

**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**

**PAUL ANTHONY GARRETT, 12 Tweedsmuir  
Crescent, Bearsden, Glasgow**

**Respondent**

1. A Complaint dated 15 October 2020 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 Anthony Garrett, 12 Tweedsmuir Crescent, Bearsden, 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. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal set the matter down for a procedural hearing to be held by video conference on 20 January 2021. Notice thereof was duly served upon the Respondent.
5. At the virtual procedural hearing on 20 January 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was neither present and represented. The Tribunal was satisfied the notice of hearing had been served in accordance with its rules and it was fair to proceed with the virtual procedural hearing in the Respondent's absence. The Tribunal fixed a virtual hearing for 23 February 2021 and confirmed it would accept evidence by way of Affidavit. Notice of the hearing was duly served upon the Respondent.

6. At the virtual hearing on 23 February 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was not present or represented. The Fiscal moved the Tribunal to proceed to deal with the case in the absence of the Respondent in accordance with rule 14(4) of the Tribunal's Rules. The Tribunal Clerk gave evidence on oath regarding service of the notice of hearing. The Tribunal was content that service had been effected and it was fair to proceed in the Respondent's absence. On the Complainers' motion, the Tribunal made two amendments to the Complaint. On the third line of paragraph 2.1, "19" was deleted and "29" was substituted. On the first line of paragraph 2.3, "2" was deleted and "21" was substituted. One witness gave evidence for the Complainers. The Fiscal made submissions.
  
7. Having given careful consideration to the terms of the Complaint, the witness evidence, the Affidavits and Productions, the Tribunal found the following facts established:-
  - 7.1 The Respondent is Paul Anthony Garrett, of 12 Tweedsmuir Crescent, Bearsden, Glasgow. He was born on the 5 July 1973. He was admitted to the roll of solicitors on the 22 August 2005. He was employed by Charles Ferguson Solicitor Advocate Limited between the 29 August 2005 and the 1 August 2006. He was employed by Bruce McCormack between 2 August 2006 and the 30 January 2015. Thereafter he was employed by Airdrie Legal Chambers Limited between the 1 November 2015 and the 27 May 2016.
  - 7.2 The Respondent did not inform the Complainer of any other employment or self employment post 27 May 2016. The Respondent did not renew his practising certificate for the year 1 November 2016 to 31 October 2017.
  - 7.3 Between 29 November and 21 December 2016 the Respondent appeared and held himself out as a solicitor in summary criminal proceedings at Paisley Sheriff Court where he represented an accused whose identity to the Council is unknown.
  - 7.4 On 21 December 2016 the Respondent appeared and held himself out as a solicitor acting on behalf of a person in summary criminal proceedings at Hamilton Sheriff Court.
  - 7.5 On 17 September 2018 the Respondent appeared at a First Diet of an indictment at Glasgow Sheriff Court where he pled guilty to the charge .

“On various occasions between 29 November 2016 and 21 December 2016, both dates inclusive at Paisley Sheriff Court, St James Street, Paisley, Hamilton Sheriff Court, Beckford Street, Hamilton and elsewhere you PAUL ANTHONY GARRETT did practise as a solicitor or hold yourself out as entitled in law to practise as a solicitor without having in force a practising certificate; CONTRARY to Section 23(1) of the Solicitors (Scotland) Act 1980.”

- 7.6 The Respondent was fined the sum of £1000.
- 7.7 The Council made a complaint to the Scottish Legal Complaints Commission in respect of the Respondent’s conduct. In due course the SLCC decided the complaint should be investigated by the Society as a conduct complaint. The complaint was intimated to the Respondent by the Council by email of the 11 April 2017. The email address utilised was the email address provided to the Council by the Respondent. The Respondent did not reply to the intimation of the complaint. On the 9 May 2017 the Council served notices in terms of Sections 48 & 15 of the Legal Profession and Legal Aid (Scotland) Act 2007 requiring the Respondent provide an explanation to the complaint. The notices were served by recorded delivery on the address provided to the Council by the Respondent.
- 7.8 The Council sent a further notice in terms of Section 15(2) of the 2007 Act by recorded delivery on the 15 June 2017.
- 7.9 The Council did not receive any correspondence/explanation from the Respondent. The Council resolved to make a further complaint to the SLCC in respect of the failure to respond to the complaint. The subsequent complaint regarding the failure to respond was intimated to the Respondent on the 30 November 2017.
- 7.10 The Respondent has not responded to either complaint intimated to him by the Complainer.

