

**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**

**DANIEL ANTHONY MCGINN, 68 Sannox  
Drive, Motherwell**

**Respondent**

1. A Complaint 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 Daniel Anthony McGinn, 68 Sannox Drive, Motherwell (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 at the address in the Complaint. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal fixed a virtual procedural hearing for 26 January 2022 and notice thereof was served on the parties.
5. At the virtual procedural hearing on 26 January 2022, the Complainers were represented by their Fiscal, James Campbell, Solicitor, Edinburgh. The Respondent was neither present nor represented. The virtual procedural hearing proceeded in the Respondent's absence. A hearing was fixed for 28 March 2022 and notice thereof was served on the parties.
6. The hearing on 28 March 2022 was adjourned on the Complainers' motion and a hearing was fixed for 26 May 2022. Notice thereof was served on parties.

7. At the virtual hearing on 26 May 2022, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present nor represented. The virtual hearing proceeded in the Respondent's absence. The Fiscal made submissions.
8. Having given careful consideration to the terms of the Complaint, documents and affidavits, the Tribunal found the following facts established:-
  - 8.1 The Respondent is Daniel Anthony McGinn. He was born on 18 March 1968. He was enrolled and admitted as a solicitor on 24 September 2007. He was employed by Lloyd Green, Glasgow from 16 November 2007 until 22 June 2012, by Compensation Lawyers (Scotland) Limited, Livingstone from 25 June 2012 to 31 May 2013 and by Iceblue Legal LLP, Rochford from 3 March 2014 to 4 April 2014. He was a director of Aristo Legal Limited, Rochford from 28 April 2015 to 4 March 2016. He was the principal of the firm The Clyde Law Group, Airdrie from 9 March 2016 to 31 October 2016. The Respondent is presently suspended from practice and does not hold a practising certificate.
  - 8.2 The Secondary Complainer instructed the Respondent in or around April or May 2016 to act for her in relation to a medical negligence matter.
  - 8.3 The Respondent accepted that instruction and issued terms of business to the Secondary Complainer which she signed and returned to him. The Respondent granted the Secondary Complainer Civil Advice & Assistance on 24 May 2016 under the primary category of "*Medical Negligence*". A template increase was also granted by the Scottish Legal Aid Board on 24 May 2016. The increase in funding was to a new expenditure limit of £2,500.00 to allow work to be undertaken to allow an expert to be instructed to produce a liability or causation report.
  - 8.4 By letter dated 3 June 2016 The Clyde Law Group wrote to the Chief Executive of Wishaw Hospital providing notice of Ms McLeary's claim and requesting the letter be passed to the hospital's legal representatives. The letter was issued under reference DAM/PI/16/003 with the email address stated as being daniel.mcgin@theclg.co.uk. By letter dated 20 June 2016 the Central Legal Office

responded to The Clyde Law Group. They confirmed their office acted on behalf of Lanarkshire Health Board. They requested details of the claimant's national insurance number, address and date of birth to allow the claim to be registered with the DWP. On 21 June 2016 an email was issued from daniel.mcgin@theclg.co.uk to kerry.ritchie@nhs.net with the claimant's national insurance number and date of birth. There was no further correspondence with The Clyde Law Group and the Central Legal Office.

- 8.5 The Respondent closed his business in or around October 2016. He did not advise the Council or the Secondary Complainer that he was doing so. He did not renew his practising certificate at the end of October 2016.
- 8.6 On 7 November 2016 the Council's Financial Compliance Department sent an email to the Respondent to advise that they had been trying to contact him regarding his practising certificate and to arrange a compliance inspection of his practice unit. A member of staff from the Council's Financial Compliance Department subsequently attended at the premises of the Respondent's practice unit and found the premises to be empty.
- 8.7 On or around the first quarter of 2017 the triennium in relation to the Secondary Complainer's claim, in which the Respondent had been instructed, expired.

9. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect that:

- 9.1 He took instructions from the Secondary Complainer to act on her behalf in relation to a medical negligence claim and ceased to act without just cause; and
- 9.2 He failed to advise the Secondary Complainer that he was ceasing to act on her behalf.

