sign on behalf of the practice unit and who can respond to queries on this matter*". The form does not contain a postal address for the Respondent. The form contains an email address and mobile phone number.

- 11.4 The form records "N/A" to the question "*What arrangements have been made in relation to current client files?*". There is no detail of any firm who had taken over current files.

- 11.5 In answer to the question "If no one firm has taken the files, where will they be held?" the form records "*ALL CLOSED FILES WITH OASIS SCOTLAND LTD (ACCOUNT NAME: LSO LTD) THE DEPOSITORY, 6 OAKBANK PARK PLACE, LIVINGSTON EH53 0TN*" (the storage company).

- 11.6 The form records in answer to the question "If files are in storage or under your control, what system is in place for the phased destruction of these files?" "*SVERRE AAEN'S COMMUNICATIONS WITH OASIS SCOTLAND LTD, AS PER THEIR SERVICES OF DESTRUCTION OF FILES.*"

- 11.7 The form records "N/A" in answer to the request for information re the arrangements made for "Title Deeds, wills & other deeds".

- 11.8 In relation to information about the availability of archive files the form records new agents or clients could contact the Respondent as "CLIENT RELATIONS MANAGER". The form records the archived files were stored at "OASIS SCOTLAND LIMITED".

- 11.9 The cessation form states the following:-

"Please provide contact details for clients or their new agents to use:- Name of Business, Name of Contact, Telephone No, Address."

The form records an email address and a mobile telephone number. No postal address is provided on the form.

- 11.10 The Respondent resigned from the company as Director on 3 August 2020. Eric Miller resigned as Secretary on 17 March 2020. Both remained shareholders at the date of dissolution of the company on 13 July 2021.

- 11.11 By 25 September 2019 the Society had received a large number of queries in relation to the practice of the company. The Respondent did not respond to correspondence addressed to the email address given on the PU14 form. The Society sought the assistance of Eric Miller.

- 11.12 Queries continued and by July 2020 matters were being addressed by the Financial Compliance team. Enquiries with the Professional Practice Team and the Society's external communications team identified that over 50 clients and/or their representatives had contacted the Society regarding outstanding client files. The Society was also contacted by the Scottish Legal Complaints Commission in relation to the files. These contacts related to a broad number of matters including that the company held principal deeds, local authority consents and NHBC paperwork for properties that were being sold, and that the Respondent had not delivered discharges of standard securities so that former securities appear as pre-ranking securities on title certificates.

- 11.13 As at July 2020 the Society had tried to contact the Respondent at various email addresses through which the Society had communicated with him previously – the emails were returned undelivered. In early July the Society contacted BM, a solicitor who had acted for the Respondent and his former co-director Eric Miller. In connection with the matter before the Tribunal, BM advised the Society he had told the Respondent and Eric Miller what "*needs done re the winding up*" of the company. The Society raised with EM the concerns that it continued to receive enquiries from the SLCC, other firms and former clients regarding the files that were held by the storage company. Eric Miller advised the Society he had been unable to access the files held to order of the Respondent/the company at the storage company.

- 11.14 The Society took action, in the first instance, by decision of the Practising Certificate Sub-Committee on 15 July 2020. It revoked the recognition of the company as an incorporated practice. This was intimated to the company at its registered address by letter the same day.
- 11.15 The Society received a reply from the company dated 20 July 2020. The letter was sent by or on the authority of the Respondent as he was the sole Director of the company at the time.
- 11.16 In the meantime, the Society had sought assistance from Balfour & Manson solicitors in relation to the ongoing difficulties. Balfour & Manson contacted the storage company. They entered into correspondence with the storage company's head office. On 10 July 2020 the head office advised Balfour & Manson that they had received "*a destruction order from our client for 137 boxes*" held by the storage company on behalf of the company.
- 11.17 It was understood by the Society the storage company held between 600-700 of the company's files in the boxes and that the instruction came from the Respondent. He was the only Director of the company at the time. His former co-director, Eric Miller, had been denied access to files in storage as he was no longer a Director of the company. There was no other person who could have instructed the destruction at that time. The letter of 20 July 2020 from the company to the Law Society refers to that instruction.
- 11.18 The Respondent required to keep any company accounting records for six years. There was a risk that further papers, deeds, etc, would be lost. The Society instructed Balfour & Manson to seek interdict against the storage company and the company from destroying the files.
12. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his failure and/or delay in delivering, or facilitating access to, or responding to the enquiries of his former clients or those clients' new representatives in respect of their files and papers held after the cessation of trading of LSO Ltd, all of which represented a failure to act in the best interests of his clients contrary to Rule B1.4.1 of the Practice

Rules 2011 and a failure to communicate with his clients and others contrary to Rule B1.9.1 of the 2011 Rules.

