

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

**CRAIG RICHARD GRIMES,
Solicitor, Anthony Mahon Limited,
48 West George Street, Glasgow**

1. A Complaint dated 14 January 2015 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Craig Richard Grimes, Solicitor, Anthony Mahon Limited, 48 West George Street, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Secondary Complainer is Mrs Reena Malhotra, Flat 3/1, 363 Dumbarton Road, Glasgow (hereinafter referred to as the Secondary Complainer) .
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 1 May 2015 and notice thereof was duly served on the Respondent.

5. The hearing took place on 1 May 2015. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented by Mr McCann, Solicitor, Clydebank.
6. On behalf of the Respondent, Mr McCann advised that all the facts and averments in the Complaint were admitted and the Respondent accepted that he was guilty of professional misconduct. No evidence was required to be led.
7. The Tribunal found the following facts established:-
 - 7.1 The Respondent is a Solicitor enrolled in Scotland. The Respondent's date of birth is 18 July 1966. He was employed as a trainee by Anthony Mahon & Co., Solicitors on 16 June 2008 and continued in their employment when the firm became Anthony Mahon Limited becoming a director on 1 May 2011.
 - 7.2 The Secondary Complainer submitted a Complaint Form to the Scottish Legal Complaints Commission (the SLCC). The SLCC considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Complainers to investigate.
 - 7.3 By letter dated 24 January 2014 the Complainers wrote to the Respondent intimating their obligation under the 2007 Act Section 47(1) to investigate complaints relating to the conduct of enrolled Solicitors. The letter advised that the complaint was based on consideration of the points outlined in the summary of complaint enclosed with the letter.
 - 7.4 The Respondent was instructed by the Secondary Complainer in March 2011 to proceed with a divorce action on her behalf. He met with her on 8, 14 and 16 March and wrote on 17 March

confirming that an application was being made to the Scottish Legal Aid Board for funding. He met her again on 23 March at which time it was noted that agents were needed to trace the whereabouts of her husband. On 24 May 2011 the Secondary Complainer enquired about service of the divorce papers on her husband. On 17 October she contacted him to obtain an update as the six week notice period he had advised her of had expired. The Respondent returned her call but did not tell her the true position as he had not warranted a writ. He wrote to her on 18 October confirming that he had traced the husband and could progress the action but a note on the letter stated that this was not the case and it had to be amended before being sent out. It is not clear whether that letter was ever issued. He led the Secondary Complainer to believe that he had raised an action on her behalf in Glasgow Sheriff Court and that there was delay caused by a court backlog. She sought updated information from him about service of the writ on 24 October 2011. He again failed to tell her that no action had been raised. In February 2012 and May 2013 he informed her that he intended to serve the papers on the walls of court. He did not do so. On 17 May 2013 he met with her and apologised for the unacceptable delay. He explained that as two years had passed the action would be simpler. He confirmed that he had had no contact from her husband and mentioned service by walls of court again. No action was ever raised on her behalf.

7.5 In February 2013 the Secondary Complainer instructed the firm of Lawrie Jackson Solicitors, 13 Granville Street, Glasgow, in connection with a change of name matter. Mr A wrote to the Respondent on 14 February indicating his instruction in that matter and seeking confirmation of the Secondary Complainer's marital status. He did not reply. The original letter was copied by fax and post on 23 April seeking a reply by return if possible. Mr A wrote again on 14 May and 5 July requiring a response. The Respondent did not reply. On 17 July Mr A sent a mandate

signed by the Secondary Complainer authorising delivery of her file and any papers connected to her divorce case. He telephoned the Respondent's office on 31 July when no reply was received and was told his call would be returned by the Respondent. It was not. On 8 August 2013 he wrote again advising that he was considering submitting a complaint to the SLCC but would afford a further week for a reply and delivery of the file. On 16 August he wrote confirming that a complaint would be made if he had no response by the 19 August. All correspondence was sent by both facsimile transmission and post. On 10 September there had been no response. He wrote to the Client Relations Partner with a copy of the mandate explaining the lack of replies. The complaint was submitted to the SLCC on 9 October 2013. The file had not been delivered by 25 March 2014.

- 7.6 The Respondent replied to the Complainers on 4 March 2014 accepting the terms of the complaint by Secondary Complainer. On 1 April 2014 he provided copy marriage and birth certificate together with a draft initial affidavit from the secondary complainer's file. He advised that the originals had been forwarded to the firm of Lawrie Jackson, Solicitors. He produced the Secondary Complainer's file on 14 April 2014.
- 7.7 The Complainers compiled an Investigation Report, a copy of which was intimated to the Respondent in a letter dated 10 September 2014.
- 7.8 By letter dated 26 September 2014 the Complainers provided a Supplementary Report to the Respondent and intimated that the Complaint would be considered by the Professional Conduct Committee on 5 November 2014.
- 7.9 On 5 November 2014 the Complainers' Professional Conduct Committee considered the matter and determined that the

Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor, that it appeared to be capable of being proved beyond reasonable doubt and could thus amount to professional misconduct. It further determined that the Respondent should be prosecuted before the Scottish Solicitors Discipline Tribunal.

