

**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**

**against**

**ROY WILLIAM ANDREW MILLER, formerly  
trading under the firm name of Miller & Co.,  
latterly as a sole practitioner, at 6 St Ninian  
Terrace, Crown Street, Glasgow**

1. A Complaint dated 23 February 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Roy William Andrew Miller, formerly trading under the firm name of Miller & Co., latterly as a sole practitioner at 6 St Ninian Terrace, Crown Street, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer: Ms A.
3. The Tribunal caused a copy of the Complaint as lodged to be served 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 18 May 2018 and notice thereof was duly served on the Respondent.
5. The hearing took place on 18 May 2018. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor-Advocate, Edinburgh. The Respondent was neither present nor represented. The Fiscal moved the Tribunal to proceed in the Respondent's absence. The Tribunal heard evidence on oath from the Clerk regarding service. Following an

adjournment for consideration of the issue, the Tribunal concluded that it was fair to proceed in the Respondent's absence. The Tribunal granted the Fiscal's motion in terms of Rule 14(5)(b) for the Tribunal to proceed and act upon evidence given by affidavit. The Tribunal allowed the Fiscal to replace one affidavit which had been lodged with the Tribunal office. The Tribunal allowed all affidavits to be received.

6. The Tribunal found the following facts established:-

6.1 The Respondent is a solicitor enrolled in the Registers of Scotland. He resides at 3 Elm Street, Glasgow. His date of birth is 22 September 1961. He was enrolled as a solicitor on 11 December 1987. He traded under the firm name of Miller & Co, latterly as a sole practitioner, at 6 St Ninian Terrace, Crown Street, Glasgow (the firm), from 12 December 1990 until the firm ceased trading on 31 October 2014. He was a Partner in the firm. He was the firm's Client Relations Partner from 22 February 1999. He was the firm's Cashroom Partner from 1 June 2000. As at 1 November 2014 the Respondent failed to renew his practising certificate. The Respondent was sequestrated on 11 January 2016. The Respondent is presently suspended from practice and does not hold a practising certificate.

**Ms A -Background.**

6.2 The Respondent, whilst at the firm, was instructed by Ms A. By a letter dated 19 June 2012, Patrick Campbell Solicitors sent the Respondent a Mandate on behalf of Ms A for her file. Despite numerous pieces of correspondence the Respondent failed to reply or implement the Mandate and a complaint was lodged with the Scottish Legal Complaints Commission (SLCC). This ultimately included a complaint in relation to his failure to respond to the SLCC itself.

6.3 In addition, a further complaint, by the present Complainers, was made in relation to a failure to respond to its correspondence. Both were classified as conduct issues and referred by the SLCC to the present Complainers for investigation.



**Ms A-Failure to Respond to the SLCC**

- 6.4 On 22 April 2016 the SLCC wrote to the Respondent informing him that they were to begin their investigation into the complaint issues raised by the complainer under their reference 201300470. This letter asked for the following within 14 days: the Respondent's response to the summary complaint which had been intimated to him on 26 November 2013 (a copy of which was attached), the case files relating to Ms A, details of any fees and outlays charged and confirmation if paid and a copy of the Respondent's firm's written complaints handling process. The SLCC sent the letter to the Records Department of the present Complainers asking them to forward it to the Respondent at his home address.
- 6.5 On 26 April 2016 the present Complainers forwarded the SLCC letter of 22 April 2016 to the Respondent at his home address. He failed to respond to the letter.
- 6.6 On 10 May 2016 the SLCC wrote to the Respondent enclosing a further copy of their letter dated 22 April 2016 and asking for his response within 7 days. The SLCC again sent this letter to the Records Department of the present Complainers asking them to forward it to the Respondent at his home address.
- 6.7 On 13 May 2016 the present Complainers forwarded this to the Respondent at his home address. He again failed to respond to it.
- 6.8 On 20 May 2016 the SLCC wrote to the Respondent enclosing a notice in terms of Section 17(1) of the Legal Profession and Legal Aid (Scotland) Act 2007 also dated 20 May 2016. The Notice required the Respondent to provide them with a response and his case files for Ms A by 10 June 2016. The letter advised him that the SLCC could apply to the Court of Session for an Order requiring the relevant documents and files to be delivered and that failure to respond may lead to the present Complainers being informed and could result in a conduct complaint being taken against him. The SLCC again sent the letter and the notice to the present Complainers asking them to forward the letter and notice to the Respondent at his home address.

