

**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**

**DANIEL ANTHONY McGINN, whose last  
known home address as intimated to the  
Complainers was 68 Sannox Drive, Motherwell**

**Respondent**

1. A Complaint dated 29 March 2019 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Daniel Anthony McGinn, whose last known home address as intimated to the Complainers was 68 Sannox Drive, Motherwell (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Mr A.
3. The Tribunal caused a copy of the Complaint as lodged to be served at the Respondent's last known home address. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal fixed a procedural hearing for 10 June 2019 and notice thereof was duly served at the Respondent's last known home address.
5. At the procedural hearing on 10 June 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was not present or represented. The Fiscal moved the Tribunal to deal with the procedural hearing in the absence of the Respondent and thereafter for the Tribunal to fix a hearing. The Tribunal

considered that it was fair and appropriate in all the circumstances to proceed with the procedural hearing on 10 June 2019 and to fix a hearing for 4 September 2019 at 10am. It directed the Clerk to arrange for service of the Notice of Hearing on the Respondent at the address in the Complaint by Sheriff Officers. Notice of the Hearing set for 4 September 2019 was duly served upon the Respondent.

6. At the hearing on 4 September 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was not present or represented. The Fiscal moved the Tribunal to hear the case in the absence of the Respondent. Following evidence from the Clerk regarding service of the Complaint and Notice of Hearing, the Tribunal was satisfied that the documents had been served in accordance with the Rules and that it was fair to proceed. In accordance with Rule 14 of its Rules, the Tribunal received two affidavits lodged on behalf of the Complainers.
7. Following the Fiscal's submissions, The Tribunal found the following facts established:-

- 7.1 The Respondent was a sole practitioner of The Clyde Law Group, 2 East High Street, Airdrie from 9 March 2016. His practising certificate expired on 31 October 2016 and he did not renew it. He did not advise the Registrar's Department of the Complainers that he had closed his business.

- 7.2 The Secondary Complainer instructed the Respondent in May 2016 to act for him in relation to his divorce. On 15 June 2016 the Respondent sent an email to the Secondary Complainer enclosing a letter dated 15 June 2016 accepting instructions from the Secondary Complainer and also enclosing a terms of business letter. The Respondent asked the Secondary Complainer to confirm his wife's address. In the letter dated 15 June 2016 the Respondent stated that:

*"...we will be pleased to assist you in your forthcoming action for divorce."*

The Respondent detailed the information which the Secondary Complainer had provided and further stated that:

*"...we will now write to your wife in respect of the above and await her responses."*

The Respondent confirmed that his fee estimate for the proposed work was £500 excluding registration and court fees. He advised that he would accept an initial payment of £250 and payment at the rate of £50 per month thereafter, with the balance to be paid at the conclusion of the matter.

- 7.3 The Secondary Complainer sent an email to the Respondent on 15 June 2016 providing details of his wife's address and the Respondent replied the same day stating that:

*"I'll get her letter out tomorrow after I get back from court."*

The Secondary Complainer's wife did not receive such a letter from the Respondent and the Secondary Complainer did not receive a copy of any letter from the Respondent to his wife.

- 7.4 The Respondent requested a payment of £500 from the Secondary Complainer and on 12 July 2016 the Secondary Complainer paid the sum of £500 by bank transfer into the Respondent's firm bank account. The Secondary Complainer did not receive a fee note or invoice from the Respondent or a receipt for the payment.

- 7.5 In or around August 2016 the Secondary Complainer's wife telephoned the Secondary Complainer to advise him that the Respondent had not contacted her or her agents and had not responded to their letters. The Secondary Complainer contacted the Respondent who advised that he had a new job and that he would refund the sum paid by the Secondary Complainer. Thereafter the Secondary Complainer contacted the Respondent on several occasions and the Respondent made excuses for not having repaid the money including that the cheque which he sent must have been lost in the post and that the Respondent had not yet been to the bank. The Respondent then stopped answering calls from the Secondary Complainer.

