

**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**

**STEPHEN McGUIRE, Maulside House, Beith**

**Respondent**

1. A Complaint dated 12 April 2023 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 Stephen McGuire, Maulside House, Beith (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were three Secondary Complainers, Ms A, Ms B and Ms C.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 1 November 2023 and notice thereof was duly served on the Respondent.
5. At the virtual hearing on 1 November 2023, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. Prior to the hearing, the Complainers had lodged a revised Complaint dated 1 November 2023 and parties had lodged a Joint Minute whereby the Respondent admitted all the averments of fact, duty and misconduct contained in the revised Complaint. At the hearing, the Tribunal received the revised Complaint and Joint Minute. There

being no objection from the Respondent, the Tribunal allowed the Fiscal to make some amendments to the revised Complaint to correct typographical errors.

6. Having given careful consideration to the terms of the revised Complaint and Joint Minute, the Tribunal found the following facts established:-

6.1 The Respondent is Mr Stephen McGuire, Maulside House, Beith. His date of birth is 9 June 1967. He was enrolled as a solicitor on 19 September 1989. He was employed by Ross Rogers & Co between 16 October 1989 and 31 December 1994. He became a partner there on 1 January 1995. He remained as a partner or consultant until 30 April 2002. He was a sole practitioner under his own name between 1 September 2002 and 31 December 2007. During that time, he was also a consultant in WW& J McClure between 1 November 2004 and 31 August 2006. His record further states he was a consultant with Jas. Campbell & Co WS between 1 November 2005 and 29 March 2007. The Respondent joined Hennessey, Bowie & Co on 1 January 2008 as a partner. He ceased practising on 31 October 2022. He no longer holds a practising certificate.

**Ms A**

- 6.2 Ms A's mother and siblings instructed the Respondent to act in her late father's executry. Ms A's late father left a will. Ms A was not an executor, but was a beneficiary in terms of that will. The Respondent was first instructed in 2009. The estate had not been distributed by the end of 2014. There was ongoing correspondence regarding the settling of the estate between the executors and beneficiaries. They sought to settle the estate other than in line with the terms of the will. The Respondent required agreement from the executors and all beneficiaries to act in that way. In 2014/5/6 some of the deceased's heritable property was purportedly transferred in terms of the agreement between the beneficiaries and executors.
- 6.3 Ms A wrote by email dated 29 March 2018 to the Respondent setting out five questions she wished him to answer about the transfer of the heritable property. The Respondent spoke with complainer on the 23 April 2018. He addressed some of the points raised.
- 6.4 Ms A's own agent contacted the Respondent regarding the transfer of the heritable property in June and July 2018. The Respondent did not respond in full to either correspondence.

- 6.5 Ms A emailed the Respondent on the 22 October 2018 asking for confirmation of which properties had been transferred to her. The Respondent spoke with Ms A. Ms A requested by email of 24 October 2018 that the Respondent provided details in writing.
- 6.6 Following a further email chasing information, the Respondent wrote by email on the 29 October:  
*“Further to the above and our recent conversation I confirm I am attempting to tie in the various properties with who owns them. As indicated I think properties may have been transferred in the old registration system. I need to work out who owns what. This is being dealt with just now I hope to revert as soon as possible”*
- 6.7 Further email exchanges took place in October and December 2018.
- 6.8 In 2019 and 2020 the following exchanges occurred.
- 6.8.1 Ms A sought further updates by emails of 4 January 2019 and 7 January 2019. The Respondent replied on the latter date at 4.10pm, requesting a couple of weeks to respond.
- 6.8.2 Ms A sent a further email on 20 January 2019, referring to their telephone call that day and listing 30 properties which she understood had been owned by her father.
- 6.8.3 Ms A sought an update on 23 and 28 January 2019. The Respondent did not reply.
- 6.8.4 The Respondent emailed the executors on 1 February 2019 outlining the allocation of 16 properties.
- 6.8.5 The Respondent was copied into an email sent by Ms A to one of the executors on 25 February 2019 which stated: *“I have been advised by [the Respondent] this morning that the estate is yet to be divided as everybody (and rightfully so) has to agree to the division and it has to go through court proceedings to be officially accepted? Can you advise who agreed on my behalf as to what would be allocated to me and what exactly this share is?”*
- 6.8.6 Ms A’s solicitor wrote on the 19 June 2019, *“We understand that the portfolio of properties held by [the deceased] at the date of his death generated rental income which would form the moveable part of [the] estate. Our client has received no details in respect of such rental income and has not been notified of any entitlement which she would be bound to receive in respect of that income.”*

- 6.8.7 The Respondent wrote four months later on the 13 December 2019, *"In relation to the properties transferred we had understood that the equitable distribution had been agreed but clearly that is not the case. We had indicated to your client that matters would not be finalised until there was agreement. Clearly matters cannot be finalised until all the beneficiaries sign the matter off. What is your client's position regarding the properties assigned to her? Given how matters stand we have been making payments due in respect of any properties assigned to her out of funds held and a final accounting will obviously follow in due course...It would appear that notwithstanding the allocations [Ms A's mother] was collecting rents. We were not involved in those matters."*
- 6.9 Ms A made a complaint to the Scottish Legal Complaints Commission (SLCC) on 5 May 2020. On 3 June 2020 the Respondent replied to the SLCC by email, asking that he be given time to address the complaint directly with Ms A as he had not been given prior intimation.
- 6.10 The Respondent agreed in an email of the 23 June 2020 to the SLCC that he considered this matter a third-party complaint. The SLCC wrote to the Respondent on 3 July 2020 enclosing a Summary of Complaint. The Respondent was given seven days in which to submit his response.
- 6.11 No response was received by the SLCC in that timescale.
- 6.12 An amended summary of complaint was sent to the Respondent by the SLCC on the 30 July 2020. A further 7 days was provided to respond. No response was made by the Respondent in that timescale.
- 6.13 By email on the 28 August 2020 the SLCC issued their Eligibility Determination Report to the Respondent. The Commission asked the Respondent to provide the following within 14 days:
- (i) his response to the eligible service issues;
  - (ii) the firm's case file including all electronic correspondence and relevant telephone logs and
  - (iii) details of any fees/VAT/outlays charged or to be charged.

