

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

**F I N D I N G S**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW SOCIETY of  
SCOTLAND, Atria One, 144 Morrison Street,  
Edinburgh**

**Complainers**

**against**

**THOMAS CUNNINGHAM STEEL, Brunton  
Miller, Herbert House, 22 Herbert Street,  
Glasgow**

**Respondent**

1. A Complaint dated 11 June 2021 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 Thomas Cunningham Steel, Brunton Miller, Herbert House, Herbert Street, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Ms A.
3. The Tribunal caused a copy of the Complaint as lodged to be served on the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal set the matter down for a virtual procedural hearing on 4 October 2021 and notice thereof was duly served on the Respondent.
5. On 1 October 2021, the Chair, exercising the functions of the Tribunal under Rules 44 and 56, on joint motion, adjourned the virtual procedural hearing and fixed a virtual hearing for 26 November 2021. Notice thereof was duly served on the Respondent.

6. At the virtual hearing on 26 November 2021, the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. Prior to the virtual hearing, parties lodged a Joint Minute. At the virtual hearing, parties made submissions.
7. The Tribunal found the following facts established:-
  - 7.1 The Respondent's date of birth is 04 February 1959. He was enrolled as a Solicitor on 11 January 1983. He practises as a Solicitor. He has been a Partner in Brunton Miller, Solicitors, since 1 July 1987 and the Cash Partner since 1 July 2016.
  - 7.2 In 2007, the Secondary Complainer and her husband purchased a boatyard and house. They subsequently separated and a dispute arose involving the boatyard tenant. The Secondary Complainer instructed Brunton Miller Solicitors and the Respondent. On 9 January 2007 Brunton Miller issued a Terms of Business letter with the Respondent being the Solicitor responsible for the transaction.
  - 7.3 Resolution of dispute in respect of the boatyard and the financial position as between the Secondary Complainer and her husband took a considerable period of time to resolve and included court actions in England.
  - 7.4 Following conclusion of court proceedings in England, agreement was reached over the sale of the boatyard and the division of the net free proceeds. On 18 August 2016, the Secondary Complainer signed Discharges of the Securities in her favour.
  - 7.5 In implementation of the agreement, Stevenson Kennedy Solicitors wrote to Brunton Miller on 16 October 2018 enclosing a cheque for £76,289. In the absence of delivery by the Respondent of the Discharges signed by the Secondary Complainer, Stevenson Kennedy wrote to Brunton Miller/the Respondent on 5 November 2018 seeking delivery of the executed Discharges by return. The Respondent delivered the Discharges with a letter dated 31 January 2019.
  - 7.6 The Respondent did not advise the Secondary Complainer that he had received the settlement sum due to her nor that he had delivered the Discharges executed by her.

7.7 On 6 March 2019 the Secondary Complainer's English Solicitors, Paris Smith, wrote to the Respondent advising that although the boatyard sale had been completed, the Secondary Complainer had not heard from the Respondent and was due payment as a result of the sale. An explanation was sought as to what had occurred to the net proceeds of sale.

7.8 On 6 June 2019 Paris Smith wrote to the Secondary Complainer advising that although they had spoken to the Respondent "last month" and been assured that he would deal with the sale proceeds issue nothing had been heard.

The letter writer also said that he had managed to speak to the Respondent "yesterday" and it was "evident that he has not done anything with regard to the sale proceeds."

In addition, the writer said, "I made it abundantly clear to Tom that he needs to deal with this matter immediately and that I expected him to deal with it today and to account to you fully for the monies to which you are entitled."

7.9 The Paris Smith solicitor thereafter emailed the Secondary Complainer advising he had not "heard anything from Tom Steel since speaking to him on Wednesday."

7.10 Notwithstanding Stevenson Kennedy writing to the Respondent on 16 October 2018 enclosing the cheque for £76,289, the client ledger in respect of the Secondary Complainer did not show any entry in respect of that sum until 31 January 2019. The subsequent entry confirmed that this sum had been paid to the Secondary Complainer on 10 June 2019.

7.11 The Secondary Complainer lodged a complaint form with the SLCC on 8 July 2019. The SLCC determined the matter to be a conduct complaint and referred the matter to the Complainers.

7.12 The issues as set out in the Summary of Complaint were:-

I, [Ms A] wish to complain about Thomas Cunningham Steel of the firm of Brunton Miller who acted on my behalf between January 2007 and June 2019 in relation to the sale of properties [...] owned by my ex-husband and I in that :-

1. Mr Steel failed to advise me in October 2018 that the boatyard had been sold and that they had received my share of the sale, £76,289 and only admitted to being in possession of the money when I learned about the sale from a third party and contacted the firm in March 2019;
2. Mr Steel unduly delayed in issuing the £76,289 (that he and/or Brunton Miller) held on my behalf and despite my divorce solicitor contacting the firm on 6 March 2019 I did not receive the funds until 11 June 2019.