- 7.6 On 17 September 2016 the Secondary Complainer sent an email to the Respondent stating that he had:

*“Still not heard from you regarding the £500 that you were supposed to pay me back, if you could get in touch either by email or phone to let me know what’s happening or like I said on the voice message I left you I will be contacting the Scottish Legal Complaints Commission.”*

7.7 On 12 October 2016 the Secondary Complainer submitted a complaint to the Scottish Legal Complaints Commission (SLCC).

7.8 The Respondent closed his business in or around October or November 2016. He did not advise the Council or the Secondary Complainer that he was doing so. He did not renew his practising certificate at the end of October 2016.

7.9 The Council’s Financial Compliance Department sent an email to the Respondent on 7 November 2016 to advise that they had been trying to contact him to arrange a compliance inspection of his practice unit and also regarding his practising certificate. A member of staff from the Council’s Financial Compliance Department thereafter attended at the premises of the Respondent’s practice unit and found the premises to be empty.

7.10 On 2 February 2017 the Secondary Complainer sent an email to the SLCC advising that he had not received any correspondence from the Respondent about obtaining a new job just a telephone call from the Respondent in August 2016 telling him that he had accepted a new job and that was why he had not pursued the Secondary Complainer’s case.

7.11 The Respondent thereafter could not be contacted and the Secondary Complainer made an application to the Client Protection Fund. The Client Protection Subcommittee of the Council of the Law Society of Scotland met on 7 September 2017 and agreed that a grant of £500 should be paid to the Secondary Complainer. Said sum has been paid.


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

- (a) failed to undertake any work on behalf of the Secondary Complainer in relation to his divorce having received from the Secondary Complainer the sum of £500 in fees;
- (b) failed to provide the Secondary Complainer with a fee note, invoice or receipt in respect of the sum of £500 paid by him into the Respondent's firm bank account;
- (c) failed to refund the said sum of £500 to the Secondary Complainer having advised him that he would do so; and
- (d) failed to advise the Secondary Complainer that he was ceasing to act on his behalf.

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

Edinburgh 4 September 2019. The Tribunal having considered the Complaint dated 29 March 2019 at the instance of the Council of the Law Society of Scotland against Daniel Anthony McGinn, whose last known home address as intimated to the Complainers was 68 Sannox Drive, Motherwell; Find the Respondent guilty of professional misconduct *in cumulo* in respect that he (a) failed to undertake any work on behalf of the Secondary Complainer in relation to his divorce having received from the Secondary Complainer the sum of £500 in fees; (b) failed to provide the Secondary Complainer with a fee note, invoice or receipt in respect of the sum of £500 paid by him into the Respondent's firm bank account; (c) failed to refund the said sum of £500 to the Secondary Complainer having advised him that he would do so; and failed to advise the Secondary Complainer that he was ceasing to act on his behalf; Suspend the Respondent from practice for a period of eight years and Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that the suspension shall take effect on the date on which these findings are intimated to 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; Direct that publicity will be given to this decision and that this publicity

should include the name of the Respondent and his firm but need not include any other name; and Allow the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office.



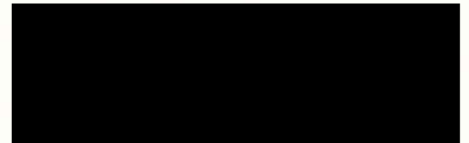
**(signed)**

**Nicholas Whyte**

**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 7 OCTOBER 2019 .

**IN THE NAME OF THE TRIBUNAL**



**Nicholas Whyte**  
**Chair**

**NOTE**

At the procedural hearing on 10 June 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was not present or represented. The Fiscal moved the Tribunal to deal with the procedural hearing in the absence of the Respondent and thereafter for the Tribunal to fix a hearing. The Fiscal indicated that the address on the Complaint was the last home address supplied by the Respondent to the Complainers. He did not notify the Law Society under Section 8(2) of the Solicitors (Scotland) Act 1980 of any change to that address. He did not inform the Complainers that he had ceased practice or that his business address should no longer be used. The Society sent mail to the address in the Complaint during the investigation phase relying on Section 64 of the Solicitors (Scotland) Act 1980, which provides for service at the last known place of business or residence. During the period of investigation, the police had reason to trace the Respondent and located him in England. However, they were not given permission to disclose his address to the Complainers. Enquiry agents instructed by the Complainers reported that as of 25 September 2018, the Respondent was believed to be living overseas but his whereabouts were unknown.