- 6.14 No response was noted within the fourteen-day deadline.
- 6.15 The SLCC next contacted the Respondent on 17 September 2020, stating: *“In order to progress this investigation, please provide a response and file(s) within the next 7 days. As advised in the above letter, your delay/failure to provide the information and documentation requested may result in a conduct issue being raised against you on the basis of a failure to respond to the SLCC’s initial request and to this subsequent reminder.”*
- 6.16 On the 23 September 2020 the Respondent sent an email to the SLCC in the following terms:  
*“I refer to your recent e mail. I regret the delay in reverting to you. The file is substantial and I would need at least another six weeks to consider and collate the information requested and ask for a continuation on that basis.*
- I also require to take advice on the matter as the Executors in the estate have indicated they do not allow me to provide any information from the file. Further there is a Court action also ongoing relative to a dispute in the estate and I again need to clarify my position on that matter too relative to this matter.”*
- 6.17 The Respondent was granted an extension to the 22 October 2020 to provide a response and his file.
- 6.18 The SLCC wrote pressing for a response on the 2 November 2020, 17 November 2021 and 5 January 2022. In the final email the Respondent was asked to reply by the by 26 January 2022 as the SLCC were preparing to instruct solicitors to make the necessary application to the Court to recover the files. The Respondent did not respond to these communications.
- 6.19 The SLCC next wrote to the Respondent on 26 February 2021. He was asked once again to provide the documents noted at para 6.13 above. The Respondent was advised that if no response was received by 19 March 2021, the SLCC would proceed with a court application.

- 6.20 The Respondent replied to the SLCC by letter of 24 February 2021 (which bore a date stamp of having been received on 3 March 2021). He stated: *“I was admitted to hospital prior to Christmas and have subsequently been diagnosed with heart failure. I am currently working part time with a view to retiring from practice due to this condition. I was unable to comply earlier with the time limits imposed due to my illness and ask that I have a further month's extension to comply. Given my condition I also intend to instruct a solicitor on my behalf.”*
- 6.21 The SLCC provided a further extension to 12 April 2021. The Respondent did not reply by that date or provide the file as requested.
- 6.22 Some further exchanges took place between the SLCC and the Respondent. The Respondent sought and was given a further extension to the 7 May 2021. No file or response was received by the SLCC in that timescale.
- 6.23 The SLCC then engaged with Ms A asking if she wished to raise an additional issue in respect of the delay. Ms A indicated she did.
- 6.24 The SLCC wrote to the solicitor on 10 June 2021 with the additional issue of complaint. The Respondent was given until 17 June 2021 to provide his views.
- 6.25 No response was received by the SLCC from the Respondent within that timescale.
- 6.26 The SLCC received *“1 x large bundle of banded papers”* from the firm on 1 October 2021. The SLCC sought confirmation on the 25 October 2021 that the papers were the entire file and asked for the Respondent's comments once again. No response was received.
- 6.27 The SLCC sought confirmation by correspondence of the 8 November 2021 whether a response would be forthcoming. By email on the 10 November 2021 the Respondent wrote *“I am afraid I have not been well enough to deal with the matter but am now doing so. I would hope to revert to you within the next seven days”*. The Respondent did not provide a response within that seven-day period.
- 6.28 The SLCC sent their report on the service element of original complaint to the Respondent on the 18 November 2021 seeking confirmation that he agreed its terms by 2 December

2021. The Respondent did not reply timeously. The Respondent emailed accepting the recommendation on the 20 December 2021.

- 6.29 The conduct element of the complaint was intimated by the Society to the Respondent on 9 February 2022. The Respondent did not reply to the Society. Notices were issued to him on 7 March 2022.
- 6.30 The Respondent replied on the 8 March 2022 requesting sight of the firm's papers prior to providing his substantive response to the complaint. The Law Society received further papers from SLCC, which were sent to solicitor for review.
- 6.31 The Respondent replied to the complaint which is now before the Tribunal on the 12 June 2022.

**Ms B**

- 6.32 The Scottish Legal Complaints Commission (SLCC) intimated a complaint made by Ms B to the Respondent on 2 September 2020. The complaint narrated three service issues.
- 6.33 On 2 February 2021, the SLCC wrote to the Respondent by emailed letter to advise him that mediation would not take place. It advised that the next stage of the process was investigation. The commission requested, amongst other things, the Respondent's file within 14 days. It noted a failure by the Respondent to respond to this request may lead to a conduct complaint being raised against him.
- 6.34 On 18 February 2021, the SLCC wrote again to the Respondent by e-mailed letter referring to the previous correspondence and noting that they had not yet received his response to the complaint or his file. He was asked again to provide, amongst other things, his file within the next seven days and reminded that a failure to do so may result in a conduct issue being raised.
- 6.35 On 8 March 2021, the SLCC e-mailed the Respondent to advise that the complainer would not engage in mediation and that the complaint would therefore remain at investigation. The Respondent was referred to their letter of 18 February 2021 for further instructions and attached a further copy for his ease.

