

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

FINDINGS

in two Complaints

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, formerly
of 26 Drumsheugh Gardens,
Edinburgh and now at Atria One, 144
Morrison Street, Edinburgh**

Complainers

against

**PAUL THOMPSON, Solicitor,
formerly of 45 Skelmorlie Castle
Road, Skelmorlie, then of 1 Mavis
Bank Gardens, Govan, Glasgow
and now of 2 Wilmar, Eglinton
Terrace, Skelmorlie**

Respondent

1. Two Complaints were lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers"). One Complaint was dated 28 August 2014, the other 9 September 2015. Both Complaints averred that, Paul Thompson, Solicitor, formerly of 45 Skelmorlie Castle Road, Skelmorlie, then of 1 Mavis Bank Gardens, Govan, Glasgow and now of 2 Wilmar, Eglinton Terrace, Skelmorlie (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. Neither Complaint involved a Secondary Complainer.
3. The Tribunal caused copies of the Complaints as lodged to be served upon the Respondent. Sheriff Officers required to be instructed to effect service of the Complaints. The Respondent emailed Sheriff Officers on

23 September 2015 indicating that his address was 2 Wilmar, Eglington Terrace, Skelmorlie, PA17 5DZ. Thereafter, the Complaints were served by Sheriff Officers at that address. No Answers were lodged in respect of either Complaint for the Respondent.

4. In terms of its Rules the Tribunal appointed both Complaints to be heard at procedural hearings on 4 December 2015 and notice thereof was duly served upon the Respondent.
5. At the hearing on 4 December 2015, the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was neither present nor represented. The office for the Tribunal had received an email from the Respondent at 6pm on 3 December 2015 stating that the Respondent was unable to attend the hearing but that he intended to lodge Answers and defend both Complaints. The Tribunal ordered the Respondent to lodge Answers to both Complaints within 14 days failing which he would be taken as admitting the Complaints. Full hearings were fixed in relation to both Complaints for 8 January 2016. Notice of the hearing was served upon the Respondent by Sheriff Officer and an email was sent to the Respondent on 4 December 2015 indicating the outcome of the hearings of that date.
6. At the hearings on 8 January 2016, the Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was neither present nor represented. No Answers had been lodged. The Fiscal made a motion in terms of Rule 14(4) of the 2008 Tribunal Rules for the Tribunal to proceed to hear and determine the Complaints in the absence of the Respondent. The Tribunal heard evidence from the Clerk with regard to service of the Complaints and Notices of hearing and thereafter granted the Fiscal's motion. The Fiscal asked the Tribunal in terms of Rule 17 of the 2008 Rules to conjoin both Complaints and that motion was granted. The Fiscal asked the Tribunal to receive an Inventory of Productions and a List of Witnesses for the Complainers and this was

allowed. Thereafter the Fiscal asked the Tribunal in terms of Rule 14(5)(b) of the 2008 Rules to proceed upon evidence given by affidavit and this motion was granted. Thereafter the Fiscal lodged an affidavit for one witness. The Fiscal made submissions to the Tribunal in relation to the affidavit evidence and the documentary productions lodged.

7. The Tribunal found the following facts established:-

7.1 The Respondent's date of birth is 4 June 1983. He trained with Gateley (Scotland) LLP between 28 August 2006 and 20 January 2009. He worked as an employee of Frank Irvine Solicitors Ltd., between 23 February 2009 and 20 January 2011. From 4 February 2011 to 28 October 2013 he was a sole practitioner operating as PT Legal Solicitors. He is currently suspended from practice.

7.2 The Complainers submitted a Complaint Form to the Scottish Legal Complaints Commission (SLCC) in respect of the failure of the Respondent to cooperate with them; to respond to communications; to provide accounts certificates on time; to produce accounting records; to provide information to ensure an adequate standard of record keeping and to demonstrate the financial position of the firm. 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.

