

**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**

**RAYMOND GEORGE MALLON, Solicitor, 8  
Carnock Gardens, Milngavie, Glasgow**

**Respondent**

1. A Complaint dated 19 April 2017 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Raymond George Mallon, Solicitor, 8 Carnock Gardens, Milngavie, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
  2. There was a Secondary Complainer, Charles Mullen, 9 Cunningham Street, Grangemouth.
  3. In terms of its Rules, 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 appointed the Complaint to be heard on 19 July 2017 and notice thereof was duly served upon the Respondent.
  5. At the hearing on 19 July 2017, the Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was neither present nor represented. 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. Having heard submissions from the Fiscal and evidence from the Clerk, the Tribunal concluded that it
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was appropriate to grant the Fiscal's motion. The Fiscal had lodged a number of Productions and led evidence from two witnesses.

6. Having given careful consideration to the parole evidence and the documentary productions, the Tribunal found the following facts established:-

6.1 The Respondent's date of birth is 13 March 1967. He was enrolled as a Solicitor on 30 March 2004. He practised as a Solicitor and was an LLP Designated Member and Partner of RMS Law LLP, 8 Lint Riggs, Falkirk from 9 November 2009 to 31 January 2014. RMS Law LLP remains on the Companies Register and the Respondent is an active LLP Designated Member.

From 1 February 2014 to 10 November 2015 he was a Consultant with Thompson and Brown Solicitors (otherwise Thompson Family Law), Suite 200 Central Chambers, 93 Hope Street, Glasgow. From 10 November 2015 to 31 October 2016 he was a Consultant with Berlow Rahman Solicitors, 1st Floor, 40 Carlton Place, Glasgow. The Respondent does not presently hold a Practising Certificate but remains on the Complainers' Roll of Solicitors.

6.2 The Secondary Complainer consulted the Respondent in respect of a potential claim in relation to him contracting Legionnaires disease following a holiday in Majorca. The Secondary Complainer had been treated at Stirling Royal Infirmary before being released. He was subsequently re-admitted to Stirling Royal Infirmary and spent three weeks in intensive care there before being transferred to Glasgow Royal Infirmary where he spent a period of five weeks.

6.3 The Respondent wrote to the Secondary Complainer on 2 February 2010 referring to a recent meeting and advising that he had received authorisation from the Scottish Legal Aid Board to progress the Secondary Complainer's claim.

6.4 Subsequently, the Secondary Complainer was advised by the Respondent that his case had been an isolated one and there had not been an outbreak of Legionella in Majorca at the relevant time. The Respondent went on to

comment that the Secondary Complainer's treatment in Stirling Royal Infirmary had been negligent and that he (the Respondent) had been told by a Doctor in Edinburgh that there was a case to sue the NHS for negligence.

- 6.5 Thereafter the Secondary Complainer occasionally called at the Respondent's office to check on progress and was advised that the case was active and still going on. He was advised by the Respondent that the case was "a stonewall" one. The Secondary Complainer visited the Respondent's office at RMS Law LLP in Falkirk to find that it was empty. A sign on the door directed callers to the firm of Thompson and Brown Solicitors.
- 6.6 Having discovered that the Respondent was employed at Thompson and Brown Solicitors, the Secondary Complainer telephoned their offices to speak to the Respondent. He was advised that the Respondent was on long term sick leave.
- 6.7 Thompson and Brown wrote to the Secondary Complainer on 23 September 2015 when they referred to having discussed the Secondary Complainer's case with the Respondent and the past history including the possibility that the Secondary Complainer's treatment might amount to medical negligence. They advised they were happy to apply for Legal Aid funding to investigate the Secondary Complainer's case in respect of medical negligence and sent him Legal Aid papers.
- 6.8 On 17 October 2015 the Secondary Complainer wrote to the Respondent at Thompson and Brown Solicitors advising that he understood he already had funding from the Legal Aid Board and requested his Legal Aid Certificate number which he had previously requested in a phone call on 24 August 2015. The letter was delivered and signed for on 19 October 2015.