- 6.36 On 17 March 2021, the SLCC wrote to the Respondent by e-mailed letter noting that they had not received his files or response to the complaint following the e-mail of 8 March 2021. The Respondent was asked again to provide, amongst other things, his case file within 21 days. The letter was stated to be notice under section 17 (1) of Legal Profession and Legal Aid (Scotland) Act 2007 requiring him to produce or deliver his firm's business file(s), and his explanation regarding the matters to which the complaint related, to the SLCC by 7 April 2021.
- 6.37 On 27 April 2021, the SLCC wrote to the Respondent by e-mailed letter noting that his response and file had still not been received. The SLCC referred to a letter dated 24 February 2021 received from the Respondent explaining his health issues, seeking a further extension of time of one month and indicating that he intended to instruct solicitors to act on his behalf. The SLCC noted that since then they had yet to hear from either the Respondent or anyone instructed to act for him. The Respondent was given one final extension to 5 May 2021 to provide the file failing which the SLCC would apply to the Court of Session for an order requiring delivery.
- 6.38 No response was received from the Respondent by the 5 May 2021.
- 6.39 Ms B sought to include a further issue to her complaint regarding the Respondent's failure to provide a response to the SLCC.
- 6.40 On 17 September 2021 the SLCC received the Respondent's file.

### Ms C

- 6.41 WM died on the 11 February 2015. Ms C was his daughter. Ms C registered his death and in due course instructed the Respondent to assist her in relation to her father's affairs. WM was survived by his widow EPM. WM left a will which appointed his widow as his executor whom failing Ms C. EPM died on the 23 December 2015. Prior to her death EPM accepted the responsibilities as executor nominate.
- 6.42 Ms C instructed the Respondent on the 2 March 2015. Ms C wished the Respondent to send certain papers she found in the father's affairs to the solicitor administering the estate. These included typed (signed) and handwritten notes expressing certain bequests. Ms C



also raised a query about a large debit transaction on her father's bank account (£10,000 cheque) she asked that investigations be undertaken.

- 6.43 The Respondent did not issue a terms of business letter setting out what work he would undertake on behalf of Ms C. The Respondent did not take any immediate steps.
- 6.44 On the 3 March 2015, Ms C advised the Respondent that EPM had instructed McCluskey Browne Solicitors, Kilmarnock (MB) to act on her behalf. The Respondent did not write to MB at this stage.
- 6.45 On 13 May 2015 Ms C advised EPM had returned from an extended holiday and would now be able to engage. The Respondent wrote to MB on 13 May 2015 asking for a copy of the will. Ms C pressed for action by email of 4 June 2015. The Respondent chased MB on 4 June 2015. MB wrote on 8 June 2015 enclosing the will. The will bequeathed WM's estate to his widow. MB explained EPM's understanding was that WM had provided Ms C with a letter expressing his wish that his shares in various companies be left to Ms C. MB requested Ms C /the Respondent confirm the position. They explained they were ascertaining the position regarding assets and would update the Respondent further in due course. The Respondent forwarded a copy of the letter and will to Ms C on 9 June 2015.
- 6.46 Ms C provided the codicil and authority to the Respondent to send the same to MB on 2 June 2015.
- 6.47 On 22 July 2015 the Respondent sought a copy of the inventory of WM's estate from MB. Ms C pressed for an update on 31 July 2015. On 7 August 2015 the Respondent sent a reminder and wrote to Ms C advising that he had prompted MB for a response.
- 6.48 Ms C required to press for a response from the Respondent. The Respondent had not received an inventory from MB. By letter dated 17 September 2015 MB advised the inventory for Confirmation had been provided to WM's widow (EPM – the executor) for approval. They advised on approval, the application for Confirmation would be submitted. The Respondent wrote to MB on 21 September 2015 requesting sight of the draft inventory of estate. A copy inventory was forwarded by MB on the firm on 28 September 2015.

- 6.49 MB advised the inventory had excluded a coin and stamp collection. It was explained that a valuation was required. Ms C wrote on 5 October 2015 instructing the Respondent to press for the executor's position on these. Ms C pressed for a response by email of 27 October 2015. On 5 November 2015, the Respondent sent Ms C a copy of a letter from MB dated 20 October 2015 with a valuation of the stamp and coin collection.
- 6.50 Confirmation to WM's estate in favour of his executor was granted on 16 November 2015. The inventory of estate comprised 18 items, all moveable estate: shareholdings, bank accounts, ISA's, bonds, life insurance and Premium Bonds. The value for Confirmation was £98,572.25.
- 6.51 Ms C sent an email to the Respondent on 7 January 2016. She asked for an update on the estate and information in relation to WM's house.
- 6.52 MB wrote to the Respondent on 8 February 2016 advising that WM's widow had died on 23 December 2015. They requested Ms C's instructions as to whether she intended to claim her entitlement under WM's will, or to claim legal rights in respect of his estate.
- 6.53 The Respondent wrote to Ms C on 15 February 2016 enclosing the letter from MB. He sought a meeting with Ms C to discuss. As Ms C was named as an alternative executor in the will it appeared to fall to Ms C to seek appointment to complete the administration of the estate. MB had suggested this was dependent on whether Ms C intended to claim legal rights. MB had forwarded a statement of bequests made to Ms C and the date of death value. MB had enclosed a legal rights calculation together with Certificate of Assessment of their fees and copy of the firm's invoice. MB sought Ms C's position at which stage MB would consider the next steps.
- 6.54 Ms C met with the Respondent. The Respondent has not retained a note of that meeting. Ms C's position is it was the Respondent's advice that it would be cost effective if MB continued to act. She accepted this advice. On the 19 February 2016, the Respondent wrote to MB advising that Ms C would accept her legal rights entitlement plus interest and sought a revised calculation and interest. He advised that Ms C agreed to being appointed as executor to complete the administration of the estate. The Respondent

advised that correspondence ought to be directed via himself and Ms C sought access to the property to collect personal items including WM's art collection, books and records.