7.3 The Respondent set up practice as PT Legal on 4 February 2011 under a waiver of restriction on his Practising Certificate allowing him to practice mental health and incapacity law only. He practised from his home address in Skelmorlie then moved to an office at Parklane House, 47 Broad Street, Glasgow, without advising the complainers. In 2012 he moved to 272 Bath Street,

Glasgow before returning to his home address in 2013. The Respondent failed to cooperate with the complainers from the commencement of his practice either failing or delaying to provide the information they required of him to perform their regulatory functions. During lengthy periods the complainers were unable to ascertain the true financial position of the firm or to contact the Respondent at all.

7.4 The Respondent delayed his submission of the new firm questionnaire sent to him on 31 May 2011 for a period of one month. He submitted his Accounts Certificate to 31 July 2011 two months late and incorrectly completed. It was returned to him for correction. On 13 December 2011 he was advised that as he had not returned the corrected certificate the Guarantee Fund Sub-Committee (GFSC) would consider suspension of his practising certificate at its meeting on 2 February 2012. He was invited to interview before a panel of the GFSC on 19 January 2012. He did not reply and did not attend. On 1 March the GFSC decided to initiate the suspension procedure. The Respondent was invited to attend for interview on 19 April 2012. The Accounts Certificate was delivered to the complainers by hand on 8 March 2012. The suspension procedure was terminated.

7.5 On 19 November 2011 the Financial Compliance team wrote to the Respondent by recorded delivery advising of an inspection on 5 December 2011. He was required to deliver his accounting records prior to that date. He did not do so. He was contacted by e-mail and claimed not to have received the notice. The notice was returned marked "not called for". The same happened with the notice dated 7 February 2012 for an inspection on 23 February. The Respondent submitted his Accounts Certificate to 31 January 2012 late and incorrect. It was returned to him and he resubmitted it on 27 April 2012. Attempts to contact him by

telephone were unsuccessful. Messages left went unanswered. The Respondent subsequently contacted the complainers to advise that he had been in hospital with meningitis. The inspection was rescheduled for 29 February 2012 but did not actually take place until 30 April 2012 as he did not submit the required books and records in spite of promises to do so. The inspection raised concerns about client funds, in particular SLAB outlays, being held in the firm account. There were cheques which had been returned by the bank which suggested a precarious financial position. As outgoing cheques were posted on the day of encashment and not the date of issue they did not show up in the bank reconciliations. The bank reconciliations were not prepared at the correct month end date and discrepancies were seen between the firm file balance and the nominal ledgers at 3 February 2012. No monthly trial balances were provided and the records were provided only to the end of year date of 3 February 2012.

- 7.6 Attempts to communicate with the Respondent following the inspection were fruitless. He did contact the complainers to advise that he had health issues. On 9 August 2012 the GFSC met and continued consideration to enable him to provide a medical certificate and to provide the required records. He did provide a satisfactory response but no medical certificate. The records provided to the GFSC showed that the practice operated with no client funds apart from outlays from SLAB which were regarded as client funds until paid out. A re-inspection was required in July 2013. The Respondent submitted his Accounts Certificate to the period ending 31 January 2013 on 3 April 2013. It was returned to him on 29 April 2013 for amendment. He did not return it. The Financial Compliance department attempted to contact him by post, email and by telephone. No response was received from him. On 10 July 2013 the Financial Compliance

team wrote to the Respondent at his home address by recorded delivery advising of an inspection on 2 August 2013. The letter was returned marked as “not called for”.

7.7 The Respondent did not respond to e-mails or telephone messages. His practising certificate fees for 2013 remained outstanding as the cheques issued to the complainers were returned unpaid. He did not respond to the Registrar’s department. He was written to on 13 August and 4 September 2013. He did not respond. On 3 October 2013 the GFSC determined that the Respondent should be invited to attend for interview to explain why his Practising Certificate should not be removed in terms of Section 40 of the Solicitors (Scotland) Act 1980. On 4 October 2013 he was written to and advised that the Regulatory Committee of the Council of the Society had made an Interim decision on the matters raised by the Financial Compliance department and that the GFSC was minded to withdraw his Practising Certificate under Section 40 of the Solicitors (Scotland) Act 1980. He was invited to attend an interview meeting at the Society’s offices on 17 October 2013 at 12:30pm. The letter was returned by the Royal Mail marked as not called for.

