

**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**

**RONALD GRANT FULTON, 36 Newlands  
Road, Glasgow**

**Respondent**

1. A Complaint dated 15 February 2022 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 Ronald Grant Fulton, 36 Newlands Road, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Miss Morag Dunn, 27 Eden Crescent, Glenfarg.
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. Following a virtual procedural hearing on 22 April 2022, the Tribunal appointed the Complaint to be heard on 29 June 2022. Notice thereof was duly served on the Respondent. An amended Complaint dated 21 June 2022 was lodged with the Tribunal.
5. At the hearing on 29 June 2022, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Jonathan Brown, Advocate, instructed by Grant Maclean, Solicitor, Glasgow. Parties made submissions.

6. Having given careful consideration to the terms of the amended Complaint, the Tribunal found the following facts established:-

- 6.1 The Respondent is Ronald Grant Fulton, 36 Newlands Road Glasgow. He was born on the 23 October 1953. He was admitted as a solicitor on the 10 October 1978. He retired from practice on the 31 October 2020. The Council's records note he was a partner in Hamilton Burns & Moore between the 1 October 1980 and 30 November 1999. He was a partner in HBM Sayers between the 1 December 1999 and 30 September 2013. He then set up Fulton's and was a partner there until 20 August 2019, when he became consultant before he retired from practice on the 31 October 2020.
- 6.2 The Secondary Complainer requested by email of the 1 May 2018 that the Respondent act for her in respect of a potential re-apportionment of the distributions from Mr R's estate. She wished to reduce her 45% interest to 15% to realise potential Inheritance Tax savings. Mr R had died on the 27 September 2016. The respondent replied the same day that he could not do so without sight of the estate documents. He advised that the Deed of Variation required to be dealt with before the second anniversary of Mr R's death (27 September 2018) and before the funds were distributed.
- 6.3 The next contact the Respondent had regarding the matter was on the 7 September 2018 (giving only 19 days to complete the instruction) from Mr C, an English solicitor administering Mr R's Trust. Mr C enquired about the signing of a Deed of Indemnity (to indemnify Mr C qua Trustee of the Trust). Mr C noted that the Secondary Complainer had indicated that she wanted to vary the amount being left to her and advised that her own solicitor (the Respondent) could provide a Deed of Variation.
- 6.4 The Secondary Complainer contacted the Respondent again on the 10 September 2018. She wished him to act in revising the deed of indemnity and draft the Deed of Variation. The Respondent wrote to Mr C on behalf of the Secondary Complainer by email of the 14 September 2018. He proposed that a deed of variation need not be drafted. His position was the Trustees could agree to reduce the Secondary Complainer's share capital of the Discretionary Trust. He advised

the Trustees could do so by resolution rather than the drafting and signing of a Deed of Variation.

- 6.5 Mr C advised the same day confirming that the Trustees had resolved to distribute the estates per the Trust and that: *"If [the Secondary Complainer] wants to vary her interest (ie. make an onward gift) she is entitled to and HMRC accept this can be done (see IHTM35085)."*
- 6.6 The Secondary Complainer instructed the Respondent on the 17 September 2018 to draft the Deed of Variation.
- 6.7 The Respondent issued a terms of business letter to the Secondary Complainer on the 18 September 2018. The Respondent was stated in that letter as being the solicitor responsible for administration of the case, the subject heading for which was *"Matter Concerning: Estate of the late [Mr R]."*
- 6.8 The Deed of Variation was drafted and negotiated by a consultant of the Respondent's firm, and Mr C. The Secondary Complainer attended with the Respondent on the 25 September 2018 when she signed the deed of variation and Deed of Indemnity (of the Trustees). The Deed of Variation was not dated. The Deed of Indemnity was forwarded to Mr C by email.
- 6.9 Mr C acknowledged the Deed of Indemnity on the 26 September 2018 and asked that the Respondent provide an undertaking that the original would be placed in the post. The author explained: *"As soon as I receive this I shall date the Deed of Appointment and scan this and send it over to you so that you can date the Deed of Variation today."*
- 6.10 On 26 September 2018, Mr C forwarded a signed copy of the Trustees' Deed of Appointment to the consultant and confirmed that the Deed of Variation could now be dated. In a separate email exchange with the Secondary Complainer, Mr C confirmed that the Secondary Complainer should retain the principal Deed of Variation as "it is proof that you made the gifts".