- 6.55 Ms C raised concerns to the Respondent by email dated 7 March 2016 that she had discussed WM's record collection with a friend of WM's widow. She advised that they had informed her the records had been given away by WM's widow.
- 6.56 MB replied to the Respondent on 31 March 2016. They sought submissions on the appropriate interest rate for the legal rights claim. They suggested Ms C be appointed as executor ad non executa. They also advised that they respond regarding Ms C's request for access to the property to collect personal items belonging to WM.
- 6.57 The Respondent wrote to MB on 13 April 2016 re the interest rate, advising the record collection had been removed from the property. He sought confirmation that no further items would be removed pending resolution of matters. He also requested a copy of WM's widow's will.
- 6.58 The Respondent pressed MB seven weeks later, on the 2 June 2016. He advised Ms C of his actions. The letter was sent after the Ms C had called the Respondent. MB replied indicating they would seek instructions. They invited Ms C to confirm which personal items she wished, indicating the coin and stamp collection would be provided if requested. MB enclosed draft form for appointment of Ms C as executor ad non executa, together with a copy of the inventory for WM's estate, for approval.
- 6.59 Ms C called on 5 July 2016 expressing a concern re lack of progress. This was now 17 months post WM's death and 15 months post the Respondent's instruction. The Respondent pressed MB to reply to his letter of the 13 April – despite MB's response narrated above.
- 6.60 MB wrote to the firm on 18 July 2016 advising that their clients were content with the Respondent's proposed interest rate on the complainer's entitlement to legal rights.
- 6.61 Ms C wrote to the Respondent on 20 July 2016. She enclosed a copy letter and list of items for onward transmission to MB for the executors. She raised concerns about the record collection being disposed of.

- 6.62 The Respondent did not progress matters between July and December 2016.
- 6.63 On the 14 December 2016, Ms C wrote by email asking whether there had been any response regarding her taking over the role of executor. She advised she had still not had a response regarding having items returned to her (record, stamp and coin collections). The Respondent met with Ms C on 22 December 2016. She signed the paperwork to take over as executor of WM's estate. The Respondent provided Ms C with the address where she could retrieve items relating to WM's estate. The Respondent did not action the application.
- 6.64 MB wrote by letter of 13 January 2017 seeking Ms C's identification documents (for client identification purposes) and the return of the signed application. The Respondent did not reply.
- 6.65 On the 5 March 2017, Ms C wrote to the Respondent seeking confirmation of the present position. She questioned why there had been no progress. She emailed the following day. The Respondent wrote to MB on the 7 March 2017 advising Ms C was to become the executor. This time he advised his firm was to act for her.
- 6.66 Ms C wrote again by email of the 22 May 2017. She sought confirmation as to whether she had been appointed as executor. She sought progress. The Respondent did not reply.
- 6.67 On 25 August 2017, the Respondent wrote to MB. He advised again that Ms C would prefer the administration of the estate to be taken over by his firm. He did not press for the papers.
- 6.68 The Respondent's file next holds a letter from MB on the 5 December 2017. MB acknowledged receipt of an email sent to them by the Respondent of 10 November 2017 acknowledging files were sent with a letter from MB on 17 October 2017. Copies of the email and letter were not on the Respondent's file. MB requested an update on progress of the administration of the estate. They asked whether Ms C had been confirmed as executor.

- 6.69 Ms C sent an email to the Respondent on the 10 December 2017. She wrote it was almost a year since she had signed the executor documentation. She stated had heard nothing. She stated that if the Respondent did not wish to deal with the case, perhaps he could advise who else she ought to approach.
- 6.70 Ms C received an email from the Respondent on 11 December 2017. The Respondent stated that he had received the files from MB and would revert to Ms C shortly.
- 6.71 The Respondent next wrote by email of dated 5 March 2018 (over three years since WM's death). He advised that he had the files from MB. He stated that he required Ms C to sign a form assuming her to the role of executor and asked that she make an appointment to attend to matters. Ms C responded on the 6 March 2018 pointing out she had signed the documents in December 2016, some 15 months earlier.
- 6.72 Ms C met with the Respondent on the 15 March 2018. The Respondent undertook to ascertain what happened to WM's album collection and other articles of value. Ms C advised that the information had already been supplied years before. Ms C forwarded the information to the Respondent by email on 19 March 2018.
- 6.73 The Respondent wrote to the Sheriff Clerk on 16 March 2018 enclosing the application to appoint Ms C as executor. There is second letter, 3 months later, dated 25 June 2018 to the same Sheriff Clerk enclosing a copy Confirmation and application to appoint Ms C as executor.
- 6.74 Ms C's appointment as executor ad non executa was recorded by the Sheriff Clerk on 5 July 2018. There is no explanation of the 4-month delay between March and July on the Respondent's file.
- 6.75 MB pressed for action by letter dated 6 September 2018. They referred to their telephone conversation with the Respondent on 31 July 2018 when the Respondent had confirmed that the Ms C had been appointed as executor and they were proceeding to complete the administration of the estate.
- 6.76 Ms C wrote by email to the Respondent on the 12 September 2018. She noted it had been six months since their last meeting. She requested an update. She noted the Respondent

had said he would write to MB regarding the missing albums and title deeds. She asked whether she could now obtain the items from WM's estate as she was now executor. The Respondent did not reply. Ms C pressed for a response by email dated 24 September 2018.

