

**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**

**RAYMOND GEORGE MALLON, 2 Anchor  
Villas, Main Road, Langbank, Port Glasgow,  
Renfrewshire**

**Respondent**

1. A Complaint dated 22 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 Raymond George Mallon, 2 Anchor Villas, Main Road, Langbank, Port Glasgow, Renfrewshire (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 15 March 2019 and notice thereof was duly served on the Respondent.
5. At the hearing on 15 March 2019, the Complainers were represented by their Fiscal, Elaine Crawford, Solicitor, Edinburgh. The Respondent was absent and was not represented. The Fiscal invited the Tribunal in terms of Rule 14(5) of the Tribunal Rules 2008 to proceed to hear and determine the Complaint in the absence of the Respondent. Having heard evidence from the Clerk with regard to service of the Complaint and Notice

of Hearing and submissions from the Fiscal, the Tribunal concluded that it was fair and appropriate to proceed to hear and determine the Complaint in the Respondent's absence. Thereafter, the Fiscal asked the Tribunal in terms of Rule 14(5)(b) to allow affidavit evidence for two witnesses. This motion was granted. The Fiscal sought permission from the Tribunal to add a witness to her List of Witnesses and two further documentary productions to her List of Productions. These motions were granted. The Fiscal led evidence from one witness and proceeded to make submissions to the Tribunal.

6. The Tribunal found the following facts established:-

**Ms A's fee note**

- 6.1 In May 2012 the Respondent instructed an advocate Ms A to draft an opinion in relation to a case he was conducting before the Mental Health Tribunal for Scotland on behalf of his client SM.
- 6.2 The Respondent sent an email to Ms A on 26 May 2012 enclosing a copy of an application to the Scottish Legal Aid Board ("SLAB") for an increase for counsel's opinion and stating that he would send her copies of an expert report, a joint minute and an interlocutor with a view to ensuring that no time was lost. The Respondent advised that he was "*not asking [her] to do any work until we have legal aid cover*".
- 6.3 The Respondent sent a further email on 28 May 2012 advising that "*SLAB have not made a decision on the increase application. I have submitted a message reminding them of the urgency.*" On the same date Ms A responded by email and confirmed that she would await hearing from him in early course regarding the legal aid position.
- 6.4 On 29 May 2012 the Respondent sent an email to Ms A stating that "*I can confirm that SLAB has granted the increase for your opinion.*" The Respondent noted that the case was due to call again shortly and that she would not have sufficient time to prepare a detailed opinion. Accordingly the Respondent asked her to prepare a short note detailing the issues that the Mental Health Tribunal would have to consider when making their decision.



- 6.5 Ms A prepared her note dated 30 May 2012 and Faculty Services Ltd issued a fee note on her behalf on 30 July 2012 under reference R154/MO120136/001 in the sum of £540 inclusive of VAT in respect of “*Opinion in respect of the meaning of the “Named Person” in the context of the Mental Health (Care and Treatment) (Scotland) Act 2003 and in respect of the conduct of a hearing convened to remove agent’s client from the role of “Named Person”.*” The fee note was addressed to the solicitor at the firm RMS Law.
- 6.6 On 28 March 2013 Ms B, a credit controller at Faculty Services Ltd, sent a letter to the Respondent seeking an update in relation to Ms A’s outstanding fee note. The letter stated: “*According to our records the fees are covered by legal aid. We would therefore appreciate if you could complete the following in order that we can update our records*”. The letter included a form for the Respondent to complete.
- 6.7 The Respondent sent a letter to Faculty Services Ltd on 17 May 2013 returning the above mentioned update request form. The Respondent had ticked the “*Account Current/Complete*” box and had handwritten beside that “*ongoing negotiations with slab*”. He had also inserted the legal aid reference number 2663918012.
- 6.8 Further reminder letters were sent to the Respondent regarding the outstanding account on 23 July, 10 September, 10 October and 15 November all 2013.
- 6.9 Ms B sent an email to SLAB on 17 January 2014 noting that the Respondent had advised her in September 2013 that his account had been submitted to SLAB for payment and seeking confirmation if payment had been made to him. SLAB replied on 20 January 2014 advising that the Respondent’s account had been paid “*but this did not include Counsel’s fee*” in relation to Ms A’s opinion.
- 6.10 Ms B sent an email to one of the Respondent’s colleagues at RMS Law on 20 January 2014 stating that she had written to SLAB regarding payment of the account and had been advised that the account had been paid to the Respondent but this did not include Ms A’s fee. She enclosed a copy of the fee note in

respect of Ms A's opinion and asking for confirmation that the fee note would be submitted to SLAB for payment.