7.8 The Respondent could not be contacted. His trainee advised that the Respondent was selling his house in Skelmorlie and moving in with his parents and had indicated that he would not be renewing his practising certificate due to ill health. The trainee stated that the books and records of the firm were held on a cloud based system called ‘Dropbox’ and the Respondent held them through the computer in his home. The trainee was locked out of the cloud based accounting system of the firm. He confirmed that if he could make contact with the Respondent, he would ask him to contact the complainers. The Respondent did not attend the

interview on 17 October 2013. On 28 October 2013 the GFSC noted that there had been no correspondence or verbal communication with the Respondent. The Financial Compliance department had tried to contact him at address details previously provided by him and in the absence of any notification of change of address that there was prima facie evidence that he was in breach of Rule B.6.18.7 of the 2011 Practice Rules. No medical certificate was provided and in the absence of any information about his health or the condition of his practice to ensure protection of the clients of PT Legal the Respondent's Practising Certificate was withdrawn under Section 40 of the Solicitors (Scotland) Act 1980.

- 7.9 On 29 November 2013 he was advised that the GFSC had decided to refer his conduct to the SLCC for investigation in relation to his failure to cooperate with his Regulators leading to his Practising Certificate being withdrawn and he being suspended from practice.
- 7.10 By letter dated 20 January 2014 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 above circumstances and required his response within 21 days. The letter was not returned. The Respondent did not reply and a section 15(1) Notice was sent to him by recorded delivery on 10 February 2014. He was required to reply within 14 days. This Notice was signed for by 'Thompson' on 12 February. As there was no response a section 15(2) Notice was sent to him on 25 February by recorded delivery intimating a further issue relating to his failure to reply and requiring him to do so within 14 days. The second Notice was marked as "not called for" and a further letter was sent to

him with a copy of the Notice on 11 March 2014. He was required to respond by 4pm on 20 March 2014. He did not do so.

- 7.11 The Complainers compiled an Investigation Report, a copy of which was intimated to the Respondent in a letter dated 2 April 2014. By letter dated 17 April the Complainers provided a Supplementary Report and intimated that the Complaint would be considered by the Professional Conduct Committee on 8 May 2014.
- 7.12 The Respondent represented Mr A in connection with an employment dispute. The client submitted a complaint to the SLCC about the service he received. The SLCC referred the case to the Complainers in respect of five possible conduct issues. The Complainers advised the Respondent that they had received the referral on 27 June 2014. They sent him a formal letter on 9 July 2014 outlining the heads of complaint and requiring his response within 21 Days. He did not reply. On 1 August 2014 formal Notices in terms of Sections 15(2) of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 were served upon him. They were sent by recorded delivery to his registered address and also care of his parents at 2 Wilmar, Eglinton Terrace, Skelmorlie, PA17 5DZ. The recorded delivery letter sent to his address was returned marked "*not called for*". That sent to his parent's address was signed for.
- 7.13 On 22 August 2014 the second part of the Section 15 Notice was sent to both addresses. That sent to his home address was returned marked 'not called for' and that sent care of his parents was returned marked 'gone away'. No response was received from him to any of the correspondence. A fresh complaint due to his failure to reply to his professional body was intimated to him

by first class mail on 15 September 2014 giving him 14 days to reply. He did not reply. On 17 October 2014 he was written to by first class mail and advised that enquiries were being made with his client's former employer due to the lack of response. He was again asked to respond to the issues. On 6 November he was sent further details and copies of all the paperwork at both addresses. The recorded delivery letter to his home was returned "*addressee gone away*" and that to his parents was returned "*not called for*". The Complaints Investigator made enquiries and information was obtained from a tracing agent that the Respondent appeared to be using his parents' address as his correspondence address.