- 6.11 By email on 5 October 2018, the Secondary Complainer asked the Respondent to provide his Fee Note together with a copy of the signed Deed of Variation and Deed of Indemnity.
- 6.12 The Respondent had his file/fee assessed it was assessed at £1875 plus VAT. The Respondent intimated the assessment to the Secondary Complainer and advised he would restrict his fee to £1200 +VAT. The Secondary Complainer did not accept the fee. She wished to uplift the Deed of Variation and Deed of Indemnity in the week of 27 November 2018.
- 6.13 The Respondent sought to secure the Deed of Variation. His files show the following investigations
- a) On the 29 November 2018, the Respondent advised the consultant of the complainer's request for the papers. The Respondent observed he possessed only *"one slim file that does not seem to incorporate copies of [the Deed of Indemnity or Deed of Variation]."* He asked if the consultant had kept his own file which may contain these papers or if he otherwise knew where they might be.
  - b) In a further email to the consultant on 4 December 2018, the Respondent added: *"For the life of me I cannot find another file opened by you although my recollection is there was a fairly hefty file which you had prepared."*
  - c) The consultant confirmed on 5 December 2018 that he had consolidated his own file with the office file and that he would check if the Law Accountants had retained papers. The Law Accountants confirmed on 9 January 2019 that they had not.
  - d) On the 21 December 2018 the Respondent asked Mr C to provide him with copies of the Deed of Indemnity and Deed of Variation. Mr C forwarded a copy of the former by email of 3 January 2019, noting: *"The Deed of Variation was never sent to us and you must have the original there"*.
  - e) On 11 January 2019 the Respondent emailed the consultant again. He advised that he *"can still only find my own file and I cannot locate either the principal Deed of Indemnity signed by [the Secondary Complainer] or the Deed of Variation executed by her."* While he had been able to obtain a copy of the former, he stated: *"I cannot even find a draft of the ultimate*

*Deed of Variation. I can only find the original drafts prepared by me.”* He asked if the consultant could locate his draft of the Deed.

- 6.14 In the meantime, the Secondary Complainer had pressed for the papers. On the 7 December she wrote *“In the continuing absence of an adequate response to the requests referred to in my last email of 27 November...as I was, and still am, anxious to take possession of the signed and dated Deed of Variation ... I hereby formally request that you submit your invoice without further delay. If I do not receive it within 28 days from today's date, I will submit a formal complaint to the appropriate authorities. Your continuing failure to provide me with my documents is inexcusable”*
- 6.15 On the 11 January 2019 the Respondent wrote to the Secondary Complainer enclosing a further restricted fee of £600 + VAT. He enclosed some papers but not the Deed of Indemnity or Deed of Variation.
- 6.16 The Secondary Complainer was not satisfied as she sought the Deed of Indemnity or Deed of Variation. She so explained in an e-mail of the 16 January 2019.
- 6.17 The Secondary Complainer attended the Respondent's office on the 17 January 2019. A further copy of the Deed of Variation was presented which the Secondary Complainer signed. The Deed was taken to the Respondent who witnessed the signature and completed the “testing clause”. The deed was dated the 26 September 2018.
- 6.18 On the 18 January 2019, the Secondary Complainer acknowledged a copy of the Deed of Variation. She told the Respondent she had been advised *“only that original [of the Deed of Variation] - with the attached copy of the Resolution of the Trustees of 28 March 2018 which I handed to you on 25th to be attached to the DoV - will be accepted as legally valid....[I] have no certainty that the shelter from further inheritance tax liability which it would otherwise have legitimately conferred on the gifts I plan to make from my inheritance will be acceptable to HMRC in the event that I should die within a seven year period from the time these gifts are made.*

6.19 The Secondary Complainer continued “[t]he loss of such a time-critical, irreplaceable document is a gross breach of your firm's professional duty to this client”. The Secondary Complainer sought “A written undertaking from your firm now to each of the four parties provided for in my DoV, guaranteeing that you will provide the necessary indemnity should it be required, would seem appropriate in the circumstances”.

6.20 Further communication was exchanged between the Respondent and Secondary Complainer. The Secondary Complainer sought protection from potential IHT consequences which may result from the loss of the principal Deed of Variation. The Respondent indicated he could not locate the original. He advised that if the copy document was presented to the Revenue with an explanation the original was lost but had been signed on the 26 September 2018, that may be sufficient for the Secondary Complainer’s purpose.