7.13 The Report and all other relevant documentation were considered by the Complainers' Professional Conduct Sub Committee on 28 January 2021. The matter was investigated by the Complainers who compiled a Report, a copy of which was provided to the Respondent by letter dated 25 February 2021. The letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

7.14 The Sub Committee determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further the Sub Committee determined that a Fiscal should be appointed in terms of Section 51 of the Solicitors (Scotland) Act 1980 to investigate and present a Complaint in respect of the Respondent to the Scottish Solicitors Discipline Tribunal.

8. Having given careful consideration to the foregoing circumstances and parties' submissions, the Tribunal found the Respondent guilty of Professional Misconduct in respect that:-

- a) He failed to communicate with the Secondary Complainer following his receipt on or about 18 October 2018 of the sum due to her;
- b) He delayed unduly in remitting the sum to the Secondary Complainer. Despite receipt of the sum on or about 18 October 2018, payment was not made to the Secondary Complainer until 10 June 2019.

9. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 26 November 2021. The Tribunal having considered the Complaint dated 11 June 2021 at the instance of the Council of the Law Society of Scotland against Thomas Cunningham Steel, Brunton Miller, Herbert House, Herbert Street, Glasgow; Find the Respondent guilty of professional misconduct in respect that (a) he failed to communicate with the Secondary Complainer following his receipt on or about 18 October 2018 of the sum due to her, and (b) he delayed unduly in remitting the sum to the Secondary Complainer; Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person.

**(signed)**

**Colin Bell**

**Chair**

10. By Video Conference, 26 November 2021. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Thomas Cunningham Steel, Brunton Miller, Herbert House, Herbert Street, Glasgow and determined that the Respondent was guilty of professional misconduct, and having been advised by parties that the Respondent had agreed to pay, and the Secondary Complainer had agreed to accept, compensation of £3,992.26 in respect of this Complaint; Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to make

payment to the Secondary Complainer, Ms A, in the sum of £3,992.26 in respect of loss, inconvenience and distress directly arising from the misconduct and that within 28 days of the date on which this Interlocutor becomes final with interest at the rate of 8% per annum from the due date until paid.

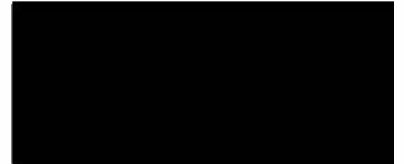
**(signed)**

**Colin Bell**

**Vice Chair**

11. 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 10 JANUARY 2022 .

**IN THE NAME OF THE TRIBUNAL**



**Colin Bell**  
**Chair**

**NOTE**

At the virtual hearing on 26 November 2021, the Tribunal had before it the Complaint, a Joint Minute, two references and an Inventory of Productions for the Respondent. The Joint Minute agreed all the averments of fact, duty and misconduct. By way of the Joint Minute, parties agreed that Rule B1.2 had been breached to the extent that the Respondent had allowed his personal integrity to be called into question. However, the Complainers did not aver dishonesty, or claim that the Respondent had acted fraudulently or deceitfully.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid referred the Tribunal to the Complaint and Joint Minute. The Respondent received a cheque for £76,289 on 16 October 2018. Discharges were sent. The Respondent did not advise the Secondary Complainer that he had received the settlement sum or delivered the discharges. Despite reminders, no entry was made on the client ledger until 31 January 2019. The money was paid to the Secondary Complainer on 10 June 2019. According to Mr Reid, the Respondent had breached Rules B1.2, B1.9.1 and B6 of the Practice Rules. The breach of Rule B1.2 was restricted to lack of integrity. Although the Complaint referred to breach of Rule B6, there was no specific averment of misconduct about this as it had not been part of the original complaint to the Scottish Legal Complaints Commission. However, it was relevant to the overall complaint about delay.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Macreath explained that the transaction had been lengthy and complex. It had involved English solicitors as well as the Respondent. The case involved the sale of a house and boatyard. There was a dispute with the tenant. When the Respondent received the cheque, he made a handwritten note on the letter reminding himself to check the file regarding the separate sales of the boatyard and house. If he had checked the file at that time, he would have seen the English court order with the settlement terms and directions about how to allocate the free proceeds. If he had any material doubt, he could have discussed matters with the Scottish solicitors on the other side, or the English solicitors. There was no impediment to the Respondent lodging the cheque or intromitting with the funds.

Mr Macreath referred the Tribunal to the Respondent's Inventory of Productions which contained his letter to the Secondary Complainer of 21 August 2019 and his letter to the Complainers of 29 November



2019. At an early stage, the Respondent gave instructions to enter into a Joint Minute. He accepts he is guilty of professional misconduct.