- 6.77 Ms C wrote by email on the 6 December 2018. Ms C sought an update and confirmation that she could collect the personal belongings. She stated she was concerned that so much time had passed. She sent a further reminder on 13 December 2018. The Respondent replied on 14 December 2018 apologising and advising he had been off sick recently. He advised he would reply as soon as possible. The Respondent did not reply.
- 6.78 Ms C emailed the Respondent on 28 January 2019 and 7 February 2019. She explained she had spent time in the previous four years worrying about her father's death and associated matters. She asked for a recommendation of someone suitable who could deal with matters if the Respondent could not. The Respondent replied on 8 February 2019, some four years after the death of Ms C's father and his instruction, and eight months since Ms C's appointment as executor. The Respondent expressed sympathy and advised that he was checking through the files. He advised that he was attending to the general finalisation of the estate. He advised that delays were due to the retirement of his partner, but that matters had settled and that he believed progress could now be made. He gave assurances that he would press the matters which concerned Ms C and return to her in early course.
- 6.79 MB wrote on 16 May 2019. They expressed concern on behalf of the executor of WM's widow. The Respondent wrote on 10 June 2019 advising he was checking to ensure all outstanding funds had been ingathered and hoped to update them shortly with a final Statement of Account.
- 6.80 Ms C wrote by email to the Respondent on the 4 August 2019. She asked whether any progress had been made on WM's estate. She asked where WM's possessions were. She asked what had happened regarding the maintenance of his home. She stated it remained empty for almost four years. She asked whether there was a reason no progress had been made. The Respondent did not reply.
- 6.81 The Respondent wrote to MB on 21 August 2019 apologising for his delay. He advised that he had the outstanding funds and could proceed to finalisation. The Respondent

advised that prior to finalisation Ms C requested confirmation of where WM's personal effects and collections were as she wished to have them returned to her.

- 6.82 The Respondent wrote to MB on 18 October 2019 advising that he had prepared a statement relative to the funds he had ingathered. He requested MB's Statement of Account to enable them to amend it and finalise matters.
- 6.83 On 11 December 2019, MB emailed the Respondent referring to their email enclosing Statement of Intromissions. They requested the Respondent's completed draft Statement for approval. They advised that if the Respondent was not in a position to do so, that he provide an explanation and proposed timescale as MB's clients had been pressing them. The Respondent replied on 11 December 2019 advising that he could not find any trace of receiving an email of 12 November 2019. He asked that it be re-sent. MB replied on the same date attaching his email of 12 November 2019 with Statement of Intromissions. The Respondent acknowledged receipt.
- 6.84 On the 9 December 2019, Ms C made a complaint to the SLCC. The Respondent replied to the SLCC's intimation of the complaint to him on 20 January 2020.
- 6.85 The Respondent purportedly wrote to Ms C by email of 20 January 2020. He sent his to the wrong email address. This was corrected on the 5 February 2020. He advised he had received notification of her complaint to the SLCC. He stated he appreciated her concerns. He explained he had been unwell from March 2019 until the end of 2019, had required surgery and was not working full time. He stated that a backlog of his work had accumulated.
- 6.86 The Respondent requested that Ms C attend his offices or telephone to resolve matters. He advised, however, that it would be inappropriate to continue acting in the event that there was an outstanding complaint, and that Ms C would require to instruct another solicitor. He advised that further delays would then be encountered by Ms C.
- 6.87 The Respondent advised Ms C on 19 February 2020 he had the accounts ready for discussion, in addition to the other matters which required to be reviewed. Ms C emailed the Respondent on 4 March 2020. She advised that she could drive up to his office the following week if things were ready.

- 6.88 An attendance note dated 9 March 2020 stated the Respondent and Ms C had met, that Ms C had still queried figures in the accounts and the whereabouts of personal items.
- 6.89 Ms C provided the Respondent by email of 11 March 2020 a previous version of MB's account. She stated it was from the period after WM's debts had been settled and following the death of WM's widow. She stated the shares were still present at that time and half of the joint bank account value. She advised that it was her understanding that it was the date of death value which was important. She stated that there was reference to the fact that shares were bequeathed to her. She advised that MB had also asked at that time whether she had any knowledge of insurance policies held by WM, which she advised were retained in a separate folder by him. Ms C advised that she did not have copies but that raised her suspicion as MB had never properly accounted for use of her birth certificate. She questioned whether MB should still be preparing accounts as Ms C was the executor. The Respondent replied on the same date advising that he would look at the accounts and return to her. He did not return to Ms C.
- 6.90 Ms C emailed the Respondent on 24 April 2020 requesting an update. The Respondent replied the same day advising that, unfortunately, he had required to furlough staff so was dealing with everything himself. He advised that he was, however, looking over Ms C's papers again with a view to formulating some queries. He advised he would be in contact as soon as he could.
- 6.91 MB emailed the Respondent on 30 April 2020 referring to an email of 30 January 2020 and letter of 10 March 2020. MB requested an update. They asked whether the Ms C had received the Statement of Intromissions and approved it.
- 6.92 Ms C emailed the Respondent on the 14 August 2020 asking for a response to her email of the 11 March and 21 April (5 & 4 months previously).
- 6.93 MB faxed the Respondent on 12 August 2020 referring to their letter of 11 June 2020 and telephone calls to their office on 2 and 8 August 2020 and noted that they continued to await a response from the Respondent. A copy of the 11 June 2020 letter was not on the file.



