

**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

**TRACEY CAMPBELL-HYND, 29
Brandon Street, Hamilton**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Tracey Campbell-Hynd, 29 Brandon Street, Hamilton (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal fixed a hearing for 20 January 2014 and notice thereof was duly served on the Respondent. On the motion of both parties that hearing was subsequently converted to a procedural hearing.
4. When the Complaint called on 20 January 2014 the Complainers were represented by the Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented herself. The Respondent

advised the Tribunal of difficulties she had experienced in lodging the necessary Productions prior to today's date. The Tribunal allowed the Respondent seven days to lodge the necessary Productions. Parties were given until the 7 February 2014 to adjust the Complaint and Answers. A hearing was fixed for 2pm on 14 February 2014.

5. Prior to the Complaint calling on 14 February 2014, Secondary Complainers, who had been parties to the Complaint, were allowed to withdraw their claim for compensation.
6. When the case called at the hearing on 14 February 2014 the Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented herself. An adjusted Complaint had previously been lodged for the Complainers. A Joint Minute of Admissions agreeing the averments of fact and duty was placed before the Tribunal. Both parties confirmed to the Tribunal that the only matter now in dispute was whether the agreed facts amounted to professional misconduct. Accordingly, no evidence required to be led and the Tribunal heard submissions from both parties.
7. The Tribunal found the following facts established:-

7.1 The Respondent is a solicitor enrolled in the Registers of Scotland on 17 February 2002. She has practised since 8 June 2009 as a sole practitioner under the business name of TCH Law, Solicitors, 29 Brandon Street, Hamilton.

7.2 At the relevant material times narrated below the Respondent initially acted for Company 1.

Company 1 – Company 2

7.3 As at 30 July 2012 the Respondent acted for Company 1. By letter of 30 July 2012 Company 2 sent a mandate on behalf of

Company 1 to the Respondent for implementation requesting the transfer of all files and papers held on behalf of Company 1 to Company 2.

- 7.4 By letter of 7 August 2012, Company 2 sent a reminder to the Respondent as no response had been received to the letter in the preceding paragraph.
- 7.5 By e-mail of 8 August 2012, the Respondent wrote in relation to one ongoing litigation for Company 1 and enclosed an Account of Expenses in relation to that litigation. She also indicated that she would invoice Company 2 in relation to outstanding fees due to her by Company 1 for that litigation and once she had received payment she would release the file in relation to that litigation. She would also be in touch in due course regarding remaining matters.
- 7.6 By e-mail of 10 August 2012, Company 2 pressed for release of the litigation papers indicating that the outstanding fee notes would be settled in the course of the day. The Respondent provided a copy of the pleadings and indicated that she would send a disc on the following Monday in relation to that file. The outstanding fee notes due to the Respondent were paid on 10 August 2012.
- 7.7 By e-mail of 14 August 2012, Company 2 advised the Respondent that they had not received any discs or files in relation to the mandate.
- 7.8 On 16 August 2012, Company 2 received one CD containing electronic copies of the papers relating to the litigation referred to in paragraph 7.5 and 7.6 above.

- 7.9 By email letter of 20 August 2012, Company 2 requested the other files outstanding as soon as possible. No response was received.
- 7.10 By e-mail letter of 30 August 2012, Company 2 sent another reminder in relation to the remaining files.
- 7.11 By e-mail of 31 August 2012 the Respondent requested clarification as to whether Company 2 had received 2 separate discs regarding Company 1. On the same date Company 2 indicated that nothing had been received as yet. The Respondent advised that they had been sent on 14 August 2012 along with the litigation file referred to above. Company 2 confirmed, again on the same date, that they had received the first letter and disc but not the second and requested it was resent.
- 7.12 By e-mail on 4 September 2012, Company 2 again sent a further reminder in relation to the provision of the second disc as referred to in the e-mail correspondence in the preceding paragraphs. On the same date the Respondent indicated that she would prepare another disc and send an e-mail confirming when it had been sent out.
- 7.13 By e-mail letter of 11 September 2012, Company 2 again indicated that it was still to receive the second disc and requesting it by return. No response was received.
- 7.14 By e-mail of 24 September 2012, a further reminder was sent by Company 2 requesting the second disc as a matter of urgency. Company 2 indicated it was not clear as to the reasons for the delay. No response was received.