## **DECISION ON MISCONDUCT**

The Tribunal was satisfied beyond reasonable doubt on the basis of the admitted facts in the Joint Minute that the Respondent had acted in the manner set out in the findings in fact above. On 18 October 2018, the Respondent received a sum due to the Secondary Complainer. He did not communicate with her. He did not remit the sum of her until 10 June 2019. He therefore failed to communicate effectively with the Secondary Complainer (Rule B1.9.1). He failed to return money held for a client promptly as soon as there was no longer any reason to retain it (Rule 6.11.1).

Having regard to the guidance contained in Wingate and Evans-v-The SRA: SRA-v-Mallins [2018] EWCA Civ 366, the Tribunal was not satisfied that the conduct demonstrated a lack of integrity. According to that case, integrity is a broader concept than dishonesty. In professional codes of conduct, the terms “integrity” is 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. The examples of lack of integrity given in that case involved a greater moral or ethical failure than was present in this case. Lack of integrity may involve misleading; subordinating the interests of a client to the solicitor’s interests; making improper payments out of the client account; becoming involved in clearly suspect transactions; or making false representations. The Respondent in the present case did not mislead the Secondary Complainer or any other person. He did not misuse the money or subordinate the client’s interests to his own. The Complaint involved a single incident. There was no evidence to suggest he had deliberately acted or omitted to act in a way that brought his integrity into question. The available information suggested this was an oversight at a time when the Respondent was particularly under pressure. There was therefore no breach of Rule B1.2.

The Tribunal went on to consider the admitted conduct and established breaches of rules in the context of 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. ”*

The Tribunal was satisfied that even without a finding of lack of integrity, the Respondent’s conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors. A competent and reputable solicitor on receipt of the cheque would have created a ledger entry and paid the money to the Secondary Complainer as soon as possible. The Respondent’s delay in this case was unconscionable as was his lack of communication. Other solicitors had reminded him about the problem. The Secondary Complainer was without her money for eight months. Members of the public entrust their money to solicitors. An eight-month delay in forwarding clients’ funds when there was no impediment to doing so undermines the public’s trust in the profession and is likely to affect the reputation of the profession. The Respondent was therefore guilty of professional misconduct.

The Fiscal indicated that there were no previous conduct findings on the Respondent’s record card. He also confirmed that the Respondent and the Secondary Complainer had come to an agreement regarding compensation. The Respondent would pay compensation of £2,500. He also would pay £1,492.26 which reflected interest at 3% on the sum which he had failed to send to the Secondary Complainer for eight months. The total agreed sum was therefore £3,992.26.

## **SUBMISSIONS IN MITIGATION**

Mr Macreath noted that the Respondent had been a solicitor for 38 years. In 2016, he had a very high workload. He also had a large burden of administrative duties within the firm and he was designated cashroom manager. Since then, the firm has taken on additional staff and some of the Respondent’s files were allocated to others.

The Respondent showed immediate contrition. He wrote to the Complainers accepting the delay and expressing his deep shame and embarrassment. He also explained the situation to the client and made proposals for resolution. He offered a fulsome and unreserved apology. He cooperated with his regulator. He will have to bear the burden of expenses and publicity. There will be reputational damage. There are still service issues to be resolved with the Scottish Legal Complaints Commission which will take into account the compensation offered and received.

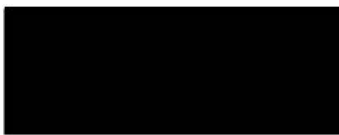
Mr Macreath invited the Tribunal to censure the Respondent. Without a finding of lack of integrity, the misconduct was at the lower end of the scale.

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

The Tribunal had regard to the references lodged by the Respondent. It considered the Respondent's conduct to be at the lower end of the scale. There were no previous conduct findings against the Respondent. From June 2019, he had handled the matter appropriately and attempted to come to a resolution with the Secondary Complainer. He had cooperated with the Complainers and the Tribunal. The matter was an isolated incident. There was no finding of dishonesty or lack of integrity. He had clearly expressed his remorse to the Secondary Complainer, the Law Society and through his representative, the Tribunal. The steps he had taken to reduce his workload meant the risk of repetition was reduced. He had insight into his conduct. He was not a danger to the public. The appropriate sanction was therefore censure.

The Fiscal moved for expenses and publicity. Mr Macreath did not object but suggested that the Secondary Complainer should not be named. Parties were content for the Tribunal to issue an Interlocutor ordaining the Respondent to pay compensation to the Secondary Complainer in the amount agreed by them.

The Tribunal awarded expenses to the Complainers. There was no reason to depart from the usual position that expenses should follow success. In accordance with Paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980, publicity will be given to this decision and this publicity will include the name of the Respondent but need not identify any other person. In particular, the Tribunal decided that the Secondary Complainer should not be named. The case involved details of her divorce and financial settlement. It was not necessary to identify her in these misconduct findings against the Respondent. Publication of her personal data may be likely to damage her interests.



**Colin Bell**  
**Chair**