

**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

**SARAH DUNCAN LANE or STUART,
Ledingham Chalmers LLP, Johnstone House,
52-54 Rose Street, Aberdeen**

Respondent

1. A Complaint dated 26 September 2022 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Sarah Duncan Lane or Stuart, Ledingham Chalmers LLP, Johnstone House, 52-54 Rose Street, Aberdeen (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Nicholas Murphy, 1 Kemnay Place, Aberdeen.
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 fixed a virtual procedural hearing for 11 January 2023.
5. At the procedural hearing on 11 January 2023, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by Mark Lindsay, K.C. The Tribunal fixed a hearing in person for 13 March 2023 and notice thereof was duly served on the Respondent. Amended Answers were lodged for the Respondent.

6. At the in-person hearing on 13 March 2023, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by Mark Lindsay, K.C.
7. Having given careful consideration to the Complaint, Answers, Joint Minute, Productions and the evidence given by the Respondent, the Tribunal found the following facts established:-
 - 7.1 The Respondent is Sarah Duncan Lane or Stuart. She was born on 24 October 1973. She was enrolled and admitted as solicitor on 10 July 1997. She was employed by Peterkins from 25 July 1997 until 28 January 2000. She has been employed by Ledingham Chalmers since 1 February 2000 where she remains; becoming an associate on 1 April 2003 and a partner on 1 April 2006. The Respondent currently holds a practising certificate.
 - 7.2 In or around June 2019 the Respondent was instructed by Mr A, Ms B and Mr C (“her clients”) in relation to a family dispute which, amongst other matters, related to the administration of a family estate. The estate itself belonged to the late Mr D and Ms E.
 - 7.3 On 2 July 2019, the Respondent wrote by letter to 13 people on the instruction of her clients.
 - 7.4 The letter of 2 July 2019 advised the recipients that the firm acted for Mr A, Ms B and Mr C. The letter stated that defamatory allegations had been made against the Respondent’s clients. The letter noted that Mr F had demanded that Ms B account for her intromissions as a trustee. The letter stated that in order to provide Mr F and other family members with an accounting, their clients would require to instruct professional accountants to carry out this work. The letter noted that the family estate which formed the basis for the dispute, had received a substantial lump sum from a Ms G who acted as attorney for the late Mr D. The letter noted that Mr D remained an undischarged bankrupt at the time of his death and the lump sum may be considered as an unfair preference over other creditors. Furthermore, the letter noted that the firm had been advised that the late Mr D had been receiving means tests benefits which he may not have been entitled to receive. The letter noted that if any forensic exercise uncovered either an unfair preference or that Mr D was not entitled to benefits this could have serious consequences for those due to receive funds from the estate. The letter went on to make the following proposal:

“In order to bring these damaging events to a close, we have been asked to propose a solution which would involve all of [Ms E and Mr D’s] children. The proposal is that each child (including [Mr C] on behalf of the deceased [Ms H] and the family of the deceased [Mr I]) who benefitted from the estates of both [Mr D and Ms E], would repay the amount received from their respective estates and that the proceeds be gifted to charities to be selected by [Ms G] and [Ms B] as trustees of the estates of [Mr D and Ms E] respectively.”

As part of the proposal, all parties were to agree that there would be no further claims for accounting against any attorney or trustee to either Mr D or Ms E.

- 7.5 On 13 August 2019 the Respondent emailed Mr F. The email noted that four family members had responded positively to the firm’s letter of 2 July 2019 and agreed to pay to charity the funds received from the combined estates of Mr D and Ms E. The email stated that a response, positive or negative, was requested to the letter of 2 July 2019 within 28 days. The email stated that the proposal was made on behalf of her clients who considered it unlikely that any of the family would want to benefit financially from any alleged wrongdoing of Mr D. The email stated that the decision had to be unanimous. The email stated:

“If it is not, our clients have indicated that their intention is to contact the relevant authorities in relation to the concerns as to certain financial irregularities raised in our letter of 2 July 2019. This will deal with the fraud issue one way or another”.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent not guilty of professional misconduct but considered she may be guilty of unsatisfactory professional conduct. Therefore, the Tribunal remitted the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980.
9. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 13 March 2023. The Tribunal having considered the Complaint dated 26 September 2022 as amended at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Sarah Duncan Lane or Stuart, Ledingham Chalmers LLP, Johnstone House, 52-54 Rose Street, Aberdeen; Finds the Respondent not guilty of professional misconduct; Remits the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Finds no expenses due to or by any party; and Directs that publicity will be given to this decision and that this publicity should include the name of the Respondent and the Secondary Complainer but need not identify any other person.

