

**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

**GRAEME C MILLER, McGregor MacLeod
Ltd., 3 Donaldson Crescent, Kirkintilloch,
Glasgow**

Respondent

1. A Complaint dated 26 September 2022 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Graeme C Miller, McGregor MacLeod Ltd., 3 Donaldson Crescent, Kirkintilloch, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Stephen Geddes, 3 Highland Avenue, Blantyre, Glasgow.
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 6 February 2023 and notice thereof was duly served on the Respondent.
5. An amended Complaint dated 6 January 2023 was lodged with the Tribunal. A Joint Minute was lodged with the Tribunal whereby the Respondent admitted the averments of fact, duty and misconduct in the amended Complaint.

6. At the virtual hearing on 6 February 2023, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow.
7. Having given careful consideration to the terms of the amended Complaint and Joint Minute, and parties' submissions, the Tribunal found the following facts established:-
 - 7.1 The Respondent is Graeme C Miller of McGregor MacLeod Ltd, 3 Donaldson Crescent, Kirkintilloch, Glasgow, Lanarkshire. He was born on 04 February 1963. He was enrolled and admitted as a solicitor on 01 October 1996. He has been employed with McGregor MacLeod Ltd since 01 May 2016. He has been the firm's client relations partner, cash room partner and Director since the date of his joining. The Respondent currently holds a practising certificate.
 - 7.2 The Secondary Complainer submitted a complaint to the Respondent on 25 January 2021. At that time the Respondent was the client relations partner of McGregor MacLeod Ltd ("the firm"). The complaint related to events surrounding an instruction given by the Secondary Complainer on 15 September 2020, to the Respondent, to act on his behalf in relation to the purchase of a buy to let property. A complaint form relating to the same purchase was sent to the Scottish Legal Complaints Commission ("the SLCC") in February 2021.
 - 7.3 The Secondary Complainer stated that when he informed the Respondent of his intention to submit a formal complaint to the SLCC, he was advised by him to read the conditions detailed within the firm's Terms of Business letter which the Secondary Complainer had received from the firm upon his instruction of their services. The Secondary Complainer observed that within Section 30 – 'SLCC Matters', the firm had stipulated that clients would incur a financial penalty for lodging a formal complaint about the firm to the SLCC unless specific conditions were met and even then, a significant financial penalty could still be imposed.
 - 7.4 Section 30 of the firm's Terms of Business was as follows:

Section 30. SLCC Matters

If you are unhappy with any part of your transaction, it is a condition of these Terms and Conditions of business that before going to the SLCC or The Law Society you must first raise this matter with our client relations partner Graeme Miller, by email to graemiller@mcgregormacleod.co.uk. This email should clearly state that you are considering a complaint to the SLCC. Should you breach (sic) this term, and fail to send an email and fail to advise that you are intending to lodge a complaint with the SLCC we shall charge you £500 + Vat as a penalty for breaching your obligations to the Firm, and causing additional work for us in dealing with the SLCC.

Should you thereafter still be unsatisfied with the outcome of your complaint it is your lawful right to be able to raise matters with the SLCC in Edinburgh.

Vexations (sic) or inaccurate or untruthful or exaggerated or unfounded complaints cost the Firm a great deal of money and time in defending such complaints.

With all complaints we shall co-operate with the SLCC to resolve matters as soon as possible, however should to (the) SLCC determine that we were not at fault at all, or any head of your claim is not accepted for investigation by the SLCC or you drop any head of claim, we shall charge you a levy for dealing with each head of complaint which you submitted to the SLCC which is not upheld, not accepted for investigation, any head of complaint which you withdraw.

The levy charged by the Firm at the present moment is £2500 (Two Thousand Five Hundred Pounds) per head of complaint, not accepted, not upheld or withdrawn."

