

**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**

**HUGH SCOTT NEILSON, Glendevon, 13  
Grahamshill Street, Airdrie, Lanarkshire**

**Respondent**

1. Three Complaints were lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Hugh Scott Neilson, Glendevon, 13 Grahamshill Street, Airdrie, Lanarkshire (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct. These Complaints were dated 29 March 2016, 23 August 2016 and 28 September 2018.
2. Only the Complaint dated 29 March 2016 had Secondary Complainers. They were Mr A, Mr B and Ms E.
3. The Tribunal caused a copy of each of the Complaints as lodged to be served upon the Respondent. No Answers were formally lodged for the Respondent.
4. The first hearing set down for the Complaint dated 28 September 2018 was a procedural hearing on 21 November 2018. With regard to the other two Complaints, following sundry procedure, procedural hearings were set for 21 November 2018 with full hearings to take place on 24 January 2019.

5. At the procedural hearings on 21 November 2018, the Complainers were represented by their Fiscal, Paul Reid, Solicitor-Advocate, Glasgow. The Respondent was absent but was represented by his solicitor, Ronald Conway, Solicitor, Glasgow. The Fiscal made a motion to convert the procedural hearing to a full hearing. Mr Conway confirmed he had no objection to the motion and consequently, the Tribunal granted same. Thereafter, a motion was made by both parties for all three Complaints to be conjoined in terms of Rule 17 of the 2008 Rules. The Tribunal granted this motion. The Fiscal sought leave to lodge an amended Complaint in place of the Complaint dated 29 March 2016. Both parties confirmed that this amended Complaint represented the agreement between the parties. Mr Conway confirmed that he had no objection and the motion was granted. Mr Conway confirmed that the Respondent admitted all three Complaints. No evidence required to be led. The Tribunal heard submissions from both parties.

6. The Tribunal found the following facts established:-

6.1 The Respondent is Hugh Scott Neilson of Glendevon, 13 Grahamshill Street, Airdrie, Lanarkshire. He was born 25 October 1952. He was enrolled as a solicitor on or about 15 August 1977. From on or about 1 June 1978 through to 1 April 1996 he was a partner with the firm of Cartys Solicitors, Hamilton. Thereafter from 6 June 2005 through to 9 August 2013 he was employed initially as a consultant and thereafter as a partner with the firm Harper McLeod Solicitors the Ca'd'oro Building, Glasgow. Then from 1 November 2013 through to 30 October 2014 he was employed as a consultant with EF Kelly Limited Solicitors, Coatbridge, Lanarkshire. From 1 November 2014 through to 2 August 2015 he was employed as a consultant with the firm Fagans Solicitors, Coatbridge, Lanarkshire. From 3 August 2015 through to 10 February 2018 he was employed as a consultant with the firm Marshall Wilson Law Group Limited, 115 Graham Street, Airdrie.

MR A

6.2 Mr A instructed the Respondent to act on his behalf in connection with an insurance claim he was pursuing following a fire at heritable premises which occurred on 24 January 2009. The Respondent agreed to act on behalf of Mr A. Mr A was disappointed at the manner in which the Respondent acted on his behalf and he appointed another solicitor to represent him. A review of the file maintained by that solicitor revealed at the outset of the relationship between Mr A and the

Respondent, the Respondent intimated correspondence to a firm of solicitors acting on behalf of the insurers Hiscox. It was alleged by the insurers after forensic investigation that the fire at the property had been started deliberately. At that time Mr. A was bankrupt and a trustee in sequestration had been appointed. A firm of solicitors was appointed to act on behalf of the insurers. It wrote a number of items of correspondence to the Respondent requesting clarification of certain factual events both prior to and on the night of the fire. On 26 August 2009, Mr A was exasperated and e-mailed the Respondent advising that if Hiscox did not co-operate then court action should be threatened. In particular he concluded the e-mail with a request that a Writ be served upon the insurers as he felt this was the only way they were going to take any notice. Thereafter the file is silent as to any progress being advanced by the Respondent on behalf of Mr A. There is an e-mail from solicitors acting on behalf of the insurers dated 12 February 2010 to the Respondent advising that they had not heard from him since 18 June 2009. No reply was received from the Respondent. On 18 May 2010 the solicitors for the insurers sent a copy of their letter of 18 June 2009 to the Respondent. Having been advised by Mr A to raise a court action the Respondent did not accept these instructions. In particular during the currency of their relationship, Mr A requested that the Respondent raise a court action and enquired about progress on a number of occasions being 26 August 2009, 23 September 2010, 4 March 2011, 9 May 2011, 17 November 2011, 9 December 2011, 24 January 2012, 15 February 2012.