(signed)

Catherine Hart

Vice Chair

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

24 APRIL 2023.

IN THE NAME OF THE TRIBUNAL



Catherine Hart
Vice Chair

NOTE

At the Hearing on 13 March 2023, the Tribunal had before it the Complaint, Answers as amended, a Joint Minute, one Inventory of Productions for the Complainers, two Inventories of Productions for the Respondent, a Note of Issues for the Respondent, and a List of Authorities for the Respondent. The Fiscal indicated that he did not intend to call any witnesses and that the Complainers' case rested on the admissions made in the Answers together with the productions referred to in the Joint Minute. The Fiscal clarified that the essence of the Complainers' case was based on the email of 13 August 2019. References to the letter of 2 July 2019 were to put the email of 13 August 2019 in context.

EVIDENCE FOR THE RESPONDENT**Witness 1: The Respondent****Evidence-in-chief**

The Respondent gave evidence on oath. She is 49 years old. She confirmed she was the practitioner who was the subject of the present complaint. She agreed that she had prepared a written statement which she had submitted to the Tribunal. She wished the statement to form part of her evidence. She did not wish to qualify anything in her statement.

The Respondent's statement set out her career history. It explained the background to the instruction. It noted that Mr A, Ms B and Mr C ("the clients") were introduced to her by a former partner and colleague around 10 June 2019. That colleague had been advising the clients and corresponding on their behalf in relation to various disputes for many years. Mr C was a retired solicitor, and his late son was a partner in the Respondent's firm.

The Respondent was provided with papers. The case involved a difficult family situation. Members of the family had made allegations and counter-allegations about each other. There were many disputes between the two factions over decades. Her impression was of a family at war with each other.

The Respondent noted that the clients were not looking for advice. They wanted assistance in dealing with alleged defamatory statements made by other members of the family. The Respondent drafted a "cease and desist" demand. Mr F had requested Ms B account for her intromissions with the estate of Ms E. The clients said that if this was required, it would be necessary to involve forensic accountants. The clients were concerned this would create further division and disputes. The Respondent was not provided

with any evidence that there had been an unfair preference or that the late Mr D had been receiving means tested benefits to which he was not entitled. She felt that she was simply putting forward the concerns raised by her clients. She believed the proposal was intended to draw a line under the various disputes. She set out the proposal in the letter of 2 July 2019.

On 22 July 2019, Mr C asked the Respondent to send a follow up letter or email to the family members. Mr C drafted the response. The Respondent understood that this was one final attempt to draw a line under all the disputes in the family. The clients' draft included the words, "*That will deal with the fraud issue one way or another.*" While the Respondent redrafted other parts of the text she did not change those words. Had she drafted the email from scratch, she said she would not have used those words.

The Respondent accepted that having no evidence of fraud, she should not have put forward any proposal that suggested fraud. The wording of the email was different from the earlier letter but her understanding of the situation was the same. The Respondent indicated that she should have advised the clients that she could not make the proposal set out in the email of 13 August 2019. She said this was an error of judgment made with the best of intention. She regretted that the wording of the email did not convey the same message as that in the earlier letter. Her only intention was to attempt to bring the family dispute to an end. When the charity proposal was not accepted, the Respondent was not asked to do anything else. Her instruction came to an end in August 2019.