7.14 On 16 January 2015 a letter was sent by first class mail to the Respondent care of his parents' address. It advised that information had been received that he had sold his former home and used his parents' address for correspondence. He was asked to confirm if this was the case or to provide the address if he wished correspondence to be sent elsewhere. He was advised that correspondence would be sent by first class post. The relevant correspondence and information was again copied out to him under cover of this letter. It was stated that if he did not respond by 5pm Monday 26 January 2015 it would be assumed that he did not wish to engage in the Society's complaints process and the Society would proceed to progress the complaint. He did not reply. All further correspondence was sent to him at his parents' address. It was not returned to the Complainers.

8. Having given careful consideration to the above facts and the Complainers' submissions in relation to the question of professional misconduct, the Tribunal found the Respondent guilty of Professional Misconduct in respect that:-

- 8.1 between 4 February 2011 and 28 October 2013 he repeatedly delayed or failed to cooperate with the Complainers in the exercise of their regulatory functions and in particular he failed to respond to communications, to provide accounts certificates on time or at all, and to produce accounting records and information to ensure an adequate standard of record keeping and demonstrate the financial position of the firm;
- 8.2 between 20 January and 8 May 2014 he repeatedly failed to reply to the reasonable enquiries of the Complainers in their investigation of his failure to respond to the financial compliance team and to comply with notices served upon him; and
- 8.3 between 9 July 2014 and 26 January 2015 he repeatedly failed to cooperate with the Complainers in the exercise of their regulatory functions and in particular he failed to respond to letters in connection with the complaint of his client, Mr A, or to comply with notices served upon him.
9. Having heard further submissions from the Complainers, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 8 January 2016. The Tribunal having considered the Complaints at the instance of the Council of the Law Society of Scotland dated 28 August 2014 and 9 September 2015 against Paul Thompson, Solicitor, formerly of 45 Skelmorlie Castle Road, Skelmorlie, then of 1 Mavis Bank Gardens, Govan, Glasgow and presently of 2 Wilmar, Eglinton Terrace, Skelmorlie; Find the Respondent guilty of professional misconduct in respect that (a) between 4 February 2011 and 28 October 2013 he repeatedly failed to cooperate with the Law Society in the exercise of their regulatory functions and in particular he failed to respond to communications, to provide accounts certificates on time or

at all, and to produce accounting records and information to ensure an adequate standard of record keeping and demonstrate the financial position of the firm; (b) between 20 January and 8 May 2014 he repeatedly failed to reply to the reasonable enquiries of the Law Society in their investigation of his failure to respond to the financial compliance team and to comply with notices served upon him; and (c) between 9 July 2014 and 26 January 2015 he repeatedly failed to cooperate with the Law Society in the exercise of their regulatory functions and in particular he failed to respond to letters in connection with the complaint of a client, or to comply with notices served upon him; Suspend the Respondent from practice for a period of two years; 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 and may but has no need to include the names of anyone other than the Respondent.

(signed)

Nicholas Whyte

Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Nicholas Whyte
Vice Chairman

NOTE

There was a delay in serving the 2014 Complaint because the Respondent's whereabouts were unknown.

No appearance was made on behalf of the Respondent at the hearing on 8 January 2016.