- 7.15 By e-mail of 9 October 2012, Company 2 indicated that no response had been received to the e-mails of 11 and 24 September 2012 referred to above and requesting papers as a matter of urgency. No response was received.
- 7.16 By further e-mail letter of 17 October 2012, Company 2 noted the lack of response and requested compliance by 19 October 2012 failing which the matter would be referred to the Law Society.
- 7.17 By e-mail of 22 October 2012, the Respondent indicated that she had been out of the office after a lengthy absence, that her understanding was that everything had been sent to Company 2 for a second time during her absence but she would look into it and come back to Company 2 by 23 October 2012. She did not do so. Rather, by e-mail on 25 October 2012, she indicated that she was recalling her files from storage but saw a note on her system indicating documentation was to be sent out to her again and indicated that hopefully the papers would be with her the following day and she would send them on again. Company 2 acknowledged that e-mail on 26 October 2012.
- 7.18 By e-mail of 5 November 2012, Company 2 again advised the Respondent that nothing further had been heard from her and requested a response by return. On that date the Respondent advised that the papers had not arrived from offsite storage but had been assured that they would arrive the week of 5 November 2012. She would confirm when the files were received and send them out. She also indicated that “with the exception of my most recent pleadings I am sure your clients have everything in their own files that you/they would need to proceed with anything they have now decided to pursue”.

- 7.19 On 14 November 2012, Mr A of Company 2 telephoned TCH Law. The Respondent was unavailable but Mr A left a voice mail message for her requesting that she return to him as a matter of urgency to confirm the position. Mr A thereafter received instructions from Company 1 to provide the Respondent with a draft referral to the Law Society and explain to the Respondent that if there was not a response by return it would be lodged.
- 7.20 By e-mail letter of 15 November 2012, Company 2 indicated that as no response had been received to the voice mail the matter was being referred to the Law Society if documents were not received within 7 days of 15 November 2012. No response was received.
- 7.21 By e-mail of 13 December 2012, Company 2 intimated a copy of the complaint to the SLCC to the Respondent requesting implementation of the mandate by 5pm on Tuesday 18 December 2012.
- 7.22 By e-mail of 18 December 2012, the Respondent indicated that the remaining files had been sent to Company 2 twice. On 19 December 2012 Company 2 clarified with the Respondent that that had not occurred and referred back to the e-mail from Company 2 on 13 December 2012 as well as the previous e-mails and voice mail seeking the files. Company 2 indicated that unless the remaining files were sent by return matters would be referred to the SLCC.
- 7.23 By e-mail of 15 January 2013, Company 2 indicated to the Respondent that the complaint had been lodged that day with the SLCC given the absence of any response from her.
- 7.24 To date the Respondent has failed to comply with the mandate.

FAILURE TO RESPOND TO THE LAW SOCIETY

- 7.25 The factual background in relation to the Respondent and company 1 is detailed in the preceding paragraphs.
- 7.26 By letter dated 17 April 2013, the Complainers intimated Company 2 / Company 1's complaint and requested any relevant files or papers and any additional information the Respondent considered relevant. This is a standard part of the Complainer's process in handling complaints.
- 7.27 By letter of 16 May 2013, a notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 was served on the Respondent. Said recorded delivery notice was returned by the Royal Mail marked "not called for". By recorded delivery letter of 18 June 2013 a further notice in terms of Section 15(2)(i)(i) of the Act was served on the Respondent. It was not returned and no response was received.
- 7.28 By recorded delivery letter of 9 July 2013 the Complainers sent a further notice in terms of Section 15(2)(i)(i) of the 1980 Act. It was not returned and no response was received.
- 7.29 By letter of 9 July 2013, the Complainers intimated a complaint in respect of the Respondent's failure to respond. No response was received. Further letters of 25 and 26 July 2013 were sent to the Respondent in the latter seeking her response. No response was received. Furthermore, by letters of 19 August and 24 September, the Complainers intimated the Complainer's agents' comments upon the report, a supplementary report and the determination of the Complaint. Again no response was received to any of this correspondence.