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

By Video Conference, 24 February 2025. The Tribunal having considered the Complaint dated 14 March 2024, amended 4 December 2024 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Sverre Nils Aaen, formerly having a place of business at LSO Ltd, 81 St. Vincent Street, Glasgow; Finds the Respondent guilty of Professional Misconduct in respect of his failure and/or delay in delivering, or facilitating access to, or responding to the enquiries of his former clients or those clients' new representatives in respect of their files and papers held after the cessation of trading of LSO Ltd, in breach of Rules B1.4.1 and 1.9.1 of the 2011 Practice Rules 2011; Censures the Respondent; Finds 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 Directs 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)

Catherine Hart

Vice Chair

14. 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 16 May 2025.

IN THE NAME OF THE TRIBUNAL



Catherine Hart

Vice Chair

NOTE

At the virtual Hearing on 24 February 2025, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented.

The Clerk of the Tribunal gave evidence under oath confirming that a Notice of Hearing was sent to the Respondent at the address in the instance of the Complaint by First Class Recorded Delivery Post. That Notice of Hearing was returned to the Tribunal office by Royal Mail. A further copy was sent to the Respondent by First Class post at the request of the Fiscal.

The Fiscal invited the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent, in terms of Rules 11(2)(c) and 14(4) of the 2008 Rules. He submitted that the statutory obligations in respect of giving proper notice of the hearing had been complied with and that it was therefore appropriate for proceedings to continue in the absence of the Respondent. He also referred to the background of the proceedings as noted in the interlocutors of the Tribunal; in particular that the Respondent had initially engaged in response to the Complaint by lodging Answers but thereafter refused to provide active contact details.

The Fiscal further submitted that the Tribunal should take account of additional statutory obligations on the Respondent in terms of section 8 of the 1980 Act, namely that it was incumbent upon him to provide the Complainers and/or the Tribunal with active contact details. He referred to the balance of the interests of the public, the profession and the deliberate actions of the Respondent in absenting himself from proceedings.

In support of the Complainers' position, the Fiscal cited the Court of Appeal decision in the case of GMC v Adeogba [2016] WLR(D) 156, (in particular at paragraphs 63 and 63 onwards) in relation to the obligations of a professional person in dealing with their regulator when aware of proceedings before the Tribunal. He submitted that this case is authority to support the position that, if a person deliberately absents themselves from proceedings and is aware of them, the Tribunal has discretion to proceed in the absence of that person.

The Fiscal submitted that, on a strict interpretation of the Rules, all the Tribunal has to do is post the notice. That had been done in this case. No certificate of service is required. Noting that the original Notice of Hearing was returned, the Fiscal argued that this is not something which the Complainers can control. However, in this case, they had also requested that an additional copy of the Notice be sent out

to the Respondent by first class post and this had been done. The Fiscal submitted that not only had the statutory requirements been complied with, but additional steps had been taken to notify the Respondent of the substantive Hearing. In addition, the Respondent was aware of how to contact the Tribunal as he had previously been in touch with the Tribunal Office. In all the circumstances, the Fiscal asked the Tribunal to proceed in the absence of the Respondent.

The Tribunal gave careful consideration to the information before it. It noted that the copy of the Complaint sent to the Respondent at the address in the instance of the Complaint was received by him. The Respondent had lodged Answers but thereafter expressly absented himself from proceedings. Service by First Class Signed For post had been attempted but the Notice of Hearing was subsequently returned to the Tribunal Office on 19 December 2024. Thereafter, a copy of the Notice was posted by First Class post on 12 February 2025 as an additional measure at the request of the Fiscal. 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.

Thereafter, 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 the Respondent had initially responded to the Complaint by lodging Answers and Productions. Thereafter, he had expressly absented himself from proceedings. He provided no further correspondence addresses and messages sent to the email address provided by him were returned as untraceable by the email provider. The Respondent had not attended any of the procedural Hearings fixed to date and had been given opportunities to engage throughout proceedings. Despite this, he failed to engage.