- 6.3 The Respondent had some contact with the representatives from Hiscox and with IMG, but he failed to prosecute any claim. Further having regard to the communications with Mr. A as above, it was clear that Mr. A was under the misapprehension that proceedings had been raised, and the respondent repeatedly failed to disabuse him of this misapprehension.
- 6.4 Having received a complaint at the instance of Mr A, the Complainers wrote to the Respondent at his home address seeking a reply. No reply was received as a consequence of which Formal Statutory Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 were intimated by recorded delivery and first class post to the Respondent on 10 December 2014. No reply was received by the Respondent. Examination of the track and trace system revealed that a letter was signed for on

15 December 2014.

MR B

- 6.5 Mr B was involved in litigation with a former employer. He instructed a solicitor, who subsequently died. He met with the Respondent and instructed him to act on his behalf on or about 23 February 2012. A number of meetings were held between Mr B and the Respondent. Mr B provided the Respondent with information in support of his claim. The provision of this information was acknowledged by the Respondent on 8 June 2012. A Diet of Proof was assigned for 26 June 2012. The Respondent contacted Mr B on 25 June 2012 to inform him the hearing had been cancelled by the court and he would be in contact with a fresh date. During this period the Respondent invoiced the complainer for professional fees. Mr B made enquiries of the Sheriff Clerk at Hamilton and learned that the Diet of Proof in 2012 had not been cancelled by the court. A further Diet of Proof was assigned for October 2012. This Diet of Proof was adjourned without the knowledge of Mr B or without the Respondent obtaining his instructions. The expenses of the discharged Diets of Proof were to be met by Mr B. The Respondent agreed to this concession without the knowledge or instruction of Mr B. Mr B subsequently made enquiries which revealed that the Respondent had failed to lodge productions and supporting evidence on his behalf as a consequence of which these Diets of Proof were adjourned. A Proof subsequently occurred in April 2013 at which Mr B was successful. The decision was appealed by the Defender. In July 2013 Mr B learned that the Respondent was no longer a partner of Harper Macleod. The Appeal took place. Mr B was successful. He subsequently received an invoice for professional fees of £17,080.02 which included expenses incurred by the Respondent in respect of the discharged hearing of June 2012.
- 6.6 Mr B was disappointed at the manner in which the Respondent acted on his behalf. He intimated a complaint. The file maintained by the Respondent was reviewed. This revealed that an agent for the opponent e-mailed the Respondent on 25 June advising that no productions had been lodged on behalf of Mr B in connection with the Proof which was to occur the following day. The e-mail enquired as to whether the Respondent intended to proceed with the Proof. The file record maintained entries of 25 June where the Respondent apparently had a telephone discussion with Mr B regarding instructions. No such call took place. The record revealed the

expenses of the discharge were conceded. A fresh Diet of Proof was assigned for 22 October 2012. On 8 August 2012, the agent for the Defender reminded the Respondent that he was still to lodge an Inventory of Productions. This issue had been raised in June 2012. A reminder was sent noting that the productions had been promised some 3½ months earlier. On 10 October 2012 the Defender's agent sent a letter to the Respondent to advise that any lodging of productions at this late stage would be opposed by them. The lodging of productions was significant. The case on behalf of Mr B was particularly flawed due to the absence of supporting evidence. On 18 October 2012 the file recorded a discussion between the Respondent and his opponent which confirmed that due to the fact that productions would be received the day before the Proof, the opponent would seek to discharge the Diet. It was noted the Respondent would not oppose such a motion. It was noted the Respondent would not oppose a motion for expenses of the discharged diet. This concession was advanced by the Respondent without the knowledge of Mr B. Mr B attended court on the morning of the Proof and appeared himself and sought to oppose the discharge of the Diet of Proof.

- 6.7 With regard to the Proof of 26 June 2012, this was discharged on the motion of the Respondent with no instruction or knowledge of Mr B. With regard to the Diet of Proof of 22 October 2012, Mr B was advised by the Respondent that the Proof may not proceed but not the reason for it not proceeding. The Proof was discharged due to productions not having been lodged by the Respondent on behalf of Mr B. Expenses for the preparation and discharge of the Proof were awarded against Mr B. These were not discussed with Mr B. In acting in this fashion it is clear that the Respondent failed to properly represent the best interests of Mr B, that he failed to properly communicate effectively with Mr B and that he acted on behalf of Mr B and made important concessions without his knowledge or instruction. In particular the Respondent failed to adequately prepare the case on behalf of Mr B as a consequence of his failure and undue delay in lodging productions which were necessary in support of the case of Mr B prior to the Diets of Proof assigned for June and October 2012. Although these productions were in his possession and he had instructions from his client to lodge them. As a consequence of the Respondent failing to properly advance the case on behalf of Mr B, resolution of the matter was unduly delayed, unnecessary expense was incurred and expense was awarded against Mr B which impacted upon the sums he eventually recovered.

- 6.8 Having received a complaint it was intimated by the Complainers to the home address of the Respondent on 11 November 2014. No reply was received. Due to a lack of response, Statutory Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 were issued by recorded delivery to the home address of the Respondent on 5 December 2014 and 8 January 2015, no reply was received by the Complainers. This led to a further complaint of failure to reply to the Law Society being issued to the Respondent on 27 February 2015. No reply was received by the Respondent. A review of the Royal Mail Website Track and Trace revealed that the correspondence of December 2014 which was intimated by recorded delivery had been recorded and signed for by someone bearing the name Clark and the January 2015 correspondence was signed for and delivered by someone bearing the name Neilson.

