

**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, formerly of 26 Drumsheugh
Gardens, Edinburgh and now at Atria One, 144
Morrison Street, Edinburgh**

Complainers

against

**PAUL THOMPSON, Solicitor, 1 Mavis Bank
Gardens, Govan, Glasgow**

Respondent

1. A Complaint dated 20 January 2017 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 Paul Thompson, Solicitor, 1 Mavis Bank Gardens, Govan, 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. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent by Sheriff Officers at his home address on 22 February 2017. No Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 21 April 2017 and notice thereof was duly served upon the Respondent at his home address by Sheriff Officers on 21 March 2017.
5. At the hearing on 21 April 2017, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was neither present nor represented. The office for the Tribunal had received an email from the Respondent at 1621 hours on 20

April 2017. It stated that the Respondent was unable to attend the hearing on 21 April 2017 and wished the matter to be adjourned. The Tribunal ordered the Respondent to lodge Answers to the Complaint within 21 days failing which it would be assumed that he admitted the Complaint. A hearing was fixed for 21 June 2017. An email was sent to the Respondent on 21 April 2017 indicating the outcome of the hearing of that date. Notice of the hearing was served upon the Respondent's husband at the Respondent's address by Sheriff Officer on 27 April 2017.

6. At the hearing on 21 June 2017, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was neither present nor represented. No Answers had been lodged. The office for the Tribunal had received an email from the Respondent at 1018 hours on 21 June 2017. It stated that the Respondent was unable to attend the hearing on 21 June 2017 and wished the matter to be adjourned to a hearing which was not published on the Tribunal's website diary and was to be heard in private. This email was shared with the Fiscal. The Fiscal made a motion in terms of Rule 14(4) of the 2008 Tribunal Rules for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. The Fiscal objected to the motion that any hearing be heard in private. The Tribunal heard evidence from the Clerk with regard to service of the latest Notice of hearing and considered whether it was fair to proceed in the Respondent's absence. Thereafter it granted the Fiscal's motion. The Fiscal asked the Tribunal in terms of Rule 14(5)(b) of the 2008 Rules to proceed upon evidence given by affidavit and this motion was granted. The Fiscal lodged an affidavit for one witness. The Fiscal made submissions to the Tribunal in relation to the affidavit evidence and the documentary productions lodged.