The Tribunal considered that if it heard the case in the Respondent's absence, then the information provided in his Answers could not be fully scrutinised and tested. However, given the procedural history of the case and previous comments made by the Respondent, there was no reason to be confident the Respondent would attend on another occasion if the hearing were adjourned. In fact, the Respondent had stated in correspondence with the Tribunal that he intended to place his faith in the answers and productions that he had lodged and that he would let the matter be decided on that basis. He stated that he had nothing further to add and would no longer be using the email address which he had used to correspond with the Tribunal as he wanted to safeguard his privacy. 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 and the Tribunal granted the Fiscal's motion.

The Tribunal had before it the revised Complaint of 4 December 2024 and three Inventories of Productions for the Complainers. The third Inventory of Productions contained Affidavits which were adopted by the Complainers as the witnesses' evidence-in-chief. The Tribunal also had before it Answers and Productions lodged by the Respondent in response to the initial Complaint.

EVIDENCE FOR THE COMPLAINERS

WITNESS ONE: DENISE ROBERTSON

The Affidavit for this witness confirmed that she is employed at the Law Society of Scotland as a Manager in the Member Registration Department. Her responsibilities include maintaining the Roll of Solicitors and all records of Solicitors, including contact details. The Affidavit confirmed that no contact, home or business addresses are held on the Complainers' records in respect of the Respondent, that the Respondent does not hold a practising certificate and has not held one since 31 October 2019. Attached to the Affidavit was a certified true copy of a Cessation of Practice PU14 Form in respect of LSO Ltd. The Affidavit confirmed that the form was dated 13 September 2019 and received by the Complainers on 17 September 2019. It also stated that the Complainers received numerous enquiries from former clients and solicitors in respect of LSO Ltd between September and October 2019.

WITNESS TWO: GILLIAN ALEXANDER

The Affidavit for this witness confirmed that she is employed at the Law Society of Scotland as Head of Professional Practice within their Member Services Directorate. It also confirmed that the Professional Practice team received numerous calls from the profession about the difficulties which solicitors were experiencing obtaining files and discharges of standard securities from LSO Ltd and the Respondent. The Affidavit also stated that the witness had confirmed these difficulties to, among others, the Head of Financial Compliance of the Complainers by email dated 10 July 2020. A copy of that email was annexed to the Affidavit and confirmed to be a 'true copy'.

WITNESS THREE: SHARON BROWNLEE

The Affidavit for this witness confirmed that she is employed at the Law Society of Scotland as a Financial Compliance Manager in the Regulation Directorate. It confirmed that the witness became involved with LSO Ltd after a Cessation of Practice form had been submitted in respect of the practice as no final accounts certificate was received from the Respondent. The witness also became aware of

numerous complaints about former clients being unable to obtain papers, and so contacted Eric Miller as he was the Respondent's former co-partner in LSO Ltd. The witness met with Eric Miller on 27 February 2020 when she was advised of the following:-

- Eric Miller started his own Practice Unit (PU) – GWG Ltd on 01/08/2019.
- Eric Miller officially left LSO Ltd on 13/09/2019.
- LSO ceased trading on 16/10/2019 – the Respondent was joint Cashroom Manager with Eric Miller and remained sole Cashroom Manager of LSO following Eric Miller's departure
- Eric Miller was not involved at all in LSO after 13/09/2019. He had no access to any bank accounts or accounting systems of LSO since that date. His login and access details to the LSO bank accounts and the Quickbooks accounting system were revoked immediately on that date (presumably by the Respondent).
- Eric Miller's new PU operated from the same premises in St. Vincent Street, and had taken over the existing phone system. The new PU had been inundated with calls and queries and potential complaints from previous and existing clients regarding their transactions, and from SLCC, all of which do not involve Eric Miller.
- Eric Miller took his own (mandated) client transactions when setting up his own PU. The calls, complaints and queries that Eric Miller and his staff were receiving all related to files and transactions that his previous partners, [the Respondent] and Miss X, had dealt with.
- The Respondent could not be contacted and was not responding to any messages from clients, LSS, SLCC, etc. A previous partner had also set up her own PU. Eric Miller had not contacted her as yet regarding any of her previous files. Eric Miller was taking advice - regarding these matters.
- Eric Miller had been able to resolve some of the concerns, for example by contacting Registers of Scotland for copy deeds, or local authorities for completion certificates, etc. even although these are/were not his transactions. Eric Miller was also personally funding the cost of these expenses in an attempt to assist the clients in resolving their issues and to avoid any adverse publicity or complaints that would affect his new PU.
- Eric Miller had attempted on a number of occasions to contact Oasis, LSO's storage provider, to obtain files put into storage by the Respondent, or at least to obtain an inventory of files, so that he could assist previous clients of LSO and the SLCC further in resolving any issues (albeit not his responsibility). However, Oasis refused to deal with

