

**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

**JOHN FRASER TAIT, Tait Macleod, Eilean
Chambers, 6 Park Street, Falkirk**

Respondent

1. A Complaint dated 28 April 2023 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that John Fraser Tait, Tait Macleod, Eilean Chambers, 6 Park Street, Falkirk (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Bridget Raeside, 55 Bar Farm Road, Kilsyth, Glasgow.
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 24 August 2023 and notice thereof was duly served on the Respondent. A Joint Minute was lodged with the Tribunal in advance of the hearing.
5. At the virtual hearing on 24 August 2023, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow.

6. Having given careful consideration to the terms of the Complaint and Joint Minute, The Tribunal found the following facts established:-
- 6.1 The Respondent is John Fraser Tait. He was born on 05 April 1969. He was enrolled and admitted as a solicitor on 07 October 1993. The Respondent commenced employment with 'Tait Macleod' hereinafter known as 'the firm' as a partner on 12 February 2009. The Respondent currently possesses a full unrestricted practising certificate.
- 6.2 The Respondent was instructed in 2011 in relation to the administration of the Secondary Complainer's brother in law's estate. The Secondary Complainer was one of two executors of the estate.
- 6.3 The Secondary Complainer raised a complaint with the Scottish Legal Complaints Commission (SLCC) in January 2021 regarding the manner in which the Respondent administered the estate. Nine service issues were deemed eligible for investigation by the SLCC.
- 6.4 A request was made via email by the SLCC to the Respondent on 17 May 2021 in the following terms:
"This letter is notice under section 17(1) of the Act requiring you to produce or deliver your firm's business file(s), and provide your explanation regarding the matters to which this complaint relates, to the SLCC by 7 June 2021."
- 6.5 The Respondent did not reply to the request which resulted in a further email being sent to the Respondent from the SLCC on 10 June 2021 which stated:
"If we do not receive the following from you by 17 June 2021, the SLCC will pass this matter to our solicitors to exercise the SLCC's powers under Section 17 of the Act by initiating legal action against you for the recovery of your files."
- 6.6 No response was received in relation to the SLCC's email of 10 June 2021.
- 6.7 On 25 June 2021 the SLCC wrote to the Respondent stating additional issues were being added to the Secondary Complainer's original complaint which now included a failure to deliver files requested by the SLCC.

6.8 The SLCC instigated an action in the Court of Session for recovery of the documents. This case was disposed of with the Respondent being liable for the expenses of agents instructed on behalf of the SLCC.

6.9 The Respondent sent the files along with a cover letter to the SLCC on 04 November 2021. These files were received by the SLCC on 10 November 2021.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect that:

7.1 He failed to provide the Scottish Legal Complaints Commission with a copy of a file in order for it to investigate a complaint against the firm of Tait MacLeod, despite this being requested by the Scottish Legal Complaints Commission on 17 May 2021 and 10 June 2021.

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

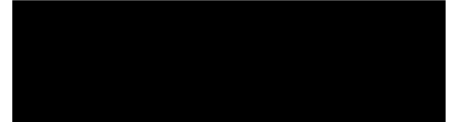
By Video Conference, 24 August 2023. The Tribunal having considered the Complaint dated 28 April 2023 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against John Fraser Tait, Tait Macleod, Eilean Chambers, 6 Park Street, Falkirk; Find the Respondent guilty of professional misconduct in respect that he failed to provide the Scottish Legal Complaints Commission with a copy of a file in order for it to investigate a complaint against the firm of Tait MacLeod, despite this being requested by the Scottish Legal Complaints Commission on 17 May 2021 and 10 June 2021; Censure the Respondent; Fine him in the sum of £1,500 to be Forfeit to His Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person; and Allow the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation if so advised.

(signed)

Ben Kemp
Vice Chair

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 12 SEPTEMBER 2023 .

IN THE NAME OF THE TRIBUNAL



Ben Kemp
Vice Chair

NOTE

At the start of the Hearing on 24 August 2023, the Tribunal had before it the Complaint and a Joint Minute of Admissions. Following the decision on misconduct, the Tribunal also had before it three documents provided by the Respondent to support the submissions made in mitigation. By way of the Joint Minute, the Respondent admitted the averments of fact, duty and misconduct in the Complaint. Mr Macreath indicated that the Joint Minute represented parties' agreement, even though the copy of the Joint Minute lodged with the Tribunal had not been signed by him.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that the Complaint was relatively short and was narrowly focussed. The Respondent admitted that he had failed to provide the SLCC with a copy of a client file even although he was required to do so. The Secondary Complainer submitted a complaint to the SLCC on 16 January 2021. The SLCC wrote to the Respondent on 17 May 2021 and 10 June 2021 requesting the file. Only after legal action was commenced by the SLCC did the Respondent send the file. The SLCC received the file on 10 November 2021. The Respondent was found liable in the expenses of the legal action commenced by the SLCC.

The Fiscal said the Respondent's behaviour was a breach of Practice Rule B1.9.1 which related to effective communication and was a serious and reprehensible departure from the standards of competent and reputable solicitors. It therefore constituted professional misconduct. He said it was significant that the SLCC had to commence legal action before the Respondent acted. Six months elapsed between the original request and receipt of the file. The Fiscal referred the Tribunal to paragraph 12.15 of Paterson and Ritchie's "Law, Practice and Conduct for Solicitors" which notes that this Tribunal has repeatedly found that failure to cooperate with a regulator constitutes professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath noted that this Tribunal has considered non-cooperation with a regulator to be professional misconduct for many years, even before the practice rules made it a requirement. This reflects the Law Society's obligations in relation to the public interest.