The Respondent indicated that she had reflected on the case, considered the rules and guidance, and had undertaken additional training. She recognised that a settlement proposal should not be linked to a threat to report the other party to the authorities if they do not accept it. Allegations of fraud should not be made lightly and without proper evidential basis. She expressed her regret and remorse. The Respondent apologised to the Tribunal. She should have thought more carefully about her actions. She should have been more prudent regarding the family situation and circumspect regarding her instructions. She should have refused to accept a draft from the clients. She should not have said there would be a report to the authorities if there was no settlement. She ought not to have accepted instructions to put forward that proposal. She accepted that the behaviour was sufficient to constitute unsatisfactory professional conduct. In her view, there was no risk of repetition.

Cross-Examination

The Respondent indicated that the clients knew their own minds. She agreed that the letter of 2 July 2019 contained no demand for money and no overt threat. It had been deliberately and carefully worded.

It did not achieve the result the clients were hoping for. She agreed that the email of 13 August 2019 was also deliberately and carefully worded. She agreed the content of the email amounted to a threat. On the clients' instructions she was trying to effect a resolution without involving any public authority. She accepted she should not have accepted those instructions. She should have been clearer about her instructions and omitted the final sentence. She agreed that even without the final sentence, some people might have interpreted the email as containing a threat. She did not advise her clients regarding the consequences of sending such an email. She agreed she should not have sent the email. The Fiscal suggested that the problem was not an oversight of drafting, but rather was a deliberate attempt to inflame the situation. The Respondent said that was not her intention. It was an extremely careless oversight. There was a failure in the way the proposal was presented.

Re-Examination

The Respondent said that Mr C had provided a draft email. He was a retired solicitor from a firm in Aberdeen. The draft was used as the basis for the email. However, she indicated that in sending the email, she became the author and was responsible for it. It was inappropriate to link the threat of reporting to a settlement. Her intention was not to inflame the other members of the family. The offer was not accepted. The siblings continued their email combat, but the Respondent dropped out of the exchanges as she was no longer instructed.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal said the first question for the Tribunal was whether it accepted the Respondent's explanation. The second was whether the test for professional misconduct was met.

The Fiscal noted that the Respondent accepted the email should not have been sent, it contained a threat, and she took improper instructions. She did not accept that her conduct was deliberate. Rather, she said it was a drafting error.

The Fiscal referred the Tribunal to Rule B1.5 and said the Respondent had accepted improper instructions. Solicitor should not relay threats of this nature. He referred the Tribunal to paragraph 3.08 of Paterson and Ritchie's "*Law, Practice and Conduct for Solicitors*" which says that solicitors cannot act where the instructions would involve the solicitor in professional misconduct or unsatisfactory professional conduct. He said that she had failed to properly advise her clients on the legal consequences of their instructions. She had breached Rule B1.9 which deals with effective communication. He also said that she had breached Rule B1.2 to the extent that she had allowed her integrity to be called into

question. He referred the Tribunal to Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366. He said that the use of a threat demonstrated a lack of integrity because of the higher standards of ethical conduct required of solicitors.

The Fiscal submitted that the test for professional misconduct in Sharp v Council of the Law Society of Scotland 1984 SLT 313 was met. The aggregate of the charges justified a charge of professional misconduct. He noted the references in the letter of 2 July 2019 to public authorities, forensic exercises, and serious consequences for the beneficiaries.

The Fiscal referred the Tribunal to its decision in Law Society-v-Aiden Gallagher (2018). He said the cases were undoubtedly different, but Gallagher was authority for the proposition that it is essential that a solicitor applies his own mind when asked to pass on a message to another.

The Fiscal said that if the Tribunal was satisfied beyond reasonable doubt on the facts, the conduct was capable of bringing the profession into disrepute and could constitute professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Lindsay submitted that when all the circumstances were considered, the Respondent's conduct lacked the seriousness and culpability to constitute professional misconduct. She admitted the behaviour was unsatisfactory professional conduct. If the Tribunal agreed, it could remit the Complaint to the Law Society under Rule 18 which gives effect to section 53ZA(1)(b) of the Solicitors (Scotland) Act 1980.