Eric Miller as all storage instructions and agreements are between Oasis and the Respondent.

- If Eric Miller could get access to the files in storage, he advised that he was willing to continue to assist in resolving any outstanding matters, so that no clients suffer any loss or do not have deeds unrecorded, etc
- Again, Eric Miller undertook to take advice from BM regarding current position. Eric Miller was quite distraught at the situation and felt he had been left to deal with matters relating to LSO, when he had left that PU more than a month before cessation.

The Affidavit recorded that the witness would contact Eric Miller again if required and would try to conclude matters relating to the final accounts certificate, etc, for LSO Ltd.

WITNESS FOUR: IAN MESSER

The Affidavit for this witness confirmed that he is employed at the Law Society of Scotland as Director of Financial Compliance in the Regulation Directorate and that one element of the department's work is carrying out inspections and follow up on practices following intimation of cessation of practice notices. The Affidavit confirmed that the witness' colleague, Sharon Brownlee, became involved with LSO Ltd after its Cessation of Practice form was submitted to the Member Services Department and that she had become aware of difficulties arising for former clients who were trying to access their files in addition to not receiving a final accounts certificate from the practice. The witness states in his Affidavit that he delegated to another colleague, Hugh Sanders (then a solicitor in the Financial Compliance team) to investigate the matter. Mr Sanders is no longer employed by the Complainers. However, the Affidavit refers to the First and Second List of Productions lodged by the Complainers together with Productions therein. It confirms that documents numbered 3 on the First list and 6 to 22 on the Second List were taken from the Financial Compliance file operated by Mr Sanders at the time of the investigation and are true and accurate records held by the Complainers which reflect the true state of the investigation carried out at the time.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal made submissions. He proceeded by narrating the averments contained within the Complaint and referred to the sections of particular Affidavits and individual pieces of correspondence which, in his submission, would allow the Tribunal to make individual findings in fact.

The Fiscal stated that the averments of duty in paragraphs 4.2 to 4.5 of the revised Complaint highlight certain obligations on members of the profession, specifically paragraph 4.2 which quotes Rule B1.2 of the 2011 Practice Rules:-

“You must be trustworthy and act honestly at all times so that your personal integrity is beyond question. In particular, you must not behave, whether in a professional capacity or otherwise, in a way which is fraudulent or deceitful.”

The Fiscal said that, although he was not seeking to rely on any allegations of fraud or deceit in this case, solicitors ‘*must act in best interest of clients subject to preserving independence and compliance with the law*’ (Rule B1.4.1 of the Practice Rules 2011) and they *must have the authority of client and proper instructions*” Rule B1.5.1 of the Practice Rules 2011). In addition, “*Solicitors must communicate effectively with their clients*’ (Rule B1.9.1 of the Practice Rules 2011)

In relation to the averment of Professional Misconduct in this case, the Fiscal pointed to paragraph 5.2 of the revised Complaint, namely:-

“The Respondent’s failure and/or delay in delivering, or facilitating access to, or responding to the enquiries of his former clients or those clients’ new representatives in respect of their files and papers held after the cessation of trading of LSO Ltd., as shown by the extensive communication with the Society’s Professional Practice Team is illustrative of a failure in his duties to act in the best interests of his clients, is a failure to communicate effectively with them and brings the Respondent’s integrity into question.”

In consideration of this averment, the Fiscal submitted that the test in the case of Sharp v Council of the Law Society of Scotland 1984 SLT 313, had been met in that the conduct of the Respondent had dropped to such an extent that his failures were a serious and reprehensible departure from the required conduct of a competent and reputable solicitor.

