

**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

**ALAN JOHN BAILLIE, formerly of Baillies
Law Limited, 37 Union Street, Dundee**

Respondent

1. A Complaint dated 12 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 Alan John Baillie, formerly of Baillies Law Limited, 37 Union Street, Dundee (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Lorraine Ludman, 1 The Green, Craobh Haven, Argyll.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. The case called for a virtual procedural hearing on 13 September 2023. A revised Complaint dated 19 December 2023 was lodged with the Tribunal and intimated to the Respondent. A Joint Minute was lodged whereby the Respondent admitted the averments of fact, duty and misconduct in the revised Complaint. The Tribunal appointed the Complaint to be heard on 6 March 2024 and notice thereof was duly served on the Respondent.
4. At the virtual hearing on 6 March 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was not present but was represented by John Macmillan, who is not a solicitor.

5. Having given careful consideration to the terms of the Complaint and Joint Minute, the Tribunal found the following facts established:-

- 5.1 The Respondent is Alan John Baillie. He was born on 28 September 1957. He was enrolled and admitted as a solicitor on 2 October 1980. The majority of the Respondent's legal career was based at Baillies Law Limited where he was a partner and more recently a director of the firm during the period between 15 January 1990 to 30 September 2021. The Respondent does not currently possess a practising certificate.
- 5.2 The Secondary Complainer, Andrew McIlvride, and Graeme McIlvride formed an unwritten agreement in late 2006 which specified that Andrew McIlvride was to convey land at Lunga Mill, Argyll to Graeme McIlvride and that this land would then be conveyed to the Secondary Complainer. This land was originally purchased by Andrew McIlvride in 2000 and consisted at that point of two plots of ground divided by a track, with a cabin and the ruin of an old mill on the easternmost plot and open ground on the westernmost plot. Graeme McIlvride was to provide finances for a house to be built upon the land. Once the house and land were sold, all three parties would share the balance of any profit in proportion to their relevant financial contributions to the project overall.
- 5.3 On 6 June 2007, the Respondent was instructed by Andrew McIlvride to convey the land to Graeme McIlvride. The purpose of this was to use Graeme McIlvride's expatriate status to avoid paying capital gains tax when the time came to sell the plot.
- 5.4 The land was subject to a right of pre-emption in favour of the owner ("the Laird") of the neighbouring Lunga Estate. At the time the Respondent was instructed, the land was also subject to certain restrictions on its use.
- 5.5 The solicitors acting for the Laird and the Respondent agreed in November 2008 that Andrew McIlvride would obtain plots from the Laird who would grant fresh dispositions of the upper plot to Andrew McIlvride and land to Graeme McIlvride.
- 5.6 The Secondary Complainer and Andrew McIlvride agreed in January 2009 that the Secondary Complainer would buy the land from Andrew McIlvride for a sum of £140,000.00 and build a property on the land.

- 5.7 From January 2009, the Respondent acted for the Secondary Complainer, Andrew McIlvride and his brother Graeme McIlvride in respect of the agreement reached.
- 5.8 The Secondary Complainer emailed the Respondent on 21 January 2009, stating that parties had agreed she would purchase the land and offered to make a significant payment for it. Andrew McIlvride instructed the Respondent to seek release of the funds, from the Secondary Complainer, which he did.
- 5.9 On 18 February 2009, the Respondent sent an e-mail to the Secondary Complainer, Andrew McIlvride, and Graeme McIlvride with the subject line "Lunga Mill Plots". The email stated:
- "Hi Troops, Can I just make sure I have the arrangements right before we complete and register the deeds? Mill-site to be transferred to Andy's name (along with existing mortgage) and with new access rights etc as agreed. 'Building' site to be transferred to Graeme (who has paid pound? as (a half share) with Lorraine's recent payment being the other (half share)? And also with new access rights as agreed. This plot later to be transferred to G and L jointly? But remember Laird will have a right of pre-emption (first refusal) on a later 'sale'. Thereafter, this plot to be sold on to a new buyer, either with or without a house constructed on it? My understanding is that G and L, being expats, aren't liable to pay Capital Gains tax on sale profits - but this should perhaps be double-checked?"*
- 5.10 On 20 February 2009, Graeme McIlvride in an email to the Respondent, Andrew McIlvride and the Secondary Complainer indicated that all parties consented to the 2009 agreement. The consent amongst all parties was confirmed again by Graeme McIlvride directly to the Respondent on 22 February 2009 via email correspondence.
- 5.11 Between May 2009 and June 2015, the Secondary Complainer paid Andrew McIlvride £140,000.00 in consideration of the acquisition of title to the land, however, Andrew McIlvride never conveyed the title deeds to the Secondary Complainer.
- 5.12 The Secondary Complainer paid an initial payment of £57,000.00 with the balance being paid in instalments thereafter. A significant portion of this sum went through the Respondent's client account. The reason for payment by instalments was twofold. Firstly,

Andrew McIlvride preferred payment by instalment as he claimed he was poor at managing money and secondly, he wished to avoid paying tax which he could do if he paid by instalments.