Subsequently the Secondary Complainer learned that the Respondent was no longer at Thompson and Brown Solicitors and had moved to work as a consultant with the firm of Berlow Rahman Solicitors. On 19 January 2016, the Secondary Complainer wrote to the Respondent at that firm referring to his previous letter and the history of the case. He again asked for his legal aid

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certificate number. The letter was signed for on 20 January 2016. There was no response to that letter.

6.9 In November 2015 the Secondary Complainer made a complaint to the Scottish Legal Complaints Commission. Subsequent to his initial complaint he advised the SLCC that he had received no response to his letter of 19 January 2016.

6.10 In May 2016 the SLCC determined that there might be a conduct complaint in respect of the Respondent's delay and/or failure to advise the Secondary Complainer of his Legal Aid reference number. The SLCC accordingly referred the conduct issue to the Complainers.

On 20 May 2016 the SLCC wrote to the Respondent advising him of their Determination and attaching a copy of the Determination.

6.11 The Complainers intimated the complaint to the Respondent by letter dated 1 June 2016. The letter explained that the Complainers required to investigate the issue in terms of the Legal Profession and Legal Aid (Scotland) Act 2007, Section 47(1) that he had a professional obligation to reply and that he could reply within twenty-one days providing his professional files setting out his position in respect of the complaint and providing any additional information which he considered to be relevant.

The letter further advised the Respondent that if he did not respond within the appointed timescale the Complainers would require to serve Notices in terms of the 2007 Act.

6.12 In the absence of any response from the Respondent the Complainers issued Notices on 22 June 2016 to the Respondent in terms of the Solicitors (Scotland) Act 1980 Section 15(1) and the Legal Profession and Legal Aid (Scotland) Act 2007 Section 48. As the Section 15(1) Notice contained an error, an amended Section 15(1) Notice was issued to the Respondent on 23 June 2016.

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Separately the Complainers emailed the Respondent advising that he would have received a Section 15(1) Notice, that this Notice contained an error and that a further Section 15(1) Notice was about to be issued.

The Royal Mail Track and Trace system showed that the original Section 15(1) and Section 48 Notices were delivered on 23 June 2016 and that the amended Section 15(1) Notice was delivered on 24 June 2016. The Track and Trace Certificates confirmed that the Notices were all duly signed for.

- 6.13 On 23 June 2016 the Respondent emailed the Complainers indicating he hadn't received "the Notice mentioned" and asked that a copy be emailed to him.

The Complainers responded by email advising that the Section 15(1) and Section 48 Notices had been sent to him the previous day by recorded delivery. The Respondent acknowledged that email and on the same day the Complainers emailed the Respondent advising "Dear Mr Mallon further to our earlier exchange of emails, I now attach a copy of the Society's Section 15 Notice, as amended and issued today".

- 6.14 In the absence of any further response from the Respondent the Complainers issued a 1980 Act Section 15(2) Notice on 13 July 2016 both by recorded delivery and email.

The Respondent's employers emailed the Complainers on 14 July 2016 advising that the email had been received and that "Mr Mallon has been cc into this email". They commented that no copy of the Section 15(2) Notice had been attached to the Complainers' email.

The Complainers' Royal Mail Track and Trace receipt confirmed the Section 15(2) Notice had been delivered on 14 July 2016 and signed for.

The Complainers replied by e-mail on 2 August 2016 inter alia attaching the Section 15(2) issued on 13 July and signed for on 14 July 2016.

- 6.15 On 9 September 2016 the Complainers attempted to phone the Respondent. They were advised by his office that he wasn't in at that time but the message would be passed to him as soon as possible.

There was no response from the Respondent.

On 20 September 2016 the Complainers wrote inter alia to the Respondent advising that the complaint was being moved to the report stage.

- 6.16 A Report was duly completed and a copy provided to the Respondent by letter dated 11 October 2016. Inter alia, the letter advised that the complaint would be considered by the Complainers' Professional Conduct Sub Committee.

The Report and all other relevant documentation was considered by the Complainers' Professional Conduct Sub Committee on 8 December 2016.