Reference was also made to *Law Practice & Conduct for Solicitors (2nd Edition)* by Alan Paterson and Bruce Ritchie (2014) at section 15.08.08 which sets out what is generally expected of a solicitor when a firm closes, namely:-

“The outgoing solicitor must make suitable arrangements to ensure all correspondence addressed to them is received and dealt with timeously.”

The Fiscal stated that this is a clear and significant obligation on solicitors. He went on to say that these matters are usually dealt with in the Cessation of Business form on which the solicitor provides a new business address to the Complainers. However, no postal address was given on the form in this case.

In addition, the Fiscal referred to the third paragraph of 15.08.08 of *Paterson and Ritchie* which states:-

“Notification should include information on who to contact in the event of future enquiries. In particular the Law Society should be informed of the identity of any solicitor to whom files, wills and titles have been transferred. This is important so that the Law Society’s staff can answer queries from clients or their executors on the whereabouts of their papers.”

He submitted that this, once again, sets out the obligation on solicitors to ensure that there is access to the records and documents of their former practice and this would include requirements to meet letters of obligation, store files, Local Authority consents, NHBC paperwork and Standard Security discharges to ensure that a purchaser’s title is granted in full.

The Fiscal also referred to the Petition to the Court of Session raised by the Complainers against the Respondent which set out the obligations of solicitors to give appropriate notice to clients and to protect client files. He argued that evidence had been produced by the Complainers to demonstrate that the Respondent had failed in respect of these obligations and that the Affidavit evidence lodged with the Tribunal was sufficient to find the Respondent guilty of Professional Misconduct.

Referring again to the test in the case of Sharp, the Fiscal said that it was necessary to look at personal culpability and, in that regard, the Tribunal is entitled to look at Answers lodged by the Respondent. The Answers state that there was an agreement between the Respondent and Eric Miller regarding cessation of the practice. However, the Fiscal observed that there was no evidence lodged by the Respondent to support that statement.

In the absence of such evidence from the Respondent, the Complainers had sought to investigate the matter in October 2024 by obtaining an order for production of documents by the Respondent. He pointed to particular sections of the Affidavit sworn by Sharon Brownlee and lodged with the Tribunal in relation to that; in particular there was a meeting between the witness and Eric Miller on 3 October 2020 which was spoken to in that Affidavit. At that meeting, Eric Miller had said he was not involved in LSO Ltd from the end of September 2019, and he had no access to business or banking systems from that date.

Eric Miller's access to those had been revoked on the date he left the business, presumably by the Respondent. During the same meeting, Eric Miller had told the witness that he took his own mandated client files with him when he set up his own, separate practice and received no response from the Respondent in relation to those files. Eric Miller had indicated that he would assist the Council where possible but stated that he could not engage with the storage facility company as he had no authority to access the files which they held. However, if he was able to obtain access, he would attempt to resolve ongoing matters.

A Tribunal member asked the Fiscal to point to the evidence which demonstrates that the Complainers attempted to investigate the Respondent's position set out in his Answers.

The Fiscal pointed out that Eric Miller was deceased, so it was not possible to obtain either direct or more detailed evidence from him. He accepted that the evidence in the Affidavit of Sharon Brownlee regarding Eric Miller was hearsay but argued that the Tribunal was entitled to consider the information that had been produced. The Complainers had presented a motion for production of documents to the Tribunal. This was considered and granted but there was no response from the Respondent. He had the opportunity to provide evidence in support of his position but failed to do so. The Fiscal submitted that the Complainers are entitled to rely on the Respondent's failure to obtemper an interlocutor of the Tribunal directing him to provide information.

The Fiscal added that the only person remaining who could give evidence on an agreement with Eric Miller following cessation of the business was the Respondent but, again, he has failed to do so. Whilst acknowledging that it is for the Complainers to prove the case beyond a reasonable doubt, the Respondent had been given the opportunity to respond fully to the case against him and had not done so.

A Tribunal member asked the Fiscal if he was asking the Tribunal to prefer the Complainers' averments based on the Affidavits produced and to take account of the Respondent's failure to engage further with the Tribunal procedure in making an inference of facts in the Complaint. The member stated that he was unclear on how that information assisted the Tribunal with findings in fact in relation to these proceedings.