Mr Lindsay referred the Tribunal to the definitions of professional misconduct and unsatisfactory professional conduct. He noted that professional misconduct involved a serious and reprehensible departure from the standards of competent and reputable solicitors. The Tribunal must have regard to the whole circumstances of the case and the degree of culpability which could be attached to the Respondent. He said culpability in this context referred to moral blameworthiness. The Tribunal had to look at the gravity of the failure and the part played by the Respondent in context. Culpability can involve *mens rea* or negligence. He referred the Tribunal to the discussion of the spectrum of conduct contained in Hood-v-The Law Society of Scotland [2017] CSIH 21.

Mr Lindsay noted that it was for the Complainers to prove professional misconduct beyond reasonable doubt. It was not for the Respondent to prove anything. In his submission the Complainers had not discharged the onus of proof regarding professional misconduct.

Mr Lindsay noted that the Respondent's conduct was restricted to conveying the clients' intentions and instructions. She expressed no comment on the merits of the clients' position or the merit of the potential report to the authorities. The allegations came directly from the clients and not from advice provided by the Respondent. The clients had expressed concerns about an unfair preference and means tested benefits. The communications do not contain definite statements of criminality. No allegations of criminality were made against the Secondary Complainer or the other email recipients. The allegations related to the late Mr D and his executrix. There was no threat implied or expressed against the Secondary Complainers or other recipients of the email that they would be reported to the authorities. The Respondent's clients did not stand to benefit financially. Any reference to the authorities would not have involved the email recipients. The Complainers accept that there was no dishonesty involved.

Mr Lindsay submitted that the Tribunal should accept the Respondent's evidence that she was acting in good faith in a genuine and pragmatic attempt to resolve a dispute. The email was drafted by Mr C, a retired solicitor and provided to the Respondent to form the basis of the email of 13 August 2019. This was a sin of omission not commission. It was inappropriate to link the threat to the settlement proposal. It should have been revised out of the draft and Mr C should have been advised that it was inappropriate. There was a simple failure to pick up these sentences. Mr C's status was important when considering culpability. He had a long career and was by then retired. He could have been expected to be aware of the responsibilities of a solicitor when conducting a settlement negotiation. The Respondent's behaviour was an isolated failure. There was no course of conduct. The Complainers did not take issue with the letter of 2 July 2019. Everything was focussed on the two sentences in the email. These were not repeated. The threat was not the same as one made by a pursuer to a defender in the context of litigation.

Mr Lindsay referred the Tribunal to an unsatisfactory professional conduct case on the Complainers' website where a solicitor wrote to a person who had made a complaint saying that they had "blatantly misrepresented" the situation and made "fraudulent claims". He suggested these were more serious threats. They were designed to place pressure on a complainer not to pursue a complaint. The terms were apt to be distressing. The solicitor stood to benefit personally from the threats. He contrasted this with the present case.

Mr Lindsay noted that the Complaint concerned a one-off mistake made when reviewing a draft prepared by a retired solicitor. This was squarely in the territory of unsatisfactory professional conduct, rather than professional misconduct. This was an isolated lapse in judgment. There was no personal gain to the solicitor or the clients. The allegations were not made to the Secondary Complainer.

DECISION

The Complainers alleged that the Respondent was guilty of professional misconduct by accepting improper instruction to issue correspondence. It was clarified during the hearing that “correspondence” was restricted to the email of 13 August 2019. That email contained the following paragraph:

“Accordingly, our clients would be grateful if you could simply confirm whether or not you are willing to agree to the Charity Proposal within 28 days of the date of this letter. The decision has to be unanimous. If it is not, our clients have indicated that their intention is to contact the relevant authorities in relation to the concerns as to certain financial irregularities raised in our letter of 2 July 2019. This will deal with the fraud issue one way or the other.”

The Complainers alleged that the Respondent had failed to properly advise her clients on the legal consequences of their improper instruction, that she had failed to act with personal integrity, and that her actions were likely to bring the profession into disrepute.

The facts of the Complaint were admitted. The Respondent admitted sending the letter of 2 July 2019 and the email of 13 August 2019. That correspondence was before the Tribunal at Productions 1 and 2 of the First Inventory of Productions for the Respondent. The Tribunal considered that the Respondent was a credible and reliable witness. She gave her evidence in a straightforward way and made appropriate concessions.

