

**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

**ALASDAIR BREMNER OAG,
Solicitor, Oag & Co Solicitors, 77
Buccleuch Street, Dumfries
Respondent**

**STEWART ALLAN, Duncanin
House, Peninver, Campbeltown,
Argyll
Secondary Complainer**

1. A Complaint dated 8 March 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alasdair Bremner Oag, Solicitor, Oag & Co Solicitors, 77 Buccleuch Street, Dumfries (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. Stewart Allan of Duncanin House, Peninver, Campbeltown, Argyll (hereinafter referred to as "the Secondary Complainer") is the Secondary Complainer.
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, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow.
5. Mr Macreath confirmed that the Respondent pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the Complaint.
6. After having heard submissions from both parties in respect of the Complaint and in respect of the Secondary Complainer's request for compensation, the Tribunal found the following facts established:-
 - 6.1 The Respondent was born on 25 June 1948. He was enrolled on 13 September 1973. From 1 January 1998 he was a partner with Oag & Co Solicitors. He is not currently in practice.
 - 6.2 The Secondary Complainer submitted a Complaint Form to the Scottish Legal Complaints Commission in June 2011. The SLCC considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Complainers to investigate.
 - 6.3 By letter dated 25 August 2011 the Complainers wrote to the Respondent intimating their obligation under the 2007 Act Section 47(1) to investigate complaints relating to the conduct of enrolled Solicitors. The letter advised that the complaint was based on consideration of the information provided by the Secondary Complainer and set out in an attached Summary of complaint.

6.4 In 2003 Mr and Mrs Stewart Allan instructed the Respondent in their purchase of the property Duncanin House, Peninvar, Campbeltown, PA28 6QP. They took entry in November 2003. The conveyancing was handled by a paralegal employed by the Respondent from 2002 until 26 February 2007. The description of the property was problematic. A new Disposition was prepared in 2005. On 23 December 2005 the Respondent's firm notified the clients that the signed Disposition was to be sent to the Inland Revenue for stamping and then sent to the Registers for registration. The clients provided funds for the fees and outlays in 2003. The Inland Revenue wrote on 12 January 2006. They advised that they could not process the transaction. They needed to know if the property was held in trust. The paralegal obtained that information and returned the form to the Inland Revenue on 20 February 2006. Thereafter the SDLT application was lost, the Stamp Duty was not paid and the deed was not recorded. Mr and Mrs Stewart Allan received no further information. They telephoned the firm on numerous occasions each year from 2006 to 2011. They spoke to Mrs A who did not keep file notes or discuss the matter with the Respondent. The Respondent was the designated cashroom partner. The transaction was concluded when passed to another firm in 2011 on intimation of the complaint.

THE LAW SOCIETY OF SCOTLAND – QUALITY ASSURANCE.

6.5 A Quality Assurance Peer Review of the Respondent's firm in terms of Rule 14(1) of the Solicitors (Scotland) (Civil Legal Aid and Advice and Assistance) Practice Rules 2003 took place between 17 and 21 August 2009. The Respondent was the Compliance Partner. The Review was considered by the Quality Assurance Committee on 3 September 2009. The Quality Assurance Administrator (QAA) wrote to the Respondent on 9

September 2009. She indicated that the firm had passed its routine review but highlighted general areas of concern. The letter required acknowledgement of the issues raised. The Respondent did not respond.

- 6.6 The QAA wrote reminders to the Respondent on 14 October and 3 November 2009. He did not reply to either. The Quality Assurance Committee allowed him 14 days to respond, failing which a conduct complaint would be considered. The decision was intimated to him on 19 January 2010. He did not reply. The Complainers submitted a Complaint Form to the Scottish Legal Complaints Commission in March 2010. The SLCC considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Complainers to investigate. The formal complaint was intimated to the Respondent on 28 April 2010. He did not reply. A Notice in terms of Section 15 of the Solicitors (Scotland) Act 1980 was intimated to him on 17 June 2010 with a Notice in terms of Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007. The second part of the Section 15 Notice was intimated to him on 7 October 2010. There was no response to any of these letters.
- 6.7 The Complaints Investigator contacted the Respondent's Council member and asked for assistance. The Council member called the Respondent who was unavailable. He wrote a personal letter to the Respondent but received no response. The failure to respond to Complainer's correspondence was intimated to the Respondent as an additional complaint on 31 January 2011. He did not reply.