- 6.94 Ms C emailed the Respondent on the 26 August 2020 advising that she had not received a response to her email of 14 August 2020. The Respondent advised that he was drafting something for MB and would hope to revert to Ms C as soon as possible for approval.
- 6.95 Ms C emailed the Respondent on 18 September 2020 advising that she had not yet received the letter he was drafting. The Respondent sought her up to date telephone number. Ms C provided this. The Respondent did not call Ms C.
- 6.96 Ms C emailed the Respondent on 24 September 2020 advising she would be at home all afternoon that day and the following day and could take the Respondent's call. The Respondent replied to advise he would call the following morning.
- 6.97 Ms C emailed the Respondent on 1 October 2020. She stated she had not received the Respondent's letter.
- 6.98 MB wrote to the Respondent on 2 October 2020 acknowledging receipt of the firm's letter of 22 September 2020 and cheque (this file was not on the Respondent's file). They stated they had advised their clients of the terms of the Respondent's letter and awaited their approval.
- 6.99 Ms C emailed the Respondent on 8 October 2020 advising she had still not received the Respondent's letter for checking.
- 6.100 Ms C emailed the SLCC on 14 October 2020 to resurrect her complaint.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct singly and *in cumulo* in respect that:

- 7.1 The Respondent failed to respond in full to Ms A's queries which led to her making a complaint to the SLCC. He failed over a period of around 13 months to provide his file/bundle of papers to the SLCC, despite seeking four formal extensions during this period. He did not provide his firm's response to the original complaint at any point prior to the issuance of the investigation report, and in doing so,
- (a) Breached Rule B1.9.1 of the Law Society of Scotland's Practice Rules 2011 in respect of the failure to answer Ms A's complaint and thereafter correspond with the SLCC,

- (b) Failed to communicate timeously and openly with his regulatory body, and
- (c) His conduct was apt to bring the profession into disrepute;

7.2 The Respondent took seven months (and a threat of Court of Session proceedings) to provide the firm's file to the SLCC, despite numerous extensions and did not provide the firm's full response to the complaint and in doing so:

- (a) Breached Rule B1.9.1 of the Law Society of Scotland's Practice Rules 2011,
- (b) Failed to communicate timeously and openly with his regulatory body, and
- (c) His conduct was apt to bring the profession into disrepute;

7.3 The Respondent's handling of the instruction from Ms B took in excess of five years to complete, even although the executry was simple, and the estate value was less than £100,000. Ms C and MB Solicitors required to press the Respondent on numerous occasions for progress. The Respondent failed to progress matters in a timely and efficient manner and he duplicated work; and in doing so

- (a) Breached Rules B1.4 and B1.10 of the Law Society of Scotland Practice Rules 2011 in that his extended instruction and failure to progress matters in a timely fashion was not in the client's best interest and did not exhibit competent and timely action;
- (b) Aggravated the breach of the rules by seeking to and failing to complete the instructions following the initial complaint to the SLCC.

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

By Video Conference, 1 November 2023. The Tribunal having considered the revised Complaint dated 1 November 2023 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Stephen McGuire, Maulside House, Beith; Find the Respondent guilty of professional misconduct in respect of his breach of Rules B1.4.1, B1.9.1 and B1.10 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Fine him in the sum of £1,500 to be Forfeit to His Majesty; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of five 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 or successive employers as may be 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; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person; and Allow the Secondary Complainers 28 days from the date of intimation of these written findings to lodge a claim for compensation.

**(signed)**

**Ben Kemp**

**Vice Chair**

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 *5 December 2022*.

**IN THE NAME OF THE TRIBUNAL**



**Ben Kemp**  
**Vice Chair**

**NOTE**

At the Hearing on 1 November 2023, the Tribunal had before it the revised Complaint, a Joint Minute of Admissions and a List of Authorities for the Complainers. The parties made submissions.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal noted that the conduct in relation to Ms A and Ms B was similar and concerned the Respondent's failure to deal with his regulator. The conduct involving Ms C was wider and included a failure to progress a matter. The Fiscal noted that the Respondent had retired on 31 October 2022. He asked the Tribunal to bear in mind that coronavirus lockdowns occurred during some of the periods of alleged misconduct.

With regard to Ms A, the Fiscal noted that she instructed the Respondent in 2009. Five years later, the estate in question was still not fully distributed. In March 2018, Ms A asked a number of questions of the Respondent. He engaged with her but did not answer her questions. By 2019 it was clear that the Respondent still had no clear understanding of the properties involved or the executors' position. He delayed responding Ms A's specific questions. Ms A made a complaint to the SLCC in May 2020. The Respondent sought and was granted various extensions. He did not deal timeously with the SLCC. The conduct complaint was referred to the Law Society. The Respondent made a response to the complaint in June 2022. Ms A's case involved a long history of failure or delay in replying to the SLCC.