- 5.13 The Secondary Complainer's relationship with Andrew McIlvride ended around November 2016. During the same month, the Respondent sent a letter to the Laird on 29 November 2016 in which he stated:

"I refer to previous correspondence here and to refresh your memory enclose a copy of our letter to you of 27th June 2014. I understand that since then you have been speaking to Andy from time to time and he understood you were now happy to sign the deeds so the matter can be concluded at long last. He now tells me that you have been contacted direct by his ex-partner who appears to be trying to drag you in to the aftermath of her and Andy's previous relationship. Andy has asked me to write to you to assure you that Lorraine Ludman holds no claim whatsoever on the property at Lunga Mill and unfortunately for reasons best known to herself she is trying to exert some influence on Andy's business affairs with no legal basis whatsoever. Accordingly, I would be grateful if you could arrange to sign the deeds and plans and return them to us so that the title can be updated as was agreed some years ago".

- 5.14 The Secondary Complainer raised an action against Andrew McIlvride for the recovery of £140,000 paid to him in exchange for the land (together with other sums of money paid). The proof in relation to this matter was heard between 13 March 2020 and 23 April 2021 at Oban Sheriff Court. During the course of his evidence, the Respondent denied that there was any professional obligation to the Secondary Complainer as he had never acted for her. Consequently, he insisted that there was no obligation to advise the Secondary Complainer to seek separate legal advice as no conflict of interest had ever existed. Decree was granted in the Secondary Complainer's favour. The judgement of Sheriff Patrick Hughes was issued on 8 November 2021.

- 5.15 During the course of the action, a ledger card of the firm allocated to the Secondary Complainer was discovered. This ledger card disclosed two debits from the Secondary Complainer's ledger to the account of Andrew McIlvride to settle two fee notes rendered by the Respondent to Andrew McIlvride. These related to fee invoices of £690 on 30

January 2009 and £690 on 13 March 2009. The funds have since been repaid with interest to the Secondary Complainer's solicitors.

6. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect that:
 - 6.1 He failed to communicate effectively with the Secondary Complainer in respect of conveyancing work relating to the transfer of title at Lunga Mill, Ardfern, Argyll in that his actions led her to believe that he was carrying out her instructions on a solicitor-client relationship basis contrary to his position that no such relationship was in place;
 - 6.2 He acted in a conflict of interest between 2009 and 2016 in that he represented the Secondary Complainer and Andrew McIlvride in relation to the transfer of title at Lunga Mill, Ardfern, Argyll when it became apparent that their interests in relation to the transaction were no longer aligned.
 - 6.3 He failed to advise the Secondary Complainer to seek separate legal advice in relation to the transfer of title at Lunga Mill, Ardfern, Argyll when it became apparent that their interests in relation to the transaction were no longer aligned.
 - 6.4 He inappropriately used funds in the Secondary Complainer's client account to pay the bills of another client, Andrew McIlvride, in that he deducted £690 from the client account on 30 January 2009 and 13 March 2009 and transferred this to Andrew McIlvride's client account without the knowledge and consent of the Secondary Complainer.
7. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 6 March 2024. The Tribunal having considered the Complaint dated 19 December 2023 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Alan John Baillie, formerly of Baillies Law Limited, 37 Union Street, Dundee; Find the Respondent guilty of professional misconduct in respect of his failing to communicate effectively, acting in a conflict of interest situation, failing to advise the Secondary Complainer to seek separate legal advice, and inappropriately using funds in the Secondary Complainer's client account

without her consent to pay the bill of another client; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; 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 Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office if so advised.

(signed)

Colin Bell

Chair

8. 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 19 APRIL 2024 .

IN THE NAME OF THE TRIBUNAL



Colin Bell

Chair

NOTE

At the Hearing on 6 March 2024, the Tribunal had before it the revised Complaint dated 19 December 2023, a Joint Minute, information about the Respondent's health which had been submitted by his representative by email of 24 January 2024, and the judgment of Sheriff Patrick Hughes in Ludman-v-McIlvride (2021).