10. The Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 26 May 2022. The Tribunal, having considered the Complaint at the instance of the Council of the Law Society of Scotland against Daniel Anthony

McGinn, 68 Sannox Drive, Glasgow; Find the Respondent guilty of professional misconduct in respect that (1) He took instructions from the Secondary Complainer to act on her behalf in relation to a medical negligence claim and ceased to act without just cause and (2) He failed to advise the Secondary Complainer that he was ceasing to act on her behalf; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that this order shall take effect on the date on which the written 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 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 or an updated written claim for compensation with the Tribunal Office.

**(signed)**

**Colin Bell**

**Chair**

11. 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 22 JUNE 2022 .

**IN THE NAME OF THE TRIBUNAL**



**Colin Bell  
Chair**

**NOTE**

At the Hearing on 26 May 2022, the Tribunal had before it the Complaint, three Inventories of Productions for the Complainers, two Lists of Witnesses for the Complainers, and two Lists of Authorities for the Complainers.

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. According to Section 8(2) of the Solicitors (Scotland) Act 1980, solicitors shall on enrolment, inform the Council in writing of their place of business, and shall on any change of that address, inform them in writing of the new address. The Respondent had failed to keep the Law Society updated regarding his current whereabouts. His address on the roll was that which was on the Complaint. The Fiscal said that the Tribunal must balance the interests of justice, the profession, the public and the Respondent. The Respondent had not engaged with the process at all. This must not frustrate proper regulation. The balance therefore lay in favour of proceeding in the Respondent's absence.

The Tribunal heard evidence on oath from the Clerk regarding the service of the Notice of Complaint and Notice of Hearing. Service of the Notice of Complaint was effected on 27 October 2021 by Sheriff Officers depositing it in a sealed envelope in to the dwelling place at the address on the Complaint. Service of the Notice of Hearing had been effected on 4 April 2022 by Sheriff Officers depositing it in a sealed envelope in to the dwelling place at the address on the Complaint. The Tribunal was satisfied that the Respondent had been given proper notice of the hearing.

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 Tribunal noted that it was possible that the Respondent did not know of the proceedings against him. Although the Tribunal was not convinced that Section 8 of the 1980 Act applied in these circumstances, where the Respondent had not changed business address but rather had ceased business, it was satisfied that the Respondent had failed in his professional duty to keep his regulator up-to-date regarding his current business or residential address. Notice had been given to the last address he gave to his regulator. If the Tribunal heard the case in the Respondent's absence, there would be a disadvantage to him in being unable to give his account of events. However, there was no reason to be confident the Respondent would attend on another occasion if the hearing were adjourned. It is in the public interest that regulatory proceedings take place within a reasonable time. It would be inappropriate for a solicitor to avoid professional

misconduct proceedings by failing to update contact details with his regulator. The fair, economical, expeditious and efficient disposal of allegations against solicitors was an important consideration. Failing to hear the case would not be in the public interest, or in the interest of the Secondary Complainer. A fair hearing was possible. The Tribunal had to be satisfied regarding the question of misconduct, whether or not the Respondent was present. In all these circumstances, the balance lay in favour of proceeding in the Respondent's absence. Therefore, the Tribunal granted the Fiscal's motion to proceed.

No witnesses were called for the Complainers. The Fiscal moved the Tribunal under Rule 14(5) to take account of the affidavits lodged at items 4-7 of the Complainers' First Inventory, item 8 of the Complainers' Second Inventory and item 9 of the Complainers' Third Inventory. The Tribunal agreed to proceed and act upon the evidence given by affidavit.

