

**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**

**BRIAN TRAVERS, 2 Drumpellier Avenue,  
Coatbridge**

**Respondent**

1. A Complaint dated 20 June 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Brian Travers, 2 Drumpellier Avenue, Coatbridge (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 fixed a procedural hearing to be heard on 4 September 2018 and notice thereof was duly sent for service on the Respondent by recorded delivery letter.
5. At the procedural hearing on 4 September 2018, the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was neither present nor represented. His agent provided a letter dated 27 August 2018 to the Tribunal indicating that he would not attend any hearings and wished the Tribunal to take into account his written submissions at any hearing to be fixed. A hearing was fixed for 7 November 2018

and notice was duly sent for service on the Respondent by recorded delivery letter. This was not delivered, and the Respondent's agent agreed to accept service on the Respondent's behalf on 8 October 2018.

6. At the hearing on 7 November 2018, the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was neither present nor represented. The Tribunal considered the Respondent's agent's letter of 27 August 2018. Said letter indicated that the Respondent did not dispute the averments of fact in the Complaint and accepted the allegations of professional misconduct. The Fiscal made a motion in terms of Rule 14(4) of the 2008 Rules for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. The Tribunal heard evidence on oath from the Clerk with regard to service of the Notice of Hearing and considered whether it was fair to proceed. Thereafter, it granted the Fiscal's motion to proceed in the Respondent's absence. The Fiscal made submissions.

7. The Tribunal found the following facts established:-

7.1 The Respondent's date of birth is 2 October 1957. He was a Partner with Marshall Wilson Solicitors, Falkirk until 2 November 2008 and was a Director of the Marshall Wilson Law Group Limited, Solicitors, Falkirk from 3 November 2008 until 31 March 2018.

7.2 The Secondary Complainer consulted the Respondent in August 2014 and instructed him to defend a Court Action ("the Action") which had been raised against the Secondary Complainer.

The Pursuers sued the Secondary Complainer in a personal capacity. The Pursuers had previously raised and abandoned an Action against Company 1 on similar grounds.

7.3 The Respondent sent a Notice of Intention to Defend to Haddington Sheriff Court and on 27 August 2014 the Sheriff Clerk issued a "Timetable" which inter alia advised that the last date for lodging Defences was 16 September 2014, the last date for Adjustment was 3 November 2014 and an Options Hearing was fixed for 17 November 2014.



- 7.4 The Respondent sent Defences to Haddington Sheriff Court but they did not arrive until 17 September 2014. The Sheriff Clerk's Office at Haddington, by letter dated 17 September 2014, wrote to Marshall Wilson/the Respondent advising the Defences were late and suggesting a Motion be submitted to have them received late.
- 7.5 On 7 October 2014 the Pursuers' Solicitors intimated a Motion for Summary Decree on the basis the Defences (which had not in fact been lodged) had "no real prospect of success."
- 7.6 The last date for opposing the Motion for Summary Decree was 14 October 2014. On 20 October 2014 the Respondent intimated a Motion to allow the Defences to be received although late. The Defences remained in their original skeleton form without any adjustment to respond to the criticism made by the Pursuers' solicitors. No explanation was offered as to why the Defences were late and why they should be allowed to be received late. The Respondent also failed to lodge a formal opposition to the Motion for Summary Decree.
- 7.7 By Interlocutor dated 11 November 2014 Haddington Sheriff Court fixed 17 November 2014 as a Hearing for the Motions in respect of Summary Decree and the late Defences. This was also the date of the Options Hearing. Intimation of the date was given to Marshall Wilson/the Respondent by letter and email.
- 7.8 When the Action called in Haddington Sheriff Court on 17 November 2014 there was no appearance by or on behalf of the Defender (the Secondary Complainer). The Sheriff granted Decree by default against the Defender.
- 7.9 The Respondent lodged a Note of Appeal against the Sheriff's decision. By letter dated 17 December 2014 the Sheriff Principal's Appeals Clerk sent the Respondent a Questionnaire which was returned by a letter dated 22 December 2014.
- 7.10 The Secondary Complainer had not been advised that the Defences had been lodged late, that the Pursuers' solicitors had lodged a motion for Summary

Decree, that a Hearing had taken place on 17 November 2014 and that a Decree had been granted against him.

He requested a meeting with the Respondent which meeting eventually took place on 18 December 2014 at which point the Secondary Complainer was advised that a Decree had been granted against him.

It was agreed that the Respondent would write to the Secondary Complainer fully setting out the position. Having received no letter the Secondary Complainer wrote to the Respondent on 16 January 2015 expressing disappointment to the effect he hadn't received a report by 23 December as agreed at the 18 December meeting. He went on to express his concern that Decree had passed against him and that he had been required to make at least five calls before he was able to arrange the meeting of 18 December.

