

**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**

**DESMOND WILLIAM DONOGHUE, 1F2, 408  
Morningside Road, Edinburgh**

**Respondent**

1. A Complaint dated 5 September 2022 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Desmond William Donoghue, 1F2, 408 Morningside Road, Edinburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Mr Trevor Geraghty, 2 The Stables, Stronachlachar, Stirling.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent at this time.
4. In terms of its Rules, the Tribunal set the matter down for a virtual procedural hearing on 7 November 2022 and notice thereof was duly served upon the Respondent.
5. At the virtual procedural hearing on 7 November 2022, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present by telephone and represented himself. The Tribunal set the matter down for a hearing in

person on 2 December 2022. Notice thereof was duly served upon the Respondent. Answers were lodged for the Respondent.

6. At the hearing on 2 December 2022, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented himself. A joint minute of admissions was lodged. Parties made submissions.
7. Having given careful consideration to the submissions and documents before it, the Tribunal found the following facts established:-

7.1 The Respondent is Desmond William Donoghue. He was born on 12 August 1957. He was enrolled and admitted as a solicitor on 21 November 1991. He was employed by Glenrothes Development Corporation from 1 November 1991 until 29 March 1996, McQuittys from 23 April 1996 until 14 February 1997, Falkirk Council from 5 May 1997 until 9 April 1998, Smith Grant from 15 February 1999 until 31 August 2004 (becoming partner on 1 September 2001), and The PSM Law Group from 20 June 2005 until 27 February 2006. He was a partner of Ide Legal from 8 June 2006 until 31 October 2019. Amongst other roles he was the Cashroom Partner at Ide Legal from 7 February 2007 until 31 October 2019. The Respondent retired from practice on 31 October 2019.

7.2 On 01 July 2019 the Secondary Complainer instructed the Respondent to act for him in relation to the purchase of a property. The purchase settled on 01 August 2019. Following conclusion of the transaction the Respondent's firm's client account held funds pertaining to the Secondary Complainer amounting to £12,100.00. These funds were which was due to Revenue Scotland in respect of Land and Buildings Transaction Tax (LBTT) pertaining to the purchase. The relevant return and funds required to be lodged with Revenue Scotland by 31 August 2019.

7.3 Prior to settlement, the Secondary Complainer transferred the full sum of LBTT due as well as other fees and outlays associated with the purchase to the Respondent's firms bank account. This transfer was made by the Secondary Complainer on 09 July 2019.

- 7.4 On 03 October 2019 the Secondary Complainer received a penalty notification from Revenue Scotland in respect of LBTT which had not been paid in relation to the purchase.
- 7.5 The Secondary Complainer attempted to contact the Respondent on multiple occasions via telephone and email from 03 October 2019, however, did not ever receive a response.
- 7.6 The Secondary Complainer received and paid penalty sums to Revenue Scotland in two amounts. The first for £645.00 and the second for £103.00.
- 7.7 The Secondary Complainer paid an additional £12,100.00 to Revenue Scotland directly to prevent further penalty charges from being levied against him in respect of the outstanding LBTT.
- 7.8 On 07 November 2019 the Secondary Complainer submitted his complaint to the SLCC in respect of the Respondent's conduct.
- 7.9 The £12,100 which the Secondary Complainer paid to the Respondent on 09 July 2019 was returned to him by the Respondent's firm, IDE legal on 28 November 2019.
- 7.10 On 12 December 2019 a Judicial Factor was appointed *ad interim* to the firm. This appointment was later made permanent on 30 June 2020.
- 7.11 On 24 December 2019, the Secondary Complainer received a letter dated 23 December 2019 from the Judicial Factor's office to advise that they had been appointed *ad interim* to the firm; that the firm had ceased to trade; and that the solicitor was no longer practising. The letter further advised the Secondary Complainer that in relation to his recent house purchase it appeared that his title had not been registered correctly. The letter encouraged the Secondary Complainer to instruct a new solicitor to complete the remedial work required in respect of his registration of title and Standard Security in favour of his lender. Finally, he was advised that the matter was to be referred to the firm's insurers and, if they accepted the claim, then they would cover the reasonable costs of his new solicitor's fees in dealing with the remedial work.