The Clerk gave evidence on oath that the Complaint had been sent for service by Sheriff Officers on 4 April 2019. However, Sheriff Officers returned those papers to the Tribunal Office reporting that the Respondent did not appear to be resident at the address in the Complaint. A neighbour said that the house had not been occupied for over a year. The Respondent was believed to be in London and had been expected back in January but had not returned. Database checks show that the Respondent was recorded as a former occupier of the property but was flagged as “gone away”. On 11 April 2019, the Tribunal Office instructed Sheriff Officers to serve the Complaint and a Notice of Hearing on the Respondent by leaving these documents at the address in the Complaint so as to comply with the Tribunal’s Rules relating to service. This was done on 15 April 2019. The Tribunal considered all the attempts which had been made to engage with the Respondent and effect service of documents upon him. His refusal to allow the police to divulge his whereabouts suggested that he did not want to engage in these matters. The Tribunal considered the public interest in having this matter resolved. It considered that it was fair and appropriate in all the circumstances to proceed with the procedural hearing on 10 June 2019 and to fix a hearing for 4 September 2019 at 10am. It directed the Clerk to arrange for service of the Notice of Hearing on the Respondent at the address in the Complaint by Sheriff Officers. Notice of the Hearing set for 4 September 2019 was duly served upon the Respondent.



At the hearing on 4 September 2019, the Fiscal made a motion in terms of Rule 14(4) of the 2008 Rules for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. The Fiscal indicated that the Complainers had heard nothing from the Respondent since the matter last called. She sent correspondence to the address on the Complaint but had received no response. The Clerk gave evidence that the Complaint and Notice of Hearing had been served on the Respondent by Sheriff Officers depositing the documents through the letterbox at the Respondent's last known home address at 68 Sannox Drive, Motherwell. Service had been effected within the timescales in the Rules.

The Tribunal was satisfied in terms of the Rules that the Complaint and Notice of Hearing had been properly intimated to the Respondent. The Tribunal considered whether it was fair to proceed in the Respondent's absence. The Tribunal had regard to R-v-Jones [2002] UKHL 5 and the need to exercise its discretion in this matter "*with great caution and close regard to the overall fairness of the proceedings.*" The Tribunal considered that if it heard the case in the Respondent's absence there would be a disadvantage to him in being unable to give his account of events. However, notice of the date and venue had been given using the address he had provided to his regulator. There was no reason to be confident that he would attend on another occasion if the hearing was adjourned. It is in the public interest that regulatory proceedings take place within a reasonable time. The fair, economical, expeditious and efficient disposal of allegations against solicitors was an important consideration. The Tribunal balanced the interests of the Respondent and the public interest. It was entirely possible that the Respondent was unaware of the Tribunal hearing. However, he had an obligation to keep the Law Society advised of his current address. He appeared to have positively refused to give consent for his address to be revealed. Therefore, there was no proportionate way to ensure he was aware of the hearing. It was also inappropriate that a solicitor avoided professional misconduct proceedings by failing to update his regulator with his address and not allowing police to pass on his whereabouts to the Law Society. It seemed that the Respondent had taken a deliberate decision to avoid communication. If the Tribunal decided not to proceed, there was no indication that the Respondent would be traced or attend a hearing. Failing to hear the case was not in the interests of the Secondary Complainer or the public interest. The Tribunal was satisfied that a fair hearing was possible. It would consider professional misconduct regardless of whether he was present. In these circumstances, the balance lay in favour of proceeding in the Respondent's absence.

At the hearing on 4 September 2019, the Tribunal had before it the Complaint, a List of Witnesses and an Inventory of Productions, both for the Complainers, and two affidavits lodged on behalf of the Complainers. The Fiscal moved the Tribunal to proceed on the basis of the affidavit evidence as provided for in Rule 14. The Tribunal granted this motion. One affidavit was provided by the Secondary Complainer and the other by an official at the Law Society. The Tribunal accepted the evidence in their affidavits and made the findings of fact contained at paragraph 7 above.