THE LAW SOCIETY OF SCOTLAND – FINANCIAL COMPLIANCE

- 6.8 A Financial Compliance Inspection of the Respondent's firm took place on 26 August 2009. On 15 September 2009 the Head of Financial Compliance (HFC) wrote to the Respondent about a deficit on the client account as at 31 June 2009 amongst other things and required a response within 14 days. He did not respond. Follow up letters were sent to him on 5 and 22 October 2009. A response was required by 9 November 2009. He did not reply. A follow up letter was sent to him on 20 November 2009. The outstanding matters were set out in detail and a response was required by 27 November 2009. He did not reply. On 5 January 2010 another detailed letter was sent to him and a response required within 14 days failing which the matter would be placed on the Agenda of Guarantee Fund Committee in relation to the breaches of the Accounts Rules and in relation to his failure to respond timeously. He did not reply. A telephone call was made to his wife, his employee, on 15 February 2010 emphasising the seriousness of the situation. She gave various reasons for the delay. It was explained to her that the Guarantee Fund Committee would be provided with a Report for consideration if the Respondent did not reply. There was no response from him.
- 6.9 On 8 April 2010 a further letter was sent to Respondent in connection with the letters of 15 September 2009, 5 October 2009, 22 October 2009 and 20 November 2009. His failure to reply to the matters raised at the inspection was highlighted. The letter made it clear that failure to reply to Law Society correspondence was a serious matter and required urgent attention. It stated that the HFC was reluctant to escalate matters further but with no submissions at all there was little choice. The letter indicated that a member of the Financial Compliance Team would attend at the offices of Oag & Co on 14 April 2010 and

that the Respondent should have all the required information to hand. The letter concluded with the warning that if matters could not be resolved at the visit the case would be placed on the Agenda of the Guarantee Fund Committee for consideration.

- 6.10 At the visit on 14 April 2010 it was noted that Mrs A looked after the books and records of the firm. She had assistance from the firm's accountants to deal with the matters raised at the inspection. A re-inspection was recommended for 3 months from the follow-up visit as there was a continued failure to deal with the majority of outstanding matters since the August 2009 inspection. A letter dated 14 May 2010 was sent to the Respondent setting out what was found during the inspection visit and asking for responses and updates to the matter set out in the letter failing which the matter would be placed on the Guarantee Fund Committee for further consideration.
- 6.11 A Financial Compliance Review took place at the Respondent's firm on 19 July 2010. On 20 July 2010 the HFC wrote to the Respondent following the inspection and enclosed an Executive Summary which set out the Rules not complied with and the action needed. A full response was required from him to all of the points within 14 days of the date of that letter. He did not reply and on 20 September 2010 he was sent a reminder and allowed 7 days to respond. It was made clear that if there was no response the matter would be referred to the Guarantee Fund Committee with a recommendation that the failure to respond be referred to the Scottish Legal Complaints Commission.
- 6.12 The Complainers submitted a Complaint Form to the Scottish Legal Complaints Commission in July 2011. The SLCC considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Complainers to investigate.

THE LAW SOCIETY OF SCOTLAND – STAFF
SUPERVISION

- 6.13 The Respondent was ill from the end of December 2009 to November 2010. He was well enough during this time to appear in Court and to return to the office to carry out dictation work. He had sole responsibility for the management of his firm and the supervision of his staff. The first letter after the Quality Assurance Review was sent on 9 September 2009 thereafter further letters were sent in October and November 2009 prior to his illness. None were responded to. The Respondent's wife was managing the office and stated that the correspondence from the Quality Assurance Committee was left on the Respondent's desk.
- 6.14 The paralegal employed by the Respondent dealt with conveyancing transactions. She failed to complete the conveyancing instructed by Mr and Mrs Stewart Allan and closed the file in about 2006. The Respondent did not realise that this was the case and did not rectify the situation. The Respondent was the sole partner in the firm and had a duty to supervise the paralegal's work. His wife was employed as the receptionist and was responsible for taking numerous telephone calls over the years from 26 February 2007 to 2010 from the clients prior to which the calls were taken by the paralegal. She retrieved the file and noted that the transaction was incomplete but she did not know how to resolve the problem and did not note the calls or advise the Respondent of the true situation. She was not adequately trained to realise the possible consequences of her actions. The Respondent had a duty to supervise his staff to ensure that adequate staff training and working practices were in place and that the best interests of his clients were met. He had insufficient systems in place to ensure that files were reviewed

before closure, titles timeously registered and that problems were brought to his attention.