The Fiscal submitted that the only evidence available to the Tribunal in these proceedings is produced by Affidavit. In the interests of fairness, when it became apparent that the Respondent was not co-operating with the proceedings, the Fiscal took steps to provide some evidence to the Tribunal in respect of the Answers lodged. He said it was incumbent upon the Complainers to do so. The Fiscal

acknowledged that the standard of proof in this case is beyond reasonable doubt but, as these are civil proceedings, the evidential rules are different from criminal proceedings (for example, corroboration is not required) and the Tribunal is entitled to weigh the evidence presented to it.

The Fiscal submitted that there is no evidence to support the contention that Eric Miller was to blame for events. On the contrary, the evidence produced shows that Eric Miller resigned from the firm and that the only person responsible for the cessation of the practice was the Respondent. The evidence shows that the Respondent had control of the firm systems and Eric Miller had no access to those or to firm files held in storage. The Respondent's name was on the PU14 Cessation of Practice form, further backing up the Complainers' position.

Referring to the number of applications from the Respondent's clients spoken to by employees of the Complainers in Affidavits, the Fiscal submitted that this showed significant harm caused to those clients by not having access to their files and documents. The Complainers had to take significant steps to protect that information via a petition for interim interdict and revocation of the company's recognition as an - incorporated practice.

In summary the Fiscal stated that the evidence showed that the Respondent had acted in a serious and reprehensible way which fell far below the conduct required of a solicitor when closing a firm. He invited the Tribunal to make a finding of Professional Misconduct in terms of the Sharp case, a copy of which was produced and referred to.

Submissions were concluded.

DECISION

Firstly, the Tribunal had to determine what, if any, conduct had been proved by the Complainers. It was for the Complainers to prove their case, and the conduct had to be established beyond reasonable doubt. The Complainers had produced Affidavits for four witnesses together with a number of documentary productions. The Affidavit of Denise Robertson had a copy of the Cessation of Practice Form for the practice annexed to it and this reflected the terms of the relevant averments of fact within the Complaint.

The Affidavit of Sharon Brownlee contained hearsay in relation to Eric Miller. However, Eric Miller was deceased and could not be cited to give evidence. The best evidence had been produced to the Tribunal

in these circumstances. The Tribunal noted that it is competent for it to consider hearsay evidence, applying appropriate weight to it.

The Affidavits and Productions lodged by the Complainers supported the averments of fact in the revised Complaint dated 4 December 2024 and formed a cohesive and consistent picture of matters. The Tribunal took account of the Answers and documents lodged by the Respondent in terms of Rule 14(5).

The Tribunal noted that the Respondent's position was that the active clients of LSO Ltd had transferred to the new practice of GWG Ltd. He stated that where he knew about enquiries from former clients, he assisted. He had not been aware of other requests.

The Respondent stated that the PU14 form that had been submitted for LSO Ltd had been completed by Eric Miller, and therefore the Respondent was not responsible for its contents. He had not agreed that his details could be included in the form.

He stated that he had resigned from the Roll of Solicitors on 16th October 2019 and, on that basis, he was no longer a solicitor or subject to the jurisdiction of the Law Society of Scotland. He could not have legal clients. The clients and files were those of LSO Ltd, the incorporated practice.

At no time did he advise the Law Society of Scotland that Eric Miller could not access the paper files or that he would not allow this.

His position was that EM, as a practicing solicitor and former director of LSO Ltd, could have dealt with enquiries from former clients and in giving the Respondent's details in the PU14 form, Eric Miller had sought to avoid responsibility and pass this onto the Respondent.

The Respondent did not deny that the instruction to destroy files held in storage came from him. He stated that the request to destroy the files was entirely unconnected to the concerns of the LSS. He maintained that these were "unremarkable conveyancing paper files" that were historic. The order for destruction was in line with the LSS's guidelines on the retention and destruction of client files and LSO Ltd's terms of business. There were also obligations under the data protection provisions to be considered.

He stated that, during the timescales narrated in the Complaint, he had not received any direct enquiries from former clients or their new representatives about their files or papers.