7.30 Company 2 / Company 1's complaint was determined in the absence of any response from the Respondent. As at the date of the commencement of proceedings, the Respondent had failed to respond to any of said correspondence from the Complainers.

8. Having giving careful consideration to the foregoing circumstances and the submissions of both parties, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in terms of Section 53 of the Solicitors (Scotland) Act 1980 in respect of:

8.1 Her unreasonable delay in responding to the reasonable to enquiries of the Complainers;

8.2 Between 30 July 2012 and 28 October 2013, her unreasonable delay and/or failure to respond to, or her giving of misleading information in relation to, requests, written and verbal, from Company 2, the solicitor who took over acting for her client, Company 1; and

9.3 Her failure to comply with the Guidelines on Mandates 1998 issued by the Complainers.

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

Edinburgh 14 February 2014. The Tribunal having considered the adjusted Complaint at the instance of the Council of the Law Society of Scotland against Tracey Campbell-Hynd, 29 Brandon Street, Hamilton; Find the Respondent guilty of Professional Misconduct *in cumulo* in respect of (1) her unreasonable delay in responding to the reasonable enquiries of the Law Society; (2) between 30 July 2012 and 28 October 2013 her unreasonable delay and/or failure to respond to, or her provision of misleading information in relation to, requests, written and verbal, from Company 2, the solicitor who took over acting for her client Company 1; and (3) her failure to comply with the

Guidelines on Mandates 1998 issued by the Law Society; Censure the Respondent; Fine the Respondent in the sum of £1,000 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

Nicholas Whyte
Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Nicholas Whyte
Vice Chairman

NOTE

This matter called as a hearing on 14 February 2014. The Complainers had lodged an adjusted Record. Both parties had lodged a number of Productions. The parties had entered into a Joint Minute agreeing all of the averments of fact and duty and the Productions lodged for the Complainers. The previously involved Secondary Complainers had been allowed to withdraw their claim by the Tribunal. The Respondent confirmed that the only matter in dispute was whether the standard for a finding of professional misconduct had been met. Accordingly, no evidence required to be led and the Tribunal proceeded on the basis of submissions on behalf of both parties.

SUBMISSIONS FOR THE COMPLAINERS

Ms Motion confirmed that she did not intend to go through the Complaint and documents in detail. In her submission it was clear that a failure to implement a mandate on its own and a failure to respond to the Law Society or to colleagues' correspondence on their own were sufficient to amount to professional misconduct. In support of this submission she referred the Tribunal to the textbook Paterson & Ritchie, "Law, Practice and Conduct for Solicitors", Page 250 and the cases of Paul McConville of 1 June 2012 and Manus Tolland of 19 May 2005. The Tolland case had involved one simple failure to implement a mandate. The other case had involved a substantial number of failures. Her submission was simple and was based on the text of Paterson & Ritchie that failure to implement a mandate by itself was sufficient to amount to professional misconduct.

Failure to respond to the Law Society notices and correspondence was also in itself professional misconduct. In a recent case before the Appeal Court, a failure to respond to the professional body was compared to a failure to stop and report an accident. Such a failure constrained the regulator from dealing with issues appropriately.

If the failure to implement a mandate and the failure to respond to the Law Society were linked then surely the Sharp Test had been met.

In response to a question from the Chairman, the Fiscal confirmed that the Law Society had not served a Section 42 notice. She submitted however that it was clear from the correspondence that the Law Society required a response. No response to any of the correspondence or notices had been received. There is nothing on the Law Society's file showing any response from the Respondent.