7. The Tribunal found the following facts established:-

- 7.1 The Respondent is Paul Thompson. He was enrolled as a solicitor on 9 February 2002. He was a practitioner with Frank Irvine from 23 February 2009 to 20 January 2011 and sole partner with PT Legal between 4 February 2011 and 28 October 2013. The Respondent was suspended from practice on 28 October 2013 under section 40 of the Solicitors (Scotland) Act 1980, as amended ("the 1980 Act").
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- 7.2 The Council made a complaint about the Respondent alleging professional misconduct or unsatisfactory professional conduct (“the Secondary Complaint”), concerning the Respondent's failure to cooperate with the Council's investigation or to provide relevant papers to the Council in respect of another complaint (“the Principal Complaint”). This is despite notices in terms of section 15 of the 1980 Act and section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”) having been served upon him calling for him to do so.
- 7.3 The Principal Complaint related to conduct by the Respondent after he had been suspended from practice. He was suspended from acting as a solicitor on 28 October 2013 under section 40 of the 1980 Act, due to a failure to correspond and cooperate with the Law Society's Financial Compliance Department. After his suspension, the Respondent continued to represent his client, AB, in an Employment Tribunal case against Inverclyde Council. The Principal Complaint was brought to the Law Society's attention in a separate complaint raised by AB against the Respondent. On the recommendation of the Council's Complaints Sub Committee, the Principal Complaint was subsequently raised by the Council *ex proprio motu*. The Council complained that this conduct amounted to professional misconduct or unsatisfactory professional conduct.
- 7.4 The Principal Complaint was intimated to the Respondent by recorded delivery post at his home address on 30 October 2015. The letter stated that in terms of section 47(1) of the 2007 Act, the Council was obliged to investigate eligible complaints relating to the conduct of enrolled solicitors. It explained that, “*The Society has a statutory obligation to investigate this matter, and you have 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 2007 Act and section 15 of 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 letter.
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- 7.5 On 25 November 2015, the Complaints Investigator issued statutory notices under section 15(2)(i)(i) of the 1980 Act and section 48(2) of the 2007 Act to the Respondent in connection with the Principal Complaint.
- 7.6 The notice under section 15(2)(i)(i) (“the First Part of the Section 15 Notice”) stated that the Council considered that the Respondent had failed to reply in such a way which would enable the Council to complete its investigation of the matter. It required the Respondent to send to the Complaints Investigator the response previously requested in the letter of 30 October 2015 within 21 days of 25 November 2015. It stated, *“You should also be aware that if you fail to respond to this Notice within the specified timescale, the complainer will be invited to submit to the SLCC a further conduct complaint in relation to your failure to respond to the Law Society, which failing the Society shall do so ex proprio motu. The Scottish Solicitors’ Discipline Tribunal has previously upheld such complaints as professional misconduct.”*
- 7.7 Accompanying the First Part of the Section 15 Notice was a notice also dated 25 November 2015 requiring the Respondent to produce specified documents and/or an explanation of the matters to which the complaint relates in accordance with section 48(2) of the 2007 Act. The notice required the Respondent to deliver a written explanation of the matters to which the complaint relates to the Complaints Investigator at the Council’s offices within 21 days of the date of the notice. The notice advised the Respondent that, *“If you fail to respond to this Notice within the specified timescale, the Society:- Will submit ex proprio motu a further conduct complaint to the Scottish Legal Complaints Commission in relation to your failure to provide the relevant documentation/explanation and/or your failure to respond to the Law Society.”*
- 7.8 The notices were sent by recorded delivery post to the Respondent at his home address. The Royal Mail’s online Track and Trace service indicated that the Respondent signed for both notices on 27 November 2015. The Respondent did not reply to either of the notices issued on 25 November 2015.
- 7.9 On 8 January 2016, the Complaints Investigator issued a further statutory notice under section 15(2)(i)(i) of the 1980 Act (“the Second Part of the
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Section 15 Notice”) to the Respondent in connection with the Principal Complaint. It noted that the Respondent had failed to reply by the date specified in the notice served on 25 November 2015 and to report as required to the Council. The Respondent was required to give six weeks’ notice to the Council of his intention to make application to take out a Practising Certificate for the year commencing 1 November 2016. The Second Part of the Section 15 Notice was served on the Respondent by recorded delivery post at his home address. The Royal Mail’s online Track and Trace service indicated that the Respondent signed for it on 9 January 2016. He failed to respond.

- 7.10 On 8 January 2016, the Complaints Investigator intimated the Secondary Complaint to the Scottish Legal Complaints Commission (“the SLCC”) by email as an additional issue to the Principal Complaint. The SLCC assessed the Secondary Complaint as eligible and accepted it for investigation. The SLCC’s decision was intimated to the Council by letter dated 22 February 2016.
- 7.11 On 25 February 2016, the Complaints Investigator wrote to the Respondent to intimate notice of the Secondary Complaint. 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 did not reply to the 25 February letter.
- 7.12 Both the Principal and Secondary Complaints were considered by the Sub Committee on 8 September 2016. In relation to the Principal Complaint, the Sub Committee determined that:

“...in relation to the Tribunal and Inverclyde Council there was insufficient evidence to allow even a finding of Unsatisfactory Professional Conduct to be made.

“However, in relation to the client CD, the Sub Committee agreed that a client after instructing a solicitor ought to be given the choice on whether he still wishes the solicitor to represent him where that solicitor no longer holds a practising

certificate...However, the Sub Committee agreed, in the absence of direct information from the client and the Solicitor, that this could only be proved on a balance of probabilities.