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal indicated that the case had resolved by way of the Joint Minute. He noted that the Respondent admitted all four averments of professional misconduct.

The Fiscal explained that the Respondent was instructed regarding the conveyancing of part of the site at Lunga Mill in Ardfern. There were three parties involved in the transaction (excluding the Laird who was separately advised/represented by another firm of solicitors). The Respondent acted for all three parties from 2006. Originally, Graeme McIlvride and the Secondary Complainer were to become owners of the plot and then in 2009 it was agreed that the Secondary Complainer would buy the plot from Andrew McIlvride for £140,000. The Secondary Complainer paid him in instalments between 2009 and 2016. However, the title deeds were never conveyed to her. There was a court action in 2020 and 2021 at Oban Sheriff Court. The Secondary Complainer obtained decree in her favour. Sheriff Hughes had found that there was an agreed valid, binding and enforceable contract and the Respondent had acted for the Secondary Complainer throughout.

The Fiscal submitted that the Secondary Complainer had failed to communicate with the Secondary Complainer. He referred to Rule 9 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008. He noted that the Respondent's position at proof was that no solicitor-client relationship existed between himself and the Secondary Complainer. Sheriff Hughes dismissed this argument due to the terms of the correspondence between the Respondent and the Secondary Complainer in addition to the money which had been paid through the Respondent's client account.

The Fiscal said that the Respondent had acted in a conflict of interest situation. He had continued to act for Andrew McIlvride and the Secondary Complainer when their interests no longer aligned. He referred the Tribunal to Rules B1.7.1 and B2.1.2 of the Law Society of Scotland Practice Rules 2011. Once the relationship deteriorated in November 2016, there was a definite and obvious conflict of interest. The Respondent now accepted that he was acting for both parties.

The Fiscal noted that the Respondent admitted that he had failed to inform the Secondary Complainer that she ought to seek separate legal advice.

The Fiscal submitted that the Respondent had inappropriately used funds to pay Andrew McIlvride's bill from the Secondary Complainer's money in 2009 without the Secondary Complainer's knowledge or consent. This was a breach of Rule 6 of the Solicitors (Scotland) Accounts etc Rules 2001. It was not in the best interests of the client and was contrary to Rule 3 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008. There was no authority in writing from the Secondary Complainer on file. Although the funds were repaid with interest, this was only done twelve years after the event when the matter came to light during the proof at Oban Sheriff Court.

The Fiscal reminded the Tribunal of the test for professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313. He submitted that the Respondent's behaviour constituted professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Macmillan said he did not have anything to say at this stage. The joint minute was comprehensive. He noted that the money had been paid back with interest, although late. The Respondent admitted professional misconduct. In answer to a question from the Tribunal, Mr Macmillan indicated that the Respondent did not understand himself to be acting for the Secondary Complainer and the breach of communication should be seen in that context. However, the Respondent accepted that he ought to have formed the view at the time that she was a client.

DECISION

On the basis of the admitted facts, the Tribunal was satisfied that the Respondent had acted in the manner set out in the revised Complaint. Solicitors must communicate effectively with their clients and others. They must not act where there is a conflict of interest and should exercise caution where there is a potential conflict of interest. Clients should be advised to take separate independent legal advice in appropriate circumstances. Solicitors should not withdraw money belonging to one client without that client's written authority for the purpose of meeting a payment on behalf of another client. The Respondent failed in these duties and breached Rule 6 of the Solicitors (Scotland) Accounts etc. Rules 2001; Rules 3 and 9 of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008; Rules

B2.1.2, B2.1.7, B1.7.1 and 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 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 had failed to communicate effectively. There was an absence of the kind of communication which would be expected with a client in these circumstances, for example, reference to missives or the other usual arrangements in a conveyancing transaction. The Respondent’s actions led the Secondary Complainer to believe he was acting for her.

The Respondent maintained at proof that the Secondary Complainer was not his client, so he had not been acting in a conflict of interest situation. However, the Secondary Complainer had instructed him in multiple conveyancing transactions, she had paid part of the purchase price through his client account, and he had a client ledger card for her. Clients can sometimes want to instruct a single solicitor to deal with a conveyancing transaction, particularly when they are involved in business, personal or family relationships. However, the potential for a conflict to arise in these cases is significant. If solicitors choose to proceed in these circumstances, they must be very cautious about the basis upon which they are to act, communicate effectively with the clients about the situation, recommend independent legal advice if appropriate, and take all proper steps in terms of the rules. In this case there were various difficulties which might derail the transaction such as the Laird’s right of pre-emption, the conditions attached to the property, the money which had been transferred without a security for a benefit yet to be received, and tax planning. All these things ought to have caused the Respondent to pause and consider the potential for conflict among his three clients and whether he ought to accept the instruction.