The Committee determined that the Respondent's conduct in respect of unduly delaying/failing to tell the Secondary Complainer his Legal Aid reference number, despite the Secondary Complainers' request by recorded delivery on 19 January 2016 and by telephone on 24 August 2015 and failing to co-operate with the Law Society's investigation in respect of the principal complaint or to provide relevant papers to the Law Society in connection with the principal complaint, despite Notices in terms of Section 15 of the Solicitors (Scotland) Act 1980 and Section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 having been served upon him calling for him to do so appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor; that they appear to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

The Committee determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect of his failure (a) to communicate with the Secondary Complainer by failing to respond to the letters of 17 October 2015 and 19 January 2016 and (b) to respond to correspondence and notices from the Complainers.
8. Having heard further submissions from the parties, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 19 July 2017. The Tribunal having considered the Complaint dated 19 April 2017 at the instance of the Council of the Law Society of Scotland against Raymond George Mallon, Solicitor, 8 Carnock Gardens, Milngavie, Glasgow; Find the Respondent guilty of professional misconduct *in cumulo* in respect of his failure (a) to communicate with the Secondary Complainer by failing to respond to the letters of 17 October 2015 and 19 January 2016 and (b) to respond to correspondence and notices from the Complainers; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Sub Committee of the Council of the Law Society of Scotland and that for an aggregate period of at least three years; 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.

(signed)

**Nicholas Whyte**

**Chairman**

9. The Tribunal then went on to consider the Secondary Complainer's claim for compensation and heard evidence from the Secondary Complainer and a supporting witness. The Tribunal found that the Secondary Complainer had been directly affected by the misconduct of the Respondent resulting in inconvenience and distress.

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

Edinburgh 19 July 2017. The Tribunal having considered the Complaint dated 19 April 2017 at the instance of the Council of the Law Society of Scotland against Raymond George Mallon, Solicitor, 8 Carnock Gardens, Milngavie, Glasgow, and having determined that the Respondent was guilty of professional misconduct, considered that it was appropriate to award compensation to the Secondary Complainer; Ordain the Respondent in terms of Section 53(2)(bb) of the Solicitors (Scotland) Act 1980 to pay to Charles Mullen, 9 Cunningham Street, Grangemouth the sum of £750 by way of compensation in respect of loss, inconvenience and distress resulting from the misconduct within 28 days of the date on which this interlocutor becomes final with interest at the rate of 8% per annum from the due date until paid.

**(signed)**

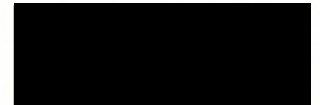
**Nicholas Whyte**

**Chairman**



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 1 SEPTEMBER 2017.

IN THE NAME OF THE TRIBUNAL



**Nicholas Whyte**  
**Chairman**

**NOTE**

No Answers had been lodged on behalf of the Respondent nor had any correspondence been received. The Tribunal had before it the Complaint, List of Witnesses, Inventory of Productions and copy Productions lodged by the Complainers.

The Fiscal made a motion in terms of Rule 14 of the 2008 Rules asking the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. It was noted that the address for the Respondent in the instance of the Complaint was different to the address recorded by the Law Society in his record card. The Fiscal explained to the Tribunal that when he was instructed he had received information that the Respondent was no longer at the address held by the Law Society. On 14 February 2017, the Fiscal had made enquiries with Companies House in relation to the Respondent's firm, RMS Law LLP. The Fiscal had ascertained that the company was still registered and the Respondent was still listed as an LLP designated member with the listed address being that address given in the Complaint. Similarly, the date of birth listed for the LLP designated member with the Respondent's details had a date of birth of March 1967, matching the records for the Law Society. On 31 March 2017, the Law Society had sent an email to the Respondent, using the email address the Respondent had used to communicate previously with the Law Society. This email had asked the Respondent to confirm his current address. No reply was received. The Fiscal had instructed enquiry agents who had reported back that their enquiries suggested that the Respondent was residing at the address given in the Complaint. The Fiscal produced a copy of the information held by Companies House and a copy of the enquiry agent's report. The Fiscal went on to explain that the telephone directory listed a telephone number for the Respondent at the address given. The Fiscal had telephoned that number on 9 June and 30 June 2017 without success. He had written to the Respondent on 28 June 2017, ordinary post, inviting the Respondent to contact him to discuss matters. The Fiscal received no response. The Fiscal had attempted to forward an Inventory of Productions to the Respondent by recorded delivery on 3 July 2017. The Royal Mail's track and trace system showed that this item had not been signed for and so the Fiscal had instructed sheriff officers to serve the Inventory of Productions and List of Witnesses upon the Respondent. On 6 July 2017, the Fiscal wrote to the Respondent, by first class ordinary post, enclosing a List of Witnesses. The Fiscal had received an execution of service from the sheriff officers, together with a report, indicating that they had served the items by letterbox having spoken with a neighbour who had confirmed that the Respondent resided at that address. On 18 July 2017, the Fiscal had checked again with Companies House and the Respondent was still listed there as an LLP designated member with the same address.