With regard to Ms B, the Fiscal noted that she made a complaint on 2 September 2020. The SLCC chased for a long period of time. Extensions were granted. The SLCC informed the Respondent that they would apply to the Court of Session for an order requiring delivery of the file. The file was sent on 17 September 2021, one year after the complaint was made.

The Fiscal said that the in relation to the cases involving Ms A and Ms B, the Respondent had breached his duty to communicate effectively. He submitted that it met the test in Sharp v Council of the Law Society of Scotland 1984 SLT 313 as it was a serious and reprehensible departure from the standards of competent and reputable solicitors. The Fiscal drew the Tribunal's attention to Law Society-v-Tait (2023) which was in his bundle of authorities, noting that the period of non-compliance in those cases was less than that in the present case.

With regard to Ms C, the Fiscal noted that she instructed the Respondent on 2 March 2015. The case involved a relatively small executry worth less than £100,000. However, it took five years to complete. The Respondent did not issue terms of business to Ms C. He had limited communication with Ms C who had to press him on various occasions for progress. In June 2016, the draft form for appointment of Ms C as executor ad non executa was provided to the Respondent. No action was taken between July and December 2016 and no explanation was given for this. Ms C continued to press the Respondent. In December 2016, Ms C signed the required paperwork to be appointed as executor. The Respondent did not send it to the court or the executry solicitors. Ms C chased the Respondent on various occasions. The Respondent asked Ms C to sign the same forms again in March 2018. The paperwork was sent to the Sheriff Clerk in March 2018 and June 2018. Ms C was finally appointed as executor in July 2018 (19 months after she had first signed the forms). Ms C continued to press the Respondent, but he only issued holding emails. The other firm of solicitors involved in the case also pressed the Respondent. In December 2019, Ms C made a complaint to the SLCC. A meeting took place in March 2020. Ms C had to chase the Respondent again in April 2020 but did not contact him again until August 2020. The Respondent took no action during this time. Ms C received holding replies only to her queries in August, September and October 2020. She complained again to the SLCC in October 2020. The Fiscal said that the Respondent made no inroads into a very simple executry. He had failed to act in the best interests of his client, failed to communicate and had accepted instructions but had not carried them out adequately and completely within a reasonable time. The Fiscal submitted that the Respondent's conduct met the test in Sharp v Council of the Law Society of Scotland 1984 SLT 313 as it was a serious and reprehensible departure from the standards of competent and reputable solicitors. The Fiscal drew the Tribunal's attention to a case in his list of authorities, Law Society-v-Tait (2015), noting that the undue delay in obtaining confirmation in that case was less than a year. The Fiscal invited the Tribunal to make a separate finding of misconduct in relation to each Secondary Complainer.

The Tribunal asked the Fiscal to clarify the extent of the non-communication in the cases involving Ms A and Ms B. The Fiscal said that in Ms B's case, it was restricted to the SLCC. However, in Ms A's case, the Respondent had an obligation to Ms A and he failed to respond to her. As Ms A was a third-party complainer, he might not have been originally under an obligation to her but given the history of engaging with her from 2018, he was under a duty to communicate with her clearly and unequivocally, or tell her that he was not authorised to do so. He said that in Ms A's case the failure to communicate related to both Ms A and the SLCC.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr Macreath referred the Tribunal to the terms of the Joint Minute. While it was for the Tribunal to come to its own view on misconduct, the Respondent had admitted all the averments of fact, duty and misconduct in the revised Complaint.

With regard to Ms A, Mr Macreath noted that she was not an executor in her father's estate. The Respondent had become involved in the case to assist one of Ms A's siblings who was also a solicitor. Ms A's father had a property portfolio. It was difficult to identify what was contained in the portfolio. There was a substantial delay in the case and a failure to correspond timeously with the SLCC. The Respondent accepted that his conduct was apt to bring the profession into disrepute. No fees were charged to Ms A or her family. The matter is still subject to litigation. The Respondent accepts that he never should have got involved in this case. He did it to assist a fellow solicitor. As far as the SLCC is concerned, the Respondent has paid compensation for the service elements of the complaint. There may be circumstances where a file cannot be provided to the SLCC or redactions have to be made. However, what solicitors cannot do is "down tools" and not respond to their regulator.

With regard to Ms B, Mr Macreath noted that the SLCC had to threaten Court of Session proceedings before the Respondent delivered the file. Part of the period fell within the first lockdown. This was not sufficient to excuse the Respondent's conduct. Compensation had been paid to Ms B for the service element of the case. The Respondent also accepted he overpaid a legal rights claim to Ms B's sibling. He had to compensate the state and refund the fees.

With regard to Ms C, Mr Macreath noted that the estate was not significant. Ms C's father died in February 2015 and his executor died in December 2015. Mr Macreath said that there was no reason for the Respondent to have become involved in this case. He did have Ms C appointed as executor eventually and through the troubleshooting scheme at the Law Society, another firm of solicitors was appointed to deal with the matter.

Mr Macreath said that the Respondent had no excuse for his conduct other than being very unwell and snowed under with work. The Respondent had been a partner in Hennessy Bowie. The Respondent was left to deal with the consequences of his partner being struck off in 2019. The Respondent is rather a broken man. His health is broken. It had collapsed prior to lockdown and then he had to furlough all his staff, even with the problems the firm was experiencing. His ill health continues. Mr Macreath had assisted him to retire and with the help of Douglas Mill, ensured that no clients apart from the three

Secondary Complainers in the present case had been prejudiced. The problems with their cases were already live when the issues with the Respondent's former partner arose.