8. Having considered the foregoing circumstances and submissions by both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

8.1 his unconscionable delay for a period of 28 months and ultimately his failure to raise a divorce action in respect of a client and repeatedly misleading her as to the progress of the action;

8.2 his failure during a six month period to reply to correspondence from a fellow solicitor in respect of that same client; and

8.3 his failure during a period of eight months to implement a mandate from that same client authorising him to pass her divorce file and all related papers to her new solicitors.

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

Edinburgh 1 May 2015. The Tribunal having considered the Complaint dated 14 January 2015 at the instance of the Council of the Law Society of Scotland against Craig Richard Grimes, Solicitor, Anthony Mahon Limited, 48 West George Street, Glasgow; Find the Respondent guilty of professional misconduct in respect of his unconscionable delay for a period of 28 months and ultimately his failure to raise a divorce action in respect of a client and repeatedly

misleading her as to the progress of the action; his failure during a six month period to reply to correspondence from a fellow solicitor in respect of that same client and his failure during a period of eight months to implement a mandate from that same client authorising him to pass her divorce file and all related papers to her new solicitors; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of two years any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as maybe approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

Malcolm McPherson

Vice Chairman

10. Edinburgh 1 May 2015. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Craig Richard Grimes, Solicitor, Anthony Mahon Limited, 48 West George Street, Glasgow and having determined that the Respondent was guilty of professional misconduct considered that it was appropriate to award compensation to the Secondary Complainer; Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to Mrs Reena Malhotra, Flat

3/1, 363 Dumbarton Road, Glasgow the sum of £1500 by way of compensation in respect of inconvenience resulting from the misconduct within 28 days of the date on which this Interlocutor becomes final with interest at the rate of 8% per annum from the due date until paid.

(signed)

Malcolm McPherson

Vice Chairman

11. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Malcolm McPherson

Vice Chairman

NOTE

Mr McCann on behalf of the Respondent advised that his client admitted the facts and averments in the Complaint and accepted that he was guilty of professional misconduct. No evidence therefore required to be led.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston referred to Article 4.2 of the Complaint and advised that the Respondent was instructed by the Secondary Complainer in March 2011 regarding a divorce action. She stated that there had been domestic violence during the marriage and the Secondary Complainer's husband had appeared in court in relation to that. Ms Johnston advised that there had been a number of meetings between the Respondent and his client around the time of her initial instructions. Ms Johnston further advised that the Respondent had also been instructed by the Secondary Complainer regarding a business that the Secondary Complainer was involved in with her husband.

Ms Johnston advised that the Secondary Complainer met the Respondent on 23 March 2011 at which time it was not clear where her estranged husband was living. Ms Johnston stated that her impression was that the case went off the rails right at the beginning because of the difficulties in finding the estranged husband. Ms Johnston advised that by 24 May 2011 the Secondary Complainer was in touch to enquire about the progress of the action as she was under the impression that the divorce action had been raised. Ms Johnston stated that no action had been raised.

Ms Johnston advised that the Respondent did not tell his client the full position and the Secondary Complainer still thought that there was a court action in progress. In relation to the letter dated 18 October 2011, Ms Johnston stated that it was not clear from the file whether this was ever sent to the Secondary Complainer. Ms Johnston advised that she had spoken to the Secondary Complainer about this and she had no recollection of receiving that letter at all.

Ms Johnston stated that the Respondent allowed the Secondary Complainer to believe that a writ had been served on the walls of court. Ms Johnston advised that by May

2013 the Respondent had met with his client and apologised for the unacceptable delay and he mentioned service by the walls of court again. No action was ever raised and by that time the Secondary Complainer had already obtained alternative legal advice regarding this matter. She had consulted with Lawrie Jackson Solicitors in February 2013. A mandate was sent by that firm on 17 July 2013 to the Respondent and this was followed up by several calls by Mr A to the Respondent's office in August. Despite that no file was received by Mr A by 25 March 2014.

Ms Johnston referred the Tribunal to Article 4.4 of the Complaint when the matter came to the attention of the Law Society. The Respondent replied to the Complainers on 4 March 2014 accepting the terms of the complaint by the Secondary Complainer. The Secondary Complainer's file was produced by the Respondent on 14 April 2014.