Mr Macreath highlighted that the SLCC case was resolved by agreement and there was no need for a Court Interlocutor. The SLCC insisted on expenses, and these were paid. The SLCC dealt with the

Secondary Complainer's complaint. The Respondent paid the Secondary Complainer compensation of £3,500 and the fees were reduced by 75%.

Mr Macreath said that it is always for the Tribunal to assess professional misconduct but it was nevertheless conceded in this case. He noted the aggravating factors to be the delay of six months in providing the file and the fact that Court of Session proceedings had to be commenced. If solicitors do not cooperate with the SLCC this brings the profession into disrepute. Mr Macreath gave some details relating to the background of the executry matter which was the subject of the complaint. The case had a difficult history and he said that the file sat in a corner until the matter was pressed by the Secondary Complainer. Although there was a significant background to the executry, it did not detract from the fact that the files ought to have been provided to the SLCC timeously.

DECISION

On the basis of the admitted facts, the Tribunal was satisfied that the Respondent had acted in the manner set out in the Complaint. Solicitors must communicate effectively with their clients and others. The Respondent's failure to communicate effectively with the SLCC was a breach of Rule B1.9.1 of the Law Society of Scotland Practice Rules 2011. Although the Respondent admitted professional misconduct, it remained for the Tribunal to determine that matter.

According to the definition of professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313,

"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 to be made."

The Respondent failed for 6 months to provide a file to his regulator. The SLCC commenced court proceedings before the Respondent acted to fulfil his obligations. Failure to respond to the SLCC and provide files where necessary, frustrates the regulatory process. Solicitors must respond timeously to the regulators. This has been repeatedly highlighted to the profession in recent years, and solicitors must take heed of their obligations (which are now contained in Rules B1.16 and B1.17 of the Law Society of

Scotland Practice Rules 2011). It is not acceptable for solicitors to ignore the SLCC. The public interest is affected because complainers cannot progress their complaints. It hampers the SLCC in performance of its statutory duties. It also brings the profession into disrepute. The Respondent's failure to act was a serious and reprehensible departure from the standards of competent and reputable solicitors. He was therefore guilty of professional misconduct.

SUBMISSIONS ON SANCTION, PUBLICITY AND EXPENSES

The Fiscal noted that there was one previous finding of professional misconduct on the Respondent's record. In 2015 the Respondent was censured following his undue delay in obtaining confirmation, failing to follow his client's instructions, and failing to communicate effectively.

Mr Macreath noted that he had also appeared for the Respondent in relation to the 2015 case. The estate in question was otherwise properly wound up. The expenses ordered by the Tribunal in that case were paid.

Mr Macreath described the Respondent's personal circumstances at the time of the misconduct and referred to a letter from the Respondent's GP which was lodged with the Tribunal. He highlighted the favourable references provided by eminent members of the profession which spoke of the Respondent in very favourable terms. He noted the difficulties experienced by the Respondent as a sole practitioner during the pandemic. The Respondent is well-regarded within his local legal community.

The Respondent knows that he has the support of his colleagues in Falkirk as well as other solicitors. He has insight into the misconduct. He has reorganised his practice and has employed additional staff. He is in good control of his files. He can seek help if required. Mr Macreath submitted that the risk of repetition of this offence was low. The Respondent does not ever want to come before the Tribunal again. The publicity will be significant. The expenses will be a penalty. Mr Macreath invited the Tribunal to impose a censure alone or a censure and fine.

The Fiscal moved for expenses. He said there was no reason why the Respondent and Secondary Complainer should not be named in the Tribunal's decision. Mr Macreath said that the Respondent accepted that expenses would follow success.

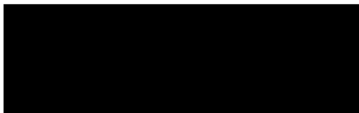
DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal noted the aggravating factors in this case. The Respondent had a previous finding of misconduct on his record for analogous matters relating to communication and responsiveness. The misconduct in this case was likely to damage the reputation of the profession. It is a source of professional embarrassment to the Respondent and the profession that an action had to be commenced at the Court of Session before the Respondent cooperated with his regulator. Resolution of complaints is delayed when Respondents fail to communicate effectively with the SLCC. This is contrary to the public interest as well as the interests of the individual complainers.

The Tribunal noted the mitigating factors in the case. It had regard to the terms of the references provided on his behalf which spoke of his contributions to the profession, and his diligence, conscientiousness and integrity. It noted the difficulties faced by the Respondent as a sole practitioner during the pandemic and the effect this had on his health. The Respondent cooperated with the Fiscal and the Tribunal. He attended the hearing and entered into a Joint Minute. He had paid the compensation awarded to the Secondary Complainer by the SLCC and the expenses relating to the Court of Session action.

In all the circumstances, the appropriate sanction was a censure and fine of £1500. The Respondent now has two findings of misconduct on his record. Any further cases of established misconduct are likely to be viewed very seriously indeed.

The appropriate award of expenses was one in favour of the Complainers. Publicity will be given to the decision and that publicity should include the names of the Respondent and the Secondary Complainer. The Secondary Complainer will have 28 days from the intimation of these findings to lodge a written claim for compensation with the Tribunal Office if so advised.



Ben Kemp
Vice Chair