- 7.11 The Respondent did not send the Secondary Complainer a copy of the Note of Appeal for his consideration prior to this being lodged nor did he advise the Secondary Complainer that the date of the Hearing of the Appeal was fixed for 26 February 2015.

By Interlocutor dated 26 February 2015 Sheriff Principal Mhairi M Stephen, QC refused the Appeal.

- 7.12 The Secondary Complainer was unaware of the Appeal proceeding and its outcome until he received a letter dated 8 April 2015 from the Pursuers' Solicitors.

The Secondary Complainer emailed the Respondent's Client Relations Partner on 13 April 2015 advising inter alia that the letter was the first he knew of the situation and asking "What is Marshall Wilson doing to sort this mess out."

On 14 April 2015 the Client Relations Partner emailed the Secondary Complainer confirming that the appeal was unsuccessful and advising that the firm had to withdraw from acting. He was not advised of any possible appeal procedure which might have been open to him.



7.13 The Secondary Complainer made a complaint to the Scottish Legal Complaints Commission (SLCC) on or around 14 October 2015.

The SLCC carried out the appropriate investigation and determined six issues of complaint:-

1. Mr Travers and/or Marshall Wilson Law Group Limited failed to lodge Defences by 16 September 2014 in time for the Hearing to be heard on a date unknown to me, despite telling me he had it in hand.
2. Mr Travers and/or Marshall Wilson Law Group Limited failed to lodge a Notice of Opposition to the Pursuer's Motion for Summary Decree which he should have lodged by a date unknown to me.
3. Mr Travers and/or Marshall Wilson Law Group Limited failed to arrange for representation on my behalf at the Options Hearing held on 17 November 2014 which consequently led to a Decree granted against me. I did not discover that a Decree had been granted against me until I had forced a meeting with the firm to find out what was happening.
4. Mr Travers and/or Marshall Wilson Law Group Limited failed to properly and fully advise me that Decree by Default had been granted against me. This prompted an official complaint to the firm when I discovered that I had not been represented at the Hearing held on a date unknown to me.
5. Mr Travers and/or Marshall Wilson Law Group Limited failed to advise me that an appeal to the Sheriff Principal had been refused on a date unknown to me.
6. Mr Travers and/or Marshall Wilson Law Group Limited failed to advise me of my right to appeal the Sheriff Principal's Decision to the Inner House.

- 7.14 The SLCC referred the complaint to the Complainers for investigation and by letter dated 17 May 2016 the Complainers wrote to the Respondent intimating a complaint and requesting the Respondent provide a response within a period of twenty-one days.
- 7.15 The complaint was suspended for a period of time but on the lifting of the suspension the Complainers investigated the matter and prepared a Report a copy of which was provided to the Respondent by the Complainers by letter dated 5 January 2018 together with intimation that the complaint would be considered by a Professional Conduct Sub Committee. A Supplementary Report was prepared and a copy provided to the Respondent by the Complainers by letter dated 23 January 2018.
- 7.16 On 22 February 2018 the Complainers' Professional Conduct Sub Committee considered the complaint.

The Sub Committee determined that the Respondent's conduct in respect of his:-

1. Failing to lodge Defences by 16 September 2014 in time for the Hearing to be heard on a date unknown to the Complainer, despite telling the Complainer he had it in hand.
2. Failing to lodge a Notice of Opposition to the Pursuer's Motion for Summary Decree which he should have lodged by a date unknown to the Complainer.
3. Failing to arrange for representation on the Complainer's behalf at the Options Hearing held on 17 November 2014 which consequently led to Decree being granted against the Complainer and with the Complainer not discovering that a Decree had been granted against him until he had forced a meeting with the firm to find out what was happening.
4. Failing to properly and fully advise the Complainer that Decree by Default had been granted against the Complainer. This prompted an official



complaint to the firm when the Complainer discovered he had not been represented at the Hearing held on a date unknown to the Complainer.

5. Failing to advise the Complainer that an Appeal to the Sheriff Principal had been refused on a date unknown to the Complainer and,
6. Failing to advise the Complainer of his right to appeal the Sheriff Principal's Decision to the Inner House.

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further, the Sub Committee determined that a Fiscal should be appointed in terms of Section 51 of the Solicitors (Scotland) Act 1980 to prosecute the Respondent before the Scottish Solicitors' Discipline Tribunal.

