

**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**

**COMPLAINERS**

**against**

**LESLIE WILSON  
SOMERVILLE, Solicitor, Messrs  
Somerville & Co., Suite 17, Stirling  
Business Centre, Wellgreen,  
Stirling**

**RESPONDENT**

**MR A**

**SECONDARY COMPLAINER**

1. A Complaint dated 3 December 2012 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Leslie Wilson Somerville, Solicitor, Messrs Somerville & Co., Suite 17 Stirling Business Centre, Wellgreen, Stirling (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 appointed the Complaint to be set down for a procedural hearing on 20 February 2013 and notice thereof was duly served on the Respondent.
4. The procedural hearing took place on 20 February 2013. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was not present but was represented by Mr Murphy, Solicitor, Stirling. The Secondary Complainer was not present or represented. It was clarified that the Secondary Complainer, Mr A, was no longer seeking compensation and because he was in a remote part of Australia he was not going to engage in the process or give evidence. Ms Johnston stated that in the circumstances she would be proceeding on the basis of the facts that were admitted and she would not be insisting on the facts that were disputed as she was unable to lead any evidence to support these facts. Ms Johnston clarified that the Secondary Complainer was aware that the Tribunal would proceed on the basis of what was admitted. Mr Murphy confirmed that this was his understanding of the position. In the circumstances it was agreed that the matter be adjourned to a substantive hearing on 19 March 2013.
5. The substantive hearing took place on 19 March 2013. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and was represented by Mr Murphy, Solicitor, Stirling. The Secondary Complainer was not present or represented. The Tribunal noted that on 6 March 2013 the Secondary Complainer had emailed the Tribunal's Clerk and advised that he wished the hearing to be postponed to allow him to ask his employer in Australia for leave to travel to back to Scotland for a rearranged hearing. The Tribunal noted that the Tribunal's Clerk had made arrangements to have a videolink available at the hearing on 19 March and had emailed the Secondary Complainer to advise him of this and to ask him to make a formal request for a postponement of the substantive hearing. The Secondary Complainer had then emailed in response on 15 March 2013

to advise that he did not wish the hearing to be postponed and that as he was working in a remote area of Australia he was not able to take up the opportunity to engage in the hearing via videolink. He also advised that he would await the decision of the Tribunal. The Tribunal agreed to proceed with the hearing in the absence of the Secondary Complainer and had regard to the email of 12 February 2013 from the Secondary Complainer to the Fiscal in which he had originally asked that the Tribunal consider the matter in his absence and have regard to his statement. The Tribunal requested from the Fiscal a copy of the Secondary Complainer's statement which was contained in an email dated 25 January 2013 from the Secondary Complainer to the Fiscal and confirmed that the Respondent and his solicitor had also seen that document.

6. Ms Johnston advised that in the absence of the Secondary Complainer she was not able to prove part of the averments contained in paragraph 4.4 of the Complaint which were disputed in the Respondent's Answers. These averments were as follows.

1) "He wrote a terse reply on 26<sup>th</sup> August confirming there were no missives for the sale of the flat, that it would be MMV Limited who would purchase it in seeking a new administrator for his client, for MMV Limited and for Company 1."

2) "His client understood that the price being discussed in negotiations was the valuation of £100,000 and that the Respondent was intending to purchase the flat. The Respondent used his intimate knowledge of the client's financial affairs in negotiations with the Bank which could have furthered the interests of his own company."

7. Ms Johnston advised that all the other averments of fact, duty and misconduct were admitted in the Answers and confirmed that she wished the Tribunal to proceed on the basis of those admissions. Mr Murphy confirmed that his client accepted that he was guilty of professional

misconduct as outlined in the Complaint under deletion of the above two averments. No evidence was led.

8. The Tribunal the following facts established:
- 8.1 The Complaint is made by the Council of the Law Society of Scotland. The Secondary Complainer is Mr A.
- 8.2 The Respondent's date of birth is 6 May 1961. He was enrolled on the 26 July 1983. He was a partner in Pollock, Stewart & Co., Solicitors, then Pollock, Somerville & Co., from October 1988 to October 2011. He was a partner with Grant Brown Lindsay, Solicitors, Glasgow from 1 November 2011 to 4 May 2012. He commenced practice in Somerville & Co., Solicitors, on 15 May 2012.
- 8.3 The Complainers received intimation of a complaint from Mr A about the Respondent. The Respondent was instructed by Mr A to act in the sale of the premises at property 1 and on 27 March 2009 provided sales particulars for the marketing and a mandate to property agents. Some limited interest was expressed. On 5 May 2009 he cancelled the instruction to the property agents and there followed a dispute over fees due. On 4 September 2009 the Respondent sought guidance on the potential conflict of interest should other clients of his seek to buy the flat and public house from Mr A, his long established client. On 23 September 2009 Mr A's lenders the Clydesdale Bank (hereinafter referred to as the Bank) indicated they were not going to extend his overdraft facility due to concerns that he had - hard core debt build up on his overdraft; no evidence of the viability of his business; loan arrears; and a lack of up to date financial information. On 29 September 2009 the Respondent replied to the Bank with representations on behalf of his client. On 19 January 2010 Comrie Pollock solicitors