SUBMISSIONS FOR THE RESPONDENT

The Respondent indicated that she accepted that a failure to respond could amount to professional misconduct. Her case, she said, could be looked at differently because there were a number of items that did not reach her personally. She submitted that she had not had sight of the correspondence from the Law Society. She had tried to ascertain where the correspondence had gone without success. She did not deny that the correspondence was sent. She said that she had given an undertaking that she would change the way in which her firm dealt with mail. The mail was dealt with centrally in a building of offices. It was then farmed out to the various offices within the building. She had changed the system so that all mail now came direct to TCH Law.

She submitted to the Tribunal that she had thought that the Law Society had received her letter to them dated 9 May 2013 – which she said had been sent to the Law Society together with another piece of correspondence. It was said within the pleadings that a notice of the Law Society sent to her had been returned – not called for. It was her position that the item had been returned because it was sent with the incorrect postage and that it was nothing to do with her office.

The Respondent indicated that if she had received the correspondence personally she would have responded.

The Respondent stated that two separate discs had been sent to the firm Company 2 – one on 14 August 2012, the other on 20 August 2012. Mr A had indicated that he had not received one. This was re-sent to him. Her thoughts had been that the mandate had been implemented.

The Chairman asked the Respondent if she was accepting that she had not complied with the mandate. She submitted that she had only partially implemented the mandate – one disc had been received. She accepted that when the Complaint came through that it was apparent that all files had not been received. The files for the client had been split into different dates – one file dealing with the most impending dates, the second file dealing with less urgent matters. The first file had arrived. She thought she had implemented the mandate fully.

The Respondent submitted that she had attempted to implement the mandate but had to concede that it must not have been implemented.

In response to a direct question from one of the members, the Respondent indicated that she accepted that the second file/disc had not been received. The Respondent indicated that items were sent by legal post and so she had no way of proving if they had been received. Mr A said that they had not been received. She had sent a second copy – there was a note on her file that a colleague had sent it.

She was asked by the Tribunal if she was denying that any of the notices had been sent. The Respondent clarified that she was not denying that the notices had been sent but was saying that she had not personally received them. She was able to say that the letter of 9 July 2009 was received and it was an oversight on her part that she had not responded. The letter had been placed on a file behind other correspondence whilst she was on holiday. She had answered the other correspondence and had missed the letter from the Law Society. It did not occur to her to send her correspondence registered post. It would now be her practice should anything such as this occur again to send items in a registered fashion.

The Tribunal asked the Respondent if she had had any difficulty with other mail. She confirmed that she had had some difficulty and had previously complained to the Royal Mail. She had no proof of that previous complaint. The Respondent confirmed that she had changed the way that the mail was dealt with within the office. Mail came direct to TCH Law and was opened by one of her colleagues. Every piece of mail is now scanned.

The Chairman asked the Fiscal whether or not the Law Society had received Production 9 for the Respondent which appeared to be a letter from the Respondent to the Law Society.

The Fiscal confirmed she had provided a copy of this letter to the Law Society and asked that they check to see if it had been received. The Respondent's position had been that the letter went to the Financial Compliance Department together with an accounts certificate. A check was made in that department and no trace could be found. Checks had been carried out within the other regulatory teams but no trace could be found. The Fiscal indicated that the difficulty facing the Respondent was that there had been correspondence since the date of that letter that clearly showed it had not been received and yet the Respondent had not raised that matter with the Law Society.

The Respondent indicated that she communicated with the Law Society by hard copy and not by email because she believed that was required. The letter forming Production 9 was sent that day because she was going on annual leave. The only correspondence after 9 May initially raising this was the letter that had been returned to the Law Society because of incorrect postage. The letter she did receive on 9 July had been overlooked by her. She accepted that letter should have alerted her to the earlier problems.

The Respondent indicated that she accepted that no response had been sent.