8. Having given careful consideration to the above facts, the Complainers' submissions, the Tribunal found the Respondent guilty of Professional Misconduct by:-
  1. Failing to lodge Defences by 16 September 2014 in time for the Hearing to be heard on a date unknown to the Secondary Complainer, despite telling the Secondary Complainer he had it in hand;
  2. Failing to lodge a Notice of Opposition to the Pursuer's Motion for Summary Decree which he should have lodged by a date unknown to the Secondary Complainer;
  3. Failing to arrange for representation on the Secondary Complainer's behalf at the Options Hearing held on 17 November 2014 which consequently led to Decree being granted against the Secondary Complainer and with the Secondary Complainer not discovering that a Decree had been granted against him until he had forced a meeting with the firm to find out what was happening;

4. Failing to properly and fully advise the Secondary Complainer that Decree by Default had been granted against the Secondary Complainer;
  5. Failing to advise the Secondary Complainer that an Appeal to the Sheriff Principal had been refused on a date unknown to the Secondary Complainer;
  6. Failing to advise the Secondary Complainer of his right to appeal the Sheriff Principal's Decision to the Inner House; and
  7. Failing generally to properly communicate with the Secondary Complainer and failing to advise him of significant developments.
9. Having heard further submissions from the Complainers, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 7 November 2018. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Brian Travers, 2 Drumpellier Avenue, Coatbridge; Find the Respondent guilty of professional misconduct in respect of his (1) failing to lodge Defences by 16 September 2014 in time for the Hearing to be heard on a date unknown to the Secondary Complainer, despite telling the Secondary Complainer he had it in hand, (2) failing to lodge a Notice of Opposition to the Pursuer's Motion for Summary Decree which he should have lodged by a date unknown to the Secondary Complainer, (3) failing to arrange for representation on the Secondary Complainer's behalf at the Options Hearing held on 17 November 2014 which consequently led to Decree being granted against the Secondary Complainer and with the Secondary Complainer not discovering that a Decree had been granted against him until he had forced a meeting with the firm to find out what was happening, (4) failing to properly and fully advise the Secondary Complainer that Decree by Default had been granted against the Secondary Complainer, (5) failing to advise the Secondary Complainer that an Appeal to the Sheriff Principal had been refused on a date unknown to the Secondary Complainer, (6) failing to advise the Secondary Complainer of his right to appeal the Sheriff Principal's Decision to the Inner House, and (7) Failing generally to properly communicate with the Secondary Complainer and failing to advise him of significant developments; Suspend the Respondent from practice for a period of nine years and



Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that the suspension shall take effect on the date on which these findings are intimated to 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 include any other name; 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.

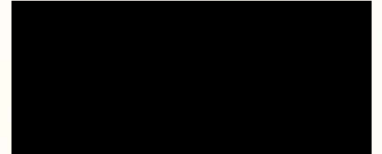
**(signed)**

**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 30 NOVEMBER 2018.

**IN THE NAME OF THE TRIBUNAL**



**Colin Bell**

**Vice Chairman**



**NOTE**

At the hearing on 7 November 2018, the Tribunal had before it the Complaint dated 20 June 2018, a letter from the Respondent's agent dated 27 August 2018 and various medical reports submitted on behalf of the Respondent. The Fiscal made a motion in terms of Rule 14(4) of the Tribunal Rules 2008 for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. The Clerk gave evidence on oath regarding service of the Notice of Hearing which was effected on 8 October 2018 when the Respondent's agent agreed to accept service on the Respondent's behalf. 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 this matter "*with great caution and close regard to the overall fairness of the proceedings.*" The Respondent had been given ample notice and it was clear from the terms of his agent's letter that the Respondent was aware of the case and wished it to be disposed of in his absence. It was in the public interest that the matter was adjudicated upon without delay. Therefore, the Tribunal granted the Fiscal's motion to proceed in the Respondent's absence.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal noted that the factual basis of the Complaint was not disputed. Professional misconduct was also admitted although it was a matter for the Tribunal to decide if the facts supported such a finding. The Fiscal noted that the Respondent had failed to lodge defences, failed to lodge a notice of opposition in response to a motion for Summary Decree, and failed to arrange representation of the Secondary Complainer at an Options Hearing. Decree was granted against the Secondary Complainer. However, the Respondent did not communicate that to the Secondary Complainer until he forced a meeting with the firm. The Respondent failed to advise the Secondary Complainer that an appeal to the Sheriff Principal had been refused. The Respondent failed to advise the Secondary Complainer of his right to appeal the Sheriff Principal's decision to the Inner House of the Court of Session. In general, the Respondent had failed to properly communicate with the Secondary Complainer and advise him of significant developments in his case. The Fiscal submitted that there was a complete failure by the Respondent to deal with his client's court action. This had a very prejudicial effect on the Secondary Complainer. The Fiscal submitted that the matter could not have been handled in a worse fashion. In his submission, the circumstances clearly amount to professional misconduct.