- 6.9 On 25 May 2016 the present Complainers forwarded the letter and the notice to the Respondent by recorded delivery to his home address. The Complaints Investigator made enquiries with the Registrar of the present Complainers and there is no receipt confirming delivery of this letter. However, it has not been returned to the present Complainers as undelivered. The Respondent failed to respond to the letter and the notice.
- 6.10 On 30 August 2016 the SLCC wrote to the Respondent enclosing an amended Summary of Complaint with an additional issue, namely Issue 4, namely a failure to respond. The SLCC again sent the letter and enclosure to the Complainers and asked them to forward the items to the Respondent at his home address. This letter did not require a response from him.
- 6.11 On 5 September 2016 the Respondent forwarded the SLCC letter and enclosure to the Respondent at his home address.
- 6.12 The SLCC wrote further letters to the Respondent on 22 September, 27 October and 7 December all 2016 advising him of the progress of the complaint. The SLCC sent each of those letters to the Complainer and they forwarded them to the Respondent at his home address respectively on 23 September, 28 October and 8 December all 2016.
- 6.13 On 11 January 2017 the SLCC wrote to the Respondent advising him that the fourth issue of complaint had been classified as a conduct complaint and accordingly the matter would be investigated by the present Complainers who would contact him directly. The SLCC's Determination Report was enclosed with this letter. The SLCC again sent this to the present Complainers and asked them to forward it to the Respondent at his home address.
- 6.14 This occurred on 12 January 2017 and was sent again to his home address.
- 6.15 None of the SLCC letters forwarded by the present Complainers to the Respondent have been returned as undelivered.



- 6.16 Accordingly, the SLCC required to conclude its investigations without any information being provided by the Respondent. The SLCC have been put to additional unnecessary expense as a result of the Respondent's non co-operation.

**Failure to Respond to the Complainers re Ms A**

- 6.17 On 31 January 2017 the present Complainers intimated Ms A's complaint to the Respondent at his home address advising him that he had a professional obligation to respond and asking him to respond within 21 days:

- (i) setting out his position
- (ii) providing his business files relevant to the complaint and
- (iii) providing any additional information that he considered relevant.

The Respondent failed to respond.

- 6.18 On 28 February 2017 a Notice in terms of Section 15(2)(i)(i) of the Solicitors (Scotland) Act 1980 was sent to the Respondent's home address by recorded delivery together with a Notice in terms of Section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007. These were delivered and signed for on 2 March 2017. He failed to respond.

- 6.19 On 6 March 2017, due to a typographical error in the Notice in terms of Section 15(2)(i)(i) which had been served on 2 March 2017, an amended Notice was sent to the Respondent by recorded delivery. This was delivered and signed for on 7 March 2017. He yet again failed to respond.

- 6.20 On 30 March 2017 a further Notice in terms of Section 15(2)(i)(i) was sent to the Respondent's home address by recorded delivery. This was delivered and signed for on 31 March 2017.

- 6.21 On 22 May 2017, due to a typographical error in the Notice in terms of Section 15(2)(i)(i) served on 31 March 2017, a further amended Notice was sent to the Respondent by recorded delivery. This was delivered and signed for on 23 May 2017. He yet again failed to respond.

6.22 On 20 June 2017 intimation of an additional complaint by the Law Society in relation to the Respondent's failure to respond to correspondence from the Law Society was sent to the Respondent's home address by recorded delivery. There is a receipt of postage, although the receipt has the wrong file reference on it, but no confirmation of delivery. The letter has not been returned to the present Complainers as undelivered. In addition, on 20 June 2017 the Complaints Investigator also sent an email to the Respondent attaching a copy of the intimation. The Respondent has failed to respond to either.

6.23 Accordingly, the present Complainers required to proceed and conclude its investigation process with no input from the Respondent. The present Complainers have been put to additional unnecessary expense as a result of the Respondent's non co-operation.

7. Having considered the evidence submitted by way of affidavit and the submissions in relation to the question of professional misconduct, the Tribunal found the Respondent guilty of Professional Misconduct individually and *in cumulo* in respect that (a) he failed to respond to the SLCC's correspondence including a formal statutory notice, and (b) he failed to respond to the Complainers' correspondence including formal statutory notices relating to the Secondary Complainer and its own complaint.

8. The Tribunal heard further submissions from the Fiscal with regard to disposal. Having given careful consideration to those submissions, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 18 May 2018. The Tribunal having considered the Complaint dated 23 February 2018 at the instance of the Council of the Law Society of Scotland against Roy William Andrew Miller, formerly trading under the firm name of Miller & Co., latterly as a sole practitioner at 6 St Ninian Terrace, Crown Street, Glasgow; Find the Respondent guilty of professional misconduct individually and *in cumulo* in respect that (a) he failed to respond to the SLCC's correspondence including a formal statutory notice, and (b) he failed to respond to the Complainers' correspondence including formal statutory notices relating to the Secondary Complainer and its own complaint; Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be



taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and his firm 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 with the Tribunal Office.