The Fiscal for the Complainers asked the Tribunal in terms of Rule 14(4) of the Tribunal Rules 2008 to proceed to hear and determine the Complaints in the absence of the Respondent. The Tribunal heard evidence under oath from the Clerk with regard to the history of service of the Complaints and Notices. It was confirmed to the Tribunal that the Complaints were passed to Sheriff Officers for service upon the Respondent. The Respondent had contacted the Sheriff Officers concerned and in particular, sent an email confirming that his address was 2 Wilmar, Eglington Terrace, Skelmorlie, PA17 5DZ and asking that any documents be deposited through the letterbox there should he not be at home. A procedural hearing was fixed for 4 December 2015 for both Complaints. Notices of this hearing in relation to both Complaints were sent by recorded delivery post to the Respondent at the address he had given in his email. The post office's track and trace system indicated that this had been signed for by an individual giving the name "P Thompson" on 23 October 2015. On 3 December 2015 the Clerk's office had received an email from the Respondent that indicated he was unable to attend the hearing on 4 December 2015 but demonstrating that he was aware of that hearing. That email had indicated an intention to defend both Complaints. At the procedural hearing on 4 December 2015 the Tribunal had ordered the Respondent to lodge Answers within 14 days and had fixed full hearings for 8 January 2016. Sheriff Officers were instructed to serve Notices of the hearing and they had provided an execution of service dated 9 December 2015 indicating that the Notices had been deposited at 2 Wilmar, Eglington Terrace, Skelmorlie by the letterbox. An email was sent to the Respondent advising him of the outcome of the hearing on 4 December 2015. A further email had been sent on 18 December 2015. Having considered the evidence with regard to service of intimation, the Tribunal granted the Fiscal's motion.

Thereafter the Fiscal made a motion to conjoin both Complaints in terms of Rule 17 of the 2008 Rules and this motion was granted.

Ms Johnston indicated to the Tribunal that she did not intend to rely on the lack of response from the Respondent as establishing her case. She asked the Tribunal to allow her to lodge an Inventory of Productions and List of Witnesses. She confirmed that these had been intimated to the Respondent on 29 December 2015 by email sent to the same email address as the Respondent had used in contacting the Clerk's office. This email address had also been used by the Respondent to communicate with the Law Society. Ms Johnston indicated to the Tribunal that she intended to proceed with one witness. She had prepared an affidavit for the witness which she had available for the Tribunal. Ms Johnston indicated to the Tribunal that it was her intention to have the witness placed under oath in order to adopt the affidavit as her evidence but to have the witness available for any questions that members of the Tribunal might have. Having given careful consideration to the Fiscal's submissions, the Tribunal confirmed to the Fiscal that she could lead evidence either by way of affidavit or by the leading of the witness. The Fiscal confirmed that she would proceed by way of affidavit evidence and thereafter lodged the affidavit for the witness.

Ms Johnston made a motion to amend the Complaint dated 9 September 2015 at paragraph 4.3. This was to amend a date stated in line 6 of that paragraph to the "15 September 2014" rather than as stated there the "6 September". That motion was granted.

EVIDENCE AND SUBMISSIONS FOR THE COMPLAINERS

The Fiscal lodged one affidavit for the witness, Caroline Catto, an individual employed by the Law Society of Scotland whose present position was Clerk to the Professional Conduct Sub Committee. That witness confirmed that the Productions lodged on behalf of the Complainers were true copies of the documents referred to within the affidavit and Complaint. The background for the Respondent was set out in paragraph 2 of the affidavit and Production 1 for the Complainers.

In respect of the first Complaint, the history of the lack of financial compliance was set out in paragraphs 3 to 6 of the affidavit and in particular, pages 43 to 46 of the Productions.

Ms Johnston moved to delete the first six and a half lines of Article 4.8 so that the remaining Article would begin “On 29 November 2013..”

Copies of the correspondence referred to in Article 4.9 and 4.10 were all produced with her Inventory and these Articles were referred to in paragraph 5 of the affidavit.

She moved to delete Article 4.11 in its entirety.

Ms Johnston moved on to address the second Complaint dated 9 September 2015. She indicated that paragraphs 7 to 10 of the affidavit spoke to the content of these Articles. Production 2 contained copies of all of the paperwork relating to these averments. Copies of all of the correspondence referred to in the Complaint were included in the Inventory.

Ms Johnston drew the Tribunal’s attention to paragraph 10 of the affidavit that confirmed that the Respondent had contacted the Law Society by email after the two prosecutions had been raised and that this was the same email address as used in the correspondence with the Clerk to the Tribunal.