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

- 8.1 The Respondent's appearance before Sheriffs at Paisley and Hamilton, where he held himself out to be a qualified solicitor when he was aware he did not have a practising certificate as result of which he was unqualified, was dishonest and as such is likely to bring the reputation of the profession into disrepute.
- 8.2 The Respondent's appearance before the Sheriffs at Paisley and Hamilton, where he held himself out to be a qualified solicitor when he was aware he did not have a practising certificate as result of which he was unqualified was in breach of rule B1.2, in that his action lacked honesty and integrity.
- 8.3 The Respondent by appearing before the Sheriffs at Paisley and Hamilton, when he was aware he did not have a practising certificate, and he held himself out to be solicitor mislead the court and accordingly was in breach of rule B1.13.1.
- 8.4 The Respondent by appearing before the Sheriffs at Paisley and Hamilton, when he was aware he did not have a practising certificate and held himself out to be solicitor failed act regulated persons in a manner consistent with persons having mutual trust and confidence in each other and accordingly was in breach of Rule B1.14.1.
- 8.5 The Respondent by failing to communicate with his professional body, the Council, and in particular the failure to provide an explanation in response to the conduct complaint, failed to act with integrity and accordingly was in further breach of rule B1.2 and his failure is likely to bring the reputation of the profession into disrepute.

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

By Video Conference, 23 February 2021. The Tribunal having considered the Complaint dated 15 October 2020 at the instance of the Council of the Law Society of Scotland against Paul Anthony Garrett, 12 Tweedsmuir Crescent, Bearsden, Glasgow; Find the Respondent guilty of professional misconduct in respect that he appeared before Sheriffs at Paisley and Hamilton and dishonestly held himself out to be a solicitor when he was aware that he did not have a practising certificate and was therefore unqualified, in breach of Law Society of Scotland Practice Rules B1.2, B1.13.1 and B1.14.1, and failed to communicate with his professional body in breach of Rule B1.2;

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; and 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.

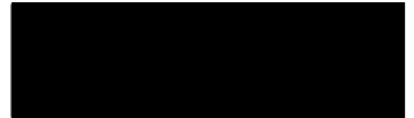
**(signed)**

**Nicholas Whyte**

**Chair**

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 MARCH 2021 .

**IN THE NAME OF THE TRIBUNAL**



**Nicholas Whyte**  
**Chair**

**NOTE**

At the Hearing on 23 February 2021, the Fiscal moved the Tribunal in terms of rule 14(4) of the Scottish Solicitors' Discipline Tribunal Rules 2008 to proceed to hear and determine the Complaint in the absence of the Respondent. The Tribunal heard evidence on oath from the Clerk regarding service. The Complaint and the notice of hearing for the virtual procedural hearing on 20 January 2021 had been served by Royal Mail signed for delivery at the address on the Complaint. The notice of the hearing for the virtual hearing on 23 February 2021 had been served by Sheriff Officers leaving the notice of hearing and a paper copy of the video conference link invitation in a sealed envelope in the hands of the Respondent's father at 12 Tweedsmuir Crescent, Bearsden, Glasgow. The Clerk had sent an email to the Respondent on 15 February 2021 informing him that the notice of hearing had been left with his father and also giving the date of the hearing. The Tribunal Office sent the video conference link invitation to the Respondent by email. A delivery receipt was received but not a read receipt. The Clerk confirmed she had not had any contact with the Respondent during the life of the case. The Tribunal was satisfied in terms of its rules that the Respondent had received proper notice of the hearing.

The Tribunal considered whether it was fair to proceed in the Respondent's absence. The Tribunal had regard to the principle that it ought to exercise its discretion in this matter with great caution and close regard to the overall fairness of the proceedings. The Tribunal noted that the Respondent had not had any contact with the Tribunal Office despite various attempts to contact him by post, Sheriff Officer and email. The lack of communication from the Respondent suggested that he had chosen not to attend the hearing. The Tribunal considered that if it heard the case in the Respondent's absence there would be a disadvantage to him being unable to give his account of events. However, he had been given notice of the hearing and there was no reason to think he would attend on another date if the matter was adjourned. The Respondent had similarly failed to engage with the Law Society during its investigation. 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. 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.

The Fiscal moved the Tribunal to amend the Complaint to deal with two typographical errors. The Tribunal was content to make these amendments to dates which were consistent with the information provided in the Productions.

At the virtual hearing, the Tribunal had before it the Complaint as amended, three Inventories of Productions for the Complainers and a List of Witnesses for the Complainers. The Second Inventory of Productions for the Complainers contained four Affidavits at Productions 5-8. These had been intimated to the Respondent. The Tribunal had previously indicated it was willing to receive evidence by way of Affidavit in this case and it was content to accept the Affidavits as the evidence of those witnesses. One of those Affidavits was sworn by David Simpson and dated 28 January 2021. The Fiscal moved the Tribunal to receive an additional Affidavit from David Simpson which had been sworn by him on 12 February 2021. It referred to Productions 1-4 in the Complainers' Second Inventory of Productions which had not been dealt with in the Affidavit of 28 January 2021. The Tribunal was not content to accept Mr Simpson's additional Affidavit. It had some concerns about the Affidavit itself. In addition, it had not been served on the Respondent. The Fiscal indicated that Mr Simpson was on the Complainers' List of Witnesses and was available to give evidence regarding those productions. In the circumstances, the Tribunal preferred to hear from Mr Simpson. The Fiscal therefore called him as a witness.