6.15 The correspondence to the Respondent from the Financial Compliance Department began on 15 September 2009 and followed an Inspection of his firm of which he was aware. There were letters sent to him on 5 October, 22 October, 20 November and 27 November, all before he became ill. An experienced solicitor would expect a follow up letter from the Financial Compliance Department after an inspection. Additional visits took place in April and July 2010. Further correspondence was sent to the Respondent following those. His wife was also doing the firm bookwork and was struggling. She was not sure what she was doing but did not want to discuss this with the Respondent and did not show him the letters. There was no system in place to ensure that she was coping with Financial Compliance requirements and to ensure that she was unable to hide correspondence. She was not adequately trained to realise the possible consequences of her actions even when this was drawn to her attention. She did not pass on all of the letters sent to the Respondent in the Complaints process. The Respondent did not ensure that proper systems were in place to supervise his staff and ensure that calls and letters were logged and passed to the relevant person.

6.16 The Complainers submitted a Complaint Form to the Scottish Legal Complaints Commission in May 2012. The SLCC considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Complainers to investigate.

6.17 The Complainers compiled Investigation Reports, copies of which were intimated to the Respondent.

- 6.18 The Complainers provided Supplementary Reports to the Respondent and the Respondent's Solicitor and intimated that the Complaints would be considered by the Professional Conduct Committee on 24 May 2012. The further issue of staff supervision raised by the Complainers was intimated to him, a Report prepared and he was advised that the Committee would consider it on 10 January 2013.
- 6.19 On 24 May 2012 and 10 January 2013 the Complainers' Professional Conduct Committee considered the matters and determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor, that they appeared to be capable of being proved beyond reasonable doubt and could thus amount to professional misconduct. It further determined that the Respondent should be prosecuted before the Scottish Solicitors Discipline Tribunal.
- 6.20 The Secondary Complainer suffered inconvenience and distress as a direct result of the Respondent's failure to register a valid Disposition in favour of Mr and Mrs Stewart Allan.
7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
- 7.1 His failure between 20 February 2006 and 26 July 2011 to register a valid disposition of the subjects Duncanin House, Peninver, Campbeltown, Argyll in favour of his clients Mr. and Mrs. Stewart Allan whereby their ownership of the property was placed in jeopardy;
- 7.2 His failure between 9 September 2009 and 26 July 2011, to reply to the reasonable enquiries of the Complainers following upon

the Quality Assurance Review of August 2009 or to comply with Notices served upon him;

- 7.3 His failure between 15 September 2009 and 26 July 2011 to reply to the reasonable enquiries of the Complainers following the Financial Compliance Inspections of 26 August 2009, 14 April and 19 July 2010; and
- 7.4 His repeated failure between December 2005 and 26 July 2011 to adequately supervise his employees to ensure that there was an effective system in force for their training and supervision and for the protection of clients whereby the clients Mr. and Mrs. Stewart Allan were seriously inconvenienced and his ability to co-operate with Quality Assurance Review and Financial Compliance Inspections and the Complaints Investigation process was seriously impaired.

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 8 March 2013 at the instance of the Council of the Law Society of Scotland against Alasdair Bremner Oag, Solicitor, Oag & Co Solicitors, 77 Buccleuch Street, Dumfries; Find the Respondent guilty of Professional Misconduct in respect of his failure between 20 February 2006 and 26 July 2011 to register a valid Disposition in respect of a client's property whereby the ownership of the property was placed in jeopardy, his failure between September 2009 and July 2011 to reply to reasonable enquiries of the Law Society following upon the Quality Assurance Review of August 2009 and failure to comply with the notices served upon him, his failure between September 2009 and July 2011 to reply to the reasonable enquiries of the Law Society following Financial Compliance Inspections of August 2009 and April and July 2010 and his repeated failure between

December 2005 and July 2011 to adequately supervise his employees to ensure that there was an effective system in force for their training and supervision and for the protection of clients whereby a client was seriously inconvenienced and his ability to co-operate with the Quality Assurance Review and Financial Compliance Inspections and the Complaints Investigation process of the Law Society was seriously impaired; 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

Edinburgh 13 August 2013. The Tribunal having considered the Complaint dated 8 March 2013 at the instance of the Council of the Law Society of Scotland against Alasdair Bremner Oag, Solicitor, Oag & Co Solicitors, 77 Buccleuch Street, Dumfries and having considered the Secondary Complainer's claim for compensation; Ordain the Respondent to make payment to the Secondary Complainer, Stewart Allan, Duncanin House, Peninver, Campbeltown, Argyll in the sum of £1,000 in respect of inconvenience and stress resulting from the misconduct and that within 28 days of the date on which this Interlocutor becomes final with interest at the rate of 8% per annum from the due date until paid.