MS C

- 6.9 The Respondent acted on behalf of the client Ms C in connection with an appeal in terms of the Church of Scotland Appeals Process. The client was dissatisfied with the level of service provided by the Respondent, as a consequence of which she instigated a complaint. The Respondent first acted for the said Ms C in or about 14 October 2011. On 4 March 2015, the Complainers intimated the complaint to the Respondent together with two copy files. They advised the Respondent that he required to respond to the complaint within a period of 21 days. To date the Respondent has provided no written response to the complaint. On 22 April 2014, a Notice in terms of Section 15 of the Solicitors (Scotland) Act 1980 was served on the Respondent advising the Respondent to reply no later than 14 days from the date of the Notice. The Respondent has provided no response in relation to the Notice. As a consequence, on 21 May 2014, the consequential part of the Section 15 Notice was served once again upon the Respondent. Again, no response has been received from the Respondent to date. As a consequence, the ability of the Complainers to properly investigate the complaint has been hampered and frustrated by the failure on the part of the Respondent to reply. Such a failure to reply undermines the confidence of the original Complainer being Ms C, and the public at large in the ability of the Complainers to effectively undertake their statutory duties.

MR D

- 6.10 The Respondent acted on behalf of the client Mr D. The client was a former police officer who had sustained serious injuries whilst performing his public duties and was later discharged from the police force as a consequence of medical issues. He intimated a claim to the Criminal Injuries Compensation Authority. He instructed Firm 1 to act on his behalf. An offer of compensation was made by the authority but rejected by Mr D who appealed to the First-Tier Tribunal. Mr D proceeded to instruct the Respondent. The Respondent was aware that an alternative firm of solicitors was acting at this time and despite this knowledge, the Respondent proceeded to act on behalf of the said Mr D in respect of the authority matter for a number of months, without advising the already instructed firm.
- 6.11 Mr D first instructed the Respondent on or about 6 August 2010. He wished the Respondent to act on his behalf exclusively. The Respondent indicated to the client that he should allow the existing firm of solicitors to continue to act and carry out work on behalf of the client thereby taking advantage of their efforts and the funding arrangement in place. The client sought to persuade the Respondent to act exclusively. The Respondent declined to do so. A mandate was signed by the client on 11 April 2011 instructing Firm 1, his former solicitors to release all files and papers relating to his appeal to the Respondent. The mandate was intimated by the Respondent on or about 3 May 2011. During the period between 6 August 2010 and 3 May 2011 the Respondent acted on behalf of the said Mr D knowing that Firm 1 remained instructed by him. The work carried out by the Respondent during this period involved amongst other matters considering copy correspondence afresh regarding the position of Firm 1. The Respondent intimated to the client and was paid considerable fees for the work carried out during this period of his agency. During this period the Respondent failed to ascertain whether the Scottish Police Federation, of which Mr D was a member, would continue to fund the case in the event that agency was transferred. Acting in this fashion was not in the best interests of the client. The Respondent in particular drafted a letter for Mr D to send to Firm 1 in or about 17 February 2011. Instead the Respondent undertook to act in a parallel fashion on behalf of the said Mr D over an extended period in which the Respondent was well aware a firm of solicitors was already instructed. The Respondent so acted without notifying the solicitors of the position or equally without explaining to his client that he could not act on that basis.

6.12 On or about 3 February 2014, the Complainers intimated the conduct complaint to the Respondent. In this intimation, the Complainers advised the Respondent that they had a statutory obligation to investigate the matter and that the Respondent had a professional obligation to reply. The intimation called upon the Respondent to reply within 21 days setting out his position in respect of the Complaint, enclosing his business files and providing any additional information which he considered to be relevant. The intimation further advised the Respondent that if he did not reply within 21 days, the Complainers would serve Notices in terms of Section 48 of the Legal Profession & Legal Aid (Scotland) Act 2007 and Section 15 of the Solicitors (Scotland) Act 1980. The Respondent was warned that in such event, a further conduct complaint might be intimated in respect of his failure or delay to reply. The intimation was addressed to the Respondent at care of EF Kelly Limited, 11b Academy Street, Coatbridge, Lanarkshire as the records held by the Complainers showed that the Respondent was employed there. No reply was received from the Respondent. Enquiries by the Complainers ascertained that the Respondent was employed by Messrs Fagans, Solicitors of 115 Graham Street, Airdrie. Accordingly, a letter dated 26 February 2014 was sent to the Respondent at that address by recorded delivery. This communication advised the Respondent of the earlier letter which had been sent and of a telephone conversation with Mr Fagan. A request had been made of Mr Fagan to inform the Respondent that he required to confirm the details of his present employment to the Complainers and to keep the Complainers informed of any changes in his employment. The letter enclosed a further copy of the statement of complaint and reminded the Respondent of his obligation to respond. No reply was received from the Respondent. On 20 March 2014, Statutory Notices were issued by recorded delivery to the Respondent at the address of Fagans Solicitors. In particular a Statutory Notice was intimated in terms of Section 15 of the Solicitors (Scotland) Act 1980. A further Notice was submitted in terms of Section 48 of the Legal Profession & Legal Aid (Scotland) Act 2007. This requested that all papers held by the Respondent in relation to the affairs of Mr D be delivered to the Complainers. No reply was received to either Formal Notice. As a consequence the second part of the Section 15 Notice was served by recorded delivery to the Respondent at the address care of Fagans Solicitors. No reply was received to this Notice. Information was brought to the attention of the Complainers that the Respondent may have been absent from his employment as a