The Tribunal observed that the lack of engagement by the Respondent in the Tribunal proceedings was not relevant to proof of the allegations. The Tribunal had no regard to the Respondent's lack of participation when considering whether the facts had been established. However, the Tribunal was entitled to draw inferences from the evidence presented to it. On the basis of the evidence presented to it and the submissions of the Complainers, the Tribunal was satisfied beyond a reasonable doubt that the Respondent had acted in the manner detailed in the averments of fact set out in the revised Complaint and found the above facts to be established.

The Tribunal was satisfied that the conduct of the Respondent demonstrated a clear failure both to act in the best interests of his clients contrary to Rule B1.4.1 and communicate effectively with them and others contrary to Rule B1.9.1.

On ceasing in practice, the Respondent had a responsibility to provide details that would allow him to be contacted if there were enquiries, but he failed to do so. This is not merely an administrative requirement, but plays an important role in protecting the ongoing interests of clients. The Complainers were entitled to rely on the information provided in the PU14 form.

The Respondent seemed to be under the misapprehension that he could simply ask to be removed from the Roll of Solicitors and would then no longer be accountable to the regulator of the profession. The Law Society of Scotland explained to the Respondent that his request could not be processed as there were outstanding regulatory matters under investigation. Therefore, the Respondent was aware, or ought to have been aware, that there were issues to be addressed.

While the Respondent sought to pass responsibility for enquiries onto Eric Miller, there was no evidence before the Tribunal that the information in the PU14 form did not reflect the agreement that had been reached between the Respondent and Eric Miller for dealing with queries and for accessing files of former clients after LSO Ltd ceased in practice.

The Tribunal noted that there was evidence to suggest that the Respondent was aware that others were trying to access the files in storage and that he had attempted to prevent this. There were matters which could only be resolved through access to the paper files.

It appeared that only the Respondent could access the files in storage, certainly until July 2020 when he agreed, via LSO Ltd, to instruct the storage company to hold the files to the order of Eric Miller.

The Tribunal was not satisfied that the information before it was sufficient to support the Fiscal's submission that the Respondent's conduct called into question his integrity. It, therefore, was not prepared to hold that a breach of Rule B1.2 had been established.

The Tribunal went on to consider whether what had been established before it amounted to Professional Misconduct.

The definition of Professional Misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313 states:-

"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 properly to be attached to the individual against whom the complaint is to be made."

The Tribunal was satisfied that the conduct described fell below the standard to be expected of a competent and reputable solicitor to the degree that it could only be described as serious and reprehensible. It appeared to the Tribunal that the Respondent considered that he could simply cease practice as a solicitor with no continuing responsibility. That was not correct. The Respondent had ongoing responsibilities to clients for whom the business had acted. The Respondent's failure to provide details through which he could be contacted had led to concerns for a significant number of clients and the agents who acted for them subsequently. The Respondent's conduct in attempting to prevent access to the files in storage was also of serious concern as it hampered attempts by others to resolve outstanding enquiries.

SUBMISSIONS ON SANCTION, PUBLICITY AND EXPENSES

The Fiscal moved for expenses, on the basis that these usually follow success, and the usual order for publicity.

In relation to publicity, the Tribunal expressed a reservation about using the address for the Respondent in the Complaint given that it is not a legal business and, therefore, is not regulated by the Complainers.

There was a concern that publication of this address could be prejudicial to the interests of others involved in that business and that an alternative address for the Respondent should be considered in terms of naming him in the final decision of the Tribunal. The Fiscal suggested that the address of the former business of the Respondent be used for the purposes of publicity.

The Fiscal confirmed that there were no previous findings of Professional Misconduct against the Respondent. There was one finding of Unsatisfactory Professional Conduct.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

In relation to sanction, the Tribunal noted that the Respondent's conduct was at the lower end of scale of misconduct and was, in effect, a one-off incident. There had been no previous findings of professional misconduct. There was no evidence that any client had suffered. It noted that some of the files held in storage at risk of destruction may have contained original documents. The Tribunal considered the risk presented to the public by this conduct. However, the Respondent was no longer practising as a solicitor and had moved abroad. The Tribunal concluded that the risk to the public in these circumstances was low and observed that imposing a restriction would not serve any practical purpose. Having considered all of the circumstances, the Tribunal decided that it was appropriate to Censure the Respondent.

Having considered the submissions on expenses and publicity, 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 at his former business address. However, there was no requirement to identify any other person.



Catherine Hart
Vice Chair