The Tribunal heard evidence from the Clerk confirming that the Complaint and thereafter the Notice of Hearing had been sent by recorded delivery post to the Respondent at the address given in the Complaint with the appropriate Notices in accordance with the Rules. The Clerk confirmed that the Royal Mail track and trace system indicated that both of the Notices had been delivered and in particular the Notice of Hearing was delivered and signed for on 13 May 2017.

The Tribunal gave careful consideration to the information before it. It was satisfied that the notice of hearing had been served in accordance with Rule 11 of the Tribunal Rules. Thereafter, the Tribunal went on to consider whether it was fair and appropriate to proceed in the absence of the Respondent. The Tribunal was satisfied that all of the information confirmed that the address in the Complaint was the address for the Respondent. On that basis, the Tribunal was satisfied that the Respondent had had reasonable notice of the Complaint and the hearing date. Given the nature of the allegations made within the Complaint, taken together with the Respondent's failure to cooperate with the Tribunal proceedings, the Tribunal concluded that there was little to be gained by adjourning the hearing. There were two witnesses present who had attended to give evidence on behalf of the Complainers. One of these witnesses was the Secondary Complainer, who was alleging a lack of communication by the Respondent. The Tribunal noted that there was a duty upon the Respondent to keep both the Law Society and Companies House advised of his current address. In all of these circumstances, the Tribunal concluded that it was fair and appropriate to proceed in the absence of the Respondent.

The Complainers had lodged a number of Productions and the Fiscal led evidence from two witnesses.

## **EVIDENCE FOR THE COMPLAINERS**

### **Witness One: Charles Mullen**

Mr Mullen confirmed that he had consulted with the Respondent in relation to a potential claim following his contraction of legionnaires disease after a holiday in Majorca. He confirmed that Production 2 for the Complainers was a letter address to him by the firm of RMS Law LLP dated 2 February 2010 referring to a meeting with the Respondent and confirming that the Respondent had successfully applied for legal aid cover to progress the Secondary Complainer's claim. The witness was of the view that as the Respondent had legal aid cover there was nothing to hold him back from looking into the Secondary Complainer's case. As far as the Secondary Complainer was aware, the Respondent had looked into his case. His potential claim had developed into a claim against the hospital for medical negligence. The Secondary Complainer had initially been admitted to the hospital in Stirling but had been discharged with medication. A couple of weeks later the Secondary Complainer had ended up being readmitted to

Stirling Royal Infirmary and was kept in intensive care for three weeks. Thereafter he was transferred to Glasgow Royal Infirmary where he was an inpatient for five weeks before being discharged and becoming an outpatient at Stobhill Hospital. He had been advised that the Respondent had consulted with someone in Edinburgh who had told him that the Secondary Complainer had a good case. Every time the Secondary Complainer had seen the Respondent, the Respondent had said that it was ok for the case to proceed and that the Secondary Complainer had an excellent case. On one occasion the Secondary Complainer had gone to see the Respondent at the offices of RMS Law LLP in Falkirk. He had arrived to discover the office closed and empty. The nameplate for RMS Law LLP was still outside the premises. There was a sign indicating that the business had moved to Thompson & Brown Solicitors. The Secondary Complainer telephoned the offices of Thompson & Brown to speak to the Respondent. He was advised that the Respondent was on long term sick leave. He confirmed that Production 3A was a copy of a letter to him from the firm of Thompson & Brown referring to this telephone conversation and noting the background circumstances. This letter had indicated that the firm was prepared to take on the Secondary Complainer's case but he was unable to provide them with his legal aid reference number. The Secondary Complainer confirmed that Production 4A was a copy of a letter sent by him to the Respondent at the firm of Thompson & Brown Solicitors asking for a note of the legal aid certificate number. He confirmed that Production 4B was a copy of the Royal Mail track and trace entry showing that this letter had been delivered on 19 October 2015 and signed for by "J McGhee".