consequence of ill-health. On 25 April 2014, the Complainers wrote to the principal of Fagans Solicitor seeking clarification of the position. Having obtained this information, the Complainers wrote to the Respondent asking that he provide a medical certificate identifying a prognosis and a date when he was likely to return to employment. The letter asked the Respondent to comment as to whether he wished the investigation to be suspended temporarily and to provide reasons for this. No reply was received from the Respondent. On 30 April 2014, it was brought to the attention of the Complainers, through a newspaper article, that the Respondent was actively engaged as solicitor in a high profile case involving a member of clergy. Enquiries by the Complainers revealed that on a number of occasions, the Respondent had conducted business as an agent at the Sheriff Court, Hamilton. On 30 May 2014, the Complainers wrote to the Respondent at care of Fagans Solicitors advising the Respondent to provide a reply within 14 days. No such reply has been received. Throughout the entire process of the complaint, the Respondent has not engaged at all. On 24 July 2014, the Complainers wrote to the solicitor at his address enclosing copies of previous correspondence. No reply was received from the Respondent. The matter proceeded to a complaint. The process of the complaint involved communication with the Respondent providing him with copies of relevant matters. This included letters dated 8 September 2014, 10 November 2014, 15 December 2014, 17 December 2014, 9 January 2015 and 16 January 2015. The Respondent has not engaged in the process at all.

#### MS E

- 6.13 Ms E was formerly a client of the Respondent. In or about April 2007 the client instructed the Respondent to act on her behalf in connection with the breakdown of her marriage. Eventually she was divorced from her husband on 7 June 2011. A Minute of Agreement was entered into which dealt with certain of the consequences of the parties' separation. In particular it was agreed between the parties that the joint interest of Ms E and her husband in two life assurance policies with Abbey Life and Sun Life Financial of Canada were to be transferred from the names of both parties into the name of Ms E alone.
- 6.14 Following completion of the Minute of Agreement a solicitor acting on behalf of the husband of Ms E wrote to the Respondent asking him to provide personal details of Ms E in order that the assignation of the life policies could be completed. No

reply was received from the Respondent. The solicitor wrote a number of reminders to the Respondent in December 2011 and January 2012 requesting again that the Respondent provide the necessary information to facilitate the assignation of the life policies. No reply was received from the Respondent. Throughout 2012 and 2013, indeed until August 2013 when the Respondent left his then firm, no work was carried out by the Respondent in relation to the assignation of the policies. In August 2013 another solicitor in the firm assumed responsibility for dealing with the affairs of Ms E and dealt with the assignation of the two policies. All paperwork in relation to the assignation of the policies was completed by mid-January 2014.

- 6.15 Ms E was anxious to have matters finalised. She pressed the Respondent for an explanation as to why there was a delay in finalising the assignations. The Respondent made representation to Ms E that the delay in completing the assignations was due to her husband refusing or delaying to sign documentation. This assertion made by the Respondent was inaccurate and dishonest. The Respondent further advised Ms E that as a consequence of the behaviour of her husband in allegedly failing to complete the paperwork he had raised a Court action which would either force the husband to complete the paperwork or would allow the presiding Sheriff to complete the paperwork on behalf of the husband. He further advised Ms E that a court date had been fixed which would force her husband to sign the documents transferring the policies to her. These assertions made by the Respondent were inaccurate and dishonest.

#### MR F

- 6.16 The Respondent previously acted on behalf of the client Mr F. The client for a variety of reasons intimated a complaint regarding the level of service provided by the Respondent. The Law Society obtained information surrounding the complaint. On 27 May 2015 the complainers intimated the complaint to the Respondent. No reply was received. A formal Notice in terms of Section 15 of the Solicitors (Scotland) Act 1980 was intimated to the Respondent by First Class Post and Recorded Delivery on 18 June 2015. Separately, on that date a formal Statutory Notice in terms of Section 48 of the Legal Profession and Legal Aid (Scotland) 2007 was also intimated to the Respondent by First Class Post and Recorded Delivery. A review of the Track and Trace Service maintained by the Royal Mail revealed that both formal Notices were signed for by "Neilson" on 23 June 2015.

No reply was received from the Respondent. A Supplementary Notice was intimated by Recorded Delivery and First Class Post to the Respondent on 8 August 2015. A review of the Track and Trace Service maintained by Royal Mail revealed that these Notices were also signed for by "Neilson". No reply was received from the Respondent. Further correspondence was intimated to the Respondent on 27 November 2015 and on 3 February 2016. Again, no reply was received from the Respondent.

Dr G

6.17 The Respondent acted in connection with the administration of the estate of the late Dr G. Mrs H, Solicitor acted in connection with the administration of the estate of the late Mrs G. Both Mrs and Dr G were married to each other when Dr G died, although at the time they were estranged. Dr G predeceased Mrs G. Prior to the death of Mrs G she made a claim for legal rights against the estate of Dr G which legal rights fell to her estate. On 22 November 2014 the Sheriff Clerk at Glasgow Sheriff Court granted Confirmation to Mrs G and her daughter as executors nominate to the estate of the late Dr G. On 3 June 2015 Mrs H wrote to the Respondent asking that he clarify the amount of the legal rights claim as a matter of urgency as she was coming under pressure from her client for progress. No reply was received. She wrote again on 30 July 2015 and 18 August 2015. No reply was received. On 3 September 2015 she wrote to the Respondent "Hugh, I have still not heard from you. Could you please confirm the figures as this is now the only thing outstanding in my file keeping me from finalising". No reply was received. A further reminder was sent on 4 November 2015. No reply was received. On 6 May 2016, Mrs H wrote to the Respondent requesting details of the legal rights claim intimated by Mrs G prior to her death. She requested these details in order to finalise the executry for Mrs G. In her correspondence she advised that since November 2015 she had been in touch with the Respondent on a number of occasions by telephone and letter and he had provided an assurance that the figures would be forthcoming. Despite that assurance they were not delivered. As a consequence a complaint had been lodged against Mrs H alleging that she had failed to apply sufficient pressure to the Respondent in this regard. She did not receive a reply. Coming under pressure from her own client, Mrs H wrote to the Complaints Partner of the firm which employed the Respondent. That Partner advised that a reply would be provided shortly. A further e-mail reminder was intimated to the

