

**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

**GARY ROBERTSON PIRRIE, Alex Mitchell &
Sons, 21 Eskdale West, Musselburgh**

Respondent

1. A Complaint dated 21 November 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Gary Robertson Pirrie, Alex Mitchell & Sons, 21 Eskdale West, Musselburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer.
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 11 March 2019 and notice thereof was duly served on the Respondent. On 7 March 2019 of consent and on the Respondent's motion, the Chair, exercising the functions of the Tribunal under Rule 56 of the Scottish Solicitors' Discipline Tribunal Procedure Rules 2008, adjourned the hearing fixed for 11 March 2019 and fixed a hearing for 16 May 2019. Notice thereof was duly served on the Respondent.

5. At the hearing on 16 May 2019, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow. Of consent the Fiscal lodged an amended Complaint dated 10 May 2019.

6. Having given careful consideration to the terms of the Complaint, the Tribunal found the following facts established:-
 - 6.1 The Respondent's date of birth is 17 February 1969. He was enrolled as a solicitor on 2 November 1992. He was an employee of a legacy firm of Gillespie McAndrew and then Johnston Herron between November 1992 and August 1997. He thereafter joined Alex Mitchell & Sons, 21 Eskside West, Musselburgh, East Lothian as an employee then an associate and he became a partner on the 1 May 2002.

 - 6.2 On the 4 June 2009 TI died testate. The Secondary Complainer (SC) was TI's niece. TI left the SC his heritable property and a pecuniary legacy of £5000. The will appointed two partners (neither of which was the Respondent) of Alex Mitchell & Co (the firm) as executors. By 2009 the Respondent was the Principal of the firm, one of the executor solicitors was retired and the other was a consultant. The Respondent opened the executry file and completed the initial correspondence. AC the consultant executor wrote to the complainer in November 2009. The Respondent advised this letter was returned marked "not delivered". The next letter to the SC was the Respondent's dated the 7 March 2011, the letter was sent to the same address as the 2009 letter. The Respondent did not receive a response. The Respondent made no further attempts to write to or trace the SC until 7 July 2015. On the 7 July 2015 the Respondent instructed Eadie Corporate Solutions (ECS) a firm of investigators to trace the SC. The SC was traced by ECS in January 2016 and contact was facilitated between the Respondent and SC. They spoke for the first time in April 2016.

 - 6.3 In the 6 $\frac{3}{4}$ year period between June 2009 and April 2016 the Respondent on behalf of the executors had made certain payments to charities which were the residuary beneficiaries. The Respondent also paid in excess of £3200 in respect of factoring charges for the heritable property which TI left to the SC.

6.4 The Respondent spoke to the SC by phone on or around 11 April 2016 and advised her of the legacies left to her. The SC wrote to the Respondent by letter dated 29 April 2016 raising seven numbered points. She concluded “I look forward to having some clarification...” The Respondent did not respond to the SC. The SC emailed a reminder to the Respondent on the 3 June 2016. On the 7 July the SC met with Respondent at the heritable property. The Respondent was asked what had caused the 6-year delay. He did not give an explanation. He undertook at the meeting to send a cheque for the pecuniary legacy of £5000 the next day. On the 8 July 2016 the Respondent sent a cheque for £2051.59 to the SC. He explained he required to recover the balance to make the full payment and sought confirmation of her intention regarding the heritable property.

6.5 The SC spoke with Respondent on the 1 August 2016 advising she wished to take up residency in the heritable property. In the meantime, she instructed solicitors to write on her behalf in respect of the outstanding queries she had about the executry. W&AS Bruce Solicitors wrote to the Respondent on her behalf on the 3 August. The Respondent had not responded to W&AS Bruce Solicitors by the 17 August 2016. The SC sought and received the keys for the heritable property on or around 23 August 2016 she moved into the property around this time. The Respondent has not sent any communication regarding the legal transfer of the heritable property into the SC’s name to the SC.

6.6 In November 2016 the SC wrote a letter of complaint to the Respondent. The Respondent acknowledged the letter on the 25 November 2016 and undertook to provide a detailed response within 14 days. No detailed response was sent by the Respondent.

6.7 The Respondent sent SC the balance of her pecuniary legacy on 10 August 2018.

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

7.1 His failure to communicate with the Secondary Complainer between June 2009 and April 2016 and his delay in making over a pecuniary legacy; and

7.2 His failure to respond to the Secondary Complainer's letter of 29 April 2006, the Secondary Complainer's letter of 25 November 2016 and the letter from W&AS Bruce of 3 August 2016.