## **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal informed the Tribunal that the Secondary Complainer instructed the Respondent in 2016 regarding a divorce. The Respondent requested payment of £500 and the Secondary Complainer paid this on 12 July 2016 by bank transfer. The Respondent did not provide a fee note, invoice or receipt. In August, the Secondary Complainer contacted the Respondent. The Respondent said that he had a new job and would refund the £500. The Secondary Complainer contacted him several times regarding the money. The Respondent gave various reasons for not returning the £500. He told the Secondary Complainer he had sent a cheque which must have been lost in the post. He also said that he had not been to the bank. The Respondent stopped answering the Secondary Complainer's calls. The Respondent closed his business in November 2016. He did not inform the Secondary Complainer or the Law Society. He did not renew his practising certificate. Financial Compliance Department staff found his premises empty. The Client Protection Fund made a payment of £500 to the Secondary Complainer. By acting in the manner libelled, the Respondent had breached the Practice Rules and his behaviour was a serious and reprehensible departure from the standards of competent and reputable solicitors.

## **DECISION**

The Tribunal considered carefully the averments in the Complaint and the two affidavits lodged on behalf of the Complainers. The Tribunal was satisfied beyond reasonable doubt that the Respondent had behaved in the manner set out in the Complaint.

Solicitors have a duty to act honestly (Rule B1.2). They must act in the best interests of their clients (Rule B1.4). They must communicate effectively and account to clients for funds (Rule B1.9.1). Solicitors should not cease to act without just cause and without giving reasonable notice (Rule B1.12). The Respondent breached these Rules by failing to undertake any work on behalf of the Secondary Complainer, failing to provide him with a fee note, invoice or receipt for the sum of £500,

failing to repay that sum having stated he would do so and failing to advise the Secondary Complainer that he was ceasing to act on his behalf. The Tribunal was satisfied that dishonesty was made out when the Respondent took the Secondary Complainer's money but took no action. He was also dishonest when he told the Secondary Complainer he had or would repay the money but failed to do so.

The Tribunal considered whether the Respondent's conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. In that case it was noted that:-

*"There are certain standards of conduct to be expected of competent and reputable solicitors and 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."*

The principle that a solicitor should be honest is fundamental to the profession. The public must be able to trust that a solicitor will carry out his duties and obligations in an honest and trustworthy manner. The Respondent failed in this fundamental duty and also breached other Practice Rules. The Tribunal was satisfied that *in cumulo*, this conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors and therefore constituted professional misconduct.

A finding of dishonesty against a solicitor is a very serious matter given the importance of honesty and integrity to the profession. It is one of the most serious ways a solicitor can fall short of the high standards expected by the public. The courts have indicated on a number of occasions that a finding of dishonesty will lead to strike off in all but the most exceptional circumstances (Bolton-v-The Law Society [1993] EWCA Civ 32 and SRA-v-Imran [2015] EWCA 2572 (Admin)). With reference to its indicative sanctions guidance, the Tribunal therefore firstly considered whether strike off was the appropriate sanction in the circumstances. However, it was ultimately satisfied that a lengthy suspension would suffice. There was no pattern of deceit or a course of conduct. There were no other aggravating factors relating to the offence. The dishonest conduct related to a single case and client and involved a relatively small sum of money. The Respondent obtained that money entirely properly but failed to do the work or return the fee. While the conduct would damage the reputation of the profession, this was not likely to be to a serious extent. It had occurred in the context of a solicitor closing his practice and ceasing to work. Other aggravating factors influencing sentence were the Respondent's failure to engage with the Law Society or the Tribunal and the lack of any demonstration of remorse or insight. Taking account of all these circumstances, the Tribunal decided that the Respondent should be allowed to return to the profession in due course. However, an eight-year

suspension was necessary to protect the public in the short term, sanction the Respondent and demonstrate to the profession the seriousness of the misconduct. The suspension will take effect on intimation of these findings.

Following the Fiscal's submissions on expenses and publicity, the Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests. In accordance with the general rule that expenses follow success, the Tribunal awarded expenses to the Complainers. The Secondary Complainer will have 28 days from intimation of these findings to lodge a claim for compensation with the Tribunal Office.



**Nicholas Whyte**  
**Chair**