Complaints Partner on 31 May 2016. On 6 June 2016 Mrs H explained to the Complaints Partner that her clients were pressing her to lodge a complaint against the Respondent for his failure to reply. On 8 June 2016 the Complaints Partner advised Mrs H that “Mr Neilson has advised he will give details today”. Becoming exasperated at the failure of the Respondent to properly provide a reply, Mrs H contacted the firm and registered her concerns with the Partner of the Respondent. She then spoke with the Respondent who advised her by way of an undertaking that he would provide her with the final figures no later than 20 June 2016. This afforded Mrs H some comfort as she had a formal undertaking from a professional colleague. The 20 June 2016 passed. Despite the undertaking, no information was forthcoming from the Respondent. As at 12 December 2016 still no information has been forthcoming.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct *singly* and *in cumulo* in respect that:-
- (a) in relation to client Mr A, the Respondent repeatedly misled his client thereby acting contrary to the common law principle of honesty, truthfulness and integrity and allowed his personal and professional integrity to be called into question;
  - (b) in relation to client Mr B, he failed to act in the best interests of his client, failed to properly advance his client’s case, and failed to communicate effectively with his client all contrary to Rules B1.4 and B1.9 of the Practice Rules 2011;
  - (c) in relation to client Mr D, he acted in an inappropriate and improper fashion acting contrary to the explicit instructions of his client, not in the interests of his client and contrary to the obligations owed by him to a fellow professional contrary to Rule B1.14 of the Practice Rules 2011 all calling into question his personal and professional integrity;
  - (d) in relation to client Ms E, he failed to act in accordance with the basic common law principle of honesty and integrity;
  - (e) in respect of the complaint referring to client Mr F, he failed to respond to repeated correspondence from a fellow professional and failed to obtemper two

undertakings all in breach of Rules B1.2, 1.9.1, 1.10 and 1.14.1 of the Practice Rules 2011; and

- (f) in relation to five separate complaints, he failed to respond to correspondence and statutory notices from the Complainers.

8. Having heard further submissions from the parties, the Tribunal pronounced an Interlocutor in the following terms:-

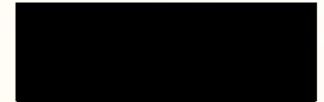
Edinburgh 21 November 2018. The Tribunal having considered the Complaints dated 20 November 2018, 23 August 2016 and 28 September 2018 at the instance of the Council of the Law Society of Scotland against Hugh Scott Neilson, Glendevon, 13 Grahamshill Street, Airdrie, Lanarkshire; Find the Respondent guilty of professional misconduct in respect of his contravention of Rules B1.2, B1.4, B1.9, B1.14 of the Practice Rules 2011, his failure to act in accordance with the basic common principle of honesty and integrity and his failure to comply and act in accordance with his professional obligations and to reply to the enquiries made of him by the Complainers; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; 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; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and any individual referred to in paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980 but need not identify any other person; Allow the Secondary Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office; and Discharge the hearings set down for 24 January 2019.

**(signed)**

**Eric Lumsden**  
**Vice Chairman**

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 *16 JANUARY 2019.*

**IN THE NAME OF THE TRIBUNAL**



**Eric Lumsden**  
**Vice Chairman**

**NOTE**

These three Complaints were each set down for a procedural hearing on 21 November 2018. This was the first calling of Complaint dated 23 August 2016. With regard to the other two Complaints, they had called before the Tribunal at a number of previous hearings. In particular, at a procedural hearing on 15 November 2016, the Respondent had appeared on his own behalf and tendered a plea of guilty to Complaint dated 23 August 2016 and with regard to the original Complaint dated 29 March 2016, some amendments having been made to the Complaint, he confirmed that he was pleading guilty to this Complaint excluding the conduct relating to client Mr A, and admitting the facts for client Mr D, but not admitting that these facts constituted professional misconduct.

At the procedural hearing on 21 November 2018, parties confirmed to the Tribunal that they had reached agreement across all three Complaints. A motion was made to convert the procedural hearing to a full hearing, which was granted. A further motion was made to conjoin all three Complaints to allow them to be dealt with together, which was also granted. The Fiscal lodged an amended Complaint, dated 20 November 2018, which he wished to be used to replace the original Complaint of 29 March 2016. He confirmed that this amended Complaint reflected the amendments made at the procedural hearing in November 2016 and also included further amendments relating to the outstanding issues with regard to clients Mr A and Mr D. The Fiscal asked the Tribunal's permission to amend the Complaint dated 20 November 2018 by inserting the words "misled his client" into averment 7.1(a) and by adding reference to Rule B1.14 to averment 8.1(c). Mr Conway confirmed that he had full instructions from the Respondent and had no objection to these amendments. Accordingly, they were allowed.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid confirmed that the Respondent was 66 years old, was admitted in 1977 and by his calculations, had practised for 19 years in the profession before being appointed to the Shrieval Bench. He returned to the profession for a period of 8 years thereafter making a total of 27 years. He confirmed that there was one other pending disciplinary matter due to call before the Sub Committee in December. Apart from that matter, and the current issues, there were no other disciplinary matters for the Respondent.