(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

The Respondent pled guilty to all aspects of the Complaint. No evidence was accordingly required.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston advised that she had agreed to make points on behalf of the Secondary Complainer who was unwell, aged 82 years and unable to travel to the Tribunal. Ms Johnston explained that it took a long time for the Secondary Complainer to lose faith in the Respondent after years of trying to find out what was happening with his conveyancing. The Secondary Complainer was left with the impression that the Respondent was dabbling in the conveyancing and was concentrating on his criminal work. The Respondent's wife gave no help to the Secondary Complainer who was under the impression that she was lying to him.

Ms Johnston referred to the letter of instruction to the Respondent from the Secondary Complainer dated 13 December 2010 being Production 1 in her Inventory of Productions. The fees and outlays paid in respect of the conveyancing were £3,744.25. The conveyancing transaction was dealt with by a paralegal. The SDLT form was sent on 23 December 2005 with the Disposition for stamping. It was returned in January 2006. There was a balance of £308 on the ledger held from December 2005 until December 2010, a period of five years. A cheque for this amount was sent to Mr and Mrs Allan in August 2011. Production 7 was the explanation from the Respondent. Ms Johnston submitted that the Respondent should have been aware of the problems in his office and had a duty to supervise. He should have been alerted to the fact that there was a problem by the credit balance on the ledger. Ms Johnston submitted that distress and inconvenience had been caused to the Secondary Complainer who was ill at the time and the uncertainty caused by a lack of a recorded title left him in limbo. Ms Johnston referred to production 2 being the Complaint form from the Secondary Complainer which emphasised the anxiety and frustration experienced by him and his wife and which indicated that they were looking for £500 by way of compensation. Ms Johnston also referred to the letter from the Secondary Complainer dated 1 March 2013 which claimed the sum of

£1,500 by way of compensation. Ms Johnston stated that she indicated to the Secondary Complainer that this seemed a little high but that he explained that he felt this was reasonable to cover the anxiety and frustration caused to him when he was ill. The Secondary Complainer had paid for the conveyancing in November 2003 but the title was not registered until 2011. The Secondary Complainer was anxious that if he had to sell he would not be able to and he was worried about his wife being left in a mess if he died. Ms Johnston stated that in the meantime the seller had died and his widow did not initially respond and the Secondary Complainer had to arrange to see the widow and get her to sign the document. On 27 November 2003 the full sum for fees and outlays was paid and the Respondent had had this money and interest on it. The Reporter had recommended compensation as £600. Ms Johnston explained that the Commission had not yet considered the service element and accordingly had not awarded any compensation as yet. Ms Johnston confirmed that the Respondent had paid Ms B for concluding the conveyancing and having the title recorded.

In connection with the three other issues, Ms Johnston pointed out that correspondence was sent to the Respondent in August 2009 prior to his illness in December 2009 but no response was received. There was a deficit of £335.70 and a number of issues were drawn to the Respondent's attention. These did not require urgent action and it was accepted that the Respondent was ill but Ms Johnston pointed out that he was still going to court at that time. The Respondent did not deal with the correspondence even prior and post his illness. His wife did not pass the correspondence to him and there was inadequate supervision. Ms Johnston submitted that overall *in cumulo* the circumstances amounted to professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath pointed out that the Respondent had been in the profession since 1973 and was a senior member of the Dumfries Bar. He set up his own practice years ago and retired one year ago. In August 2012 he was sequestered and Mr Macreath confirmed that the Respondent would not seek a discharge. The Respondent's only income at present was his pension and his wife's earnings as a care assistant. They live in rented accommodation. Mr Macreath advised that the Respondent had previously been a part time Sheriff but had demitted office in January 2012 after five

years. The Respondent had not renewed his practising certificate in November 2012 although he remained on the Roll.

