

**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

**ALAN MAITLAND DEWAR
McWILLIAM, Solicitor of 3
Hartington Place, Edinburgh**

1. A Complaint dated 3 May 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alan Maitland Dewar McWilliam, Solicitor of 3 Hartington Place, Edinburgh (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. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 13 August 2013 and notice thereof was duly served on the Respondent.
4. The hearing took place on 13 August 2013. The Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow.

The Respondent was present and represented by William Macreath, Solicitor, Glasgow.

5. Mr Reid moved the Tribunal to allow a slight amendment to the Complaint and this was agreed. The Respondent then pled guilty to the facts, averments of duty and averments of professional misconduct in the amended Complaint.
6. After having heard submissions, the Tribunal found the following facts established

6.1 The Respondent was born on 22nd April 1953. He was admitted as a solicitor and enrolled in the Register of Solicitors in Scotland on 8th January 1980. He was employed as a partner with Biggart Baillie, Solicitors, from 1st July 1981 until 30th June 1994. From 1st July 1994 to date he has carried on business operating as the firm McWilliam WS of 3 Hartington Place, Edinburgh.

Failure to respond to the Complainers

6.2 In accordance with the Solicitors (Scotland) Accounts Rules 2001 the Respondent delivered an Accounts Certificate to the Complainers which identified a deficit on the Client Account in the sum of £24,014.22 as at 31st December 2010. In accordance with procedure the Director of Financial Compliance of the Complainers wrote to the Respondent by letter dated 11th February 2011 acknowledging receipt of the Accounts Certificate and noting the qualification as follows:-

“I note that due to a bank error there was a deficit created on the Client Account. The Guarantee Fund Committee always takes a serious view about any deficit occurring on the Client Account. If you have not already done so, please obtain a letter from the

bank confirming their error in this matter, forwarding a copy on for review.”

The letter also sought clarification as to when the matter was resolved and invited a response within a period of ten days. No reply was received from the Respondent.

6.3 The Complainers wrote again on 8th March 2011 and invited a response within seven days of the date of that letter. No reply was received from the Respondent.

6.4 The Complainers wrote again a reminder dated 22nd March 2011 referring to the earlier letters and invited a response. In this letter the Complainers advised that if they did not hear from the Respondent then the matter would be referred to the Guarantee Fund Committee. No reply was received from the Respondent.

6.5 On 8 April 2011 the Complainers wrote to the Respondent advising as follows:-

“I refer to my letter of 11 February 2011 and reminder letters of 8th March and 22 March 2011, and note that I have not heard further from you with regard to this matter. As previously advised, I now require your detailed response by return, failing which the matter will be placed before the Guarantee Fund Committee at their next meeting for consideration.”

No reply was received from the Respondent.

6.6 The Complainers wrote to the Respondent once again on 20th April 2011 in the following terms:-

“I refer to my letter of 11 February 2011 and reminder letters of 8th March, 22 March and 8th April. I note I have not heard further

from you with regard to this matter. As previously advised, the matter will now be placed before the Guarantee Fund Committee at the next meeting for consideration. Submission of a satisfactory response to my letter of 11th February 2011 would result in the matter being removed from the agenda.”

No reply was received from the Respondent.

- 6.7 The Complainers wrote by Recorded Delivery dated 29th June 2011 to the Respondent advising as follows:-

“After consideration of all correspondence sent to your firm following receipt of your Accounts Certificate for the period to 31st December 2010 ... the Council of the Law Society of Scotland acting through the Guarantee Fund Committee has decided to refer the complaint on your conduct to the SLCC. The Committee have agreed if a full response is received within 14 days of this letter, then the complaint will not be necessary. However, if no such response is received to the complaint then your failure to respond to the Law Society of Scotland is to be submitted at the earliest opportunity. This decision was made by the Guarantee Fund Committee at its meeting on 5th May 2011.”

No reply was received from the Respondent.

- 6.8 By Recorded Delivery dated 26th July 2011 the Complainers wrote to the Respondent advising:-

“Following on from my letter of 29th June 2011, I note that I have not received a response. As discussed in my said letter of 29th June (copy enclosed) the Council of the Law Society of Scotland, acting through the Guarantee Fund Committee, have decided to refer the complaint on your conduct to the SLCC. This decision

was made by the Guarantee Fund Committee under delegated powers at its meeting on 5th May 2011”.

No reply was received from the Respondent.

- 6.9 On 15th February 2012 the solicitor responded to advise that his laptop was broken and that he was experiencing problems and could not respond to the complaint. On 15th March 2012 the Respondent wrote to the Complainers to explain that his laptop had broken again and that he was about to depart on two weeks holiday.
- 6.10 On 12th April 2012 the Complainers intimated by recorded delivery and first class post Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980. These Notices were returned due to the Respondent not being at home to receive mail. On 20th May 2012 the Statutory Notices were served once again along with a Notice in terms of Section 42 of the Solicitors (Scotland) Act 1980 calling on the Respondent to reply to the complaint and provide all relevant documentation.
- 6.11 The Respondent replied on 11th June 2012 to explain that his aunt had died and that he had not been able to draft a full response due to her health and work related pressure following his return from holiday. He also explained that he had been unwell suffering from a virus. The Respondent replied to the Complainers on 13th June 2012 with an explanation of the circumstances which related to the deficit leading to him issuing a qualified to the Accounts Certificate for the six month period to 31st December 2010. The Respondent explained that in his opinion the error was due to the bank making a mistake. There is a further letter dated 10th September 2012 from the Respondent to the Complainers. The Respondent advised that he had just discovered the letter of 2nd July 2012 from the Complainers. He

