

**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**

against

**QUINTON MUIR, D & J Dunlop Solicitors, 2
Barns Street, Ayr**

1. A Complaint dated 13 April 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Quinton Muir, D & J Dunlop Solicitors, 2 Barns Street, Ayr (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Mr A.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 28 September 2018 and notice thereof was duly served upon the Respondent.
5. The hearing took place on 28 September 2018, the Complainers were represented by their Fiscal, Paul Reid, Solicitor-Advocate, Glasgow. The Respondent was present and represented himself.
6. On Joint Motion, the Complaint was amended to delete paragraph 4.1(c); the figure "13" where it appeared in paragraph 4.2; and "B1/13" where it appeared in paragraph 4.3. A

Joint Minute of Admissions was lodged. Said Joint Minute agreed that the Respondent admitted the averments of fact, duty and misconduct contained within the Complaint as amended. The Tribunal heard submissions from both parties.

7. Having given careful consideration to the terms of the Complaint as amended, the Joint Minute of Admissions and the parties' submissions, the Tribunal found the following facts established

7.1 The Respondent is Quinton Muir. He was born 8th May 1967. He was enrolled and admitted as a Solicitor on 18th December 1991. Initially he was employed by the firm James Campbell & Co WS from 31st January 1992 until 28th February 1995. Thereafter he was employed by the firm West Anderson & Co, Glasgow from 20th March 1995 until 30th June 1995. Latterly he was employed initially as an employee, then an associate and subsequently a partner with the firm D & J Dunlop, Solicitors, 2 Barns Street, Ayr from 19th July 1995 to date.

7.2 The Respondent acted on behalf of a client, Mr A. The Respondent was instructed by Mr A to act on his behalf in March 2002 in connection with issues arising as a consequence of the redundancy of the client from his then employer. Initially the Respondent was instructed to make representation in connection with a Compromise Agreement. The employer of the client had determined to render him redundant. A sum of money was to be paid. A Compromise Agreement was revised by the Respondent under instruction of the client. Subsequently in May 2002 the client decided that he no longer wished to enter into the Compromise Agreement and would instead accept the employer's redundancy payment with a view to pursuing the employer for a claim for damages. In or about 30th June 2002 the client contacted the Respondent with a view to pursuing a claim against his former employers, either before an Employment Tribunal or at common law being an action for damages for wrongful dismissal. The Respondent was instructed to act on behalf of the client.

7.3 Having been instructed in June 2002 to proceed with litigation against the employer, the client of the Respondent contacted the Respondent on three occasions in September and October 2002 requesting an update. A meeting took place in March 2003. Due to the client being unemployed he was eligible and therefore granted

advice and assistance in terms of the Legal Aid Scheme. The Respondent advised the client at a meeting in May 2003 that he was covered in terms of the Advice and Assistance Scheme. The Respondent did nothing further. The client contacted the Respondent on four occasions between May 2003 and December 2003 seeking updates from the Respondent. Nothing was done. Between February and July 2004, the client sent on five occasions e-mails requesting updates from the Respondent. Eventually in October 2004 the Respondent advised he would try and progress matters with Counsel. Further e-mail communication was sent by the client which was ignored by the Respondent. In May 2005 an Initial Writ raising an action against the former employer was lodged with the Sheriff Clerk at Ayr Sheriff Court. The firm Pinsent Masons was instructed on behalf of the former employer. The Respondent enrolled a Motion to sist the cause to allow determination of an application for legal aid on behalf of the client. The Motion was granted in August 2005. Nothing further was done by the Respondent. Pinsent Masons wrote to the Respondent seeking an update in relation to the application for legal aid throughout September, October and November 2005. In 2006 the client wrote or called the Respondent on a number of occasions seeking an update and did not receive a reply. Pinsent Masons continued to seek an update from the Respondent on three occasions between April and November 2006 and did not receive a reply. Pinsent Masons continued to correspond in 2007 with the Respondent seeking confirmation as to the client's legal aid application and did not receive a reply. In December 2008 the client sought a meeting with the solicitor. The Respondent replied that they could meet after the Christmas holiday in early January 2009. No meeting was organised. The client sent further e-mail communication between January and September 2009 when eventually the Respondent replied providing information and dates when he would be available for a meeting. Nothing further was done. In July 2010 the client e-mailed the Respondent seeking clarification of upcoming court dates and whether a meeting was required. In 2011 the client e-mailed the solicitor on three occasions seeking further updates with the last e-mail of October 2011 enquiring as to how a preliminary hearing had proceeded. In 2012 the client provided the Respondent with information on payments he had received from his previous employment and information the client had obtained from a former work colleague. The client sent four e-mails between July and December 2012 seeking updates and/or requesting a meeting. Nothing was done. In 2013 the client continued to e-mail the

Respondent. These e-mails made reference to court dates and requested a response or update from the Respondent. Nothing was done. In 2014 the client continued to e-mail the Respondent requesting that the Respondent contact him and provide an update. The Respondent eventually replied in July 2014 when he advised the client that probable court dates would take place in September. Nothing was done. A similar pattern arose throughout 2015 with the client sending a number of e-mails between January and December 2015 to the Respondent requesting information and updates. Nothing was done. In 2016 the Respondent prepared a Mandate to obtain the GP records of the client. In March 2016 the client advised the Respondent that due to the absence of response he intended to register a complaint.