Mr Macreath referred the Tribunal to the various references lodged which confirmed that the Respondent was held in high esteem by his colleagues. Between February 2006 and July 2011 the Respondent failed to record a valid Disposition. Mr Macreath however pointed out that it was the paralegal who did the work and then left the firm and the Respondent was unaware that there was a problem as he did not check the credit balance. Between September 2009 and July 2011 he failed to respond to the reasonable enquiries from the Quality Assurance Review Department of the Law Society but there were no real issues of concern. He also failed to respond to the Financial Compliance Department over a period of two years but Mr Macreath pointed out that there were no financial failures and that the Respondent's wife had hidden the mail from him.

Mr Macreath explained that the failure to supervise the paralegal and the Respondent's wife was a matter picked up by the Law Society which led to a delay in the Complaint against the Respondent being finalised. It was only in January 2013 that the whole Complaint became clear. Mr Macreath pointed out that the drawn out procedure had caused distress to the Respondent. Mr Macreath explained that in connection with the conveyancing matter was not simple and a plan was necessary. In December 2005 the paralegal sent the Disposition for stamping but the Disposition was not returned and this was not picked up. The Respondent's wife did not tell the Respondent about the mail from the Law Society. Although the Respondent was in general practice, in later years he had been concentrating on court work. Mr Macreath pointed out that the Respondent was a first class criminal practitioner and submitted that he should be allowed to continue. He referred the Tribunal to the medical report in August 2011 from Doctor Taylor and explained that the Respondent only attended court because of his obligations to his clients but he did not have enough energy to continue with matters. The Respondent at that time believed that he had serious health problems and this affected his ability to function.

Mr Macreath referred the Tribunal to the Affidavit from the Respondent's wife who hid mail from the Respondent because he was unwell and she was trying to protect

him. The Respondent was not functioning properly at this time. Mr Macreath explained that when the problem with the Secondary Complainer's conveyance came to light, the Respondent got Ms B to sort matters out at no cost to the Secondary Complainer. Mr Macreath pointed out that the paralegal left in 2007 and did not tell the Respondent that the title had not been recorded and put the file in storage. Although the Respondent did not see the Doctor until December 2009 he was having problems prior to this. By the end of 2010 the Respondent's health had improved.

Mr Macreath stated that the Respondent would not seek another practising certificate and stated that there was no prospect of him being able to pay any financial penalty. Mr Macreath pointed out that the Respondent had given his life to the profession for the last 30 years and it would be draconian to strike him from the Roll. He invited the Tribunal to deal with the matter by way of a Censure. Mr Macreath stated that compensation of £600 was conceded but it could not be paid.

DECISION

The Tribunal was concerned by the Respondent's failure to respond to his professional body. Failure to do this hampers the Law Society in the performance of their statutory duty. The Tribunal however accept that in this case the Respondent's wife was hiding the correspondence from him to try and protect him at a time when he was not well. The Respondent however as a sole practitioner had a duty to adequately supervise his employees including his wife and had a duty to fulfil his professional obligations and ensure that there were adequate working practices in place to protect the best interests of his clients. The Tribunal found the most concerning aspect of the Respondent's conduct to be his failure to register a title for the Secondary Complainer between 2006 and 2011. Although it is accepted that it was the paralegal that carried out the work, the Respondent had overall responsibility for the transaction. The credit balance on the ledger should have alerted the Respondent to the fact that something was amiss.

The Tribunal considered that the delay of five years in having the Disposition in favour of the Secondary Complainer recorded was totally unacceptable. In this case the Secondary Complainer was ill and understandably had concerns about what would

happen if he died and there was no recorded title to the property. The Tribunal is satisfied that the Secondary Complainer has suffered distress and inconvenience as a direct consequence of the Respondent's misconduct. The Tribunal noted that the Secondary Complainer had originally requested £500 compensation and that the Reporter had considered £600 to be appropriate and that the Respondent conceded £600. In this case however the Tribunal considered, given the length of time and the fact that the Secondary Complainer had to go and see the widow of the seller to get a new deed signed, taken together with the Secondary Complainer's age and state of health, meant that compensation of £1,000 would be more appropriate. The Tribunal note the Respondent's financial position and his sequestration but still consider it appropriate to make an award of compensation.

The Tribunal would also have considered imposing a significant fine in this case if the Respondent had not been sequestrated. In the whole circumstances in light of the undertaking given on behalf of the Respondent by his agent that he would not be renewing his practising certificate, the Tribunal considered that a Censure in addition to the Compensation Order would be sufficient in this particular case. The Tribunal made the usual order with regard to publicity and expenses.

Malcolm McPherson
Vice Chairman