Ms Johnston submitted that the Tribunal should make the usual orders for expenses and publicity.

SUBMISSIONS FOR THE RESPONDENT

Mr McCann advised the Tribunal that he had lodged a written plea in mitigation for consideration by the Tribunal and wished to highlight a number of aspects of that.

Firstly Mr McCann advised that his client was a late entrant to the profession having previously had a career in IT. Mr McCann stated that the Respondent frankly admitted that one of factors in this matter was that he was unsure of how to deal with this case and how to cite the defender using the walls of court. Mr McCann advised that in fact the Respondent could not ever have properly raised the action as he did not have legal aid in place. The SLAB application had not been progressed by the member of staff who the Respondent had allocated it to.

Mr McCann advised that when he asked the Respondent why he had delayed in this case the Respondent described being so busy that he was only able to deal with the most urgent matters every day such as court appearances and related paperwork and this file being problematic simply did not get progressed.

Mr McCann submitted that once the Law Society was involved the Respondent was immediately contrite and gave an early admission of guilt and an apology. The Respondent agreed that the delay was unacceptable.

Mr McCann asked the Tribunal to pay particular regard to paragraphs 4, 5 and 6 of his plea in mitigation. Mr McCann submitted that the Tribunal could be reasonably confident that the lesson has been learned by the Respondent. Mr McCann advised that the firm are coping well now and submitted that there was little risk of recurrence.

Mr McCann advised that if the Tribunal were to restrict the Respondent's practising certificate this would have a very serious impact on the Respondent as his fellow director senior partner is close to retirement and the whole firm would thereafter be dependent on him. If a restriction was imposed this would have a fatal impact on the firm.

Mr McCann stated that the Respondent had accepted that compensation was due to the Secondary Complainer. He had initially offered her £1000 but this was refused. He had increased the offer to £1500 and that had recently been accepted. Mr McCann advised that a cheque had been sent for the compensation and advised that the Respondent was not a member of the LDU so he would be liable for his fees as well as the Tribunal's expenses. Mr McCann also advised that as this is a hybrid complaint more compensation is likely to be imposed by the SLCC.

In all these circumstances Mr McCann asked the Tribunal to impose a Censure only. He advised that the Respondent is genuinely contrite and remorseful and has taken on board what has to be done to progress cases. He regularly appears in the Sheriff Court and has had no further complaints from anyone.

In answer to a question from the Tribunal as to whether the shop premises were matrimonial assets, Mr McCann advised that there were no assets of the business, only debts.

In answer to a further question from the Tribunal as to whether Mr B ever instructed a solicitor, Mr McCann advised that he did not. He stated that Mr B had a Pakistani passport and that one of the factors of the case was a fear that if the usual custody proceedings were commenced that Mr B might take the child out of the country.

Mr McCann advised that he had no submissions to make in relation to the usual orders for publicity and expenses.

The written plea in mitigation was as follows -

1. "The Respondent received his first Practising Certificate in July 2010. He had undergone a traineeship after University graduation between 16 June 2008 and 16 June 2010. The Respondent was a late vocation into the profession, having worked previously as an IT Manager with a department store. He had no prior problems with the Law Society, and has not in the period since the events libelled, attracted any further complaint or regulatory concern.
2. The Respondent accepts that there is essentially no excuse for the delays which occurred here in regard to [a] progressing the client's case notwithstanding the problem of not having an address for the defender, and [b] complying with the Mandate from the new agents for the client Mrs Malhotra. The background of the firm at the time was that they had been going through a very stressful and difficult period due to adverse cash flow problems. The Respondent and his fellow director had made a judgement that they would have to impose redundancies, which was itself a difficult and stressful process. Eventually two solicitors and a secretary accepted redundancy terms and left the firm.
3. By the time the instructions were received from Mrs Malhotra in about June 2011, the Respondent and his co-director had realised that they had perhaps compounded the problem because they still attracted a significant volume of work and were finding it more difficult to deal with such work in the absence of the staff who had left. The Respondent accepts of course that the response

to that particular situation in regard to any client such as Mrs Malhotra was to arrange for her to be sent on to new agents if the firm couldn't cope adequately with the instructions that she was giving them. The background was that Mrs Malhotra, apart from having a divorce action that she wished to pursue against her separated husband, had operated a small shop business in the east end of Glasgow along with the husband, and the solicitors' single file included a very large volume of documents and correspondence to do with debts and liabilities falling upon Mrs Malhotra and which had to be dealt with by correspondence. The Mandate in respect of the divorce papers was not intended to cover the entire file. The situation required someone to take the time to go through the composite file which was quite large, and identify and extract the papers relating to the divorce action, which could then be sent on in compliance with the Mandate. Had the office been adequately organised, this task could and should have been done quite quickly, but in the event the Respondent and his co-director and staff were under such pressure that he put off what was a clear obligation upon him to do i.e. to carry out the necessary work to identify the papers covered by the Mandate and to send them off within a reasonable time. The Respondent in February 2012 had decided to instruct a search agency at his own cost to try and find the Defender. That was eventually successful so that the new agents for Mrs Malhotra were provided with an actual address to serve the action, but he accepts that what he did to progress matters was too little and too late.