“In all these circumstances and for these reasons...the Sub Committee determined that the Solicitor's conduct met the test for Unsatisfactory Professional Conduct and therefore a finding of Unsatisfactory Professional Conduct ought to be made.”

7.13 The Sub Committee determined to censure the Respondent in terms of section 42Z(3) of the 1980 Act, but to make no order in terms of section 42ZA(4)(a) in respect of the Principal Complaint.

7.14 In relation to the Secondary Complaint, the Sub Committee decision as narrated in the Schedule was that:

“In these circumstances the Sub Committee was satisfied that the factual basis of the complaint was capable of being proved beyond reasonable doubt, it being satisfied that the correspondence referred to in the complaint had been sent to the Solicitor and been delivered to him and where he had failed to issue any response...

“...[T]he Sub Committee agreed that the Solicitor had been given a number of opportunities to respond but failed to do so and this was unsatisfactory.

“Accordingly, the Sub Committee was satisfied for these reasons and those given by the Complaints Investigator that the Solicitor'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 and could therefore amount to Professional Misconduct.”

8. Having given careful consideration to the above facts and the Complainers' submissions in relation to the question of professional misconduct, the Tribunal found the Respondent guilty of Professional Misconduct in respect that:-

He failed to respond timeously, accurately or fully to correspondence or statutory notices

sent by the Council to him on 30 October 2015, 25 November 2015, 8 January 2016 and 25 February 2016; he failed to communicate effectively by providing clear and comprehensive information in response to correspondence or statutory notices sent by the Council to him on 30 October 2015, 25 November 2015, 8 January 2016 and 25 February 2016; and he failed to respond promptly and efficiently to correspondence or statutory notices received from the Council in respect of its regulatory function.

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

Edinburgh 21 June 2017. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland dated 20 January 2017 against Paul Thompson, Solicitor, 1 Mavis Bank Gardens, Govan, Glasgow; Find the Respondent guilty of professional misconduct in respect that he failed to respond timeously, accurately or fully to correspondence or statutory notices sent by the Council to him on 30 October 2015, 25 November 2015, 8 January 2016 and 25 February 2016; he failed to communicate effectively by providing clear and comprehensive information in response to correspondence or statutory notices sent by the Council to him on 30 October 2015, 25 November 2015, 8 January 2016 and 25 February 2016; and he failed to respond promptly and efficiently to correspondence or statutory notices received from the Council in respect of its regulatory function; Censure the Respondent, Fine the Respondent the sum of £1,000 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; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but should not contain the names of any third parties.

(signed)

Colin Bell

Vice Chairman

10. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 18 July 2017

IN THE NAME OF THE TRIBUNAL



Colin Bell
Vice Chairman

NOTE

The Complaint was served by Sheriff Officer on the Respondent at his home address on 22 February 2017. No Answers were lodged for the Respondent. The Tribunal appointed the Complaint to be heard on 21 April 2017 and notice was served upon the Respondent by Sheriff Officer on 21 March 2017.

The office for the Tribunal received an email from the Respondent at 1621 hours on 20 April 2017 stating that he was unable to attend the hearing on 21 April 2017 due to the ill health of his husband and wished the matter to be adjourned. The case called on 21 April 2017 and was adjourned to 21 June 2017. The Tribunal ordered the Respondent to lodge Answers to the Complaint within 21 days failing which it would be assumed that he admitted the Complaint. An email was sent to the Respondent on 21 April 2017 indicating the outcome of the hearing of that date. Notice of the hearing was served upon the Respondent's husband at the Respondent's address by Sheriff Officer on 27 April 2017. No Answers were lodged for the Respondent.

The office for the Tribunal received an email from the Respondent at 1018 hours on 21 June 2017. The hearing was due to start at 1030 hours. The email stated that the Respondent was unable to attend the hearing on 21 June 2017 and wished the matter to be adjourned. He wished the matter to be heard in private. He did not wish the adjourned case to be published on the Tribunal's website diary. He indicated that he had been advised by Police Scotland not to put himself at risk by making his whereabouts known to AB and so therefore he could not appear at the hearing as he was concerned that AB might attend. He intended to apply for legal aid and instruct legal representation before the Tribunal. The email was shown to the Fiscal.