7.5 The Respondent advised the SLCC that upon reading the complaint received in January 2021, he considered that the Secondary Complainer had raised the complaint because the firm decided to withdraw from acting prior to completion of the purchase of the property. The Respondent regarded the complaint as vexatious and as retribution for withdrawing from acting, which he did on 22 December 2020 with the Secondary Complainer instructing new agents that same day. The transaction relating to the property settled on 18 January 2021.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect that he failed to act with integrity in that:

- 8.1 The Firm's Terms of Business stated that prior to any complaint being made to the SLCC or the Law Society, the matter must be raised with the Firm's client relations manager and that failure to comply would result in the Firm charging £500 + VAT;
- 8.2 The Firm's Terms of Business stated that for any complaint made to the SLCC which was not upheld or not accepted for investigation by the SLCC, the Firm would charge a levy of £2,500 per head of complaint.
9. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 6 February 2023. The Tribunal having considered the Complaint as amended dated 6 January 2023 at the instance of the Council of the Law Society of Scotland against Graeme C Miller, McGregor MacLeod Ltd., 3 Donaldson Crescent, Kirkintilloch, Glasgow, Stirling; Find the Respondent guilty of professional misconduct in respect that he failed to act with integrity in that (a) The Firm's Terms of Business stated that prior to any complaint being made to the SLCC or the Law Society, the matter must be raised with the Firm's client relations manager and that failure to comply would result in the Firm charging £500 + VAT; and (b) The Firm's Terms of Business stated that for any complaint made to the SLCC which was not upheld or not accepted for investigation by the SLCC, the Firm would charge a levy of £2,500 per head of complaint; Censure the Respondent; Fine the Respondent in the sum of £1,000 to be forfeit to His Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and the Secondary Complainer but need not identify any other person; and Allow the Secondary Complainer 28 days from the date of initiation of these findings to lodge a written claim for compensation with the Tribunal Office, if so advised.

(signed)
Colin Bell
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 *27 FEBRUARY 2023*.

IN THE NAME OF THE TRIBUNAL



Colin Bell
Chair

NOTE

At the hearing on 6 February 2023, the Tribunal had before it the revised Complaint dated 6 January 2023 and the Joint Minute of Admissions.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal explained that the Secondary Complainer had instructed the Respondent regarding a conveyancing transaction. The Respondent withdrew from acting and the transaction later settled. When the Secondary Complainer indicated he was going to make a complaint to the SLCC, the Respondent advised him to read the Terms of Business which stipulated that clients would incur a financial penalty for lodging a complaint unless certain conditions were met. The Fiscal referred the Tribunal to Section 30 of the Terms of Business.

The Fiscal submitted that the Respondent's behaviour was a serious and reprehensible departure from the standards of competent and reputable solicitors, and therefore constituted professional misconduct. Terms of Business are significant documents which form the contract between the client and the solicitor. A solicitor should not restrict, remove or impede a client's statutory right inappropriately. This was not a case of poor or ambiguous wording.

The Fiscal referred the Tribunal to Law Society v Thorley (2020) and said that there should be no restriction on a person's right to complain to a regulator. The Tribunal invited the Fiscal to make submissions on lack of integrity. The Fiscal referred the Tribunal to Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366. The profession is held to higher ethical standards. It was unethical to impede a client's rights in the way the Respondent had attempted in his Terms of Business. While solicitors do not have to be paragons of virtue, the Respondent's conduct lacked integrity and constituted professional misconduct. However, the Complainers made no allegation of dishonesty.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath referred the Tribunal to Rule B4. Solicitors ought not to contract out of their ethical obligations. They should not attempt to leverage their clients or unrepresented third parties. Any person has a right to make a complaint. The SLCC has a discretion about whether to proceed with cases. Sometimes they will ask complainers to speak to the solicitor first before making the complaint. The SLCC encourages resolution of complaints. However, there is still an unfettered right to complain.

Section 30 of the Respondent's Terms of Business should not be there. No one should be restricted in this way. The Tribunal made it clear in Law Society of Scotland v Anwar (2021) that the right to complain must be unfettered. Letters of engagement are vital. They can in some circumstances restrict liability, but the terms have to be fair.

DECISION

The Respondent and the Secondary Complainer had been in a solicitor client relationship, but the Respondent had withdrawn from acting. The Secondary Complainer wished to lodge a complaint about the Respondent with the SLCC. The Respondent's Terms of Business provided that any complaint must be raised first with him and failure to do so would result in a "penalty" of £500 + VAT. With reference to complaints made to the SLCC, the Terms of Business also said that there would be a levy of £2,500 charged for every head of complaint which was not upheld or not accepted for investigation by that body. When the Secondary Complainer indicated his intention to complain, the Respondent referred him to these terms. The Complainers alleged, and the Respondent admitted, that this conduct lacked integrity and amounted to professional misconduct.

Although the Respondent admitted professional misconduct, it remained for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. According to the definition of professional misconduct contained in 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."