- 6.11 On 11 March 2014 SLAB sent an email to Miss C, a credit controller at Faculty Services Ltd, advising that they had received the Respondent's account but no fee notes. They sought copies of the fee notes in respect of work undertaken by Ms A.
- 6.12 On 14 March 2014 SLAB sent a letter to Ms A advising that her account (which included other work undertaken in relation to the case) had been assessed and payment offered subject to abatement. The abatement was in respect of the sum of £450 plus VAT relating to her opinion. SLAB noted that the abatement was because sanction had not been granted under the Legal Aid certificate for this until 17 October 2012.
- 6.13 On 18 March 2014 Miss C sent a letter to the Respondent at RMS Law enclosing a copy of the aforesaid letter from SLAB and asking the Respondent to advise her of the position regarding settlement of the outstanding fee note. She sent a further reminder letter dated 29 April 2014 to the Respondent.
- 6.14 On 28 May 2014 Miss C sent an email to a member of staff at Firm 1 referring to a telephone conversation with her and enclosing a copy of the outstanding fee note. She noted that she had not received a response to her letters dated 18 March and 29 April 2014. Miss C asked that the matter be given immediate attention.
- 6.15 On 30 May 2014 Miss C telephoned Firm 1 and was advised that neither the member of staff to whom she had spoken nor the Respondent was available. She left a message that she required an update regarding payment of the fee note that day otherwise the matter would be referred to the SLCC.
- 6.16 On 2 June 2014 Miss C telephoned Firm 1 and spoke to the Respondent's secretary who advised that Miss C's emails had been forwarded to the Respondent. Miss C stated that she had been writing to and emailing the



Respondent for months. She advised that if no reply was received that day then there would be no further calls and the matter would be referred to the SLCC.

- 6.17 On 3 June 2014 Ms A sent an email to the Advocates' Deputy Clerk advising that she was puzzled by the fact that the proposed abatement by SLAB appeared to be in relation to the Civil Legal Aid account as she had been instructed by the Respondent to prepare the opinion under the Advice and Assistance account not the Civil Legal Aid account.
- 6.18 Miss C sent an email to the Advocates' Deputy Clerk on 3 June 2014 advising that she had contacted SLAB and had been informed that the Respondent had submitted a supplementary account under Advice and Assistance but that the account payment was offered at nil to the Respondent as no sanction had been sought or granted for an opinion from counsel.
- 6.19 Between 18 November 2014 and 3 September 2015 there was correspondence between Miss C and both the cashier at Firm 1 and one of the partners there, Mr D regarding various outstanding fees due including the outstanding account ref R154/MO120136 in respect of Ms A's fee. During correspondence Miss C drew their attention to the fact that sanctions had been imposed on RMS Law.
- 6.20 On 17 September 2015 Miss C sent an email to Firm 1 advising that she had received no reply or relevant information to enable settlement of the fee in respect of Ms A's opinion and that if she did not receive a response within 14 days then a complaint would be lodged with the SLCC.
- 6.21 Mr D replied by email on 22 September 2015 noting that the outstanding fee was an RMS Law account which had been sent to SLAB again. He asked Miss C to note that any complaint should relate to RMS Law as the fee had nothing to do with Firm 1.
- 6.22 On 22 October 2015 Miss C sent an email to SLAB advising that she had been informed in September that the account was with SLAB and asking for confirmation of the position regarding payment of Ms A's fee. SLAB responded advising that an offer of nil in respect of the account for Ms A's fee

had been sent to the Respondent at RMS Law Solicitors because no cover was sought or granted to obtain counsel's opinion.

- 6.23 On 22 October 2015 Miss C sent an email to the Respondent at Firm 1 enclosing the above email from SLAB confirming the position regarding Ms A's fee. She asked the Respondent to check his records and confirm the position regarding settlement of the fee, a copy of which she enclosed.
- 6.24 On 28 June 2016 Faculty Services sent an email to the Respondent at Firm 2 noting that he was now employed there and reminding him that there were unpaid fees for work which he instructed whilst at RMS Law. The Respondent was advised that unless a resolution could be reached within 28 days then a recommendation would be made to the Dean of Faculty that a complaint should be made to the SLCC.
- 6.25 The above email was followed up with a letter from Faculty Services to the Respondent on 30 June 2016 drawing his attention to outstanding accounts for work instructed by him whilst at RMS Law and noting that whilst there had been part payment of the accounts the Respondent had not provided a good reason for non-payment of the balance.