## **SUBMISSIONS FOR THE RESPONDENT**

Written submissions for the Respondent were contained within his agent's letter of 27 August 2018. The Respondent's agent noted that it was unfortunate that the present Complaint could not have been grouped together with the other Complaints which came before the Tribunal earlier in the year. During the period covered by these Complaints, the Respondent was suffering from significant health problems. The Respondent's agent referred to a psychiatric report which had been lodged on the Respondent's behalf. The Respondent's agent submitted that it was a feature of the Respondent's illness that he had been unable to deal properly with his work and deadlines were missed. The Respondent's agent submitted that the Respondent had voluntarily relinquished his practising certificate. He does not currently carry out any legal work. He has been engaged in performing routine administrative facilities for the company. He wished to continue to do this. Mr Burnside asked the Tribunal not to make a formal order for striking off.

## **DECISION**

The Tribunal considered carefully the admitted facts contained in the Complaint. The Tribunal was satisfied beyond reasonable doubt that the Respondent had conducted himself in the manner as set out in the Complaint. Solicitors must act in their clients' best interests. They must do their best for their clients. They must communicate effectively and advise them of significant developments in their case. They must only act in matters where they are competent to do so. They must only accept instructions where the matter can be carried out adequately and completely within a reasonable time exercising the level of skill appropriate to the matter.

The Respondent failed in these duties. He failed to act in his client's best interests or to do his best for his client by failing to lodge defences, failing to lodge a notice of opposition to the motion for summary decree and failing to arrange for the client to be represented at the Options Hearing. He failed to advise the client of the progress of the action and any significant developments such as failing to inform him that decree had been granted against him. Amongst other failures in communication, the Respondent failed to tell the Secondary Complainer that his appeal was refused or that he had another right of appeal.

Having considered the whole circumstances and the Respondent's degree of culpability, the Tribunal was of the view that the Respondent's conduct represented a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors. This was sufficient to



satisfy the test for professional misconduct as defined in Sharp v The Law Society of Scotland 1984 SLT 313. The Tribunal accepted the Respondent was experiencing significant health difficulties at the time of the professional misconduct but considered that this went to mitigation only.

Following the finding of professional misconduct, the Fiscal provided copies of two Tribunal decisions against the Respondent. One involved a failure to implement a mandate. The other had been dealt with in early 2018 and concerned some similar conduct to that contained in the present Complaint. Amongst other conduct in that case, the Respondent had failed to communicate with clients and others, failed to properly progress a claim for over six years, delayed settling a client's debt with HMRC, delayed in applying for recall of sequestration, and delayed in preparing a draft writ.

The Tribunal considered the conduct in the present Complaint to be at the middle to serious end of the scale. There was a lengthy catalogue of failures over a prolonged period of time in relation to one case. When considered in the context of the Respondent's record, the Tribunal was very concerned with regard to whether the Respondent was fit to practise. The pattern of Complaints was most concerning. The Tribunal accepted that the Respondent had been very unwell at the time of the conduct. However, it was concerned that the public should be adequately protected. The Tribunal noted that the Respondent had not renewed his practising certificate but was working for his old company in an administrative capacity. It was not clear to the Tribunal exactly what that involved.

The Tribunal considered the appropriate sanction. A Censure or a Fine or both would be insufficient to reflect the seriousness of the conduct in this case. The Tribunal noted that this Complaint covered similar conduct to that to which it had considered in January 2018, although the conduct took place a little later. Following that case, the Tribunal had ordered that the Respondent's practising certificate be restricted. The Tribunal considered that the conduct in the present case added to the gravity of the offending for which the Respondent had already been sanctioned. The Tribunal did not consider that a further Restriction was appropriate. It had concerns that the Respondent would be a danger to the public even if working under supervision. The professional misconduct in the present case when seen in the context of the Respondent's record raised the question whether the Respondent was a fit and proper person to practise. The Tribunal considered that the ultimate sanction of strike off was not appropriate given the mitigating factors present but that suspension was required. This was to mark the gravity of the offending in the context of the Respondent's record and to protect the public. A suspended solicitor cannot work for a solicitor's practice without the written permission of the Council of the Law Society of Scotland. Permission can be given for any period and be subject to such conditions as the Council thinks fit. This provides additional safeguards to the public. In view of the

gravity of the offence and the Respondent's age, the Tribunal decided that the suspension should remain in place for nine years.

Following submissions from the Fiscal on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Fiscal made a motion that publicity be given to the decision but that only the Respondent need be named. The Tribunal therefore ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests. The Secondary Complainer will have 28 days from the date of intimation of the findings to lodge a written claim for compensation with the Tribunal Office.



**Colin Bell**  
**Vice Chairman**