expressed interest in the property for a client subject to change of use being possible. On 22 February 2010 they submitted a formal offer for the Lounge Bar, function suite, Kitchen, cellars, and entrance hall plus all ground *ex adverso* same at £115,000 with entry ten working days after the last of various suspensive conditions was satisfied. On 18 March 2010 the Respondent wrote to the Bank acknowledging his client was in difficulty servicing his loan and explaining the offer of £215,000 was for part of premises and was conditional on change of use. The bargain was concluded on 7 April 2010 with a date of entry of 1 September. On 5 May 2010 he updated the Bank about the sale of two parts of the premises. He included the correct price. He confirmed that the flat was being upgraded to offer as a house of multiple occupancy. He submitted a press advert for the sale of the flat on 12 July 2010.

- 8.4 During this time the Respondent entered into discussions with his client Mr A for the purchase of the flat by MMV Ltd., a company operated by him and in which he was a director. In an exchange of e-mails with the Bank's representative who was the business administrator for his client, himself and his company dated 5, 6 and 17 August 2010 the Respondent intimated that there were negotiations to sell him the flat at a price of £60,000. The business administrator indicated that she could not comment on whether he should purchase the property and asked if he was seeking further lending to MMV to assist in the purchase. On 24 August he was advised that the Bank had appointed HBJ Gateley Wareing to review the transactions relating to the properties. That firm sought details of the transactions to enable the Bank to satisfy itself that they were arm's length transactions. On 1 September the Respondent wrote to the Bank outlining the financial position, stating that there were informal discussions between his client and MMV Ltd for the sale of the flat at a price of £80,000 and asking if the

Bank was willing to allow the proposed transactions to proceed. The Respondent made telephone enquiries of the Bank on behalf of his company to ascertain the lending position at various price levels with a view to financing the purchase. The Respondent prepared a Minute of Agreement between his client and his company in respect of the purchase of the flat by his company incorporating an obligation on MMV Ltd. to pay one half of the monthly rental from the flat to Mr A over a period of four years and undertaking not to sell the flat without his consent or giving Mr A first refusal. The Respondent continued to act on behalf of his client while taking these steps on behalf of his company. The transaction did not proceed.

9. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of professional misconduct in respect of his acting in a conflict of interest situation by entering into negotiations with a client for the purchase of a property when he was instructed in the sale of the property and when he was privy to detailed financial information about his client's financial problems which could objectively be seen as seeking to make financial gain out of his client's misfortune.
10. Having heard from the Respondent's solicitor in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19 March 2013. The Tribunal having considered the Complaint dated 3 December 2012 at the instance of the Council of the Law Society of Scotland against Leslie Wilson Somerville, Solicitor, Messrs Somerville & Co., Suite 17 Stirling Business Centre, Wellgreen, Stirling; Find the Respondent guilty of Professional Misconduct in respect of his acting in a conflict of interest situation by entering into negotiations with a client for the purchase of a property when he was instructed in the sale of the property and when he was privy to detailed financial information about his client's financial problems which could objectively be seen as seeking to make financial

gain out of his client's misfortune; Censure the Respondent; Fine him in the sum of £5,000 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.

**(signed)**

**Kirsteen Keyden**

**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**

**Vice Chairman**



**NOTE**

A procedural hearing took place on 20 February 2013. It was clarified that the Secondary Complainer was no longer seeking compensation and because he was in a remote part of Australia he was not going to engage in the process or give evidence. Ms Johnston stated that in the circumstances the matter would be proceeding on the basis of the facts that were admitted and she would not be insisting on the facts that were disputed as she was unable to lead any evidence to support these facts. Ms Johnston clarified that the Secondary Complainer was aware that the Tribunal would proceed on the basis of what was admitted. Mr Murphy confirmed that this was his understanding of the position. In the circumstances it was agreed that the matter be adjourned to a substantive hearing on 19 March 2013.

At the hearing on 19 March 2013 the Tribunal noted that the Secondary Complainer had contacted the clerk after the procedural hearing and advised that he wished the hearing to be postponed to allow him to attend a rearranged hearing. However, then tribunal noted that the Secondary Complainer had advised by email on 15 March 2013 that he did not wish the hearing to be postponed and that as he was working in a remote area of Australia he was not able to take up the opportunity to engage in the hearing via videolink. He also advised that he would await the decision of the Tribunal.

The Tribunal agreed to proceed with the hearing in the absence of the Secondary Complainer and had regard to the email of 12 February 2013 from the Secondary Complainer to the Fiscal in which he had originally asked that the Tribunal consider the matter in his absence and have regard to his statement. The Tribunal requested from the Fiscal a copy of the Secondary Complainer's statement which was contained in an email dated 25 January 2013 from the Secondary Complainer to the Fiscal and confirmed that the Respondent and his solicitor had also seen that document.