- 7.4 Having accepted instruction the Respondent failed to progress the matter in hand for his client timeously or in a proper fashion. Whilst a court action was raised, it was sisted to allow an application for legal aid on behalf of the client to be determined. No such application for legal aid was submitted by the Respondent. Years of delay occurred. During the period of his appointment the Respondent was contacted on a repeated basis by the client seeking an update or information regarding progress in relation to this matter. The Respondent failed to reply. The case remained sisted. The only brief activity on the file arose after the client attended a meeting with the Respondent and thereafter made reference to registering a complaint. The court action although raised, remained sisted for a period in excess of 12 years on the pretext that an application for legal aid was to be submitted, said application never having been submitted. In all of these circumstances the Respondent failed to act in an expeditious or effective fashion. The Respondent failed to properly communicate effectively with his client. The Respondent failed to act in the client's best interests. The Respondent failed to properly communicate effectively with the solicitor for the opponent. The Respondent allowed a court action to remain sisted for an inordinate amount of time rendering the court action pointless. In particular if the Respondent had sought, after a period of 12 years, to recall the sist there is every likelihood he would have been met with a plea that the action should be dismissed due to inactivity and delay on the part of the Pursuer. The action was raised against a former employer of the client. That employer dissolved as a commercial entity in September 2016 rendering the court action raised as pointless.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his breaches of Rules B1.2, B1.4, B1.9.1, B1.9.2, B1.10 and B1.14 of the Law Society of Scotland Practice Rules 2011 (and the corresponding paragraphs of the Code of Conduct for Scottish Solicitors 2002 and corresponding Rules of the Solicitors (Scotland) Standards of Conduct Practice Rules 2008). He allowed his integrity to be called into question (B1.2); he did not act in the best interests of his client (B1.4); he did not communicate effectively with his client (B1.9.1); he failed to advise his client of significant developments in the case (B1.9.2); he failed to act competently and carry out the matter adequately and completely within a reasonable time exercising the appropriate level of skill (B1.10); and failed to act with other regulated persons in a manner consistent with persons having mutual trust and confidence in each other (B1.14).
9. Having heard submissions in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 28 September 2018. The Tribunal having considered the Complaint dated 13 April 2018 at the instance of the Council of the Law Society of Scotland against Quinton Muir, D & J Dunlop Solicitors, 2 Barns Street, Ayr; Find the Respondent guilty of professional misconduct in respect of his breaches of Rules B1.2, B1.4, B1.9.1, B1.9.2, B1.10 and B1.14 of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Fine the Respondent in the sum of £7,500 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 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)

Beverley Atkinson
Acting Vice 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 *22 OCTOBER 2018*.

IN THE NAME OF THE TRIBUNAL



**Beverley Atkinson
Acting Vice Chair**

NOTE

At the hearing on 28 September 2018, the Tribunal had before it an amended Complaint and a Joint Minute of Admissions.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal informed the Tribunal that the Respondent was 51 years old. He was admitted as a solicitor in 1991 and has practised for 27 years. He had never been before the Tribunal before. The Respondent was instructed by the Secondary Complainer in March 2002 with regard to a redundancy. A compromise agreement was tabled. By May 2002 it was clear that negotiations were unsuccessful. The Secondary Complainer instructed the Respondent to pursue matters through the Employment Tribunal or the Court. In March 2003 it was established that the Secondary Complainer was eligible for legal aid. However, the Respondent did not apply for legal aid and did no work on the file. In May 2005, an initial writ was lodged and sisted so that the Respondent could apply for legal aid. The Secondary Complainer repeatedly contacted the Respondent over several years seeking information on his case. The Respondent failed to communicate effectively with him. Finally, the Secondary Complainer complained in 2016 after 12 years of inactivity. By then, the employer company had been dissolved rendering the court action pointless.

Mr Reid noted that the Respondent had entered into a Joint Minute and had cooperating with the Fiscal. This had saved time and expense.

SUBMISSIONS FOR THE RESPONDENT

The Respondent began by offering an “unreserved apology” to the Secondary Complainer. He noted that technically the action remains sisted but accepted that it was lost to the Secondary Complainer.