## DECISION

Based on the admitted facts, the Tribunal was satisfied that the Respondent had acted in the manner set out in the revised Complaint which are reflected in the findings in fact above. The Complainers alleged that the Respondent had breached Rules B1.4, B1.9.1 and B1.10 of the Law Society of Scotland Practice Rules 2011. These rules provide that solicitors must act in the best interests of their clients, communicate effectively with their clients and others, and only accept instructions where the matter can be carried out adequately and completely within a reasonable time, exercising the level of skill appropriate to the matter. The Respondent admitted that he was guilty of professional misconduct. However, that was a matter for the Tribunal to determine, independent of parties' agreement.

According to the definition of professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313,

*"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."*

The Respondent admitted that he had failed to communicate with Ms A regarding her queries and complaint. She had asked questions on 29 March 2018. She made a complaint to the SLCC on 5 May 2020. He failed to communicate with the SLCC regarding her complaint for a very lengthy period and also failed to provide the file for over a year. The Respondent failed to communicate with the SLCC regarding Ms B's complaint for a year and only delivered the file after there was a threat of litigation from the SLCC, seven months after it was requested. The SLCC threatened court action to recover the file. The Respondent failed to act in Ms C's best interests. He did not carry out the work adequately and completely within a reasonable time. He did not exercise the level of skill appropriate to the matter. There was a significant delay in dealing with the matter, particularly with regard to the application for appointment of Ms C as executor. This straightforward executry should not have taken five years to complete.



The Tribunal was satisfied that the Respondent's conduct was in breach of Rules B1.4, B1.9.1 and B1.10 of the Law Society of Scotland Practice Rules 2011 and that it constituted a serious and reprehensible departure from the standards of competent and reputable solicitors. It is not acceptable to delay taking appropriate action for so long. Solicitors must not ignore the SLCC. The public interest is affected because complainers cannot progress their complaints. It hampers the SLCC in performance of its statutory duties. It also brings the profession into disrepute. Having considered all the circumstances, the Tribunal was satisfied that the Respondent's failures in this case were a serious and reprehensible departure from the standards of competent and reputable solicitors singly and *in cumulo*.

The Fiscal indicated that the Tribunal had previously made a finding of professional misconduct against the Respondent in 2021. That case concerned deficiencies in the Respondent's practice management and involved breaches of the accounts rules and AML failures. He was censured and fined £1,000.

#### **SUBMISSIONS IN MITIGATION AND ON EXPENSES AND PUBLICITY**

Mr Macreath noted that the Respondent had been a partner at Hennessy Bowie from 2008 until 2022. Mr Bowie's behaviour caused various difficulties for the Respondent who had to struggle on as a sole practitioner. The Respondent no longer held a practising certificate. He was contrite. He had significant health difficulties. He had attended in person and taken professional misconduct. There was no finding of dishonesty or lack of integrity. He dealt with the SLCC matters and made payments of compensation. Mr Macreath highlighted to the Tribunal its powers to impose restrictions on solicitors' practising certificates. He noted that the Respondent's failures had caused a lot of angst to the Secondary Complainers and that the Tribunal would be aware of the need to vindicate the reputation of the profession and protect the public interest.

Mr Stewart moved for expenses and suggested that the matter should be given publicity but that the Secondary Complainers should not be named as it might be against their interests. Ms A was involved in ongoing litigation regarding significant property interests. Ms B's case was related to the Respondent's failure to communicate with the SLCC, not her. Ms C's case involved her financial interests and publicity of these might be detrimental to her interests. Mr Macreath had no objection to the motion for expenses or the suggestions regarding publicity.

One of the Tribunal members lost connection during the virtual hearing at the close of Mr Macreath's submissions in mitigation. Proceedings were adjourned briefly to allow that member to re-join

proceedings. He did so quickly but his connection was not stable. Parties were content that the Chair went over the minor part of submissions for which his connection had been unstable, in the deliberation room, and that the Tribunal proceeded to consider sanction, publicity and expenses.

### **DECISION ON SANCTION, EXPENSES AND PUBLICITY**

The Tribunal was content that all members had sufficiently understood the submissions made by parties in order to make its decisions on sanction, expenses and publicity. The Tribunal considered the aggravating and mitigating factors in the case. It noted the Respondent's previous conviction and the sanction imposed in that case. It noted the health difficulties experienced by the Respondent at the time of the misconduct and at present. It was apparent that at the time of the misconduct he had been struggling on several fronts. The Tribunal took account of the fact that the present case did not involve dishonesty or lack of integrity. It noted that the Respondent had tidied his affairs, that his practice had been transferred to another firm of solicitors and that he had paid the awards of compensation directed by the SLCC.

The Tribunal was concerned that the Respondent had failed in his duties in relation to three separate cases and that those failures persisted for such a long time. It considered that the Respondent might be a danger to the public should he return to the profession with a full practising certificate. The Respondent's practice required review and supervision. A censure and a fine of £1,500 were appropriate to reflect the seriousness of the misconduct. In addition, the Tribunal considered that a restriction for an aggregate period of five years would be sufficient for the Respondent to return to the profession under supervision, should he decide to do so. This would protect the public and uphold the reputation of the profession. Suspension or strike off would be excessive in the circumstances.

The Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. 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. The Secondary Complainers will have 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office if they wish to do so.



**Ben Kemp**  
**Vice Chair**