The Tribunal considered whether the Respondent’s conduct met the test set out in Sharp v Council of the Law Society of Scotland 1984 SLT 313. According to that definition,

“There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made.”

Solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question (Rule B1.2). They must not accept improper instructions (Rule B1.5). They must communicate effectively with their clients and others (Rule B1.9).

The Respondent breached Rule B1.5. She ought not to have accepted instructions to send an email linking a failure to accede to a settlement proposal to an intention to report family members to the authorities. She should have advised the clients properly regarding their proposed course of action. To that extent there was a lack of effective communication, but this was best considered as part of the breach of Rule B1.5, rather than a separate breach of Rule B1.9. According to Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366, integrity is a broader concept than dishonesty. In professional codes of conduct, the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. Integrity connotes adherence to the ethical standards of one’s own profession and involves more than mere honesty. The Tribunal did not consider that the Respondent’s actions lacked integrity, rather that she had failed to apply her mind rigorously to the problem and the proposed email. There was no intent to threaten or any other ulterior motive.

The Tribunal considered the matter of professional misconduct carefully. The Complainers made no criticism of the letter of 2 July 2019, only the email of 13 August 2019. The only part of the email of 13 August 2019 which goes further than the letter of 2 July 2019 was the recording of the clients’ intention to contact the relevant authorities in relation to the concerns of financial irregularities and the reference to the “fraud issue”. Although the email had been drafted by another, the Respondent had sent it out in her name. She was therefore responsible for it. The Tribunal was satisfied that the Respondent should not have included this paragraph in the letter of 13 August 2019. This was not the behaviour of a competent and reputable solicitor. The Respondent is an experienced solicitor. Her decision to send the email was ill-judged. She should have taken greater care. However, considering the context in which this email was sent, the Tribunal did not consider that the failing was a serious and reprehensible departure from the standards of competent and reputable solicitors. While not condoning the Respondent’s behaviour, the overall culpability was not high enough to mean that she was guilty of professional misconduct.

The Tribunal does not suggest that a solicitor can exercise less care where the client has legal experience. However, the context in which the clients had been introduced to the Respondent and the presentation of a draft email for onward transmission was relevant. The Respondent was asked by her former partner to deal with the matter. The email in question was drafted by a retired solicitor. His late son had been a partner in the Respondent’s firm. The Respondent acted in good faith in setting out a proposal which her clients hoped would resolve certain issues within the family. The email communicated her client’s intentions but did not, for example, make any comment on the merits of the clients’ position or the

strength of the allegations of fraud. The Tribunal accepted that this was a genuine attempt to resolve a dispute. No one was to benefit financially from the proposal. There was no ongoing course of conduct. In all these circumstances the Tribunal considered that the Respondent's culpability was not sufficiently high to satisfy the test for professional misconduct.

The Tribunal considered that the Respondent might be guilty of unsatisfactory professional conduct, which is professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor, but which does not amount to professional misconduct and which does not comprise merely inadequate professional service. Accordingly, the Tribunal found the Respondent not guilty of professional misconduct and remitted the case to the Law Society under Section 53ZA of the Solicitors (Scotland) Act 1980.

The Fiscal indicated that the Complainers were neutral about expenses and publicity. He noted that expenses usually follow success. Mr Lindsay moved for expenses. The Respondent had offered to accept a finding of unsatisfactory professional conduct at an early stage. Mr Lindsay sought sanction for senior counsel. He suggested that the matter should not be given publicity.

Following submissions on expenses and publicity, the Tribunal made no award of expenses due to or by either party. The Respondent was successful to the extent that she had not been found guilty of professional misconduct. However, as she accepted, there had been deficiencies in her conduct which will now be reviewed by the Complainers' Professional Conduct Sub Committee. The Complaint had been properly brought by the Complainers. In the particular circumstances of this case therefore, it was appropriate to make no order regarding expenses.

The Tribunal noted its obligations under Paragraphs 14 and 14A of Schedule 4 to the Solicitors (Scotland) Act 1980. It ordered that publicity should be given to its decision and that publicity should include the name of the Respondent and the Secondary Complainer. 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.



Catherine Hart

Vice Chair