As far as the Secondary Complainer was aware, the Respondent had subsequently stopped working for that firm and had moved as a consultant to another firm in Glasgow. The Secondary Complainer confirmed that Production 7 was a copy of a letter sent by him to the Respondent at the firm of Messrs Berlow Rahman Solicitors dated 19 January 2016 and that letter, amongst other things, again requested his legal aid certificate number. The Secondary Complainer confirmed that he received no response to any of his letters. The Secondary Complainer had taken the view that there was no point in going to another solicitor when he had gone so far down the road with the Respondent. The Respondent had not replied to the Law Society never mind him.

He confirmed that Production 8 was a copy of a letter from him to the Scottish Legal Complaints Commission (SLCC) dated 29 February 2016. Production 5, he confirmed was his completed complaint form. He was aware that the SLCC had referred the matter to the Law Society for investigation.

As a result of his illness, the Secondary Complainer had started taking seizures and fits and was now on medication which he requires to take for the rest of his life. He considered that the Respondent's failure to do his job right contributed to his condition. The Respondent had guaranteed to win the Secondary

Complainer's case. He had been told by the Respondent that the Respondent had written to the top man in Edinburgh and that his case had a 99% chance of winning.

The Secondary Complainer had not phoned the Legal Aid Board himself taking the view that the Legal Aid Board would not give him the information and expecting the Law Society to take the matter further. Nor had he spoken to any other lawyer to obtain assistance. Matters had reached this stage because the Respondent had not done his job right. The Respondent's conduct had stressed the Secondary Complainer out for a period of six years.

**Witness Two: Caroline Rose Catto**

The witness confirmed that she was a solicitor employed by the Law Society of Scotland in the Regulation Department and that she was the Clerk to the Professional Conduct Sub Committee. The Complaint against the Respondent was referred to the Law Society by the SLCC and had been mainly handled by her colleague, Mr Davidson, as the complaints investigator. Her colleague was off ill but she had examined the Law Society's file and could confirm its history.

She confirmed that Production 1 was the record card for the Respondent and gave the employment history for him. She confirmed that the Respondent was not currently a practising certificate holder although he was still on the Roll of Solicitors.

The witness referred to Productions 9 to 22 inclusive describing their nature and content. Productions 10E, 11E, 13E and 16B she confirmed were copies of the Royal Mail track and trace entries relating to the letters or notices that were Productions 10, 11, 13 and 16. She confirmed that the only response from the Respondent the Law Society had received was the email copied at Production 14A.

The witness explained that the Law Society were only able to investigate the Complaint on the basis of the information from the Secondary Complainer and the documentary evidence, given the Respondent's lack of cooperation.

In response to a question from the Chairman, the witness clarified that it was her office's practice to keep an internal notebook recording letters and recorded delivery reference numbers. After the issue of the letters, copies of the track and trace records were obtained and placed on the appropriate files connecting the letters and the reference numbers on the recorded delivery slip.

In response to a question from a member of the Tribunal, the witness confirmed that the solicitor's record card, reproduced at Production 1, has information which comes from a number of different sources. As an example, when a solicitor moves employers, either the solicitor or the employer will contact the Law Society giving a note of the change. The witness herself was aware of Berlow Rahman contacting the Law Society on 31 October 2016 advising that the Respondent was no longer there. The Respondent had not applied for a new practising certificate, his last certificate expiring on 31 October 2016. She confirmed that a solicitor is under a duty to advise the Law Society of any change of address. She confirmed that the application for a practising certificate details a solicitor's current place of employment.