Ms Johnston advised that in the absence of the Secondary Complainer she was unable to prove part of the averments contained in paragraph 4.4 of the Complaint which were disputed in the Respondent's Answers. Ms Johnston advised that all the other

averments of fact, duty and misconduct were admitted in the Answers and confirmed that she wished the Tribunal to proceed on the basis of those admissions. Mr Murphy confirmed that his client accepted that he was guilty of professional misconduct as outlined in the Complaint under deletion of the two averments. No evidence required to be led.

### **SUBMISSIONS FOR THE COMPLAINERS**

On behalf of the Law Society Ms Johnston stated that the Respondent had an intimate knowledge of the financial circumstances of his client and submitted that this Complaint concerns not only his taking the first step in deciding that he would purchase the property but also the further steps of following up that decision by progressing the transaction by approaching the Bank regarding funding and preparing a Minute of Agreement. Ms Johnston submitted that these factors take the Respondent's plan beyond an idea into an action and then into a conflict of interest situation. Ms Johnston submitted that objectively anyone viewing this behaviour would think that the Respondent had taken advantage of the confidential information which he had obtained from his client. Ms Johnston submitted that it does not matter that the transaction did not ultimately proceed. She submitted that the crux of the Complaint was that the Respondent acted in a conflict of interest situation.

### **SUBMISSIONS FOR THE RESPONDENT**

Mr Murphy stated that the Respondent is aged 51, was admitted as a solicitor in 1983 and this is the first time he has appeared before the Tribunal. Mr Murphy stated that the Respondent regrets the actions which have led him to appear before the Tribunal.

In relation to professional misconduct, Mr Murphy stated that the Respondent has always accepted that his behaviour amounted to professional misconduct but submitted that the professional misconduct should be viewed by the Tribunal as being at the lower end of the scale for two reasons. The first reason was in relation to the Respondent's unblemished record up until now and the second reason was in relation to the circumstances of the misconduct.

Mr Murphy submitted that initially the Respondent was only trying to help his client and then at some point he strayed over the line. Mr Murphy advised that the Respondent accepts that he should not have contacted the Bank and that he should not have prepared the Minute of Agreement. Mr Murphy stated that while the Respondent did commit professional misconduct his behaviour did not ultimately have a practical result as the sale was not taken to a final conclusion and so he did not enter into a transaction to his client's detriment.

Mr Murphy submitted that an appropriate sanction would be for the Tribunal to Censure the Respondent. However, Mr Murphy submitted that if the Tribunal felt that a Censure was not a sufficient sanction any fine imposed should be at the lower end of the scale.

In response to a question from the Tribunal Mr Murphy advised that the transaction did not proceed because the Respondent was unable to raise the necessary funds. Mr Murphy advised that the Respondent and the Secondary Complainer thereafter fell out and the transaction was never concluded.

In response to another question from the Tribunal Mr Murphy stated that the Respondent's financial situation was not good. He advised that the Respondent's practice has been badly affected by the downturn in the economy as it deals mainly with conveyancing. He advised that the Respondent had also suffered financially as a result of the dissolution of a long standing business partnership and then entered into a short term business partnership losing funds as a result of both business ventures. He also had personal financial pressures.

## **DECISION**

The Tribunal had regard to the definition of professional misconduct as outlined in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC 129. The Tribunal noted that the Respondent had acted in an obvious conflict of interest situation by entering into negotiations for the purchase of a flat by his own property company when he was instructed in the sale of that property on behalf of a client. In addition, the Tribunal noted that as a result of those instructions the Respondent was

privity to detailed information about his client's financial problems which could objectively be seen as him seeking to make personal gain out of his client's misfortune. The Tribunal noted that whilst the sale did not ultimately proceed for other reasons that at no stage did the Respondent reconsider his position and withdraw from acting.

The Tribunal was of the view that the Respondent's failure as outlined above was a very serious breach of trust and would be viewed by competent and reputable solicitors as serious and reprehensible and therefore as sufficient to meet the Sharp test.

In considering sanction, the Tribunal noted that the Respondent had accepted that he was guilty of professional misconduct from the commencement of these proceedings and that in a legal career of just under thirty years this was the first time that the Respondent has appeared before the Tribunal.

However, the Tribunal was concerned about the circumstances which gave rise to the conflict of interest and felt that a solicitor of the Respondent's experience should have recognised the conflict at an early stage and taken steps earlier to avoid it. In all the circumstances the Tribunal was of the view that a substantial fine was appropriate, however taking into account the Respondent's financial circumstances the Tribunal decided to Censure the Respondent and fine him £5000.

As far as the Secondary Complainer's claim for compensation was concerned the Tribunal had regard to the Mr A's statement which was contained in the email to Ms Johnston of 25 January 2013 but found that it had no information before it on which to base an award of compensation. The Tribunal made the usual orders for expenses and publicity.

**Kirsteen Keyden**  
**Vice Chairman**