The Respondent confirmed that he was 51, married with one dependent child. He has been a solicitor for 27 years and a partner in his firm for 23 years. There are two other partners in the firm, employing 10 staff. He practises almost exclusively in the fields of criminal and civil litigation.

The Respondent reported that he accepted instructions from the Secondary Complainer because he was asked to do so by another local solicitor who was the Secondary Complainer’s best friend. There was therefore an element of *delectus personae*. He wanted to help the local solicitor by assisting the Secondary Complainer. At that stage, the Secondary Complainer was looking to negotiate a compromise

agreement. The Respondent said he professed no experience in employment law. There was an onus on the Respondent to move things along and that did not happen. He got into a “deadlock or pickle”. He ought to have told the Secondary Complainer to seek other advice.

The Respondent noted that the Complaint involved only one file and one complaining party. This Complaint concerned one issue among hundreds of clients who had been served well. The Complaint did not involve dishonesty. There was no financial gain to the Respondent. There was obvious disappointment to the Secondary Complainer but no risk to the public. There was “minimal disrepute” caused to the profession. Steps have been taken to address the root cause of the problem. The Respondent’s firm has reviewed its computing and technical support so that if there is no action on a file for a specified period, another partner will review it. The firm recognises that it does not have expertise in employment law and its policy is now that it will not advise clients in this area. They have also joined a network through which they can refer on clients which they cannot or do not want to deal with. The Respondent suggested therefore that there was no scope for repetition due to the steps which had been taken. He had engaged with the Fiscal and cooperated with him and the Tribunal.

The Respondent noted that he was embarrassed by the misconduct. He was challenged by the whole episode but recognised that was a fraction of the upset experienced by the Secondary Complainer. He did not provide references to the Tribunal as he was aware from case law that these would not assist his position. However, he did wish to apologise to the Secondary Complainer and to “the system”.

The Tribunal questioned the Respondent regarding the reason why he had failed to progress the case for so many years. The Respondent said that there was nothing which had occurred in his professional or private life which accounted for his lack of action. The case became old and “dogged-eared”. It became difficult to progress the action and bring it back.

DECISION

The Tribunal considered carefully the admitted averments of fact. The Respondent failed to progress a court action for his client timeously or in a proper fashion. He did not apply for legal aid. There were 12 years of delay. Despite repeated attempts by the client to engage with the Respondent, he failed to respond. The Respondent allowed a court action to be sisted for over 12 years. The court action has been rendered pointless by the company’s dissolution.


The Respondent failed to act expeditiously or effectively and allowed his integrity to be called into question. He failed to communicate effectively with his client or his solicitor for the opponent. He failed to advise his client of significant developments in the case. He failed to act in the Secondary Complainer's best interests. He failed to act with other regulated persons in a manner consistent with persons having mutual trust and confidence in each other.

The Tribunal had regard to the test for professional misconduct as defined in Sharp v The Law Society of Scotland 1984 SLT 413. In that case it was emphasised that a serious and reprehensible departure from the standards of competent and reputable solicitors may be properly categorised as professional misconduct. However, in every case it is essential to consider the whole circumstances and the degree of culpability of the individual against whom the complaint is made. The Tribunal considered all the circumstances and found that the Respondent's conduct was sufficiently serious and reprehensible to amount to professional misconduct.

The Tribunal considered that the offending sat in the middle of the range of professional misconduct. It did not consider that the Respondent had displayed full insight into the consequences for the Secondary Complainer or the likely damage to the reputation of the profession. The length of the course of conduct was a significant aggravating factor as was the fact that the Secondary Complainer's claim could no longer be pursued. No real explanation was provided as to why this offence occurred.

The Tribunal had regard to previous cases where solicitors had failed to progress court cases. It seriously considered whether a restriction on the Respondent's practising certificate would be the appropriate sanction. However, it was ultimately persuaded that there was no ongoing risk to the public necessitating restriction. The event appeared to have been an isolated incident. The Respondent cooperated with the Fiscal and the Tribunal. He displayed some limited insight into the consequences. He offered an apology to the Secondary Complainer. There had been no repetition of the conduct. The Respondent had taken steps to ensure that there was no repetition by utilising updated office and computer systems. His firm had joined and subsequently used a network to refer clients who needed specialised advice which he could not provide. The Tribunal was satisfied that if similar circumstances arose again, the Respondent would refer the client to another solicitor. However, the Tribunal also had regard to the seriousness of the professional misconduct, the effect on the Secondary Complainer and the impact on the profession's reputation. It considered that a significant fine was appropriate to mark the seriousness of the offending and the Tribunal's disapproval of the Respondent's conduct.

Following submissions on expenses and publicity, the Tribunal awarded expenses to the Complainers and ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. 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 intimation of the Findings to lodge a written claim for compensation with the Tribunal Office.



Beverley Atkinson
Acting Vice Chair