## **SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal indicated that it was his basic submission that the Respondent's conduct was serious and reprehensible and met the test set out in the case of Sharp. He submitted that the Complaint was a combination of a failure to communicate with the Secondary Complainer and with the Law Society. He directed the Tribunal's attention to the averments of duty set out at paragraph 6 of the Complaint. The general proposition was set out and described in paragraphs 6.1 and 6.2. Detailed averments were made at paragraph 6.3.

In relation to the averment that the conduct was a breach of Rule B1.2, the Fiscal clarified that he was not suggesting the Respondent had acted in any way which was fraudulent or deceitful but he was submitting that the lack of communication was relevant to the question of personal integrity. Rule B1.9 was relevant to the Respondent's failure to correspondence with his client and Rule B1.14 referred to the Respondent's failure to communicate with the Law Society.

With regard to paragraph 6.4, he submitted it was quite clear from the evidence and the Productions that the Respondent had failed entirely to engage with the Law Society. The Tribunal has held on many occasions that a failure to cooperate with the Law Society amounts to misconduct and that it restricts and impedes the Law Society in the exercise of the investigation of a complaint. He submitted that this aspect of the case alone amounted to professional misconduct.

The Fiscal asked the Tribunal to consider the position of the Secondary Complainer separately. The Secondary Complainer had outlined the history of the matter and it seemed that as far back as January 2014 there had been no communication from the Respondent. The Respondent had left the firm of RMS Law in January 2014 and this had only become apparent to the Secondary Complainer when he had

attended at the previous offices of RMS Law. Against this background, the Secondary Complainer had been chasing for the reference number for his legal aid certificate. The Secondary Complainer had spoken to two letters requesting this information and the information had not been forthcoming. Whilst it might be said that a one-off instance of failing to communicate with a client might not amount to professional misconduct, the Fiscal submitted that in this case it was capable of standing on its own given the whole background. He asked the Tribunal to bear in mind that the letters that produced no response were sent against the background of the firm moving in January 2014. He asked the Tribunal, if it was not satisfied that the Secondary Complainer's complaint stood alone as professional misconduct, to hold that it was certainly professional misconduct *in cumulo*.

In reply to a question from the Chairman, the Fiscal clarified that the reference to a legal aid certificate probably meant a grant of advice and assistance. The Fiscal confirmed that the reference number for the grant of advice and assistance would be necessary to instruct another solicitor.

In relation to paragraph 6.3 of the Complaint, the Fiscal explained that he was not suggesting that the Respondent was acting in a fraudulent or deceitful manner but that he had not acted in a trustworthy manner.

In response to a question from the Chairman, the Fiscal confirmed that he was arguing that the Respondent's failure to communicate went beyond the failure to provide the reference number to the legal aid certificate. The Fiscal suggested that there was a more general failure to communicate based on the evidence of the Secondary Complainer and the record card disclosing the change of firms.

## **DECISION**

The onus lay upon the Fiscal for the Complainers to prove the averments of fact beyond reasonable doubt. The Complainers had led evidence from two witnesses and had lodged documentary Productions. The Tribunal found both witnesses to be credible and reliable.

The Tribunal was without hesitation satisfied beyond reasonable doubt that the Respondent had failed to respond to correspondence and notices from the Law Society of Scotland. This Tribunal has repeatedly indicated that a solicitor is under a duty to cooperate with the Law Society as its regulatory body. It is important that the public can place trust in the profession. Where a client has made a Complaint and then a solicitor goes on to fail to cooperate with his regulatory body this can only bring the profession into disrepute. It has repeatedly been said by the Tribunal that such conduct meets the test of professional

misconduct set out within the case of Sharp and the Tribunal was satisfied that the conduct here amounted to professional misconduct.