explained that his cleaning lady had brought the mail in from the front hall and placed it on top of another batch of mail. The Respondent advised that he had not written to the bank about the mistake. The Respondent advised that on 31st November 2010 he and the bank teller had made a silly mistake and their attention may not have been fully devoted to their work. He acknowledged that he could not prove that the oral instruction which he gave to the bank teller was framed in the right fashion and in his opinion the error lay with the teller. He also advised that he accepted that responsibility must rest with him as he was the account holder and ultimately he knew in which direction the money was to move and that the bank teller did not. The Respondent also asked for clarification of what Practice Rule he had supposedly broken.

7. The Tribunal found the Respondent guilty of Professional Misconduct in respect of his failure to reply timeously to the enquiries made of him by the Law Society concerning a deficit noted on his accounts certificate for the period 31 December 2010.
8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 13 August 2013. The Tribunal having considered the Complaint dated 3 May 2013 at the instance of the Council of the Law Society of Scotland against Alan Maitland Dewar McWilliam, Solicitor of 3 Hartington Place, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his failure to reply timeously to the enquiries made of him by the Law Society concerning a deficit noted on his accounts certificate; Censure the Respondent; 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.

(signed)

Malcolm McPherson

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

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

Mr Reid moved the Tribunal to delete the words “openly and accurately” from paragraph 4.1(a) of the Complaint. This was agreed. Mr Macreath then confirmed that his client pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the Complaint as amended. It was accordingly not necessary for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid advised that the Respondent was 60 years old and had been in the profession for 33 years. An inspection took place in 2010 which identified a deficit on the client account. The Law Society wrote to the Respondent on 11 February 2011 and then sent various reminders, all of which the Respondent failed to respond to. Statutory notices were sent in April/May 2012. The Respondent did send a response on 13 June 2012 explaining the position and his explanation was accepted.

Mr Reid invited the Tribunal to make a finding of professional misconduct pointing out how important it was for the Law Society to monitor solicitors’ compliance with the Accounts Rules and that the matter in this case was of significance given that it concerned a deficit on the client account. 11 letters were sent and four formal notices and it took the Respondent 16 months to reply.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath stated that it was accepted on behalf of the Respondent that his conduct did amount to professional misconduct given that he had failed to reply timeously to his professional body. Mr Macreath pointed out that there had not been any inspection but in the accounts certificate dated 4 February 2011 the Respondent drew the apparent deficit to the Law Society’s attention. The Respondent at this time explained that the bank teller had misinterpreted an instruction and had done the opposite of what she should have done. This was rectified as soon as it came to light and the funds were under the control of the Respondent at all times. This was what led to Mr

Messenger of the Law Society writing to the Respondent asking for a letter from the bank to confirm that this was how the error arose.

In October 2011 a complaint form was sent by the Law Society to the Scottish Legal Complaints Commission. The Commission then sent the matter back to the Law Society as a conduct complaint. In February 2011 the Law Society wrote to say they had received the complaint and then in January 2012, a lot of papers were issued to the Respondent. He provided a detailed response in June 2012 with a full explanation. The Respondent however did not explain at this time why he had failed to respond.

Mr Macreath explained that he had carefully checked the file and could confirm that the money had been properly credited. Mr Macreath advised the Tribunal that the Respondent's wife was an expert in solicitors' accounts and that the Respondent advised other solicitors on executry accounts and prepared accounts for other solicitors. The Respondent thought that he had given a proper explanation with regard to the bank error and accordingly did not give the letters from the Law Society the priority they deserved. The Respondent then froze and was distracted by other work. Mr Macreath stated that the Law Society did give the Respondent a last chance to reply and he still failed to do so.

Mr Macreath explained that the Respondent was a sole practitioner working from home and he had no one to discuss it with. The Respondent had taken over Lindsays with a lot of complicated work and acted for a number of leading firms in Scotland. He had a very good reputation and had an unblemished past record. The Respondent was very contrite and Mr Macreath asked the Tribunal to consider being lenient in this case and imposing a Censure. He emphasised the Respondent's valuable qualifications, experience and skills.

DECISION

The Tribunal considered it extremely unfortunate that a talented and experienced solicitor with an unblemished career record should find himself before the Tribunal for a matter such as this. It is however completely unacceptable for a solicitor to ignore correspondence from their professional body. Failure to comply with a request

for information hampers the Law Society in the performance of their statutory duty and is capable of bring the profession into disrepute. The Respondent in this case was given numerous chances by the Law Society to respond. The Tribunal find it quite puzzling that despite this he still failed to do so over a period of 16 months.

The Tribunal took account of the Respondent's lengthy unblemished record, his contrition and the fact that he had cooperated with the Law Society and the Fiscal from the outset. No client was adversely affected by the Respondent's actions and the Tribunal consider that there would be no risk to the public as a result of the Respondent continuing in practice. In the circumstances the Tribunal considered that the Respondent's misconduct fell at the lower end of the scale and that a Censure was a sufficient penalty. The Tribunal made the usual order with regard to publicity and expenses.

Vice Chairman