4. The measures taken by the Respondent and his co-director have in the event proved successful in stabilising the firm and putting it on to a better track. The practice is 50/50 criminal legal aid and civil legal aid, and the firm have continued to operate from two offices with adequate staff now in place to make themselves available to the public and to deal properly with instructions from clients They are currently operating with two directors, plus an employed solicitor, and have been able to give a placement to a trainee. They have extended their typing and secretarial staff to three in number, and believe that they have wholly overcome their administrative and management problems.

5. The Respondent co-operated fully with the complaints process, once the matter was in the hands of the Law Society. He expressed at an early stage to the Society his sincere and profound apologies and regrets for the worry and distress occasioned to his client, Mrs Malhotra, and to the colleagues who were trying to take over his case. He has further repeated these sincere regrets and apologies along with an offer of £1,000 compensation to Mrs Malhotra per letter of 25 March 2015 a copy of which had been lodged with the Tribunal.

6. The Respondent repeats to the Tribunal his apologies and sincere regrets, and seeks to assure the Tribunal that he is fully aware of his failure in having allowed such a situation to develop so early in his career. He will take every possible step to ensure that in the future his clients will be served efficiently and competently, without allowing such a situation develop ever again. He is remorseful and fully aware of his duties as a solicitor in future. He is also extremely anxious that he should be allowed to retain his right to practice, since his co-director is close to retirement and the continued employment of his staff will now depend on him and on his continued and careful compliance with all relevant professional duties incumbent upon him.”

DECISION

The Tribunal had no hesitation in finding that the Respondent was guilty of professional misconduct. Solicitors are required by the Law Society’s Practice Rules to communicate effectively with their clients and other solicitors and to progress instructions without delay. Solicitors are also required by the Practice Rules to act in matters only where they are competent to do so. The Sharp Test characterises professional misconduct as conduct which would be seen as serious and reprehensible when considered by competent and reputable solicitors. The Tribunal considered that it was clear that this test was met in this case given the lengthy delays, misleading of the client and failure to progress her instructions which was compounded by further delays in complying with the mandate which prevented his client’s new solicitors from resolving the matter for a further period.

The Tribunal considered that the reputation of the profession had been adversely affected by the Respondent's failures.

The Tribunal noted that the reasons put forward for the Respondent's failures were twofold, namely a combination of work pressures and inexperience. The Tribunal noted that the Respondent had shown a degree of insight into his failures by co-operating with Law Society, offering an apology and compensation to his former client and attending the Tribunal hearing. However, given that the Respondent remains a fairly inexperienced member of the profession the Tribunal could not be satisfied that these failures would not be repeated should similar circumstances occur again.

The Tribunal noted that the Respondent's co-director wished to retire and was concerned that the Respondent might soon be in a position where he would be exposed to more pressure if he was solely responsible both for the legal work of the firm and for managing its employees.

The Tribunal was of the view that the Respondent's initial failure to progress instructions to raise a divorce action for a period of three years was compounded by his misleading his client as to the progress of that matter and his subsequent failures to both deal appropriately with the mandate and correspond with her new solicitors. The Tribunal were concerned that the Respondent had not been honest with his client over a prolonged period of time whilst holding a senior position in the firm and in view of this considered that it was necessary for the protection of the public that the Respondent's practising certificate should be restricted for a period to ensure that his work is supervised. The Tribunal noted that the Respondent has not been the subject of any further complaints in the last two years and in view of this decided that the restriction should be for a further period of two years to allow the Respondent to demonstrate continued improved performance.

In relation to the question of compensation the Tribunal noted that a cheque for £1500 had recently been sent by the Respondent to the Secondary Complainer after she indicated to Mr McCann that she was willing to accept that amount. The Tribunal noted that the cheque had not yet cleared and accordingly the Tribunal made an order for compensation of £1500 to be paid by the Respondent to the Secondary Complainer to compensate her for the significant inconvenience and concern which

the Tribunal were satisfied that the Respondent's misconduct had directly caused to her. The Tribunal also made the usual orders for publicity and expenses.

Malcolm McPherson
Vice Chairman