With regard to the Respondent's failure to communicate with the Secondary Complainer, the Tribunal were satisfied beyond a reasonable doubt that the Secondary Complainer had written to the Respondent on 17 October 2015 and 19 January 2016 requesting, amongst other things, confirmation of his legal aid reference number and that the Respondent had not replied. Given the nature of the parole evidence from the Secondary Complainer and the specific averments made within the Complaint the Tribunal concluded that its findings were restricted to these two items of correspondence. The Fiscal had invited the Tribunal to hold that this element of the Respondent's conduct alone amounted to professional misconduct. The Tribunal was not satisfied that a failure to respond to these two items of correspondence, set against the background described by the Secondary Complainer, was in itself sufficiently serious and reprehensible to meet the Sharp test. However, the Tribunal was satisfied that this conduct, together with the failure to correspond with the Law Society, was sufficient for an *in cumulo* finding of professional misconduct.

The Fiscal had argued that these failures amounted to a breach of Rule B1.2 of the 2011 Practice Rules. The Tribunal was not persuaded by this argument.

## **DISPOSAL**

The Fiscal tendered a copy of a previous finding against the Respondent from November 2013 which he submitted was analogous to the current matter, it having involved a failure to obtemper a mandate and failing to respond to correspondence from a colleague.

No information had been provided by the Respondent.

The Tribunal accepted that the previous finding against the Respondent was analogous. It was also relevant to note that the finding preceded the actual date of the conduct in this case. The Tribunal was concerned that the current Complaint, set against the background of the previous finding, raised issues of a danger to the public. The Respondent had previously been fined and censured. He had shown no insight into or remorse for the current misconduct. Although the Tribunal considered the conduct to be serious, it did not consider the conduct sufficiently serious so as to require the Respondent to be struck from the Roll or suspended. The conduct of the Respondent in failing to cooperate with the Law Society and the whole disciplinary process would inevitably bring the profession into disrepute.



In the circumstances, the Tribunal considered that the appropriate disposal was to censure the Respondent and restrict his practising certificate to ensure that he required to work under supervision. The appropriate period for this supervision was considered to be three years from the granting of any practising certificate, with a requirement that the whole three year period required to be a period of supervision whilst employed and would not include any period where the Respondent was the holder of a practising certificate but not actually employed.

#### **EXPENSES AND PUBLICITY**

The Fiscal moved for expenses and made no submissions regarding publicity. The Secondary Complainer confirmed he had no objection to being identified within the findings. Accordingly, the Tribunal made the usual orders with regard to expenses and publicity.

#### **COMPENSATION**

The Secondary Complainer's written statement of claim for compensation was placed before the Tribunal.

The Tribunal heard evidence from the Secondary Complainer. The Secondary Complainer had already given some evidence regarding the effects of the Respondent's conduct upon him and the Chairman sought further clarification. The Secondary Complainer confirmed that he believed without having his legal aid reference number he could proceed no further. He indicated that he had been stressed and anxious for a period of six years and believed he had lost his claim because of the Respondent.

The Tribunal heard evidence from the Secondary Complainer's wife, Eleanor Jean Mullen. She confirmed that the Respondent's conduct had caused her husband to suffer sleepless nights. He had been ill-tempered and it had caused them to argue a lot. Her husband had been worried sick about it all. He could not stop thinking about it and she believed it had affected his mind. She had accompanied him to the Respondent's office on a number of occasions when he had been advised that he had a good claim and the matter was proceeding. The whole thing had dragged on and on and had dragged her husband down.

**DECISION**

It was quite clear to the Tribunal that the Secondary Complainer had suffered inconvenience, anxiety and distress as a direct result of the conduct of the Respondent. However, some of that inconvenience, anxiety and distress was a result of conduct of the Respondent which was not before the Tribunal. In assessing what proportion had been caused by the established misconduct, it was clear to the Tribunal that the Secondary Complainer had been convinced that he needed the legal aid reference number to progress any further. The failure to provide this information had gone on for a significant period of time, and in fact the information had still not been provided to the Secondary Complainer. This had clearly caused significant inconvenience, worry, concern, anxiety and upset. The Secondary Complainer appeared to the Tribunal to be a vulnerable individual. The Respondent had taken no steps at all to rectify the matters. The Tribunal concluded that the appropriate figure to reflect these issues was £750.



**Nicholas Whyte**  
**Chairman**