With regard to client Mr A, the Respondent was instructed to act on his behalf in a case where premises he had owned were destroyed in a fire and insurers had declined an insurance claim. At the time, Mr A was bankrupt and had a trustee in sequestration appointed. Whilst this might have impacted upon his entitlement to raise court proceedings, this was never explained to him by the Respondent. The matter

was not progressed. Mr A emailed the Respondent instructing him to raise proceedings. The Respondent took no action for months. No action was taken by the Respondent even though letters were sent to him by the other side. Mr A repeatedly emailed the Respondent to proceed. The client was left with the impression that proceedings were underway. The Respondent did nothing to disabuse him of this notion and did not advise him or report back to him.

Thereafter, the Law Society became involved and the Respondent failed to respond to their correspondence.

Mr Reid invited the Tribunal to find the Respondent guilty of professional misconduct in relation to these facts. He submitted that the Respondent had misled his client by allowing him to believe that proceedings were ongoing whereas in reality the Respondent had done nothing and took no steps to disabuse the client of that notion. By acting in this fashion, he had acted contrary to the common law principle of honesty and integrity and had called his professional and personal integrity into question.

With regard to client Mr B, Mr B had engaged in litigation with a former employer. He instructed the Respondent in 2012. He met with the Respondent and provided him with the relevant information which was acknowledged by the Respondent. A proof was fixed for 26 June 2012. On 25 June 2012 the Respondent advised Mr B that the proof had been cancelled by the court. Mr B checked subsequently with the court to discover that the diet had been cancelled by the Respondent. Another proof was set for October 2012. This also was adjourned without the knowledge of Mr B. Expenses for both adjourned proofs were awarded against Mr B. This had been agreed to by the Respondent without the knowledge or instructions of his client.

Mr B had made enquiries as to the reason for the adjournment and discovered that the Respondent was ill-prepared even though Mr B had provided full information to him.

The case was finally heard in April 2013 when Mr B was successful. The other side appealed. Mr B was successful in the appeal. Mr B received fee notes amounting to approximately £17,000 in connection with the litigation. Mr Reid believed that the money was repaid to Mr B by the firm.

Mr B lodged a formal complaint. The file was reviewed. This review detected a complete absence of preparation by the Respondent which led to the proofs being adjourned. This was the case even though the opponent in the case had been encouraging the Respondent to lodge productions. One of the files contained a false telephone note suggesting that instructions had been obtained from Mr B when they



had not been. Mr B had attended court for one of the proofs which had been adjourned because he had not been told that the diet that was to go off. He waited in the waiting room for some three hours.

Thereafter, the Law Society dealt with the formal complaint and there was a failure by the Respondent to reply to correspondence.

Mr Reid invited the Tribunal to find the Respondent guilty of professional misconduct in connection with the facts relating to Mr B. The Respondent had failed to act in the best interests of his client. The Respondent had failed to properly advance the case. The Respondent had failed to communicate effectively with his client. The Respondent had failed to properly prepare the case.

Mr Reid submitted that the failure to reply to the Law Society spoke for itself.

With regard to client Ms C, the Respondent had failed to reply to the Law Society in their investigation of the complaint. This, he said, spoke for itself.

In respect of client Mr D, the Respondent accepted instructions on 6 August 2010 but failed to become formally involved. The Respondent acted on behalf of Mr D and allowed another firm to carry on acting whilst taking advantage of their efforts.

A mandate was not delivered until 3 May 2011. Between August 2010 and May 2011, the Respondent had continued to act for the client in the full knowledge that another firm had already been instructed. The Respondent reviewed correspondence from that firm and drafted correspondence on behalf of the client which the client was to sign to send to the other firm. The Respondent charged fees for the work carried out. The Respondent made no enquiries of the Police Federation regarding funding for his work.

Mr Reid invited the Tribunal to find the Respondent guilty of professional misconduct in connection with the facts related to Mr D. He submitted that the Respondent had acted in an appropriate and improper fashion, contrary to the explicit instructions of his client, not in the best interests of his client and contrary to the obligations owed by him to a fellow professional under Rule B1.1.4 of the Practice Rules 2011 thereby calling into question his personal and professional integrity.

With regard to Ms E, the Respondent was instructed by Ms E to act on her behalf in relation to an agreement between her and her ex-husband regarding the assignation of life policies. Her ex-husband's solicitor wrote to the Respondent seeking information. The Respondent failed to reply. The other

solicitor sent a reminder. There was still no reply. Between December 2011 and August 2013, nothing was done by the Respondent. When the Respondent left his then firm, another solicitor picked up the file and the matter was completed by January 2014.