Faculty Services reminded the Respondent that, as the instructing solicitor, he had a professional obligation to pay Counsel's fee irrespective of whether or not he had received payment from the client and that neither the merger with Firm 1 nor his move to another firm absolved him of this professional obligation.

The Respondent was advised that unless a satisfactory resolution was reached within the next 28 days then a complaint would be made to the SLCC.

- 6.26 On 5 July 2016 Firm 2 sent a letter to Faculty Services referring to their letter dated 30 June 2016 to the Respondent. The letter bore the Respondent's reference. Firm 2 advised that they were representing the Respondent who was now employed by the firm. They indicated that the firm had no liability in the matter.



Firm 2 advised that the Respondent did not accept that the merger of RMS Law with Firm 1 had no relevance in relation to the payment of outstanding fees. They stated that the two firms merged on 1 February 2014 and from that date all payments from SLAB due to RMS Law were paid to Firm 1 and that the Respondent was of the opinion that where Firm 1 held the funding they were liable for payment.

In relation to the fee note R154/MO120136 they advised that “[*the Respondent*] was the instructing solicitor in this case. There was a grant of advice and assistance with an increase for counsel to conduct the hearing. Unfortunately, the grant came too late for counsel to conduct the hearing. It was agreed that counsel would simply provide an opinion and our client conducted the case. Despite this being a substantial saving to the Board they have abated counsel’s opinion. We have asked them to reconsider. In the event that they agree to make payment this will be made to [Firm 1] and we would have to ask you to look there for payment. In the event that the Board refuse to make payment our client will accept liability”.

- 6.27 On 29 August 2016 Ms B sent a letter to the Respondent at Firm 2 asking for an update regarding the account. She sent a further letter to the Respondent on 7 October 2016 asking for a response to her letter dated 29 August 2016.
- 6.28 Faculty Services Limited were advised that the Respondent ceased employment with Firm 2 on 31 October 2016.
- 6.29 Ms B sent an email, marked for the urgent attention of the Respondent, to the information address at Firm 2 on 19 April 2017 asking him to confirm the position regarding payment of counsel’s fee. She asked the Respondent to give the matter his urgent attention. She attached a further copy of the fee note.
- 6.30 On 10 May 2017, in response to a request from Ms B for information to help clear the account, SLAB sent an email to Ms B advising that it appeared that the Respondent did not have sanction to undertake the work.

- 6.31 Ms B sent an email, marked for the urgent attention of the Respondent, to the information address at Firm 2 on 10 May 2017 noting that she had received no response to her email of 19 April 2017 and enclosing confirmation from SLAB that there was no sanction for the work which he instructed counsel to undertake and asking for settlement of the fee as per the letter dated 5 July 2016 from Firm 2.
- 6.32 Ms B sent further emails to the information address at Firm 2 for the attention of the Respondent on 6 and 20 June 2017 seeking a response and in the latter email she advised the Respondent that if he did not respond within 14 days then a complaint would be lodged with the SLCC.
- 6.33 On 20 June 2017 Ms B spoke to a member of staff at Firm 2 and was advised that they now only acted as a post box for the Respondent and also took messages for him.

#### **Failure to Respond to the Council**

- 6.34 On 26 June 2017 the Complaints Investigator sent an email to the Respondent at his email address (the Council did not have a postal address for the Respondent) to intimate a complaint against the Respondent in respect of his failure to settle in full a fee note dated 25 May 2012 from counsel Mr J or provide an explanation for failing to do so (these matters were subsequently resolved and the issues withdrawn). It was explained that the Complainer had a statutory duty to investigate the complaint and that the Respondent had a professional obligation to respond. The Respondent was required to respond within 21 days, setting out his position in respect of the complaint; providing his business files in relation to the matter from which the complaint arose (or confirm their current location); and providing any additional relevant information. The Respondent was informed that, if he failed to respond within 21 days, Notices in terms of section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 (the 2007 Act) and section 15 of the Solicitors (Scotland) Act 1980 (the 1980 Act) would be issued to him. He was advised that the Council may also intimate a further conduct complaint in respect of any failure or delay on his part in responding. The Respondent failed to respond to this email.