The Tribunal noted the terms of Rule B4 and the wide latitude given to solicitors to draft their own Terms of Business. It also noted that according to Paterson and Ritchie's "Law, Practice and Conduct for Solicitors" at paragraph 4.05 that there is no Scottish authority on the question of whether it is ethically acceptable for a solicitor to include in a contract with a client a term which seeks to exclude the solicitor from any liability to the client. However, the authors also note at paragraph 4.04 that,

“If the expectation that the solicitor will abide by the ethical rules of the jurisdiction is matched by an expectation that the client may not ask him or her to infringe these rules, can the parties reduce the impact of this mutual restraint by agreeing to reduce the applicability of these rules? Public policy would seem to frown on such a possibility, otherwise it would open the door to corruption or undue pressure from one or other party.”

The Legal Profession and Legal Aid (Scotland) Act 2007 created a scheme whereby members of the public could make complaints about solicitors to the SLCC. There is a public interest in that scheme operating without impediment. The Respondent, in his terms of business, attempted to prevent or make it more difficult for clients to complain to the SLCC about him. The Tribunal understands the stress and difficulties caused by complaints. However, complaints should be dealt with fairly. Part of being a professional is submitting to a regulatory scheme and participating in a complaints process. The Respondent had attempted to contract out of his ethical duties. The Respondent’s Terms of Business acted as a deterrent and impediment to the proper raising of complaints and subverted clients’ rights under the 2007 Act.

The Tribunal considered carefully whether the Respondent’s actions called his integrity into question. It found this to be a difficult concept to apply to the circumstances of this case where no evidence had been led and parties presented an agreed position on misconduct which included an admission in relation to lack of integrity. No question of dishonesty arose. According to Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366, integrity is a broader concept than dishonesty. In professional codes of conduct, the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. Integrity connotes adherence to the ethical standards of one’s own profession and involves more than mere honesty. Having considered the examples of integrity given in the Wingate case, the Tribunal considered that the Respondent’s actions had lacked integrity because he had subordinated the interests of the clients to his own interests.

Therefore, taking account of all the circumstances of the case, the Tribunal found the Respondent guilty of professional misconduct.

SUBMISSIONS IN MITIGATION

Mr Macreath noted that the Respondent is 60 years old. He operates two businesses. He does conveyancing and private client work. A lot of his business comes from social media and the web. He

has a high rate of approval given the volume of transactions he undertakes. He carries out 800-1,000 residential conveyancing transactions per year with very few complaints. He has 11 members of staff. His Terms of Business have been revised since this incident and have been approved by the SLCC.

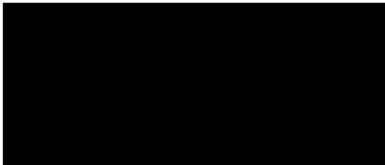
Mr Macreath said that the Respondent had appeared before the Tribunal in 2008 and was censured. The case was not analogous to the present matter.

Mr Macreath said that the Respondent sought advice after this incident. He accepted that complaints are part of a solicitor's existence as a professional. Solicitors live by their reputations. The Terms of Business in question had been an attempt to prevent complaints about very minor matters becoming public. The Respondent had wanted all complaints to come to him first but he never levied a charge on anyone.

DECISION ON SANCTION, EXPENSES AND PUBLICITY

The Tribunal considered the aggravating and mitigating factors in the case. The previous Tribunal finding was from some time ago and the subject matter was quite different in nature. The Respondent had cooperated with the Fiscal and the Tribunal. He had taken proper advice and revised his Terms of Business. There was therefore no ongoing risk to the public. However, his actions were likely to damage the reputation of the profession. In all the circumstances, the Tribunal was of the view that the appropriate penalty was censure and a fine of £1,000.

Following submissions on publicity and expenses, the Tribunal found the Respondent liable in the expenses of the Complainers and of the Tribunal. This decision will be published in accordance with paragraph 14 of Schedule 4 to the Solicitors (Scotland) Act 1980 which provides that Tribunal decisions should be published in full. Paragraph 14A of the same schedule provides that the Tribunal may refrain from publishing any names, places or other facts the publication of which would in their opinion, damage or be likely to damage the interests of persons other than those listed in the paragraph. However, there was no information before the Tribunal to justify such a course of action. 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.



Colin Bell
Chair