Throughout this time, Ms E pressed the Respondent for progress. In disguising his inaction, the Respondent repeatedly lied. He told Ms E that the lack of progress was the fault of her ex-husband. He told her that he had raised court action and that a court date had been fixed. All of this was untrue. This had a considerable impact upon her given that she was already enduring the consequences of separation at the time.

The second Complaint before the Tribunal dated 23 August 2016 was based on the failure of the Respondent to reply to correspondence from the Law Society. A failure to reply to such correspondence hampers the process that the Law Society requires to take in the investigation of complaints. The consequence is an increase on the impact upon the client who has already suffered.

With regard to the third Complaint, this related to a number of letters and telephone calls made by a colleague which were all ignored by the Respondent for a number of months. The colleague's client eventually threatened to complain about her because of the inaction. The Respondent gave an undertaking to his partner at that time that a reply would be forthcoming. Eventually, the other solicitor spoke directly to the Respondent and he undertook to give her a response by 20 June 2016. That date came and went without response. He invited the Tribunal to find the Respondent guilty of professional misconduct in relation to the facts regarding the third Complaint. The Respondent had failed to obtemper two undertakings and had failed to respond to correspondence from another solicitor.

In response to a question from the Tribunal requesting clarification of the basis for misconduct in relation to the actings for Mr D, Mr Reid explained that the misconduct related to a contravention of Rule B1.14 where the Respondent was acting in the background and giving advice regarding strategy without making this known to the other firm of solicitors. He emphasised that Mr D had wanted the Respondent to act exclusively. Whilst the Respondent's actions had not been "robust or often", there had been meetings and he charged substantial fees. These fees might have been dealt with by the Federation if the Respondent had made the appropriate enquiries. It was the view of the Law Society that he should have made his instructions known to the other firm. The Respondent's actions went beyond shadowing what was taking place. The Respondent was actually drafting replies to the other firm for the client Mr D to sign as if coming from him. The Respondent should have announced his involvement to the other firm.

## SUBMISSIONS FOR THE RESPONDENT

Mr Conway lodged with the Tribunal a typewritten personal information sheet for the Respondent.

He confirmed that the Respondent was admitting all factual allegations and was accepting that cumulatively they amounted to professional misconduct. He confirmed that the Respondent had not renewed his practising certificate and accepted that it was inevitable that he would be struck off.

He explained that all of the matters before the Tribunal related to a period of time from 2010 onwards. The Respondent had been a serving Sheriff until 2004 when he had resigned in well-publicised disgrace. The Respondent had picked himself up and had become a consultant and then a non-equity partner in Harper Macleod. He drew the Tribunal's attention to medical certificates that had previously been lodged in the currency of these Complaints. He confirmed that prior to these matters, the Respondent had had no disciplinary history.

Mr Conway explained that the Respondent had suffered from clinical depression since his late 30's or early 40's. The Respondent continued to receive medication for that. The Respondent additionally had suffered a chronic heart condition for the past 10 years. He also suffered from a neurological condition that left him with tremors. He suffered from a type of migraine which caused some memory loss. Having referred to all of these matters, Mr Conway emphasised that these were not an excuse for a miserable catalogue in his career.

Mr Conway submitted that the Respondent had allowed himself to become overwhelmed by everything that was happening and that his health had not been good. What began by the Respondent obfuscating then became deliberate deception. As far as his conduct with the Law Society was concerned, the Respondent had put his head in the sand.

As far as client Mr A was concerned, Mr Conway submitted there was never any active misleading on the part of the Respondent. The Respondent accepted however that, having regard to the large number of communications from Mr A, his failure to inform Mr A that no action had been raised was only a cigarette paper between that and actively misleading him. Mr A was bankrupt at the time and consequently his only claim could have been for items exempted from his bankruptcy that had been destroyed in the fire. Mr Conway accepted that Mr A suffered at least inconvenience and distress but doubted if any actual financial loss had been sustained but could not say without seeing the evidence.

With regard to Mr B, it had been said by the Fiscal that Mr B had attended one of the court hearings. Mr Conway had no information regarding that and as it had not been specifically libelled within the Complaint, he was unable to agree that. The Respondent had clearly however misled Mr B. Mr Conway believed that a substantial repayment of fees had been made to Mr B.

Mr Conway had no comment to make with regard to Ms C.

With regard to Mr D, Mr Conway submitted to the Tribunal that matters were fairly set out within the Complaint. The Respondent accepted that acting in this way was a breach of the Law Society rule. Mr D had come to the Respondent. Mr D had some mental health problems and wanted help. This Respondent had tried to encourage Mr D to go back to the original firm of solicitors. Mr D wanted to use the Respondent as a sounding board. Mr Conway accepted that this would have been acceptable for a couple of meetings but thereafter as matters became clearer, the Respondent should have decided to either act and tell the other firm or to cease to act. He emphasised that was the basis of the plea.

With regard to Ms E, the Respondent has no recollection of events but accepts that she is correct.

With regard to the third Complaint, at the time the Respondent gave the undertaking, he believed that he could fulfil it.

Mr Conway accepted that Mr Reid had conducted the case with discrimination but there was no getting away from the catalogue of matters where the Respondent had failed to meet the required standards. This was an ignominious end to the Respondent's career. In his career the Respondent had done service for the state and the community. Until 2010, he had also done his clients considerable service. It was accepted that he had caused frustration and distress and had caused the profession disrepute in connection with the allegations before the Tribunal today. The Respondent wanted to whole-heartedly apologise to his former clients and to the Law Society's investigatory staff. Mr Conway submitted that it was astonishing that the Respondent would make the error of failing to respond to the Law Society given his previous involvement with the Law Society.