- 6.35 The Complainers obtained an address for the Respondent from Companies House and enquiry agents. The Complaint was then intimated to the Respondent by letter on 20 July 2017 at that address, 8 Carnock Gardens, Milngavie, Glasgow G62 7RU. The Respondent was asked to respond to the complaint within 14 days. The Respondent failed to respond to this letter.
- 6.36 On 28 August 2017 the Complaints Investigator issued statutory notices in terms of section 15(2)(i)(i) of the 1980 Act and section 48(2) of the 2007 Act by recorded delivery to the Respondent at the address at 8 Carnock Gardens Milngavie, Glasgow. The Section 15(2)(i)(i) Notice was delivered and signed for on 30 August 2017. The Respondent did not reply to either of the Notices.
- 6.37 On 20 September 2017 the second part of the Section 15 Notice in terms of Section 15(2)(i)(i) of the 2007 Act was sent by recorded delivery to the Respondent at the same address. This was delivered and signed for on 21 September 2017. No response was received.
- 6.38 On 30 October 2017 the Complaints Investigator intimated an additional complaint to the Respondent by email in respect of his failure to respond to the statutory Notices issued on 28 August 2017. The Respondent did not respond.
- 6.39 The Council has received no response from the Respondent.

#### **Further Failure to Respond to the Council**

- 6.40 On 26 June 2017 the Complaints Investigator sent an email to the Respondent at his email address to intimate a complaint against the Respondent in respect of his failure to settle in full a fee note dated 7 June 2012 from counsel Mr J or provide an explanation for failing to do so (these matters were subsequently resolved and the issues were withdrawn). It was explained that the Complainer had a statutory duty to investigate the complaint and that the Respondent had a professional obligation to respond. The Respondent was required to respond within 21 days, setting out his position in respect of the complaint; providing his business files in relation to the matter from which the complaint arose (or confirm their current location); and providing any additional relevant

information. The Respondent was informed that if he failed to respond within 21 days Notices in terms of section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 (2007 Act) and section 15 of the Solicitors (Scotland) Act 1980 (1980 Act) would be issued to him. He was advised that the Council may also intimate a further conduct complaint in respect of any failure or delay on his part in responding. The Respondent failed to respond to this email.

- 6.41 The Complaint was then intimated to the Respondent by letter on 20 July 2017 to the address 8 Carnock Gardens, Milngavie, Glasgow G62 7RU. The Respondent was asked to respond to the complaint within 14 days. This intimation was not returned as undelivered and the Respondent failed to respond to this letter.
- 6.42 On 28 August 2017 the Complaints Investigator issued statutory notices in terms of section 15(2)(i)(i) of the 1980 Act and section 48(2) of the 2007 Act by recorded delivery to the Respondent at the address at 8 Carnock Gardens Milngavie, Glasgow. The Section 15(2)(i)(i) Notice was delivered and signed for on 30 August 2017. The Respondent did not reply to either of the Notices.
- 6.43 On 20 September 2017 the second part of the Section 15 Notice in terms of Section 15(2)(i)(i) of the 2007 Act was sent by recorded delivery to the Respondent at the same address. No response was received. The Notice was not returned as undelivered.
- 6.44 On 7 November 2017 the Complaints Investigator intimated an additional complaint to the Respondent by email in respect of his failure to respond to the statutory Notices issued on 28 August 2017. The Respondent did not respond.
- 6.45 The Complaints Investigator sent an update to the Respondent regarding the investigation by recorded delivery letter on 22 February 2018 to the address at 8 Carnock Gardens, Milngavie, Glasgow. The letter was delivered and signed for on 23 February 2018.
- 6.46 The Council has received no response from the Respondent.



**Further Failure to Respond to the Council**

- 6.47 On 16 January 2018 the Complaints Investigator wrote to the Respondent at 8 Carnock Gardens Milngavie, Glasgow to intimate a complaint in respect of Ms A's unpaid fee note. It was explained that the Complainer had a statutory duty to investigate the complaint and that the Respondent had a professional obligation to respond. The Respondent was required to respond within 21 days, setting out his position in respect of the complaint; providing his business files in relation to the matter from which the complaint arose (or confirm their current location); and providing any additional relevant information. The Respondent was informed that if he failed to respond within 21 days Notices in terms of section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 (2007 Act) and section 15 of the Solicitors (Scotland) Act 1980 (1980 Act) would be issued to him. He was advised that the Council may also intimate a further conduct complaint in respect of any failure or delay on his part in responding. The Respondent failed to respond to this letter.
- 6.48 On 8 February 2018 the Complaints Investigator issued statutory notices in terms of section 15(2)(i)(i) of the 1980 Act and section 48(2) of the 2007 Act by recorded delivery to the Respondent at the address at 8 Carnock Gardens Milngavie, Glasgow. Both Notices were delivered and signed for on 9 February 2018. The Respondent did not reply to either of the Notices.
- 6.49 On 20 February 2018 the second part of the Section 15 Notice in terms of Section 15(2)(i)(i) of the 2007 Act was sent by recorded delivery to the Respondent at the address at which he resides. This Notice was delivered and signed for on 23 February 2018. No response was received.
- 6.50 On 22 June 2018 the Complaints Investigator intimated an additional complaint to the Respondent by email in respect of his failure to respond to the Statutory Notices issued on 8 February 2018. Due to an error in the email address the Complaints Investigator sent a further email to the Respondent on 26 June 2018 intimating the additional complaint. The Respondent did not respond.
- 6.51 The Council has received no response from the Respondent.

