

**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, 26
Drumsheugh Gardens, Edinburgh
Complainers**

against

**ROY WILLIAM ANDREW
MILLER, 6 St Ninians Terrace,
Crown Street, Glasgow
Respondent**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Roy William Andrew Miller, 6 St Ninians Terrace, Crown Street, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. In accordance with the rules of the Tribunal 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 set down for a hearing on 6 August 2014 and notice thereof was duly served on the Respondent.

5. When the case called on 6 August 2014, the Respondent was present and represented himself. The Complainers were represented by their Fiscal Grant Knight, Solicitor, Edinburgh. The Respondent moved for an adjournment of the case to allow him to lodge Answers and fully prepare.
6. The Tribunal agreed that the case be adjourned to 17 October 2014 and ordered the Respondent to lodge Answers within 21 days.
7. No Answers were lodged by the Respondent.
8. When the case called for hearing on 17 October 2014 the Respondent was present and represented himself. The Complainers were represented by Grant Knight, Solicitor, Edinburgh. The Respondent confirmed that he pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the Complaint. It was accordingly not necessary for any evidence to be led.
9. The Tribunal found the following facts established:-
 - 9.1 The Respondent is a Solicitor enrolled in the Registers of Scotland. His date of birth is 22 September 1961 and he was enrolled as a Solicitor on 11 December 1987. He operates as a sole practitioner under the name of Miller & Company and has a place of business at 6 St Ninian Terrace, Crown Street, Glasgow.
 - 9.2 On 30 December 2012, in an action before Glasgow Sheriff Court by Ms A against Mr B, in which the Pursuer was represented by the Respondent, Ms D was appointed to prepare a Bar Report. The Respondent's client who was in receipt of legal aid was liable to meet the expenses of said report in the first instance. On 8 February 2013 the Bar Report was

submitted to the Court and the Reporter submitted her account amounting to £3,616.09 to the Respondent on 14 March 2013.

9.3 The Reporter sent a reminder to the Respondent on 30 April 2013 and the Respondent responded on 1 May advising that the Reporter's account had been submitted to the Scottish Legal Aid Board for payment on 24 March. The Reporter then spoke to the Respondent by telephone on 28 May 2013 seeking an update in relation to the payment of her account and the Respondent advised the Reporter that he would contact the Scottish Legal Aid Board for an update. The account had in fact been settled by the Scottish Legal Aid Board and reimbursed to the Respondent on 10 May 2013.

9.4 The Reporter attempted to contact the Respondent by way of further reminder on 12, 13, 16 and 26 August all 2013. On 28 August the Reporter spoke to the Respondent by telephone and the Respondent advised that he had been informed by the Scottish Legal Aid Board that payment of the Reporter's account would be made over to him within ten days. The Respondent made that statement in the knowledge that the account had already been settled by the Scottish Legal Aid Board on 10 May 2013.

9.5 The Reporter issued further reminders to the Respondent and attempted to make contact with him to seek an update on 12, 17 and 24 September and 21 October all 2013 to which the Respondent failed to respond. The Reporter then lodged a complaint with the Scottish Legal Complaints Commission who in turn referred matters to the Regulation Department of the Complainers. On 29 November 2013, the complaint was intimated to the Respondent who failed to respond. On 9 January 2014 the Complainers issued notices to the Respondent in terms of Section 15 (2) (i) of the Solicitors (Scotland) Act

1980 and Section 41(1)(a) of the Legal Professional & Legal Aid (Scotland) Act 2007. The Respondent failed to respond. On 7 February 2014, a further notice was issued by the Complainers to the Respondent in terms of Section 15 (2)(i)(i) of the said 1980 Act. The Respondent failed to respond.

9.6 The Reporter raised Court proceedings against the Respondent seeking Decree for payment of her outstanding fee and expenses. The Respondent defended said proceedings. On 17 March 2014 he settled the principal sum sought and on 7 April 2014 he settled the expenses incurred by the said Reporter in said proceedings.

10. Having heard submissions from both parties the Tribunal found the Respondent guilty of professional misconduct in respect of:-

10.1 his failure to settle an account dated 14 March 2013 in the sum of £3,616.09 and failure to respond to reminders and that despite having received reimbursement of that amount from the Scottish Legal Aid Board on 10 May 2013.

10.2 his defending Court proceedings raised against him in respect of the aforementioned outstanding account without any stateable defence to do so.

10.3 his misleading the Reporter in relation to her outstanding account during the course of telephone calls on 28 May and 28 August both 2013.

10.4 his failure or delay in responding to correspondence and Statutory Notices from the Law Society.

11. After having noted a previous finding of misconduct against the Respondent and hearing mitigation from the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 17 October 2014. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Roy William Andrew Miller, 6 St Ninians Terrace, Crown Street, Glasgow; Find the Respondent guilty of professional misconduct in respect of his failure to settle an account in the sum of £3616 and his failure to respond to reminders, despite having received reimbursement of the amount from the Scottish Legal Aid Board; his defending court proceedings raised against him in respect of the aforementioned account without any stateable defence, his misleading the reporter in relation to her outstanding account during the course of telephone calls and his failure or delay in responding to correspondence and statutory notices from the Law Society of Scotland; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to (and to being supervised by) such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Law Society of Scotland and that for an aggregate period of three 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)