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

Edinburgh 16 May 2019. The Tribunal having considered the Complaint dated 10 May 2019 at the instance of the Council of the Law Society of Scotland against Gary Robertson Pirrie, Alex Mitchell & Sons, 21 Eskdale West, Musselburgh; Find the Respondent guilty of professional misconduct in respect of his failure to communicate with the Secondary Complainer between June 2009 and April 2016 and his delay in making over a pecuniary legacy; and his failure to respond to the Secondary Complainer's letter of 29 April 2006, the Secondary Complainer's letter of 25 November 2016 and the letter from W&AS Bruce of 3 August 2016; Censure the Respondent; Fine him in the sum of £5,000 to be forfeit to Her 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 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 written claim for compensation.

(signed)

Beverley Atkinson

Acting Vice Chair

9. 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 3 JUNE 2019.

IN THE NAME OF THE TRIBUNAL



Beverley Atkinson
Acting Vice Chair

NOTE

The Tribunal had before it the amended Complaint dated 10 May 2019, an inventory of productions for the Complainers and a bundle of authorities for the Complainers. Following the finding of misconduct, the Tribunal also considered two references produced by the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal explained that the Secondary Complainer was TI's niece. TI's will appointed partners of Alex Mitchell & Sons as executors and left his heritable property to the Secondary Complainer. By the time of TI's death, one of the executors had already resigned from the firm and the other resigned from the partnership on 6 January 2015.

The Respondent opened the file and completed the initial correspondence. Between June and November 2009, both issued correspondence. The Respondent's partner wrote to the Secondary Complainer in November 2009. That letter was returned marked 'not delivered'. The next attempt to contact her was the Respondent's letter dated 7 March 2011, one and a half years after the initial letter. There was no response to this letter and no further attempt to trace her until 7 July 2015, some four years later. Investigators were appointed in July 2015 and the Secondary Complainer was traced in January 2016. The Respondent and the Secondary Complainer made contact in April 2016. Between June 2009 and April 2016, the Respondent on behalf of the executors made payments to charities which were the residuary beneficiaries and paid factoring fees for the heritable property which had been left to the Secondary Complainer.

The Secondary Complainer wrote to the Respondent in April 2016 raising seven points. The Respondent failed to respond to this letter. The Respondent met the Secondary Complainer at the heritable property. She asked him why there had been such a delay and he did not provide an explanation. He said that he would pay her the £5,000 legacy but was unable to do that and the balance was not paid for another two years. The Respondent never gave the Secondary Complainer an explanation regarding the delay. She had to instruct her own solicitors. The legal transfer of the heritable property still has not taken place.

The Fiscal contended that in these circumstances the Respondent was guilty of a failure to communicate under standard 9 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008 and Rule B1.9.1 of the Law Society of Scotland Practice Rules 2011. He also suggested that the

Respondent was guilty of a breach of rule B1.10 of the 2011 Practice Rules, namely that he had failed to exercise proper competence, diligence and appropriate skills in respect of the matter. The Fiscal reminded the Tribunal of the test found in Sharp v The Law Society of Scotland 1984 SLT 313. He referred the Tribunal to three previous Tribunal cases, Law Society of Scotland-v-James Kelly, Law Society of Scotland-v-Donald Murray and Law Society of Scotland-v-John Tait. He highlighted that these cases involved executry delays which were shorter than the delay in the present case. He submitted that the Respondent's conduct was serious and reprehensible.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath thanked the Fiscal for his assistance in resolving this matter. He noted that the test for professional misconduct in Sharp is a high standard and the decision was for the Tribunal to make. The Respondent accepted that the delays in this case were extreme. Efforts should have been made at a much earlier stage. The delay in progressing the executry and the failure to communicate was serious and reprehensible. Mr Macreath explained why in his submission, the first two Tribunal decisions referred to by the Fiscal could be distinguished. The Respondent had not been dishonest and there was no suggestion that he was lacking in integrity although the failure was egregious in a professional context.

Mr Macreath noted that the testator was not wealthy and the case involved a relative small estate. Initial work was carried out. However, the Respondent and his partner lost sight of the fact that the initial letter to the Secondary Complainer had been returned. During this period, the Respondent's partner resigned from the partnership and only worked a short period of notice. The Respondent accepted that he had control of this file and allowed matters to slip. However, there is no question regarding his capacity to fulfil the work.

Mr Macreath has worked with the Respondent to get the necessary docquet to the remaining executor for signature. This can be registered in the Books of Council and Session. However, the Law Society are concerned that the Secondary Complainer has not had independent legal advice. Mr Macreath is working with the Respondent and the Law Society to arrange this. The SLCC are dealing with the service issues relating from this complaint.

The Chair noted the concession that the Respondent had control of the file and allowed matters to slip. She asked whether the Respondent had had any issues with getting instructions from the executors. Mr Macreath said that the Respondent accepted that when the executor is the client, the Respondent as the

solicitor has a duty to wind up the estate. The duty of the solicitor is to get around any obstacles. He should have recognised the problem and found a solution.

DECISION

Although the Respondent pleaded guilty, 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. 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.