7. Having given careful consideration to the foregoing circumstances together with the submissions from the Complainers, the Tribunal found the Respondent guilty of Professional Misconduct as follows:-

- (a) Singly in respect that he misled Counsel as to the grant of sanction by the Scottish Legal Aid Board for the preparation of an opinion by her,
- (b) *In cumulo* with (a) and with each other in respect that he:-
  - (i) Failed to settle Counsel's fee despite repeated reminders and
  - (ii) Failed to communicate effectively with Faculty Services regarding the non-payment of Counsel's fee and
- (c) Singly in respect that he failed to respond promptly and efficiently to correspondence and statutory notices received from the Council in respect of its regulatory function.

8. Having heard further from the Complainers, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 15 March 2019. The Tribunal having considered the Complaint dated 22 November 2018 at the instance of the Council of the Law Society of Scotland against Raymond George Mallon, 2 Anchor Villas, Main Road, Langbank, Port Glasgow, Renfrewshire; Find the Respondent guilty of professional misconduct (a) singly in respect that he misled Counsel as to the grant of sanction by the Scottish Legal Aid Board for the preparation of an opinion by her, (b) in cumulo with (a) and with each other in respect that he (i) failed to settle Counsel's fee despite repeated reminders and (ii) failed to communicate effectively with Faculty Services regarding the non-payment of Counsel's fee and (c) singly in respect that he failed to respond promptly and efficiently to correspondence and statutory notices received from the Council in respect of its regulatory function; Censure the Respondent; 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 Council of the Law Society of Scotland and that for an aggregate period of five 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 any person referred to in Article 14A of Schedule 4 to the Solicitors (Scotland) Act 1980.

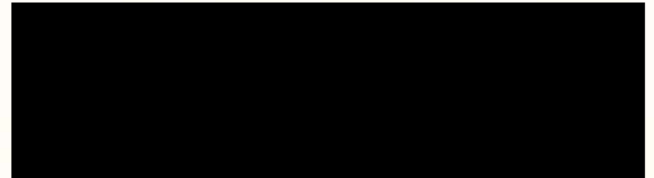
**(signed)**

**Alan McDonald**

**Vice Chairman**

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 30 APRIL 2019 .

**IN THE NAME OF THE TRIBUNAL**



**Alan McDonald**  
**Vice Chairman**



**NOTE**

At the hearing on 15 March 2019, the Tribunal had before it the Complaint, two Lists of Productions for the Complainers and a List of Witnesses.

The Respondent did not attend the hearing. Consequently, the Fiscal invited the Tribunal in terms of Rule 14(4) of the Tribunal Rules to proceed to hear and determine the Complaint in the absence of the Respondent. The Tribunal proceeded to hear evidence from the Clerk that the Complaint and relative Notice was sent to the Respondent at the address on the Complaint with a covering letter dated 27 November 2018. The Royal Mail track and trace system indicated that this item was delivered and signed for on 28 November 2018. The Clerk also confirmed that a Notice of Hearing was sent to the Respondent at the address given for him on the Complaint and that the Royal Mail track and trace system indicated that this item was delivered and signed for on 8 January 2019. The Fiscal produced a copy report from enquiry agents dated 16 May 2018 with regard to the address at 2 Anchor Villas, Main Road, Langbank, Port Glasgow. She submitted that the Respondent had failed to cooperate or communicate in any respect and so it was appropriate for the Tribunal to proceed in his absence.

The Tribunal being satisfied that notice of the hearing had been duly posted or intimated to the Respondent in accordance with Rule 11(2), went on to consider whether it was appropriate and fair in the circumstances that the hearing should proceed in the absence of the Respondent. In this regard, the Tribunal bore in mind the guidance provided in the case of R-v-Jones [2003] AC 1. The Respondent, in this case, had not lodged Answers and had not appeared at the hearing. He had made no contact with either the Fiscal or the Tribunal Office. The Complaint itself contained averments of failures to respond by the Respondent to the Law Society and other third parties. There appeared to be little or no purpose in adjourning today's hearing. The Tribunal had regard to the public perception of a decision to adjourn today's hearing in a case where the Respondent was alleged to have failed to respond with his regulator in the course of the investigation and had then failed to engage in proceedings to date. In all of these circumstances, the Tribunal concluded that the fair and appropriate decision was to proceed to hear and deal with the Complaint in the absence of the Respondent.