6.21 The Respondent did not advise the Secondary Complainer about the potential consequences of the loss of the Deed of Variation, either before or after the signing of the second copy in January 2018. He did not advise her that a court action could be raised to prove the tenor of the copy deed. He did not advise the Secondary Complainer that she may have claim against the Respondent. He did not advise of a potential conflict of interest when she signed the Deed on 17 January 2019. He did not advise the Secondary Complainer of the consequences of “backdating” that copy. The Respondent did not set out advice on the requirement of the Inheritance Tax Act 1984 section 142 which prescribed the rules on redistribution. He did not set out detailed advice whether the copy of the deed with explanation of loss of the principal would be sufficient to meet the requirement of the Act or the risks involved in relying upon such a position.

6.22 The Respondent did not insist upon his fee.

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

7.1 He breached Rule B1.2 of the 2008 Rules, his actions lacking integrity, in that

- a) He failed to advise the Secondary Complainer fully and promptly of the apparent misplacing of the original deed of variation, the potential consequences of the deed having been lost, and the potential for the loss of the original deed to give rise to a conflict of interest between the Respondent and the Secondary Complainer;
- b) He failed to advise the Secondary Complainer fully on the legal consequences of signing the second copy of the Deed of Variation on the 17 January 2019;
- c) he incorrectly dated the testing clause;
- d) he did not provide a second letter or affidavit setting out the loss and reconstitution of the deed explaining its reconstitution and suggestion it could be registered in the Books of Council and Session;

7.2 He breached Rule B1.4 in that he failed to act in the Secondary Complainer's best interests by failing:

- a) to advise of the potential legal consequences of the loss of the deed;
- b) to advise that a reconstituted deed may be insufficient;
- c) to advise that she may have a claim of damages against his firm;
- d) to advise that she may wish to take alternative advice;
- e) to provide any advice on the validity or otherwise of backdating the second signed deed;
- f) to provide any advice or explanation of alternative remedies, including an action of proving the tenor or obtaining insurance;

7.3 He breached Rule B1.7 by acting where there was a conflict between the interest of the Secondary Complainer and his own interest or that of his practice unit;

7.4 He breached Rule B1.9 by failing to communicate effectively with the Secondary Complainer;

7.5 He breached Rule B1.10 by failing to act with competence, diligence and appropriate skill in that he failed to advise the Secondary Complainer of the legal implications of the loss of the principal Deed of Variation, failed to advise her of the potential curative action available and failed to acknowledge his responsibility to her.

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

By Video Conference, 29 June 2022. The Tribunal, having considered the amended Complaint dated 21 June 2022 at the instance of the Council of the Law Society of Scotland against Ronald Grant Fulton, 36 Newlands Road, Glasgow; Find the Respondent guilty of professional misconduct in respect of his breach of Rules B1.2, B1.4, B1.7, B1.9 and B1.10 all of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Fine the Respondent in the sum of £1,500 to be forfeit to Her 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 and the Secondary Complainer 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 with the Tribunal Office.

**(signed)**

**Kenneth Paterson**

**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 *25 July 2022* .

**IN THE NAME OF THE TRIBUNAL**



**Kenneth Paterson**

**Vice Chair**

## NOTE

At the Hearing on 29 June 2022, the Tribunal received the amended Complaint and Mr Brown indicated that the Respondent pleaded guilty to it. The Tribunal had before it the amended Complaint, a List of Authorities for the Complainers and an outline of the Respondent's plea in mitigation. Parties made submissions.

## SUBMISSIONS FOR THE COMPLAINERS

The Fiscal indicated that the Secondary Complainer had not responded to the Complainers' enquiry about whether she wished to make a claim for compensation. The Fiscal described the Respondent's conduct as set out in the Complaint. He invited the Tribunal to make findings of misconduct in relation to the Respondent's breaches of Rules B1.2, B1.4, B1.7, B1.9 and B1.10. In relation to Rule B1.2, the Fiscal indicated that the Complainers did not aver dishonesty but contended that the Respondent's conduct in having the Secondary Complainer sign a backdated deed without an accompanying affidavit and failing to give her appropriate advice, lacked integrity. He referred the Tribunal to the examples of lack of integrity in Wingate & Evans v SRA; SRA v Malins [2018] EWCA Civ 366. He also referred to the test for professional misconduct in Sharp v Council of the Law Society of Scotland 1984 SLT 313 and suggested that the Respondent's conduct fell below the standards of competent and reputable solicitors to a serious and reprehensible degree.