### **SUBMISSIONS FOR THE COMPLAINERS**

With reference to the affidavits, the Fiscal outlined the facts averred within the Complaint. He noted that the Complainers relied on a breach of Rule B.1.4.1. The Respondent failed to return medical records. He closed his business without informing the Secondary Complainer and telling her to get new agents. The Complainers also relied on a breach of Rule B1.9.1 which relates to effective communication. Rule B1.12 was breached because the Respondent ceased to act for the Secondary Complainer without explanation. This kind of conduct is likely to bring the profession into disrepute. The Fiscal referred to the test in Sharp v Council of the Law Society of Scotland 1984 SLT 313. He submitted that the Respondent was clearly guilty of professional misconduct. The client was left hanging without the file and no assistance to find a new agent when the triennium in her claim was fast approaching. According to the Fiscal, this was reprehensible. Solicitors should not just "disappear". The files were never recovered.

### **DECISION**

On the basis of the affidavits lodged, the Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in the manner set out in the Complaint. He took instructions from the Secondary Complainer in April or May 2016 to act in a medical negligence claim. He applied for Legal Aid. He wrote to Central Legal Office for the National Health Service. He closed his business around October 2016 and did not renew his practising certificate. He effectively disappeared without communicating with his client. The Complainers' enquiries in November 2016 revealed that the Respondent had vacated

his office premises and they were empty. In the first quarter of 2017 the triennium expired in relation to the medical negligence claim.

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.”*

Solicitors must act in the best interests of their clients (Rule B1.4.1). They must communicate effectively (Rule B1.9.1). They must not cease to act for clients without just cause and without giving reasonable notice or in a manner which would prejudice the course of justice (Rule B1.12). By his conduct, the Respondent breached all of these Rules. The Tribunal was satisfied that the Respondent’s conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors. His conduct was deplorable and is precisely the kind of behaviour that gives the legal profession a bad name. Solicitors cannot abandon a solicitor-client relationship without reference to their professional responsibilities. There is a well-established process for winding down a legal practice which protects clients and keeps them informed. The Respondent’s serious and reprehensible departure from the standards of competent and reputable solicitors meant that the Secondary Complainer was deprived of very important information relating to her claim when the time for raising it was close to expiration.

The Fiscal noted that the Respondent was currently suspended from practice. He referred to the Tribunal’s previous case, Law Society-v-Daniel McGinn (2019) which involved similar circumstances whereby the Respondent had abandoned his practice and kept sums which had been paid to him.

## **DECISION ON SANCTION, PUBLICITY AND EXPENSES**

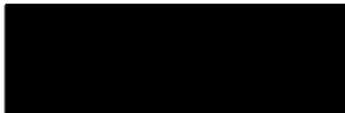
The Tribunal considered the Respondent’s conduct to be at the higher end of the scale of misconduct. Aggravating factors were the failure to cooperate with the investigation and prosecution. There was no



evidence of insight or remorse. The Respondent failed to attend in person. His client, the Secondary Complainer, had been badly let down. He had done nothing to try to sort matters out. There was a previous analogous finding of misconduct on the Respondent's record. The profession had been brought into disrepute. There was a danger to the public if the Respondent continued to practise. The Tribunal did not have the benefit of hearing any mitigation from the Respondent but it noted that there was no dishonesty involved and there was no course of conduct. However, the breach of rules was significant and represented a total dereliction of duty. The Respondent's conduct potentially could have had far-reaching consequences for the Secondary Complainer. The public required to be protected from the Respondent. The Respondent's complete disengagement from his client, regulator and this Tribunal was a concern. He was not a fit and proper person to be a solicitor.

Bearing all of this in mind, and having considered whether a lesser penalty would be appropriate, the Tribunal was of the view that the proper sanction in this case was strike off. The order shall take effect on the date on which these written findings are intimated to the solicitor.

The Fiscal moved for expenses and publicity but suggested that the Secondary Complainer ought not to be named. The Complainers were the successful parties and it was appropriate therefore that an award was made in their favour. 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 Tribunal considered that naming the Secondary Complainer might run the risk of adding further to her distress. Therefore, the Respondent will be named in these findings but no one else need be named. The Secondary Complainer will have 28 days from intimation of these findings to lodge a claim or an updated written claim for compensation with the Tribunal Office.



**Colin Bell**  
**Chair**