The Fiscal made a motion in terms of Rule 14(4) of the 2008 Tribunal Rules for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. The Fiscal objected to the motion that any hearing be heard in private. He noted the terms of Rule 43 of the 2008 Tribunal Rules which provides that the Tribunal shall hold the hearing and pronounce its decision in public. If a party wishes the matter to be heard in private that party shall submit a motion to the Clerk in writing not less than 21 days prior to the date of the hearing, send a copy of the motion to all other parties and if a party objects, the Tribunal may invite the parties to a procedural hearing to determine whether or not to grant the motion. He noted that on the last occasion the Chairman had not considered it necessary to hear the case in private and that circumstances were no different on this occasion.

The Fiscal observed that the Respondent had attempted on two occasions to adjourn this case at very short notice by way of email to the Tribunal office. He invited the Tribunal to balance the interests of the Respondent against the interests of proceeding. He submitted that the balance lay in favour of proceeding. He indicated that it was of concern that a suspended solicitor who had allegedly failed to engage with his regulator was then failing to engage with the Tribunal. It was in the public interest to proceed and not to adjourn.

The Tribunal considered the matter of adjournment and whether it was fair to grant the adjournment or to proceed. From the terms of the email, the purpose of the adjournment appeared to be to allow the Respondent to instruct a representative and to avoid AB. The Tribunal had regard to the information the Respondent had provided in relation to the criminal case against AB and the Respondent's reticence to attend the Tribunal hearing as a consequence. The Tribunal noted that the Respondent was suspended and the public was not at risk from him continuing to practise were it to grant the adjournment.

However, the Tribunal noted the Respondent did not provide any information from Police Scotland in support of his application, or any evidence that he had attempted to engage a representative or apply for legal aid since the Complaint had first been served upon him in February 2017. Having obtained an adjournment in April 2017, it appeared that the Respondent had not used that time to instruct a representative, lodge Answers as he had been directed, or otherwise engage meaningfully in the process. There was no guarantee that he would do so if the Tribunal were to grant another adjournment. Regulatory proceedings should be dealt with expeditiously. It is in the interests of all concerned, including the public and the profession, that these matters are not delayed without good reason. The Tribunal was therefore of the view that the balance lay in favour of proceeding.

The Tribunal considered the Respondent's request to have the hearing held in private. It noted that the Respondent had not followed the exact requirements of Rule 43. However, he had raised the issue in his emails of 20 April 2017 and 21 June 2017 and the Tribunal thought it appropriate to consider the matter. The Tribunal noted that in general, proceedings are heard in public and that this was consistent with the principle of open justice although there were exceptions to this rule, for example, for the protection of an individual. The Tribunal was of the view that it was not necessary to hear the case in private, particularly since the Respondent had chosen not to attend.

The Tribunal heard evidence from the Clerk with regard to service of the latest Notice of hearing and considered whether it was fair to proceed in the Respondent's absence. The Tribunal had regard to R v

Jones [2002] UKHL 5 and the need to exercise its discretion in this matter “*with great caution and with close regard to the overall fairness of the proceedings.*” The Tribunal considered fairness to the Respondent. There would be a disadvantage to the Respondent in being unable to give his account of events. However, he had chosen not to attend and had taken no steps to mitigate the effects of his non-attendance, for example, by lodging answers, engaging a representative or providing written submissions. It is in the public interest that regulatory proceedings take place within a reasonable time. Respondents cannot be allowed to frustrate the process. One adjournment had already been granted on the Respondent’s motion. The fair, economical, expeditious and efficient disposal of allegations against solicitors was an important consideration. In these circumstances the balance lay in favour of proceeding in the Respondent’s absence. Therefore, the Tribunal granted the Fiscal’s motion to proceed in the Respondent’s absence.