The Tribunal considered that the following advice in Paterson and Ritchie’s “Law, Practice and Conduct for Solicitors” at paragraph 7.15.07 was particularly apt:

“... a person who is not by trade a builder or developer and is selling a single plot or site is not regarded as a developer within the meaning of the rule. In these circumstances, a solicitor may consider acting for both parties, provided the parties fall within one of the exemptions, and there is no actual conflict of interest and no dispute is reasonably likely to arise. This will remain a matter of judgement of the solicitor. In such transactions there could well be conflicting interests, such as rights of access, services or maintenance of a private roadway. The safest way to avoid such difficulties would be to decline to accept instructions from both parties in the first place.”

It may have been wise for the Respondent to avoid this transaction completely when it was presented to him, but he certainly ought to have advised the Secondary Complainer to seek separate legal advice regarding the transfer of title when it became apparent that her interests were no longer aligned with those of her former partner.

The Respondent also breached the accounts rules. He inappropriately used funds he held for the Secondary Complainer to pay Andrew McIlvride’s fees without her knowledge and consent. He ought to have sought her written permission.

Having regard to all the circumstances and the degree of culpability attached to the Respondent, the Tribunal was satisfied that his behaviour constituted a serious and reprehensible departure from the standards of competent and reputable solicitors. It was therefore professional misconduct with each averment established singly and *in cumulo*.

FURTHER SUBMISSIONS

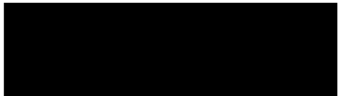
The Fiscal indicated that the Tribunal had previously made a finding of professional misconduct against the Respondent in 2014. The Respondent was censured and fined £10,000. The analogous offending concerned failures to communicate and acting in a potential conflict of interest situation, as well as breach of the accounts rules, anti-money laundering provisions and the Proceeds of Crime Act 2002.

Mr Macmillan indicated that he had no mitigation to advance on behalf of the Respondent. The Respondent accepted that strike off was the appropriate sanction in the circumstances. His health is extremely precarious. He has long since given up practising law. He is regretful. In answer to a question from the Tribunal, Mr Macmillan confirmed that it was his invitation to the Tribunal to order that the Respondent’s name be struck off the roll.

DECISION ON SANCTION, EXPENSES AND PUBLICITY

The Tribunal considered that the conduct was in the mid to serious range of conduct. There were aggravating and mitigating factors. The analogous previous finding of the Tribunal was a significant aggravating factor although the conduct in the previous case had occurred in 2010 which was within the same time period covered by the present case. The Respondent had expressed remorse to the Tribunal through his representative. However, balanced against that, he had shown a lack of insight into the situation when he maintained at the Oban Sheriff Court proof (2020-2021) in the face of all evidence to the contrary, that he did not act for the Secondary Complainer. The Respondent had cooperated with the Fiscal and the Tribunal. He was experiencing significant health challenges at the present time. The revised Complaint contained no allegations of dishonesty or lack of integrity. However, the Respondent's ongoing course of conduct persisted over a long period of time. The conduct was likely to seriously damage the reputation of the legal profession. Added to all these considerations was the Respondent's invitation to strike his name from the roll. The Tribunal considered its indicative outcomes guidance and the factors indicating that strike off would be appropriate. It reflected on the Tribunal's role which is to protect the public and uphold the reputation of the profession. It determined that the appropriate sanction in all the circumstances, having particular regard to the analogous previous conviction, was strike off.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent, but not (in terms of Paragraph 14A of Schedule 4 to the 1980 Act) the name of the firm of which he was subsequently and latterly an employee because, in the Tribunal's opinion, in the particular circumstances of this case only, publication of the name of that firm in association with the Respondent may be likely to damage the interests of that firm. There was no requirement to anonymise the names of the Secondary Complainer or any other third party. The Law Society had brought the Complaint on behalf of the Secondary Complainer. She had already been identified in Sheriff Hughes' judgment along with Andrew and Graeme McIlvride. The Secondary Complainer will have 28 days from intimation of these findings to lodge a written claim for compensation with the Tribunal Office.



Colin Bell
Chair