## SUBMISSIONS FOR THE RESPONDENT

Mr Brown said that although misconduct was a decision for the Tribunal, the Respondent accepted the Complainers' characterisation of his behaviour. There was no intent to deceive. He did not set out to mislead. There was no moral culpability in losing the deed. However, there was insufficient recognition of the emergent conflict of interest. In proposing a solution he did not acknowledge his own mistake and advise the client to take independent advice. He ought to have made a detailed proposal to her in writing. This was in part explained by the rapidly declining client relationship which was extremely fractious. He wrongly shied away from dealing with the problem head on. The other problem was that the deed was probative of its terms and the date of execution. Therefore, the reconstituted deed is inherently misleading. It will lead the reader into error although that was not the Respondent's intention.

Mr Brown noted that the Respondent was not far away from the correct diagnosis of the problem and the solution. When the deed was lost, the situation was not irretrievable. The formal and expensive

route would have been to prove the tenor of the lost deed by raising a court action. Had there been a photocopy of the original, this would have been relatively straightforward. The other option would have been to insure the risk. Another way of proceeding would have been to do nothing and hope time solves the problem. If the Secondary Complainer survives for 7 years following Mr R's death, the potential loss might never occur. Alternatively, the deed could have been reconstituted and the Respondent and Secondary Complainer could have provided affidavits to accompany it stating that the original had been lost but that these were the terms which had been signed and dated on 25 September 2018. The proper approach would have been to set that out in a letter describing this potential solution but acknowledging that the interests of the Respondent and the Secondary Complainer no longer converged and so she ought to take independent advice and ask her new solicitors to correspond with the Respondent.

There were two problems. The first was the failure to give appropriate advice. The second was the inadvertent problem of a new probative deed. In cumulo, it was accepted that this conduct passes the Sharp threshold.

In answer to a question by the Tribunal about the Respondent's intentions, Mr Brown indicated that this was simple inadvertence. The Respondent did not fully think through the appropriate course of action. He jumped to half the solution. He missed the significant risk that creation of the deed was inherently misleading. He did not explain that the deed was a replica of the lost document. However, that would have been fine if it had not been signed and there were accompanying affidavits. Mr Stewart confirmed that the Complainers were content that there was no dishonesty, fraud, or intent to deceive. However, he said there was a lack of integrity.

The Tribunal asked about the current position of the Secondary Complainer. Mr Brown noted that any tax loss has not yet eventuated because the Secondary Complainer is still alive. However, even now, it would be possible to raise an action proving the tenor of the deed. It is unlikely that there will be a liability. However, it is a loss flowing from the loss of the deed rather than the professional misconduct. The master policy will respond. Mr Brown noted that as part of the Scottish Legal Complaints Commission process, the Respondent had waived his own fee, paid the new solicitor's fee and paid compensation to the Secondary Complainer.

## **DECISION**

The Tribunal was satisfied beyond reasonable doubt on the basis of the admitted facts that the Respondent had acted in the manner set out in the findings in fact above. Although the Respondent

admitted professional misconduct, it remained for the Tribunal to consider whether the admitted facts constituted professional misconduct.

The Respondent failed to advise the Secondary Complainer of the loss of the original deed. He did not tell her about the potential consequences of that loss. He did not let her know that there was potential for a conflict to arise between them and that she might have a claim for damages against his firm. He did not tell her to get independent advice. He did not explain to her the legal consequences or validity of a second Deed of Variation. He incorrectly dated the testing clause. He did not, as he ought to have done, provide a letter of affidavit setting out what had happened. He did not provide any advice regarding alternative remedies.

Solicitors must be trustworthy and act honestly at all times so that their integrity is beyond question (Rule B1.2). They must act in the best interests of their clients. They must not permit their own personal interests to influence their actions or advice (Rule B1.4). They must not act for any client where there is a conflict between the interests of the client and the interests of the solicitor (Rule B1.7). Solicitor must communicate effectively with their clients (Rule B1.9). They must only act in those matters where they are competent to do so, exercising the appropriate level of skill (Rule B1.10). The Respondent breached these rules.