- 7.12 On 24 December 2019, the Secondary Complainer instructed his new agents to carry out all remedial work required in respect of registration of the title. He mandated the judicial factor to transfer all necessary files to his new agents. On 6 September 2021, a partner at the Secondary Complainer's new agents confirmed they had received from the Judicial Factor the principal Disposition and Standard Security however still required to carry out further remedial work which included drafting a fresh application form to register the disposition, instructing a fresh legal report and carrying out an examination of the title amongst other tasks. The requirement to obtain papers from the Judicial Factor and undertake additional tasks some time after the initial instruction was given to Respondent significantly delayed the purchase of the property which was eventually completed by the Secondary Complainer's new agents after correspondence with the Judicial Factor.
- 7.13 On 6 April 2020, the Law Society of Scotland e-mailed a letter to the Respondent intimating the complaint and requesting his response within 21 days, the Respondent failed to respond.
- 7.14 On 9 October 2020, the Law Society of Scotland e-mailed the Respondent again to advise that if they did not hear from him by 12 October 2020 then they would issue statutory notices.
- 7.15 On 13 October 2020, the Law Society of Scotland wrote to the Respondent at his home address by letter giving him notice in terms of Sections 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 and Section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007. The letters were sent via recorded delivery and were signed for at 11:35 on 14 October 2020 by "Donoghue".
- 7.16 On 13 October 2020, the Society also e-mailed copies of the formal notices sent that day to the Respondent.
- 7.17 On 14 January 2021, the Respondent was advised by e-mail of an additional complaint arising from his failure to respond to correspondence.

7.18 On 24 March 2021, the SLCC wrote to the Respondent (care of the Law Society of Scotland who held details of his home address) to intimate the additional issue arising from his failure to respond to correspondence.

7.19 On 21 April 2021, the Respondent replied by letter to the SLCC with the following:

*"I refer to your letter dated 24<sup>th</sup> March 2021.*

*"As you will be aware, my files, accounts, my LawPro computer and numerous private and personal items are currently with the factor at the Law Society.*

*"As I recall, one evening I posted (LawPro) an LBTT payment on Mr. Geraghty's file together with other postings. Unfortunately, when I returned to my other desk, I forgot to send the funds to Revenue Scotland by online transfer which had been my intention.*

*"Mr. Geraghty duly received a letter from Revenue Scotland requesting payment and seems to have paid the required amount.*

*"Later, following correspondence with Mr. Geraghty, I apologised for my oversight and refunded the money he had paid to Revenue Scotland from the funds which were of course still in his account.*

*"However, this is only my recollection.*

*"I wrote to the factor last August asking what I need to do to resolve matters as the situation is having an increasingly adverse effect on my physical and mental health. However, I have never received a reply.*

*"I will revert to you if/when my records are returned to me."*

7.20 On 8 June 2021, the additional issue was intimated by the Law Society of Scotland to the Respondent by e-mail allowing him 21 days to respond but he failed to reply.

7.21 On 6 September 2021, the Judicial Factor's office confirmed that the balance on the client account had been settled at the date of the Judicial Factor's appointment and that as part of the winding up of the case they would be meeting the complainer's additional costs to have matters rectified on his behalf.

7.22 On 7 September 2021, the Law Society of Scotland's Registrar's office confirmed that the firm had closed on 31 October 2019 as the solicitor had not renewed his practising certificate and that he has not practised since then although his name remains on the Roll of Solicitors.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect that he:-

8.1 In breach of his duties as cashroom manager, failed to disperse timeously a client balance held by his firm even once there was no longer any reason to retain it, and failed to properly register a title and standard security;

8.2 Failed to respond to, and co-operate with, the Council in respect of its investigation and ignored correspondence and statutory notices from the Complainers;

8.3 Failed to pay sums due to Revenue Scotland despite having the funds available in breach of his client's trust and contrary to the Secondary Complainer's best interests, failed to communicate effectively with him, and failed to adequately and completely conclude the work required within a reasonable time or exercise the level of skill appropriate to the matter.

9. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 2 December 2022. The Tribunal having considered the Complaint dated 5 September 2022 at the instance of the Council of the Law Society of Scotland against Desmond William Donoghue, 1F2, 408 Morningside Road, Edinburgh; Find the Respondent guilty of professional misconduct in respect that he (1) In breach of his duties as cashroom manager, failed to disperse timeously a client balance held by his firm even once there was no longer any reason to retain it, and failed to properly register a title and standard security, (2) Failed to respond to, and co-operate with, the Council in respect of

its investigation and ignored correspondence and statutory notices from the Complainers and (3) Failed to pay sums due to Revenue Scotland despite having the funds available in breach of his client's trust and contrary to the Secondary Complainer's best interests, failed to communicate effectively with him, and failed to adequately and completely conclude the work required within a reasonable time or exercise the level of skill appropriate to the matter; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of two 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 Complainer 28 days from the date of intimation of these findings to lodge a claim for compensation if so advised.

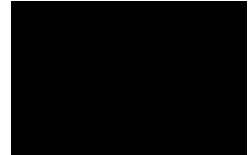
**(signed)**

**Kenneth Paterson**

**Vice Chair**

10. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on **12 JANUARY 2023**.

**IN THE NAME OF THE TRIBUNAL**



**Kenneth Paterson**

**Vice Chair**



**NOTE**

At the hearing on 2 December 2022, the Tribunal had before it the Complaint, Answers and a Joint Minute. Parties made submissions.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal indicated that the Complainers' case was based on the admissions made in the joint minute. All facts in the Complaint were admitted and the Tribunal could find them established beyond reasonable doubt. With reference to specific paragraphs in the Complaint, the Fiscal explained that the Secondary Complainer transferred the full sum for his purchase and a sum to cover the LBTT to the Respondent on 9 July 2019. The funds were required by Revenue Scotland by 31 August 2019. On 3 October 2019, the Secondary Complainer received a penalty notification. He paid the penalty and the LBTT to Revenue Scotland himself. In his Answers, the Respondent says this was an oversight. The Complainers say it was a breach of Rules B6.8.1 and B6.13.1.

The Fiscal said that the Respondent failed to register the title and the standard security. The Judicial Factor discovered this in December 2019. The Secondary Complainer had to instruct new agents to do remedial work. The Respondent breached Rules B1.2, B1.4.1 and B1.4.3. The Fiscal said that taking the Respondent's money and not carrying out the work properly was a breach of trust, although he did not say that the Respondent was dishonest or lacked integrity.

The Respondent also failed to cooperate with the Law Society. He did not respond to correspondence or statutory notices. This was a breach of Rule B1.16. This was unfortunate because the Fiscal noted that the Respondent had always been diligent in his dealings with him.

The Secondary Complainer tried to contact the Respondent several times but got no response. This was a breach of Rule B1.9.1. The Respondent had not used appropriate skill. This was in breach of Rule B1.10.

The Fiscal reminded the Tribunal of the Sharp test and invited them to find professional misconduct established.

## **SUBMISSIONS FOR THE RESPONDENT**

The Respondent indicated that he would not make any comment at this time but would welcome an opportunity to make submissions in mitigation later.

## **DECISION ON PROFESSIONAL MISCONDUCT**

The Tribunal was satisfied beyond reasonable doubt based on the admissions in the Joint Minute that the Respondent had acted in the manner set out in its findings in fact. Following the conclusion of a transaction, the Respondent held funds for the Secondary Complainer. A sum was due to Revenue Scotland for LBTT. The Respondent failed to pay Revenue Scotland. He was trusted with money to pay LBTT but did not make the payment. He was both the designated cashroom manager and the person who dealt with the transaction. Adherence to proper cashroom procedures would have alerted the Respondent to the position. The Secondary Complainer had to pay a penalty and the LBTT himself and did not receive his money back from the Respondent for some months. The Respondent failed to properly register title and a standard security. He failed to cooperate with the Law Society. This impedes the Council in its statutory obligation to investigate complaints. He did not communicate effectively with the Secondary Complainer who repeatedly tried to contact him about the problem. The Respondent did not adequately and completely conclude the work within a reasonable time or exercise the level of skill appropriate to the matter.