The Fiscal asked the Tribunal in terms of Rule 14(5)(b) of the 2008 Rules to proceed upon evidence given by affidavit and this motion was granted. The Fiscal lodged an affidavit for one witness. The Fiscal made submissions to the Tribunal in relation to the affidavit evidence and the documentary productions lodged.

EVIDENCE AND SUBMISSIONS FOR THE COMPLAINERS

The Fiscal lodged one affidavit for the witness Aidan West, a Complaints Investigator employed by the Law Society of Scotland. The witness set out in his affidavit the history of the letters and statutory notices which the Complainers had served upon the Respondent. He confirmed that the Respondent had provided no response to these. The Fiscal referred to his productions which consisted of five letters/notices which had been sent to the Respondent together with proof of delivery for the statutory notices. He submitted that the documentary and affidavit evidence proved the facts in the Complaint beyond reasonable doubt. Further, he submitted that these proved facts amounted to professional misconduct. The Respondent had failed to communicate effectively with his regulator and had failed to respond promptly and efficiently to correspondence received by the Complainers.

The Fiscal noted that the Tribunal has held on many occasions that a solicitor’s failure to respond to the Law Society of Scotland is professional misconduct. In support of that submission he referred to the recent Tribunal cases Law Society of Scotland v Skimming and Law Society of Scotland v Dickson.

DECISION

The Tribunal gave careful consideration to the Affidavit, Productions and the Fiscal's submissions. It concluded that the above noted facts had been proved beyond reasonable doubt.

The Tribunal considered the test for professional misconduct contained within Sharp v Council of the Law Society of Scotland 1984 SLT 313, namely that:

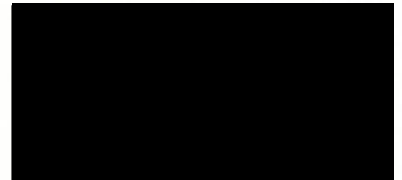
“There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct 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 made.”

The Tribunal was satisfied that the Respondent's behaviour was serious and reprehensible and met the test for professional misconduct. The behaviour amounted to a course of conduct of failing to cooperate with the Respondent's regulatory body. This Tribunal has on many occasions emphasised the importance of the duty of a solicitor to cooperate with the Law Society exercising its role as the regulatory body of the profession. The Society exercises this function to protect the public. It cannot do so effectively without the cooperation of the members of the profession. Accordingly, the Tribunal unanimously found the Respondent guilty of professional misconduct.

The Tribunal considered the Respondent's conduct to be at the lower end of the scale of misconduct. However, when considering sanction it also had regard to the Tribunal's previous finding of misconduct against the Respondent for analogous matters. Further aggravating factors were the lack of remorse and insight displayed by the Respondent and his failure to engage adequately with the Tribunal process. The Tribunal considered the appropriate sanction to be a censure and a fine.

The Fiscal moved for expenses to be awarded against the Respondent. The Tribunal found the Respondent liable in the expenses of the Complainers and of the Tribunal. It directed that publicity would be given to the decision and that publicity should include the name of the Respondent but should not identify any third parties as publication of their personal data is likely to damage their interests.

The Tribunal gave consideration as to whether it should refrain from publishing the Respondent's address in this decision given the information he had provided regarding the circumstances of the current criminal court case against AB. The Tribunal noted that Paragraph 14A of Schedule 2 to the Solicitors (Scotland) Act 1980 does not confer on the Tribunal the discretion to refrain from publishing names, places or other facts which would be likely to damage the interests of the solicitor against whom the complaint is made, his partners or their families. The Tribunal had regard to the general rule under the principle of open justice that the names of the parties to an action are included in the judgements of the court. It was clear from the information provided by the Respondent that his address was already known to AB and had previously been published in a decision of this Tribunal. The Tribunal considered that there was sufficient public interest in identifying the Respondent by his address and this was also in the interests of the profession.



Colin Bell
Vice Chairman