Solicitors must communicate effectively. They must complete work adequately and completely within a reasonable time. This Tribunal has repeatedly held that failure to complete executries in a reasonable time and to communicate effectively can constitute professional misconduct. The Tribunal noted the significant delay in this case, the poor communication with the Secondary Complainer and her solicitors and fact that the matter was still not resolved. In these circumstances it was satisfied that the Respondent's failures represented a serious and reprehensible departure from the standards of competent and reputable solicitors and was therefore professional misconduct.

The Fiscal produced the Respondent's record card which contained one finding of unsatisfactory professional conduct. This related to a failure to communicate effectively with regard to a complaint.

SUBMISSIONS IN MITIGATION

Mr Macreath noted that the Respondent is 50 years old and was enrolled as a solicitor 27 years ago. He joined Alex Mitchell & Sons 22 years ago. At that time the senior partner was hoping to retire. In October 2014, his only partner unexpectedly intimated his resignation, leaving in January 2015. The Respondent had expected him to finish his outstanding cases and leave detailed notes on the remaining files. However, this was not completed as the partner suffered an injury and never returned to work. This created professional difficulties for the Respondent. At the same time, he was experiencing personal problems.

Mr Macreath noted that following Bolton v Law Society [1993] EWCA Civ 32, the Tribunal would be concerned with damage to the reputation of the profession and the risk of repetition. He indicated that he was helping the Respondent resolve all issues with the Secondary Complainer. The legacy has been

paid. The Respondent has arranged for the necessary docquet to go to the remaining executor for signing to complete the link in title. The SLCC is involved in the service aspects of this complaint. There will inevitably be a finding of compensation which the Respondent will have to pay. Mr Macreath referred to the two references lodged on the Respondent's behalf. Both referees were given a copy of the Complaint but were not aware of the unsatisfactory professional conduct decision. Both know the Respondent well and can testify as to how he conducts himself. They both made mention of the difficulties caused by the Respondent's partner's departure. Mr Macreath said that the Respondent accepted responsibility for his actions and submitted that there was little risk of repetition.

The Chair asked why there was such a delay in having title transferred to the Secondary Complainer. Mr Macreath said the Respondent had become consumed by the complaint and did not address the issues timeously. One executor resigned. Now there is only one remaining executor and he can sign the relevant docquet. As of March 2019, these matters are being addressed. Mr Macreath mentioned the difficulties of operating as a sole practitioner. The Respondent now has a support network. He can approach Mr Macreath for assistance and he can also seek guidance from the solicitors who provided the references.

DECISION ON SANCTION, PUBLICITY AND EXPENSES


Aggravating factors included the length of the delay and the unsatisfactory professional conduct decision (which bore some similarities to the present Complaint). There were mitigating factors related to the Respondent's partner's relatively sudden departure in January 2015. The Tribunal took into account the difficult professional and personal circumstances the Respondent was experiencing during this period. It took account of the fact that there was no personal gain to the Respondent in the matters being delayed and no question of dishonesty or lack of integrity. However, the Tribunal also noted that it was the Respondent who had opened the file and completed the initial correspondence. He did not deal properly with correspondence from the Secondary Complainer and her solicitors and title to the property has not yet been transferred.

The Tribunal referred to the authorities produced by the Fiscal and noted that in similar cases, the full range of sanctions had been employed. In Law Society of Scotland v James Kelly, the Respondent was struck off. He had failed to wind up an estate. He had also failed to communicate with Secondary Complainers and the Law Society and had failed to comply with mandates. There were two analogous findings of the Tribunal against him, the last offence being committed while subject to a restriction imposed by the Tribunal. He failed to satisfy the Tribunal that the conduct would not be repeated. In

Law Society of Scotland v Donald Murray, the Respondent failed to wind up an executry for fourteen months. The Respondent deceived beneficiaries. He was unable to demonstrate insight, engagement or corrective steps and his practising certificate was restricted for four years. In Law Society of Scotland v John Tait, the Respondent was censured for undue delay in obtaining confirmation, failure to follow instructions and failure to communicate effectively. The Tribunal noted the Respondent's cooperation and the lack of risk to the public.

The Tribunal was satisfied that in the present case, the circumstances which existed during the period of misconduct no longer apply. There was therefore no requirement to protect the public by means of a restriction. The Respondent accepted his guilt, and appeared personally before the Tribunal. He demonstrated insight by engaging Mr Macreath to assist him with disposing of the complaint before the Tribunal and the service complaint before the SLCC, and by taking steps to have the docquet signed and the executry wound up. He now appears to have a better support network. The Tribunal considered that a censure alone would be insufficient to mark the gravity of this offence and the likelihood of damage to the reputation of the profession. Therefore, it also fined the Respondent £5,000.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. 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. The Secondary Complainer will have 28 days from intimation of these findings to lodge a claim for compensation.



Beverley Atkinson
Acting Vice Chair