The Fiscal, thereafter, invited the Tribunal to allow evidence to be led by way of Affidavit. She also asked to be allowed to add an additional witness, Ian Ritchie, to her List of Witnesses together with lodging an additional Production. The Tribunal granted these motions.

**EVIDENCE FOR THE COMPLAINERS****AFFIDAVIT OF JONATHAN WILLIAM BRYDON RAE**

This witness is a data operations supervisor employed by Faculty Services. He confirmed that he had referred a complaint to the SLCC in respect of the Respondent's failure to settle the fee note of Ms C dated 30 July 2012. He had prepared a detailed timeline of correspondence between Ms C, the Respondent, the Respondent's firm and employers, the Scottish Legal Aid Board and Faculty Services Limited. He confirmed that Production 64 was a true and accurate record of that timeline. Additionally, he confirmed that Production 2 was a copy of the fee note. He confirmed that Productions 1 and 3 to 31 were copies of correspondence relating to this fee note. He confirmed that the fee note remains unpaid and no explanation for non-payment has been provided.

**EVIDENCE OF WITNESS – IAN DAVID RITCHIE**

The witness confirmed that he is employed by the Law Society as one of the Clerks to the Professional Conduct Sub Committee.

He confirmed that Production 32 was an email sent by the Law Society to the Respondent intimating a complaint the Law Society had received from the SLCC. As far as he could recollect, this email address was current at that time and he was aware that that email address had been used in connection with other matters. He confirmed that Production 33 was a copy of a letter sent by post to the Respondent on 20 July 2017 to an address at 8 Carnock Gardens. The Law Society had obtained this address by two means. The first was that his colleague had checked with the Register of Companies and had ascertained that that was the address used by the Respondent in relation to his firm RMS Law LLP. That colleague had then instructed one of the Law Society's Fiscals to instruct a firm of enquiry agents to check the address. He confirmed that the Complainers' Production 65 was a report received from those enquiry agents that confirmed that they were reasonably confident that the Respondent lived at the given address together with his wife and children. The witness confirmed that the date of birth given by the enquiry agents for Raymond Mallon within their report was the date of birth for the Respondent. Production 34 was a copy of a Notice under Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 sent to the Respondent dated 28 August 2017. Production 35 was a copy of a Section 48(2) Notice sent to the Respondent dated 28 August 2017. Production 36 was a Royal Mail posting receipt dated 26 August 2017. This only referred to the Section 15 Notice at Production 34. The witness indicated that sometimes administrative staff sent both notices in the same envelopes, sometimes they were sent separately. Of the two notices, the Section 15 Notice is the primary one that



requires a response from the Respondent. Production 37 showed that the Section 15 Notice was delivered and signed for on 30 August 2017. The lodged receipt indicated the name 'Mallon'.

Production 38 was the second part of the Section 15 Notice sent to the Respondent dated 20 September 2017. Production 39 was the Royal Mail posting receipt for that Notice and Production 40 showed that this was delivered and signed for on 21 September 2017 and again, with the recipient giving the name 'Mallon'.

Production 41 was a copy of an email sent to the Respondent dated 30 October 2017 intimating an additional complaint relating to the Respondent's failure to respond to correspondence with the Law Society.

Production 42 is a copy email to the Respondent intimating an additional and separate complaint. The witness drew the Tribunal's attention to the separate reference number. This was another complaint remitted to the Law Society by the SLCC. This complaint was also intimated to the Respondent by post dated 20 July 2017 and addressed to 8 Carnock Gardens. Production 44 is a copy of the first part of the Section 15 Notice relevant to this complaint. Production 45 is a copy of the Section 48 Notice relevant to that complaint. Production 46 is a receipt of posting which only makes reference to the Section 15 Notice but which may also have included the Section 48 Notice. The Royal Mail track and trace system is reproduced as Production 47 and indicates that this item was delivered and signed for on 30 August 2017. Production 48 is a copy of the second part of the Section 15 Notice relating to this complaint. Production 49 is the receipt for posting that item. No track and trace receipt has been lodged. Production 50 is a copy email intimating an additional complaint to the Respondent, of failing to correspond with the Law Society. Production 51 is a copy email providing an update in connection with this complaint. Production 52 is a receipt for posting and 53 a copy of the track and trace showing that the item was delivered and signed for on 23 February 2018.