Dorothy Boyd
Vice Chairman

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

IN THE NAME OF THE TRIBUNAL

Dorothy Boyd
Vice Chairman

NOTE

The Complaint was originally set down for hearing on 6 August 2014. The Respondent was present at the hearing on 6 August 2014 and represented himself. He indicated that he had been in contact with Mr McCann the previous week to ask him to represent him. The Fiscal, Mr Knight, confirmed that Mr McCann had been in contact with him to discuss the case the previous week. The Respondent apologised to the Tribunal for the delay in dealing with matters and explained that this was down to pressure of business and moving house. The Respondent made a motion to adjourn the hearing, which was opposed by the Fiscal on the basis of no Answers being lodged and he was expecting the matter to be undefended. He had intended to move for evidence to be given by way of affidavit evidence for one witness and to call another witness. The Tribunal adjourned the hearing to allow parties to have a discussion. When the case was recalled it was confirmed that matters could not be resolved by way of a Joint Minute as the Respondent wished to challenge one of the fundamental averments of fact. The Fiscal conceded, in the interests of justice, that the matter would require to be adjourned to allow the Respondent to lodge Answers and for the Law Society to arrange for attendance of the witness to speak to the disputed evidence. Mr Knight asked for an award of expenses in respect of the adjourned hearing. The Respondent asked for the question of expenses to be reserved until the conclusion of the Complaint.

The Tribunal agreed that the matter be adjourned to a full hearing on 17 October 2014. The Respondent was allowed 21 days in which to lodge Answers. The Tribunal reserved the question of expenses until the conclusion of the case.

The case called again on 17 October 2014. The Respondent was present and represented himself. The Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. Mr Knight advised that the Respondent had contacted him on 8 October 2014 to advise that he would be pleading guilty. The Fiscal had accordingly been able to cancel his witness, the reporter. The Respondent confirmed that he pled guilty to the Complaint as libelled.

SUBMISSIONS FOR THE COMPLAINERS

Mr Knight stated that the Complaint was self-explanatory and he referred the Tribunal to the productions lodged. Mr Knight lodged previous Findings with the Tribunal which he submitted were analogous. The Respondent had a history of ignoring things. Mr Knight also pointed out that the Respondent had still not paid the expenses amounting to £1300 from the previous Tribunal hearing. Mr Knight questioned whether the Respondent would be able to pay another fine and questioned whether the Respondent should be allowed to continue as a sole practitioner. Mr Knight advised the Tribunal that there were four other matters which were presently being investigated by the Law Society. He asked for a finding of expenses.

SUBMISSIONS FOR THE RESPONDENT

The Respondent indicated that he accepted the Complaint. He advised that he had been in practice for 24 years and until he came before the Tribunal in 2012 there had been no previous matters of concern. The Respondent explained that due to the economic climate matters had become difficult. He pointed out that he had paid the reporter's account plus expenses, so had had to pay out more in the end. The Respondent advised of his difficult financial circumstances but explained that he had recently sold his house in Edinburgh and moved to Glasgow to be nearer his father who was ill. He had freed equity from his house in Edinburgh and should be in a position to pay a fine. He advised however that his income had decreased. A reduction in legal aid had resulted in a substantial drop in his income. He advised that he would make payment of the previous Tribunal's expenses. The Respondent submitted that there was no reason to restrict his practising certificate and that if this was done it would significantly affect his ability to earn an income. The Respondent advised that he had managed to get matters on a firmer footing now and he had spoken to a financial adviser and hoped to resolve his financial situation by the end of the year. The Respondent stated that he accepted that his conduct was reprehensible but pointed out that things were difficult for sole practitioners. He explained that he employed one secretary and that he serviced his local area. He did not handle much client's money and accordingly there was no need for the Tribunal to have concerns

about client's money. He indicated that he was very embarrassed to be before the Tribunal for a second time.

DECISION

The Tribunal had no hesitation in finding the Respondent guilty of professional misconduct. Solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question. The Tribunal was particularly concerned to note that in this case the Respondent misled the reporter by telling her that he would contact the Scottish Legal Aid Board for an update when he well knew that he had already received funds from the Legal Aid Board. It is extremely damaging to the reputation of the legal profession if solicitors provide misleading information. Solicitors instructing reports are liable to pay the fees and the reporter in this case was acting in terms of an interlocutor from a court. The Respondent had a duty to settle the fee timeously. Not only did he not do this but he also defended court proceedings raised against him when he had no defence and went on to fail to respond to the Law Society which hampers the Law Society in the performance of their statutory duty. The Tribunal was also extremely concerned to note that when the Respondent was before the Tribunal in respect of the previous Findings on 27 September 2012, he advised the Tribunal that he had taken steps to make sure that nothing similar happened again. Despite this, only 6 months later the Respondent is failing to deal with matters properly. The Findings in the previous case are analogous and show a pattern of behaviour of not dealing with things properly and failing to respond.

The Tribunal have some sympathy for the Respondent as it is appreciated that things have not been easy for sole practitioners recently. It is however imperative that solicitors act with integrity and in this case the Respondent compounded matters by being dishonest about whether he had received the money from the Legal Aid Board. The Respondent was not able to give the Tribunal any reasonable explanation for his conduct. The Tribunal consider that there is a real risk if the Respondent continues as a sole practitioner that something similar will happen again. The Tribunal cannot understand why the Respondent would defend a court action when there was no defence and consider that the Respondent has not demonstrated insight into his behaviour.

The Tribunal did not consider that a fine would be appropriate or realistic given that the Respondent clearly has had financial difficulties and has still not paid the expenses of the last Tribunal. The Respondent's suggestion to the last Tribunal that he had entered into an agreement with another sole practitioner to deal with matters which came in from the Commission clearly has not worked, in that he has still not been dealing with matters properly and failed to respond to the Law Society. The Tribunal's view is that the Respondent would benefit from supervision and consider that a restriction on his practising certificate is necessary in order to protect the public. The Tribunal ordered an aggregate restriction for 3 years which means that the Respondent will require to work under supervision for a 3 year period before he can obtain a full practising certificate. The Tribunal saw no need to impose a fine as well as a Censure and Restriction. The Tribunal made the usual order with regard to publicity and expenses.

Dorothy Boyd
Vice Chairman