The Fiscal then moved on to address the averments of professional misconduct beginning with the Complaint dated 28 August 2014. She confirmed that Article 6.2 involved conduct from the very commencement of the Respondent working as a sole practitioner up to the date of his suspension. Right from the very beginning he failed to cooperate. It was important to clarify that the Law Society did not have any concerns that the Respondent was misappropriating client funds. The Respondent was in fact not operating with client account funds. He did receive money from the Legal Aid Board which included payment of outlays etc that should have been handled in the same way as client funds. It appeared that the Respondent was in a complete

shambles and simply not responding. Article 6.3 demonstrated that when the solicitors' regulatory authority had attempted to engage with him he had not responded to them either. The date of 20 January 2014 was the date of the first formal letter and 8 May 2014 was the date of the Committee meeting, that date chosen because up until then he would have been entitled to respond in some way.

With regard to the Complaint of 9 September 2015, Article 6.2 again related to the Respondent's complete failure to cooperate with the regulatory body. The Fiscal submitted that in this Complaint the misconduct was aggravated by the fact that a member of the public was involved. A client had made a complaint and was faced with the regulatory body that was unable to deal with his complaint appropriately because of the solicitor's non-cooperation. The commencement date of 9 July 2014 was the date of the first intimation letter and the end date of 6 January 2015 was the deadline he had been given to respond.

DECISION

The Tribunal gave careful consideration to the Affidavit, Productions and the Fiscal's submissions. It concluded that the above noted facts had been proved beyond reasonable doubt.

The behaviour described in these facts amounted to a lengthy course of conduct involving the complete failure of the Respondent to cooperate with his regulatory body. He had failed to cooperate with the accounts process. He then failed to respond to the complaints process following thereon. Finally he had failed to cooperate with the process relating to a separate complaint raised by a client.

This Tribunal has on many occasions emphasised the importance of the duty of a solicitor to cooperate with the Law Society exercising its role as the regulatory body of the profession. The Society exercises this function to protect the public. It cannot do so effectively without the cooperation of the members of the profession. The supervisory capacity of the Society with regard to solicitors' accounting practices is patently and obviously an important part of the protection of the public.

This extensive and lengthy course of non-cooperation on the part of the Respondent amounts to behaviour falling well below the standard to be expected of the reasonably competent solicitor to the degree that can only be considered serious and reprehensible. Accordingly, the Tribunal unanimously found the Respondent guilty of professional misconduct.

The Fiscal thereafter confirmed to the Tribunal that the Respondent had no previous history of disciplinary matters. She had no information regarding his current employment status other than to confirm that his practising certificate remained suspended.

The Tribunal considered the Respondent's conduct to be at a high level of seriousness on the scale for such misconduct. His lack of cooperation had gone on for years. His lack of cooperation with the regulation of his accounting practices caused the Tribunal particular concern. Whilst the Tribunal accepted in this case that the Respondent did not deal with clients' funds, one of the reasons the accounts certificate and inspection processes exists is for the Society to confirm that in fact a solicitor does not handle client money or that he does so appropriately. His complete failure to answer a client complaint represents conduct undermining confidence in the profession and damaging the reputation of the profession.

There has been no sign of remorse or any indication that the Respondent recognises the seriousness of his conduct. Whilst there may have been an issue of ill-health at some point in the past, the Respondent has taken no steps at any stage to confirm that. His failure to engage with the Tribunal process has done nothing to clarify the situation.

The Tribunal considered the conduct here far too serious to be dealt with by way of a Fine or Censure. The Respondent was, at the time of his behaviour, working under a waiver of a restriction on his practising certificate. Given the Respondent's age and lack of experience, the Tribunal was reluctant at this stage to strike him off. Taking all

of this into account, the Tribunal concluded that the appropriate disposal was one of suspension and that the relevant period should be two years.

The Fiscal had asked for expenses to be awarded to the Complainers. She had no submissions regarding publicity. The Tribunal made the appropriate orders.

Nicholas Whyte
Vice Chairman