Production 54 is an intimation of a further complaint received from the SLCC to the Respondent. Production 55 is the first part of the Section 15 Notice relating to this further complaint and Production 56 is a copy of the Section 48 Notice relating to that complaint. Production 57 shows two receipts of posting, one for the Section 15 Notice, the other for the Section 48 Notice. Productions 58/1 and 58/2 are the track and trace confirmations that these items were delivered and signed for on 9 February 2018. Production 59 is the second part of the Section 15 Notice sent on 9 February 2018. Production 60 is the receipt for posting of that item and at Production 61, a copy of the track and trace shows that this was delivered and signed for on 23 February 2018.

Production 62 is an email from the Law Society to the Respondent dated 22 June 2018 setting out a further complaint. The letter attached to the email to the Respondent is addressed to an address in Port Glasgow. The witness confirmed that he was aware that one of the Law Society's Fiscals had carried out investigations and had instructed enquiry agents to confirm the Respondent's address.

At this juncture, the Fiscal asked to be allowed to lodge another additional Production, Production 66 which was a copy of the enquiry agent's report that she had referred to at the commencement of proceedings. The witness confirmed that this was the enquiry agent's report confirming the Respondent's address in Port Glasgow.

The email dated 22 June was sent again on 26 June as an extra digit had been erroneously included in the email address. This email was reproduced at Production 63. The witness confirmed that as far as he was aware Production 62 was the only email that was ever returned to the Law Society as undelivered. None of the emails were ever replied to. As far as the witness was aware no items of correspondence were returned by the Post Office. The witness was aware that the Respondent owed a sum of money to the Law Society and that correspondence addressed to the Port Glasgow address resulted in a firm of solicitors representing the Respondent contacting the Law Society to negotiate payment.

#### **AFFIDAVIT OF FIONA ALEXANDRA ROBB**

This witness confirmed that she is a reporter to the Professional Conduct Sub Committee of the Law Society and is employed in the regulation department of the Law Society. This witness confirmed the correspondence sent to the Respondent by the Law Society and confirmed that no response was received from the Respondent to any of the correspondence.

#### **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal drew the Tribunal's attention to the email from the Respondent dated 29 May 2012 wherein the Respondent stated to Ms C that the Scottish Legal Aid Board had granted an increase for her opinion. This was clearly not correct. The Legal Aid Board had confirmed in correspondence that sanction was not even applied for. She submitted that this confirms what was said by the Respondent was untrue. She drew the Tribunal's attention to Rule B1.2, the duty of a solicitor to be trustworthy and act honestly at all times. She submitted that it was apparent that a hearing had been imminent and that the Respondent was under pressure.



Ms Crawford also drew the Tribunal's attention to Production 24, a letter dated 5 July 2016 from the Firm 2 to Faculty Services Limited. That letter bore the reference RM. It made no reference to any application for sanction so obviously it had not been true. Additionally, that letter included an undertaking that the Respondent would pay the fee if SLAB would not. In fact, the Respondent neither paid the fee nor responded to correspondence.

The Fiscal drew the Tribunal's attention to the case of Deryck De Maine Beaumont from 2008 where the Tribunal held that it was professional misconduct to fail to pay fees and to respond to correspondence. She submitted that in the Respondent's case there was a clear course of conduct of misleading Counsel, failing to pay the fee and then failing to respond. She submitted that this was clearly professional misconduct.

With regard to the failure to correspond with the Law Society, the Fiscal emphasised that this impacted negatively on the reputation of the profession. The public expect solicitors to respond to clients, colleagues and their regulator. To fail to respond with the regulator is clearly professional misconduct bringing the profession into disrepute.

In response to a question from the Tribunal, the Fiscal confirmed that she was inviting the Tribunal to convict the Respondent of misconduct in averment 6 on a singular basis under each of the four averments of misconduct.

## **DECISION**

The Tribunal gave careful consideration to the two Affidavits, parole evidence and Productions lodged for the Complainers. It was satisfied that the facts noted above had been proved beyond reasonable doubt. In particular, the Tribunal carefully considered the changes of address for the Respondent in relation to the correspondence with the Law Society. The Complainers had instructed enquiry agents on two separate occasions to obtain up to date addresses for the Respondent. A number of items of correspondence had been sent to him by ordinary post and by recorded delivery. No items had been returned to the Law Society's offices. Additionally, the Law Society had had email correspondence with the Respondent at an address they were aware had been operated by him. Only one email had bounced back to the sender and that was due to a typographical error.