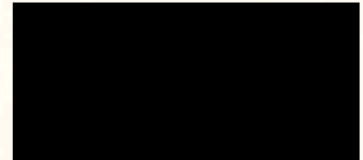
**(signed)**

**Kenneth Paterson**

**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 4 JUNE 2018.

**IN THE NAME OF THE TRIBUNAL**



**Kenneth Paterson**

**Vice Chairman**



**NOTE**

At the hearing on 18 May 2018, the Tribunal had before it a Complaint and a Schedule of Documents for the Complainers numbered 1-33. Said Schedule of Documents included three affidavits.

The Fiscal made a motion in terms of Rule 14(4) of the Tribunal Rules for the Tribunal to proceed and hear and determine the Complaint in absence of the Respondent. She had intimated all documents and her motion to proceed by way of affidavit evidence to the Respondent. The Respondent had sent an email to her on 16 May 2018 indicating that he was aware of the hearing date but did not intend to attend.

The Tribunal heard evidence on oath from the Clerk regarding service of the Notice of Hearing. Service had been effected on 23 March 2018 by recorded delivery post, signed for by the Respondent. The Tribunal 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 these matters "*with great caution and with close regard to the overall fairness of the proceedings*". The Tribunal considered that if it heard the case in the Respondent's absence, there would be a disadvantage to the Respondent in being unable to give his account of events. However, he had been given ample notice of the date, was aware of the date of the hearing, and had indicated that he did not intend to attend. There was no reason to be confident that he would attend on another occasion if the hearing was adjourned. It is in the public interest that regulatory proceedings take place within a reasonable time. The fair, economical, expeditious and efficient disposal of allegations against solicitors was an important consideration. It was in the public interest that the matter was adjudicated upon without delay. In these circumstances the balance lay in favour of proceeding in the Respondent's absence and the Tribunal granted the Fiscal's motion to proceed.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal said that the Respondent had shown a complete disregard for correspondence sent to him by the SLCC and the Complainers. The affidavit of the SLCC's case investigator confirmed the correspondence which was sent out by that body to the Respondent through the Complainers' Registrar's Office. The affidavit of the witness who worked within the Complainers' Registrar's Department confirmed receipt of those sealed envelopes from the SLCC and that these were sent on to the Respondent. The affidavit of the Complainers' complaints investigator confirmed that the Complainers' correspondence with regard to its own complaint was sent to the Respondent as labelled in the Complaint.

The Fiscal asked the Tribunal to take into account the documents lodged and the terms of the affidavits. She said that these displayed a clear pattern which impacted negatively on the reputation of the profession. The public should be able to expect solicitors to engage with them, the SLCC and their regulator. She noted that the Respondent had not provided any excuse regarding his failures and that his lack of cooperation had been a simple choice. This choice brought the profession into disrepute and amounted to professional misconduct individually and *in cumulo*.

## DECISION

The Tribunal considered carefully the averments of fact in the Complaint. It considered that these were sufficiently proved by the affidavits contained in Productions 31, 32 and 33. The Tribunal was satisfied beyond reasonable doubt that the Respondent had behaved in the manner as set out in the Complaint.

The Tribunal had regard to the test of professional misconduct as defined in Sharp-v-The Council of the Law Society of Scotland [1984] SLT 413. In that case it was emphasised that a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors may be properly categorised as professional misconduct. However, in every case it is essential to consider the whole circumstances and the degree of culpability of the individual against whom the complaint is made.

The Tribunal considered that the Respondent's conduct was sufficiently serious and reprehensible to amount to professional misconduct. Solicitors have a duty to cooperate with the SLCC and the Complainers and provide full and accurate explanations in respect of any matter that is the subject of a complaint. Failure by solicitors to do this hampers the Law Society in their performance of the statutory duty and brings the profession into disrepute.

The Fiscal provided copies of four previous Tribunal cases against the Respondent. The Tribunal had regard to these analogous matters and the professional misconduct established in the present Complaint. Over a period of six years, the Tribunal has made five findings against the Respondent. These cases involved repeated failures by him to respond to the Complainers. The Tribunal noted that it had ordered on the last occasion that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland. The Tribunal recognised that in these circumstances, its powers were limited by Section 53(3A)(a) of the 1980 Act. In relation to a former solicitor who has been struck off the roll, the disposals which the Tribunal can impose are those laid out in Section 53(2)(bb) to (e). The Tribunal noted that the public was already protected by the order for strike off. The Respondent is currently sequestered and is of limited means. Therefore, on this occasion, the Tribunal Censured the Respondent.



Following submissions on expenses, the Tribunal decided that the appropriate award in relation to expenses was one in favour of the Complainers. The Fiscal made a motion that all individuals other than the Respondent should be anonymised in the Findings. 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 need to identify any other person as publication may damage or be likely to damage the interests of those persons. The Secondary Complainer will have 28 days from the intimation of these Findings to lodge a written claim for compensation with the Tribunal Office.



**Kenneth Paterson**  
**Vice Chairman**