The Respondent had breached several rules. Solicitors must regularly reconcile client bank statements (Rules B6.8 and B6.9). Client balances should be returned promptly to the client as soon as there is no longer any reason to retain that money (Rule B6.11). The cashroom manager must supervise the staff and systems employed by the practice unit to implement the provisions of Rule 6 (Rule B6.13). Solicitors must be trustworthy (Rule B1.2). They must act in the best interests of their clients (Rule B1.4). They must communicate effectively (Rule B1.4). They should only act in matters where they are competent to do so and accept instructions where the matter can be carried out adequately and completely within a reasonable time, exercising the appropriate level of skill (Rule B1.10). They must cooperate with the Law Society (Rule B1.16).

Although the Respondent admitted professional misconduct, it was for the Tribunal to consider whether the admitted conduct met the test for professional misconduct contained in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313. According to that case,

*“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.”*

Failure to properly register the title and security leaves the client and lender at risk. Although the failure to pay the LBTT on time could have been an oversight, the Respondent then failed to respond to the Secondary Complainer’s repeated attempts to contact him from 3 October 2019. This was completely unsatisfactory. If a mistake had been made, it could and should have been rectified immediately once it was drawn to the Respondent’s attention. The length of time it took to resolve, and the consequences for the Secondary Complainer were serious. Having regard to all the circumstances, the Tribunal was satisfied that the Respondent’s conduct *in cumulo* represented a serious and reprehensible departure from the standards of competent and reputable solicitors. Accordingly, he was guilty of professional misconduct.

The Fiscal provided a copy of the Respondent’s record card which disclosed two previous findings of misconduct.

## **SUBMISSIONS IN MITIGATION**

The Respondent explained that at the time of the offence, he was under huge pressure. His landlord was chasing him from his office.

The Secondary Complainer was a friend of a friend. The Respondent had acted for him before. He remembered receiving an email or a text from him later thanking him for the return of his money and apologising for being grumpy. However, as he no longer has access to his work emails, he could not produce this to the Tribunal.

The Respondent said he did not understand why this matter could not have been conjoined with the last Complaint. He said there was an element of unfairness that a complaint which started in March 2020 was still hanging over him in December 2022. There was an aspect of delay.

The Respondent said he should have picked up the unpaid LBTT. He explained that he had made the postings on LawPro but when he went to his other desk he completely forgot to do the return to Revenue Scotland. It was late at night. He was tired and under pressure.

The Respondent does not know why the title was not registered. He suspects the Keeper bounced the application as his firm was being wound up or just after that. He cannot say anything about that.

The Respondent explained that he has had a very difficult time in the last three years. He has had to borrow from friends. The Judicial Factor has taken everything from him. He will have to sell his house to pay his debts. He is 65 years old. He said he did not knowingly ignore the Law Society. However, at this time, he was dealing with a number of more pressing practical issues. He had no access to money. He was borrowing for food. His gas was cut off. He may have pushed things to one side as he tried to survive. He is living with a great deal of guilt and regret. He has no intention of returning to the profession. He has no private pension and is not yet eligible for an old age pension. He is receiving some help through his GP.

The Fiscal moved for expenses and made no comment regarding publicity. The Secondary Complainer has intimated that he does want to claim compensation.

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

The Tribunal noted the previous analogous finding of professional misconduct. The present conduct could be a danger to the public and was likely to damage the reputation of the profession. The Tribunal took into account the Respondent's current state of health. It noted that he had cooperated with the Fiscal and had entered into a Joint Minute. The Respondent had attended in person and made an explanation to the Tribunal for his conduct.

In all the circumstances, it was appropriate to censure the Respondent. Although the Respondent did not intend to return to the profession, it was appropriate to provide a level of protection to the public by restricting his practising certificate so that he could only work under supervision. This gives the Respondent the opportunity of returning to work as a solicitor and earning an income in due course, while at the same time protecting his clients. The restriction will last for an aggregate period of two years.

The Tribunal found the Respondent liable in the expenses of the Complainers and the Tribunal on the usual basis. The Tribunal's decision will be given publicity. The Respondent and the Secondary Complainer will both be named. The Secondary Complainer will have 28 days from the date of intimation of these findings to lodge a claim for compensation with the Tribunal Office.



**Kenneth Paterson**  
**Vice Chair**