Having concluded that the above facts were established, the Tribunal went on to consider whether the conduct proved amounted to misconduct. In that regard, the Tribunal bore in mind the test for professional misconduct set out within the case of Sharp v The Law Society of Scotland 1984 SLT 313.

The Complainers had set out four heads of professional misconduct:

- (1) The misleading of Counsel as to the grant of sanction by the Legal Aid Board.
- (2) The failure to settle Counsel's fee note.
- (3) The failure to communicate effectively with Faculty Services.
- (4) The failure to respond promptly and efficiently to correspondence and to statutory notices from the Council of the Law Society.

The Fiscal had asked the Tribunal to hold each one as establishing a finding of professional misconduct.

With regard to the misleading of Counsel, the Tribunal understood the Fiscal to be asking it to hold that the Respondent had deliberately misled Counsel with regard to the question of sanction. Given the information before it, the Tribunal was not prepared to draw an inference that the Respondent had deliberately misled Counsel. The Tribunal was however satisfied that the Respondent had in fact misled Counsel given that sanction could not have been granted as it had not been applied for. Nor was any explanation or clarification provided by the Respondent subsequently. In these circumstances, the Tribunal was satisfied that the Respondent had allowed his integrity to be called into question in contravention of Rule B1.2 of the Law Society of Scotland Practice Rules 2011. This conduct appeared to the Tribunal to clearly meet the test set out in Sharp, being conduct falling below that expected of a competent and reputable solicitor and which could only be regarded as serious and reprehensible. In these circumstances, the Tribunal found the Respondent guilty of professional misconduct in relation to this issue.

With regard to the second and third averments of misconduct, the Tribunal was satisfied that the facts established clearly demonstrated that the Respondent had failed to pay Counsel's fee despite repeated reminders and had failed to communicate effectively with Faculty Services. In the circumstances of this particular case, the Tribunal was of the view that these failures were interlinked with each other and that the appropriate finding was one of misconduct *in cumulo* with each other and with the misleading of Counsel.



The Tribunal was satisfied the evidence clearly established a failure on the part of the Respondent to respond promptly and efficiently to correspondence and statutory notices from the Council of the Law Society. This Tribunal has emphasised on many occasions in the past the importance of the duty on solicitors to cooperate with the Law Society exercising its regulatory function. If the public is to have confidence in the profession, then it must also have confidence that the Law Society can regulate the profession appropriately. In this case, the Respondent had failed to respond to correspondence with third parties. That failure had led to the Law Society's investigation. The Respondent had then gone on to fail to respond to the Law Society as regulator. This conduct clearly brought the profession into disrepute and the Tribunal found the Respondent guilty of professional misconduct singly in this regard.

## **DISPOSAL**

The Fiscal drew the Tribunal's attention to two previous findings of misconduct against the Respondent. The first of these was in 2013 and related to a failure to implement a mandate. The second finding was in 2017 and related to a failure to communicate with the Secondary Complainer in that case and a failure to respond to the Law Society.

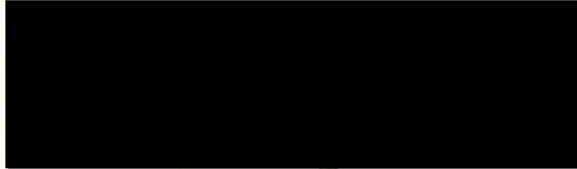
The Respondent's failure to engage with the disciplinary process concerned the Tribunal. It was impossible to determine any degree of insight or remorse due to this lack of participation. The Respondent had two previous findings of misconduct. The second of these was directly analogous to matters before the Tribunal in the current Complaint. Whilst some of the Respondent's conduct in the current Complaint pre-dated the second finding of misconduct, correspondence from the Law Society was sent in the course of 2018, which was clearly well after the last finding. On that occasion, the Respondent had been Censured and his practising certificate restricted for a period of three years.

Despite that last disposal, the Respondent had persisted in such misconduct. This clearly brought the profession into disrepute and caused great concern to the Tribunal. Upper most in the Tribunal's mind was the question of the protection of the public. Accordingly, the Tribunal concluded that the appropriate disposal was to censure the Respondent and to restrict his practising certificate limiting him to being employed and supervised for a period of five years.



The Fiscal sought an award of expenses and that was granted. The Tribunal ordered that publicity should be given to this decision including the name of the Respondent and any person included in Article 14A of Schedule 4 to the Solicitors (Scotland) Act 1980.

The Fiscal confirmed that the Secondary Complainer was no longer seeking compensation and the Tribunal allowed the claim for compensation to be treated as withdrawn.



**Alan McDonald**  
**Vice Chairman**