The Fiscal submitted to the Tribunal that the matters relating to the provision of discs etc went some way to explaining what had happened but did not explain the pattern of conduct here where the Respondent was saying she had not received voicemails, emails or hard copy letters. The Respondent is a sole practitioner and wholly responsible for the acts or omissions of her firm.

The Respondent concluded with a submission that she accepted that it was her responsibility but explained that if she personally had received the correspondence then she would have answered it.

DECISION

The Respondent had entered into a Joint Minute agreeing all of the averments of fact. These averments involved a very large number of pieces of correspondence that had not been responded to the Respondent. The Tribunal took the view that it was appropriate to look at the whole pattern of conduct.

The Respondent had accepted that up to the point of raising this Complaint, she had not fully obtempered the mandate. She accepted that she had not responded to correspondence from another solicitor. She accepted that she had not responded to correspondence and notices sent to her by the Law Society.

Individually each of these matters could in some cases stand alone as a basis for a finding of professional misconduct. In this case, all of the failings taken together clearly represented conduct falling well short of the conduct to be expected of a competent and reputable solicitor and could only be regarded as serious and reprehensible. The Sharp Test had clearly been met and the Tribunal found the Respondent guilty of professional misconduct.

Following the intimation of the finding of misconduct, the Tribunal invited submissions with regard to penalty.

SUBMISSIONS FOR THE COMPLAINERS

Ms Motion indicated that she accepted that the conduct here was not at the higher end of the scale.

SUBMISSIONS FOR THE RESPONDENT

The Respondent indicated that she was remorseful. She submitted that it had not been her intention for matters to get this far. In advance of today's hearing, she had reached an agreement with the Secondary Complainer to avoid any further inconvenience.

She confirmed that she had not previously received any complaints. The firm had changed the way mail was received and processed within the office. She conceded she was responsible for the firm as a whole.

The Respondent indicated that she was of good character and had no previous issues with regard to failing to respond to correspondence. She indicated that the Fiscal had accepted that the Complaint was at the lower end of the scale. She submitted to the Tribunal that the impact of failing to implement the mandate was minimal as the majority of the papers within the file were within the Secondary Complainer's possession anyway. The Respondent accepted that the conduct looked like a pattern although she submitted that it was not something she was personally aware of. The matter having now come to her attention she had changed office procedures.

The parties were asked for their submissions with regard to expenses.

The Fiscal moved for the usual award of expenses. The Respondent conceded that she could not oppose that motion.

DECISION RE: PENALTY

In having regard to the appropriate penalty, the Tribunal bore in mind that the Finding of professional misconduct had been one *in cumulo*. This, however, was a considerable pattern of conduct – failing to respond to correspondence from fellow solicitors, her professional body and failing to implement a mandate. This conduct was considered to be within the low to medium range of the scale of misconduct. The Respondent had had no previous history of complaints. She had demonstrated insight into the problems posed by her conduct by introducing a new method of dealing with correspondence coming into her office. The introduction of this system together with previous good conduct suggested that there was no requirement for supervision. She had demonstrated some remorse by compensating the Secondary Complainers before today. However, there were a number of aggravating factors in the case which required that more than a Censure be imposed. Failure to respond to her professional regulatory body was extremely damaging to the reputation of the profession. Failure to implement a mandate can make it extremely difficult for a new solicitor to handle

matters properly and could be extremely prejudicial to the interests of the client. The Respondent had failed to correspond not only with her professional body but also with fellow solicitors. This was a lengthy pattern of failing to respond that had to be reflected in the penalty imposed. The Tribunal concluded that it was appropriate to Censure the Respondent and Fine her £1,000.

There was no reason to interfere with the normal rule that expenses go hand in hand with success and an award of expenses in favour of the Complainers was appropriate.

The Respondent was invited to make submissions regarding publicity and, on the basis that she had no special reason that would prevent the usual order, the usual order was made.

Nicholas Whyte
Vice Chairman