Mr Conway submitted that it is sometimes said that every man owes a debt to his profession. He suggested that until these matters arose, the Respondent had more than repaid his debt. Mr Conway submitted to the Tribunal that it was a personal tragedy that history would record the end of the Respondent's distinguished career in ignominy and humiliation. The Respondent accepted that he must be struck off.

The Respondent's income was restricted to £3,500 per month by way of a pension. It was accepted that there had to be publicity and that expenses would be awarded against him.

The Tribunal raised with both parties the basis on which misconduct was to be found. The Fiscal had invited a finding of misconduct on a single issue basis where Mr Conway had invited the Tribunal to find the Respondent guilty *in cumulo*. Both parties agreed that this was a matter for the Tribunal to decide.

## DECISION

The Tribunal had before it three Complaints with all averments admitted and all Complaints conjoined to be treated together. The Fiscal had asked the Tribunal to find the Respondent guilty of professional misconduct in relation to each single issue. The Respondent had invited the Tribunal to find him guilty on an *in cumulo* basis. Both parties had submitted that professional misconduct was a matter for the Tribunal to decide upon, including whether the finding should be *singly* or *in cumulo*.

The Tribunal required to consider each set of facts to assess whether they met the test for misconduct set out in the case of Sharp v The Law Society of Scotland 1984 SLT 313. Where 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."*

Looking first at the issue relating to Mr A, the Respondent had misled his client, albeit by omission, for in excess of two years. Mr Conway had described the Respondent's conduct as "a cigarette paper" away from actively misleading Mr A. The duties of honesty and integrity are a fundamental and underpinning principle for the profession. To operate effectively, the public must be able to have trust in the profession. The Respondent acted in a way which called his professional integrity into question. This was clearly serious and reprehensible and amounted to professional misconduct on a stand-alone basis.

With regard to Mr B, the Respondent had admitted failing to advance his client's case, failing to communicate effectively with his client and failing to act in his client's best interest. In this latter respect, the Respondent had adjourned two diets of proof due to his lack of preparation and had conceded expenses, all without his client's instructions. Thereafter, he had misled his client as to the causes of the

adjournments in order to conceal his lack of preparation. This was clearly serious and reprehensible conduct and met the test for professional misconduct.

With regard to Mr D, the Respondent had admitted acting for his client whilst knowing that he was already represented by another firm of solicitors without making his involvement known to the original firm. Nor had the Respondent made contact with the Police Federation to enquire to as to whether they would fund his involvement. The Respondent accepted that this was not in his client's best interests nor consistent with his duty to act with other solicitors in a manner consistent with solicitors having mutual trust and confidence in each other. The Tribunal considered this to be serious and reprehensible amounting to professional misconduct.

With regard to Ms E, the Respondent had lied to his client to conceal his own inaction. This was dishonest conduct. The Tribunal considered this to be serious and reprehensible, amounting to professional misconduct.

With regard to Dr G, the Respondent had admitted to failing to respond to correspondence from another solicitor for a period of approximately one year. That solicitor could not progress an executry without the necessary information from the Respondent. The Respondent gave two separate undertakings to provide the necessary information, one to his partner, the other to the solicitor, neither of which he otemppered. He did not communicate effectively. He had accepted instructions where he was unable to carry out these instructions adequately and completely within a reasonable time. He had acted in a manner inconsistent with other solicitors having mutual trust and confidence. He had acted in a way that allowed his personal and professional integrity to be called into question. This was serious and reprehensible conduct and amounted to professional misconduct.

The Tribunal determined that in fairness all of the failures to respond or cooperate with the Law Society should be considered together. This Tribunal has emphasised repeatedly in the past the importance of solicitors cooperating with the Law Society exercising its regulatory function. It is essential if the public are to have confidence in the Law Society performing effectively that solicitors cooperate with the Law Society's investigatory function. To fail to do so damages the reputation of the profession and brings it into disrepute. Here the Respondent had failed to respond or cooperate with the Law Society in respect of five separate complaints. This was clearly serious and reprehensible conduct amounting to professional misconduct.

**DISPOSAL**

The Tribunal had before it a catalogue of serious and reprehensible behaviour.

Mr Conway had submitted a biography for the Respondent which set out considerable voluntary work undertaken by him on a personal basis and considerable service given by him in the past to the Law Society, the profession, the Courts and the Country. It was of great regret to the Tribunal that such a career would end in this fashion. However, the Tribunal required to consider the protection of the public and the reputation of the profession. The Respondent had acted dishonestly and without integrity. Whilst some reference had been made to ill-health, there was no attempt to use this to explain the Respondent's conduct.

The Tribunal concluded that the Respondent was no longer fit to be a solicitor and that the appropriate order to protect the public interest was to strike his name from the Roll of Solicitors in Scotland.

Following 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. 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. The Tribunal allowed the Secondary Complainers 28 days from the date of intimation of these findings to lodge written claims for compensation. The hearings set down for 24 January 2019 were discharged.



**Eric Lumsden**  
**Vice Chairman**