The Tribunal considered the admitted conduct and established breaches of rules in the context of the test for professional misconduct contained in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313. According to that case,

*“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 Tribunal was satisfied that the Respondent’s conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors. He was therefore guilty of professional misconduct. The Complainers did not allege dishonesty in this case but said that Respondent’s conduct displayed a lack of integrity. In Wingate & Evans v SRA; SRA v Malins [2018]

EWCA Civ 366 it was noted that integrity is a broader concept than dishonesty. In professional codes of conduct, the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. Integrity connotes adherence to the ethical standards of one’s own profession and involves more than mere honesty. It is noted in that case that a solicitor must take particular care not to mislead. They are expected to be even more scrupulous about accuracy than a member of the general public in daily discourse. The Tribunal was satisfied that in failing to advise the Secondary Complainer appropriately, preparing another Deed of Variation for signature and by completing and signing the testing clause which was backdated, the Respondent had shown a lack of integrity.

The Fiscal confirmed that there were no previous conduct findings on the Respondent’s record card. He moved for expenses.

## **SUBMISSIONS IN MITIGATION**

Mr Brown adopted the written note of mitigation. He explained that the Respondent had a lot on his mind at the time of the misconduct. He was in the advanced stages of preparing for retirement. There were the usual legacy issues to tidy up as well as credit balances to return and files to close. He was working very long hours. When he realised that the original deed had been lost, he shied away from acrimony with the Secondary Complainer. He found the situation stressful and unpleasant. As well as a busy professional life, there were calls on his time in his personal family life. If he had dealt with the issue properly, this would have resulted in nothing more than a service complaint. However, by allowing the matter to fester, the Secondary Complainer’s suspicions multiplied, and the issue became even more acrimonious. The Respondent’s response was superficial. It did not have sufficient analysis or attention to detail.

It had been the Respondent’s intention to round off the file and write out to the Secondary Complainer. However, she made it clear at their meeting that she already had new solicitors. They mandated the file. The Respondent expected to receive correspondence from the new solicitors. However, they did not contact him. There was no conscious decision not to write to the Secondary Complainer although he did not think it appropriate to write to her when she had new solicitors. He accepts now that the correct thing to do would have been to set everything out in writing, recommend independent advice, and invite the new agents to correspond with him. It is misconduct, but there was no intent to deceive. The correspondence makes clear that the second deed is a replica. The Respondent did not appreciate it was probative of the original date.

The Respondent is 69 this year. He retired in October 2020. He has no interest in returning to the profession. He had a long professional career which was blameless. There is no systemic risk. He is not in practice. This was an isolated one-off incident at the lower end of the spectrum. The matter could be adequately marked by a censure. The service complaint has been dealt with by the Scottish Legal Complaints Commission. The Respondent paid the fees of the new solicitors which were about £2,600. He waived his own fee. He paid £5,000 to the Secondary Complainer.

Mr Brown suggested that the Tribunal could proceed as if the Secondary Complainer has been compensated. If any residual issue arises, the master policy will cover it. Expenses were conceded and publicity would be mandatory in the circumstances.

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

The Tribunal considered that this matter was not at the lower end of the scale of misconduct. Signing a back dated self-proving deed is a very serious matter. It displayed a lack of integrity. This kind of conduct is likely to seriously damage the reputation of the profession. The reconstituted deed would mislead, regardless of the Respondent's intentions.

There were some mitigating factors. This was the first conduct issue involving the Respondent to come before the Tribunal. The Respondent had cooperated with the Fiscal and the Tribunal. He had arranged to plead guilty at an early stage. He had attended in person and accepted his shortcomings. He had complied with the Scottish Legal Complaints Commission determination. This was a one-off incident.

The Tribunal considered that censure alone would be insufficient in this case. A fine of £1,500 would also be appropriate in the circumstances to show the seriousness with which the Tribunal viewed the Respondent's conduct. The Tribunal was satisfied that, despite the finding of lack of integrity, the circumstances of this case meant that censure and fine was the appropriate sanction. This was a single incident in a long career. The Respondent had retired from practice and had informed the Tribunal he did not intend to return to the profession. There was no requirement for supervision. The public was not at risk. The Tribunal therefore did not consider that a stronger sanction was necessary in the particular circumstances of this case.

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 and the Secondary Complainer. 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 these findings to lodge a written claim for compensation with the Tribunal Office.



**Kenneth Paterson**  
**Vice Chair**