## **EVIDENCE FOR THE COMPLAINERS**

### **DAVID SIMPSON**

The witness gave evidence on oath. His name is David John Simpson. He is a reporter to the Professional Conduct Committee of the Law Society of Scotland. He is 46 years old. Mr Simpson confirmed that his Affidavit sworn on 28 January 2021 was contained at Production 5 in the Second Inventory of Productions for the Complainers. He was content that the Tribunal accepted the contents of the Affidavit as his evidence.

He also described to the Tribunal the correspondence contained at Productions 1 – 4 in the Second Inventory of Productions for the Complainers. He had written to the Sheriff Clerk at Hamilton and Paisley. Only the Sheriff Clerk at Hamilton had responded and her letter was at Production 2 in the Second Inventory of Productions for the Complainers.

## **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal described the averments of fact and identified the corresponding Productions and evidence supporting each averment. The Respondent had held himself out as a solicitor and appeared in court on two occasions between November and December 2016, when he did not have a practising certificate. He was convicted of an offence under section 23 of the Solicitors (Scotland) Act 1980. His conduct was



dishonest and in breach of Law Society Rules B1.2, B1.13.1 and B1.14.1. He did not communicate with his regulator during its investigation. The Fiscal submitted the Respondent's conduct fell far short of the proper standards of conduct for solicitors and met the Sharp Test. Any client the Respondent represented did not have the protection of professional indemnity insurance or the master policy. If he was principal, he did not contribute to the client protection fund.

## DECISION

The Tribunal accepted David Simpson's evidence as credible and reliable. His evidence, the Affidavits contained in the Second Inventory of Productions for the Complainers, and the Productions supported the averments of fact and the Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in the manner set out in the Complaint. The certified copy indictment and extract conviction at Production 1 in the Complainers' First Inventory of Productions proved that the Respondent had been convicted of an offence on indictment that on various occasions between 29 November 2016 and 21 December 2016 he had practised as a solicitor without having in force a practising certificate. The letter from the Sheriff Clerk at Hamilton at Production 2 of the Complainers' Second Inventory of Productions as spoken to by the witness David Simpson, demonstrated that on 21 December 2016 the Respondent represented an accused person at a summary trial. The correspondence and Affidavits lodged showed that the Respondent had failed to communicate with the Law Society during its investigation.

According to the test set out 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."*

It is essential that solicitors act honestly and with integrity. The Respondent's conduct in appearing in court twice without a practising certificate was dishonest. He misled other regulated persons and the court. The court system works because of the trust placed in representatives. To appear without a practising certificate was a gross breach of that trust and deceived the court. On one of the occasions he appeared without a practising certificate, the Respondent conducted a summary trial, a matter which is likely to have been of considerable importance to his client who placed his trust in the Respondent. The

clients were placed at risk. They were unprotected by professional indemnity insurance or the master policy. The Respondent compounded these failings by failing to cooperate with his regulator in its investigation. This behaviour was a serious and reprehensible departure from the standards of competent and reputable solicitors and therefore constituted professional misconduct.

The Fiscal confirmed there were no previous findings of unsatisfactory professional conduct or professional misconduct against the Respondent. He moved for expenses and noted the Tribunal would be obliged to give the matter publicity.

The Tribunal carefully considered the appropriate sanction. It noted the disposal for the criminal case had been relatively low (£1,000). The matter may only have resulted in solemn proceedings as a result of the other matters on the indictment which did not ultimately result in a conviction. The period of offending (two months) was relatively short. There was no evidence of any loss or damage as a result of the Respondent's action. However, the conduct had involved dishonesty and criminal behaviour. The Respondent now had an indictment conviction relating to his professional practice. He had demonstrated no remorse or insight into the offence. He had failed to engage with his regulator or the Tribunal with regard to this case. The conduct demonstrated a gross breach of trust involving misrepresentation to clients and the court on two occasions. The Tribunal was therefore of the view that strike off was the appropriate disposal in this case, both to protect the public and to maintain the reputation of the legal profession. The order for strike off will take effect on intimation of these findings.

The Tribunal found the Respondent liable in the expenses of the Complainers and the Tribunal. Publicity will be given to the decision but no one apart from the Respondent need be identified. There is no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests.



**Nicholas Whyte**  
**Chair**